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General guidance on enhancing consistency between the Convention and environmental impact assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia

Summary

The present guidance responds to the requirement of the workplan adopted at the fifth session of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the first session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment, which provides for the development of general guidance on resolving a possible systemic inconsistency between the Convention and environmental assessment within the framework of a State ecological expertise system (ECE/MP.EIA/SEA/2, decision V/9–I/9, annex).

The guidance was prepared by two international consultants to the secretariat in consultation with Parties and other stakeholders, and taking into account comments by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its second and third meetings (Geneva, 27–30 May and 11–15 November 2013, respectively).

The Meeting of the Parties to the Convention is invited to endorse the guidance through decision VI/8.

Contents

I. Mandate and objectives

1. The present guidance has been prepared further to the deliberations of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment. As a result of the Committee's deliberations on information received regarding the Convention's implementation in some countries in Eastern Europe, the Caucasus and Central Asia, it observed that there might be a more general systemic inconsistency between the Convention and environmental assessment within the framework of State ecological *expertiza* (or expertise) systems (ECE/MP.EIA/IC/2011/2, para. 18). In that connection, in its report to the fifth session of the Meeting of the Parties to the Convention (MOP) (Geneva, 20–23 June 2011) the Implementation Committee proposed "to include in the new workplan the development of general guidance on resolving a possible systemic inconsistency between the Convention and environmental assessment within the framework of State ecological expertise systems" (ECE/MP.EIA/2011/4, para. 73).

2. At its fifth session, the MOP considered relevant opinions and observations of the Implementation Committee (ECE/MP.EIA/15, decision V/4, para. 6), and included the development of the proposed general guidance in the workplan for the period up to the sixth session of the Meeting of the Parties to the Convention and the second session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (ECE/MP.EIA/SEA/2, decision V/9–I/9, annex).

3. Noting that "compliance concerns both legal implementation and practical application" (ECE/MP.EIA/10, decision IV/2, annex II, para. 24), the purpose of this guidance document is to further support Parties to the Convention in Eastern Europe, the Caucasus and Central Asia in further developing their legislation in compliance with the Convention and to streamline application of the Convention throughout the region.

4. The document is largely based on the opinions and recommendations of the Implementation Committee as expressed in the reports of its sessions, including its findings and recommendations subsequent to either a submission or a Committee initiative, and in its reports to the MOP. To some extent, with respect to the issues related to public participation, it also draws on the respective opinions and recommendations of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

5. The first draft of the document was also based on information obtained from Governments and other stakeholders from several countries in Eastern Europe, the Caucasus and Central Asia[1] through a questionnaire, and during an informal consultation meeting held in Geneva, on 30 October 2012 on the margins of a joint workshop on public participation in strategic decision making.[2] The draft was then sent for comments to all the countries in advance of the second meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 27–30 May 2013) where it was presented and discussed. Countries were also invited to provide further

[1] Including from Armenia, Azerbaijan, Kyrgyzstan, the Republic of Moldova, the Russian Federation and Uzbekistan.

[2] The informal consultations included representatives of the Governments of Armenia, Azerbaijan, Belarus, Kyrgyzstan, Mongolia, the Republic of Moldova, the Russian Federation and Uzbekistan, and non-governmental organization representatives from Armenia, Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation.

comments in writing following the meeting. As requested by the Working Group, the draft guidance was finalized taking into account the comments provided before, during and after the meeting.[3]

II. Introduction

A. The OVOS/expertise system

6. A general outline of the OVOS/expertise system in the countries of Eastern Europe, the Caucasus and Central Asia is first necessary in order to illustrate those features that may raise concerns in the context of the application of the Convention. The description that follows is not exhaustive, and does not reflect all variations existing in national legislation.

7. The regulatory framework for development control systems in most of the countries in Eastern Europe, the Caucasus and Central Asia is based on the system of "expertise" whereby the decision-making process involves the review of planned activities (mostly concrete development projects but also plans, programmes, etc.) by special expert committees/individual experts. The expert committees/experts are affiliated to various governmental bodies. The environmental part of the review is usually called the State ecological expertise (also sometimes referred to as the State environmental review) and is usually subject to separate laws.

8. Planned activities which have a potential impact on the environment are subject to State ecological expertise conducted by the competent environmental authorities or by external experts nominated by the competent environmental authorities. The procedure is finalized with the so-called "expertise conclusion". The activity can be implemented only if the conclusion is positive.

9. Additionally, the activities that are considered to have a potentially significant impact on the environment are subject to OVOS, an acronym whose terms, in direct translation, can be rendered as "assessment of the impact upon the environment". There is usually a list of activities which always require State ecological expertise and/or OVOS. However, the environmental authorities may, upon review of the proposed activity, decide that an OVOS must be conducted, irrespective of whether the activity is included in the list or not.

10. The OVOS is the procedure during which the proponent/developer (i.e., the applicant for the authorization) collects all the necessary information concerning the impact of the project on the environment and compiles the relevant impact assessment documentation. The OVOS procedure is not of a permitting nature and is closely connected to the developing of the overall project documentation: the proponent/developer or the

[3] These included comments from Belarus, Georgia, the Republic of Moldova, the Russian Federation and Ukraine. Belarus indicated that the systemic issues described in the general guidance did not reflect its own national environmental impact assessment legislation and that the guidance was not of relevance to it. Based on the comments made and with a view to reflecting in a more accurate manner the purpose of the guidance, which is to support countries in further developing their legislation in compliance with the Espoo Convention, and not to single out inconsistencies, it was proposed to change the title of the guidance from "General guidance on resolving a possible systemic inconsistency between the Convention and environmental assessment within State ecological expertise" to "Guidance on enhancing consistency between the Convention and environmental assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia".

consultant hired by the proponent/developer conducts the necessary investigation and studies and prepares draft OVOS materials. Such materials may take the form of a standalone document (which is usually called the OVOS report) or may be just one of the chapters of the overall project documentation.

11. Additionally, in some countries, the proponent/developer is also responsible for preparing a document called the OVOS statement (or statement on environmental impact) which in an abbreviated manner gives basic information about the project and its potential environmental impact. It serves as a basis for public consultation, and therefore in some countries the OVOS statement should be published in its entirety. It is the proponent/developer who is responsible for notifying the public, providing the respective information to the public and conducting the public consultations, including public hearings. Public hearings are the main procedure in the subregion for allowing the public to submit any comments, information, analyses or opinions that it deems relevant, although in some countries hearings are formally done in cooperation with the competent authorities. Once the consultations are completed the proponent/developer is responsible for completing the OVOS document meant to summarize the results of OVOS procedure.

