

**Annex I**

**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

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## **Introduction**

1. This document presents three key elements of the “Review of Implementation 2003”: the introduction, summary and conclusions. The complete “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 Review, a description of its outcome and a summary of the conclusions drawn.

### **II. MANDATE AND AIM OF THE REVIEW**

#### **A. Review**

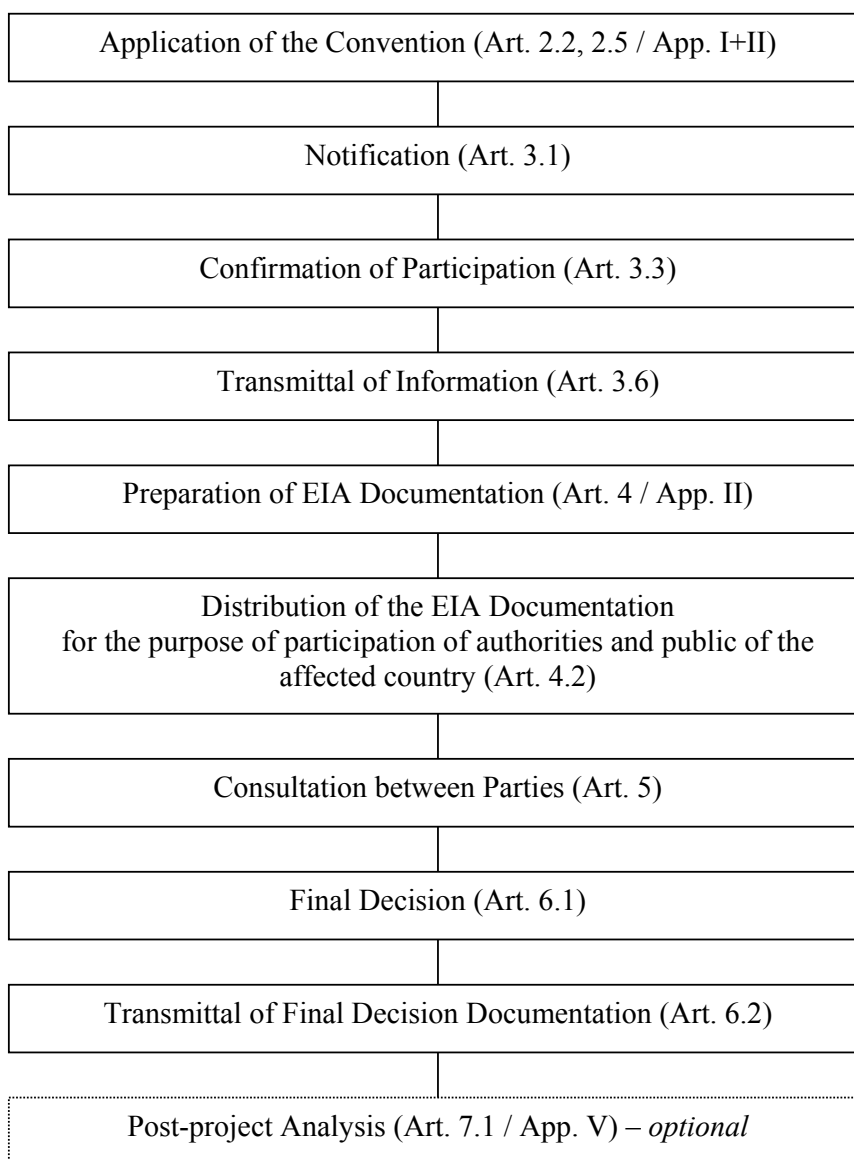
7. The Meeting of the Parties decided at its second meeting in Sofia, 26-27 February 1991, to adopt a work plan (decision II/11) that included an activity on ‘Reviews of the implementation of the Convention’. The objective of the activity was that Parties and non-Parties submit information on recent 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 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.<sup>1</sup> The objective was to improve the questionnaire so that it provides information on how the obligations of the Convention

have been compiled 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,<sup>2</sup> in mid-2003. The most recent response is referred to in those cases where a Party submitted a 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:<sup>3</sup> Armenia; Austria; Belgium<sup>4</sup>; Bulgaria; Canada; Croatia; Czech Republic; Denmark<sup>5</sup>; 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 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 review. In addition, their original, unedited responses are annexed to the 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 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:<sup>6</sup> 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.

### **C. Structure of the review**

24. After this introductory chapter, a summary is provided of all the responses followed by some conclusions. The remainder of the 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 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 review. All the group summaries have been brought together in the summary below.



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 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.

#### **Summary**

31. This section of the review brings together the summaries from the remainder of the review.

### **OVERVIEW OF DOMESTIC IMPLEMENTATION**

32. Only limited information on measures taken and responsibility for implementation was supplied, thus precluding the drawing of any conclusions from this part of the questionnaire.

#### **I. APPLICATION OF THE CONVENTION**

33. To determine whether an activity falls within the scope of Appendix I to the Espoo Convention, respondents generally described a procedure that combined a review against a list, either a direct copy of Appendix I or a more extensive list, and a case-by-case examination using expert judgement. Hungary employed a list of activities combined with a set of quantitative thresholds, thus removing the need for expert judgement.

34. To determine whether a change to an Appendix I activity is "major", respondents again identified a case-by-case examination relying on expert judgement and, in certain instances, consultation of authorities (Bulgaria, Italy) or interested parties (Kyrgyzstan). For some respondents, this examination was aided by guidelines and/or criteria, usually qualitative, but in certain Parties quantitative as well (Austria, Czech Republic, Germany). Again, Hungary employed a complete set of quantitative thresholds, thus removing the need for expert judgement.

35. To determine whether an activity not listed in Appendix I should be treated as if it were so listed, respondents generally reported use of a case-by-case examination relying on expert judgement. Many respondents also noted that their national lists of activities were more extensive than Appendix I to the Convention (Austria, Canada, Finland, Germany, Italy, Netherlands, Poland, Switzerland, United Kingdom). The Republic of Moldova noted the possibility for its Central Environmental Department to extend the list of activity types. Again, Hungary provided an exception in that only those activities in its extensive activity lists were subject to Environmental Impact Assessment (EIA); a bilateral or multilateral agreement might have been used to overcome this restriction.

36. To decide whether a change identified in pursuance of Article 2, paragraph 5, (i.e. to an activity not listed in Appendix I, but treated as if it were so listed) is considered to be a “major” change, respondents generally identified a case-by-case examination relying on expert judgement, supported by the use of quantitative or, more commonly, qualitative criteria (Austria, Bulgaria, Hungary, Latvia, Netherlands). Bulgaria, again, reported providing opportunities for consultation of authorities. Once again, Hungary provided an exception by employing a complete set of quantitative thresholds, thus removing the need for expert judgement.

37. There was greater divergence among the respondents in the procedures applied to determine the significance of transboundary impacts of activities listed in Appendix I. Generally, a case-by-case examination was made using expert judgement, guidelines (Canada, Switzerland) and, in a number of countries, qualitative or quantitative (Latvia) criteria. Switzerland also had a particular interest in involving potentially affected Parties at this stage; in addition, it has a scoping procedure. In the United Kingdom, the consultations were quite wide, though only domestic, extending to non-governmental organizations. The Czech Republic did not apply a significance test; any potential transboundary impact implied the carrying-out of a transboundary EIA.

38. Regarding procedures applied to decide whether an activity not listed in Appendix I, or a major change to such an activity, is considered to have a “significant” adverse transboundary impact, about half of the respondents simply referred to the answer to the previous question. Generally, a case-by-case examination was made using expert judgement, guidelines (Canada, Switzerland, United Kingdom) and, in a number of countries, qualitative or quantitative (Latvia) criteria. Again, Switzerland also had a particular interest in involving potentially affected Parties at this stage. As in the case of listed activities, the Czech Republic did not apply a significance test; any potential transboundary impact implied the carrying-out of a transboundary EIA. Some respondents also noted that their national lists of activities were more extensive than Appendix I to the Convention (Hungary, Italy, Switzerland, United Kingdom). In Hungary only those activities in its extensive activity lists were subject to EIA; a bilateral or multilateral agreement might have been used to overcome this restriction, as might a request from a potentially affected Party.

## II. NOTIFICATION

### A. Questions to the Party in the role of ‘Party of origin’

39. It appears that some of the respondents replied to questions in this section in the role of affected Party, or with respect to domestic EIA procedures, rather than in the role of Party of origin in a transboundary EIA procedure.

40. Most respondents in their role of Party of origin reported that notification was the responsibility of the Espoo ‘point of contact’ or the environment ministry or national environment agency (or similar), the two often being the same in practice. In France, it was the point of contact in the Ministry of Foreign Affairs for national level projects but the county (*département*) prefect for local ones. In the United Kingdom, the Secretary of State for Environment was responsible for notification (whereas the point of contact is in the Office of the Deputy Prime Minister). In Germany, Kyrgyzstan, the Netherlands, Norway and Switzerland, it was the competent authority that was responsible for the notification though, in the case of the Netherlands, the notification was copied to the point of contact in the environment ministry. No respondent indicated that they did not use the points of contact as decided at the first meeting of the Parties. Apart from the Netherlands, all respondents indicated that the body responsible for notification was permanent. Respondents provided additional information on how the notification was organized.

