

**REPORT OF NETHERLANDS ON THE
IMPLEMENTATION OF THE CONVENTION ON
ENVIRONMENTAL IMPACT ASSESSMENT IN A
TRANSBOUNDARY CONTEXT**

in the period 2006–2009

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Date on which report was completed: 29-06-2010

PART ONE – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

In this part, please provide the information requested, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should describe the framework for your country's implementation, and not experience in the application of the Convention.

Article 2

General Provisions

DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2.2).*

In the Netherlands the general legal and administrative measures to implement the provisions of the Convention are regulated in chapter 7 of the Dutch Environmental Management Act, paragraph 7.8g: Activities with potential transboundary environmental effects. Since the early nineties environmental impact assessments in a transboundary context is regulated in this act. In 1998 the legal provisions in paragraph 7.8 were revised to implement EU-directive 97/11/EG.

Direct quotation of the Dutch Environmental Management Act:
§ 7.8 Activities with potential transboundary environmental effects

Section 7.38a

1. If an activity, in preparation for which an environmental impact statement must be drawn up, may have serious adverse effects on the environment in another country, the information gathered in the framework of this Chapter, together with the application referred to in section 7.28, or the draft of the decision in the preparation of which the environmental impact statement must be drawn up and the decision referred to in section 7.27 shall be supplied to the government or to an authority to be designated by that government in that country at the same time as they are made public in the Netherlands. The information and documents shall also be sent to the bodies designated for that purpose by the competent authority of that country on the basis of their specific responsibility for the environment. Section 7.14, subsection 1 and section 7.25, subsection 1 shall apply to those bodies *mutatis mutandis*.
2. The documents to be supplied pursuant to subsection 1 shall serve as the basis for negotiations with the administrative authorities in that country concerning any serious adverse effects the activity may have on the environment in that country, and the measures being considered to prevent or limit those effects.
3. Our Minister shall be responsible for the duties arising from the application of subsections 1 and 2, in so far as they concern the provision of information to and negotiations with the government of the other country. The competent authority shall also be responsible for these duties.
4. Further rules concerning the provisions of subsections 1 and 2 may be laid down by ministerial order.

Section 7.38b

Without prejudice to the provisions of section 7.38a, subsection 1, Our Minister or the competent authority shall, as soon as possible after it has become clear from the information gathered in the framework of this Chapter that there may be serious adverse effects on the environment of another country, inform the government of that country or an authority to be designated by that government. Section 7.38a, subsection 2 shall apply *mutatis mutandis*.

Section 7.38c

1. In the event of possible serious adverse effects on the environment in another country, the competent authority shall send to Our Minister:
 - a. a copy of the notification referred to in section 7.12;
 - b. a copy of the guidelines referred to in section 7.15;
 - c. a copy of the environmental impact statement referred to in section 7.20;
 - d. a copy of the application referred to in section 7.28 or of the draft of the decision in the preparation of which the environmental impact statement must be drawn up;
 - e. a copy of the decision referred to in section 7.27.
2. When sending these documents, the competent authority shall request Our Minister to apply section 7.38a, subsection 1.

Section 7.38d

If another country suspects that it may suffer serious adverse environmental effects as the result of an activity in the Netherlands, in preparation for which an environmental impact statement must be drawn up, Our Minister or the competent authority shall apply section 7.38a, subsections 1 and 2, at the request of that country.

Section 7.38e

If another country may suffer serious adverse environmental effects as the result of an activity in the Netherlands, in preparation for which an environmental impact statement must be drawn up, Our Minister may stipulate that the competent authority must take the decision, in preparation for which the environmental impact statement must be drawn up, only after Our Minister has had the opportunity, for thirteen weeks after the end of the period referred to in section 7.26, of sending to the competent authority the outcome of the negotiations referred to in section 7.38a, subsection 2.

Section 7.38f

The statement of the grounds on which the decision is based, as referred to in section 7.27, subsection 1, shall in any event indicate:

- a. what consideration has been given to any possible serious adverse transboundary environmental effects mentioned in the environmental impact statement or recommendations referred to in section 7.26;
- b. what consideration has been given to the results of the negotiations referred to in section 7.38a, subsection 2.

Section 7.38g

1. If a planned activity in another country may have serious adverse effects on the environment in the Netherlands, Our Minister shall be responsible for maintaining contacts with that country.
2. Our Minister may ask the Committee for its advice in the implementation of subsection 1

Besides these legal and administrative measures we have made arrangements with respectively Flanders (Belgium) and Germany about practical implementation of the Convention in transboundary procedures.

2. *Indicate any further measures to implement the provisions of the Convention that are planned for the near future.*

No specific measures. We have legal provisions in place. We did revise our law on EIA and SEA (entry into force 1st July 2010) in order to improve the balance between EIA and SEA requirements and to further harmonise our legislation with EU requirements (as is national policy).

TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE

3. *Describe your country's national and transboundary environmental impact assessment (EIA) procedures and authorities (art. 2.2):*

- a. *Describe the EIA procedure in your country and indicate which steps of the EIA procedure include public participation;*

The E.I.A. is regulated in chapter 7 of the Dutch Environmental Management Act (Wm) and in the Environmental Impact Assessment Decree 1994 (Besluit M.e.r.1994). This Act is a framework act describing the basic principles of environmental policy. The details are provided for in orders in council (AMvB). The Environmental Impact Assessment Decree 1994 is such an order in council. Other important passages in the Environmental Protection Act on the E.I.A. besides chapter 7 can be found in chapter 2.2 (about the E.I.A. Commission), chapter 14.2 (about the coordination required when drawing up an environmental impact report) and chapter 20 (appeal).

The Environmental Impact Assessment Decree 1994 states when an E.I.A. should be carried out. The decree contains appendices, which include the C and D lists. The C list indicates which activities and decisions require a mandatory environmental impact report. The D list sums up the activities and decisions for which a so-called 'article 7.8a/7.8d procedure' is required. These activities and decisions are evaluated on an individual basis to see whether an E.I.A. is necessary. (The lists can be found in the Besluit m.e.r. 1994).

The Environmental Impact Assessment Decree 1994 resulted from a European Directive for E.I.A. (officially known as Directive 97/11). It also incorporates the United Nations Economic Commission for Europe (Unece) treaty on E.I.A. for transboundary environmental impacts (Espoo treaty).

How does an E.I.A. procedure work?

An E.I.A. procedure comprises 10 steps:

1: Pre-starting note: the initiator writes the pre-starting note. This document contains the basic data for the project. The procedure can start when the competent authority publishes the pre-starting note.

2: Public participation and recommendations: in this phase of the procedure there are 6 weeks set aside for public participation. Focus of the participation is on the guidelines for the desired content of the environmental impact report, e.g. the public can give their input on the range and detail of the environmental report. Participation is open to everyone. An important element are the recommendations for the Commission's guidelines for the environmental impact assessment.