12. The OVOS materials (the OVOS report or separate chapter in the overall project documentation), along with the other required documentation, is submitted by the proponent/developer to the relevant authorities for State ecological expertise. At the expertise phase, the authorities (or the external experts nominated by them) examine the compliance of the documentation submitted, including the information on public participation, with the requirements set by law. The State ecological expertise procedure is finalized with the expertise conclusion. As mentioned above, the project in question can be implemented only if the authorities issue a positive conclusion.

13. The regulatory framework of the countries concerned usually gives more prominence to the State ecological expertise procedure, which is usually defined in laws adopted by the parliament (such as a specific law on State ecological expertise or a general environmental protection law), than to the OVOS procedure, which is regulated by a low-level measure/instrument, such as a Government instruction, guidelines or recommendations or a so-called “State Construction Standard”, which often cannot be enforced in courts.

14. State ecological expertise and OVOS are two closely interlinked procedures, with OVOS preceding the expertise. In most countries they are required at the stage of the development of the feasibility study for the project and at the stage of developing a construction design of the project.

15. Bearing the above in mind, the OVOS procedure, despite its name, should be distinguished from what is generally internationally understood as an environmental impact assessment (EIA) procedure. The two terms are not exactly synonymous because they reflect slightly different practices. Both have similar objectives, but they have some different features that are important from the point of view of the Espoo Convention.

16. Therefore, for the purposes of the Espoo Convention (and also for the Aarhus Convention) the OVOS and State ecological expertise are considered as a decision-making process constituting jointly a form of an EIA procedure finalized with the conclusions of the State ecological expertise. The decision-making procedure in the regulatory framework for development control based on the OVOS/expertise system starts in some countries with the proponent/developer submitting to the competent authorities the “declaration of intent” (in some countries this early stage does not exist). Thereafter, it involves the development of the OVOS documentation, including the carrying out of the public participation process, followed by the submission of the entire documentation to expertise. The procedure ends with the issuance of the expertise conclusions by the competent environmental authorities.

After the expertise conclusions there is normally also a construction permit granted by the competent construction authorities and sometimes additionally also another decision of a permitting nature, and for some activities even a decision of the highest national authorities.

17. The details of the regulatory framework for development control based on the OVOS/expertise system may differ in each of the countries concerned, and not all the general features described above or the specific features described below may apply to all countries in Eastern Europe, the Caucasus and Central Asia. Some of these countries have recently significantly changed their frameworks, in particular those that have been prompted to do so as a result of opinions issued by the Espoo Convention Implementation Committee or the Aarhus Convention Compliance Committee. The experience gained in this respect shows that there are some features of the traditional OVOS/expertise system which can give rise to issues of concern in implementing the obligations stemming from the Espoo Convention, and which could be successfully addressed.

18. There are a number of differences, both conceptual[4] and methodological,[5] between the traditional OVOS/expertise system described above, still in existence in many countries in Eastern Europe, the Caucasus and Central Asia, and the EIA procedure as internationally known. The very existence of such differences is perfectly legitimate and stems from the sovereign right of each Party to the Espoo Convention to develop its own national framework for development control. However, such national frameworks must be consistent with the Convention and allow the Party to fulfil its obligations under the Convention.

19. Bearing this in mind, and following the experience of the countries that have recently changed their national frameworks to meet their obligations under the Espoo Convention, it is worthwhile to assist the other countries in Eastern Europe, the Caucasus and Central Asia that would also like to do so by describing some specific features of the traditional OVOS/expertise system that can give rise to issues of concern in fulfilling the obligations stemming from the Espoo Convention, as set out below, and on that basis to provide some guidance on how to resolve the possible problems that arise therefrom.

B. Specific issues of concern

1. Scope of activities covered

20. The scope of activities covered by the traditional OVOS/expertise system is usually delimited by a general list of activities subjected to state environmental expertise supplemented by a narrower list of activities that are recognized as environmentally hazardous and therefore require OVOS. The former list is usually very extensive, while the latter list is much narrower and usually broadly comparable with the list of activities in appendix I to the Convention. However, since traditionally activities that do not involve construction are not subjected to expertise, the list of activities subjected to OVOS also usually includes only activities where construction is involved and does not include several activities such as, for example, deforestation of large areas or intensive rearing of poultry or pigs.

[4] See for example Stephen Stec, "EIA and EE in CEE and CIS: Convergence or Evolution?", in *A World Survey of Environmental Law*, Stefano Nespor, ed. (Milan, Giuffre Editore, 1996).

[5] Aleg Cherp and Alexios Antypas, "Dealing with Continuous Reform: Towards Adaptive EA Policy Systems in Countries in Transition", *Journal of Environmental Assessment Policy and Management*, vol. 5, No. 4 (December 2003), pp. 455–476.

21. In many countries the environmental authorities may require OVOS for activities outside the list of activities subjected to OVOS if they potentially have environmental impact. However, usually there are no criteria and thresholds for the selection of such activities. This often causes problems and misunderstandings between the environmental authority and the project proponent/developer. Some countries do not have a formal list of activities subjected to OVOS at all, but just general legal requirements to prepare OVOS (conduct expertise) on activities that potentially may have an environmental impact. This gives wide discretion to project proponents/developers and environmental authorities in identifying activities subject to OVOS/expertise. In some cases it also results in overloading the authorities with small and low impact projects.

2. Scope of assessment and content of EIA documentation

22. Most of the traditional OVOS/expertise systems do not envisage a scoping process as a specific procedural step. Instead, there are quite detailed requirements as to the content of the OVOS documentation included in administrative measures regulating the procedure; however, these are not enforceable. These requirements are often differentiated according to the stages of the project's review and development (e.g., at the feasibility study stage of a project the requirements are usually slightly different than at the construction design stage), but most often are not differentiated with regard to the particular features of the project in question, in particular the size and location of the project.

23. Furthermore, there is not always a clear requirement to provide all the elements of the EIA documentation as required in the appendix II to the Espoo Convention. For example, quite often there is no clear requirement for "identification of gaps in knowledge and uncertainties" and no clear requirement regarding reasonable alternatives to be described.

