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#### Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context

##### **Fifth session**

Geneva, 20–23 June 2011

Items 6 and 11 of the provisional agenda

##### **Review of compliance, review of implementation and work done by the Implementation Committee**

##### **Adoption of decisions**

#### **Draft review of implementation, regarding legal, administrative and other measures taken to implement articles 5–9 of the Convention, and regarding practical experiences**

##### **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 the implementation of the Convention, based on 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 second part of the draft third review, addressing the legal, administrative and other measures taken to implement articles 5–9 of the Convention, and regarding practical experiences of applying the Convention, based on national reports.

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## I. Introduction

1. This document presents the second part of the draft third review of the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context. It addresses the legal, administrative and other measures taken to implement articles 5–9 of the Convention, and Parties' 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. It should be read in conjunction with the first part of the draft review, which addresses the legal, administrative and other measures taken to implement articles 2–4 of the Convention, along with a description of the preparation of the review and its findings (ECE/MP.EIA/2011/2).

2. This document summarizes completed questionnaires received from 41 of the 44 States Parties to the Convention on their implementation of the Convention during the period between 2006 and 2009. The numbers indicated in bold italics within parentheses refer to the questions in the questionnaire, e.g. (53).

## II. Summary of responses to the questionnaire

### A. Article 5: Consultations

#### 1. Questions to the Party of origin

3. 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 environmental impact assessment (EIA) procedure the consultations in accordance with article 5 generally took place (31). France, the Republic of Moldova and Serbia had no legislation providing for consultations, but Serbia had always required consultations. Lithuania always offered consultations, the Netherlands and Poland proposed consultations in the letter accompanying the EIA documentation, Finland set the time frame for consultations when sending the EIA documentation and following its legislation, and the Czech Republic made arrangements shortly after receipt of that documentation. For Estonia, consultations occurred at the request of the affected Party.

4. For Austria, Bulgaria, Germany, Serbia and Slovakia, consultations might take place at any stage, and in Kazakhstan and Switzerland they preferably started during scoping.<sup>1</sup> However, for Croatia and Latvia consultations occurred once the EIA documentation had been prepared and, for Romania and the United Kingdom of Great Britain and Northern Ireland, 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 Bulgaria and 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. The United Kingdom generally expected that adequate EIA documentation would minimize the need for formal consultations.

5. 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

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<sup>1</sup> The case-by-case determination of the scope of the assessment.

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.

6. Austria, the Czech Republic, Denmark, Finland, Norway and Serbia normally set the duration for consultations beforehand, with the possibility of an 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; in Montenegro and Ukraine the duration was set once consultations had begun.

7. Austria, Bulgaria, 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 Bulgaria, the affected Party might also have indicated earlier that there was no need for 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. If no consultations had been needed, Slovakia and Ukraine included evidence of that in the final decision.

8. 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, Finland (for part of the time), Latvia, Switzerland) and the public (Bulgaria, Serbia, 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. Finland agreed a written memorandum after consultations.

## **2. Questions to the affected Party**

9. Respondents in their role of affected Party gave very similar responses regarding arrangements for consultations (33). Austria indicated the involvement of the proponent; Bulgaria, of the public and non-governmental organizations (NGOs); Slovakia, of the public. Bulgaria, 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. Finland sought consultations in particular if it was unclear whether its comments had been taken into account in the EIA documentation.

## **B. Article 6: Final decision**

### **Questions to the Party of origin**

10. Respondents identified for each type of activity listed in appendix I to the Convention what was regarded as the “final decision” to authorize or undertake a proposed activity (art. 6 in conjunction with art. 2.3) (34). Broadly, two approaches were reported: either the EIA was integrated into the permitting or development consent procedure; or the EIA led to a separate environmental permit that was a precondition to development consent.

11. 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, Ireland, Sweden), or an authorization (Spain). In Bulgaria, Estonia, France, Germany, Latvia, Luxembourg, the Netherlands, the former Yugoslav

Republic of Macedonia and the United Kingdom, this “permit”, or development consent, allowed the proponent to proceed with the activity. 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.

12. In contrast, for some respondents the final decision was an environmental decision or permit or a final statement<sup>2</sup> on the EIA procedure (Greece, Hungary, Lithuania, Montenegro, Poland, Portugal, Serbia, 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. In Finland, the final decision for certain activities was an environmental permit whereas for others a sectoral permitting procedure was followed.

13. Among those countries with a system of State ecological expertise, for Belarus, a 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.

14. All projects listed in appendix I required a final decision in most Parties.

15. 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.