3: Guidelines: within 13 weeks of the publication of the pre-starting note the competent authority will set the guidelines. These indicate which alternatives and which environmental impacts have to be dealt with in the environmental impact report.

4: Environmental impact report (EIR): the initiator is responsible for writing the report. This is not subject to any time limit. Good interaction with project development is recommended in this step. When the environmental impact report is ready, the initiator sends it to the competent authority together with the request for a decision.

5: Acceptability assessment: within 6 weeks of the environmental impact report being submitted, the competent authority assesses whether the environmental impact report meets the guidelines (the desired content) and legal requirements. The competent authority also checks whether the application can be considered.

6: Publication of environmental impact report and application or draft decision: the competent authority publishes the report together with the application for the decision within 8 weeks so that participation and recommendations can take place. If the decision does not require an application for a decision to be submitted, the environmental impact report will be published with the draft decision or preliminary draft decision.

7: Participation, recommendations and hearing on the EIR: anyone may comment on the environmental impact report and raise objections to the application or the draft decision. The public has a minimum of 4 weeks to comment on the EIR and draft-decision but follows the period for objections to the procedure for the decision.

8: Consult by the environmental impact assessment Commission: once the period for public participation has ended, the environmental impact assessment Commission publishes its report on the completeness and the quality of the environmental impact report within 5 weeks. The comments and recommendations that have been received will be taken into account when compiling the report.

9: Decision: the competent authority takes the decision on the project. In so doing, it takes account of the environmental impacts and the reactions and recommendations that have been received. In the decision it explains what has been done with the result of the environmental impact report. It also specifies what is to be assessed and when. The decision is open to objections and appeal. The regulations for making objections and appeals result from the provisions of the regulation on which the decision is based.

10: Assessment: with the cooperation of the initiator, the competent authority assesses the environmental impacts that actually occur, as laid down in the assessment section of the decision. Where necessary, it takes extra measures to limit the impact on the environment.

An objection or an appeal must be submitted within six weeks.

- b. *Describe how the different steps of the transboundary EIA procedure set out in the Convention fit into your country's national EIA procedure;*

The steps for a transboundary EIA are the same as the domestic EIA procedure, see response on question 2a. Neighbouring countries, regional and local authorities, other relevant parties and the public are free to participate in the EIA procedure and they are treated like parties involved in the national procedure at the same moments authorities, other parties and the public is consulted.

- c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure (notification, consultation between Parties, public*

participation, etc.). Also list the authorities responsible for the domestic EIA procedure, if they are different;

The competent authorities are responsible for the different steps of the transboundary EIA procedure as well for the domestic EIA procedure. In the Annex to the Environmental Impact Assessment Decree 1994 (Part C, column 3) is stipulated which authority is competent to make a decision related to the proposed activity. This is based on the laws which creates the competence for the concerned authority. These responsible authorities can be: the Minister of Transport, Public Works and Watermanagement, the Minister of Economic Affairs, the Minister of Agriculture, Nature and Food quality, the Minister of Defence, the Minister of Housing, Spatial Planning and Environment, regional authorities (provincies, waterschappen (water quality management agency) and local authorities (gemeenten). For the majority of (transboundary) EIA procedures the regional or local authorities are the designated competent authorities.

The promotor of an activity/project is responsible for drawing up EIA documentation (the Environmental Report etc).

The commission on environmental impact assessment (Commissie voor de m.e.r.) is responsible for assessing the quality of the EIR (and if the guidelines for the EIA report set by the competent authority are followed adequately) and subsequently giving advice to the competent authority on respectively guidelines and EIA report (in which the results of the public consultation is taken into account).

- d. *Is there one authority in your country that collects information on all the transboundary EIA cases? If so, name it. If not, does your country intend to establish such an authority?*

No. The commission on environmental impact assessment does register all EIA procedures, including transboundary, but there is no specific focus on transboundary EIA cases nor are they assigned a specific task to collect information on all transboundary procedures (nor information on the entire course of the procedure).

4. *Does your country have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

Each case will be considered on its specific possibilities. As much as possible a common procedure will be created taking into account the strongest aspects of both EIA procedures.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE CONVENTION

5. *Is appendix I to the Convention transposed into your country's national legislation? Does your country's legislation already cover the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7), and if so, how? Please describe any differences between the national list and appendix I to the Convention. Please explain how your country interprets terms such as "large" and "major" used in appendix I (including in items 4, 8, 11, 14, 16, 17 and, as appropriate, 22).*

All Espoo Convention Appendix I activities (including the revised appendix I in the second amendment) fall within the scope of EIA in the Netherlands.

In the review period 2006-2009 the Dutch EIA Decree contains more activities than included in Appendix I to the Convention (following the EU Directive). For the extra activities, and for cases where a significant adverse transboundary impact is considered likely, the Convention will be applied.

Terms as 'large' and 'major' are interpreted in various ways: in our Dutch EIA Decree that lists the activities for which a EIA has to be carried out, a threshold has been set (as allowed by the EU EIA Directive). For all activities above the threshold an EIA has to be carried out. Besides that, the competent authority assesses the proposed activity/project, taking into account legal provisions/measures for various environmental aspects (maximum levels for noise, pollution etc), the local setting/environment in which the project is foreseen etc.

6. *Please describe:*

- a. *The legislation and, where appropriate, the procedures your country would apply to determine that an “activity”, or a change to an activity, falls within the scope of appendix I (art. 2.3), or that an activity not listed should be treated as if it were (art. 2.5);*

The Environmental Management Act contains procedural provisions for EIA and content requirements for the EIA documentation. Paragraphs 7.2 and 7.3 describe the procedure to determine whether an EIA is mandatory for an activity, by reference to an EIA Decree. The EIA Decree contains a list of activities for which an EIA is mandatory (list C) or on a case by case basis (list D) the competent authority has to assess whether a EIA is necessary.

- b. *How your country conducts transboundary EIA cooperation (through points of contact, through joint bodies or within bilateral or multilateral agreements);*

The competent authorities are responsible for conducting transboundary procedures. The Netherlands has agreements with respectively Belgium (Flanders) and Germany in which, among other practical arrangements concerning transboundary cooperation, points of contact are named in both countries. For the Netherlands these are the bordering provinces. The Ministry of VROM is formal point of notification on the national level for the Espoo Convention.

- c. *How a change to an activity is considered as a “major” change;*

The Dutch EIA Decree contains descriptions of changes and extensions that are EIA obligatory or which have to be considered by the competent authority to determine whether an EIA is necessary given the size, location or likely effects.

