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Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

Third session

Minsk, 13–16 June 2017

Item 6 of the provisional agenda

Review of compliance, implementation and the activities of the Implementation Committee

Second review of implementation of the Protocol on Strategic Environmental Assessment

Note by the secretariat

Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment (Meeting of the Parties to the Protocol) decided that a draft review of implementation of the Protocol during the period 2013–2015 based on the reports by Parties would be presented at its third session (ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2, decision II/1, para. 11).

This note presents the draft second review, covering the period 2013–2015, based on national reports received by 30 April 2016. The draft review has been finalized taking into account the comments made during and after the sixth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 7–10 November 2016).

The Meeting of the Parties to the Protocol is invited to review the draft document and subsequently to adopt the second review of implementation of the Protocol through its decision III/I.

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I. Introduction

1. This document presents the Second Review of Implementation of the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). It examines responses to a questionnaire on implementation of the Protocol by countries in the period 2013–2015.
2. This chapter describes the preparation of and the major findings from the review. Chapter II summarizes the responses to the questionnaire regarding the legal, administrative and other measures taken by respondents to implement the Protocol. Chapter III describes the practical application of the Protocol during the period 2013–2015. Chapter IV contains suggestions from a State Party on how the reporting process could be improved.

A. Preparation of the review

3. The Second Review of Implementation of the Protocol was prepared in line with the workplan adopted by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (Meeting of the Parties to the Protocol) at its second session (Geneva, 2–5 June 2014) (see ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3, decision VI/3–II/3). Parties reported on their implementation by completing a questionnaire produced by the Implementation Committee and approved by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment. Based on the completed questionnaires received by 30 April 2016, the secretariat, with the assistance of a consultant, prepared a draft review for consideration by the Implementation Committee and the Working Group. The present draft review was then finalized taking into account the comments made during and after the sixth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 7–10 November 2016).
4. Completed questionnaires were received by 30 April 2016 from 24 of the 29 Parties. Serbia, a Party, replied after the deadline, but as the review of implementation was still being prepared, it was possible on an exceptional basis to include the results in this review. Italy and Malta also provided responses, although they were not yet Parties and not bound by the provisions of the Protocol. Belarus and Bosnia and Herzegovina also provided responses, although they are not yet Parties.
5. Protocol Parties Latvia and Ukraine did not complete questionnaires; they were not Parties during the reporting period 2013–2015, and had no obligation to report. The European Union is a Party to the Protocol, but, as a regional economic integration organization rather than a State, considered it inappropriate to report. At the time of writing, the former Yugoslav Republic of Macedonia had not submitted a completed questionnaire.
6. States, both Parties and non-Parties, that replied to the questionnaire are referred to as “respondents” throughout this review.
7. The completed questionnaires are available on the Protocol website¹ and are reflected in this draft review.

¹ See http://www.unece.org/env/eia/implementation/review_implementation.html. Reports received after 30 April will also be available from this website, but, with the exception of Serbia, as noted above, are not reflected in the review.

B. Findings of the review

8. Overall, the results of the review are encouraging. An analysis of the national reports showed that most respondents are fully engaged in implementing the Protocol and broadly satisfied with the clarity of its provisions. The overwhelming majority of respondents (19) report that they have not experienced any substantial difficulties in interpreting particular terms in (or particular articles of) the Protocol. This represents considerable progress since the last review, when a number of Parties were hindered in their application of the Protocol by a lack of an understanding of various terms. Moreover a majority of respondents (14) saw no need to improve application of the Protocol in their country. On the other hand, a substantial number of the respondents (12) still reported a need to improve the Protocol's application.

9. The objective of the review is to enhance implementation of and compliance with the Protocol. With this in mind, this review identifies the following possible weaknesses or shortcomings in the Protocol's implementation by Parties that the Parties may wish to address:

(a) A need to align practice on the obligations arising from article 5, paragraph 3, and article 6, paragraph 3, of the Protocol with respect to public participation in screening and scoping;

(b) A need to ensure that strategic environmental assessment (SEA) documentation systematically contains information on health, including transboundary effects, following article 7, paragraph 2, and annex IV;

(c) Difficulties related to the translation of documentation during transboundary consultations and arising from differences in national practice as regards the SEA procedures, leading to Parties' failing fully to understand the procedure for particular consultations;

(d) A lack of bilateral agreements or other arrangements to facilitate transboundary consultations between several Parties, in particular in order to improve effectiveness in relation to language-related issues, time frames, public participation, the interpretation of various terms, the organization of transboundary SEA procedures and application of the Protocol;

(e) A need to improve the application of the Protocol, on the basis also of valuable experience gained so far, which should be further shared among Parties and other stakeholders;

(f) A lack of timely reporting by Parties, the majority of which submitted their reports following their obligation under article 14, paragraph 7, of the Protocol, so as to ensure the all-inclusive character of the review of implementation, which enables the Implementation Committee to highlight possible general and individual compliance issues and helps Parties to identify priorities for future work and disseminate good practice;

(g) A possible need to revise and update the *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment*² (Resource Manual) (ECE/MP.EIA/17), taking into account any available examples of good practice presented by Parties in their responses.

