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on Environmental Impact Assessment
in a Transboundary Context

Working Group on Environmental Impact Assessment

Fourteenth meeting
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Item 3 of the provisional agenda
Compliance with and implementation of the Convention

Draft review of implementation

Note by the secretariat

Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context decided that a draft third review of implementation based on the reports by Parties would be presented at the fifth session of the Meeting of the Parties (ECE/MP.EIA/10, decision IV/1).

This note presents the draft third review, regarding the legal, administrative and other measures taken to implement the provisions of the Convention, based on national reports received by 31 August 2010.

Contents

I. Introduction

1. The Convention on Environmental Impact Assessment (EIA) in a Transboundary Context (Espoo Convention) was adopted and signed on 25 February 1991, in Espoo, Finland. As of 1 July 2010, there were 44 Parties to the Convention: 43 member States of the United Nations Economic Commission for Europe (UNECE), plus the European Union (EU). On 21 May 2003, the Convention was supplemented by the Protocol on Strategic Environmental Assessment (SEA), which entered into force on 11 July 2010.

2. This document presents the "Review of Implementation 2010", examining responses to a questionnaire on countries' implementation of the Convention in the period from 2006 to 2009. This document is a follow-up to the first and second reviews of implementation (respectively, ECE/MP.EIA/6, annex I, decision III/1; and ECE/MP.EIA/10, decision IV/1).

3. This chapter describes the preparation of the review and introduces some of the strengths and weaknesses in the implementation of the Convention that are apparent from the responses to the questionnaire. Chapter II summarizes the responses to the questionnaire regarding the legal, administrative and other measures taken to implement the provisions of the Convention. A separate document will address practical experiences of applying the Convention with a focus on identifying good practices as well as difficulties Parties have encountered in applying the Convention in practice.

A. Preparation of the review

4. The Meeting of the Parties decided at its fourth session to adopt a workplan that included an activity on compliance with and implementation of the Convention (ECE/MP.EIA/10, decision IV/7).

5. The workplan indicated that the Convention's Implementation Committee should prepare a questionnaire regarding the implementation of the Convention during the period 2006–2009, on which the Convention's Working Group on EIA later agreed (ECE/MP.EIA/WG.1/2009/2, annex I). The Working Group also agreed that the questionnaire be distributed by 30 September 2009 for completion by 30 June 2010, and that the secretariat prepare the subsequent draft third review of implementation by 31 August 2010. The workplan also indicated that the secretariat should present the draft review to the Working Group at the end of 2010 and to the fifth session of the Meeting of the Parties in 2011.

6. The secretariat issued questionnaires in English and Russian in September 2009. The remaining questionnaires in French were issued on 3 November 2009, due to delays in translation.

7. By 31 August 2010, completed questionnaires were received from 29 of the 43 States Parties to the Convention. Those completed questionnaires are reflected in this draft review. By 13 September 2010 completed questionnaires had also been received from Armenia, Finland, Luxembourg and the United Kingdom of Great Britain and Northern Ireland, but these are not reflected in this draft of the review. All completed questionnaires are available on the Convention's website.[1] The EU is a Party to the Convention but, being a regional economic integration organization rather than a State, felt it inappropriate to complete the questionnaire, though it did provide information on recent research.

[1] http://www.unece.org/env/eia/.

8. The following 10 Parties did not submit a completed questionnaire by 13 September 2010: Albania, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Ireland, Kazakhstan, Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Ukraine. The Convention entered into force in Bosnia and Herzegovina after the reporting period 2006–2009.

B. Findings of the review

9. An analysis of the information provided in the completed questionnaires revealed a substantial increase in the application of the Convention, and the continuing development of national legislation and of bilateral and multilateral agreements to support its implementation. However, the analysis also revealed the following possible weaknesses or shortcomings in the Convention's implementation:

(a) Confusion about the respective functions of the point of contact for notification and the focal point for administrative matters;

(b) Appendix I (a list of activities covered by the Convention) not being reflected in full in some Parties;

(c) The frequent lack of a definition of "the public";

(d) A failure to recognize that article 3, paragraph 8, and article 4, paragraph 2, state that the "concerned Parties" are responsible for ensuring opportunities for public participation, and that the opportunities in these provisions are distinct;

(e) A failure to recognize that article 5 provides for transboundary consultations distinct from article 4, paragraph 2;

(f) A lack of experience in carrying out post-project analysis (art. 7);

(g) A continuing need for bilateral and multilateral agreements or other arrangements particularly to address differences between Parties in: the content of the notification; language; time frames; how to proceed when there is no response to a notification or if there is disagreement about the need for notification; the interpretation of various terms; and the requirement for post-project analysis.

II. Summary of responses to the questionnaire

10. This review summarizes responses to the questionnaire, examining the legal, administrative and other measures taken to implement the provisions of the Convention. Responses to questions indicating a lack of experience have not been included. The numbers indicated in bold italics within parentheses refer to the questions in the questionnaire, e.g. "(***24***)".

A. Article 2: General provisions

1. Domestic implementation of the Convention

11. All respondents listed the general legal, administrative and other measures taken in their country to implement the provisions of the Convention (art. 2.2) (***1***), citing various acts, laws, codes, agreements, regulations, decrees, orders, resolutions, ordinances, instructions, circulars and guides, and referring to the Convention, the corresponding EU legislation and other treaties.

12. Many Parties planned for the near future further measures to implement the provisions of the Convention (***2***):

(a) In Belarus, the Cabinet had approved a resolution, procedure and regulations defining the procedures of EIA and State ecological expertise; a technical code was also being drafted;

(b) In Belgium, a new regulation was to be proposed addressing the disposal of radioactive waste;

(c) France might amend its provisions implementing the Convention following the expected adoption of a new law on a national commitment to the environment;

(d) Germany reported an ongoing review of transboundary EIA procedures with neighbouring Parties and the imminent negotiation of a further bilateral agreement;

(e) Greece planned ratification of the two amendments to the Convention;

(f) Hungary reported the entry into force in April 2010 of an amendment to its legislation in response to correspondence with the Implementation Committee on the identification of reasonable alternatives;

(g) In Kyrgyzstan, a new regulation on EIA, including the transboundary EIA procedure, was expected to be approved;

(h) Lithuania planned amendment of a national law on EIA in autumn 2010;

(i) Poland planned amendment of a regulation providing a list of activities subject to EIA and the list of contents of the EIA documentation,[2] to enter into force by November 2010, as well as negotiation or renegotiation of several bilateral agreements;

(j) The Republic of Moldova planned adoption in 2010 of a new law on EIA, providing for, among other things, the amendments to the Convention, as well as a regulation on transboundary EIA;

(k) Romania indicated ratification of the multilateral agreement implementing the Convention between the countries of South-Eastern Europe;

(l) Slovakia planned preparation of bilateral agreements with neighbours;

(m) Switzerland planned the drafting of a multilingual notification form.

