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MEETING OF THE PARTIES TO THE CONVENTION
ON ENVIRONMENTAL IMPACT ASSESSMENT
IN A TRANSBOUNDARY CONTEXT

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Item 8(a) of the provisional agenda

REVIEW OF THE WORK DONE BY THE WORKING GROUP ON ENVIRONMENTAL
IMPACT ASSESSMENT AND ADOPTION OF DECISIONS

REVIEW OF IMPLEMENTATION OF THE CONVENTION

A review of the practical application of the Convention during the period 2003–2005

Note by the secretariat

Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment (EIA) in a Transboundary Context decided at its third meeting to adopt a workplan (decision III/9, in annex IX to ECE/MP.EIA/6) that included an activity on “Compliance with and implementation of the Convention”. The activity included the preparation of a revised and simplified questionnaire by the Implementation Committee with the support of the secretariat. This review summarizes responses to the revised questionnaire regarding the practical application of the Convention during the period 2003–2005.

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INTRODUCTION

1. This review summarizes responses to the revised questionnaire regarding the practical application of the Convention during the period 2003–2005. The questionnaire is described in the annex to decision IV/1. Responses to questions indicating a lack of experience have not been included in this review. The questions are indicated in italics.

I. CASES DURING THE PERIOD

Question 44. Do you have any practical experience of applying the Convention in this period (yes/no)? If you do not have any such experience, why not?

2. Most Parties had had practical experience of applying the Convention in this period (Austria; Bulgaria; Croatia; Czech Republic; Denmark; Finland; France; Germany; Hungary; Italy; Kazakhstan; Kyrgyzstan; Lithuania; Moldova; Netherlands, at provincial, regional and local levels; Norway; Poland; Romania; Slovakia; Slovenia, in notification only; Spain; Sweden; Switzerland; Ukraine; United Kingdom). Others had had no such experience in the period (Georgia and Turkmenistan, which are not Parties; Armenia, Azerbaijan, Canada, Cyprus, The former Yugoslav Republic of Macedonia). Estonia and Latvia had received notifications but had not then indicated intent to participate.

Question 45. Does your 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 you have not provided a list of transboundary EIA procedures in connection with previous reporting, also provide a list of those procedures. If possible, also indicate for each procedure why it was considered necessary to apply the Convention.

3. Most Parties listed transboundary EIA procedures in the period (Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Kyrgyzstan, Latvia, Lithuania, Moldova, Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Ukraine, United Kingdom). Due to the number of possible competent authorities, to its federal structure and to the absence of an obligation to collect such data, Germany was unable to provide such information. The respondents provided numerous examples of activities that had been subject to such procedures, most frequently:

- (a) Thermal and nuclear power stations (item 2 in Appendix I to the Convention);
- (b) Motorways, express roads and railways (item 7).

4. Wind farms were the commonest among the types of activity not listed in Appendix I (though listed in the Appendix in the second amendment), but which had been subject to several transboundary EIA procedures.

Question 46. Are there other projects than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.

5. Most Parties were not aware of any projects other than those mentioned above for which a transboundary EIA procedure should have been applied, but was not (Armenia, Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Kyrgyzstan, Latvia, Liechtenstein, Moldova, Netherlands, Norway, Poland, Slovakia, Slovenia, Sweden, The former Yugoslav Republic of Macedonia, Ukraine, United Kingdom). Switzerland indicated that this might have occurred. Lithuania referred to a project affecting Belarus, regarding which Belarus had not initially been notified, as it was not a Party to the Convention until late in 2005. Romania noted that the Bystroe Canal Project in Ukraine had not been subject to transboundary EIA.¹ Spain had notified other Parties regarding two projects, with the Parties either not responding or indicating that they did not wish to be consulted. Azerbaijan observed that there had been such projects, but concerning neighbouring States with which it did not have agreements; most neighbouring States were not Party to the Convention. Kazakhstan similarly noted a project involving China, which was not a Party.

Question 47. Provide information on the average durations of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.

6. Transboundary EIA procedures took:

- (a) One to three years, depending on whether there were extended consultations and changes submitted by the proponent (Austria);
- (b) Fifteen months for a nuclear power plant (Bulgaria);
- (c) Two years for a flood protection project (Croatia);

¹ Information on this project is available on the Convention's website at: <http://www.unece.org/env/eia>.

- (d) A procedure begun in 2001 was still ongoing in May 2006 for a hydropower plant project (Croatia);
- (e) Highly variable (Denmark);
- (f) Less than one year (eight months) for a power plant renovation project (Estonia);
- (g) One to two years (Finland, Norway);
- (h) Two and a half years, for one abandoned project (Kyrgyzstan)
- (i) One to two years for industrial projects (Netherlands);
- (j) Two to three years for spatial planning, land-use and other plans (Netherlands);
- (k) At least one year (Poland);
- (l) One to one and a half years (Romania);
- (m) Several years (Slovakia);
- (n) Three years for marine dredging projects (United Kingdom).