16. For many Parties a positive environmental decision (or permit, statement, EIA decision or conclusion of State ecological expertise) was a precondition to a subsequent decision or procedure, such as development consent or a permitting procedure (Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Greece, Hungary, Kyrgyzstan, Montenegro, Poland, Portugal, Republic of Moldova, Slovakia, Slovenia). In Hungary and Poland, 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 Montenegro, fulfilment of the conditions in the EIA approval was a precondition for issuing a usage permit. 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.

17. In a clear majority of Parties<sup>3</sup> 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, whereas Armenia and Azerbaijan indicated a lack of experience and Ukraine confirmed that

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<sup>2</sup> A final evaluation by the competent authority of the proposed activity where this differs from the final decision; sometimes “EIA statement” or “summary”.

<sup>3</sup> Some 70 per cent or more of Parties reporting.

it took this approach provided that comments were correct and did not pose a threat to national security.

18. In a clear majority of 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). A majority of respondents confirmed that the final decision contained the reasons and considerations on which the decision was based (art. 6.2). In addition, Parties sent: the outcome of consultations (Croatia); the final statement on the EIA (Slovakia); the reasons for the decision (Montenegro, Norway, the former Yugoslav Republic of Macedonia); conditions applied to the decision (Romania); measures to be taken by the proponent (Montenegro); both the environmental decision and final licensing decision (Portugal); any other information related to the project (Cyprus); or other information made available to the Party of origin's public (France).

19. Germany and Poland translated the final decision as appropriate with respect to legislation and agreements. Romania and Serbia 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.

20. 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 and Luxembourg, in contrast, noted that an activity could be carried out once authorized, though Luxembourg would alter the operating conditions if necessary.

21. In such a situation, the decision might be revised (art. 6.3) in Bulgaria, Croatia, Finland, Germany, Greece, Italy, Kazakhstan, Montenegro, Norway, Poland, Portugal and Spain, if deemed necessary, whereas in Austria the possibilities to revise a valid decision were strictly limited. 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 the final decision might be reviewed, as in the Republic of Moldova in case of fundamental new information. In the United Kingdom the development consent could be annulled. In Estonia, it was possible to revise conditions on a development consent if the information was significant. For Romania, consultations would lead to establishing whether the decision had to be revised. In Sweden, a decision might be recalled if, for example, an unpredicted significant adverse effect occurred or permit conditions were not fulfilled. 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; in contrast, in Ireland, the decision was taken on the basis of the best information available at that time.

### **C. Article 7: Post-project analysis**

22. In Austria, Montenegro 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. Italy carried out post-project analysis if requested, but for Estonia, Finland 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. Kazakhstan undertook post-project analysis one year after operation of an activity began. In Lithuania monitoring results might trigger a post-project

analysis and Belarus, as affected Party, 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.

23. 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 ultimately repeal it if well justified, 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.

#### **D. Article 8: Bilateral and multilateral agreements**

24. 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, Poland and Ukraine were discussing draft agreements, and Germany and Poland were revising existing agreements. Italy had only case-specific agreements, whereas Ireland had an informal protocol with Northern Ireland (United Kingdom). For Austria, Belgium, Finland, 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. Estonia, Finland and Latvia each highlighted the provision in their bilateral agreements for a joint body on EIA; Slovakia highlighted provisions addressing language issues.

25. 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 Region) with the Netherlands; Belgium (federal authority under multilateral agreements); Germany with the Netherlands; Germany with Poland; and Ireland with Northern Ireland and Wales (United Kingdom). The bilateral agreement between Portugal and Spain had created a bilateral body.

#### **E. Article 9: Research programmes**

26. 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) The effects of offshore wind farms (Denmark);
- (c) The impacts arising from the Nord Stream project (Finland);
- (d) The effects on birdlife of wind farms, a methodology for evaluating landscape impacts and a methodology for assessing the cumulative effects of wind farm developments (Norway);

- (e) A methodological manual and guidelines per environmental component (Poland);
- (f) The assessment of impacts on the Danube Delta (Romania);
- (g) Scoping (United Kingdom);
- (h) The application and effectiveness of European Union (EU) directives on environmental assessment, and guidance on the interpretation of their project categories (EU).

## **F. Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment**

27. Some Parties soon planned to ratify both amendments to the Convention (Belarus, Denmark, Kyrgyzstan, Latvia, Portugal, Serbia); the second amendment only (Poland, Switzerland); or the Protocol on Strategic Environmental Assessment (Cyprus, Denmark, Kyrgyzstan, Poland) (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 Armenia and Portugal, the ratification procedure for the Protocol was ongoing. The Republic of Moldova planned to ratify the two amendments in 2010, Finland and 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. Azerbaijan, Greece and the United Kingdom were considering ratification of all three instruments; Armenia was considering ratification of the two amendments.