2. Transboundary environmental impact assessment procedure

13. Respondents described their country's national and transboundary EIA procedures and authorities (art. 2.2) (***3***).

14. Almost all respondents[3] described or summarized the EIA procedure in their country and indicated which steps of the EIA procedure included public participation (***3 (a)***). Besides the mandatory opportunity for commenting on the EIA documentation, a public hearing, as appropriate, and public information on many stages, respondents indicated other opportunities for public participation:

[2] "EIA documentation" or sometimes "EIA report", "environmental impact study" or "EIA statement" in the completed questionnaires.

[3] I.e., 90 per cent or more of Parties reporting.

(a) In screening,[4] when required, by the seeking of public opinions in the screening decision (Hungary) or by possibly reconsidering the screening decision in the light of representations by the public (Lithuania, Romania);

(b) By considering public opinions when deciding whether to participate as an affected Party (Czech Republic, Hungary, Republic of Moldova);

(c) In scoping[5] (Belgium, Czech Republic, Denmark, Estonia, Lithuania, Netherlands, Norway, Portugal, Sweden), though this was not provided for in all cases in some Parties (Austria, Canada), or might be limited to non-governmental organizations (NGOs) (Spain). In Latvia, the public might demand a public hearing at the scoping stage;

(d) By commenting on both draft and final EIA documentation (Latvia);

(e) By commenting on the expert review[6] of the EIA documentation (Czech Republic);

(f) Through access to justice on the final decision (Germany and the Netherlands, among others).

15. Most respondents described how the different steps of the transboundary EIA procedure set out in the Convention fit into their country's national EIA procedure and legal provisions, or made reference to the legal provisions (***3 (b)***). Of particular interest were the replies by:

(a) Croatia, where the assessment according to national legislation was supplemented by an assessment under the Convention, when an activity was likely to cause transboundary impact;

(b) Lithuania, where the national EIA law indicated that the Convention prevails if the Convention's provisions differed from the national law;

(c) The Republic of Moldova, where a transboundary EIA procedure had not been developed nationally and direct reference was made to the Convention.

16. Respondents identified the authority responsible for the notification, frequently the Ministry of Environment, or a central environmental or planning department or agency, and sometimes in cooperation with the Ministry of Foreign Affairs (***3 (c)***). In many instances, the competent authority, often at a regional level but with support from the centre, was responsible for subsequent steps of the transboundary EIA procedure. In Austria, Belgium, Germany and Switzerland authorities at the level of the region (or *Land* or canton) often led the procedure from the start.

17. A clear majority[7] of respondents identified a single authority in their country that collected information on all transboundary EIA cases (***3 (d)***). In most case this was the ministry or department of environment; in others, a national environmental or planning agency. However, in several Parties there was no such authority (e.g., Belgium, France) and, in the case of Germany and Greece, there was no intention to establish such an authority, whereas the Republic of Moldova did intend doing so. In Greece and the Netherlands an authority gathered information on most cases; in Switzerland, on a more

[4] "Screening" is the case-by-case determination of whether a proposed activity is subject to EIA or to notification.

[5] "Scoping" is the case-by-case determination of the scope of the assessment.

[6] "Expert review" by the competent authority of the EIA documentation and other information; sometimes "environmental impact expertise" or "opinion".

[7] I.e., 70 per cent or more of Parties reporting.

limited range of cases. In Norway, a renewed arrangement for collecting information was being discussed.

18. Almost no Parties had special provisions for joint cross-border projects (***4***), the exceptions being Canada, which described a procedure, and the Czech Republic which referred to its legislation; Switzerland had guidance on cross-border projects. Other respondents referred to ad hoc procedures (France, Germany, Greece, Netherlands, Sweden), with Romania having used the same ad hoc procedure for two separate cases with Bulgaria. Italy and Poland suggested that provisions would be included in bilateral or multilateral agreements.

3. Identification of a proposed activity requiring environmental impact assessment under the Convention

19. The legislation of a clear majority of Parties already covered, or went beyond, the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7), whereas others had legislation based on the current appendix I (Canada, Liechtenstein, Republic of Moldova) (***5***). Some respondents reported slight differences, for example with respect to wind-farms (Hungary). Portugal, Spain and landlocked Kyrgyzstan, the Republic of Moldova, Slovakia and Switzerland excluded offshore hydrocarbon production from their lists of activities. The deforestation of large areas was not covered by Belarus, or by Kyrgyzstan and the Republic of Moldova, where such an activity was not permitted. Belarus and Kyrgyzstan also excluded trading ports and also inland waterways and ports for inland-waterway traffic; the Republic of Moldova excluded installations for the enrichment of nuclear fuels, and the mining of metal ores and coal, as such activities were not found there.

20. Many Parties, including EU member States, but also Belarus, Kyrgyzstan, Norway, the Republic of Moldova and Switzerland, had numerical thresholds in their list of activities requiring EIA, thus providing an interpretation of terms such as “large” and “major” used in appendix I.

21. Many respondents indicated case-by-case examination (screening) as the procedure to determine that an “activity”, or a change to an activity, fell within the scope of appendix I (art. 2.3), or that an activity not listed should have been treated as if it were (art. 2.5) (***6 (a)***). Of particular interest were the replies by:

(a) Parties that had a first list of activities for which EIA was mandatory and a second list requiring screening (e.g., Austria, Estonia, Germany, Hungary, Netherlands, Norway, Poland, Republic of Moldova, Sweden);

(b) Italy, France, Lithuania, Slovenia and Switzerland, which carried out screening for a much wider range of listed projects;

(c) Denmark, Germany, Romania and Slovakia, which applied the Convention to any activity, whether or not listed, likely to have significant adverse transboundary impact;

(d) Greece, which discussed with potential affected Parties unlisted activities for which transboundary impact was nonetheless considered possible;

(e) The Netherlands, which noted that bilateral agreements triggered notification for activities close to the border, and Latvia, which had an agreement that covered activities either close to the border or likely to impact on territory close to the border;

(f) Poland, for which an EIA procedure was only possible for listed activities;

(g) Portugal where, in contrast, the Ministers of Environment and of the sector concerned might jointly decide that any other activity could be subject to EIA and thus transboundary EIA, if appropriate.

22. The Czech Republic also applied the Convention if requested by an affected Party; Hungary had a similar requirement in situations where both concerned Parties were EU member States.

23. Respondents indicated how their countries conducted transboundary EIA cooperation (***6 (b)***). In a clear majority of Parties, such cooperation was through, or mainly through, the points of contact (or focal points, the two terms often being confused). Some respondents also referred to joint bodies (Estonia, Germany, Portugal, Spain) and bilateral agreements (Estonia, Germany, Liechtenstein, Lithuania, Poland, Portugal, Slovakia, Spain).