3. Public participation

24. In the traditional OVOS/expertise system, public participation as a mandatory element of the procedure is envisaged basically only at the OVOS stage (if there is any formal procedure for OVOS at all — because in some countries the procedure for OVOS is not regulated formally). At the expertise stage usually the main possibility for public participation is provided through a so-called public ecological expertise. The latter is not a mandatory element of the expertise procedure, and in practice is only rarely conducted. Therefore the Aarhus Convention Compliance Committee found that it cannot not be considered as a primary tool to ensure compliance with the provisions of article 6 of the Aarhus Convention, but may play a role as an additional measure to complement the public participation procedure required as a mandatory part of the decision-making (ECE/MP.PP/2011/11/Add.2, para. 76).

25. As already indicated, public participation is a mandatory part only at the OVOS stage, and in the traditional OVOS/expertise system it is usually the proponent/developer that is responsible for organizing public participation, including notifying the public (in some countries also for notifying the public authorities), making available the relevant information, conducting public hearings and collecting the comments.

26. Such a reliance on the proponent/developer in providing for public participation during the OVOS stage is in line with the role of OVOS in the traditional OVOS/expertise system, but is not in line with the Espoo Convention, in which it is implicit in the provisions of article 3, paragraph 8, and article 4, paragraph 2, that comments should be submitted to the competent public authority. This has been confirmed by the

Implementation Committee which stated that "the organization of public participation under the Convention was the responsibility of the competent authority[6] and not of the proponent. Nevertheless, it might be possible under national systems that the competent authority and the proponent would organize the public participation together. However, the proponent should not be responsible for public participation without the competent authority" (ECE/MP.EIA/IC/2010/4, para. 19 (b)).

27. A similar opinion was given by the Aarhus Convention Compliance Committee, which stated that "it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from public authority[7], and that comments should be submitted to the relevant public authority (article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6)" and therefore found that "reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention" (ECE/MP.PP/2008/5/Add.6, para. 78; see also ECE/MP.PP/2011/11/Add.2, para. 77).

28. Another feature of the traditional OVOS/expertise system is that usually the public participation procedure is not clearly and precisely regulated by law. Although in some countries the procedure for public participation is regulated in detail, in most countries there are only general declarations on public participation included in the legal framework. Also, quite often there are no clear provisions regarding the timing and the content of the public notice of the proposed activity, the availability of information for public inspection and the forms public participation might take, as well as no clear obligation to take comments by the public into account in the decision-making.

29. In legal frameworks that attempt to regulate some elements of public participation quite often there is a requirement that comments from the public be "reasoned". The public is usually clearly granted only access to a limited part of the documentation (the OVOS statement), while access to the entire relevant documentation is often heavily restricted. Different reasons are given for these restrictions, including, quite often, ownership of information and copyright protection, and sometimes the volume of information to be made available.

4. Final decision

30. As already indicated, after the expertise conclusions there is normally also a construction permit granted by competent construction authorities and sometimes additionally also another decision of a permitting nature. In most countries, however, there is no clear indication which of these decisions finally permits the activity to take place. Sometimes also the legal nature of such a decision is not specified.

31. Furthermore, usually there is no clear requirement that in the permitting decision due account is taken of the outcome of OVOS. In fact, such a permitting decision normally does not set environmental conditions for the activity. Such conditions are deemed to be approved by the preceding expertise conclusions, which themselves also do not include clear conditions but usually are limited to merely approving the documentation, including the OVOS materials, submitted by the proponent/developer. However, when the expertise

[6] According to article 1 of the Espoo Convention "competent authority" means the national authority or authorities designated by a Party as responsible for performing the tasks covered by the Convention and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity.

[7] In the official Russian translation of the Aarhus Convention the term "public authority" is translated as "State authority". This term, however, should be interpreted in a broad way including self-governing bodies such as local or municipal authorities in cities, towns or villages (see *The Aarhus Convention: An Implementation Guide*, 2nd edition, 2013, page 35).

conclusions are deemed to be the final decision for the purposes of the Espoo Convention, there is no clear legal mechanism to ensure that the environmental conditions for the activity approved in such a way cannot be altered factually by a change of technical details as approved by subsequent permitting decisions.

32. The expertise conclusions and permitting decisions are not always required to provide the reasons and considerations on which they are based, and even if this is the case they are not always publicly accessible. Finally, in many countries there is no clear requirement that they are publicly announced. Furthermore, usually there are no clear requirements that authorities issuing expertise conclusions and authorities issuing subsequent permitting decisions keep the records of the respective proceedings, including copies of actual expertise conclusions, decisions and documentation. Usually the proponents/developers are required to keep them.

5. Transboundary procedure

33. Very few countries within a traditional OVOS/expertise system envisage clear provisions regarding transboundary procedures. Usually such procedures are assumed to be regulated by the Convention itself, which — bearing in mind its general nature — means that in practice there is a total lack of clarity in this respect and issues are handled on an ad hoc basis. Therefore the fact that a country's Constitution provides for the direct application of international agreements is considered by the Implementation Committee "as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation" (ECE/MP.EIA/10, decision IV/2, annex I, para. 64; cf. decision IV/2, annex II, para. 28).

34. The very nature of the traditional OVOS/expertise system whereby public authorities get involved in the process usually quite late, i.e., as a rule only after the OVOS documentation is prepared and after the public has been consulted, provides a significant obstacle to the implementation of the Convention's provisions.

35. The first problem is timely notification: the late involvement of the authorities, combined with a lack of any effective screening mechanism for a project likely to have transboundary effects, makes it impossible in practice to fulfil the obligation under article 3, paragraph 1, of the Convention to notify potentially affected Parties "no later than when informing its own public about the proposed activity". The project proponent/developer is usually not under an obligation, before informing the public, either to notify the potentially affected Party itself or to inform public authorities about the likelihood of a significant adverse transboundary impact. Notification of the potentially affected Party by the developer would not be a solution to the problem because, as indicated by the Implementation Committee, "entrusting the proponent of an activity with the carrying out of the procedure for transboundary environmental impact assessment would not be adequate, unless the proponent was the State" (ECE/MP.EIA/IC/2010/2, para. 36). Similarly, informing the public authorities about the likelihood of a significant adverse transboundary impact would not be a solution unless there was an effective screening mechanism in place to ensure that proponents/developers followed that obligation.