41. Problems reported by the respondents in complying with the requirements of the Convention (Art. 3, para. 2), included describing “the nature of the possible decision” (Bulgaria), timing (Kyrgyzstan, Netherlands), translation (Netherlands), and the point of contact’s level of awareness of the procedure and willingness to accept a notification where a dependent territory was not recognized as such by the affected Party (United Kingdom).

42. Most respondents noted that, in practice, information to supplement that required by the Convention (Art. 3, para. 2) was included in notifications, sometimes in reply to a request from the affected Party (Croatia, France), and sometimes because of a legal requirement (Czech Republic, Poland).

43. Seven Parties reported use of the proposed guidelines in the report of the first meeting of the Parties in Oslo (ECE/MP.EIA/2, decision I/4), but five reported that they did not and two others (Hungary, United Kingdom) noted partial use of the guidelines. Norway reported use of a national format, whereas others used a letter (Estonia, Italy, Lithuania); the Czech Republic and Finland used both a form and a letter.

44. The Convention (in Art. 3, para. 5 (a) and (b)) requires submission of additional information on receipt of a positive response from an affected Party indicating a desire to participate. Certain respondents indicated that information was indeed only sent at this stage (Croatia, Estonia), but the majority said that it was sent with the notification, whereas Poland sent part with the notification (para. 5(b)) and part in response to the request (para. 5(a)). Switzerland and the United Kingdom continued to provide information after notification without waiting for a response.

45. In determining when to send the notification to the affected Party, respondents indicated that this had to occur no later than notifying their own public (Austria, Czech Republic, Finland) or consultees (Sweden, Norway), or no later than when the development notice was issued (Italy, Netherlands, United Kingdom) or a decision taken to hold a public inquiry (France). Switzerland was seeking to notify the affected Party at the scoping stage, whereas in Hungary and Slovakia the notification was sent on receipt of the development request. In Bulgaria, the proponent notified the public at the same time as the competent authority, which then decided whether there was a need for a transboundary EIA procedure and notified the affected Party accordingly. In Canada, Croatia, Germany and Poland, the likelihood of a significant transboundary impact was first determined. In practice, many of the above may have been equivalent.

46. Half of the respondents indicated that their national EIA legislation required a formal scoping process with mandatory public participation. Two Parties without mandatory public participation in the scoping process notified the affected Party once the transboundary impact had been identified (Croatia, Poland). Others reported not having a mandatory scoping process (France, Germany, Italy, United Kingdom), whereas Switzerland said that it did notify the affected Party during the scoping stage.

47. Respondents reported various responses to notifications, but there was generally a lack of experience. Experiences were generally reported as 'good' or 'effective' (Estonia, Finland, Hungary, Slovakia, Sweden); the Netherlands noted the importance of informal contacts. The United Kingdom indicated that responses were usually only received in response to reminders.

48. The time frame for a response was reported as being typically between one and two months by a number of respondents (Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Sweden), but slightly shorter in the Netherlands and the United Kingdom. This time frame was derived from national EIA procedures (Czech Republic, Estonia, Finland, France, Hungary, Switzerland), from a combination of national procedures and bilateral agreements (Germany, Italy), or from national procedures adjusted to allow for procedures in the affected Party (Slovakia, United Kingdom). Bulgaria reported a complex set of criteria for determining the time frame. Kyrgyzstan made reference to the project proponent's deadlines.

49. Responses had always or generally been received within the time frame according to a number of respondents (Croatia, Estonia, Finland, France, Hungary, Italy, Slovakia, Sweden). If responses were not received in time, respondents to the questionnaire indicated that a reminder was sent (Croatia, France, Sweden, United Kingdom) and more time allowed (Finland, Italy), but that ultimately the Party of origin might have decided to continue without the participation of the affected Party (Croatia, France, Germany, Kyrgyzstan, United Kingdom). Delays in responses are also likely to result in delays in the entire approval procedure (Hungary, Netherlands, United Kingdom). If an affected Party requested extension of the time frame, most respondents indicated that it was granted, if possible and reasonable.

50. Only the United Kingdom reported problems with the notification procedure, caused by delays in response and by responses not being provided in English.

51. Fewer than half of the respondents indicated that they normally requested information from the affected Parties. Certain respondents reported that they requested general information (Bulgaria, Czech Republic, Switzerland), whereas Hungary requested such information according a legal provision. By contrast, France noted that this was the responsibility of the project proponent.

52. Responsibility for requesting information was reported by approximately half of the respondents as being with the environment ministry and by the other half as being with the competent authority. In Kyrgyzstan and Italy, it was the project proponent that was responsible. The requests were reportedly sent to the points of contact (Bulgaria, Croatia, Hungary, Italy, Slovakia, Switzerland) or the competent authority (Estonia, Kyrgyzstan); other respondents reported a flexible approach, with more direct contacts being made where possible.

53. The kind of information normally requested was reportedly quite varied, for example it was either general (Czech Republic), defined by law (Hungary) or specific to the case

(Germany, Kyrgyzstan, United Kingdom), or it related to potential impacts (Bulgaria, Slovakia, Switzerland), the affected population (Bulgaria), publicity requirements (United Kingdom) or the state of the environment (Netherlands). The Czech Republic, Slovakia and the Netherlands reported that the information provided was generally sufficient, whereas Croatia said it was “not exactly”. The United Kingdom noted that a development decision could not have been made unless the EIA documentation was sufficient.

54. A response to a request for information from the affected Party has to be provided “promptly”. Respondents varied significantly in their interpretation of “promptly”: as soon as possible (Estonia, Germany), as defined in the request (Bulgaria, United Kingdom), according to agreements (Slovakia) but flexibly (Italy), as agreed by the points of contact (Croatia), two months when the competent authority was a federal one (Switzerland), or at the same time as the affected Party indicated its wish to participate in the EIA procedure (Hungary).

55. Only Croatia reported difficulties in requesting information, with an affected Party unable to submit appropriate data because the data were missing or belonged to someone who was not willing to provide them. (However, both Bulgaria and the United Kingdom noted problems as an affected Party with meeting tight deadlines set in a request that had been delayed in its arrival.)

56. About half of the respondents indicated that it was the affected Party, not the Party of origin, that identified the public in the affected area. Certain respondents indicated that this was supplemented through dialogue between the concerned Parties (Bulgaria, Canada, Germany, United Kingdom). Similarly, responsibility for transferring the notification to the public in the affected Party was reported as being the responsibility of the authorities in the affected Party by most respondents. Certain respondents also indicated that the project proponent (Croatia) or project joint body (Italy) were involved in this matter, whereas Germany suggested that, as Party of origin, it would have used its best efforts to support the notification of the public in the affected Party. Some respondents (Czech Republic, Netherlands, Switzerland) noted that, though it was for the affected Party to transfer the notification to the public, it was the Party of origin’s responsibility to prepare the notification. Finland noted that a regional environmental centre had on one occasion both identified the public in the affected Party and issued the notification to the local authority there.

57. As to how the public was notified in the affected Party, several respondents indicated once again that this was the responsibility of the affected Party (whereas others answered in the role of the affected Party). Similarly, most respondents indicated that the authorities in the affected Party were not only consulted on, but were also responsible for, these issues.

58. Again, several respondents indicated that it was for the affected Party to determine the content of the public notification (Finland, France, Germany). In addition, respondents indicated that certain information should have been included (Bulgaria, Croatia, Czech Republic, Slovakia) in accordance with their domestic law (Germany, Hungary, Norway), bilateral agreements (Italy) or decision I/4 of the Meeting of the Parties (Canada). Eight of twelve respondents indicated that the notification to the public in the affected Party had the same content as the notification to their own public; three of the other four indicated that it might be the same but that it was then for the affected Party to decide the exact content of the notification to its public.

59. Once again, several respondents indicated that the timing of the notification to the public in the affected Party was for the affected Party to decide, though the Netherlands and Switzerland noted that they aimed to assure notification at the same time as their own public

was informed. Croatia reported that the public in the affected Party was notified after the domestic public inquiry had been completed.

60. Only Kyrgyzstan reported on difficulties experienced by the Party of origin in the organization of the notification to the public in the affected Party, noting organizational problems and a lack of procedures.

**B. Questions to the Party in the role of ‘affected Party’**

61. It would appear that some of the respondents replied to questions in this section in the role of Party of origin rather than in the role of affected Party in a transboundary EIA procedure.

62. In the role of affected Party, most respondents indicated that the (federal) environment ministry was responsible for the reception and distribution of the notification. France indicated that the Ministry of Foreign Affairs received the notification; Canada indicated that both ministries plus the Canadian Environmental Assessment Agency received the notifications. In Sweden, it was the Swedish Environmental Protection Agency, while in the United Kingdom it was the point of contact in the Office of the Deputy Prime Minister. In the Netherlands, provincial points of contact generally received the notifications. Distribution was reportedly much more varied, but recipients included the public (Bulgaria, Hungary), NGOs (Austria, Finland), provincial or local government or authorities (Austria, Canada, Germany, Hungary, Italy, Sweden, Switzerland, United Kingdom), federal or national ministries, authorities or agencies (Austria, Canada, Finland, Hungary, Sweden, United Kingdom), and regional environmental centres (Finland).