24. To determine when a change to an activity was considered as a "major" change (***6 (c)***), respondents presented a range of approaches. For some, a change was major if the activity would reach the threshold specified for the activity to be automatically subject to EIA (Belarus, Czech Republic, Germany, Lithuania, Norway, Switzerland). For others, or for changes that did not reach the threshold, a case-by-case examination was carried out (approximately half of the respondents), with some respondents referring to criteria (Germany, France, Hungary, Kyrgyzstan, Latvia). Some respondents provided percentage changes that would qualify as major (Austria, Kyrgyzstan, Poland).

25. Slovenia and Spain reported a different approach with activities and changes to activities being treated the same. Sweden considered all changes to be major unless they were minor and without significant risk to health or the environment.

26. To determine whether such an activity, or such a change to an activity, was considered "likely" to have a "significant" adverse transboundary impact (art. 2.3, art. 2.5, appendix III) (***6 (d)***), a clear majority of respondents again referred to a case-by-case examination, with some referring to the use of criteria; in Spain the criteria were similar to those in appendix III. Canada reported a step-by-step screening procedure to assess, in turn, if activities were adverse, significant or likely to have transboundary impacts. France, Germany, Latvia and Sweden indicated the consultation of relevant authorities or experts, if and as appropriate. Both the Netherlands and Norway indicated a precautionary approach, notifying even if unsure that a significant adverse transboundary impact was likely; the Netherlands also referred to reciprocity with its neighbours.

4. Public participation

27. A majority of Parties had a definition of "the public" in national legislation — either the same as or similar to that in article 1 (x) (***7***), which followed the Aarhus Convention, or that was their own definition. A minority had no definition (Belarus, Belgium (Wallonia Region), Czech Republic, Kyrgyzstan, Liechtenstein, Netherlands, Poland, Sweden, Switzerland), whereas in the Czech Republic, the Netherlands and Poland "the public" included "everyone".

28. Each respondent went on to report how their country as the Party of origin, together with the affected Party, ensured that the opportunity given to the affected Party's public was equivalent to the one given to their country's public (art. 2.6). Some respondents indicated a focus on information to facilitate public participation in the affected Party, such as: the early or simultaneous provision of documentation; its provision in paper and electronic formats and posted on the Party of origin's websites; the provision of a wide range of information on the proposed activity[8] and the EIA, public participation and decision-making procedures; translation of key documentation; and information on public

[8] "Proposed activity" or "project".

participation in the Party of origin, including upcoming public hearings. Several respondents suggested consultations between the concerned Parties.

29. However, many respondents indicated that, having provided the necessary information, it was ultimately the affected Party's responsibility to organize public participation in the affected Party; for Spain this was made explicit in one bilateral agreement. On ratifying the Convention, France had declared that: "The Convention implies that it is the responsibility of each Party to ensure the public distribution within its territory of the EIA documentation, inform the public and collect its comments, except where different bilateral arrangements apply." Nonetheless, some respondents made clear their willingness in the role of Party of origin to participate in public hearings in the affected Party, accompanied as necessary by the proponent.[9]

B. Article 3: Notification

1. Questions to the Party of origin

30. Respondents indicated how their country as Party of origin determined at what stage in the EIA procedure to notify the affected Party (art. 3.1) (***8***), besides "as early as possible and no later than when informing its own public". Inevitably, this could only occur once transboundary impact was determined. For some respondents this might already be possible at the scoping stage (Germany, Hungary, Lithuania, Norway, Poland, Spain, Sweden, Switzerland), but others recognized that it might not occur until the EIA documentation was received by the competent authority (e.g., France, Kyrgyzstan, Liechtenstein, Slovenia). In several Parties notification might occur during or as a result of screening (Croatia, Czech Republic Denmark, Greece, Latvia, Netherlands, Romania, Slovakia). In Austria, notification might even occur during a preliminary procedure before the application for consent.

31. In the Republic of Moldova, notification followed determination of the proposed activity's location, capacity and funding, and preceded preparation of the EIA documentation. Belarus suggested that advance notice might be given even before a site had been chosen. The Czech Republic pointed out that notification also occurred on receipt of a request for notification from an affected Party.

32. Many Parties provided, with the notification, information to supplement that required by article 3, paragraph 2 (***9***), including: that specified in article 3, paragraph 5 (Germany, Hungary), if available (Switzerland); information on the EIA procedure (art. 3.5 (a)) (Czech Republic, Sweden); the proponent's application for consent (Hungary); the screening report (Lithuania); and the draft or final scoping report[10] (Hungary, Lithuania), if available (Switzerland). Some respondents indicated that they sent additional information if there was a particular need (Denmark, Greece, Netherlands), whereas others sent all available useful information (Czech Republic, France, Germany, Kyrgyzstan). France also sent the EIA documentation, as did Austria, if it was available.

33. Approximately half of the Parties used, sometimes in a general way, the format for notification as decided by the first session of the Meeting of the Parties (ECE/MP.EIA/2, decision I/4) (***10***). Hungary considered that the format was not suitable for a procedure with public participation in scoping. France had no standard format and no formal procedure for

[9] "Proponent" or "developer" of an activity.

[10] "Scoping report", "EIA programme", "guidelines", "preliminary assessment documentation" or "initial assessment documentation" (which include screening too) or "report of fact-finding procedure".

the notification, whereas Germany used any form that fulfilled the requirements of the Convention, taking into account the guidelines. Denmark sent its domestic notification of intent, translated as necessary, plus a letter. Switzerland sent a simple letter with key information.

34. Respondents described the criteria that their country used to determine the time frame for the response to the notification from the affected Party (art. 3.3) (***11***). Many Parties based the time frame on their legislation, whereas others indicated that their domestic time frame did not apply (Cyprus), or there was no applicable legislation (Poland, Republic of Moldova, Sweden). Estonia, Poland, Portugal and Spain referred to bilateral agreements, several others to a case-by-case determination, Kyrgyzstan to subregional guidance on transboundary EIA; Sweden also discussed the time frame with the affected Party, Latvia with the proponent. Respondents indicated a range of two weeks to three months for the response, with an average of about one month. Some respondents made clear that the time frame began with the receipt by the affected Party of the notification.

35. If an affected Party did not comply with the time frame, some Parties would send a reminder or call (Austria, Croatia, France, Sweden, Switzerland). Romania simply extended the time frame by two weeks. If the affected Party asked for an extension, several Parties would usually agree (Belarus, Croatia, Romania, Slovakia, Slovenia, Sweden), or did so if justified (Hungary, Kyrgyzstan, Lithuania, Republic of Moldova). Others were more hesitant, indicating that an extension was possible or a short extension was considered (Belgium, Czech Republic, Denmark, France, Latvia, Netherlands, Portugal, Spain, Switzerland). Germany and Poland granted an extension as long as it did not delay the administrative procedure. Estonia had some flexibility but had to inform the proponent.