36. Another issue of concern relating also to the timing of notification described above is that in the traditional OVOS/expertise system the transboundary procedure may be initiated only when the process of developing the documentation, including the OVOS materials, together with the related public participation procedure have both in principle already been completed at the domestic level, and the final documentation, including the outcomes of public participation, has been submitted by the proponent/developer to the competent authority. However, as a result of the transboundary procedure under articles 3 and 4, as well as the consultations provided for under article 5, the entire project

documentation may well be revised, in which case it would mean ensuring the possibility for the public in the country of origin to participate again.

37. The conduct of the transboundary procedure is often hindered by the already mentioned approach to transparency whereby access is clearly granted only to limited part of the documentation (i.e., the OVOS statement), while access to the entire relevant documentation is restricted. Also the fact that providing possibilities for the participation of the domestic public is as a rule the responsibility of the project proponent/developer and not of the public authorities does not contribute to the smooth running of the transboundary public participation procedure. As indicated by the Implementation Committee, while generally "the organization of public participation under the Convention [is] the responsibility of the competent authority and not of the proponent" in the case of transboundary public participation "the concerned Parties [have] a common responsibility for providing equivalent opportunities for public participation in the affected Party, including accurate and effective notification of the public". (ECE/MP.EIA/IC/2010/4, paras. 19 (b) and (c)).This means that public authorities that are not necessarily familiar with the practice of public participation would need to undertake this task.

38. Finally, the design of the decision-making scheme in which it is difficult to identify the final decision authorizing the activity, as well as any conditions attached to it, creates a problem in fulfilling the obligations stemming from article 6 of the Convention.

39. Even more fundamental problems arise for the "affected Party" to fulfil its obligations. The traditional OVOS/expertise system is not designed with a view to accommodating situations of a transboundary nature. The major problem here is not only a lack of clear procedures and practical experience, but also the lack of even generally described competences and powers, as well as a sufficient legal basis to use resources to provide public participation together with the Party of origin.

III. Recommendations

A. General recommendations

1. Need for a national framework

40. As stipulated in article 2, paragraph 2, of the Convention "each Party shall take the necessary legal, administrative or other measures to implement the provisions of [the] Convention". In real terms this may mean establishing a framework for an EIA procedure that:

(a) Involves public participation;

(b) Requires preparation of the EIA documentation described in appendix II to the Convention;

(c) Covers all the proposed activities listed in appendix I to the Convention.

41. The mere provision in the Constitution to directly apply international agreements is insufficient for proper implementation of the Convention without more detailed provisions in the legislation (ECE/MP.EIA/10, annex I, para. 64, cf. decision IV/2, annex II, para. 28).

42. While establishment of an EIA procedure is one of the core obligations under the Convention (MP.EIA/WG.1/2003/3, para. 9) a proper domestic framework for authorizing and assessing proposed activities likely to have a significant environmental impact is necessary for implementation of the Convention, especially with respect to public participation (ECE/MP.EIA/IC/2010/4, para. 19 (a)).

43. The national framework should clearly indicate not only the details of domestic procedure but also the details of transboundary procedure, in particular:

(a) Where in the decision-making process there is a place for a transboundary EIA procedure;

(b) Who is responsible for carrying it out;

(c) By which means it should be carried out;

(see ECE/MP.EIA/10, decision IV/2, annex I, para. 64).

44. When establishing their national regulatory framework with respect to public participation, Parties to the Convention that are also parties to the Aarhus Convention should fully observe also the respective obligations under the Aarhus Convention.

2. Modalities for the legal framework and legal technique

45. In order to follow the present recommendations and assure full compliance with the Convention, Parties in Eastern Europe, the Caucasus and Central Asia may wish:

(a) To introduce necessary changes to their existing OVOS/expertise system; or

(b) To establish a new legal framework, which may include:

(i) Either an EIA law based on the model applied in the rest of the United Nations Economic Commission for Europe region; or

(ii) Their own specific model.

46. While the details of the EIA procedure, for example regarding public participation, should rather be included in the legislation than left for implementing regulations (ECE/MP.EIA/10, decision IV/2, annex II, para. 32), the technical aspects, for example the list of activities or specific requirements as to the EIA documentation, may be included in the implementing regulations.

47. When a Party choses to establish a new legal framework it may consider doing this by way of a separate standalone EIA law or alternatively by introducing respective legal provisions into the general act on environmental protection.

3. Principles

48. The main principles of the national framework should be as follows:

(a) The national framework ensures:

(i) Full compliance with the Convention;

(ii) The ability to implement the Convention in practice;

(b) The national framework is compatible and integrated with the overall development control legislation;

(c) For Parties to the Aarhus Convention, the national framework ensures compliance with the respective requirements regarding public participation under the Aarhus Convention;

(d) The national framework provides for:

(i) The proper role of public authorities and their involvement in the procedure at the early stage;

(ii) Early identification of the activities with potential transboundary impact;

(iii) Effective public participation.

49. Ensuring the proper role of public authorities includes that public authorities have:

(a) The ultimate responsibility for conducting:

(i) Public participation (see also annex I below);

(ii) The transboundary procedure (including notification) (see also annex II below);

(b) An obligation to maintain:

(i) Environmental information relevant to their competences and functions, including those competences upon which they base their decisions (ECE/MP.PP/C.1/2009/2, annex II, para. 10 (a));

(ii) All the relevant documents, including the application for development consent, EIA documentation and the final decision in publicly accessible databases or registers (possibly electronically accessible).

50. The national framework should be designed in such a way as to prevent the use of shortcuts in the decision-making procedure, i.e., parts of EIA being provided for evaluation and approval by the decision-making authority prior to any information being made publicly available (ibid., para. 10 (f)).

51. Whatever the model chosen by a Party, it should be based on the above principles and follow also the specific recommendations set out below which provide a list of requirements a national framework should have in order to fully implement the Convention.

B. Specific recommendations

1. Activities

52. For Parties to both the Espoo and the Aarhus Conventions, the national framework for EIA as a tool to implement both Conventions should cover all the proposed activities listed in appendix I to the Espoo Convention and annex I to the Aarhus Convention, including, for example, “nuclear power stations”, but also “intensive rearing of pigs”, “opencast mining”, “deforestation”, “offshore hydrocarbon production” and “groundwater abstraction”. It is suggested that Parties to the Espoo Convention not Parties to the Aarhus Convention also follow the present recommendations.