63. The content of the notifications received was reportedly adequate or good for some respondents (Croatia, Czech Republic, Norway, Slovakia, Switzerland), variable or inadequate for others (Austria, Finland, Poland, Sweden, United Kingdom).

64. The content and format of the notification received was reported by some respondents as being consistent with decision I/4 (Bulgaria, Croatia, Czech Republic, Finland, France, Italy, Norway) and giving adequate information for a decision (Croatia, Czech Republic, France, Hungary, Italy, Norway, United Kingdom). Others indicated that they were not consistent with the decision (Austria, Hungary, Poland, Slovakia), did not necessarily fully reflect decision I/4 (Switzerland) or were inadequate (Austria).

65. Regarding timing of the notification to the affected Party with respect to notification of the Party of origin’s public, either variable (Austria, Hungary, Netherlands, Sweden, United Kingdom) or good (Italy, Switzerland) experience was reported, though this experience was very limited. Poland and the United Kingdom remarked that it was difficult to know what stage the domestic EIA procedure had reached.

66. Respondents generally indicated a wish to participate in transboundary EIA procedures notified to them (Austria, Finland, Italy, Netherlands, Norway, Poland, Slovakia, Sweden). Bulgaria and Poland reported application of the criteria in Appendix III to the Convention to determine whether they wished to participate. In the Czech Republic, the views of relevant authorities were sought. Several respondents reportedly made a judgement on the likely significance of any transboundary impact (Hungary, Latvia, Lithuania, Netherlands, Norway, Poland, United Kingdom). The Netherlands also took into account the likely level of public interest.

67. The time available for a response was reported as being adequate (Austria, Croatia, Latvia, Norway, Switzerland) or too short (Finland, France, Netherlands, United Kingdom). Generally, respondents indicated flexibility with respect to a failure to comply with a time frame. All respondents reported that requests for deadline extensions were responded to positively.

68. Parties reported a number of problems experienced in organizing the notification procedure, including:

- Late notification (Bulgaria, Netherlands);
- Notification in the language of the Party of origin (Austria, Poland);
- Inadequate information in the notification (Bulgaria, Poland);
- Non-compliance with Espoo Convention's requirements (Poland);
- Difficulty understanding the Party of origin's EIA procedure (Sweden); and
- Problems with domestic procedures for processing notifications (France).

69. Those few respondents providing information on their experience of receiving requests for information reported that such requests had been responded to positively. No problems were reported.

70. Such requests were reported as being received by permanent bodies: the Espoo point of contact (Austria, Canada, Croatia, Finland, Poland, Sweden, Switzerland, United Kingdom), the provincial government (Austria, Switzerland), the Minister of Foreign Affairs (Canada), or the environment ministry (Bulgaria, Canada, Czech Republic, Hungary, Italy, Lithuania, Poland, Slovakia) or agency (Canada, Sweden). (Certain of these bodies may be equivalent in a Party.)

71. "Reasonably obtainable" information was interpreted by respondents in two main ways: easily obtainable, publicly available, existing, non-confidential information (Bulgaria, Croatia, Hungary, Netherlands, Poland, Slovakia, Switzerland, United Kingdom); or information that permits the assessment of transboundary impacts (Hungary). Kyrgyzstan made reference to its legislation on freedom of access to information. "Promptly" providing the information was interpreted as meaning within the time frame specified by or agreed with the Party of origin (Bulgaria, Finland, Switzerland, United Kingdom), or allowing a reasonable period for the collection of the requested information (Bulgaria, Canada, France, Hungary, Netherlands, Poland).

72. Public notification was reported as being the responsibility of various permanent bodies (Kyrgyzstan excepted): the Espoo point of contact (Finland, United Kingdom), the provincial or local government (Austria, Croatia, France, Hungary, Kyrgyzstan, Poland), the environment minister (Bulgaria, Czech Republic, Hungary, Norway, Slovakia) or agency (Canada, Sweden), the Minister of Foreign Affairs (Canada), the competent authority (Canada, Germany, Switzerland), the Party of origin (Netherlands) or the project proponent (Italy, Kyrgyzstan).

73. Various means were reported for publicizing the notification, including the Internet (eight respondents), public notice boards (Czech Republic, Hungary, Poland, Slovakia, Sweden), local or national newspapers (13 respondents), the official gazette (Croatia, Switzerland), radio (Czech Republic, Poland, Slovakia) or by direct contact with NGOs (Finland) or other stakeholders (Norway, Poland).

74. Respondents reported few difficulties. Bulgaria reported complaints about the limited distribution of the notification. Hungary commented on the difficulty of maintaining public interest in the lengthy Espoo procedure.

### III. PREPARATION OF THE EIA DOCUMENTATION

#### A. Questions to the Party in the role of ‘Party of origin’

75. Regarding the level at which the Party of origin consulted the affected Party in order to exchange information for the EIA documentation, respondents recorded that it was the responsibility of the EIA consultants or project proponent (France, Sweden) or of the environment ministry or competent authority (Poland), or that it was done through the point of contact in the affected Party (Canada, Croatia, Czech Republic, Hungary, United Kingdom).

76. Most respondents indicated that they provided all of the EIA documentation to the affected Party. Bulgaria and Canada indicated that they did so subject to confidentiality constraints, whereas Finland sought the advice of the affected Party. France noted that it also sent non-EIA project information.

77. Respondents described various means of identifying “reasonable alternatives” (App. II, subpara. (b)), with some confusion as to whether the question asked for a definition of “reasonable alternatives”, a process for identifying potential “reasonable alternatives” or a process for determining which candidate alternatives were “reasonable”. Taking the second of these interpretations, Estonia reported that EIA experts identified alternatives in consultation with the authorities, Finland relied on its EIA Act, whereas in Sweden the developer had to define alternative sites and designs.

78. “The environment” likely to be affected was identified by the Parties in different ways: according to the definition in the Convention (Armenia, Netherlands); by the EIA experts or project proponent (Croatia, Estonia, France, Switzerland, United Kingdom); in cooperation with the affected Party (Austria); and according to environmental legislation (Finland, Hungary, Italy, Kyrgyzstan, Sweden).

79. With regard to difficulties experienced in compiling the information described in Article 4, paragraph 1, and Appendix II, Croatia noted a lack of criteria, whereas Bulgaria reported a lack of information on the proposed activity or its potential transboundary impact.

80. Several respondents reported the transfer and reception of comments as being organized between the Espoo points of contact (Bulgaria, Canada, Croatia, Czech Republic, Finland). Other respondents indicated that comments were sent, either directly or via the point of contact, to the competent authority (France, Germany, Hungary, Netherlands, Switzerland) and integrated into the EIA documentation (Estonia). In Kyrgyzstan the comments are sent to the Environment Ministry, either directly or via the project proponent. The United Kingdom noted that it would have accepted comments directly from the public and authorities in an affected Party. Indeed, several Parties indicated a preference for comments being sent directly to the competent authority rather than via the point of contact (France, Germany, Netherlands, Switzerland). Only in Armenia was the recipient of comments not a permanent body.

81. The requirement to send comments “within a reasonable time before the final decision” was reported by the respondents as being interpreted as agreed by the points of contact (Croatia), according to the domestic EIA regulations (Bulgaria, Czech Republic, Estonia, Finland, Germany, Hungary, Kyrgyzstan, Netherlands, Norway, United Kingdom), corresponding to the period for domestic consultation (Canada, France, Switzerland) or according to bilateral agreements and the laws of the concerned Parties (Italy, Slovakia). The United Kingdom reported additional flexibility for transboundary EIAs. Several respondents



noted that the specified time frame was sometimes or often exceeded (Croatia, Finland, Netherlands).

82. Respondents generally indicated late comments were sometimes taken into account (Croatia, Czech Republic, Germany, Hungary, Netherlands, United Kingdom), though some indicated that the deadline for comments would expire (Kyrgyzstan, Switzerland). France, Hungary, Italy and the United Kingdom indicated that an extension was sometimes allowed. Moreover, if an affected Party made a reasonable request for an extension, all respondents indicated that they responded positively, if possible.

83. The comments received from an affected Party were used in different ways: either the EIA documentation was amended to take them into account, either by the Environment Ministry (Czech Republic) or by the project proponent (Estonia); or, more commonly, the comments were taken into account in the decision-making process (Finland, France, Germany, Hungary, Italy, Kyrgyzstan, Netherlands, Norway, Slovakia, Switzerland, United Kingdom).

#### **B. Questions to the Party in the role of ‘affected Party’**

84. The content of the EIA documentation was reported by some respondents as sometimes being inadequate (Austria, Hungary, Netherlands, Poland, United Kingdom), with the affected Party having to request additional information (Bulgaria, Croatia, Netherlands). Other Parties reported that the documentation was adequate (Czech Republic, France, Norway, Slovakia, Sweden).

85. Respondents reported having made various comments on the EIA documentation sent to them, including regarding impact prediction methodology (Finland, United Kingdom), quantity and quality of the information (Austria, Poland), project description (Finland), consideration of alternatives (Bulgaria, Finland), potential transboundary impacts (Bulgaria, Hungary, Poland), adequacy of mitigation measures (Bulgaria, Finland, Hungary), and monitoring and post-project analysis (Bulgaria, Finland). France also reported commenting at a broader level, objecting to a category of projects being proposed.