36. Ultimately, however, the Party of origin had to decide what to do if there was no response within the deadline, whether or not extended. Several Parties would then consider that the affected Party did not wish to participate in the EIA procedure (Belarus, France, Greece, Portugal, Republic of Moldova, Slovenia, Switzerland), or might so decide (Germany). Croatia understood a failure to respond as agreement with the proposed activity. However, Sweden dealt with a late response in the same way as one that arrived in time, Norway and Spain indicated some flexibility, and Hungary suggested that a long delay could mean that the opinion of the affected Party would not be taken into consideration. In the Netherlands the procedure itself would be delayed as a result.

37. Most Parties generally or always provided relevant information regarding the EIA procedure and the proposed activity and its possible significant adverse transboundary impact (art. 3.5) already with the notification (***12***), whereas several others provided only part of this information. In Germany and Sweden this depended on the need for translation. The Republic of Moldova made clear that this information was only provided later.

38. Many Parties did not have legal provisions on whether they should request information from the affected Party (art. 3.6) (***13***). Austria, France and Greece made clear that this was the proponent's responsibility; for Kyrgyzstan the affected Party should take the initiative. The timing of the request varied: with the notification (Hungary, Lithuania) or once the affected Party had responded positively (Czech Republic); during scoping (Romania, Slovakia); or during the preparation of the EIA documentation. Poland and Romania forwarded such a request when asked by the proponent. The time frame for a response from the affected Party to a request for information, which should be "prompt" (art. 3.6), was sometimes specified in the request (Czech Republic, Estonia, Latvia, Lithuania), and was sometimes agreed between the concerned Parties (Croatia, Netherlands). Hungary and Switzerland both referred to the time frame for the response to the notification. Belarus specified one month, whereas Lithuania did not wait more than three months.

39. Each respondent reported how their country as the Party of origin cooperated with the authorities of the affected Party on public participation (art. 3.8), taking into account that the Party of origin and the affected Party were both responsible (***14 (a)***). Many respondents noted cooperation between the concerned Parties leading, for example, to agreement on procedures, timing and documentation. Respondents also referred to the provision of information, including on their own procedures and in electronic format if possible.

40. For many respondents it was then generally and primarily, or solely, the responsibility of the affected Party to provide for public participation in the affected Party (Croatia, Hungary, Lithuania, France, Poland, Republic of Moldova, Romania, Sweden); Estonia, Portugal and Spain referred to bilateral agreements that made this responsibility clear.

41. However, Cyprus took a more proactive role, making sure that information was provided to the authorities and public in the affected Party. Kyrgyzstan reported the direct distribution of documentation by the Party of origin in the affected Party, down to local authority level. For Latvia the competent authorities in the concerned Parties cooperated to ensure that the public and authorities in the affected Party were given the opportunity to comment and object. The Czech Republic requested that certain actions be taken to publicize the notification, so that anybody might comment, and set out the full procedure for commenting. Slovakia made sure that the affected Party's public was informed at an early stage by the affected Party's authorities. Germany suggested that the concerned Parties had to work together and, where the Party of origin had no administrative powers, the Party of origin could still provide the best possible support. The Netherlands informed the affected Party and asked which authorities to involve and about practicalities, such as newspaper announcements.

42. In response to the question on how their country identifies, in cooperation with the affected Party, the "public" in the affected area (***14 (b)***), respondents described either a methodological approach or reported on responsibility. Belarus, the Czech Republic, Estonia, France, Hungary, Kyrgyzstan, Poland, Romania, Slovenia and Switzerland made clear that this was the responsibility of the affected Party; Portugal and Spain referred to their bilateral agreement that made this responsibility clear. Several respondents indicated a dialogue between the concerned Parties to identify the public (Denmark, Greece Netherlands, Norway, Sweden). Some referred to a case-by-case identification based on the geographical extent of the potential impact. The Netherlands stated that the identification was best done by the competent authorities of the concerned Parties together, often based on an initial proposal by the Party of origin's competent authority; alternatively the affected Party decided and then informed the Party of origin. Sweden did not apply any restriction.

43. Most respondents were unable to indicate, as Party of origin, how the public in the affected Party was notified (what kinds of media, etc., were usually used) (***14 (c)***) because they considered the public announcement[11] to be the responsibility of the affected Party. Nonetheless, several respondents noted the use of newspapers and the Internet, and the posting of information on their own website. The Czech Republic asked the affected Party to use public notice boards, the media and the Internet.

44. The normal content of the public announcement included elements such as: the contact details of the proponent and of the competent authority of the Party of origin; a description of the proposed activity and its likely transboundary impact; the application for

[11] "Public announcement" or "public notification" to inform the public of a proposed activity and of the possibility for making comments on or objecting to the proposed activity, or for making comments on related information including the EIA documentation.

development consent; information on the decision to be taken and its timing, as well as on the EIA procedure; and information on where and until when documentation could be consulted, on any public hearing or information event, and on the means and timing for submitting suggestions.

45. Many respondents as Party of origin expected the announcement to the affected Party's public to have the same content as the announcement to their own public (***14 (d)***). Many other Parties provided the same information to the affected Party. However, Estonia, France, Latvia, Poland and Slovenia made clear that the affected Party determined the content; Portugal and Spain again referred to their bilateral agreement that made this responsibility clear. Further, Lithuania expected the announcement in the affected Party to focus on the transboundary impact whereas the domestic public announcement did not. Sweden noted that, when translation of the announcement was necessary, often only a summary was translated.

46. In response to the question on the stage in the EIA procedure at which the Party of origin normally notified the affected Party's public, several respondents again indicated that this was the responsibility of the affected Party. Others indicated that the affected Party's public was notified at the same time as the public of the Party of origin, or early enough for public participation to take place at the same time. Others referred to the timing of the notification of the affected Party. Croatia notified the affected Party's public after the public hearing had been held in the Party of origin.

47. A clear majority of Parties made use of contact points for the purposes of notification as decided at the first session of the Meeting of Parties (ECE/MP.EIA/2, decision I/3), and as listed on the Convention website (***15***); France indicated that the focal point was copied. In Hungary, in certain important cases, the Minister of Environment might lead. Romania sent the notification through diplomatic channels with a copy to the point of contact. For Germany, the Netherlands, Portugal and Spain, bilateral agreements sometimes specified alternative points of contact; for the Netherlands the main point of contact was still copied.

2. Questions to the affected Party

48. For many Parties the process of deciding whether, as affected Party, to participate in the EIA procedure (art. 3.3) (***16***) was examined case by case, often with the decision being taken by the Ministry of Environment or the competent authority. A majority of Parties indicated consultation of other relevant authorities in their country, at central, regional and local levels, depending on criteria such as the nature of the proposed activity, the possible significance of the impact and the territory likely affected. The Czech Republic, Hungary, Kyrgyzstan, Sweden and possibly the Republic of Moldova sought the opinions of the public, whereas Slovakia received comments from affected municipalities. Slovenia noted consultation of health and cultural heritage authorities.