53. When designing the national framework it should be borne in mind that:

(a) Article 1, paragraph (v), of the Convention defines a “proposed activity” as “any activity or any major change to an activity”, thus, for example, including the modernization of motorways and express roads (ECE/MP.EIA/IC/2009/2, para. 30 (b));

(b) The list of activities under both Conventions include not only activities involving construction: for example, for the purposes of the Convention “maintenance of a depth in a waterway constitutes continuation of such activity ... and remains subject to the obligations under the Convention” (ECE/MP.EIA/IC/2010/2, annex, para. 40).

2. Scope of assessment and content of EIA documentation

54. When designing the national framework it should be borne in mind that, while the Convention lists in appendix II some mandatory elements of the content of the EIA documentation, a case-by-case determination of the scope of information to be included in these elements of the EIA documentation (“scoping”) is an effective method for streamlining the assessment and reducing its costs. Furthermore, the Implementation

Committee has recommended involving the affected Party in such a case-by-case determination (ECE/MP.EIA/IC/2009/4, para. 26).

55. Parties may provide for a case-by-case determination of the scope of information to be included in the EIA documentation as a mandatory part of the procedure, or may make it obligatory only when conducting a transboundary procedure. As a minimum it is recommended that, if the proponent/developer so requests before submitting an application for development consent, the competent authority should give an opinion on the scope of information to be included in the EIA documentation.

56. When establishing the requirements for the mandatory elements of the content of the EIA documentation it should be borne in mind that:

(a) The Convention's provision requiring that the EIA documentation include a description, where appropriate, of reasonable alternatives (appendix II, item (b)) is mandatory for the legal implementation of the Convention by a Party (ECE/MP.EIA/IC/2009/2, para. 39);

(b) It is important that the no-action alternative be addressed fully so that the evolution of the environment in the absence of the project can be considered (ECE/MP.EIA/IC/2010/2, para. 33);

(c) The non-technical summary is a mandatory element of the EIA documentation and it should outline in non-technical language the findings included in each of the earlier chapters corresponding to items (a)–(h) of appendix II (cf. ECE/MP.EIA/IC/2009/2, para. 16), including visual presentations, as appropriate (maps, graphs, etc.);

(d) Identification of gaps in knowledge and uncertainties encountered in compiling the required information is also a mandatory element of the EIA documentation.

3. Public participation

57. When designing the national framework it should be borne in mind that organization of public participation under the Convention is the responsibility of the competent authority and not of the proponent/developer. Nevertheless, it might be possible under national systems that the competent authority and the proponent would organize the public participation together. However, the proponent should not be responsible for public participation without the competent authority (ECE/MP.EIA/IC/2010/4, para. 19 (b)) Thus, these observations regarding the role of the developers/project proponents shall not be read as excluding their involvement, under the control of the public authorities, in the organization of the public participation procedure (for example conducting public hearings) or imposing on them special fees to cover the costs related to public participation (ECE/MP.PP/2011/11/Add.2, para. 81) (see also annex I).

58. To ensure the proper conduct of the public participation procedure, the administrative functions related to its organization may be delegated to bodies or persons which specialize in public participation or mediation, are impartial and do not represent any interests related to the proposed activity being subject to the decision-making (ECE/MP.PP/2011/11/Add.2, para. 79).

59. The public should be informed promptly and properly not only about the initiation of the procedure and possibilities to participate, but also of the issuing of the final decision (permit) (see also art. 6, paras. 2 and 9, of the Aarhus Convention).

60. The national framework should contain detailed requirements for informing the public, as required under article 6, paragraph 2, of the Aarhus Convention, about the initiation of the procedure and possibilities for the public to participate. In particular:

(a) There should be a clear requirement that the public is informed in an adequate, timely and effective manner;

(b) Mandatory forms of the public notice should be specified, including a notice in the vicinity of the venue of the proposed activity and on the website of the public authority competent for decision-making;

(c) Mandatory contents of the public notice should be specified (see the requirements specified in art. 6, para. 2 (a)-(d), of the Aarhus Convention).

61. If the main means of informing the public is via Internet, there should be clear requirements that:

(a) All documents, including the application for development consent, the EIA documentation, etc., be submitted by proponents/developers also in electronic form;

(b) The information is available on the specially designated and easily recognizable Internet websites of the authorities and not only on the websites of proponents/developers.

62. Specific time frames for the public participation process should be set, including in particular sufficient time frames for:

(a) The public to examine the available information and documents, and to prepare to participate effectively;

(b) The public to prepare and submit comments (ECE/MP.PP/C.1/2009/2, annex II, para. 10 (d));

(c) The public officials to take any comments into account in a meaningful way (ibid., para. 10 (e)).

63. In relation to access to information relevant to decision-making:

(a) The provision of information should not be limited only to selected parts of EIA documentation (ibid., para. 10 (g));

(b) Copyright protection should not be considered as allowing for the prevention of the public availability of the full EIA documentation (ECE/MP.EIA/IC/2010/4, para. 20);

(c) There is a clear requirement that:

(i) Information is provided regardless of its volume (ECE/MP.PP/C.1/2009/2, annex II, para. 10 (b));

(ii) Information required to be provided by proponents/developers should not generally be exempted from disclosure (ibid., para. 10 (h)).

64. In addition to a public hearing, the public should have the possibility to submit in writing any comments related to the respective decision-making during the entire commenting period without the requirement that the comments be reasoned (art. 6, para. 7, of the Aarhus Convention).

65. When designing a national framework it should be borne in mind that the organization of discussions on the proposed project in the newspapers and through television programmes is not a sufficient way to assure public participation in compliance with article 6, paragraph 7, of the Aarhus Convention (ECE/MP.PP/2011/11/Add.2, para. 95).

66. Finally, there should be a clear requirement that in the decision due account is taken of the outcome of public participation (art. 6, para. 1, of the Espoo Convention and art. 6, para. 8, of the Aarhus Convention).

4. Final decision

67. The national framework should clearly indicate which of the decisions for approving the activities should be considered the final decision for the purpose of satisfying the requirements of the Convention (ECE/MP.EIA/10, decision IV/2, annex I, para. 64 (a)).