² Available from http://www.unece.org/env/eia/pubs/sea_manual.html.

Some of these issues are similar to those identified in the Fifth Review of Implementation of the Convention (ECE/MP.EIA/WG.2/2016/8).³

II. Summary of responses to the questionnaire

10. There follows a summary of responses to the questionnaire. Where possible, the responses are presented in the form of charts.

11. Wherever the summary refers to a proportion of respondents (for example a majority of respondents, just over half the respondents, etc.), it is referring to respondents that sent in their answers to the questionnaire, or to a particular question in the questionnaire, by 30 April 2016, and to Serbia.

12. Throughout the summary there are references to specific answers from respondents. These references have been chosen from the answers of many different respondents in order to give the reader a sense of the range and variety of answers. Referring to a limited number of selected responses is not intended to prejudice other responding Parties that may also have acted in the manner described.

A. Article 3: General provisions

Question I.1

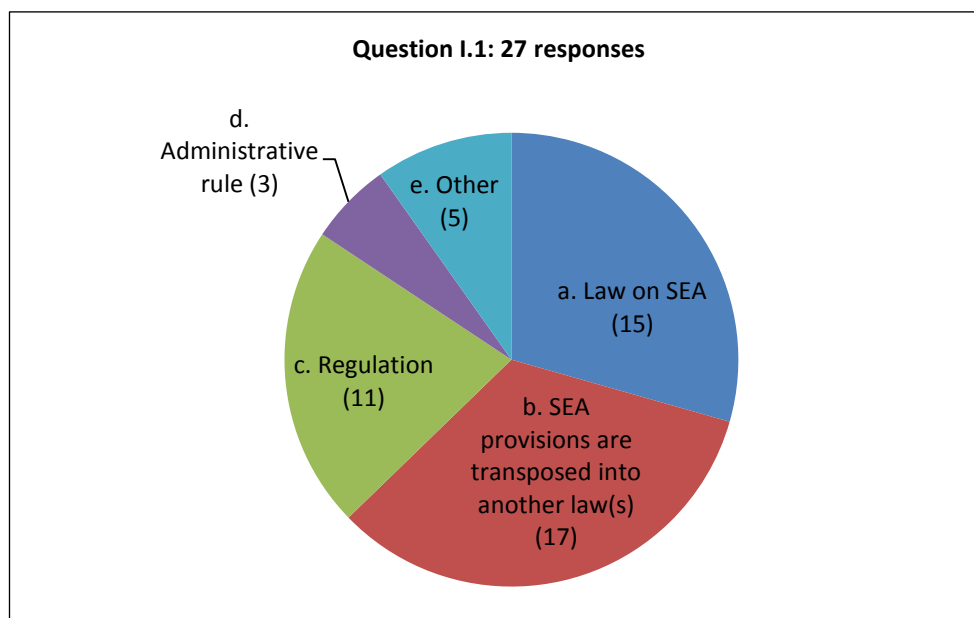
13. The majority of respondents implement the Protocol by acts adopted by their legislature either directly to implement the Protocol or as part of broader environmental legislation, some of which relates to environmental impact assessment. Only Denmark reported implementation by administrative rule; in this case that rule supplemented other legislative or regulatory measures. The Netherlands reported implementation of the Protocol by act and by administrative rule.

14. Belarus, not yet a Party, reports that it is preparing a draft law on SEA. Denmark is in the process of consolidating requirements on environmental impact assessment (EIA) and SEA into a single law.

³ The Fifth Review also contains findings on translation, bilateral agreements, reporting and guidance.

Figure 1

Please provide the main legislative, regulatory and other measures you have adopted in your country to implement the Protocol (art. 3, para. 1) (more than one option may apply)



B. Article 4: Field of application concerning plans and programmes

Question I.2

15. Respondents listed the various types of plans and programmes that require SEA in their legislation.

16. The types of plans and programmes most commonly referred to were those expressly listed in article 4, paragraph 2, namely: agriculture; forestry; fisheries; energy; industry, including mining; transport; regional development; waste management; water management; telecommunications; tourism; and town and country planning or land use.

17. Other categories frequently listed overlap with those expressly listed in article 4, paragraph 2. For example, urban planning was mentioned by Albania, Serbia and Slovenia, and traffic was cited by Germany and Hungary.

18. The possibility of an effect on a Natura 2000 site was a factor taken into account by all the member States of the European Union.

Question I.3

19. Respondents had a number of different ways of defining whether a plan or programme “set the framework for future development consent” within the meaning of article 4, paragraph 2. There was no overall trend. Some respondents identified whether plans or programmes set the framework for future development consent on a case-by-case basis (for example Luxembourg, Malta and Slovakia). Bosnia and Herzegovina and Germany have specific definitions in their legislation. The Netherlands and Poland define criteria for identifying plans and programmes that fall within article 4, paragraph 2. The Croatian and Czech laws import the same wording as that used in the Protocol.

