



**Economic and Social
Council**

Distr.
GENERAL

MP.EIA/2004/2
31 March 2004

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

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

**Third meeting
(Cavtat, 1-4 June 2004)
(Item 7 (a) of the provisional agenda)**

**DRAFT DECISION III/1 TO BE TAKEN AT THE THIRD MEETING OF THE PARTIES
Submitted by the Working Group on Environmental Impact Assessment**

**DECISION III/1
REVIEW OF IMPLEMENTATION**

The Meeting,

Recalling its decision II/10 on the review of the Convention,

Having analysed the responses provided by the Parties to the questionnaire for the reporting system,

1. Adopts the Review of Implementation 2003 – Summary, as appended to this decision;
2. Requests the secretariat to make the Summary and the full Review of Implementation 2003 available on the web site of the Convention;
3. Noting further areas of improvement as highlighted in the Review of Implementation 2003, requests Parties to ensure that:
 - (a) The contact details of their points of contact are transmitted to the secretariat, which shall make this information available on the Convention's web site;

- (b) Their points of contact are competent in the application of the Convention;
 - (c) The contents of the notifications issued by the Parties of origin comply with Article 3, paragraph 2, of the Convention and with decision I/4;
 - (d) The final decisions made by the Parties of origin are provided to the affected Parties as soon as possible after they have been taken;
 - (e) The contents of the final decisions made by the Parties of origin comply with Article 6, paragraph 2, of the Convention;
 - (f) The public of the concerned Parties is encouraged to participate in procedures under the Convention;
 - (g) In compliance with Article 9 of the Convention, they exchange information with the other Parties on the results of their research programmes;
4. Notes that the Review of Implementation 2003 suggests that the implementation of the Convention can be strengthened through subregional cooperation and the preparation of bilateral and multilateral agreements;
5. Requests the secretariat to bring to the attention of the Implementation Committee general compliance issues identified in the Review of Implementation 2003, and requests the Implementation Committee to take these into account in its work;
6. Requests the Implementation Committee to prepare a revised and simplified questionnaire on the implementation of the Convention for consideration by the Working Group on Environmental Impact Assessment and for circulation by the secretariat thereafter;
7. Requests Parties to complete the revised and simplified questionnaire and decides that a second draft review of implementation based on the responses will be presented at the fourth meeting of the Parties, and that the work plan shall reflect the elements required to prepare the second draft review.

Appendix

REVIEW OF IMPLEMENTATION 2003 - SUMMARY^{*/}

Contents

Introduction

- I. The Convention
- II. Mandate and aim of the draft review
 - A. Review
 - B. Questionnaire
- III. Outcome of the Review
 - A. Issue of the questionnaire
 - B. Responses
 - C. Structure of the draft review
 - D. Terminology

Summary

- Overview of domestic implementation
- I. Application of the Convention
- II. Notification
- III. Preparation of the EIA documentation
- IV. Transfer and distribution of the EIA documentation
- V. Public participation
- VI. Consultation
- VII. Final decision
- VIII. Post-project analysis
- IX. Translation
- X. Contact points
- XI. Inquiry procedure
- XII. Settlement of disputes
- XIII. Bilateral and multilateral agreements
- XIV. Research programme
- XV. General questions
- XVI. Experiences and opinions

Conclusions

^{*/} The summary and the conclusions can be found in MP.EIA/2004/2/Add.1 and 2.

Introduction

1. This document presents three key elements of the “Draft Review of Implementation 2003”: the introduction, summary and conclusions. The complete “Draft Review of Implementation 2003”, including detailed responses to a questionnaire, will be made available once adopted by the Meeting of the Parties.

I. THE CONVENTION

2. The Convention on Environmental Impact Assessment (EIA) in a Transboundary Context was adopted and signed on 25 February 1991, in Espoo, Finland. As of 1 September 2003, there were forty Parties to the Convention – 39 member States of UNECE plus the European Community (EC), referred to as ‘a regional economic integration organization’ in the Convention.

3. The Convention does not specify its objectives explicitly, but these may be inferred from its general provisions (see box below). The diagram below illustrates the main steps of the transboundary EIA procedure under the Convention.

4. Two subsidiary bodies support the activities of the Meeting of the Parties to the Convention: the Working Group on EIA and the Implementation Committee.

5. On 21 May 2003, the Convention was supplemented by the Protocol on Strategic Environmental Assessment.

6. This introductory chapter continues with a description of the mandate and aim of the Draft Review, a description of its outcome and a summary of the conclusions drawn.