## **G. Cases during the period 2006–2009**

28. A clear majority of respondents listed the transboundary EIA procedures that were under way during the period 2006–2009, identifying for each whether their country was the Party of origin or the affected Party (47). Armenia, Azerbaijan, Canada, Cyprus, Liechtenstein and Luxembourg indicated that they had no experience of applying the Convention in the period, and the United Kingdom was only aware of notification of activities prior to application for development consent. The national administrations of France and Germany did not have full information on the transboundary EIA procedures that were undertaken in the period, but both indicated experience. No respondent objected to its list of transboundary EIA procedures being included in a compilation to be made available on the Convention website (48).

29. A clear majority of respondents were not aware of any projects other than those mentioned above for which a transboundary EIA procedure should have been applied, but was not (49). However, Kazakhstan reported that a draft preliminary EIA of a planned nuclear power plant had concluded that its impact would not exceed an environmentally acceptable level. In addition, some Parties observed that neighbouring States had not notified them about activities for which they had considered themselves as affected Party:

- (a) Because of differences in activities listed as subject to EIA (Czech Republic);
- (b) For an activity in the Russian Federation, which is not a Party to the Convention (Lithuania);



(c) For an activity in Ukraine, which the Implementation Committee determined was not subject to the Convention (Republic of Moldova).<sup>4</sup>

30. Respondents provided information on the average duration of whole transboundary EIA procedures (50), ranging from six months to three-and-a-half years. However, procedures usually lasted less than about a year in some Parties (Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Kyrgyzstan, Republic of Moldova, Romania), whereas Latvia, Slovenia and Sweden reported averages of over two years. The duration was dependent on, among other factors, the nature of the proposed activity, the number of Parties involved and the quality of the EIA documentation.

31. Many respondents also provided information on the duration of the individual steps, though comparison between these durations was difficult as the definitions of steps differed substantially, for example:

- (a) One month for screening; FF<sup>5</sup>
- (b) Between one and three months for scoping, depending on whether there was public participation;
- (c) Between one and four months for notification and response;
- (d) Between 3 and 12 months for preparation of the EIA documentation;
- (e) Three weeks for translation of the EIA documentation by the affected Party;
- (f) Between one and three months for distribution of the EIA documentation and the collection of comments in the affected Party, and a further one to three months for any public hearing;
- (g) Between one and two months for consultations;
- (h) Between two and six months for the final decision.

## **H. Experience of the transboundary environmental impact assessment procedure in 2006–2009**

32. Many respondents stated that, on the basis of their practical experience, the implementation of the Convention had supported the prevention, reduction or control of possible significant transboundary environmental impacts (51). Only Italy suggested that this was not the case, because of the nature of the activities to which the Convention had been applied. Respondents described specific examples and cited general benefits, including:

- (a) Closer cooperation, with a higher level of mutual information and understanding and an opportunity to express concerns;
- (b) Better EIA, with a broader examination of environmental threats, better consideration of environmental issues and understanding of impacts, better EIA documentation overall and opportunities for and improved public participation;
- (c) Improved proposed activities, with a higher level of environmental safety, better and broader environmental protection and mitigation measures, the introduction of monitoring and an early warning system, specific conditions on the development consent or permit and proper implementation of the activity;
- (d) A better environment, with a reduced environmental impact.

<sup>4</sup> Committee reference EIA/IC/INFO/2.

<sup>5</sup> The case-by-case determination of whether a proposed activity is subject to EIA or to notification.

33. However, in the Czech Republic the procedure had a limited impact on the final decision especially for smaller projects, and in Germany the procedure rarely led to rejection of a proposal.

## 1. Interpretation of terms

34. Respondents then indicated how their country interpreted in practice the various terms used in the Convention, and what criteria were used (52). Many respondents indicated possible discussion between concerned Parties on these points.

35. Respondents reported diverse approaches to the interpretation of a “major change” (art. 1 (v)), including:

(a) In Austria, it led to a significant increase in emissions, output or land-take, or it might have a potentially significant impact on the safety performance of activities with possible long-range transboundary impact;

(b) In the Wallonia Region (Belgium), it was a 25 per cent or more increase in production;

(c) In the Netherlands, it was determined with respect to environmental standards, sensitive areas and cumulative effects;

(d) In Poland, it led to the transformation or change of use of land, defined in strict relation to a case-by-case determination;

(e) In Romania, it was likely to have a significant adverse transboundary impact;

(f) In Sweden, it was identified following discussion with the affected Party.