Question I.4

20. Again, no particular pattern or trend emerged from respondents' description of how to determine whether plans and programmes "determine the use of small areas at local level" within the meaning of article 4, paragraph 4. A number of examples were given. Portugal and Denmark use the criteria in annex III of the Protocol. According to Croatian legislation, the plans and programmes referred to in article 4, paragraph 4, are urban development plans at a local level, and in Norway selection criteria are used to determine if a detailed zoning plan requires an SEA. In Lithuania legislation expressly defines "small areas at a local level" as 10 square kilometres or less, but most respondents do not have definitions in their legislation and instead determine what areas fall within that definition on a case-by-case basis using applicable national and/or local criteria.

Question I.5

21. Some respondents — Belarus, Bosnia and Herzegovina, Croatia, Czechia, Lithuania, Norway, Poland and Serbia — expressly define minor modifications to a plan or programme within the meaning of article 4, paragraph 4; but most respondents do not. In Romania minor modifications are identified through a case-by-case examination and by application of screening criteria. Similarly, in Poland a case-by-case approach is used. In Denmark if the modification is likely to have a significant impact on the environment it is not considered minor. In Malta it is for the competent authority to determine whether a modification is minor for the purposes of article 4, paragraph 4.

C. Article 5: Screening**Question I.6**

22. Approximately a third of respondents determine which other plans and programmes should be subject to SEA, as set out in article 4, paragraphs 3 and 4, in accordance with article 5, paragraph 1, only on a case-by-case basis, and two do so only by specifying types of plans and programmes. The majority of respondents combine the two methods.

23. A number of respondents gave specific examples of the way they made determinations on a case-by-case basis and/or by specifying types of plans and programmes:

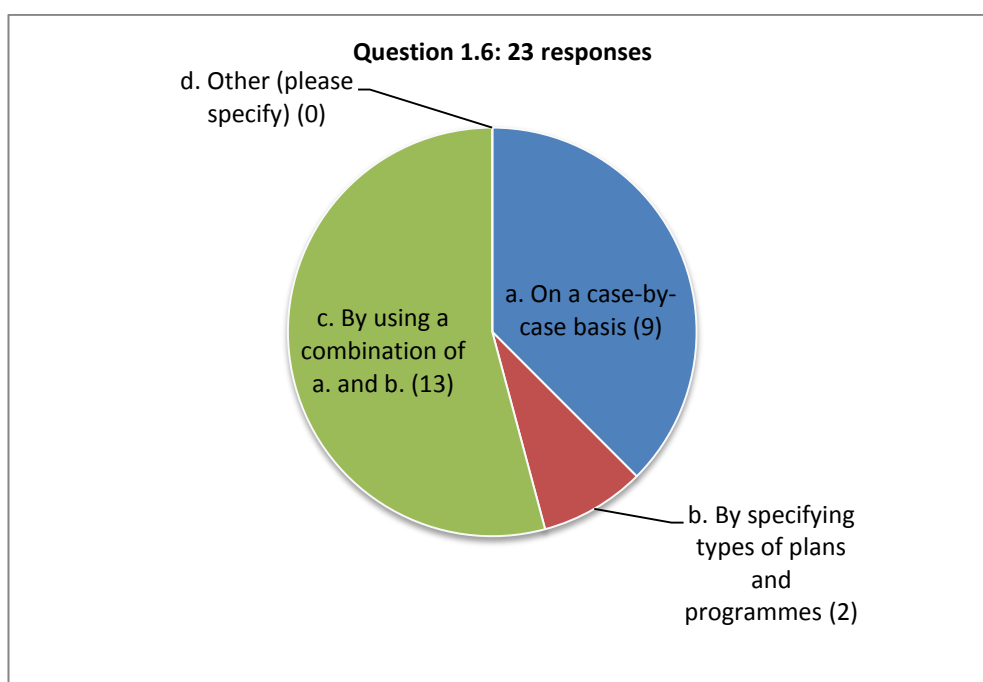
(a) Lithuania uses a combination of case-by-case consideration and express identification of plans and programmes to which SEA procedures should be applied. National legislation requires screening of the effects of plans and programmes of particular categories in order to decide which of them will be subject to SEA;

(b) Serbia requires SEA for all plans and programmes in the areas of spatial and urban planning, land use planning, agriculture, forestry, fishery, hunting, energy, industry, transport, waste management, water management, telecommunications, tourism and conservation of natural habitats and wild flora and fauna that set the frameworks for granting the approval for future development projects falling within the scope of national EIA laws;

(c) In the Netherlands, the competent authorities decide on a case-by-case basis whether a particular plan or programme sets a framework for future developments that may possibly require an EIA.