- d. *How such an activity, or such a change to an activity, is considered “likely” to have a “significant” adverse transboundary impact (art. 2.3 and 2.5, and the Guidelines in appendix III).*

It is primarily the decision of the competent authority whether an activity is likely to have a significant adverse transboundary impact. When it is obvious to the competent authority that a proposed activity in the Netherlands may have a significant adverse environmental impact on the environment in another country, the competent authority has to send a notification to the point of contact in the affected country and will have to publish the information in the areas of the affected country that are likely to be affected. The competent authority decides on a case-by-case basis, taking into consideration the specific situation: type of activity, type of effects and distance to the border. A basic assumption is to encourage applying the precaution-principle and treat your neighbouring countries like you would treat your domestic public.

In practice competent authorities is (following the specific arrangements which are made in the agreements with respectively Belgium (Flanders) and Germany

concerning information exchange on projects within a 5 km range from the border).: if a proposed activity with environmental effects is located within 5 kilometers of the border, the competent authorities will inform authorities on the 'other'-side of the border . If there are possible transboundary effects (or the authorities wish to be involved regardless) authorities and public are involved in hte EIA procedure. For projects/activities that are (to be) located more than 5 km from the border, the authorities and public will be given the opportunity to participate in the EIA procedure. If there are doubts about possible environmental effects (or a project is controversial f.e.), usually the competent authority will also contact the authorities in the affected country about these possible transboundary environmental effects and will give these authorities and public the opportunity to participate in the EIA-procedure.

PUBLIC PARTICIPATION

7. *Does your country have its own definition of “the public” in national legislation, compared to article 1(x)? How does your country, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your country’s public as required in article 2, paragraph 6?*

No, the 'definition' of the public has a similar meaning as article 1 of the Convention. In the Dutch EIA procedure 'everyone' (meaning a natural or legal person or organisation) is entitled to make comments, so the scope more than covers the scope of the definition given in Article1 of the Convention.

In the Netherlands the EIA process provides for public participation in two stages. First, before the EIA documentation is prepared, in the scoping phase, the public is given the opportunity to make suggestions for the project-specific guidelines for the content of the EIA documentation. Secondly, once the EIA documentation has been prepared there is the opportunity for the public to comment both in writing and orally at a public hearing. At the same time as the public in the Netherlands is informed, the publication in the affected country has to take place. This implies that in the scoping phase the notification of intent is translated and made public in the affected country and after the EIA documentation has been prepared the summary is translated and the (complete) documentation is made public in the affected country.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

8. *Describe how your country determines when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure does your country usually notify the affected Party (art. 3.1)*

In principle, the notification is sent at the same time as the publication of the “notification of intent” takes place domestically.

9. *Does your country provide any information to supplement that required by article 3, paragraph 2?*

The information required by article 3, par 2 may be supplemented by the competent authority if they see a need to do so in a particular case.

10. *Does your country use the format for notification (as decided by the first meeting of the Parties, decision I/4, in document ECE /MP.EIA/2)? If not, in what format does your country normally present the notification?*

In general, the proposed guidelines are followed (besides particular arrangements made between points of contact/competent authorities on the regional and local level in a particular case).

The competent authority sends the (translated) 'notification of intent', often with an accompanying letter, to the affected Party (local, regional and national authorities). The form may differ (letter, email if so agreed between the authorities involved etc).

11. *Describe the criteria your country uses to determine the time frame for the response to the notification from the affected Party (art. 3.3, "within the time specified in the notification")? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how does your country react?*

In defining the time frame, reference is made to the time frame of the decision-making procedure.

If the time frame is not complied with, the whole procedure will suffer from delays, as the time given to the Affected party is the same as the time given to the relevant authorities and public in the Country of Origin.

In most cases a short extension of the deadline is considered, if an affected Party asks for an extension of a deadline.

12. *Describe when your country provides relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in article 3, paragraph 5. Already with the notification, or later in the procedure?*

In most cases the information in accordance with Article 3, paragraph 5 (a) and (b), is submitted with the notification. When the EIA report, usually together with the draft decision is published, information about the procedure and timeframe and other specifics relation to public participation are given as well.

13. *How does your country determine whether it should request information from the affected Party (art. 3.6)? When does your country normally request information from the affected Party? What kind of information does your country normally request? How does your country determine the time frame for a response from the affected Party to a request for information, which should be "prompt" (art. 3.6)?*

During the scoping phase, it becomes clear which information the EIA documentation should focus on.

Information on the state of the environment is normally requested. The timeframe for a response of the affected party is usually discussed with the affected party. The information is always present before the competent authority takes a decision.

14. *Please describe:*

a. *How your country cooperates with the authorities of the affected Party on public participation (art. 3.8), taking into account that the Party of origin and affected Party are both responsible;*

Usually the point of contact and/or relevant bordering competent authorities are informed about a EIA procedure and the (non-) occurrence of possible transboundary effects. If necessary the point of contact (as mentioned in the agreements with Belgium (Flanders) and Germany) is consulted on which authorities and other

relevant parties to involve in the affected party and practicalities in which newspapers to publish.

- b. *How your country identifies, in cooperation with the affected Party, the “public” in the affected area;*

Usually the competent authority and the point of contact and/or relevant bordering competent authority in the affected country together can best identify the public and authorities to be informed. This can be done in dialogue between those authorities (most of the time these are local and regional authorities). In practice often the competent authority either makes a suggestion which public to inform in the affected Party (and the competent authority/point of contact in the Affected Party can give comments whether this is a complete and correct range for notification/participation) or the point of contact/competent authority in an affected party will determine the public and inform the Party of Origin on request of the latter.

- c. *How the public in the affected Party is notified (what kinds of media, etc are usually used). What is normally the content of the public notification?;*

The public is notified by a public announcement in relevant newspapers or in any other way the point of contact in the affected Party may suggest. The announcement contains the name and address of the proponent, the competent authority, a description of the proposed activity (type and size), the location of the proposed activity, and the decision or decisions for which the EIA is carried out. Furthermore, the announcement should include information on the timing and the means by which suggestions for the content of the EIA documentation can be delivered to the competent authority. In case the competent authority organizes an information meeting, the public announcement should also contain information on this meeting.

- d. *Whether the notification to the public of the affected Party has the same content as the notification to your country’s public. If not, describe why not. At what stage in the EIA procedure does your country normally notify the public of the affected Party?*

Yes, the two notifications contain the same information.

In principle at the same time as the public in the Netherlands is first informed. This is after the “notification of intent” has been presented to the competent authority.

15. *Does your country make use of contact points for the purposes of notification as decided at the first meeting of Parties (ECE/MP.EIA/2, decision I/3), and as listed on the Convention website (http://www.unece.org/env/eia/points_of_contact.htm)?*

Yes, in practice the points of contact are made use of directly in this way for transboundary projects on the national level/ of national interest and - depending on the kind of arrangements made in the bilateral statements between the Netherlands and respectively Belgium (Flanders) and Germany, the point of notification as listed on the website of the Convention receives a copy.