36. Regarding a “reasonable time” it was not always possible to determine whether the response related to the notification (art. 3.2 (c)) or the comments on the EIA documentation (art. 4.2). The Netherlands and Norway indicated six weeks as a basis, Denmark eight. Hungary and Romania gave 30 days for a response to the notification. Hungary gave 30 days for comments on the notification too (art. 3.8); but if notification only occurred once the EIA documentation had been prepared, Hungary gave from 70 to 80 days for a response to the notification and for comments on the documentation (art. 4.2).

37. To interpret “promptly” (art. 3.6), Denmark and the Netherlands discussed with the other Party the provision of information, the Wallonia Region (Belgium) reacted without delay and Romania within about six weeks of receiving the request.

38. The “reasonable time frame” for consultations (art. 5) was eight weeks for Denmark, six weeks or more for Norway, and around a month for Romania. Hungary agreed with the affected Party on a period of between three and six weeks.

39. Several Parties reported no substantial difficulties interpreting particular terms. Belarus noted a difficulty interpreting the term “as early as possible” (art 3.1). Lithuania noted difficulties when the concerned Parties had different legislated procedures, with some providing for scoping, for example. Slovenia once had difficulties in establishing a reasonable time frame, but worked with the other Party to find a solution.

## 2. Screening

40. Respondents shared their country’s experience of using the Convention in practice, providing practical examples and general experience (53). Respondents indicated how in practice their country identified proposed activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact (53 (a)), with many simply referring to a case-by-case approach. However, Lithuania noted that the

proponent had always been first to identify such activities, whereas Denmark had been contacted by proponents, the public, NGOs and competent authorities.

41. Finland, Greece and Sweden had consulted the affected Party during screening; Denmark discussed upcoming cases with its neighbours. Croatia, Romania and Spain had been asked to notify by an affected Party; Germany and the Netherlands notified if they were unsure whether there was a need to do so. Several Parties highlighted activities proposed close to an international border.

### **3. Chapter on transboundary issues**

42. Many Parties provided, usually or always, a separate chapter on transboundary issues in the EIA documentation (53 (b)), and this was recommended in Finland and Germany and would be done in future in the Wallonia Region (Belgium). In Slovenia this was not an obligation and it varied in Switzerland. A separate chapter was not provided in Italy, the Republic of Moldova, Romania and Serbia. Respondents gave diverse answers to the question on how much information to include in the EIA documentation, which necessarily depended on the case and had to provide sufficient relevant information.

### **4. Methodology**

43. No Party identified a specific methodology for the transboundary EIA procedure (53 (c)), with methods necessarily determined case by case. Some respondents identified typical EIA methods. In Bulgaria, Estonia, Germany, Greece, Lithuania and Switzerland, the methodology was normally determined by the proponent or its EIA experts, though in Italy the methodology for domestic EIA was specified in the legislation.

### **5. Translation**

#### **Need for translation**

44. Translation is not addressed in the Convention and is sometimes a complication in the transboundary EIA procedure (53 (d)), with Slovenia identifying it as the key technical problem: reaching an agreement on translation took time and caused delays. Sweden gave an example of a refusal by the proponent to translate, following a request by the affected Party for translation, which had led to a delay of six months. However, for some combinations of concerned Parties, translation was not generally a problem, for example: between Scandinavian countries; between the Netherlands and the Flanders Region of Belgium; between France and the Wallonia Region of Belgium; between Switzerland and its neighbours; in Central Asia; and within the former Yugoslavia. Germany, Lithuania, the Netherlands, Poland and Spain explained that their bilateral agreements provided solutions, whereas Kyrgyzstan referred to subregional guidance.

#### **Early steps**

45. Austria and Romania translated the project description, into English in Romania's case. The Netherlands and Poland translated the notification; Denmark, Greece and the former Yugoslav Republic of Macedonia translated the notification into English. In Hungary, the screening and scoping reports were translated into English or the language of the affected Party.

#### **EIA documentation**

46. If translation was needed, several Parties had translated at least the non-technical summary into the language of the affected Party (Belgium, Croatia, Denmark, Germany, Hungary, the Netherlands, Norway, Romania, Spain) or into English (Greece, Hungary,

Romania, Serbia). Austria, Belgium, Hungary, Lithuania, the Netherlands, Poland and, according to their bilateral agreement, Portugal and Spain had also translated the transboundary chapter (or equivalent), as necessary; in Lithuania the translation had been into English, Russian or the language of the affected Party. Denmark, Finland, Greece and Norway cited examples of cases for which the full EIA documentation had been translated, with Denmark and Finland having provided the documentation in English. The Czech Republic explained how, despite a lack of legal provisions, it normally arranged translation into English of the table of contents of the EIA documentation and, in particular cases, of the non-technical summary and the transboundary chapter; in special circumstances the proponent had provided the full EIA documentation in the language of the affected Party. Finland translated into the language of the affected Party all material provided for public information, and had provided simultaneous interpretation in some public hearings.