Figure 2

How do you determine which other plans and programmes should be subject to a SEA as set out in article 4, paragraphs 3 and 4, in accordance with article 5, paragraph 1?



Question I.7

24. Just over a quarter of respondents do not provide opportunities for the public concerned to participate in screening and/or scoping of plans and programmes in their legislation (article 5, para. 3, and article 6, para. 3). Of those respondents that do provide such opportunities, the most popular ways of doing so are by sending written comments to the competent authority or the local municipality or by taking part in a public hearing.

25. In their comments, 16 respondents gave further details on their national legislation and practice relating to participating in screening and or scoping. No significant patterns emerged apart from those already revealed in figure 2 above.

26. More generally, article 5, paragraph 3, and article 6, paragraph 3, set out legal obligations to endeavour to provide opportunities to the extent appropriate for the participation of the public. These legal obligations require Parties simply to endeavour to provide opportunities, so there is no obligation actually to provide them.

27. Nevertheless, a considerable majority of respondents indicate that in practice they do provide the public with the opportunity to participate in a variety of ways.

28. There is evidence from the respondents' answers that the *Good Practice Recommendations on Public Participation in Strategic Environmental Assessment*⁴ is having an impact on how the public is engaged in screening and scoping. Those recommendations support the application of the Protocol's provisions by Parties and future Parties as regards public participation.

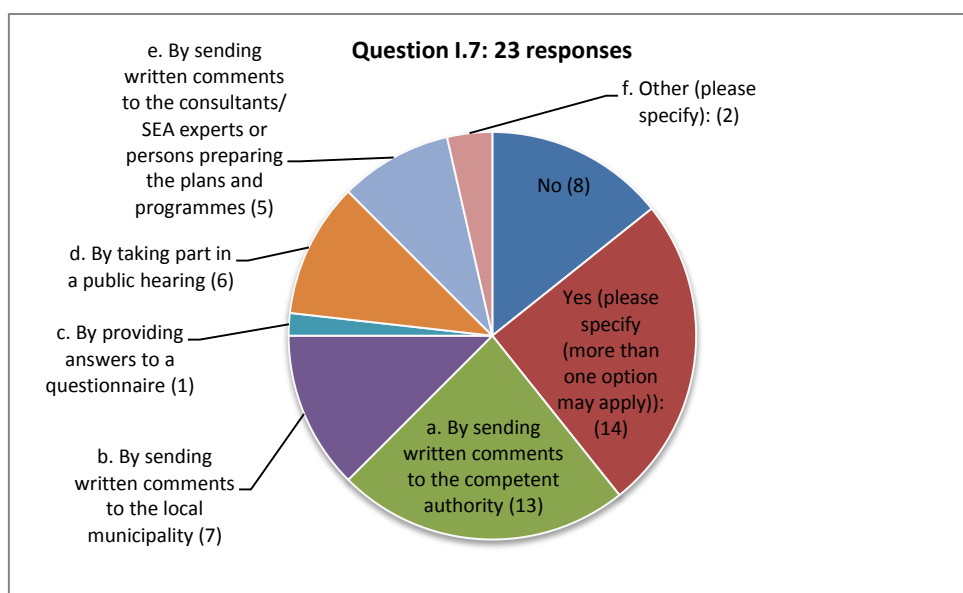
⁴ United Nations publication, Sales No. E.15.II.E.7. Available from <http://www.unece.org/index.php?id=42234>.

29. Article 8, paragraph 1, states that notification should be “early, timely and effective”. Box 4 of the Good Practice Recommendations, which describes good practice with respect to public participation on screening and scoping, sets out a number of ways in which notification of the public could take place and explains what the contents of that notice could be.

30. This is reflected in the practice of respondents: for example, Dutch and Maltese requirements ensure that the public are notified early in screening and scoping, respectively; in Romania, the public are informed during screening about the first draft plan or programme by repeatedly announcing it in mass media and by its publication on official web pages; in Hungary during screening all available environmental information relevant to the plan or programme must be published, including the objectives of the plan or programme, where and when there will be consultation and the deadline for submitting comments; and in the Netherlands the notification of the public on scoping must include sufficient information to allow the public to express its views on the development of a specific plan or programme, as well as on the scope and level of detail of the SEA.

Figure 3

Do you provide opportunities for the public concerned to participate in screening and/or scoping of plans and programmes in your legislation (art. 5, para. 3, and art. 6, para. 3)?



D. Article 6: Scoping

Question I.8

31. Respondents reported a number of different requirements about the contents of environmental reports. Bulgarian legislation provides a minimum list of information, which reflects annex IV of the Protocol, to be contained in the environmental report. In Estonia, Finland, Germany and Malta the legislation also contains express provisions on the contents of the environmental report. In Albania there is a long list of issues that must be addressed in the environmental report. In Austria, a scoping report should include as a minimum an outline of the information which will be included in the environmental report, and guidance is available online to help evaluate what should be included.