7. Broad public interest and political attention extended the timescale in Hungary. Germany and Sweden noted that it depended on the individual project. However, it should have been, or generally was the same as for domestic EIA procedures in Italy, the Netherlands and Switzerland.

8. Regarding the average durations of the individual steps in the procedure:

- (a) Individual steps lasted 30–60 days (Croatia);
- (b) The preparation of the terms of reference for scoping and for holding consultations took approximately one month (Bulgaria);
- (c) The publication and approval of the scope and the EIA documentation lasted one month (Estonia);
- (d) Ten weeks was sufficient for the first, notification phase (France);
- (e) The notification and response took two months (Kyrgyzstan), one month (Lithuania), or four to six weeks (Romania);
- (f) The comments on the scope took one month, but could have been accelerated by sending the draft scope with the notification (Lithuania);
- (g) The scoping took six weeks (Romania) or two months (Switzerland);
- (h) The comments on the EIA documentation took two months (Lithuania);
- (i) The review stage generally took six to eight weeks, but six months for a nuclear power plant (Romania);
- (j) The consultation on the EIA documentation took five months (Switzerland)
- (k) The quality review of the EIA documentation took 14 days (Bulgaria);
- (l) The delay between the final public hearing and the issue of the final decision was two months (Bulgaria).

9. Romania explained that deadlines for the different stages were agreed with the affected Parties. Bulgaria, as a Party of origin, indicated that the notification of the competent authority, the public and the affected Party regarding a nuclear power plant took approximately two months, whereas Romania as the affected Party indicated only four weeks. Later in the same procedure, Bulgaria indicated that public hearings in the concerned Parties (including one month's public access the EIA documentation) took six months, whereas Romania reported only four months.

II. EXPERIENCE OF THE TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE DURING THE PERIOD

Question 48. If you have 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.

10. Some respondents gave practical examples of how implementation of the Convention had supported the mitigation of possible transboundary impacts, including:

- (a) Environmental protection measures added to, and made stricter for, interim storage facilities for spent nuclear fuel (Austria) and a flood protection project (Croatia);
- (b) Substantial environmental improvements were introduced into the design of a goldmine project (Kyrgyzstan);
- (c) A dredging project halted in part through application of the Convention (Norway);
- (d) A dredging area reduced in extent (United Kingdom).

11. Estonia, Poland and Romania also indicated that an affected Party's position had affected how a project was implemented and monitored. Germany noted that EIA in most cases led to conditions on development but not a project's refusal, whereas Denmark noted that a Party of origin had refused projects subject to the Convention. Finland indicated that the consideration of adverse transboundary impacts inevitably led to the reduction of such impacts. In contrast, Sweden reported that was not aware of such benefits. Finally, Switzerland indicated that the procedure led to greater awareness of environmental consequences of projects and to better public participation.

Question 49. How have you interpreted in practice the various terms used in the Convention, and what criteria have you used to do this? Key terms include the following: "promptly" (Art. 3.6), "a reasonable time" (Art. 3.2(c), Art. 4.2), "a reasonable time frame" (Art. 5), and "major change" (Art. 1(v)). If you are experiencing substantial difficulties interpreting particular terms, do you work together with other Parties to find solutions? If not, how do you overcome the problem?

12. Respondents explained how in practice they interpreted the various terms used in the Convention, with some usually working with other Parties to interpret particular terms (Austria, Denmark, Finland, Germany, Kyrgyzstan, Romania, Sweden, Switzerland) or indeed the concerned Parties needed to agree on the interpretation (Estonia, Latvia, Lithuania). Croatia suggested that Parties might have had to refer back to the Meeting of the Parties if the concerned Parties were unable to agree. Bilateral agreements addressed the interpretation of these terms, or might do so in some countries (Latvia, Netherlands, Poland, Romania, Slovakia). Legislation in the Netherlands included comparable terms. Kyrgyzstan indicated that Parties needed to refer to their own legislation; and Switzerland similarly referred to the legislation of the Party of origin. France, Moldova, the Netherlands, Switzerland and the United Kingdom had not experienced difficulties with these terms.

13. Practical definitions for "promptly" included:

- (a) Within the deadline specified in the request to the affected Party (Bulgaria, Croatia, United Kingdom);
- (b) As soon as possible and no later than 30 days after receiving documents, etc. (Estonia);
- (c) As soon as possible (Germany);
- (d) Immediately after the necessary procedural steps were taken (Hungary);
- (e) As soon as practicably possible, i.e. once the project description was sufficient to provide such information (Norway).