QUESTIONS TO AFFECTED PARTY

16. *Describe the process of how your country decides whether or not to participate in the EIA procedure (art. 3.3)? Who participates in the decision-making, e.g. central authorities, local competent authorities, the public, environmental authorities? Describe the criteria or reasons your country uses to decide.*

Often the notification is followed by a positive response to participate in the EIA procedure, when detrimental environmental transboundary effects are to be expected. Criteria for

participation are the expected transboundary impact and the level of public interest involved. The relevant competent authorities participate in the procedure; often these are the local or regional competent authorities but naturally this depends on the expected range and gravitude of the transboundary impacts, the national, respectively regional and/or local interests involved and the type of transboundary effects. For example, when there are water issues involved, then the relevant waterbodies participate as well etc.

17. *When the Party of origin requests your country to provide information relating to the potentially affected environment, how does your country determine what is “reasonably obtainable” information to include in its response? Describe the procedures and, where appropriate, the legislation your country that would apply in determining the meaning of “promptly” in the context of responding to a request for information (art. 3.6)*

Information is “reasonably obtainable” if it is existing information. The information has to be 'up-to-date' (most recent information available). One could think of inventoried references to literature, research reports and publications. No further research has to be carried out.

“Promptly” will have to be interpreted in a way that it takes into consideration the fact that the information will have to be collected from various sources.

18. *Please describe:*

- a. *How your country cooperates with the authorities of the Party of origin on public participation (art. 3.8), taking into account that the Party of origin and affected Party are both responsible;*

In the arrangement/agreement with respectively Germany and Belgium (Flanders) on both sides points of contacts have been established which can help with giving information and other forms of support if necessary, and assist in organising public participation by giving information etc (which are the relevant authorities, which newspapers do we have to publish etc)

- b. *How your country identifies the “public” in the affected area;*

The competent authority defines the public in relation to the possible range of the expected transboundary effects. When necessary or agreed, this happens in consultations with the point of contact. For example for each project the province of Groningen consults with the point of contact in Niedersachsen who has to be informed (public and authorities) and which newspapers a notification has to be published etc.

- c. *How the public is notified (e.g. what kinds of media, etc., are usually used). What is normally the content of the public notification?;*

Normally the local paper(s) and often a regional paper is used to publish the notification; basically the types of media that are used when it concerns a project on Dutch territory. The content of the public notification is mostly similar to the notification when the Netherlands is the Party of Origin and at least contains the required information on the project and the EIA-procedure (and how to participate).

- d. *At what stage in the EIA procedure does your country normally notify its public?*

Usually before the scoping phase. When we are the affected Party this depends on the procedure of the Party of Origin.

Article 4

Preparation of the environmental impact assessment documentation

QUESTIONS TO PARTY OF ORIGIN

19. *What is the legal requirement for the minimum content of the EIA documentation (art. 4.1, appendix II)?*

The legal (minimum) content of the EIA documentation in the Dutch law requires: a description of the proposed activity and its purpose, a motivated description of reasonable alternatives (including the Most Environmentally Friendly Alternative (so called MMA) and a description of the reference situation when no activity would take place; with the revision of the national law in EIA the MMA is no longer obligatory), a description of the environment and the consequences of the project and alternatives for the environment (including preventive, mitigating and sometimes compensating measures); an indication of the required decision(s) and a list of previous established plans relating to the proposed activity and alternatives, including a comparison of the consequences and alternatives; a motivation of how the described consequences on the environment were determined (i.e. an explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used), an identification of the gaps in knowledge and uncertainties encountered in compiling the required information; and a non-technical summary for the public allowing them to obtain sufficient understanding to judge the EIA-report and the environmental consequences of the proposed activity and alternatives. A post-project analysis is obligatory as well in the EIA procedure, but is part of the final decision and not part of the EIA documentation itself.

20. *Describe your country's procedures, if any, for determining the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4.1).*

The procedure can start when the competent authority publishes the pre-starting note. Participation is open to everyone and the recommendations focus on the guidelines for the desired content of the environmental impact report. An important element of this is the recommendations from the Commission of the EIA on the guidelines for the environmental impact assessment. The competent authority will set the guidelines. These guidelines indicate which alternatives and which environmental impacts have to be dealt with in the environmental impact report..

21. *How does your country identify "reasonable alternatives" in accordance with appendix II, paragraph (b)?*

Reasonable alternatives are alternatives that are suitable to reach the purpose set by the proponent. Reasonable alternatives are also alternatives that reduce the environmental impact and fall within the competence of the proponent.

22. *How does your country identify "the environment that is likely to be affected by the proposed activity and its alternatives" in accordance with appendix II, paragraph (c), and how does it define "impact" in accordance with article 1(vii)?*

The "environment" is interpreted to include the elements listed in the definition in Article 1, paragraph (vii).

23. *Does your country give the affected Party all of the EIA documentation (art. 4.2)? If not, which parts of the documentation does your country provide?*

Yes, all the EIA documentation is given to the affected Party (including a translation of the non-technical summary).

24. *How does your country cooperate with the authorities of the affected Party on distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party are both responsible? How does the competent authority in your country (as the Party of origin) deal with the comments (art. 4.2)?*

Usually the comments on the EIA documentation are sent directly to the competent authority (including those by the public of the affected Party).

Article 7.37 of the Environmental Management Act states that the statement of the grounds on which the decision is based shall in any event indicate: "... c. what consideration has been given to the comments and recommendations submitted concerning the environmental impact statement." The final decision has to include a motivation of what the competent authorities have done with the comments received by the public and other stakeholders. Also the Commission on EIA (Commissie van de m.e.r.) takes the comments which are received into account in their advice to the competent authorities on the EIA report.

25. *Describe the procedures and, where appropriate, the legislation that define the time frame for comments provided "within a reasonable time before the final decision" (art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how does your country react?*

The General Administrative Law Act applies, meaning that the time frame for comments is six weeks time for everyone to state their views.

If the competent authority does not receive the comments in time they cannot be taken into consideration in the decision making process.

If the decision-making procedure permits this, an extension can be granted.

26. *What material does your country provide, together with the affected Party, to the public of the affected Party?*

In the scoping phase: the notification of intent (translated) and additional information on the procedure and the possibilities for input. After the preparation of the EIA documentation: the EIA documentation (with translated Summary) and additional information on the procedure and the possibilities for involvement and for making comments. The EIA report is always published together with the application as well as the draft-decision to enable the public to see how the information in the EIA has been used in the draft-decision.