49. Criteria used to decide included: the nature of the proposed activity; its location, distance from the border or proximity to international waters; the possible significance of the transboundary impact; and the level of public interest. Croatia referred to the significance criteria in appendix III. Belarus and Slovenia referred to criteria in their legislation.

50. In the context of a request by the Party of origin to provide information relating to the potentially affected environment (art. 3.6), respondents explained how they determined what was "reasonably obtainable" information to include in their response (***17***), referring to the existence, accessibility and availability of information (to the public or the relevant authorities), and whether it was up to date. Some suggested that the information should already be available, or obtainable within the time frame specified by the Party of origin,

and without a lengthy process. For some Parties there should be no need for further research or analysis, though Denmark might carry out additional analysis.

51. Respondents also described the procedures and, where appropriate, the legislation their country applied in determining the meaning of "promptly" in the context of responding to a request for information. Some respondents interpreted this term to mean "without undue delay" or "as soon as possible". Greece, the Republic of Moldova and Switzerland referred to the time frame specified by the Party of origin in its request, whereas several others indicated one month. Some respondents referred to the time necessary to collect the requested information, bearing in mind their other responsibilities. Belarus provided the information in its own language whereas in Hungary translation delayed the response.

52. Regarding the affected Party's cooperation with the authorities of the Party of origin on public participation (art. 3.8), taking into account that the Party of origin and affected Party are both responsible (***18 (a)***), many respondents reiterated the affected Party's primary or sole responsibility. Nonetheless, many respondents also noted cooperation and agreement between authorities in the concerned Parties, for example regarding practical arrangements (Netherlands) and the holding of public hearings (Sweden). The Netherlands and Poland referred to bilateral agreements in this regard. Denmark, Hungary, Slovakia and Sweden cooperated closely in the holding of hearings, as appropriate. As an example, Belarus as affected Party informed the Party of origin of the timing and location of a hearing in Belarus.

53. Many respondents indicated that their country, as affected Party, identified the "public" in the affected area (***18 (b)***) case by case depending on various criteria, such as: the nature of the proposed activity, the potential impact and its geographical area, and the distance from the border. In the Czech Republic and Sweden everyone was included, though Sweden carried out a case-by-case identification to focus the public participation. In France local authorities identified the public in the affected area based on siting information provided by the Party of origin. Croatia and Slovakia also sought the opinion of relevant authorities; Slovakia also took into account advice from its public on the identification of the "public" in the affected area.

54. Respondents provided examples of how, as affected Party, their country's public had been notified (***18 (c)***). Most respondents indicated announcements in newspapers (national, regional, local) and postings on the Internet, but also mentioned were press releases, the official journal (national, local), public noticeboards (including in municipal offices and in public libraries), bill posting, direct mailing, television or radio spots, and direct contact with key NGO stakeholders. In some Parties the public announcement were routed through local authorities.

55. Respondents also provided examples of what was normally the content of the public announcement, repeating answers from their role as Party of origin, with the addition of the contact details of the proponent's EIA experts. In addition, France, Slovenia and Switzerland explicitly mentioned the inclusion of the EIA documentation.

56. Finally, in their role of affected Party, respondents reported at what stage in the EIA procedure their country normally notified its public (***18 (d)***). Several respondents did so immediately upon receipt of the relevant information from the Party of origin (Austria, Czech Republic, Denmark, Norway, Slovakia). Latvia did so within 14 days of receipt. Belarus and Hungary notified their public once they had prepared the necessary translations. However, Belarus, Estonia and the Republic of Moldova referred to the receipt of the EIA documentation. In contrast, Lithuania and Sweden reported notifying their public at the scoping stage. Germany, the Netherlands and Poland suggested that the timing depended on when the Party of origin had notified the affected Party.

C. Article 4: Preparation of the environmental impact assessment documentation

1. Questions to the Party of origin

57. In Denmark the legal requirement for the minimum content of the EIA documentation (art. 4.1, appendix II) (***19***) was similar to that in appendix II. All other respondents referred to, described or quoted their legislation to identify the legal requirement for the minimum content. In addition, Greece, Kyrgyzstan, Romania and Slovakia indicated consistency with appendix II.

58. In most Parties the competent authority determined case by case the content of the EIA documentation (scoping procedure) (art. 4.1) (***20***), with Romania using a checklist approach and several others referring to criteria. Belarus, the Republic of Moldova and Slovenia did not have a scoping procedure. In Kyrgyzstan, once the EIA documentation had been prepared, it was reviewed and might if necessary be returned to the proponent for revision. In Italy a scoping procedure was only occasionally necessary. In France and Portugal the proponent might ask the competent authority to define the scope; this was mandatory within a transboundary EIA procedure in Poland. But in Austria, Estonia, Lithuania, Norway and Switzerland the proponent, or its EIA experts, prepared or drafted a scoping report.

59. In Latvia, the scoping report identified also the institutions and organizations to be consulted, whereas in the Netherlands, and potentially in Spain, it identified alternatives to be considered by the proponent. Many respondents referred to consultation of other authorities, with Spain also indicating possible consultation of NGOs. The opinions of the public were taken into account in Croatia, the Czech Republic, Estonia, Hungary, the Netherlands and, as appropriate, Norway and Portugal. The Netherlands and Romania both included recommendations by a separate committee or commission. Hungary, the Netherlands and Norway took into account the comments of the affected Party, an approach also recommended in Germany.

60. In several Parties (Germany, Greece, Italy, Latvia, Liechtenstein, Lithuania, Romania, Spain, Sweden) the proponent or its EIA experts identified "reasonable alternatives" (appendix II, para. (b)) (***21***), but in the Czech Republic and Greece the competent authority might propose alternatives too, with the Czech Republic making proposals within the constraints of the land-use plan. Many respondents referred to a case-by-case approach, taking into account the nature of the activity, its location and size. Romania referred to its guidelines. In Estonia, Hungary, Slovakia and Spain reasonable alternatives might emerge from scoping, with Slovakia indicating that these might be according to comments received from the public and authorities in the concerned Parties.

61. Various types of alternatives were mentioned, including the no-action alternative. A few respondents reported that the alternatives should be suitable for achieving the purpose of the proponent, reduce the impact and be within the proponent's competence.

62. "The environment that is likely to be affected by the proposed activity and its alternatives" (appendix II, para. (c)) (***22***) was identified case by case, with some respondents suggesting that it was done by the proponent, others by the competent authority, or by a combination of the two. In Estonia, Hungary and Spain the affected environment was identified during scoping. Romania again referred to its scoping checklist. Both Norway and Slovakia suggested a possible role for the public and authorities of the concerned Parties.