68. While the Parties are free to decide which of the multitude of decisions required within their regulatory framework should be considered final for the purpose of the Convention, their discretion in this respect is limited to those decisions that in real terms set the environmental conditions for implementing the activity (ibid., para. 61) and which embrace all the basic parameters and main environmental implications of the proposed activity in question (cf. ECE/MP.PP/2008/5/Add.10, para. 43).

69. The national framework should be designed in such a way that for each of the decisions that are considered to be final in relation to a given activity there is clarity as to the authorized basic parameters of the proposed activity and the respective environmental conditions for implementing that activity. If the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the "final decision" in the meaning of the Convention (ECE/MP.EIA/IC/2009/2, para. 21). The same applies if the other decision is capable of significantly changing the above basic parameters or addressing significant environmental aspects of the activity not already covered (ECE/MP.PP/2008/5/Add.10, para. 43).

70. There should be a clear requirement that:

(a) The final decision be accompanied with the statement of reasons and considerations on which it is based (art. 6, para. 2, of the Espoo Convention and art. 6, para. 9, of the Aarhus Convention);

(b) Texts of the decisions, along with the reasons and considerations on which they are based, are publicly available (ECE/MP.PP/C.1/2009/2, annex II, para. 10 (j));

(c) The public authorities must:

(i) Promptly inform the public of the decisions they have taken and how the decisions, along with the reasons and considerations on which they are based, can be accessed;

(ii) Maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions they take, along with the reasons and considerations on which they are based and other information relevant to the decision-making, including the evidence of fulfilling the obligation for having informed the public and provided it with opportunities to submit comments.

71. It is recommended that the final decisions when applying the Convention include:

(a) Monitoring conditions (ECE/MP.EIA/IC/2010/2, para. 18);

(b) Information about possibilities to appeal (ECE/MP.EIA/IC/2009/2, para. 26 (a)).

72. When designing the national framework it should be borne in mind that in the light of article 3, paragraph 8, of the Espoo Convention there is an obligation to inform the public concerned in the affected Party of the final decision (ECE/MP.EIA/IC/2009/2, para. 27).

73. The final decision should provide a summary of the comments received pursuant to article 3, paragraph 8, and article 4, paragraph 2, and the outcome of the consultations as referred to in article 5, and should describe how they and the outcome of the EIA were incorporated or otherwise addressed in the final decision, in the light of the reasonable alternatives described in the EIA (ECE/MP.EIA/IC/2010/2, para. 40).

5. Transboundary procedure

74. In addition to the general obligation to clearly indicate in the national framework where in the decision-making process there is a place for a transboundary EIA procedure and who is responsible for carrying it out and by which means (ECE/MP.EIA/10, decision IV/2, annex I, para. 64) the national framework should also provide other necessary features of the transboundary procedure, both as the "Party of origin" and as the "affected Party", as detailed below.

75. One necessary condition for conducting a transboundary procedure is the early involvement of the environmental authorities, for example by requiring proponents/ developers to submit a "declaration of intent" to such authorities, which in turn could decide if there is likelihood of a significant adverse transboundary impact and initiate the process of transboundary notification. This should be complemented with obligatory scoping where it is found there is a likelihood of transboundary impact. As an additional tool for the successful screening of activities likely to cause significant adverse transboundary effects, the Parties, either individually or through bilateral or multilateral agreements or other arrangements, might find it useful to establish a list of activities, with thresholds if appropriate, that should automatically be subject to notification (ECE/MP.EIA/IC/2010/2, para. 21).

76. When designing the national framework it should be borne in mind that:

(a) It is the common responsibility of all concerned Parties to ensure that the opportunity provided to the public of the affected Party to participate in the procedure under the Convention is equivalent to that provided to the public of the Party of origin. This includes accurate and effective notice given to the public. In this context, while recognizing the lack of administrative powers of the Party of origin's competent authority on the territory of the affected Party, at a minimum it should provide the possibility for the public of the affected Party to participate in the procedure organized in the territory of the Party of origin (cf. ECE/MP.EIA/IC/2010/2, para. 37, and ECE/MP.EIA/IC/2010/4, para. 19 (c));

(b) The concerned Parties should share the responsibility for ensuring that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin, including access to at least the relevant parts of the documentation in a language the public can understand, as set out in article 2, paragraph 6, article 3, paragraph 8, and article 4, paragraph 2, of the Convention (ECE/MP.EIA/IC/2010/2, para. 35);

(c) The Party of origin's competent authority should furthermore support the affected Party's competent authority in providing effective participation for the public of the affected Party in the transboundary EIA procedure (ECE/MP.EIA/IC/2010/4, para. 19 (c));

(d) EIA documentation should include a separate chapter on transboundary impact to facilitate translation (ECE/MP.EIA/IC/2010/2, para. 35);

(e) Entrusting the proponent of an activity with the carrying out of the procedure for transboundary EIA will not be adequate, unless the proponent is the State (ibid., para. 36) (see also annex II);

(f) Consultations under article 5 are bilateral or multilateral discussions between authorities that have been authorized by the concerned Parties, and should not be confused with public participation under article 3, paragraph 8, and article 4, paragraph 2, or with consultation of the authorities under article 4, paragraph 2, in the areas likely to be affected (ibid., para. 39).

77. When designing a national framework it should be ensured that:

(a) There is a legal mechanism for the comments of foreign authorities and the public regarding the information in the EIA materials (art. 3, para. 8, and art. 4, para. 2, of the Convention) to be duly taken into account (art. 6, para. 1, of the Espoo Convention) so that the transboundary impact is properly addressed;

(b) There is a legal mechanism for the results of consultations with foreign authorities under article 5 of the Espoo Convention to be duly taken into account by authorities issuing a final decision (art. 6, para.1, of the Espoo Convention);

(c) Legal and financial mechanisms are in place allowing public authorities to undertake their duties related to providing public participation in transboundary procedures.

78. Moreover, Parties should bear in mind that a bilateral agreement could:

(a) Be an effective mechanism to address communication between concerned Parties and the sending of information (ECE/MP.EIA/IC/2010/4, para. 29);

(b) Resolve many issues relating to public participation, as foreseen by the Convention (ECE/MP.EIA/IC/2010/4, para. 19 (f)).