32. There were also different ways of determining the contents of environmental reports. In Hungary the contents are determined by using annex IV of the Protocol and the comments from the concerned authorities received during scoping. In Croatia the environmental report is based on information specified in annex IV, comments from concerned authorities and the public concerned and the competent authority expertise. In Armenia information to be included is stipulated as the result of the screening process. For Belarus, regulations specifying the procedure for SEA will be developed once the draft Belarusian SEA legislation is adopted.

33. Different actors play a role in scoping. In Austria the scoping report is either prepared by the planning or SEA authority or by a commissioned consultant. In Bulgaria the competent environmental authority gives guidelines to the developer on what information should be included in SEA report. In Estonia an expert prepares the scoping document in cooperation with a person preparing the strategic planning document (who will vary from sector to sector); the supervisor of SEA (the Environmental Board or the Ministry of the Environment) deals with quality issues.

34. In Italy the planning authority draws up a preliminary environmental report. A consultation phase is launched with the competent authority and the environmental authorities to define the goals and the level of detail of the information to be included in the environmental report.

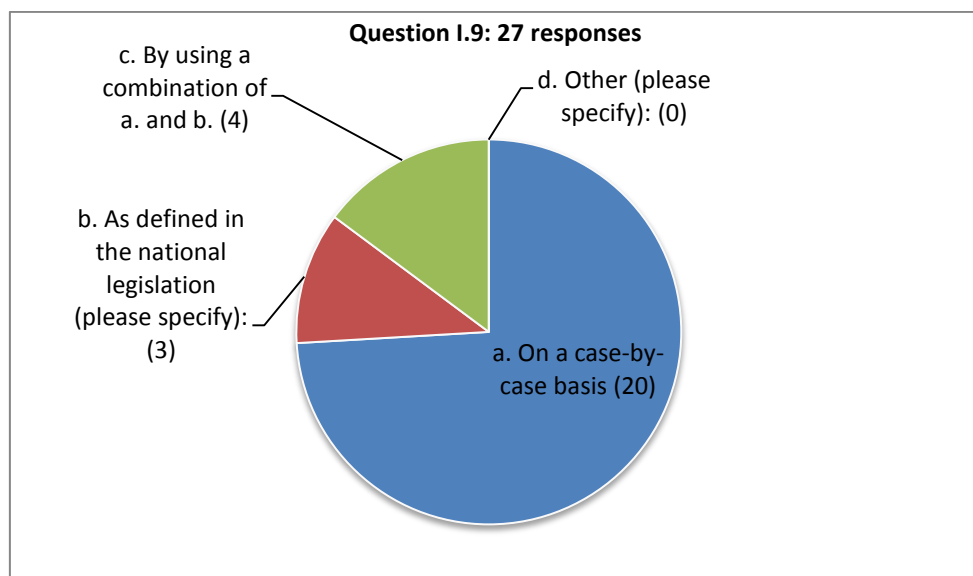
E. Article 7: Environmental report

Question I.9

35. The overwhelming majority of respondents determine “reasonable alternatives” in the context of the environmental report on a case-by-case basis. Three respondents used national legislation and four respondents combined legislative requirements with a case-by-case approach for the determination of reasonable alternatives.

36. Comments from respondents showed the difficulties in identifying reasonable alternatives in legislation. A number of them, for example Austria and Portugal, did not have a specific definition in their legislation. Moreover, comments reinforced the case for a pragmatic case-by-case approach. Several comments (Austria, Czechia, Italy and Portugal) stressed the importance of giving due weight to the “zero” alternative.

Figure 4
How do you determine “reasonable alternatives” in the context of the environmental report (art. 7, para. 2)?