86. Respondents reported the reception and transfer of comments to the Party of origin as being the responsibility of a permanent body: the point of contact (Austria, Croatia, Finland, France, Italy, Sweden, United Kingdom), the environment minister (Bulgaria, Czech Republic, Estonia, Hungary, Italy, Norway, Poland, Slovakia) or agency (Canada, Sweden), the minister of foreign affairs (Canada, France, United Kingdom), the competent authority (Canada, Germany, Kyrgyzstan) or local authorities (Kyrgyzstan). (Certain of these bodies may be equivalent in a Party.) In the Netherlands and Switzerland, the public sent comments directly to the Party of origin.

87. In determining a “reasonable time before the final decision” allowed for comments, affected Parties reported compliance with the Party of origin’s legislation or requirements (Austria, Bulgaria, Czech Republic, France, Netherlands, Switzerland, United Kingdom) or bilateral agreements, whether formal or informal (Armenia, Bulgaria, Italy), or both bilateral agreements and the legislation of the concerned Parties (Slovakia). Others made reference to practical domestic requirements (Hungary, Poland). All nine respondents that had requested an extension of a deadline indicated that their request had been accepted.

88. Most respondents indicated that the Party of origin had taken into account their comments as affected Party (Austria, Croatia, Finland, France, Netherlands, Sweden). The

Netherlands noted, however, that it had had to encourage a Party of origin to take account of some comments. Bulgaria and Poland reported a lack of feedback on how their comments were taken into account, while the United Kingdom recorded a lack of response to certain comments.

#### IV. TRANSFER AND DISTRIBUTION OF THE EIA DOCUMENTATION

##### A. Questions to the Party in the role of ‘Party of origin’

89. As Party of origin, respondents indicated different bodies responsible for the transfer of the EIA documentation: the competent authority (Austria, Canada, France, Germany, Netherlands, Norway, Switzerland), the point of contact (Austria, Croatia, Finland, Sweden, United Kingdom), the environment minister (Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Italy, Lithuania, Poland, Slovakia) or agency (Canada, Sweden), the project proponent (Kyrgyzstan) or the Minister of Foreign Affairs (Canada). Only Kyrgyzstan and the Netherlands indicated that this body was not permanent. The actual transfer was variously undertaken by post (13 respondents), electronic mail (8 respondents) or fax (Finland), or person-to-person at a meeting (Italy, Kyrgyzstan). Slovakia and Sweden also reported posting of documentation on an Internet web site.

90. Finland reported technical difficulties with the transfer, the Netherlands timing problems, whereas the United Kingdom indicated that points of contact in ministries of foreign affairs were not always familiar with the Espoo Convention’s requirements.

91. Responsibility for distribution of the EIA documentation in the affected Party was variously attributed but generally it was reported that the affected Party was responsible, with some respondents being more specific in terms of the environment ministry or the point of contact in the affected Party. Kyrgyzstan reported that the project proponent was responsible. The Netherlands reported a more direct role for its competent authority (as Party of origin) in distribution, assisted by the point of contact in the affected Party. Again, only Kyrgyzstan and the Netherlands indicated that the responsible body was not permanent. Italy and Switzerland noted that distribution within the affected Party was according to that Party’s legislation.

92. The question regarding to whom the EIA documentation was distributed in the affected Party yielded responses that cannot be meaningfully summarized or compared. Respondents answered this question in different ways: (a) listing recipients of the EIA documentation received directly from the Party of origin, e.g. the point of contact; or (b) listing recipients of the EIA documentation received either directly or indirectly via another body, e.g. the Party of origin sent the documentation to the point of contact in the affected Party, who then sent it on to the local environmental authorities. In addition, respondents answered according to (a) their intent, (b) their legislation, or (c) their experience, or lack of it.

93. Sweden and the United Kingdom reported difficulties identifying appropriate contact points in regional government or competent in Espoo matters, respectively.

##### B. Questions to the Party in the role of ‘affected Party’

94. Similarly to previous questions, the body responsible for receiving the EIA documentation in an affected Party was variously reported as being the point of contact (Austria, Canada, Croatia, Finland, Germany, Netherlands, Sweden, Switzerland, United Kingdom), the environment ministry (Bulgaria, Czech Republic, Estonia, Germany, Hungary,

Italy, Lithuania, Norway, Poland, Slovakia) or agency (Canada, Sweden), the competent authority (Austria, Canada, Germany, Kyrgyzstan) or the Ministry of Foreign Affairs (Canada). (In certain countries, two of these bodies may be one and the same.) In all cases, the body was reportedly permanent.

95. The documentation was received in paper and electronic forms (Austria, Hungary, United Kingdom), by post (11 respondents), electronic mail (Canada, Czech Republic, Finland, Italy, Slovakia) or fax (Finland), posted on the Internet (Slovakia) or directly at meetings (Italy).

96. Difficulties reported with the transfer included:

- Receipt of a single hard copy (no electronic version) making necessary scanning of the documentation for inclusion on an Internet web site (Bulgaria);
- A tight timetable (Czech Republic);
- The documentation being in the language of the Party of origin only (Poland); and
- Documentation not being sent or copied to the point of contact (United Kingdom).

97. The body responsible for distributing the EIA documentation in an affected Party was variously reported as being the point of contact (Austria, Croatia, Finland, Netherlands, Sweden, United Kingdom), the environment ministry (Bulgaria, Czech Republic, Estonia, Hungary, Italy, Norway, Poland, Slovakia) or agency (Canada, Sweden), the competent authority (Austria, Germany, Switzerland), the project proponent (Kyrgyzstan) or the Ministry of Foreign Affairs (Canada). (Certain of these bodies may be equivalent in a Party.) Only in Kyrgyzstan was the body not reportedly permanent.

98. The question regarding to whom the EIA documentation was distributed in the affected Party yielded responses that again cannot be meaningfully summarized or compared. Respondents answered this question in different ways: (a) listing recipients of the EIA documentation received directly from the point of contact in the affected Party; or (b) listing recipients of the EIA documentation received either directly or indirectly via another body, e.g. the point of contact in the affected Party sent the documentation to the local authorities, which then distributed it to the public in the local, affected area. In addition, respondents answered according to (a) their intent, (b) their legislation, or (c) their experience, or lack of it.

## V. PUBLIC PARTICIPATION

### A. Questions to the Party in the role of 'Party of origin'

99. In order to assure that the opportunity given to the public in the affected Party was equivalent to that in the Party of origin, respondents indicated various measures, including discussing with the affected Party how this might best have been achieved (Austria, Bulgaria, Sweden, Switzerland, United Kingdom). Austria also noted the importance of early distribution of the EIA documentation, whereas Canada and Germany reported that they applied their domestic legislation in full to the participation of the public in the affected Party. Estonia reported that the public in the affected Party was in fact consulted before its own. Croatia and Hungary noted that comments received were considered according to the same criteria, irrespective of whether they came from the public in the Party of origin or the affected Party. The Czech Republic and Hungary noted the importance of distributing all information to the affected Party. France limited itself to including public participation methodologies in the dossier sent to the affected Party, whereas Italy reported that all its transboundary projects had been subject to bilateral agreements that set out equal

requirements for public participation. The Netherlands assured equal participation at both the scoping and main consultation stages. Finland reported the importance of both timing and materials.

100. The information provided to the public of the affected Party included the project (planning) application (Austria, Hungary, Netherlands), the project description (Bulgaria, Switzerland), the notification (Czech Republic, Hungary, Poland), the original or revised EIA documentation (Austria, Bulgaria, Czech Republic, Estonia, Hungary, Italy, Netherlands, Poland, Switzerland), the EIA programme (Estonia), the EIA procedure (Netherlands), the expert opinion (Czech Republic) and the decision (Austria, Hungary). Canada listed a large range of information as being accessible to both its own public and the public in an affected Party; Norway and Slovakia too noted that the same information was made available to all. Kyrgyzstan suggested that all information would be available. The United Kingdom reported that all requested information was forwarded as it became available.

101. Responsibility for organizing public participation in the affected Party was reported by the Parties in their role of Party of origin as being with the affected Party (Austria, Bulgaria, Estonia, Hungary, Italy, Switzerland), the project proponent (Kyrgyzstan) or the environment ministry (Czech Republic, Estonia, Norway, Poland). The Netherlands, Poland and the United Kingdom noted the importance of their own competent authority working with the affected Party to determine the public participation procedure. In Finland, the point of contact in the affected Party, the regional environmental centre and the project proponent organized public participation jointly. In Croatia, it was the project proponent together with the competent authority in the affected Party that organized public participation. Similarly, in Slovakia, it was the project proponent in collaboration with the affected municipality. In Sweden, the project proponent prepared the information; the Swedish Environmental Protection Agency then transmitted and advertised it. Four respondents indicated that the body responsible for organizing this public participation was not permanent (Bulgaria, Kyrgyzstan, Netherlands, Sweden).

102. Bulgaria indicated that public participation in the affected Party was organized according to its legislation, whereas Italy and Switzerland referred to the affected Party's legislation. Kyrgyzstan noted the assistance of NGOs.