27. *Does your country initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?*

No, the Party of origin does not initiate a public hearing for the affected public as a rule; this is decided on a case-by-case basis (also in consultation with the proponent). For the projects in the Eemshaven (in the northern part of the Netherlands) f.e. the Province of Groningen usually organises public hearings about the notification of intent. On a case by case basis the competent (local) authorities if separate hearings in the affected country (Germany) have to take place. In some cases public hearings in were organised in the affected country. In other cases the public and German countries attended the public hearings in the Netherlands.

However, usually a public hearing does take place after the preparation of the EIA documentation (public hearings before or during the scoping phase also take place on a regular basis). This hearing is open to the public of the affected Party, public authorities and other organizations.

QUESTIONS TO AFFECTED PARTY

28. *Describe the procedures and, where appropriate, the legislation your country would apply to determine the meaning of the words “within a reasonable time before the final decision”, this being the time frame for comments (art. 4.2)?*

As a general rule the timeframe of the Party of Origin is followed. In our own legislation we consider 6 weeks to be a reasonable timeframe (see question 25), but (more or) less is considered acceptable as in practice the neighbouring countries do at least give 4 weeks to submit comments.

29. *How does your country cooperate with the authorities of the Party of origin on the distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party are both responsible?*

In the same way as with the notification and scoping phase. We have practical arrangements in place with respectively Belgium (Flanders) and Germany on how to cooperate in transboundary EIA procedures. One of the elements is that, if necessary/requested, the Netherlands as Affected Party supports the Party of origin in informing the public and/or making available the relevant EIA documentation etc. Usually the public can submit the comments directly to the competent authority in the country of origin.

30. *Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, with the legislation of the Party of origin, with ad hoc procedures, or with bilateral or multilateral agreements?*

As a general rule, public participation is organized in accordance with the legislation of the country of origin, as agreed to in bilateral 'agreements'.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

31. *At which step of the EIA procedure does the consultation in accordance with article 5 generally take place? Describe the procedures and, where appropriate, the legislation your country would apply to determine the meaning of “undue delay”, with regard to the timing of the entry into consultation? Does your country normally set the duration for consultations beforehand? If there seems to be no need for consultation, how does your country determine not to carry out consultations?*

After the EIA documentation has been prepared, it will be sent (without undue delay) to the affected Party, made public and laid down for public inspection. In the accompanying letter the question will be posed whether there is a need for consultation. As the timeframe for comments is six weeks, the timeframe for entry into consultation will preferably be within those 6 weeks. As a rule the competent authority does not set the duration for consultations beforehand.

Once the EIA documentation has been completed, the competent authority will publish this document in the area likely to be affected and provide the relevant authorities in the affected area with the documentation. In accompanying letters information is provided on the EIA procedure and the timetable for comment. The affected country will be asked to indicate whether it wants to enter into consultation within a specific time in order to minimize delays in the decision-making process. If the affected party answers affirmatively, consultations take place. It is a legal requirement that the competent authority takes the results of the

consultation into consideration when making a final decision. The practical experience with consultation is still fairly limited (authorities often write comments that refer to elements as alternatives, preventive and mitigating measures etc.). Also, consultation may take place in the scoping phase.

The legislation (Environmental Management Act) states in article 7.38e that in the event that another country may suffer significant adverse environmental effects as the result of an activity in the Netherlands, in preparation for which EIA documentation must be drawn up, the Minister of Housing, Spatial Planning and the Environment may stipulate that the competent authority must take the decision, in preparation for which the EIA documentation must be drawn up, only after the Dutch Minister has had the opportunity, for thirteen weeks after the end of the public participation, of forwarding to the competent authority the outcome of the consultation.

32. *On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?*

In principle, consultations are preferably organized at the level of the competent authority of the Country of Origin responsible for the decisionmaking-procedure and final decision. In most cases this is the local or regional level. Primarily, consultation will have to be carried out at an expert level. The competent authority in the Party of origin and the point of contact and other relevant levels of government authorities in the affected Party participate. If problems remain unsolved, the national government level can be involved besides the relevant regional and local authorities to continue consultations. Communication is usually in a meeting preceded by an exchange of written communications.

QUESTIONS TO AFFECTED PARTY

33. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means does your country usually communicate in consultations, for example by meeting or by the exchange of written communications? How does your country indicate if there is no need for consultations?*

Consultations are normally first held at the expert level. At first the competent authority in the country of origin and the point of contact and other relevant levels of government authorities in the affected Party discuss or exchange information at an expert level.

If no agreement can be reached or solution found, the consultation continues involving national government levels.

The usual means are a meeting preceded by an exchange of written communications.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

34. *For each type of activity listed in appendix I, identify what is regarded as the “final decision” to authorize or undertake a proposed activity (art. 6 in conjunction with art. 2.3); also provide the term used in the national legislation in the original language. Do all projects listed in appendix I require such a decision?*

The final decision is regarded as the decision taken in the sectoral law for certain types of projects/activities. The EIA Decree lists the categories of projects that require an EIA (C

list) and mentions the final decision and relevant law(s) that form the framework/legal basis for the final decision.

All projects listed in Appendix I require a decision. See appendix I for the list of final decisions in the original language.

35. *How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity (art. 6.1)?*

Environmental Management Act:

Article 7.37: The statement of the grounds on which the decision is based shall in any event indicate:

- a) how there has been taken account of the environmental impact of the activity to which the decision refers, described in the EIA documentation
- b) what consideration has been given to the alternatives described in the EIA documentation
- c) what consideration has been given to the comments and recommendations submitted concerning the EIA documentation.

Article 7.38f: The statement of the grounds on which the decision is based shall in any event indicate:

- a) what consideration has been given to any major adverse transboundary environmental effect mentioned in the EIA documentation
- b) what consideration has been given to the results of the consultation.

36. *Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and the public in your country (art. 6.1)?*

Yes, they are taken into consideration in the same way.

37. *How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (art. 6.2)*

See response to question 35.

38. *If additional information becomes available according to article 6, paragraph 3, before the activity commences, how does your country consult with the affected Party? If need be, can the decision be revised? (art. 6.3)*

By virtue of one's office the competent authority should inform and consult the affected Party. If necessary the competent authority should take corrective measures and examine if the decision needs to be revised.

Article 7

Post-Project Analysis

39. *How does your country determine whether it should request a post-project analysis to be carried out (art. 7.1)?*

In the Environmental Act there is an obligation to make an evaluation of Environmental Impact Statement. Section 7.39 stipulates: The competent authority that has taken a decision, in the preparation of which an environmental impact statement was drawn up, shall investigate the effects of the activity concerned on the environment, either during or after its completion. In practice competent authorities do not always apply section 7.39.

40. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how does your country inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to article 7, paragraph 2?*

The competent authority shall compile a report on the investigation and shall forward a copy of it as soon as possible to the proponent, to the Commission for EIA (independent experts) and to the advisers. The competent authority shall at the same time publish the report. Mutatis mutandis this publication will also take place in the affected country.