14. Definitions for “a reasonable time” included:

- (a) Thirty days, with a possible extension for the affected Party of an additional 30 days (Czech Republic);
- (b) A reasonable time for a response to a notification was specified, and was at least one month, whereas that for distribution of the EIA documentation was determined through consultations between the concerned Parties and by forwarding documentation no later than when displaying the information to its own public (Estonia);
- (c) A reasonable time for a response to a notification was normally 30 days, with a possible extension, whereas that for distribution of the EIA documentation was between six and eight weeks (Germany);
- (d) As determined through consideration of the length of the national procedural steps and the time needed for translation and dissemination (Hungary);
- (e) No less than six weeks (Norway);
- (f) As required to meet the needs of individual cases and circumstances, with possible extension, subject to the need to comply with good administrative practice (United Kingdom).

15. Definitions of “a reasonable time frame” were:

- (a) As determined individually, case by case (Norway);
- (b) As determined through consultation and adequate to allow domestic consultations, with possible extension (United Kingdom).

16. And definitions for a “major change” included:

- (a) As determined through a case-by-case screening, applying criteria and holding discussions between the proponent and the competent authority (Bulgaria);
- (b) A 30 per cent change (Croatia);
- (c) A change requiring amendment of the development consent (Estonia);
- (d) According to legal thresholds or by case-by-case screening (Germany);
- (e) Exceeding the criteria in Appendix I (Norway);
- (f) As determined through application of legal criteria (Romania);
- (g) As determined through screening whenever legal thresholds are exceeded (United Kingdom).

Question 50. Share with other Parties your experience of using the Convention. In response to each of the questions below, either provide one or two practical examples or describe your general experience. You might also include examples of “lessons learned” in order to help others.

a. How in practice have you identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?

17. Two respondents provided information, from the viewpoint of the (potentially) affected Party, on how in practice they identified transboundary EIA activities for notification under the Convention and determined the significance and likelihood of adverse transboundary impact:

(a) For projects with the potential to affect a large area, Austria assigned experts to identify potential impacts as a basis for requesting notification. For projects likely to affect smaller areas, local authorities were asked whether they wished to participate in transboundary EIA;

(b) In Hungary, notification was expected or requested for projects close to the border, with a direct hydrological impact on a cross-border river or that were similar to a project that had led to a transboundary pollution incident.

18. Other respondents described experiences as the Party of origin in determining whether to notify:

(a) In the Czech Republic, it was on the basis of a transboundary impact section in the project notice and whether the project was to be located close to the border;

(b) Both Denmark and Sweden referred to projects having impacts on their own territory and being close to a border;

(c) In Estonia, the authorities assessed whether the planned activity was likely to have significant adverse transboundary impact, taking into consideration the characteristics of the activity, its location, the risk of emergencies and the potential impact area;

(d) In Croatia and Italy, it was on the basis of the conclusions of the EIA documentation; in France, it depended on whether the planned activity was close to the border;

(e) In Croatia and the Czech Republic, it might also have been in response to a request from another Party that considered that it might have been affected;

(f) In Finland, the competent authority for the EIA would normally identify projects to which the Convention might apply, with discussions with focal points of affected Parties also having contributed to determining transboundary impact;

(g) Germany reported that the competent authority made a determination case by case, with a recommendation to notify if no clear decision was possible;

(h) Kyrgyzstan gave examples of where a project was close to a border or a cross-border river, or where it required transport of toxic chemicals through the affected Party;

(i) In Lithuania, the proponent identified whether the planned activity was likely to have significant adverse transboundary impact while preparing the EIA documentation. The authorities also examined the possibility of such an impact;

- (j) Expert judgment was used in the Netherlands to determine whether a planned activity was likely to have significant adverse transboundary impact, applying the precautionary principle. If it was to be located within five km of the border then the competent authorities gave specific attention to a possible transboundary impact. If there was uncertainty about a project further from the border, the Netherlands initiated dialogue with the affected Party and that might lead to a transboundary EIA procedure;
- (k) In Norway, the competent authority generally identified transboundary EIA activities and the local environmental authorities identified the transboundary impact, which was further determined through consultation.
- (l) Romania referred to its legislation to determine the significance and likelihood of adverse transboundary impact, and considered the outline of potential environmental effects that was included in the project description;
- (m) In Slovakia, the EIA documentation addresses transboundary impacts, and criteria are used to determine significance;
- (n) In Spain, it was simply those projects listed in Appendix I of the Convention or in the European Union EIA Directive, whereas Poland referred to Annexes I and II of the EIA Directive and to project thresholds;
- (o) Switzerland referred to the location near the border of projects subject to domestic EIA, and to the findings of the EIA;
- (p) Finally, the United Kingdom indicated that it did not notify Member States of the European Economic Area, including the European Union, under the Convention, but rather under the EIA Directive, and that it considered it unlikely that it would notify under the Convention given its location. Activities notified, except in Northern Ireland, had been marine dredging projects, with possible effects on the fisheries or coastline of the notified States. Significance was determined on the basis of the EIA and of information supplied by affected States and other stakeholders.

b. Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How do you determine how much information to include in the EIA documentation?