63. For their definition of "impact" in accordance with article 1 (vii), some provided a definition or referred to their legislation, and some included public health (Czech Republic,

Estonia, France, Hungary) and socio-economic conditions (Hungary). Several suggested that the definition was carried out case by case by the proponent or its EIA experts, whereas Romania once again referred to use of its scoping checklist by the competent authority. Austria and Norway consulted the affected Party.

64. Almost all respondents indicated that their country, as Party of origin, gave the affected Party the complete EIA documentation (art. 4.2) (***23***), with Belgium, Canada and Romania confirming that this was subject to any privacy or access-to-information requirements. Poland's legislation required transmission only of that part necessary for the affected Party to assess the impact on it, but in practice gave the complete EIA documentation. Norway did not send separate expert reports that were not relevant to the transboundary impact. Sweden did not send background data and reports and, if having to provide a translation, sent only the non-technical summary and the most relevant parts of the EIA documentation, as discussed with the affected Party.

65. In their role as Party of origin, respondents indicated how their country cooperated with the authorities of the affected Party on the distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party were both responsible (***24***). Most indicated that they provided the documentation to the affected Party, which was then responsible for distribution. Several respondents referred to cooperation between the concerned Parties in this respect, with the Czech Republic requesting certain actions be taken to publicize the public participation opportunity. Comments from the affected Party's public were submitted either directly to the Party of origin or through the authorities in the affected Party, with the routing sometimes varying case by case.

66. Respondents also reported how their competent authority dealt with the comments, with about half of all respondents indicating that they were taken into account by the competent authority in the final decision. Croatia, Estonia, Hungary, Kyrgyzstan, Latvia, Lithuania, the Republic of Moldova, Romania and Spain sent the comments instead or as well to the proponent or its experts for incorporation in the finalized EIA documentation (Belarus, Hungary, Republic of Moldova) or the proposed activity (Spain), or for the developer to answer (Croatia). Whether dealt with by the competent authority or the proponent or both, some Parties (Belarus, Denmark, Estonia, Germany, Latvia, Netherlands) required that information be provided on how the comments were addressed, or that an explanation be given if not. These answers were sent to the affected Party by Latvia and Romania.

67. The procedures and, where appropriate, the legislation that define the time frame for comments provided "within a reasonable time before the final decision" (art. 4.2) were described (***25***), which varied from between one and three months, though with some flexibility case by case. Some Parties of origin decided alone on the time frame (Poland, Republic of Moldova), whereas others discussed it with the affected Party (Croatia, Estonia, Kyrgyzstan, Latvia, Sweden).

68. If the affected Party did not comply with the time frame, Sweden and Switzerland would send a reminder. If the affected Party asked for an extension, many Parties in the role of Party of origin would usually agree, or did so if the request was justified. Others were more hesitant, indicating that an extension would be considered or that there was some flexibility, but for others still it was contingent on the time frame of the administrative procedure (Denmark, Belgium, Kyrgyzstan, Netherlands, Romania, Poland). Estonia had some flexibility but had to inform the proponent. Germany was not normally able to agree an extension because of the time frames in its legislation.

69. Ultimately, the Party of origin had to decide what to do if there was no response within the deadline, whether or not extended. Several Parties would assume that there were

no comments (Belarus, France, Kyrgyzstan, Romania, Republic of Moldova, Slovenia, Switzerland), with some unable to take late comments into account (Denmark, Belgium, Hungary, Netherlands). Some other Parties suggested more flexibility, taking into account late comments too, as long as the decision had not been taken (Czech Republic, Germany Hungary, Sweden, Spain).

70. Respondents listed the various materials that their country provided, together with the affected Party, to the affected Party's public (***26***): the application or request for development consent, a permit or an environmental decision; project documentation; the screening decision and scoping report; the EIA documentation (mentioned by most respondents) and its non-technical summary; an expert review of the EIA; and decisions already taken. A few respondents also mentioned: the statement of intent;[12] the notification; information on the EIA procedure; information on procedures and for commenting; a draft of the decision to be taken; notices and brochures; and additional studies.

71. However, materials were generally provided to the authorities in the affected Party for them to distribute to their public and authorities, as well as being made available on a website in the Party of origin. Germany and Hungary translated the non-technical summary and other parts of EIA documentation relevant to the transboundary impact. Denmark and the Netherlands translated some summary information.

72. Many respondents stated that their country did not, normally or ever, initiate a hearing for the affected public in the affected Party (***27***). Austria, Croatia, Germany and Norway might initiate a public hearing in the affected Party if needed, but for Croatia and Germany this would require close cooperation between the concerned Parties; Sweden had experience of this. More typically, Lithuania and Slovenia asked the affected Party to organize a hearing in the affected Party. Normally a hearing for the affected Party's public took place in the affected Party, organized by the affected Party's authorities and following discussion between the concerned Parties. Nonetheless, Hungary, Lithuania and Romania indicated that the proponent, perhaps together with the authorities of their country in the role of Party of origin, participated in hearings in the affected Party. For Belgium, Canada, Denmark and Switzerland a joint hearing might be held in one of the concerned Parties.

73. A majority of respondents declared that hearings in their country as Party of origin were open for participation by the affected Party. However, in Cyprus, Greece and Italy there was no legal obligation to organize a hearing, though in Greece one was often held at the proponent's initiative. In the Netherlands, the need for a hearing was decided upon in consultation with the proponent. For Kyrgyzstan, Poland and Slovenia a hearing was held after the EIA documentation had been prepared.

2. Questions to the affected Party

74. Respondents described the procedures and, where appropriate, the legislation their country, in the role of affected Party, applied to determine the meaning of the words "within a reasonable time before the final decision", this being the time frame for comments (art. 4.2) (***28***). Austria, Belgium and Germany referred to the legislation of the Party of origin, and Croatia, the Czech Republic, Estonia, the Netherlands, Romania, Slovakia, Sweden and Switzerland referred to the time frame specified by the Party of origin, with the Czech Republic and Slovakia adjusting their time frames to fit, and Romania requesting an extension if it was unable to do so. In contrast, Denmark, Norway and the Republic of Moldova referred to their legislation; Greece used the domestic time

[12] "Statement of intent" submitted by a proponent; sometimes "notification of intent", "pre-starting note" or "notification".

frame unless requested otherwise. Some respondents gave a quantified response, of between one and three months, with an average of about two months, and with some reference to bilateral agreements. For Estonia, Hungary and Lithuania sufficient time was needed to comment, and for Belarus and Hungary more time was needed when documentation required translation into their language.

75. Respondents also described how their country cooperated with the authorities of the Party of origin on the distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party were both responsible (***29***). Austria, for example, gathered as much information as possible on public participation in the Party of origin in order to give an equivalent opportunity to its public. Some respondents also referred to cooperation with the Party of origin.