#### **Consultations and final decision**

47. Bulgaria conducted consultations in English, unless otherwise provided in bilateral agreements. Poland and Slovenia provided interpreters in consultations. Germany translated parts of the final decision, but expected reciprocal action by the affected Party.

#### **Responsibilities**

48. In Bulgaria, the legislation required the proponent to translate the non-technical summary and the EIA report, or part thereof. In Poland, the proponent had been required, in line with the legislation, to prepare suitable documentation in the language of the affected Party. In Romania and Serbia, the legislation required that the proponent translate the EIA documentation into English. In Spain, the proponent was responsible for translation of the transboundary chapter into the language of the affected Party. In France and in the former Yugoslav Republic of Macedonia, the translation costs were borne by the proponent. In Sweden, the proponent was responsible for translating as necessary the notification and the EIA documentation, in part or completely. Austria and Italy referred to the concerned Parties agreeing on what had to be translated, whereas the Flanders Region (Belgium) noted discussion between the competent authority and the proponent; Hungary was usually able to persuade the proponent to translate all necessary documentation into the language of the affected Party.

49. As affected Party, Hungary asked the Party of origin to provide translations into Hungarian. Latvia and Lithuania asked for at least the non-technical summary in their own languages, with Lithuania also expecting the transboundary chapter. Latvia as affected Party also asked for interpretation for public hearings on its territory. Poland requested translation of the non-technical summary and the transboundary chapter and, under bilateral agreements, received also correspondence and further documentation in Polish. France noted that the State bore the costs of translations unless provided otherwise under a bilateral agreement. Ukraine's draft bilateral agreements foresaw the Party of origin being responsible for the cost of translation and interpretation into English or Russian.

#### **Difficulties**

50. Respondents went on to describe difficulties experienced as affected Party relating to translation and interpretation. Austria and the Netherlands noted a lack of translation, and were joined by Belarus in complaining about poor translations. Austria and the Netherlands then had to translate themselves, as appropriate. Poland noted receipt of huge documentation and not knowing what to translate. Poland and Slovenia found that translation was time-consuming and expensive.

## 6. Public participation

### Organization

51. Respondents reported on how their country organized transboundary public participation in practice (53 (e)). Many respondents indicated that their country, as the Party of origin, had not organized public participation in an affected Party, which itself organized such participation (Austria, Belgium, Czech Republic, Estonia, France, Hungary, Italy, Kyrgyzstan, Poland, Republic of Moldova, Romania, Slovenia, Switzerland). This was generally the case also for Denmark, Finland and Norway, and for Portugal and Spain according to their bilateral agreement. Lithuania, as Party of origin, and Slovenia, as affected Party, expected the comments from the affected Party's public to be submitted to the affected Party's authorities and then sent on to the Party of origin. Austria, Italy, the Netherlands and the Republic of Moldova had allowed the public of the affected Party to participate in the procedure in the Party of origin, with the Netherlands providing interpretation if a large attendance was expected.

52. However, Denmark and the Netherlands reported placing advertisements in the affected Party's newspapers, and Finland, the Netherlands and Norway, as Parties of origin, had organized, or helped to organize, public hearings in the affected Party. For an activity in Lithuania, the proponent attended hearings in the affected Party, as did experts for an activity in Belarus; Romania had sent a delegation comprising representatives of the Ministry of Environment, the competent authority and the proponent, together with an interpreter; Kyrgyzstan had sent representatives of the competent authority, the proponent and NGOs. Kyrgyzstan also noted funding by the proponent and by a donor of the hearing in the affected Party.

### Effectiveness

53. Italy considered that public participation improved the final decision. For Poland, the effectiveness of participation depended on proper notification of the public, while the level of participation depended on how controversial the proposed activity was. Slovenia considered that effectiveness was increased by the competent authority being active. Sweden noted that there was most public interest when there was media coverage; otherwise, participation was often limited to NGOs.

### Difficulties

54. Most respondents reported that they were not aware of any difficulties with the participation of their public or the public of another Party, or that there had not been complaints from the public about the procedure. However, Belgium reported a complaint by an NGO to the Implementation Committee regarding a proposed activity in its territory, and Slovenia had experienced difficulties when the affected Party's public submitted comments both in the affected Party and directly in the Party of origin.

55. As affected Party, Austria observed that the public found it difficult to understand isolated public participation steps as they related to a procedure in the Party of origin, and when its comments were not taken into account as it would expect. Slovenia noted that the already lengthy public-hearing procedure was further lengthened by the need to translate documents; on one occasion the Party of origin had taken the final decision while Slovenia was still conducting public participation as an affected Party.