19. Several respondents indicated that there was no distinct chapter on transboundary issues (Armenia, Italy, Romania), or no legal requirement to structure the EIA documentation in this way (United Kingdom). France reported that the information was spread across the documentation. However, other countries indicated that a separate chapter (or section or even document) on transboundary issues in the EIA documentation was (or would have been) recommended (Germany, Norway) or provided (Czech Republic, with its content reflecting the significance of such issues; Kyrgyzstan; Lithuania; Netherlands; Poland; Slovakia; Switzerland), according to the legislation (Austria, Estonia), and taking into account information and comments by the affected Party (Hungary). In Croatia, the structure of the EIA documentation was outlined in law and the content was defined in agreement between the points of contact. Finland considered having a separate chapter as advantageous.

c. What methodology do you use in impact assessment in the (transboundary) EIA procedure (for example, impact prediction methods and methods to compare alternatives)?

20. Respondents did not generally distinguish transboundary EIA methodologies from general EIA ones, though in Hungary transmission calculations might have played a greater role in transboundary EIAs. In many Parties, the proponent or its experts selected the appropriate prediction and comparison methods (Bulgaria, Estonia, France, Germany, Lithuania, Switzerland, Ukraine, United Kingdom). However, Italy's legislation indicated many methods, and Croatia's legislation required the use of certain methodologies. Some respondents identified specific methodologies:

- (a) France, the Netherlands and Poland noted frequent use of multicriteria analysis to compare alternatives;
- (b) Armenia and Kazakhstan noted prediction methods and methods for the comparison of alternatives;
- (c) Bulgaria referred to matrices;
- (d) The Czech Republic referred to scenario building and the comparison of alternatives.
- (e) Finland referred to models analysis and disaggregative comparison methods;
- (f) Kyrgyzstan referred to quantitative and qualitative analyses and the comparison of alternatives;
- (g) Norway noted the use sometimes of interactive conferences with the public to supplement more technical methods, especially for infrastructure projects;
- (h) Romania noted the use of emission dispersion and other simulation models.

d. Translation is not addressed in the Convention. How have you addressed the question of translation? What do you usually translate? What difficulties have you experienced relating to translation and interpretation, and what solutions have you applied?

21. Respondents provided diverse information regarding translation and interpretation during transboundary EIA procedures:

- (a) Austria, when notifying, had provided the project description and an analysis of possible transboundary impact in the language of the affected Party. It had then provided in the language of the affected Party all parts that relate to transboundary issues of the EIA documentation, the evaluation of the documentation, and the decision. Austria had received documentation in Czech only, which it had had to translate, resulting in costs and delays;
- (b) Bulgaria had held consultations between concerned Parties in English, unless otherwise specified in bilateral agreements. According to the legislation, the proponent had to translate the non-technical summary and, unless agreed otherwise, the full EIA documentation;
- (c) Croatia had once provided all the EIA documentation in its language and had once translated into English the documentation relating to transboundary issues. Interpretation was used in meetings;
- (d) The Czech Republic did not normally translate documents, considering this a matter for each Party to arrange individually, whether EIA documentation or comments from the affected Party's public. When the country as Party of origin translated

documents, this was organized by the Ministry of Environment but paid for by the proponent;

(e) Estonia gave the example of a scoping report translated into English and the summary of the subsequent EIA documentation being translated into English and Russian;

(f) Finland indicated that this was arranged between points of contact on a case-by-case basis, but with materials needed for public information always being translated;

(g) France reported that it generally notified in French and received EIA documentation in the language of the Party of origin, the exception being for marine dredging projects. However, the legislation did allow for the translation of documentation into French so as to promote effective public participation, though this did not appear to have been applied;

(h) Germany reported delays and expense for its authorities receiving materials in Czech. As a Party of origin, Germany always translated at least the non-technical summary and other parts of the documentation relevant for public participation, as well as parts of the final decision, subject to reciprocity. Its bilateral agreement with Poland addresses translation;

(i) Hungary's legislation required that it translate into the language of the affected Party the non-technical summary and the "international" chapter. When Hungary received documentation not in Hungarian, it first translated the table of contents so as to identify which sections were relevant and required translations, together with the summary. Hungary noted that translation of documentation received was costly and time-consuming, making it difficult to respect deadlines. It also noted that it was difficult to identify competent translators;

(j) Italy indicated that most documents were provided in the official language of the affected Party, though sometimes in English instead;

(k) Kazakhstan and Kyrgyzstan noted the common use of Russian in Eastern Europe, Caucasus and Central Asia, but Kyrgyzstan highlighted the need occasionally to translate materials into, and to hold discussions in, Kyrgyz in more rural areas;

(l) Latvia and Lithuania considered that translation might have been addressed in bilateral agreements. Where there was no bilateral agreement, Lithuania reported that for one project it had translated the full EIA documentation into English and Russian, but for other projects only the summary was translated;