76. More commonly, however, the affected Party received the documentation, together with a deadline for comments, and made the documentation available to its authorities and public, while often also publishing it on a website; the affected Party then gathered comments to send back to the Party of origin (e.g., Lithuania, Switzerland). However, the Netherlands, if requested, assisted the Party of origin in informing the public and making the EIA documentation available, and the public usually submitted its comments directly to the Party of origin. Hungary distributed information in accordance with the Party of origin's legislation. Hungary also incorporated public comments into its standpoint, which was translated into English and sent to the Party of origin together with the original comments in its own language. Norway and Slovakia distributed summary information domestically.

77. Regarding the organization of the public participation in the affected Party (***30***), a majority of respondents indicated that this was the responsibility of the affected Party in accordance with its own legislation, taking into account bilateral agreements (Estonia, Latvia, Portugal, Spain), or in compliance with the time frame specified by the Party of origin (Austria, Germany, Poland, Switzerland). In contrast, for Belgium and the Netherlands the public participation was organized in accordance with the Party of origin's legislation and bilateral agreements. Belgium also referred to ad hoc procedures, as did Sweden. The Czech Republic and Italy referred to the legislation of both Parties concerned. Kyrgyzstan, Latvia, Lithuania, Norway, Romania and Switzerland referred to dialogue with the Party of origin regarding public participation arrangements.

D. Article 5: Consultations

1. Questions to the Party of origin

78. Several respondents provided confusing answers regarding consultations, not having understood that these were as described in article 5. Nonetheless, some respondents did indicate at which step of the EIA procedure the consultations in accordance with article 5 generally took place (***31***). Belgium, France and the Republic of Moldova had no legislation providing for consultations. Lithuania always offered consultations, the Netherlands and Poland proposed consultations in the letter accompanying the EIA documentation, and the Czech Republic made arrangements shortly after receipt of that documentation. For Estonia, consultations occurred at the request of the affected Party.

79. For Austria, Germany and Slovakia consultations might take place at any stage, and in Switzerland they preferably started during scoping. However, for Croatia and Latvia consultations occurred once the EIA documentation had been prepared, and for Romania once it had been transmitted to the affected Party. For Austria, Belarus, Hungary, Lithuania and Poland it was later, usually after the public participation when all comments and objections had been received by the Party of origin, and for Germany later still, once those

comments had been assessed by the Party of origin. Norway generally held consultations during the public hearing stage, whereas in Slovenia they might occur after the hearing or much earlier, after receipt of the EIA documentation.

80. Few respondents described the procedures and, where appropriate, the legislation their country applied to determine the meaning of "undue delay", with regard to the timing of the entry into consultations, but the Netherlands expected to enter into consultations in the same period as that for comments on the EIA documentation.

81. Austria, the Czech Republic, Denmark and Norway normally set the duration for consultations beforehand, with the possibility of extension in the Czech Republic and Denmark. For Estonia, Germany and Latvia the duration was agreed between concerned Parties. Croatia, the Netherlands and Slovakia did not set the duration beforehand.

82. Austria, the Czech Republic and Germany reported that the affected Party informed the Party of origin if it did not wish to carry out consultations, or simply did not respond to the offer of consultations. For Croatia the EIA or the expert review of the EIA might reveal that there was no transboundary impact and so no need for consultations; for Belarus the absence of comments from the affected Party also implied that consultations were unnecessary. Hungary, Norway and Romania indicated a need to check with the affected Party.

83. In many Parties consultations were arranged at the national level (***32***). For Belgium, Denmark and the Netherlands consultations might first be held at the expert level but, if problems remained unresolved, higher-level authorities might need to intervene. Some, such as Latvia and Poland, indicated that the arrangements depended on the importance or complexity of the case. Besides the competent authorities and authorities with specific environment responsibilities from the concerned Parties, some respondents indicated the involvement of the proponent (Austria, Czech Republic, Latvia, Switzerland) and the public (Slovakia). The Czech Republic emphasized that the Party of origin organized the consultations. Parties typically communicated in consultations by written communications followed, as necessary, by a meeting. France and Romania emphasized that a meeting was not always needed.

2. Questions to the affected Party

84. Respondents in their role of affected Party gave very similar responses regarding arrangements for consultations (***33***). Austria indicated the involvement of the proponent; Slovakia, the public. Germany, Poland and Romania expected to inform the Party of origin if there was no need for consultations; Austria simply would not ask the Party of origin to carry out consultations.

E. Article 6: Final decision

1. Questions to the Party of origin

85. Respondents identified for each type of activity listed in appendix I what was regarded as the "final decision" to authorize or undertake a proposed activity (art. 6 in conjunction with art. 2.3) (***34***). Denmark emphasized that the final decision might also be the rejection of an application. For several respondents the final decision was a decision on a permit, building permit, permit procedure or consolidated permit procedure (Austria, Belgium, Cyprus, Czech Republic, Denmark, Sweden), or an authorization (Spain). Some linked the term "permit" with development consent that allowed the proponent to proceed with the activity (Estonia, Germany). For Latvia the final decision consented to commencing the proposed activity, for France it allowed the proponent to undertake works. In Germany private projects usually required a permit or licence whereas public

infrastructure projects required a planning appraisal or plan approval. The Netherlands and Norway identified the final decision as a decision under an act on a certain type of activity: Norway noted that there might be more than one such decision and it varied as to which was last and therefore "final". In Switzerland too some activities required several decisions.

86. In contrast, for some respondents the final decision was an environmental decision or permit or a final statement[13] on the EIA procedure (Greece, Hungary, Lithuania, Poland, Portugal, Slovakia, Slovenia), this being a precondition to a construction permit. Romania had a hybrid approach, with the final decision being a development consent, which was a construction authorization issued by local authorities (except for deforestation); an environmental agreement was both an integral part of, and a precondition to, the development consent.

87. Among those countries with a system of State ecological expertise, Belarus' final decision was an approval given only on the basis of a positive conclusion of the State ecological expertise, whereas the Republic of Moldova's national legislation did not use the term "final decision", but the positive conclusion of the State ecological expertise constituted permission for the further development of project documentation.

88. All projects listed in appendix I required a final decision in a clear majority of Parties.

89. To indicate how the EIA procedure (including the outcome) in their country, whether or not transboundary, influenced the decision-making process for a proposed activity (art. 6.1) (***35***), many respondents referred to the various elements of the procedure that were important: the EIA documentation, the expert review of the documentation, comments received, the competent authority's opinion, the public hearing and consultations.

90. For some Parties a positive environmental decision (or permit, statement, or conclusion of State ecological expertise) was a precondition to a subsequent decision or procedure, such as development consent or a permitting procedure (Belarus, Czech Republic, Greece, Hungary, Kyrgyzstan, Portugal, Republic of Moldova, Slovakia, Slovenia). In Hungary, the conditions attached to the environmental decision had to be included in the subsequent construction or building permit, and in the Czech Republic an explanation had to be given if such conditions were not included. In Slovakia the final EIA statement had to be taken into account in the subsequent permitting decision. In Romania the development consent included conditions set in an environmental agreement, which was in turn based on the EIA outcomes, documentation and comments.