II. MANDATE AND AIM OF THE DRAFT REVIEW

A. Review

7. The Meeting of the Parties decided at its second meeting in Sofia, 26-27 February 1991, to adopt a work plan (decision II/11) that included an activity on ‘Reviews of the implementation of the Convention’. The objective of the activity was that Parties and non-Parties submit information on recent developments in their implementation of the Convention, with a draft review to be considered at the third meeting of the Parties to review the implementation of the Convention.

8. It was decided that the secretariat would prepare a draft review based on the information provided by Parties and non-Parties pursuant to the reporting system adopted by the Working Group, for discussion and possible adoption at the third meeting of the Parties. The draft review would be prepared in 2003 and would incorporate the information received for consideration at the third meeting of the Parties, at least nine months before this third meeting.

Article 2 – General Provisions

1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.

2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.

3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.

4. The Party of origin shall, consistent with the provisions of this Convention, ensure that affected Parties are notified of a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.

5. Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in Appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated. General guidance for identifying criteria to determine significant adverse impact is set forth in Appendix III.

6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.

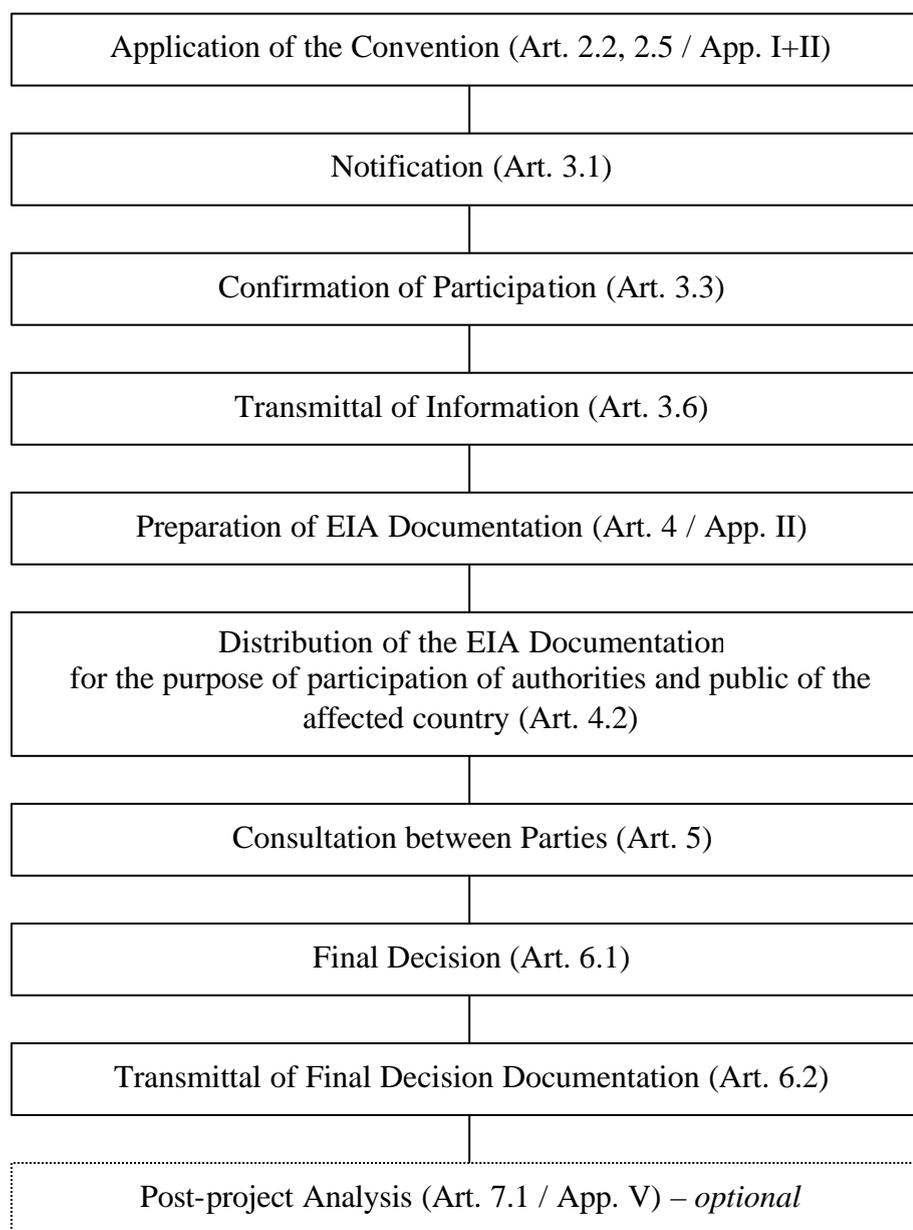
7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.