(m) The Netherlands reported that, under bilateral agreements, it generally translated the notification of intent, the EIA procedure (including time frames and conditions on participation), the summary of the EIA documentation, a summary of the permit request, and draft and final decisions. No translation was required when dealing with Flanders (Belgium);

(n) Norway indicated that it translated into English (which is acceptable for Denmark, Finland and Sweden) the project description, notification and possible transboundary impacts, when notifying, and then the EIA and other relevant documentation. Translation and interpretation into Russian was reportedly a challenge;

(o) Poland referred to a bilateral agreement according to which the notification, part of the EIA documentation relating to the affected Party's territory, part of the final decision and other letters had to be translated, and interpretation provided during consultations;

- (p) Romania reported translation into English of the project description and the EIA documentation, according to its legislation;
- (q) Slovakia noted the proponent's responsibility for translation of the summary and, determined case by case, the full documentation. Slovakia also noted difficulties arising from the time taken for translations and the adequacy of the translation, particularly of technical terms;
- (r) Spain simply reported that the language usually used was Spanish;
- (s) Sweden referred to discussions between the Parties and the developer to arrange for necessary translations;
- (t) Switzerland noted that its national languages corresponded to the languages of its neighbours, therefore assuring adequate translation;
- (u) Ukraine noted translation into English, if necessary;
- (v) The United Kingdom had encouraged the project proponent to provide translations into the language of the affected Party. If the proponent failed to do so, then the United Kingdom might have provided translation of the non-technical summary and of information relating to transboundary impact.

e. How have you organized transboundary public participation in practice? As Party of origin, have you organized public participation in affected Parties and, if so, how? What has been your experience of the effectiveness of public participation? Have you experienced difficulties with the participation of your public or the public of another Party? (For example, have there been complaints from the public about the procedure?)

22. Several respondents indicated that as Party of origin they had not organized (Croatia, Czech Republic, Estonia, Poland, Romania, United Kingdom) public participation in an affected Party, or did not do so as this was the responsibility of the affected Party (France, Hungary). Similarly, Switzerland relied on the authorities in the affected Party. Italy indicated that consultations in the affected Party were generally in line with that country's legislation and Hungary, as an affected Party, had organized its own public participation. Denmark as an affected Party had also organized its own public participation, but in cooperation with the Party of origin.

23. The Netherlands had organized public participation in affected Parties; had organized public hearings, with interpretation, in the Netherlands as a Party of origin; had translated announcements in local newspapers in affected Parties; and had points of contact in regional (local) authorities. Norway, as a Party of origin, had also organized public hearings in an affected Party. Finland was developing its public participation procedures but, as a Party of origin, was holding public hearings for two projects, for one in Sweden and the other in Finland, with the Swedish public being invited.

24. Austria, as an affected Party, and Croatia, as a Party of origin (in different cases), received large numbers of comments from the public of the affected Party. However, several respondents had difficulties with, and had received complaints about, the public participation:

- (a) Austria reported that, as an affected Party, its public had complained about public hearings in the Party of origin (no opportunity for discussion, no interpretation) and the quality of the EIA documentation;

- (b) The Czech Republic noted that it had provided a public hearing in its country and invited the public of the affected Party, but the latter had been dissatisfied with the quality of the consecutive interpretation;
- (c) Hungary noted that non-governmental organizations (NGOs) participated more actively than the general public;
- (d) The Netherlands reported that there were sometimes complaints about the procedure or about EIA documentation that had not been translated;
- (e) Norway reported that members of the public in the affected Party sometimes complained that they had not been notified;
- (f) Romania also reported problems because the EIA documentation had been made available in English rather than the language of the affected Party. National NGOs in Romania had also noted: poor interpretation during public hearings; only one in 20 participants was female and most participants were retired; too much information was provided in too short a period; there were few public comments; and there had been an emphasis on economic and mobility aspects.

f. Describe any difficulties that you have encountered during consultations, for example over timing, language and the need for additional information.

25. Several respondents described difficulties they had encountered during consultations:

- (a) Austria reported that as affected Party it had insisted on holding more than one meeting for consultations, despite the Party of origin insisting that the Convention provided for only one such meeting. Austria was of the opinion that it was the time frame rather than the number of meetings that determined the consultations;
- (b) Croatia reported difficulties arising when the EIA documentation had to be amended in response to comments from the affected Party, rather than involving the affected Party in scoping the EIA. Croatia also noted slow information and documentation flows;
- (c) The Czech Republic referred to the interpretation problems described above;
- (d) Estonia noted that there had not, on one occasion, been sufficient time for public hearings in an affected Party;
- (e) Kyrgyzstan referred to timing problems;
- (f) The Netherlands observed that additional translations were necessary to promote understanding of one's neighbours' procedures and administrative culture;
- (g) Norway noted incompatibilities between procedural timetables in the concerned Parties;
- (h) Romania indicated that relying on translations into English led to difficulties;
- (i) Sweden noted that time limits were sometimes a problem, especially if consultations were during the summer vacation period;
- (j) Switzerland referred to problems arising if the notification arrived later in the procedure;
- (k) The United Kingdom noted difficulties getting affected Parties to respond to requests to indicate whether they wished to participate.