56. Lithuania as Party of origin had heard complaints about the quality of interpretation in a public hearing in the affected Party. Hungary observed that hearings were costly and often poorly attended, and that it was difficult to decide on the timing during the day.

## 7. Consultations

57. Most respondents reported that they were not aware of any significant difficulties during consultations, for example over timing, language and the need for additional information (53 (f)). Sweden observed that there were differences between Parties regarding the meaning of consultations. It was apparent from the responses that the term “consultations” had been misunderstood by many respondents.

58. Austria and Romania observed that the affected Party wished to settle issues as carefully as possible, whereas the Party of origin normally wished to end consultations as soon as possible. Belarus, as Party of origin, reported delays in a transboundary EIA procedure caused by what it considered to be an unwarranted demand by an affected Party to postpone consultations. Latvia, as affected Party, noted that insufficient time had sometimes been provided for submission of comments after consultations; Serbia, too, had difficulties with timing. The Czech Republic and Poland, as Party of origin, had provided a translator during consultations; as affected Party, the Czech Republic had no experience of consultations and the transboundary EIA procedures had gone well without them.

59. Estonia, as affected Party, considered that consultations under article 5 had supported the prevention of possible significant transboundary environmental impacts, and Poland considered that they had supported the prevention, reduction and control of such impacts. For Hungary as affected Party, consultations had led to a better understanding of the Party of origin’s legislation and to clarification of impacts.

## 8. Final decision

60. Respondents provided diverse examples of the form, content and language of the final decision, when it was issued and how it was communicated to the affected Party and its public (53 (g)). Several reported translation in part or completely of the final decision (Austria, Germany, Lithuania, Romania), in accordance with bilateral agreements (Poland), or as needed (Finland (into English), Netherlands, Norway), whereas others indicated that it was always sent in the Party of origin’s language (Hungary, Slovenia). Bulgaria and Croatia reported publication on their respective Government website, and many reported sending the final decision to the affected Party; in the Netherlands the final decision had to be sent to all those who had commented, wherever they were. Romania included information on public rights concerning access to justice; Hungary included information on opportunities to appeal.

## 9. Post-project analysis

61. Most respondents indicated that their country had not carried out post-project analyses, at least in a transboundary context (53 (h)). Others, however, provided examples of planned activities that had been subject to post-project analysis, including: an offshore gas field (Croatia) and a gas pipeline (Denmark); wind farms (Denmark); a bridge (Denmark); nuclear power plants (Hungary, Romania) and other power plants (Hungary, Poland); a metallurgical plant (Kazakhstan); roads and railways (Poland); manufacturing plants (Poland); a hydroelectric power plant (Portugal and Spain); and an oil terminal (Republic of Moldova).

## 10. Joint projects

62. Austria, Croatia, Denmark, Germany, Italy, the Netherlands, Norway, Romania, Sweden and Switzerland provided information on successful examples of organizing transboundary EIA procedures for joint cross-border projects (53 (i)). For example:

- (a) Italy referred to a bilateral agreement for the Brenner Tunnel;

(b) Finland and Sweden referred to the Nord Stream gas pipeline, with Sweden stressing the importance of regular and frequent meetings between points of contact, focal points and representatives of the permitting authorities. Finland identified the simultaneous notification and distribution of information, the coordination of public hearings and the translation of scoping and EIA documentation;

(c) Norway referred to the Skanled gas pipeline, for which effective meetings had been held at critical steps, with e-mail communication among focal points in between meetings;

(d) The Netherlands cited the establishment of a bilateral working group;

(e) Romania referred to joint projects with Bulgaria for a bridge across, and navigation improvements to, the Danube River, both of which saw public participation in scoping and the establishment of a joint body.

## 11. Good practice cases

63. Many respondents were unwilling to name examples of good practice cases (53 (j)), or had none. Others named examples: the Netherlands and Slovakia wrote of nuclear power plants in their countries, Belgium about one in neighbouring France. Sweden referred to the Skanled gas pipeline, Denmark, Finland and Sweden referred to the Nord Stream one. As Parties of origin, Switzerland noted a transport infrastructure project and Belgium referred to a wind farm. Montenegro, as affected Party, noted a hydroelectric power plant in Croatia. Portugal referred to the hydroelectric use of the Bemposta River and expressed a willingness to introduce the case in the form of a Convention case study fact sheet.

## 12. Means of applying the Convention

64. Respondents identified the most common means of applying the Convention (53 (k)), which was through:

(a) Points of contact, at least at the start (Bulgaria, Croatia, Denmark, Hungary, Italy, Montenegro, Sweden, Switzerland);

(b) Focal points (many Parties);

(c) Bilateral agreements (Italy, Netherlands, Poland, Portugal);

(d) Focal points, joint bodies and bilateral and multilateral agreements (Bulgaria, Estonia, Germany, Latvia).