103. Respondents in their role of Party of origin reported on whether they initiated public hearings (or inquiries) in an affected Party. Several respondents said that they had not (Czech Republic, Netherlands, Sweden, Switzerland, United Kingdom), with this being the responsibility of the affected Party (Estonia, Hungary). Switzerland noted that it would have had to be organized in collaboration with the authorities in the affected Party and the project proponent. Similarly, Bulgaria and Croatia noted the need for discussion with the affected Party. Austria and Italy indicated that it might have been possible, whereas Norway reported that it had initiated public hearings at the time of notification and of release of the EIA documentation. Slovakia suggested it would be possible in certain circumstances.

104. The public of the affected Party, public authorities, organizations and other individuals were able to participate in public hearings in the Party of origin, according to all but one respondent in the role of Party of origin; Italy indicated that they normally would not have been able to participate. In Canada, participation was subject to the normal Canadian entry requirements; Kyrgyzstan similarly noted that participation was subject to border controls. Hungary noted that its legislation did not require it to notify the affected Party that the public hearing was taking place.

105. Austria, Canada, Norway, Slovakia and Switzerland reported that a joint public hearing might have been initiated, as did Bulgaria in the case of a joint EIA. Switzerland noted that a joint hearing would most likely have been organized in the Party of origin. Croatia and the United Kingdom indicated that no joint hearings were initiated.

106. Several respondents described informal guidelines and draft or signed bi- and multilateral agreements providing for the entry into the Party of origin of the public from the affected Party, usually defining practical matters such as invitation and translation (Austria, Germany, Hungary, Lithuania, Netherlands, Norway, Poland). Some of the same respondents and some others indicated that the public of an affected Party could anyway have participated under national legislation (Croatia, Czech Republic, Germany, Netherlands, Switzerland, United Kingdom).

107. Difficulties reported by respondents were interpretation (Czech Republic), a lack of public interest (Finland, Kyrgyzstan, Sweden), border controls (Kyrgyzstan), unjustified demands made of the project proponent (Kyrgyzstan), reconciling timing of public participation in joint EIAs (Italy), and identification of a suitable point of contact in the affected Party (United Kingdom).

108. Respondents reported various experiences of receiving comments from the public in the affected Party: Italy and Sweden noted few responses; Slovakia suggested that the number of responses depended on the potential impact of the project; the Netherlands and Switzerland reported that comments were sent direct to the competent authority; the Czech Republic considered the comments it received relevant but that they arrived late; Croatia remarked that it was difficult to distinguish the environmental concerns expressed in the comments; and the United Kingdom reported that the comments it received were not accompanied by an indication of their source, whether from government, NGOs or the public.

109. The respondents also indicated how the public participation was useful: identifying public concerns (Croatia, Netherlands, United Kingdom); providing more information about the affected area (Czech Republic, Kyrgyzstan, Slovakia); increasing transparency and accountability (Germany, Italy); possibly increasing acceptance of the final decision (Germany, United Kingdom); identifying alternatives and mitigation measures (Kyrgyzstan, Netherlands, Slovakia, United Kingdom); and leading to revision of the EIA documentation (Kyrgyzstan, Poland).

110. The public response was taken into account in the EIA procedure in various ways: inclusion in the EIA documentation (Estonia, Netherlands, Poland, Sweden); responded to by the project proponent (Bulgaria, Croatia); or taken into account by the competent authority in its decision (Bulgaria, Czech Republic, Finland, Hungary, Italy, Kyrgyzstan, Poland, Slovakia, Switzerland, United Kingdom).

## **B. Questions to the Party in the role of ‘affected Party’**

111. Some respondents in their role of affected Party reported positively on the opportunity given to their public to participate in the EIA procedure (Austria, Croatia, Netherlands, Norway). Austria reported having organized public information meetings, having had its public invited to a public hearing in a Party of origin and having had access to a very useful Internet web site in the Party of origin. Italy and Switzerland reported implementation of joint EIAs. France had recently introduced a law on public inquiries for projects affecting France. However, Bulgaria reported a very limited opportunity to participate and Hungary reported

that it was only notified two years after the public participation had been completed. Sweden noted that despite effective publicity, public interest had been lacking.

112. The respondents reported that their public was informed of this opportunity by newspaper advertisement (nine respondents), press releases (Sweden), Internet web site notices (Austria, Poland, Switzerland), letters to the competent authority (Bulgaria, United Kingdom), contacting NGOs (Finland), public notice boards (Poland, Slovakia), local radio (Slovakia), decrees (France), or official gazette notices (Switzerland).

113. Two Parties (Croatia, Norway) reported public inquiries initiated in their country, as affected Party, by a Party of origin. Two respondents (Canada, United Kingdom) indicated that this would have required prior discussion and their approval.

114. All respondents providing a clear answer reported that they considered the opportunities provided to their public, as affected Party, were equivalent to those given to the public in the Party of origin. The United Kingdom stated that it depended on the information and amount of time given by the Party of origin.

115. Public participation in the affected Party was reported as being in accordance with the legislation of the Party of origin (Austria, Croatia, Czech Republic, Finland, Germany, Italy, Netherlands), the legislation of the affected Party (Bulgaria, Croatia, France, Hungary, Italy, Poland, Switzerland, United Kingdom), bi- or multilateral agreements (Bulgaria, Czech Republic, Italy, Netherlands, Poland) or ad hoc procedures (Sweden). Switzerland and the United Kingdom indicated that, though they applied domestic procedures, they also respected the timetable defined by the Party of origin.

116. More than three quarters of the respondents indicated that the public in the affected Party participated in the EIA procedure. Estonia reported that participation varied, whereas Italy, Sweden and the United Kingdom indicated that the public did not participate. Italy reported that this was probably due to a lack of interest, whereas Sweden noted that the projects notified to it were large, complicated and in remote areas.

117. Respondents' experiences with respect to the response of the Party of origin to public comments varied substantially: thorough bilateral discussions (Austria); taken into account in the final decision (Italy, Netherlands, Poland, Switzerland); or a lack of feedback (Bulgaria). Finland, France and Poland noted that public comments were combined with official ones in the response to the Party of origin.

## VI. CONSULTATION

### A. Questions to the Party in the role of 'Party of origin'

118. As Parties of origin, respondents described their limited but diverse experiences of consultations pursuant to Article 5 of the Convention. Bulgaria and Italy reported that these had occurred within joint Environmental Impact Assessment (EIA). Croatia reported that consultations were difficult when an affected Party is a priori against a project. France noted the necessity to extend deadlines to assure adequate consultation for projects subject to dispute. The Netherlands, Sweden and Switzerland described procedural matters. The United Kingdom reported on early and effective consultations with Ireland.

119. Only Finland and the Netherlands declared not having entered into consultations with the affected Party. However, France indicated that no consultations occurred if the affected

Party did not respond to the notification or indicated that it had no particular comments to make. Similarly, the Netherlands reported that no consultations were needed when it was determined that the transboundary impact was limited.

120. The respondents determined in various ways the meaning of “without undue delay” with respect to entering into consultations: immediately after notification (Slovakia); once the EIA documentation had been subject to quality evaluation (Bulgaria); bearing in mind practicalities and reciprocity (France); preferably once the affected Party has commented on the EIA documentation (Germany); once the EIA documentation has been sent to the affected Party (Hungary, Netherlands, Poland, United Kingdom); according to bilateral agreements and national legislation (Italy); or at the same time as consulting the domestic authorities (Sweden).

121. Again, the respondents interpreted the reasonable time frame for consultation in different ways, with France reporting time frames exceptionally extending to two years. The Netherlands provided a range of three weeks to three months for consultation, whereas Germany indicated that it depended on the issues to be discussed. Croatia and Italy indicated that it depended upon the equivalent domestic procedures in the concerned Parties. Italy also noted the relevance of bilateral agreements.

122. Respondents reported that in their limited experience consultations had covered matters referred to in paragraphs (a) to (c) of Article 5. Two respondents noted that consultations related to other matters: legal issues (Italy); and civil liability and scientific issues (Germany).

123. Consultations were reportedly held in the Party of origin (Croatia, Germany, Netherlands, Poland, Slovakia, United Kingdom), the affected Party (Italy, Norway), alternately in the two Parties (Hungary), or as determined case by case (Canada).

124. Several respondents indicated that consultations took place at the (federal) governmental level (Bulgaria, Canada, Croatia, Germany, Hungary, Italy, Norway), at the provincial or State or regional level (Bulgaria, Canada, Croatia, Germany, Italy, Norway), at the local level (Bulgaria, Canada), or among experts (Netherlands). In Poland and the United Kingdom, the level corresponded to the level of the competent authority, though, in the case of Poland, via the Environment Minister. In Slovakia, the level varied.

125. The consultations reportedly involved various bodies and individuals from the concerned Parties, depending on the complexity and contentiousness of the project, for example: the public (Bulgaria, Sweden); the ‘authorities’ (Sweden); national government officials (United Kingdom); central, regional or local authorities with environmental responsibilities (Bulgaria, Canada, Hungary, Switzerland); the ministry of foreign affairs (Canada, France); the environment ministry (France, Germany, Hungary, Italy) or agency (Canada); the appropriate sectoral ministry (Canada, France); the competent authority (Germany, Netherlands, Switzerland); experts (Canada, Netherlands, Switzerland, United Kingdom); the project proponent (Switzerland); and other stakeholders (Canada, Croatia, Sweden).