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.

26. Respondents gave examples of the final decision:

- (a) Austria as an affected Party had received final decisions in Czech; all decisions were publicly available;
- (b) Bulgaria noted that the final decision contained the grounds for the decision and conditions on the design and construction stages;
- (c) Croatia reported that the form, content and language of the final decision were determined by national legislation and that the affected Party was responsible for communicating the final decision to its public;
- (d) The Czech Republic reported that the final decision contained, as determined by the legislation, the decision itself, its justification and the possibility for appeal. A copy was sent to the affected Party in Czech;
- (e) Denmark indicated that the decision was communicated to the affected Party in the same way as to the domestic authorities;
- (f) Estonia indicated that the content of the final decision was determined by the appropriate national legislation, and that it included conditions on the activity (such as mitigation measures and monitoring). For transboundary cases, the decision was to be translated into English;
- (g) In Finland, the content of the decision varied according to the permitting legislation, but it generally contained information on the project, its impacts, the decision itself, its justification and how the EIA was taken into account. The decision was in Finnish and, in some cases, Swedish. It was sent to the affected Party;
- (h) France reported also that the content of the final decision was determined by the appropriate national legislation, was in French and was sent in letter form to the affected Party;
- (i) Germany noted sending the whole decision, translated if possible, in paper and possible electronic forms;
- (j) Italy referred to one case where the affected Party took part in approving the final project on completion of the EIA procedure;
- (k) The Netherlands reported that the final decision was published in local newspapers in the affected Party, with more detailed information available from the authorities in the affected Party;
- (l) In Norway, the final decision was brief for projects under the planning and building act (and subject to municipal voting), but was often longer and more technical for projects under sectoral laws. The final decision was translated into English (or Russian) and sent to the affected Party, which was then responsible for distribution to those who commented on the EIA documentation;
- (m) Poland reported usually receiving the final decision in Polish, with the Ministry of Environment then asking the regional authorities to make it available to the public;
- (n) In Romania, the form and content of the final decision (environmental agreement) were determined by national legislation, including conditions and justification. The final decision was translated into English and then sent by post and e-mail to the affected Party through diplomatic channels;

- (o) Sweden noted sending the decision to the affected Party in Swedish and, if necessary, translated in part or in whole;
- (p) Switzerland indicated that a decision under the Convention had the same form as any other decision, but it also dealt with submissions from the affected Party;
- (q) Ukraine noted the issue of the final decision by the Ministry of Foreign Affairs, generally in English;
- (r) The United Kingdom indicated that the final decision, issued in English, included conditions on the commencement and operation of the activity.

h. Have you carried out post-project analyses and, if so, on what kinds of projects?

27. Though many respondents had no experience of carrying out post-project analyses, some were able to give examples:

- (a) Croatia reported monitoring programmes providing the basis for post-project analysis for two projects: offshore gas production and pipelines, and flood protection;
- (b) Estonia noted that a power plant renovation project was subject to monitoring, but pre-dated the 2005 domestic requirement to carry out an ex-post evaluation of EIA on the basis of monitoring results;
- (c) France expected several infrastructure projects to be subject to evaluation five years after construction had begun;
- (d) Romania had agreed to carry out a post-project analysis for a nuclear power plant project;
- (e) The United Kingdom reported that for marine dredging projects operators had to provide annual reports on post-project monitoring, with a substantial survey and report every five years.

i. Do you have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your experiences describing, for example, any bilateral agreements, institutional arrangements, and how practical matters are dealt with (contact points, translation, interpretation, transmission of documents, etc.).

28. Again, though many respondents had no experience of organizing transboundary EIA procedures for joint cross-border projects in the period, some were able to give examples:

- (a) Austria referred to the Brenner (or Brennero) Tunnel between it and Italy, with EIA occurring much earlier in Italy and on the basis of less-developed project documentation. Experts from the two Parties and the developer collaborated in drawing up the documentation and in the assessment, while the national procedural steps were taken separately by the two Parties. Italy added that a bilateral agreement had been prepared to address various practical arrangements of the project;
- (b) Denmark, Germany and Sweden noted the Baltic Sea gas pipeline (“NordStream”) which was the subject of a notification in November 2006;
- (c) The Netherlands referred to numerous joint cross-border projects (railways, motorways, waterways, oil and gas pipelines, power lines, industrial sites and nature

development sites) for which the application of its bilateral agreements had proved very useful;

(d) Norway reported plans for a meeting between its focal point and Finland's to discuss coordination regarding a cross-border road;

(e) Romania provided information on a bridge across the Danube River to Bulgaria. Bulgaria indicated that the EIA procedure had been completed in 2002, but for Romania it had began with a bilateral agreement in 2001 (which led to a joint committee and numerous joint working groups) and was still on going in December 2004 when a public hearing was held in Romania. This reflected a two-stage approach comprising a preliminary EIA according to Bulgarian legislation and a final EIA according to Romanian legislation;

(f) Switzerland referred to numerous such projects (hydropower, railways, roads, pipelines and power lines), noting the importance of good cooperation and seek to harmonize EIA and approval procedures.