### I. Cooperation between Parties in 2006–2009

65. Respondents indicated how their country had overcome difficulties arising from different legal systems in neighbouring countries (54), with some referring to general approaches, others referring to specific experiences. Denmark noted that much time and patience had been needed to understand and overcome differences between legal and administrative systems and cultures. Austria, Estonia, Germany, Italy, Lithuania, Portugal and Spain noted the importance of bilateral and multilateral agreements, whereas Germany and Switzerland highlighted the process of the elaboration of such agreements and Kyrgyzstan referred to subregional guidance on transboundary EIA. France was flexible in its application of the Convention. The Netherlands generally followed the Party of origin's legislation. Romania noted the compatibility of national systems implementing EU legislation. Austria and Estonia referred to the importance of bilateral meetings and consultations. Switzerland also noted that shared practical experience for joint projects had helped overcome difficulties.

66. Germany noted, with respect to the Nord Stream gas pipeline, the agreement among States to use the longest time frame legislated in the various States concerned and to provide for public participation in the scoping phase. Norway reported that for the Skanled gas pipeline the concerned Parties had produced a table summarizing the different legal systems, time frames and key steps; this had helped in reaching a compromise approach.

## **J. Experience in using the guidance in 2006–2009**

67. Respondents provided information on their country's use in practice of the guidance adopted by the Meeting of the Parties (55). Denmark and Estonia emphasized the importance of practical experience rather than guidance.

68. Some Parties had found the guidance on public participation in EIA in a transboundary context useful in practice (nine respondents) and: when preparing for a public hearing (Belarus); as a source of ideas (France); for notification (Latvia); in drawing up bilateral agreements (Netherlands); and in drawing up legislation and norms (Republic of Moldova) (55 (a)). In Armenia, the guidance had been translated and distributed.

69. About half of the respondents indicated that their country had not used the guidance on subregional cooperation in practice (55 (b)). However, some Parties had found this guidance useful in practice (Italy, Kyrgyzstan, Lithuania, Republic of Moldova), and in drawing up a multilateral agreement (Greece) or legislation and norms (Republic of Moldova).

70. About half of the Parties had used the guidelines on good practice and on bilateral and multilateral agreements, also published as guidance on the practical application of the Convention (55 (c)). It was used in practice (eight respondents) and: in drawing up bilateral and multilateral agreements (Belarus, Netherlands, Romania, Switzerland); for notification (Latvia); and for drawing up legislation and norms (Republic of Moldova). Norway also suggested that the completed questionnaires be used to update this guidance.

## **K. Clarity of the Convention**

71. A minority of respondents indicated that their country had not had difficulties implementing the Convention's procedure, either as Party of origin or as affected Party (56). Others referred to difficulties with translation (Italy, Lithuania, Netherlands, Poland, Switzerland) and with time frames (Lithuania). Switzerland noted the question of which country's criteria should be used to determine the significance of impact in the affected Party. Norway noted the challenging situation where there were many Parties of origin or affected Parties. Belarus noted a situation in which it had been Party of origin and the concerned Parties had disagreed over the format for notification, leading to a delay in the affected Party's response to what Belarus had considered was a notification.

72. Several respondents noted the continuing confusion over the various provisions for comments, objections and consultations (art. 2.6, 3.8, 4.2 and 5) (Netherlands, Norway, Switzerland), and specifically what constitutes consultations under article 5 (Romania, Sweden). Greece and Poland observed that the provisions for joint activities were unclear. Poland also noted a need for a clear definition of the time frame for consultations. Sweden noted the mismatch between the number of steps in the Convention and the larger number of steps in its domestic legislation. Kyrgyzstan observed the need for thresholds for all activities listed in appendix I, and a specific distance to an international border in appendix III.



73. A few respondents identified strengths in their country's implementation of the Convention, such as the opportunity to participate and comment (Latvia) and that all relevant stakeholders were included to find the best solution (Norway). Respondents also identified weaknesses, such as a need for: more awareness of the Convention (Kyrgyzstan); a clearer central overview of cases to ensure procedures were followed by local competent authorities (Norway); and legislation on transboundary EIA (Republic of Moldova).

74. As Party of origin, Croatia observed that it was difficult to speed up the procedure in the affected Party, and that a time frame needed to be introduced into article 4, paragraph 2. As affected Party, Austria observed that the Convention had not been applied to certain activities that, according to its legislation, would have been subject to the Convention. Austria also noted the lack of provisions on translation of documentation; the lack of a separate transboundary chapter had complicated translation for Hungary.