Article 8

Bilateral and multilateral agreements

41. *Does your country have any bilateral or multilateral agreements based on the Convention (art. 8, appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

There is one formal bilateral agreement and one draft bilateral agreement:

1. Agreement between the Government of the Netherlands and the Federal Republic of Germany on EIA in a transboundary context. This bilateral agreement is formalized in June 2005 and is published on the Conventions website (at the moment it is being extended with working arrangements concerning SEA).
2. Draft agreement Netherlands-Belgium/Flemish on EIA in a Transboundary Context. Again, this bilateral agreement is under draft (also extending practical working arrangements with respect to SEA) and therefore not yet formalized.

Both these agreements contain some general principles on applying EIA in a transboundary context and provide (step-by step) practical guidance on the process for those involved.

Items dealt with are:

- The area of application of EIA in a transboundary context;
- Institutional arrangements (contact points);
- Procedural aspects (notification, public participation, consultation, decision, post-project analysis);
- EIA documentation (including translation issues); and
- Financial aspects.

These agreements constitute practical guidance. The agreements mainly deal with the practical institutional administrative aspects of the process of EIA in a transboundary context, Appendix VI (b).

42. *Has your country established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

Yes, supplementary points of contact have been established.

Article 9

Research programmes

43. *Are you aware of any specific research in relation to the items mentioned in article 9 in your country? If so, describe it briefly.*

No.

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

44. *If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

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45. *If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

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46. *If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?*

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PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2006–2009

Please report on your country's practical experiences of applying the Convention (not your country's procedures described in part one), whether as Party of origin or affected Party. The focus here is on identifying good practices as well as difficulties Parties have encountered in applying the Convention in practice; the goal is to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve its application.

CASES DURING THE PERIOD 2006–2009

47. *Does your country's national administration have information on the transboundary EIA procedures that were under way during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If your country does not have any experience of applying the Convention, why not?*

See Appendix II for an indicative list of EIA procedures that were undertaken (either the Netherlands being the Party of Origin or the Affected Party). Our national administration has information on the occurrence of transboundary EIA procedures, but does not provide a complete overview/conclusive list. We have tried to collect this information; therefore we believe that the list comprises in large the transboundary procedures that took place in the period between 2006-2009, either with the Netherlands being the Party of Origin of the Affected Party and as such provides a good indication/idea. But, as stipulated the overview is not conclusive.

48. *Does your country object to the above list of transboundary EIA procedures being included in a compilation of such procedures to be made available on the website of the Convention? (Indicate "yes" if you object.)*

49. *Are there projects other than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.*

Not to our knowledge.

50. *Provide information on the average duration of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

The Netherlands does not have a national administration system that registers the duration of EIA-procedures as a whole nor the individual steps. Nor do the relevant competent authorities on the regional or local level. Only a few steps in the EIA procedure have a legal requirement regarding the timeframe.

In general there is no difference in the average durations for transboundary EIA procedures or domestic EIA procedures. On average the entire transboundary EIA-procedure ranges from half a year to approximately 3 years, this including the final decision. In the Netherlands the final decision is part of the so-called 'mother procedure' (for example the procedure to obtain a permit for a plant or the spatial planning law, but the EIA legislation prescribes that the decision has to include a motivation what has been done with the comments and the EIA report). Spatial planning procedures take longer on average than industrial permit-procedures.

Of course there are exceptions to the rule if there are political disagreements/issues at stake; this may delay the finalisation of the project extensively.

The following individual steps in the EIA procedure have a legally binding timeframe:

- the legal timeframe for public consultation, in the scoping phase as well as on the EIA report, is six weeks
- the legal timeframe for the Commission on EIA (independent advisory body) to give their advice on the EIA report is 5 weeks
- there can be a timeframe for processing the received comments on the EIA report set by the 'mother' (/permitting) procedure, as well as a legal timeframe for publishing the final decision. E.g. certain types of plans follow the EIA procedure; the permitting procedure prescribes that received comments have to be processed within 12 weeks and the publication of the final decision has to take place no later than 6 weeks after the maximum time granted for processing the comments.
- the timeframe between the application for an environmental permit and the final decision can take a maximum period of 6 months; however, the EIA report is published together with the application, and there is no set time for preparing the report.

EXPERIENCE OF THE TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE IN 2006–2009

51. If your country has had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.

In general the objective for EIA is to improve the decision-making process by taking into account possible environmental effects. If also transboundary environmental impacts are taken into account it will improve the quality of the EIA and in the end also the final decision. Therefore, the existence of transboundary EIA-procedure can contribute to the prevention, reduction or control of possible significant transboundary environmental impacts in a particular case, this following from international regulation (the relevant EU guidelines and the Espoo Convention). Significant environmental impacts must stand the test on national and international legal standards. If so the competent authority will give permission for the proposed activity.

One practical example to illustrate this: the Netherlands (i.e. province of Limburg) was informed and participated in a transboundary procedure concerning a sluice in Ternaaien (Walloon region, Belgium). The province of Limburg commented on the EIA report as in their opinion, (certain) protective measures regarding the nature in the area involved were missing. Now, in this project, preventive measures are being taken in this area.

52. *How has your country interpreted in practice the various terms used in the Convention, and what criteria has your country used to do this? Key terms include the following: “major change” (art. 1 (v)), “a reasonable time” (art. 3.2(c), art. 4.2), “promptly” (art. 3.6) and “a reasonable time frame” (art. 5). (Do not provide references to answers to earlier questions 6 (b), 11, 13, 25 and 31.) If your country experiences substantial difficulties interpreting particular terms, does your country work together with other Parties to find solutions? If not, how does your country overcome the problem?*

In practice, major change is interpreted as follows: the legal environmental standard measures for air quality, noise etc are taken as basic framework to determine major change, together with factors as the area (e.g. are there nature areas in the vicinity, quiet areas etc) and cumulative effects to determine a major change in the affected area.

Reasonable time as referred to in art 3.2 (time that the Affected Party receives to indicate whether or not they wish to participate in the procedure). This differs in practice, depending also on what is the working arrangement between points of contact established in the bilateral agreement (informal contact e.g.). Not uncommon either is a timeframe of six weeks; often, the notification contains the pre-start note with, among other things, the information on the procedure indicating the time to give comments on what should be in the environmental report (scoping fase), together with an accompanying letter to invite the neighbouring country to indicate their wish to participate. Reasonable time as referred to in art 4.2 in practice; for the time to submit comments six weeks is given, the time that is prescribed by the Dutch law, as, as a rule, the procedure of the country of origin is applied. The time between comments and the final decision differs. This depends on various factors, including the complexity of a project, possible controversy of the project, the number of comments.

'Promptly' as referred to in art 3.6 (time for provision of relevant information by affected party) differs per case. As quick as possible; agreements on this are made on a case-by case basis between the relevant competent authorities and/or points of contacts involved.