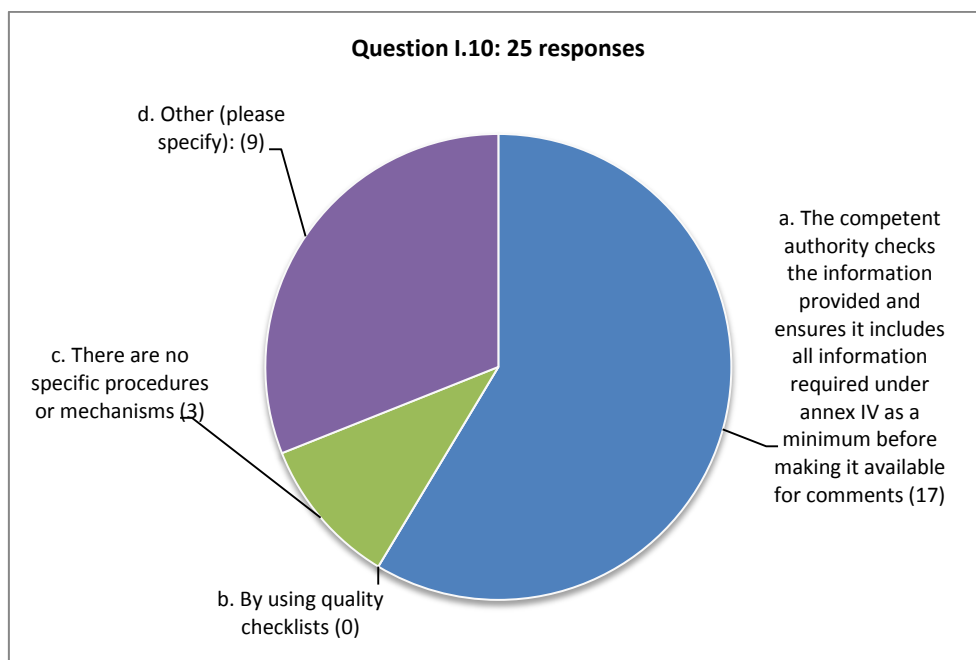
Question I.10

37. A large majority of the respondents ensure sufficient quality of the reports in the following way: the competent authority checks the information provided and ensures it includes all the information required under annex IV as a minimum before making it available for comments. No respondents use quality checklists.

38. A number of States specified other means of quality assurance, including guidelines to ensure the quality of reports (Austria and Finland); submitting the draft plan for public debate (Croatia); using qualified experts (Czechia); preparation of the SEA documentation by an expert in cooperation with the person preparing the strategic planning document, with quality issues considered by the SEA supervisor (Estonia); regulations to establish a mechanism to ensure quality (Lithuania); the Minister of the Environment and other competent authorities make a determination on the quality of the environmental reports (Luxembourg); requiring the competent authority to ask the Netherlands Commission for Environmental Assessment for advice on the environmental report; sending reports to relevant authorities for comment, followed by an expert opinion (Slovakia); and a recommendation to use of the quality assurance checklist in the ECE Resource Manual (Sweden).

39. In the comments of the respondents, a number of points were made. The Maltese authorities check the information using the requirements of annex IV as a minimum on a case-by-case basis, consulting as appropriate. The Czech Ministry of the Environment has prepared a methodology for evaluating environmental impacts described in the environmental report. The preparer of the plan or programme in Hungary is responsible for the implementation of the environmental evaluation.

Figure 5
How do you ensure sufficient quality of the reports?



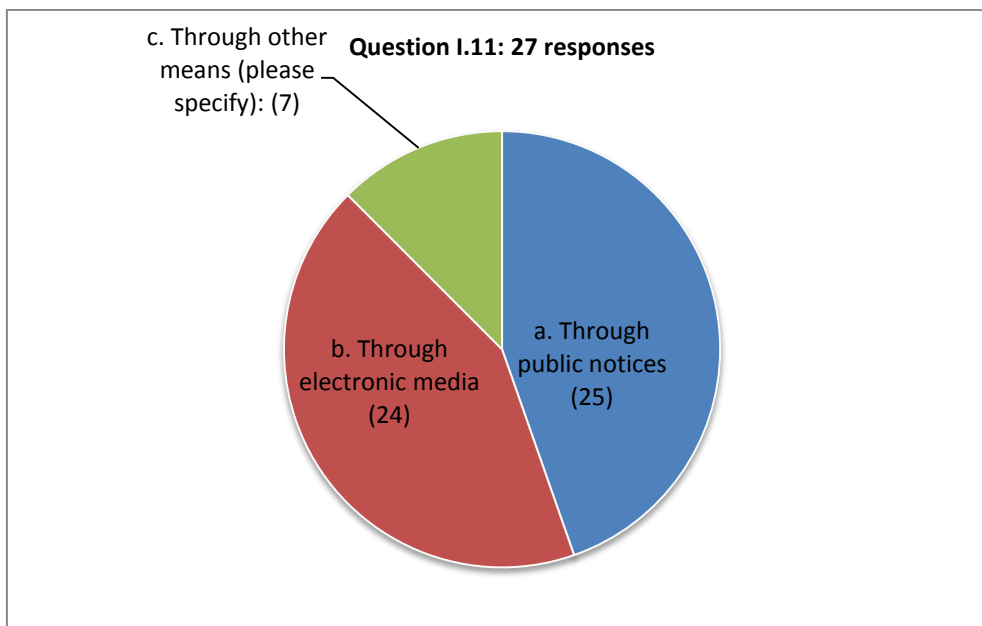
F. Article 8: Public participation

Question I.11

40. A large majority of respondents ensure the “timely public availability” of draft plans and programmes and the environmental report through public notices. A similarly large majority also ensure the availability of the drafts through electronic media. The majority of respondents use both public notices and public media.

41. The other means mentioned for ensuring timely public availability include publication in official journals (Bosnia and Herzegovina, Estonia and Malta); through the press and radio (Czechia); at public information meetings and through electronic advertising (Luxembourg); by mail (Portugal); or by local means, such as an official notice board (Slovakia).