126. As to the means of communication for consultations, respondents indicated correspondence (Sweden, United Kingdom), meetings, or both (Bulgaria, Croatia, Germany, Hungary, Italy, Kyrgyzstan, Netherlands). Italy and the United Kingdom also noted the use of the telephone. France and Switzerland indicated that a whole range of communication means was envisaged.

127. The timing of the consultation was variously reported as being: at a very early stage (Italy); once it had been decided to proceed with the EIA procedure, so as to define the scope (Bulgaria, Switzerland); while identifying potential impacts (Kyrgyzstan); once the EIA documentation had been sent to the affected Party (Bulgaria, Germany, Hungary, Netherlands, Poland, United Kingdom); once the affected Party's comments on the EIA documentation had been considered (Germany); after information had been exchanged, but before the public inquiry (Croatia); well in advance of a final decision (Canada); ongoing, following notification (France); at each step in the EIA procedure (Germany, Italy); and at the very end of the EIA procedure (Italy).

**B. Questions to the Party in the role of 'affected Party'**

128. In the role of affected Party the respondents reported various though limited experiences of consultation: the need for several meetings to reach agreement (Austria); consultation only began once the EIA documentation had been produced (Bulgaria); consultation was effective (Croatia); consultation was limited to requests for additional information (Hungary); consultation was governed by bilateral agreements (Slovakia) that were sometimes established prior to notification, sometimes after (Italy); consultations only began once a decision had been made and at the request of the affected Party (Poland); and the use of informal contacts (United Kingdom).

129. Five of fourteen respondents indicated that they had been involved in EIA procedures where the Party of origin did not initiate consultations; the other seven reported that they had not been excluded in this way. The Netherlands reported having requested a consultation after it had received EIA documentation that had caused serious concerns. Sweden was not consulted regarding a project for which EIA was not mandatory. Poland, as noted above, requested consultation after a decision had been made without its participation.

130. Some respondents (Croatia, France, Italy, Netherlands, Slovakia, Sweden, United Kingdom) reported that consultations did generally cover the matters referred to in paragraphs (a) to (c) of Article 5, whereas Austria and Hungary said they did not. Bulgaria reported that the matters were partially covered. Four out of eleven respondents indicated that consultations covered other matters, with Poland noting the importance of compensation arrangements and Kyrgyzstan noting organizational matters.

131. Six Parties reported that consultations were held in the Party of origin, whereas France and the United Kingdom said that they were held in their country, i.e. the affected Party.

132. Several respondents indicated that consultations primarily took place at the (federal) governmental level (Austria, Bulgaria, Germany, Hungary, Italy, Netherlands, Poland, Sweden), at the provincial or State or regional level (Austria, Germany, Italy, Poland), at the local level (Bulgaria), or among experts (Netherlands). Croatia and France reported that meetings took place at all levels, whereas in Slovakia and the United Kingdom they were at the relevant levels.

133. The consultations reportedly involved various bodies and individuals from the concerned Parties, for example: the public (Bulgaria); national and local authorities (Croatia, Hungary, Kyrgyzstan, Netherlands, Switzerland); provincial or regional authorities (Austria, Poland); environmental authorities or agencies (Bulgaria, Hungary, Switzerland, United Kingdom); the Ministry of Foreign Affairs (France); the environment ministry (Austria, France, Germany, Italy, Poland); the appropriate sectoral ministry (France); the competent



authority (Germany); experts (Netherlands, Poland, Switzerland); the project proponent (Kyrgyzstan); NGOs (Bulgaria, United Kingdom); and other stakeholders (Bulgaria, Croatia).

134. As to the means of communication for consultations, respondents indicated correspondence (Poland, Sweden, United Kingdom), meetings (Austria, Hungary), or both (Bulgaria, Croatia, France, Germany, Italy, Kyrgyzstan, Netherlands). Italy also noted the use of the telephone and the United Kingdom reported that other means might also have been appropriate. Switzerland indicated that a whole range of communication means was envisaged.

135. In the role of affected Party, the timing of the consultation was variously reported as being: at a very early stage or at the scoping stage (Bulgaria, Switzerland, United Kingdom); after notification (France); during identification of potential impacts (Kyrgyzstan); during preparation of the EIA documentation (Bulgaria); once the quality of the EIA documentation had been confirmed (Bulgaria); once the EIA documentation had been received by the affected Party (Germany, Netherlands, United Kingdom); after consultation of the public (Austria); once the affected Party's comments on the EIA documentation had been considered (Germany, Poland); after information had been exchanged, but before the public inquiry (Croatia); at each step in the EIA procedure (Germany); according to bilateral agreements (Italy); as and when necessary (Slovakia); or according to the Party of origin's legislation (Sweden).

## VII. FINAL DECISION

### A. Questions to the Party in the role of 'Party of origin'

136. In the role of Party of origin, all respondents confirmed that the final decision contained the reasons and considerations on which the decision was based.

137. Respondents indicated that the decision often contained other information (Croatia, Slovakia, Sweden), for example: a project description (Austria, Finland, France); an overview of the licensing or decision-making procedure (Austria, Finland, Switzerland); an overview of the EIA (Austria); conditions imposed (Bulgaria, Czech Republic, France, United Kingdom); or deadlines and liability for non-compliance with the conditions (Bulgaria).

138. Croatia noted that if additional information on a significant transboundary impact became available at a later stage, it sometimes had difficulties assuring the cooperation of the project developer. No Party indicated that a request for consultation had been made because of such information, though France noted that an indemnity might have been due.

139. With regard to the taking into account in the final decision of the outcome of the EIA, comments from the affected Party and consultations, several respondents noted again that the final decision contained the reasons and considerations on which the decision was based (Canada, Finland, Germany, Hungary, Kyrgyzstan, Netherlands, Norway, Switzerland). Slovakia stated that the EIA and valid comments were taken into account. Hungary described the evaluation of comments as comprising factual, professional and legal analyses. Germany noted the importance of defining measures to prevent, reduce or mitigate adverse transboundary impacts. The Czech Republic noted that its final decisions included the opinion of the affected Party, or explained why it was not included. Estonia reported attaching the environmental requirements to the final EIA documentation. The United Kingdom explained that the final decision had to include an explicit declaration that the EIA documentation had been taken into account.

140. All respondents indicated that comments from the public and authorities in an affected Party were taken into consideration in the same way as domestic comments, though Germany noted that the affected Party's comments were expected to focus on transboundary impacts. No difficulties were reported in the preparation of the final decision.

141. The final decision was reported as being sent to various bodies and individuals in the affected Party: the point of contact (Canada, Croatia, Finland, France, Hungary, Italy, Netherlands, Sweden, United Kingdom); government authorities (Kyrgyzstan, Norway); the competent authority (Estonia, Kyrgyzstan); authorities responsible for EIA (Italy); ministries (Czech Republic); authorities that had been consulted or otherwise involved (France, Germany, Switzerland, United Kingdom); the project proponent (Kyrgyzstan); all those who had submitted comments (Netherlands); and others that had been identified by the affected Party (Canada). No respondent reported receiving an official complaint from the affected Party that the final decision was not easily understandable.

142. The means of publication of the final decision was described by a number of respondents: made publicly available (Austria, Bulgaria, Hungary, Netherlands, Poland, Sweden); published in newspapers (Bulgaria, France, Italy, United Kingdom) possibly including in the affected Party (Germany); advertised in the affected Party (Sweden); published in an official journal (France, Italy); placed on an Internet web site (Italy); or publication was as for domestic EIA (Czech Republic). Croatia reported that the decision was only made available to the parties in the administrative procedure.

143. Respondents indicated in very different ways how the provision of the final decision to the affected Party was organized. Some answered in terms of the practical means of transfer: it was sent by post (Austria, France, United Kingdom) or by electronic mail (Austria, United Kingdom). Some indicated senders: the point of contact (Bulgaria, Sweden); the environment ministry (Czech Republic, Hungary); or the competent authority (Netherlands, Switzerland). Some reported recipients: the point of contact (Bulgaria, France, Sweden, United Kingdom); or the consultees (France, United Kingdom). While others again described the procedural framework: bilateral agreements (Italy, Netherlands, Slovakia) or domestic legislation (Czech Republic, Hungary, Slovakia).

144. Respondents provided further information on which body was responsible for sending the final decision to the affected Party: the point of contact (Finland, Italy, Sweden, United Kingdom); the environment ministry (Bulgaria, Czech Republic, Estonia, Hungary, Poland, Slovakia) or agency (Canada, Sweden); the Ministry of Foreign Affairs (Canada); the competent authority (Canada, Croatia, Estonia, France, Germany, Netherlands, Norway, Switzerland); or the competent authority in cooperation with the point of contact (Austria). Italy once again made reference to bilateral agreements, whereas Kyrgyzstan reported that the same contact as used previously would be used at this stage also.

145. In terms of difficulties, only Sweden provided a response, noting a long delay between the EIA procedure and the arrival of the final decision.