8. The provisions of this Convention shall not affect the right of Parties to implement national laws, regulations, administrative provisions or accepted legal practices protecting information the supply of which would be prejudicial to industrial and commercial secrecy or national security.

9. The provisions of this Convention shall not affect the right of particular Parties to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention.

10. The provisions of this Convention shall not prejudice any obligations of the Parties under international law with regard to activities having or likely to have a transboundary impact.

Main procedural steps of the Convention



B. Questionnaire

9. The draft review has been undertaken on the basis of responses to a questionnaire that was circulated to all member States of UNECE. The questionnaire was defined in a submission to the Working Group on EIA (MP.EIA/WG.1/2001/3), pursuant to an activity relating to a 'Reporting system', defined in the work plan adopted at the second meeting of the Parties (decision II/1).

10. The objective of the activity was that the Implementation Committee would prepare recommendations for a revision of the questionnaire used for reporting for future reviews of the implementation of the Convention. The capacity and technical possibilities of the ENIMPAS

database were to be used in the reporting system.¹ The objective was to improve the questionnaire so that it provides information on how the obligations of the Convention have been complied with, both at the general level and by particular Parties. The Committee would also consider whether any further steps might be recommended to improve the monitoring of, and compliance with, the obligations arising under the Convention.

11. The delegation of the United Kingdom acted as lead country for this activity, with the assistance of the secretariat. The Implementation Committee established by the Meeting of the Parties in accordance with decision II/4 met with a view to preparing its recommendation. It was also decided that the Committee would present its recommendation for a new reporting mechanism at the fourth meeting of the Working Group on EIA.

12. The document prepared for consideration by the Working Group on EIA (MP.EIA/WG.1/2001/3) stated in its introduction that the purpose of the questionnaire was to elicit the information necessary for the production of a report on the Parties' implementation of the Convention on EIA in a Transboundary Context and to gather information on the practices of non-Parties with respect to transboundary EIA. This would serve as background information to strengthen the implementation of the Convention and help achieve its goals.

13. The questionnaire covered the most important provisions in the Convention. The first chapters were all divided into two parts: "questions to the Party in the role as a Party of origin" and "questions to the Party in the role as an affected Party" in order to get feedback on the experiences that the Parties had in these respective roles. The last chapters were addressed to all Parties as "concerned Parties" because of their more general character.

14. EIA procedures are carried out by different authorities/bodies in a Party depending on the political system, the type of "activity" and its location. The fact that there are different actors involved in the implementation of the Convention could lead to some differences. The questionnaire therefore asked whether the Party, in its experience of EIA procedures, considered that the application of the Convention varied with the different types of actors within the Party or within another Party.

15. Concrete examples were to be provided where possible. The document also stated that the Working Group on EIA might request the Implementation Committee to review the questionnaire in the light of the answers provided by the Parties.

III. OUTCOME OF THE REVIEW

A. Issue of the questionnaire

16. The questionnaire was issued late in 2002 and again, following some minor amendments,² in mid-2003. The most recent response is referred to in those cases where a Party submitted a

¹ The ENIMPAS database on EIA in a transboundary context was later to be closed by decision III/6 of the Meeting of the Parties.

² The most significant change was to drop a condition "If not," from the start of a number of subsidiary questions, to which the main question required only a yes or no response. As a result, there would appear a rather poor link between whether the main question is answered yes or no, and whether the subsidiary question is answered. The following questions were changed in this way: II.A.1.1 (c), II.A.3.2 (c), II.B.2.2 (b), II.B.3.1 (b), III.A.2.1 (c), III.B.2.2 (b), IV.A.1.1 (b), IV.A.1.2 (b), IV.B.1.1 (b), IV.B.1.2 (b), V.A.1.2 (b) and XVI.A.1.1.

completed questionnaire on both occasions. The questionnaire is divided into two sections, referred to here as the 'domestic' and 'main' sections.