Figure 6
How do you ensure the “timely public availability” of draft plans and programmes and the environmental report (art. 8, para. 2)?



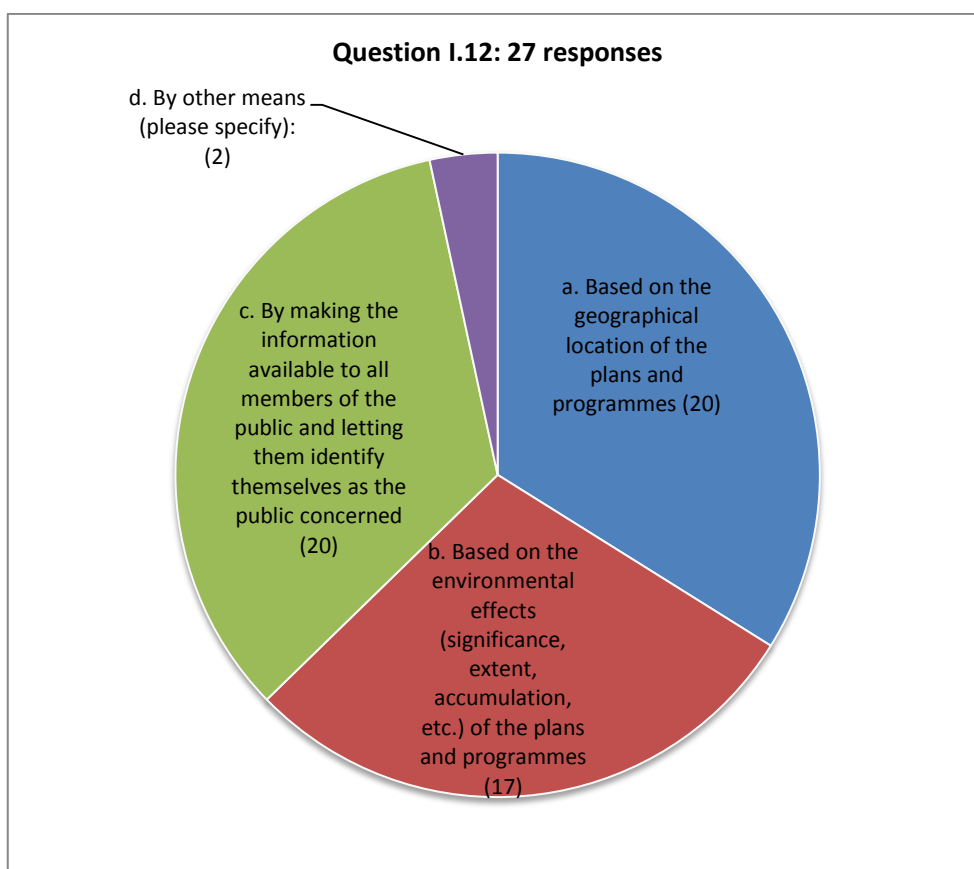
Question I.12

42. The majority of respondents identify the public concerned based on the geographical location of the plans and programmes, the environmental effects (significance, extent, accumulation, etc.) of the plans and programmes and/or by making the information available to all members of the public and letting them identify themselves as the public concerned

43. Other means of identifying the public concerned mentioned by respondents included: in Germany, following the definition of the “affected public” in legislation, which refers to any individual whose interests are affected by the plan or a programme in question and includes associations whose activities as described in their statutes are affected by the plan or a programme, including associations which promote environmental protection; in Hungary, by the developer during the preparation of the environmental report; and, in Slovakia, by sending public expressions of opinion to the Slovakian competent authority.

44. The majority of respondents make information available to members of the public and let them identify themselves as the public concerned because this should ensure that members of the public who wish to participate may do so.

Figure 7
How do you identify the public concerned (art. 8, para. 3)?