146. Respondents described the possibility for an affected Party or its public to challenge a final decision in the courts of the Party of origin. Such a right to challenge was reported by several respondents (Austria, Croatia, Germany, Italy, Netherlands, Slovakia, Switzerland, United Kingdom). The Netherlands noted that the challenge would have been of the planning decision rather than of the EIA. Canada, too, reported the possibility to challenge through judicial review, noting that a person would have needed to demonstrate a direct effect on them, rather than a general interest; Germany too would have required that a direct effect be

demonstrated. Sweden reported that reciprocal arrangements existed among the Nordic States to allow such a challenge. The Czech Republic, France, Norway and Poland indicated that such a challenge would not have been possible.

147. The possibility of a legal challenge was reportedly described in the final decision issued by several Parties (Croatia, Germany, Hungary, Netherlands, Switzerland). Austria noted that it might have included such information. Canada remarked that it was for appellants to inform themselves of their rights to challenge decisions.

148. Respondents indicated that an appellant would have been informed of the result of an appeal (Canada, Norway, Slovakia, Sweden, United Kingdom), according to domestic law (Croatia, Hungary) or bilateral agreements (Austria). The Netherlands reported that appellants would not have been informed automatically, and Poland that they would not have been informed at all.

#### **B. Questions to the Party in the role of ‘affected Party’**

149. In their role of affected Party, respondents described their experience of the content of the final decision and its provision to them by the Party of origin. The Netherlands and the United Kingdom reported difficulties in understanding fully the decisions received. Poland reported an incomplete final decision that did not make reference to its opinion. Sweden remarked that the decision arrived years after the EIA procedure was completed. Croatia declared that the decision enabled application of the necessary protection measures. Italy noted once again its experience related to joint EIAs, circumventing many of the problems that might have been expected with a transboundary EIA procedure.

150. The final decisions were received by various bodies and individuals in the affected Party, including: the point of contact (Austria, Bulgaria, Finland, France, Italy, Netherlands, Sweden, United Kingdom); the environment ministry (Austria, Bulgaria, Czech Republic, Norway, Poland, Slovakia) or agency (Canada, Sweden); the Ministry of Foreign Affairs (Canada); the provincial government (Austria); national and local authorities (Croatia, Kyrgyzstan); the project proponent (Croatia, Kyrgyzstan); or the competent authority (Germany, Kyrgyzstan, United Kingdom). France remarked that it was for the Party of origin to decide.

151. Distribution of the final decision within the affected Party was reportedly, and as appropriate, by official notice in the ‘mass media’ (Bulgaria), newspapers (Austria, Canada, Germany, Italy, Kyrgyzstan, Norway, United Kingdom), in the official journal (Italy), on an Internet web site (Austria, Canada, Germany) or through meetings (Kyrgyzstan). Several respondents simply reported public access to the decision (Austria, Bulgaria, Hungary, Netherlands, Norway, Switzerland). In Finland, the NGOs consulted were sent copies; in Sweden, all those consulted received copies. Canada reported that stakeholders were sent information on the decision. Poland reported distribution to local authorities. France remarked that Article 6 of the Convention did not impose such a requirement. Croatia, too, reported that the public was not informed.

152. No respondent reported difficulties with the publication of the final decision, though Croatia noted that it was not a public document. No respondent indicated clearly that there had been a complaint that a final decision was not easily understandable.

153. Seven respondents indicated that they sometimes had the right to make a legal challenge of a decision taken by the Party of origin (Austria, France, Germany, Italy,

Netherlands, Sweden, Switzerland); four others indicated that they did not (Czech Republic, Norway, Poland, Slovakia). The United Kingdom did not know. Sweden again made reference to reciprocal arrangements among the Nordic countries with respect to legal appeals. Austria noted that such possibilities existed in some of its neighbouring countries. France, Germany, Italy and Switzerland remarked that it depended on the domestic law of the Party of origin.

154. Austria, Sweden and the United Kingdom expected to be informed of the outcome of such an appeal. Armenia, Croatia and Poland did not expect to be informed, nor did Kyrgyzstan always, and the Netherlands indicated that it did not expect the Party of origin to be proactive in this regard.

155. The remaining questions relate to notification of the public of the final decision, rather than of the commencement of the EIA procedure. However, this was not apparent in the questionnaire causing some confusion among the respondents.

156. Austria reported that the notification of the public of the final decision included the (summary of the) decision, where it was possible to inspect it and the possibility of appeal according to bilateral agreements. The United Kingdom reported inclusion of the decision and its justification.

157. With the exception of Poland, the respondents indicated that the notification of the final decision in the affected Party contained the same information as that provided in the Party of origin, if possible (Czech Republic, Germany, Italy, Norway). The notification of the public was done as soon as possible after receipt of the final decision (Austria, Norway, United Kingdom).

### VIII. POST-PROJECT ANALYSIS

158. The respondents reported limited experience of post-project analysis, with a number of exceptions, generally relating to domestic EIA. Specifically, in Kyrgyzstan and the Netherlands, post-project analysis was always required, though it never occurred in the former. In Croatia, France, Norway, Poland, Slovakia and the United Kingdom it depended on individual cases. The requirement was under development in Switzerland. In Canada, it was dependent upon the type of EIA that had been undertaken, being compulsory for full EIAs. In France and Slovakia, post-project analysis was required for certain types of activities. In the Netherlands and Norway, it is the competent authority that initiated it. In the Netherlands, Poland Slovakia, the project proponent carried it out.

159. Those respondents that indicated why post-project analyses were undertaken, whether or not compulsorily, generally indicated that they were done to:

- Monitor compliance with the conditions in the licences;
- Review predicted environmental impacts for proper management of risks and uncertainties;
- Modify the activity or develop mitigation measures in case of harmful effects on the environment; and
- Provide the necessary feedback in the project implementation phase.

160. Only a few respondents indicated that post-project analyses were undertaken so as to learn from experience. There was no reported experience of informing another Party, or being

informed by another Party, of a significant adverse transboundary impact, identified as a result of post-project analysis.

## IX. TRANSLATION

161. Respondents indicated various approaches to overcoming language constraints during consultations. Some respondents reported that consultation was, if possible, in all the languages of the concerned Parties (Bulgaria, Germany, Norway, United Kingdom), others that interpreters were available as necessary (Austria, Netherlands). In other instances, it depended on bilateral agreements (Czech Republic, Poland, Slovakia). Several respondents noted use of English as a common language (Bulgaria, Estonia, Hungary, Italy, Sweden); Finland used Swedish and English in hearings; Kyrgyzstan generally used Russian. Sweden required that court submissions be in Swedish. Canada and Switzerland reported reliance on their national languages for consultation with their neighbours.

162. One respondent indicated that it translated all documents into the language of the affected Party (United Kingdom); others translated selected sections (Sweden), in some cases according to bilateral agreements (Austria, Czech Republic, Italy, Poland, Slovakia), domestic law (Hungary, Netherlands, Poland) or on the basis of reciprocity (Germany). Some respondents reported translation of some documentation into English (Bulgaria, Croatia, Estonia). In Canada, all documentation had to be produced in the national languages (English and French); translation into other languages would have been discussed with the affected Party. Norway did not provide translation of consultation documentation. Again, Switzerland reported reliance on its national languages for consultation with its neighbours.

163. Several respondents indicated that the final decision was, or would have been, translated into the language of the affected Party, as necessary and according to bilateral agreements (Austria, Germany, Hungary, Italy, Netherlands, Poland, Slovakia, Sweden, United Kingdom). However, three Parties (Croatia, Czech Republic, Norway) noted that the decision was not translated.

164. Several respondents also indicated that interpretation was, or would have been, provided in hearings, again as necessary and according to bilateral agreements (Austria, Bulgaria, Croatia, Czech Republic, Germany, Slovakia); again other respondents (Estonia, Netherlands, Norway, Sweden) indicated that they were not. Kyrgyzstan indicated that interpretation had not been necessary. This would appear to have been an area where there was still rather limited experience, especially in terms of hearings in an affected Party.

165. The respondents indicated that translation of basic information was generally the responsibility of the Party of origin (Austria, Croatia, Czech Republic, Estonia, Finland, Germany, Poland, United Kingdom); specifically, translated EIA documentation was provided by the project proponent (Bulgaria, Estonia, Germany, Hungary, Netherlands, Norway, Sweden, United Kingdom), whereas the formal notification was translated by the competent authority (Netherlands) or by the proponent (United Kingdom). Two respondents indicated that the affected Party was responsible for translation of its comments into the language of the Party of origin (Sweden – for the environmental court – and Finland). Five of the respondents indicated that responsibility for translation varied from case to case (Austria, Estonia, Netherlands, Poland) or according to bilateral agreements (Slovakia), whereas nine said that it did not. Kyrgyzstan reported that translation had not generally been necessary.

166. Several Parties reported problems with translation, particularly with respect to costs (Austria, Czech Republic, Estonia, Finland, Poland) and delays (Finland, Poland). Hungary

noted that translation into English, even rather than Hungarian, might be preferred because of quality problems.