In general, the competent authorities do not have substantial difficulties interpreting particular problems. If there is a difficult situation or a problem in a certain case concerning the transboundary issues, the competent authority contacts the neighbouring country (possibly affected Party) to discuss and work out the issues together.

53. *Please share with other Parties your country’s experience of using the Convention in practice. In response to each of the questions below, either provide one or two practical examples or describe your country’s general experience. You might also include examples of “lessons learned” in order to help others.*

a. *How in practice has your country identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?;*

The significance and likelihood of adverse transboundary effects are determined in the same way as the occurrence of adverse national environmental effects are determined. First, the Dutch EIA Decree indicates which projects are subject to an EIA. Second, Dutch legal provisions in environmental laws (regarding thresholds etc), and other criteria as area, cumulative effects etc determine the significance and likelihood of adverse transboundary environmental impacts. In a similar manner the competent authorities determine if an activity can take place (depending on the necessary possibility of mitigating measures etc). A basic assumption is to encourage applying the precaution-principle. Furthermore, mostly the attitude of the competent authorities is: if a proposed activity with environmental effects is located within 5 kilometers of the border, the competent authorities will give specific attention to

possible transboundary impacts. If there is adverse transboundary impact the competent authority informs authorities and the public in the affected country. If there are doubts about possible environmental effects, also when such activities have a distance to the border over 5 kilometers, usually the competent authority will contact the authorities in the affected country and start a dialogue on the possible transboundary environmental effects and gives these authorities and public the opportunity to participate in the EIA-procedure.

- b. *Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How does your country determine how much information to include in the EIA documentation?;*

In general the EIA report has a separate section/chapter/paragraph on transboundary effects. The level of detail and amount of information depends on the type of activity.

- c. *What methodology does your country use in impact assessment in the (transboundary) EIA procedure (e.g. impact prediction methods and methods to compare alternatives)?;*

The methodology used in the environmental impact assessments are based on guidance and arrangements that are or common practice and/or obligatory in the Netherlands. With respect to determining alternatives there is not one specific method, although e.g. multi-criteria-analyses is used on a regular basis to compare alternatives. The determination depends on the activity and complexity of alternatives, and factors as outcome of consultation, (political) room for alternatives etc.

- d. *Translation is not addressed in the Convention. How has your country addressed the question of translation? What does your country usually translate? What difficulties has your country experienced relating to translation and interpretation, and what solutions has your country applied?;*

The Dutch law dictates the translation of the non-technical summary (and the notification).

In addition, translation arrangements have been made in the bilateral agreement with Germany. This concerns: the notification of intent (translated by the proponent), the scoping guidelines for the EIA report as the non-technical summary of the EIA report, and the relevant sections for the affected party (on transboundary issues) of the (concept)decision. In case of large projects (e.g. in the Eemshaven) the entire advice of Commission on EIA is translated as well.

For obvious reasons translation is not an issue between Belgium (Flanders) and the Netherlands.

Between Belgium (Walloon region) there is the language issue as the official language differs (french and dutch). In general the Dutch competent authorities translate the non-technical summary and in case of a separate chapter/section on transboundary issues and effects, this is translated as well. The latter is determined on a case-by-case basis.

The Netherlands have experienced some difficulties in the reviewperiod relating to translation with EIA's from abroad. Sometimes the translation was of poor quality or non-existent. The relevant competent authorities have applied different solutions in the past. In the case of a poor translation, one solution is that the Dutch competent

authorities hire a translator themselves to translate the relevant documents in correct Dutch (f.e. the notification for the public). In the case of a translation being absent, the Dutch competent authorities formally request for a translation of at least the non-technical summary.

- e. *How has your country organized transboundary public participation in practice? As Party of origin, has your country organized public participation in affected Parties and, if so, how? What has been your country's experience of the effectiveness of public participation? Has your country experienced difficulties with the participation of its public or the public of another Party? (e.g. have there been complaints from the public about the procedure?);*

The public of the affected party are given the same opportunities to participate in the procedure as the Dutch public. This means that they are informed through publications in newspapers (local, regional or by other means that are common practice in the affected party) and they can express their opinion on the contents of the EIA report(scoping phase) and the EIA report itself.

It depends on the project and judgement of the competent authorities whether a public hearing is organised. If this is the case, the public in the affected party is informed about the hearing through a publication. In general the public hearings take place in the Netherlands. In some cases (e.g. large projects in the Eemshaven) public hearings have been organised in the affected country as well. Public hearings are usually quite well attended by the public of the affected party. When the competent authority expects a large attendance of the public from the affected party at the public hearing (e.g. Germany), an interpreter is hired for the occasion. The Dutch competent authorities are not aware of any complaints concerning the possibilities for public participation for the Dutch public and the public from the affected party (being the Party of Origin).

- f. *Describe any difficulties that your country has encountered during consultations, for example over timing, language and the need for additional information. As an affected Party, have consultations under article 5 supported the prevention, reduction or control of possible significant transboundary environmental impacts?;*

To our knowledge there have not been any particular difficulties during consultations as referred to in article 5 of the Convention (consultations on f.e. alternatives, possible preventive and mitigating measures etc).The recommendation is to be aware of the different administrative procedures en cultural aspects. Sometimes there is a need to translate more EIA documents and procedure to get a better understanding of each others interests or to get an agreement about the EIA documents which are relevant for translation.

- g. *Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public;*

The final decision is the decision within the 'mother' procedure(/ permitting procedure) by the relevant competent authorities for a project. The comments from the public consultation and the reaction of the competent authorities (how were the comments taken into account) are part of the final decision. This includes information on how the competent authorities dealt with transboundary effects and comments in this respect. The Dutch law prescribes that the final decision has to be in Dutch. It is common practice for the competent authorities bordering Germany to translate the final decision (and when relevant the reaction on the comments issued by the public or authorities by the affected party).

Everyone that has issued a comment (including public and authorities abroad) receives a copy of the final decision.

- h. Has your country carried out post-project analyses and, if so, on what kinds of project?;*

In practice, post-project analyses are not carried out very often. As we do not have a national registration system in place registering post-project analyses, and it is the responsibility of the competent authority involved, it is not able to give an indication for the amount and types of project a post-project analysis is carried out. In principle, post-project analysis should be carried out for all types of projects. Also, monitoring and evaluation may take place as part of the permit (conditions) e.g.; therefore, the absence of separate post-project analyses does not mean that there is no post-project analysis whatsoever.