## L. Awareness of the Convention

75. Most respondents indicated that their country had undertaken activities to promote awareness of the Convention among stakeholders (e.g., the public, local authorities, consultants and experts, academics, investors) (57). Several Parties provided information on their website (Bulgaria, Estonia, Germany, Kyrgyzstan, Lithuania, Netherlands, Romania) or referred to the Convention in national guidance (Estonia, Lithuania, Netherlands, Poland, Sweden); the Netherlands provided a helpdesk.

76. Others raised awareness more actively, for example:

- (a) By hosting a subregional workshop (Armenia);
- (b) Within bilateral and trilateral awareness programmes (Austria);
- (c) Through seminars for public agencies, planning organizations, research organizations and university professors (Belarus);
- (d) By an EU-funded promotion project (Croatia);
- (e) By providing information to new authorities, stakeholders, NGOs, developers, etc. (Denmark);
- (f) By a local seminar and through training of competent authorities (Finland);
- (g) By sending information to NGOs (France);
- (h) In meetings of the national EIA association (Germany);
- (i) In national meetings of authorities (Germany, Netherlands, Switzerland);
- (j) In regular workshops with inspectorates (Hungary);
- (k) Through annual workshops for central Government, local authorities, NGOs, etc. (Kazakhstan);
- (l) Through workshops for parliamentarians, central Government, local authorities, project organizations, project proponents, teachers, NGOs, etc. (Kyrgyzstan);
- (m) Within a donor project on EIA (Montenegro);
- (n) By writing to NGOs and offering the possibility to take part in meetings (Norway);
- (o) Indirectly as part of EIA promotional activities (Portugal);
- (p) Through seminars for ministries, departments, design institutes and the public (Republic of Moldova);
- (p) Through presentations to NGOs (Romania).

77. Austria supported financially the participation of NGOs. In Austria, Croatia, Italy and Romania the Convention was well known.

78. About half of the respondents indicated that their country did not see a need to improve the application of the Convention in their country (58). Others identified areas requiring improvement, such as the need to: amend the current law (Armenia); adopt new legislation and guidance (Azerbaijan); develop practical experience on the basis of recent legislation (Belarus); work with neighbouring countries to improve the efficiency of the procedure (Croatia); develop more guidance on transboundary cooperation (France); raise awareness (France, Switzerland); adopt a new regulation on EIA and eventually an environmental code (Kyrgyzstan); receive assistance from the secretariat (Montenegro); communicate regularly with competent authorities (Netherlands); make the polluter pay and the Party of origin provide documentation in the language of the affected Party (Poland); ratify a multilateral agreement (Serbia); improve internal governance and communication between ministries (Slovenia); gather information on cases (Switzerland); and adopt new legislation (the former Yugoslav Republic of Macedonia). Finland had launched a review of its experience.

79. Some suggested how application was to be improved: inclusion of carbon capture and storage activities into national legislation in line with the amendment of the relevant EU legislation (Germany); signature of a new bilateral agreement (Lithuania); and development of a new law on EIA and a regulation on transboundary EIA (Republic of Moldova). Sweden suggested that it might be necessary to delegate responsibility to the regional authority, cutting out the central body, in cases when the Party of origin tightly limited the time frame for consulting regional or local authorities.

## **M. Suggested improvements to the report**

80. Some respondents suggested how the questionnaire might be improved (59). Several observed that it should be shorter and simpler. Some observed that questions often included many sub-questions (Norway), and suggested that the long questions be broken down (Estonia, Latvia). The Netherlands proposed removal of some questions, Germany that closed (yes/no) questions be preferred. Many suggested that overlaps and repetition be avoided. Finland suggested that any changes to the questions be made clear in the questionnaire.

81. Azerbaijan suggested removing questions on the definition of terms and focussing instead on practical difficulties. Norway observed confusion over the different questions addressed to the Party of origin and the affected Party; Germany proposed that these questions be combined. The Netherlands suggested that questions on legislation and practice be better differentiated. Italy proposed that EU member States only need be asked about practical experience, unless there was a major change to the EU legislation. Norway pointed out the confusion over the term “consultations”. Germany proposed that, if gathering similar data on implementation of the Convention’s Protocol, use of a single questionnaire for both instruments might soften the administrative burden.

82. Switzerland suggested that the questionnaire might be structured by theme, such as public participation, rather than by article, and that the results of the review of implementation might be used to improve application of the Convention and be taken into account in the workplan. Norway proposed that the questionnaire be broken up, with a core questionnaire focused on possible implementation problems, other questions in a second questionnaire, and good practice addressed elsewhere, e.g., in the workplan.