167. Certain respondents indicated that they translated all documents when responsible (Bulgaria, Italy, United Kingdom); others translated only parts of the documentation as discussed with the affected Party (Austria, Finland, Sweden), or according to bilateral agreements (Czech Republic, Germany, Italy, Poland, Slovakia) or domestic law (Hungary, Netherlands). Germany noted that, unfortunately, there was so far no provision in the Convention regarding responsibility for any translation, so there could not be any legal responsibility as such for translations. Some respondents reported translation of some documentation into English (Croatia, Estonia). As mentioned above, in Canada, all documentation had to be produced in the national languages (English and French); translation into other languages would have been discussed with the affected Party.

168. Several respondents reported reliance on translation into the language of the affected Party (Czech Republic, Netherlands, United Kingdom), whereas others noted the use of either English or the language of the affected Party (Bulgaria, Croatia, Sweden). Estonia noted the use of English only. Germany, too, used the language of the affected Party, except when dealing concurrently with several States on the shores of the Baltic Sea, when English was used. In Canada, all documentation had to be produced in the national languages (English and French). Thus, English was reported as being used as a common language, even where it was not the language of any of the concerned Parties (notably Estonia, Hungary, Italy); the other official UNECE languages (French and Russian) were only reported as being used where they were the or a national language of one of the concerned Parties.

169. As Party of origin, translation costs for the EIA documentation were reported by most respondents as being the responsibility of the developer; translation of notifications and decisions was reported by several respondents as being paid for by the authorities (Germany, Netherlands, Poland). As affected Parties, Hungary and Poland reported that the Ministry of Environment and the regional authorities, respectively, were responsible for translation costs. Germany and the Netherlands noted that the competent authority was often responsible for the costs of translation and interpretation. In the United Kingdom, the developer was encouraged to bear all costs, but the Government was ultimately responsible.

170. No respondent reported problems assuring the quality of translations, with professional translators being used, nor did the respondents experience problems as the affected Party.

171. However, only half of the ten Parties providing a meaningful response to the relevant question indicated that, generally, sufficient documentation was translated to enable participation in the EIA procedure. The remaining respondents indicated both good and bad experiences.

## X. CONTACT POINTS

172. The list of points of contact appended to decision I/3 and updated via the Convention's web site was generally considered useful by the respondents, but concerns were expressed regarding its being up to date and problems occurring if no named individual was identified (i.e. only an organization, though the Czech Republic noted that because of staff movements it was difficult to name an individual). Additional points of contact had been established informally, to satisfy requirements of decentralized government or as a result of bi- or multilateral agreements with other Parties.

## XI. INQUIRY PROCEDURE

173. No Party reported application of the inquiry procedure.

## XII. SETTLEMENT OF DISPUTES

174. Only one Party reported a dispute, which had yet to be resolved.

## XIII. BILATERAL AND MULTILATERAL AGREEMENTS

175. Parties reported on their bi- and multilateral agreements with their geographical neighbours, as summarized in the list below. Few agreements had been finalized, but many draft agreements had been prepared and informal agreements established:

- Austria: draft agreements with the Czech Republic and Slovakia; informal agreements with Liechtenstein and Switzerland.
- Czech Republic: draft agreements with Austria, Germany, Poland and Slovakia.
- Estonia: agreements with Finland and Latvia.
- Finland: agreement with Estonia.
- Germany: draft agreements with the Czech Republic, the Netherlands and Poland; planned informal agreements with Austria, Liechtenstein and Switzerland; Sar-Lux-Lor Recommendation with France and Luxembourg; tripartite recommendation with France and Switzerland.
- Italy: agreement with Croatia; intergovernmental conference with France; project-specific agreements with Austria and Switzerland.
- Latvia: agreement with Estonia.
- Lithuania: draft agreements with Latvia and Poland.
- Netherlands: draft agreements with the region of Flanders (Belgium) and Germany.
- Norway: Nordic Environmental Protection Convention with Denmark, Finland and Sweden.
- Poland: draft agreements with the Czech Republic, Germany and Lithuania; talks with Belarus, Slovakia and the Ukraine.
- Slovakia: agreements being drafted with Austria, the Czech Republic, Hungary and Poland.
- Switzerland: informal agreements with Austria and Liechtenstein.

176. Armenia, Bulgaria, Croatia, France, Hungary and the United Kingdom reported having no such agreements with their neighbours. Furthermore, no agreements were reported for long-range transboundary impacts, i.e. to address instances where a proposed activity was likely to have an adverse environmental impact on another Party that was not an immediate geographical neighbour.

177. The agreements that did exist, whether formal, informal or draft, were based to varying degrees on the provisions of Appendix VI (Elements for bilateral and multilateral cooperation), with some (e.g. the informal agreements between Austria, Liechtenstein and Switzerland) being in line with the Appendix, whereas some others had little in common and

might even have pre-dated the Convention (e.g. the Nordic Environmental Protection Convention).

#### XIV. RESEARCH PROGRAMME

178. The only reported research directly related to EIA in a transboundary context was a project involving Germany and Poland.

#### XV. GENERAL QUESTIONS

179. Some respondents reported that minor variations might have occurred in the implementation of the Convention within their country as a result of bilateral agreements (Austria, Hungary, Italy, Netherlands). Italy and Switzerland indicated that variations might have occurred because of regional (within country) responsibilities. More than half of the respondents indicated that there should not have been any variations.

180. Most respondents indicated that a single point of contact within the equivalent of a ministry of environment or a national EIA agency was responsible for the coordinated application of the Convention. In Germany, the various competent authorities were responsible. In France, it was a joint responsibility of the Ministry of Foreign Affairs and the Ministry of Environment and Sustainable Development.

181. Four fifths of the respondents indicated that a single body was responsible for collecting information on all transboundary EIA cases. France, Germany, Kyrgyzstan and the Netherlands indicated that there was no such body. Generally, the body responsible was the same as that responsible for the coordinated application of the Convention.

182. Austria and Poland each reported a single difference of opinion with a Party of origin regarding interpretation of the terms “major” or “significant” (see Part I of questionnaire).

183. Several respondents described cross-border projects, employing various organizational approaches: joint EIA (Bulgaria, France, Italy, Switzerland) done under bilateral agreements (France, Italy); and Parties being in turn considered both Party of origin and affected Party (Germany, Poland).

#### XVI. EXPERIENCES AND OPINIONS

184. All respondents indicated that the questionnaire covered every aspect of the implementation of the Convention. However, several respondents indicated that the questionnaire was too long, detailed and repetitive (Croatia, Estonia, France, Germany, Italy, Sweden, Switzerland and United Kingdom) and that a shorter, more concise questionnaire might elicit more and better responses. Further changes to the questionnaire were suggested.

185. Several Parties reported problems with the implementation of the Convention, some of which had already been described earlier in the questionnaire. Several respondents indicated the need for bilateral agreements to address detailed procedural arrangements (Bulgaria, Poland). Translation and its costs were again highlighted as issues (Austria, Poland). A number of further problems were identified where certain Parties required clarification of the Convention’s provisions. Hungary reported practical staffing limitations. Kyrgyzstan noted that not all its neighbours were Parties to the Convention. The Republic of Moldova reported poor domestic legislation and a lack of experience in transboundary EIA.

186. Suggestions as to how problems might have been resolved included:



- Good practice guidance, which had been provided and was welcomed (Bulgaria, Croatia, Netherlands, Switzerland, United Kingdom);
- Good bilateral and multilateral agreements (Czech Republic, Poland);
- Amendments to the Convention, including a new provision on responsibility for translation (Austria, Germany), revisions to Appendix I (Estonia, Germany), clarification of the obligation in Article 5 to hold consultations even when the affected Party has indicated it does not wish to be consulted further (Germany) and a requirement for a separate chapter in the EIA documentation on significant adverse transboundary impacts (Finland, Hungary); and
- Additional guidelines on the different stages of the process defined in the Convention, and training in transboundary EIA using case studies from other countries (Republic of Moldova).

### **Conclusions**

187. A questionnaire was circulated to Parties regarding the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context. An analysis of the information provided in the 23 responses to the questionnaire received by the end of 2003 reveals the increasing application of the Convention and the continuing development of bilateral and multilateral agreements to support its implementation. However, the analysis also reveals a number of possible<sup>7</sup> weaknesses or shortcomings in the Convention's implementation. These weaknesses point at potential and necessary improvements in the application of the Convention. To guide and focus the future work under the Convention, they are listed and summarized below:

- The points of contact on the Convention's web site were not always correct;
- The points of contact were not always competent in the application of the Convention;
- The content of the notifications issued by the Parties of origin were not always compliant with Article 3, paragraph 2, of the Convention and with decision I/4 of the Meeting of the Parties;
- The final decisions made by the Parties of origin were not always provided to the affected Parties as soon as possible after they had been taken;
- The contents of the final decisions made by the Parties of origin did not always comply with Article 6, paragraph 2, of the Convention;
- The results of research programmes undertaken by the Parties were not always exchanged with the other Parties, in compliance with Article 9 of the Convention;
- The public of the concerned Parties was not sufficiently encouraged to participate in procedures under the Convention; and
- Given recorded difficulties with regard to the languages used, there was still a lack of bilateral and multilateral agreements among Parties to address in particular what documents should be translated, who should translate them and who should cover the costs of translation.

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

<sup>2</sup> 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.

<sup>3</sup> 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.

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

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

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

<sup>7</sup> There are some limitations in the information gathered through the questionnaire, as outlined in paragraphs 17 to 23 above.