- i. Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your country's experiences describing, for example, means of cooperation (e.g. contact points, joint bodies, bilateral agreements), institutional arrangements, and how practical matters are dealt with (e.g. translation, interpretation, transmission of documents, etc.);*

Joint cross-border project appear on a regular basis. For example: railwayprojects, motorwayprojects and waterwayprojects (Westerschelde), crossborder pipelines for oil or gastransport, elektricity transport, crossborder industrial sites and nature development projects

Examples of joint cross-border projects in the reviewperiod are:

- the construction of a pipeline from Germany to the Netherlands. Both the German and Dutch EIA-procedure was applied simultaneously. The coordination of the procedure on the Dutch side was done by 'Bureau Energieprojecten' (now 'Agentschap NL') and by the 'Landesamt für Bergbau, Energie und Geologie on the German side. There was a need for extensive consultation as the procedures in both countries are different, as translation of documents throughout the process. In both countries public hearings were held. In short, the transboundary EIA-procedure can be characterised as labourous but succesful.

- Several transboundary procedures for cross-border projects in the Schelde estuary as part of the joint development-scheme for the area (Schelde estuary) , for example the expansion of the waterway Beneden-Schelde and Westerschelde (2006-), the development of 'intergetijdengebied in de Hertogin Hedwige-en Prosperpolder (2006-) and the regeneration-scheme and expansion of het Zwin (2007-). The EIA procedures were dealt with jointly ,taking into account the legal requirements and subsequently the procedural differences in both countries. For the purpose of the EIA (and SEA) procedures e.g. a separate working group of Dutch and Flamish experts was founded. This working group advised on the contents of the EIA report (scoping phase) and the quality and completeness of the EIA report.

- j. Name examples of good practice cases, whether complete cases or good practice elements (e.g. notification, consultation or public participation) within cases. Would your country like to introduce a case in the form of a Convention's "case study fact sheet" ?;*

In general transboundary procedures are performed quite well (both ways, Netherlands as Party of Origin and Affected Party). The above mentioned cases (under i) are examples of good practice. Also, a good practice example (so far) is the

extension of Borssele (nuclear power plant) of which the transboundary procedure is still under way. For the latter good practice elements were for example: extensive notification (translated in three languages), extensive consultations with and organisation of public participation in Belgium (most direct Affected Party); for future nuclear projects the Netherlands and Belgium are in the process of making specific working arrangements for projects on nuclear energy.

- k. *Identify the most common means of applying the Convention (e.g. through focal points, joint bodies, multilateral agreements).*

Practical arrangements made in the bilateral agreements.

CO-OPERATION BETWEEN PARTIES IN 2006–2009

54. *Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries?*

As there is an agreement with the neighbouring countries to - as a general rule - follow the legislation and procedure of the country of origin. To our knowledge, we did not encounter particular difficulties in this field. See for examples on dealing with different legal systems the cross-border project between the Netherlands and Germany and the example between Belgium and the Netherlands (53.i)

EXPERIENCE IN USING THE GUIDANCE IN 2006–2009

55. *Has your country used in practice the following guidance, adopted by the Meeting of the Parties and available online? Describe your country's experience with using these guidance documents and how they might be improved or supplemented:*

- a. *Guidance on public participation in EIA in a transboundary context;*

- this was used as a reference document to draw up the bilateral agreements between respectively Belgium (Flanders) and Germany besides the legal requirements we have in the Netherlands regarding public participation

- b. *Guidance on subregional cooperation;*

- the Netherlands is not part of a sub-region under the Espoo Convention.

- c. *Guidelines on good practice and on bilateral and multilateral agreements.*

This was used as reference document to draw up the bilateral agreements between respectively Belgium (Flanders) and Germany.

CLARITY OF THE CONVENTION

56. *Has your country had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in part one above or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which your country encounters when applying the Convention.*

In general The Netherlands has not experienced difficulties implementing the procedure defined in the Convention, either as a Party of Origin or as affected party. As for provisions in the Convention that are unclear, or more precise, may cause difficulties in implementing the Convention in practice:

- the difference between consultation (article 5) and article 4.2 (furnishing EIA documentation and give the opportunity for the submission of comments); in practice it is not uncommon that matters to be discussed in consultation are addressed by the affected party through submission of written comments (and as such it becomes part of the public consultation) with consent of both parties. As such, it is sometimes perceived as the same thing by local competent authorities, as it is more an organic process. When necessary, they have additional consultations in the form most appropriate/favoured by both parties (meetings, written communication, a combination etc).
- translation of documents: what should be translated sometimes causes discussion with or complaints from the public.

It is difficult to signal out particular strengths and weaknesses of implementing the Convention's transboundary procedure in the Netherlands. In general transboundary procedures and the cooperation between neighbouring countries can be described as positive. Problems that have occurred in individual procedures are not related to particular parts of the procedure. Having said this, as Country of Origin I think the Netherlands applies the Convention well when it comes to. notifying another country, preparing EIA documentation and informing and consulting the relevant Affected Party (public and authorities).

AWARENESS OF THE CONVENTION

57. Has your country undertaken activities to promote awareness of the Convention among stakeholders (e.g. the public, local authorities, consultants and experts, academics, investors)? If so, describe them.

Yes, in the sense that the Netherlands has guidance in place (renewed by the 1st of July due to our revised national EIA and SEA legislation). The guidance informs about legal requirements as well as 'good practice'/ tips and tricks to carry out EIA (and SEA) procedures in practice. In both cases, the obligation to inform/consult the authorities and public of the neighbouring countries as your own in case of significant transboundary effects, is addressed (separately). The guidance is meant for competent authorities and private actors (consultants and experts, proponents/investors and other stakeholders like NGO's). At the moment we are actively promoting the guidance due to the revised national EIA and SEA legislation (transboundary being part of the guidance).

Also the website of the Ministry which is also directed to the public, pays attention to the Espoo Convention and transboundary issues. Besides this, we have a helpdesk in place to answer questions of competent authorities dealing with EIA and SEA. The Ministry has a six-weekly meeting with the EAI coordinators of the provinces to discuss EIA matters; every once in a while an issue regarding the transboundary is raised.

The Netherlands intends to actively promote the extended bilateral agreements with Germany and Belgium with arrangements on SEA once they are finalised.

58. Does your country see a need to improve the application of the Convention in your country and, if so, how does it intend to do so? What relevant legal or administrative developments are proposed or ongoing?

We do not see the need to improve the application of the Convention, in particular as in general the cooperation with our neighbouring countries in transboundary procedures is satisfactory. This said, we do see the benefits in communicating about transboundary procedures, the legal obligations and practical implications on a regular basis in order to keep the relevant competent authorities informed and aware of their duties with respect to transboundary EIA.

SUGGESTED IMPROVEMENTS TO THE REPORT

59. *Please provide suggestions for how this report may be improved.*

Some questions seem repetitive (questions on how words as 'major change' are interpreted e.g.); understanding the motivation to gain insight in the difference between legal implementation and implementation in practice, when this proves not to be the case, I would suggest rephrasing or skipping certain questions the next time.

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