IV. Elements that should be considered when negotiating a bilateral agreement involving a country with an OVOS/expertise system

A. Introduction

79. The Espoo Convention envisages in article 8 that Parties "may continue existing or enter into new bilateral or multilateral agreements or other arrangements in order to implement their obligations under the Convention".[8]

80. The Convention provides in appendix VI a list of elements that can be included in any such agreement, whether with a Party to the Convention or with any other country. The list is neither mandatory (i.e., not all elements listed in appendix VI have to be included in such agreements) nor exhaustive. It is here suggested that there are a number of other specific elements that should also be considered for inclusion in such an agreement.

81. The greater the number of details that are clearly regulated through a bilateral agreement, the less procedural problems countries may face when they enter into a transboundary procedure concerning a concrete activity. Therefore, the transboundary procedure can be faster and more efficient, and focus on substantive issues related to the actual transboundary impact of a given activity.

[8] Article 8 of the Convention refers to bilateral or multilateral cooperation. In practice bilateral cooperation is more common and, for ease of reference, this section refers to "bilateral" agreements, without excluding the possibility of negotiating a multilateral agreement.

82. If negotiations start on the basis of a draft agreement prepared unilaterally and proposed by one partner country, there is a risk for the negotiations, as it puts that country in a privileged position vis-à-vis the position of the other partner country.

83. For this reason, it is advisable that negotiations start with an initial meeting (which could be at an expert level) during which the partner countries:

(a) Each present their legal and institutional framework applicable in the national and transboundary EIA procedure;

(b) Agree upon a tentative list of issues to be regulated in a bilateral agreement (i.e., the general scope of the agreement);

(c) Agree upon the level, venue and procedure of further negotiations.

84. Thus, when entering into negotiations concerning a bilateral agreement it is worthwhile for each country to prepare and propose initially a list of issues to be regulated in such an agreement, i.e., to propose a general scope of such an agreement.

85. The list of issues to be regulated (i.e., the scope of a bilateral agreement) may vary a bit depending on the country with which an agreement is to be negotiated. There are two obvious factors that may influence the negotiations for bilateral agreement:

(a) Whether a partner country has an OVOS/expertise system (in which the developer is responsible for OVOS) or whether a partner country has a Western-style EIA system where the public authorities have the responsibility for the EIA procedure, including public participation;

(b) Whether a partner country has a scoping phase in its national EIA procedure.

86. It is further advisable, before starting any negotiations concerning such a bilateral agreement, to do some initial preparations including research related to the existing obligations of the partner country under multilateral or bilateral environmental (or other) agreements, as well as the legal and institutional framework for national and transboundary procedures in the partner country. It would also be worthwhile to look at existing bilateral agreements, in particular at examples — if any — of agreements of the potential partner country with other countries. In this respect it might be useful to consult the dedicated ECE website (http://www.unece.org/env/eia/resources/agreements.html).

B. Specific elements to be considered

1. Mandatory notification

87. Bearing in mind the issues of concern in the countries having an OVOS/expertise system with early screening of activities likely to have a transboundary effect, as well as the recent recommendation of the Espoo Implementation Committee (ECE/MP.EIA/IC/2010/2, para. 21), it is advisable to consider introducing to the bilateral agreement a list of activities (with thresholds, as appropriate) that should automatically be subject to notification between the two (or more) countries subject to the agreement. The list may include, for example, activities depending on their type (e.g., all nuclear energy facilities) or on their location (e.g., all activities on common natural resources). The list can be different in agreements with different countries. Having a list of activities that are automatically subject to transboundary notification is valuable because it means the screening stage can be skipped. This can be particularly beneficial where it is not the ministry responsible for environment that authorizes activities subject to a domestic OVOS procedure (other ministries may not be familiar with the screening process). It is important to remember that the inclusion of a list of activities subject to transboundary impact assessment procedures will permit the screening process to be skipped only where the proponents/developers and

all the authorities involved in domestic permitting procedures are aware of this provision in the bilateral agreement.

2. Language

88. It is necessary to clearly regulate in the agreement the language for certain documents, in particular concerning:

(a) Notification;

(b) EIA documentation;

(c) The final decision.

It may be suitable to agree on the language of other information as well, such as information on monitoring, which would significantly simplify the transboundary procedures.

89. The language may not necessarily be the same for all documents; for example, countries may agree that certain documents are transmitted in the national language only or in a third language (e.g., Russian or English).

3. Translation and interpretation

90. Regardless of the language determined for a document under the agreement, issues related to translation and interpretation should be clearly regulated, in particular who is responsible for arranging and/or for covering the costs associated with the translation of which documents, and/or the interpretation for which events (meetings or public hearings).

91. It could also be useful to provide for a procedure for monitoring the accuracy of the translation and for settlement of possible disputes related to the translation. The usual practice in such bilateral agreements is that the Party of origin is responsible for the translation of the documents into the language of the affected Party. This, however, entails the risk that the translation is not accurate enough, because translation into a foreign language is more difficult than translation into the national language. As a result, documents may be unintelligible for the affected Party. For this reason, where the agreement includes this type of arrangement, it is indispensable to submit all the documents in the original language along with the translated document.

4. Contact point for notification and means of notification

92. The agreement should clearly regulate the authorized contact point(s) for notification for both partner countries, as well as the means of notification. Identification of who is authorized to make or receive notifications is of particular importance for countries with the OVOS/expertise system, where the proponent/developer is usually responsible for the OVOS procedure.

93. As for the means of notification, all means are possible under the Convention provided that countries are in agreement about what means can be used and what their purpose is. Some countries accept informal means as a means of notification, such as by e-mail between the authorities of the countries involved, while other countries insist on formal means of notification, such as diplomatic avenues through ministries responsible for foreign affairs. Informal means of notification are commonly used by countries that have established a long tradition of cooperation and mutual trust in transboundary procedures.

5. Initial consultations about the timing

94. It may be useful to envisage in the agreement that, following a positive response to the notification, each individual transboundary procedure start with initial discussions

setting the details of the further procedure, such as, importantly, the time frames for the consecutive steps to be taken.

6. Public participation

95. The agreement should clearly regulate who is responsible for ensuring public participation. In particular it should clearly determine who bears the responsibility for:

(a) The identification of the public and the local authorities in the areas likely to be affected;

(b) Informing the public and local authorities in the areas likely to be affected about the possibility to participate (including the means through which they should be informed);

(c) Providing the public and local authorities in the areas likely to be affected with access to the necessary information and documents;

(d) Providing the public and local authorities in the areas likely to be affected with the possibility to submit comments (by written submissions or at a hearing);

(e) Providing the public and local authorities in the areas likely to be affected with information about the final decision and possibilities to have access to it.