91. In Switzerland the competent authority examined the environmental compatibility of a proposed activity.

92. In almost all Parties the comments of the authorities and the public of the affected Party and the outcome of the consultations were taken into consideration in the same way as the comments from the authorities and the public in their country (art. 6.1) (***36***). Latvia, Liechtenstein and the Republic of Moldova were unclear in their responses.

93. In approximately half of the Parties, the obligation to submit the final decision to the affected Party was normally fulfilled by sending a copy of the decision; in the Czech Republic this had to be done within 15 days of taking the decision (***37***). In addition, Parties sent the final statement on the EIA (Slovakia), the reasons for the decision (Norway), conditions applied to the decision (Romania), both the environmental decision and final

[13] "Final statement" is a final evaluation by the competent authority of the proposed activity where this differs from the final decision; sometimes "EIA statement" or "summary".

licensing decision (Portugal), any other information related to the project (Cyprus), or other information made available to the Party of origin's public (France).

94. Germany translated the final decision as appropriate with respect to legislation and agreements. Romania sent the final decision in English, and Sweden sent it in Swedish to the Nordic countries, but otherwise translated either the entire decision or only a summary.

95. A majority of respondents confirmed that the final decision contained the reasons and considerations on which the decision was based (art. 6.2), as well as the outcome of consultations (Croatia).

96. Should additional information become available before the activity commenced (art. 6.3) (***38***), several respondents indicated that their country would inform the affected Party accordingly and might start a consultation process. France, in contrast, noted that an activity could be carried out once authorized.

97. In such a situation, the decision might be revised (art. 6.3) in Croatia, Germany, Greece, Italy, Norway, Poland and Portugal, if deemed necessary, whereas in Austria the possibilities to revise a valid decision were strictly limited, and in Sweden it was not possible. In the Netherlands the competent authority took corrective measures and examined whether the decision needed to be revised. Latvia decided on measures to prevent or reduce impact. In Kyrgyzstan and Spain the final decision might be reviewed, as in the Republic of Moldova, in case of fundamental new information. In Estonia, it was possible to revise conditions on development consent if the information was significant. For Romania, consultations would lead to establishing whether the decision had to be revised. Finally, in Hungary the competent authority might revoke or modify an environmental permit if the circumstances at the time of issuing the permit had significantly changed.

F. Article 7: Post-project analysis

98. In Austria and Spain a post-project analysis was always required (art. 7.1) (***39***), as it was in Slovakia (where existing monitoring measures were always used), and in the Netherlands, where, however, the legal requirement was not always followed in practice. In France, post-project analysis was mandatory for certain types of activity, but for many other respondents this was decided case by case (Austria, Canada, Denmark, Estonia, Greece, Hungary, Norway, Poland, Republic of Moldova, Romania, Slovenia). Italy carried out post-project analysis if requested, but for Estonia and Latvia bilateral agreements provided for the concerned Parties to agree on whether post-project analysis should be carried out. In Croatia the final decision included an obligation to monitor and exchange results. In Germany it was incumbent on the competent authority to ensure compliance with conditions in the final decision. In Lithuania monitoring results might trigger a post-project analysis and Belarus reported, as affected Party, that it requested such an analysis for activities that were likely to have a significant adverse transboundary impact, or that had no equivalent in its own territory.

99. Where, as a result of post-project analysis, it was concluded that there was a significant adverse transboundary impact by the activity, respondents indicated how they informed the other Party and consulted on necessary measures to reduce or eliminate the impact (art. 7.2) (***40***). Several Parties would inform the other Party and initiate consultations. For Romania the affected Party would normally receive the results of the analysis anyway. Estonia made reference to its bilateral agreements, Italy to a written procedure. For Greece the post-project analysis would include provisions to cover this eventuality. Estonia might subsequently amend conditions on the development consent or repeal it, whereas Latvia might consult with the affected Party on measures to prevent or reduce impact. In Slovakia the person undertaking the activity would have to arrange

measures so that the actual impacts corresponded to those indicated in the EIA documentation.

G. Article 8: Bilateral and multilateral agreements

100. Many respondents listed their country's bilateral or multilateral agreements based on the Convention (art. 8, appendix VI) (***41***), but many other Parties had no such agreements. Belarus, Belgium, the Czech Republic, Lithuania, the Netherlands and Poland were discussing draft agreements, and Germany and Poland were revising existing agreements. Italy had only case-specific agreements. For Austria, Belgium, Latvia, Poland and Slovakia elements of appendix VI had been used, but some of Germany's agreements were not based on the Convention, instead responding to other practical needs such as water management. Latvia highlighted the provision in a bilateral agreement for a joint body on EIA; Slovakia highlighted provisions addressing language issues.

101. A clear majority of Parties had not established any supplementary points of contact pursuant to bilateral or multilateral agreements (***42***), but the following exceptions were cited: Belgium (Flanders and Wallonia Regions) with the Netherlands; Germany with the Netherlands; and Germany with Poland. The bilateral agreement between Portugal and Spain had created a bilateral body.

H. Article 9: Research programmes

102. Most respondents were not aware of any specific research in relation to the items mentioned in article 9 in their country (***43***), or none specifically relating to transboundary EIA. Some others cited examples such as research on:

(a) Climate change and environmental assessment, follow-up, regional environmental frameworks, and significance (Canada);

(b) Effects of offshore wind-farms (Denmark);

(c) Effects on birdlife of wind-farms, methodology for evaluating landscape impacts and methodology for assessing the cumulative effects of wind-farm developments (Norway);

(d) A methodological manual and guidelines per environmental component (Poland);

(e) Monitoring and assessment of impacts on the Danube Delta (Romania);

(f) Application and effectiveness of directives on environmental assessment, and guidance on the interpretation of project categories in the EU directives (EU).

I. Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment

103. Some Parties planned soon to ratify the first (Belarus, Denmark, Kyrgyzstan, Latvia, Portugal) and second (Belarus, Denmark, Kyrgyzstan, Latvia, Poland, Portugal, Switzerland) amendments to the Convention and the Protocol on Strategic Environmental Assessment (Cyprus, Denmark, Kyrgyzstan) (***44–46***). In Lithuania, draft ratification documents for all three instruments had been approved and were to be discussed by Parliament in autumn 2010. Hungary had completed its domestic procedure for ratification of the Protocol in April 2010. In Belgium the procedure for ratification of the two amendments had begun in spring 2010. In Poland and Portugal, the ratification procedure

for the Protocol was ongoing. The Republic of Moldova planned to ratify the two amendments in 2010, Slovenia in 2011. France planned to ratify all three instruments, but the procedure might take one to two years for the first amendment and the Protocol, as these required the adoption of legislation. The Republic of Moldova planned to ratify the Protocol in 2014. Greece was considering ratification of all three instruments.