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

29. Several respondents provided examples of good practices:

(a) Austria reported on the transboundary EIA of six interim storage facilities for spent nuclear fuel in Germany, noting that a common language had facilitated consultations and public participation;

(b) Bulgaria and Romania referred to the second bridge over the Danube River between the two countries (already the subject of a Convention fact sheet available on the Convention's website);

(c) Estonia noted that, though time frames were too tight, a case in 2002 with Finland as the affected Party had included good practice elements: early notification, informal contacts by e-mail and EIA documentation amended to take into account comments by Finland;

(d) Hungary reported that Romania had notified it in a timely fashion regarding the Rosia Montana goldmine project and that Romania had accepted suggestions on the scope of the EIA;

(e) Hungary also reported that Croatia had accepted a request for additional information on a hydropower plant and had accepted terms of reference for the EIA documentation addressing transboundary impacts. The technical and hydrological chapters of the documentation had been very well prepared;

(f) Italy referred again to the Brenner (Brennero) Tunnel;

(g) Switzerland reported that the procedure for Basel-Mulhouse Airport had gone well.

III. CO-OPERATION BETWEEN PARTIES DURING THE PERIOD

Question 51. Do you have any successful examples of how you have overcome difficulties arising from different legal systems in neighbouring countries?

30. Many Parties had not experienced difficulties arising from different legal systems in neighbouring countries. France noted that one of the main implications of implementing the Convention had been the need to understand applicable procedures in neighbouring countries. Lithuania noted the importance of bilateral agreements to overcome differences, whereas the Netherlands referred to the fact that the translation of legislation, dialogue and the exchange of expertise had increased knowledge and understanding between neighbouring States. Finland noted the importance of good relationships between points of contact. Denmark reported about the harmonization of procedures for the public hearing for a nuclear power plant in a neighbouring country, as well as harmonization of procedures for the above-mentioned NordStream project. Germany noted that difficulties had to be solved case by case, referring also to the negotiation of a bilateral agreement. Switzerland indicated that trilateral discussion of guidelines, and joint EIA procedures, both promoted understanding and resolution of problems.

IV. EXPERIENCE IN USING THE GUIDANCE DURING THE PERIOD

Question 52. Have you used in practice the following guidance, recently adopted by the Meeting of the Parties and available online? Describe your experience of using these guidance documents and how they might be improved or supplemented.

a. Guidance on public participation in EIA in a transboundary context

31. Some countries had used the guidance on public participation in transboundary EIA (Armenia and France, for regulations only; Croatia; Finland; Kyrgyzstan; Latvia, for notification only; Lithuania; Moldova). Germany had distributed the guidance widely. Others had not used the guidance (Austria; Azerbaijan; Bulgaria; Czech Republic; Denmark; Netherlands; Norway; Slovakia; Slovenia; Sweden; The former Yugoslav Republic of Macedonia; Ukraine; United Kingdom). Italy noted the primacy of national legislation.

b. Guidance on subregional cooperation

32. Several countries had used the guidance on subregional cooperation (Bulgaria, partially; Croatia; France, for regulations only; Kyrgyzstan; Moldova). Armenia indicated its use in defining the topic of a subregional seminar. Germany again had distributed the guidance widely. Switzerland noted that it had supported the elaboration of this guidance. Others had not used the guidance (Austria, Azerbaijan, Czech Republic, Denmark, Finland, Latvia, Lithuania, Netherlands, Norway, Slovakia, Slovenia, Sweden, The former Yugoslav Republic of Macedonia, Ukraine, United Kingdom).

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

33. More countries reported use in practice of the guidance on good practice and on bilateral and multilateral agreements (Armenia, for regulations only; Austria (“very useful”); Bulgaria; Croatia; Estonia; Finland; France; Germany (“positive”); Hungary, extensively; Latvia, for

notification only; Lithuania; Moldova; Norway (“useful”); Poland (“very useful”); Romania; Sweden; Switzerland). Germany reported translation and wide distribution. Others had not used the guidance (Azerbaijan, Czech Republic, Denmark, Kyrgyzstan, Netherlands, Slovakia, Slovenia, The former Yugoslav Republic of Macedonia, Ukraine, United Kingdom).

V. CLARITY OF THE CONVENTION

Question 53. Have you 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 I 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 you encounter when actually applying the Convention.