96. Bearing in mind the special role of proponents/developers in countries having an OVOS/expertise system, a bilateral agreement could introduce quite a significant role for the proponents/developers in public participation as long as they act under the control of the competent authorities and their role is clearly defined and commonly accepted.

97. Providing a role for proponents/developers in the bilateral agreement can also result in some savings for the Party of origin in carrying out a transboundary procedure.

7. Consultations under article 5

98. The agreement may address the details regarding any future consultations under article 5 of the Convention, in particular the level, venue and timing of initiation of such consultations. Again, bearing in mind the role of proponents/developers in the OVOS/expertise system, Parties to the bilateral agreement or other arrangement may agree to include them in the consultations. Apart from this, Parties may agree on the involvement of other stakeholders, such as local authorities or representatives of the public.

99. It may also be worthwhile to regulate the procedure for the settlement of disputes arising from consultations.

8. Final decision

100. The agreement may also address the details of the final decision under article 6 of the Convention, in particular which decisions in each country should be considered as the “final decision” for the purpose of triggering the requirements of article 6 of the Convention. This issue is of special importance in relation to countries having an OVOS/expertise system, in which a careful examination is needed in order to identify the proper decision setting in real terms the conditions for the activity.

Annex I

Delegating tasks in the public participation procedure[9]

While overall responsibility for each stage of a public participation procedure will always remain with the public authority that is competent to take the decision, that authority may delegate certain administrative tasks regarding the procedure to other entities, e.g., a public authority closer to the site of the proposed activity, an independent entity specializing in public participation or the developer. The table below clarifies which tasks may, and which may not, be delegated to the developer.

Task	*May the competent authority delegate the task to the proponent/developer?*	
Design the general form of the public participation procedure, including its overall time frame	NO	
Design specific stages in the procedure, including their time frames	NO	
Identify the public concerned	NO	The proponent/developer may be requested to assist the competent public authority in identifying the public concerned by providing certain information, e.g., the potential impacts of the project and the details of persons residing/owning property within the scope of those impacts.
Prepare and carry out the notification of the public	YES	Under the direction and oversight of the public authority.
Provide the public with access to all relevant information	NO*****	The public must be able to access all information that is relevant to the decision-making directly at the premises of the competent public authority. In parallel, the proponent/developer may be requested to provide access to the information relevant to the decision-making that it has provided.
Receive the public's written comments	NO	
Organize any public hearings, including notifying the public concerned of the date and place of the hearing(s) and organizing the venue	YES	Under the direction and oversight of the public authority.
Chair any public hearings	NO	

[9] The above table is based upon a table developed for the Maastricht recommendations on promoting effective public participation in decision-making (ECE/MP.PP/2014/8), which were prepared under the Aarhus Convention.

Task	*May the competent authority delegate the task to the proponent/developer?*	
Collate and, if necessary, summarize, all written and oral comments received from the public	NO	All comments should be transmitted directly to the competent authority.
Consider all written and oral comments received from the public	NO	
Take into account the comments received from the public in the decision	NO	
Take the decision and prepare the reasons and considerations on which it is based	NO	
Inform the public of the decision, how it may be accessed and how it may be appealed	NO	
Make the decision available to the public, along with the reasons and considerations on which it is based	NO*	The public authority must do so itself, but the proponent/developer may do so in parallel.

* For tasks with an asterisk, the public authority must perform these tasks, but the proponent/developer may also do so in parallel.

Annex II

Delegating tasks in the transboundary procedure

While overall responsibility for each stage of a transboundary procedure rests with the public authority, the public authority may delegate certain of the administrative tasks regarding the procedure to the project proponent/developer. The table below clarifies which tasks may, and which may not, be delegated.

Task	*May it be delegated to the project proponent/developer?*	
Decide whether activity may have significant transboundary environmental impact and require notifying potentially affected Parties	NO	The proponent/developer assists the public authority in identifying potential significant transboundary environmental impact by providing certain information about the project and its impact.
Identify the potentially affected Parties	NO	The proponent/developer assists the public authority in identifying potentially affected Parties by providing certain information about the project and its impact.
Prepare and carry out the notification	NO	The public authority responsible for the tasks related to the transboundary procedure is responsible for notifying potentially affected Parties. The proponent/developer may be requested to assist in preparing the notification and to translate it.
Provide the affected Party with relevant information regarding the procedure	NO	The public authority responsible for the tasks related to the transboundary procedure must provide the affected Party with the information regarding the procedure.
Provide the affected Party with relevant information on the proposed activity and its possible significant adverse transboundary impact	YES	Under the direction and oversight of the public authority responsible for the tasks related to the transboundary procedure.
Informing the public of the affected Party about the proposed activity and possibilities for making comments or objections	YES	Under the direction and oversight of the public authorities responsible for the tasks related to the transboundary procedure in the Party of origin and the affected Party.
Distribution of the EIA documentation to the authorities and the public of the affected Party in the areas likely to be affected	YES	Under the direction and oversight of the public authorities responsible for the tasks related to the transboundary procedure in the Party of origin and the affected Party

Task	*May it be delegated to the project proponent/developer?*	
Receive the public's written comments or objections	NO	
Organize any public hearings, including notifying the public concerned of the date and place of the hearing(s) and organizing the venue	YES	Under the direction and oversight of the public authorities responsible for the tasks related to the transboundary procedure in the Party of origin and the affected Party.
Chair any public hearings	NO	
Collate all written and oral comments received from the public	NO	
Entering into consultations with the affected Party	NO	The proponent/developer may be allowed to participate in the consultations.
Take into due account in the final decision the outcome of the transboundary procedure (including the comments received and the results of the consultations)	NO	The competent public authority entrusted by the Party of origin with decision-making powers regarding a proposed activity is responsible for taking due account of the outcome of transboundary procedure.
Provide the affected Party with the final decision, along with the reasons and considerations on which it was based and possibilities to appeal it	NO	The public authority responsible for the tasks related to the transboundary procedure is responsible for providing the affected parties with the final decision along with the reasons and considerations on which it was based and possibilities to appeal it. The proponent/developer may be requested to translate it.