B. Responses

17. Completed 'main' questionnaires were received from 25 of the 39 States that are Parties to the Convention:³ Armenia; Austria; Belgium⁴; Bulgaria; Canada; Croatia; Czech Republic; Denmark⁵; Estonia; Finland; France; Germany; Hungary; Italy; Kyrgyzstan; Latvia; Lithuania; Netherlands; Norway; Poland; Republic of Moldova; Slovakia; Sweden; Switzerland; United Kingdom.

18. In addition, the EC is a Party to the Convention but, being a regional economic integration organization rather than a State, has a different status and therefore felt it inappropriate to send in a completed questionnaire. Nonetheless, the EC provided a response explaining its position and why it considered itself unable to complete the questionnaire.

19. The edited responses to the questionnaire are included in the draft review. Most completed questionnaires were in English, but four were not: France responded in French, whereas Armenia, Kyrgyzstan and the Republic of Moldova replied in Russian. Translated and edited responses from these four Parties are included in the draft review. In addition, their original, unedited responses are annexed to the draft review.

20. The remaining 15 States that are Parties to the Convention failed to provide completed 'main' questionnaires.

21. This level of response limits the value of this draft review, as the responses may not be representative of all 40 Parties. In addition, the responses received varied considerably both in quality and in terms of the amount of experience they reported. Moreover, it was apparent that respondents replied in different ways, with some restricting themselves to describing actual experience whereas others described likely procedural approaches. Similarly, where questions were asked of Parties in each of their possible roles (Party of origin and affected Party), it is apparent that respondents were frequently confused, for example describing their experiences as an affected Party in response to a question relating to their role as Party of origin. Any conclusions drawn must, therefore, be considered as being limited in validity.

22. The following Parties provided completed 'domestic' questionnaires:⁶ Armenia; Austria; Bulgaria; Canada; Finland; Italy; Latvia; Poland; Republic of Moldova.

23. In addition, Bosnia and Herzegovina, which is not a Party to the Convention, submitted a completed 'domestic' questionnaire.

³ Versions of the main questionnaire completed in 2002 were used for Croatia, Hungary, Latvia, Norway and Poland. The other Parties returned the questionnaire in 2003, though only Bulgaria, the Czech Republic, France, Italy and Switzerland used the mid-2003 version of the questionnaire. Canada and Sweden did not reply using the questionnaire so it was not possible to determine which version of the questionnaire they were answering.

⁴ Belgium returned the questionnaire in March 2004, too late to be included in this document.

⁵ Denmark returned the questionnaire in February 2004, also too late to be included in this document.

⁶ Versions of the domestic questionnaire completed in 2002 were used for Bosnia and Herzegovina, Latvia, Poland and the Republic of Moldova.

C. Structure of the draft review

24. After this introductory chapter, a summary is provided of all the responses followed by some conclusions. The remainder of the draft review (and not included in this summary document) reflects the structure of the questionnaire, beginning with a chapter on 'domestic' implementation comprising:

- Legislative, administrative and other measures by which the Convention is implemented;
- Authorities and levels of government responsible for implementation; and
- Summary listing of projects.

25. The greater part of the draft review concentrates on the 'main' section of the questionnaire, which comprised parts I to XVI (see table of contents).

26. Many of these parts were divided into two sets of questions to reflect the dual role of each Party: as a Party of origin and as an affected Party.

27. Responses to each group of questions have been summarized at the beginning of each group, preceding individual questions and answers. These groups correspond to the section headings listed in the table of contents of the draft review. All the summaries have been brought together in the summary (MP.EIA/2004/2/Add.1 and Add.2).

28. Answers to individual questions are ordered alphabetically by country, except that: (a) common responses (e.g. a group of respondents reply 'Yes') and simple cross-references to other questions are placed at the beginning; and (b) non-responses, or responses indicating a lack of experience, are placed at the end. All responses have been subject to minor editorial changes. For the sake of brevity, cross-references to answers to other questions are expressed simply as 'see' followed by the full question reference.

D. Terminology

29. Some standardization of terminology has been undertaken in this draft review, to make it more readable and easier to compare responses:

- The Convention's term 'EIA documentation' is used throughout the review rather than the terms 'environmental statement', 'environmental report', 'environmental impact statement', 'environmental impact report' or 'EIA report';
- The term 'State ecological examination' is used rather than 'State environmental examination' or 'State ecological expertise';
- The term 'proponent' is used rather than 'developer' or 'investor', where there is no change in meaning; and
- The terms 'activity' and 'project' are generally used interchangeably.

30. Questions are cross-referenced in full, even if the cross-reference is to another question in the same section.