34. Difficulties encountered when implementing the procedure defined in the Convention included:

- (a) The time schedule was tight (Estonia) or the overall procedure was long (Croatia, Romania);
- (b) The use of diplomatic channels caused substantial delays, so the use of contact points was vital (Hungary);
- (c) It was difficult to determine a likely significant adverse transboundary impact, noting the Bystroe Canal Project in Ukraine (Romania);
- (d) There were difficulties with translation (Ukraine) and time frames, which needed to be addressed in bilateral agreements (Austria, Lithuania).

35. Regarding the clarity of the Convention’s provisions, France noted that the Convention’s requirements were not always clear as they mixed obligations with recommendations; Switzerland similarly noted a large margin for interpretation. The meaning of the word “likely” was not clear to Hungary, whereas for Kyrgyzstan the terms “major” (Appendix I), “large” (Appendices I and III) and “close to an international frontier” (Appendix III) were unclear. Similarly, others sought guidance on post-project analysis (Czech Republic) and Article 6.3 (Finland). Respondents went on to describe what approaches strengthened their implementation of the Convention:

- (a) Obligations and procedures in national legislation (Bulgaria, Netherlands, Poland, Slovakia);
- (b) Independent expert opinion on data in the notification and EIA documentation (Czech Republic);
- (c) Bilateral agreements to govern practical application (Austria, Croatia, Lithuania, Netherlands, Poland, Slovakia);
- (d) Experience in transboundary EIA (Austria, Croatia);
- (e) The delegation of responsibility to local authorities with first hand information, though this was also recognized as a weakness when it had led to the late identification of transboundary cases (Norway);
- (f) The training of local authorities (Croatia).

VI. AWARENESS OF THE CONVENTION

Question 54. Have you undertaken activities to promote awareness of the Convention among your stakeholders (e.g. the public, local authorities, consultants and experts, academics, investors)? If so, describe them.

36. Respondents reported on such activities:

- (a) Events (information days, seminars, workshops) addressing the Convention or transboundary EIA (Cyprus, Estonia, Finland, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Poland, Slovakia, The former Yugoslav Republic of Macedonia, United Kingdom);
- (b) Regular or frequent discussions with and informing of authorities on implementation of the Convention (Austria, Germany, Switzerland);
- (c) Publication of the Convention in the national collection of international treaties (Czech Republic);
- (d) Distribution of guidance addressing transboundary EIA (Armenia, Croatia, Germany, Kyrgyzstan, Poland), including with respect to public participation (Romania, in collaboration with NGOs), as well as the Convention's guidance on its practical application translated into the national language (Austria, Estonia, Hungary);
- (e) Support of activities by a national EIA society (Germany);
- (f) Raising awareness of a bilateral agreement (Netherlands);
- (g) Leaflets on EIA, including transboundary EIA (Cyprus);
- (h) Information about transboundary EIA cases on a website (Austria, Bulgaria, Croatia);
- (i) Information about the Convention and its application (Austria, Bulgaria, Estonia, Germany, Hungary, Kyrgyzstan, Lithuania, Norway, Slovakia) or about transboundary EIA (Germany, United Kingdom) on a website;
- (j) An NGO project on increasing awareness and participation in the Convention in industrial zones close to borders (Armenia) and, similarly, a meeting with NGOs to facilitate their participation (Azerbaijan);
- (k) A project to promote application with a neighbouring State (Austria).

Question 55. Do you see a need to improve the application of the Convention in your country and, if so, how do you intend to do so? What relevant legal or administrative developments are proposed or ongoing?

37. Respondents indicated a variety of legal and administrative developments that were proposed or ongoing:

- (a) Continued development of (transboundary) EIA legislation (Armenia, Azerbaijan, Croatia, Czech Republic) or public participation and access to justice (Germany);
- (b) Possible ratification of the amendments to the Convention (Ukraine);
- (c) More training of (local) authorities to identify potential transboundary impacts and to improve awareness of the Convention (Croatia, Estonia);

- (d) Broader distribution of tasks and more resources as the number of transboundary EIA cases increases (Hungary);
- (e) Preparation of bilateral agreements (Azerbaijan, Lithuania, Moldova);
- (f) Preparation of guidance on EIA of transboundary projects (Finland);
- (g) Preparation of guidance on transboundary EIA procedures (Kazakhstan, Norway);
- (h) Raising awareness of public participation in EIA (Romania);
- (i) Systematic recording of transboundary EIA cases (Switzerland);
- (j) Greater cooperation with other neighbouring States (The former Yugoslav Republic of Macedonia).

38. Other respondents (Bulgaria, Cyprus, Liechtenstein, Netherlands, Poland, Slovakia, Slovenia, United Kingdom) reported that no such improvements were required, whereas France and Latvia indicated that more experience was needed before necessary developments could have been identified.

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