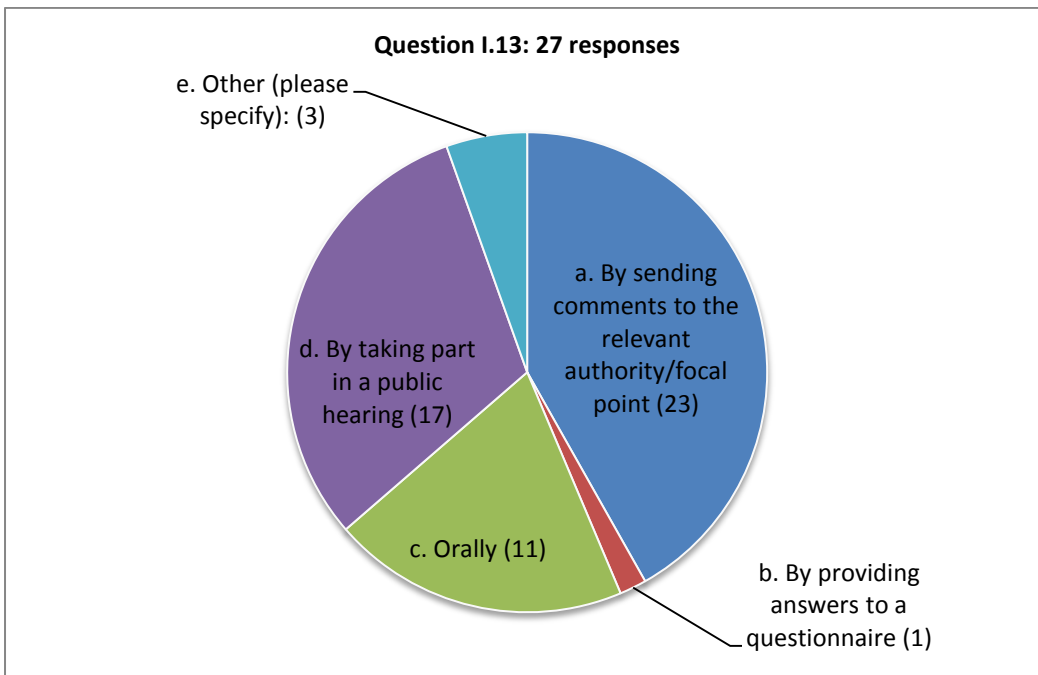


Question I.13

45. The majority of respondents reported that the public concerned may express its opinion on the draft plans and programmes and the environmental report (article 8, para. 4) by sending comments to the relevant authority or focal point and by taking part in a public hearing. Just over a quarter said the public concerned may express its opinion orally.

46. Other means for the public to express its opinion included sending written comments to the consultants, SEA experts or persons preparing the strategic planning document (Estonia); sending comments to the organizer of the preparation of plan or programme or orally during the public hearing (Lithuania); and providing suggestions electronically (Luxembourg).

Figure 8
How can the public concerned express its opinion on the draft plans and programmes and the environmental report (art. 8, para. 4)?

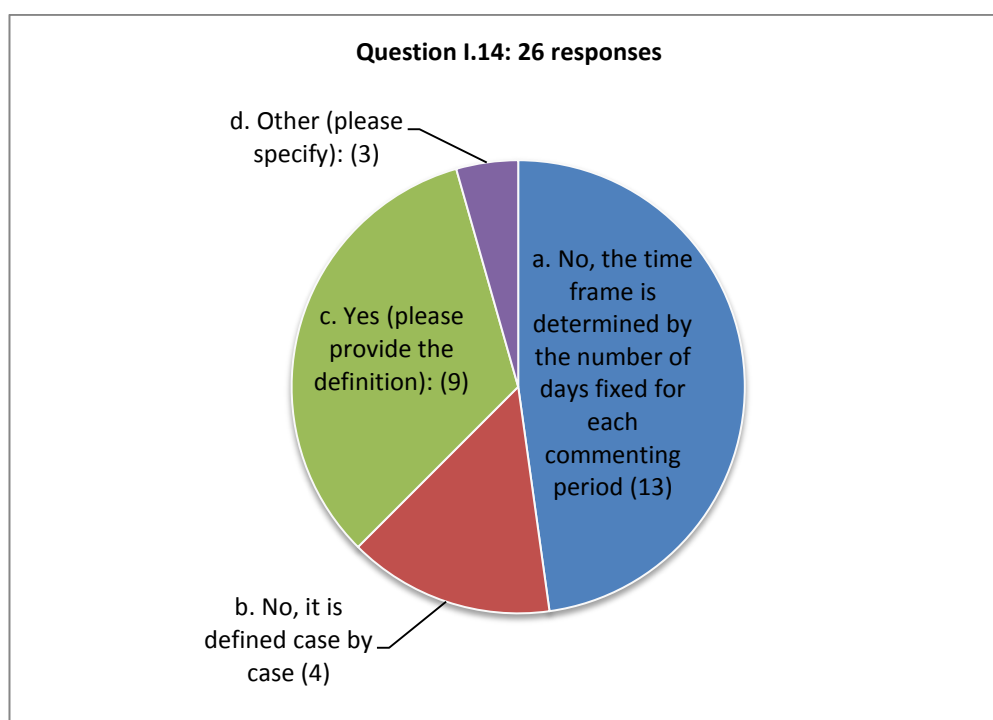


Question I.14

47. About half of the respondents do not have a definition in their legislation of the term “within a reasonable time frame” (article 8, para. 4); the time frame is determined by the number of days fixed for each commenting period. In a minority of cases the time frame is defined case by case. Eight respondents provided a definition of a time frame, ranging from 30 days for Bosnia and Herzegovina, Croatia and Slovenia to 16 weeks for Malta — with 6 weeks for the Netherlands and Norway, at least 8 weeks for Denmark and 45 working days for Spain.

Figure 9

Do you have a definition in your legislation of the term “within a reasonable time frame” (art. 8, para. 4)?



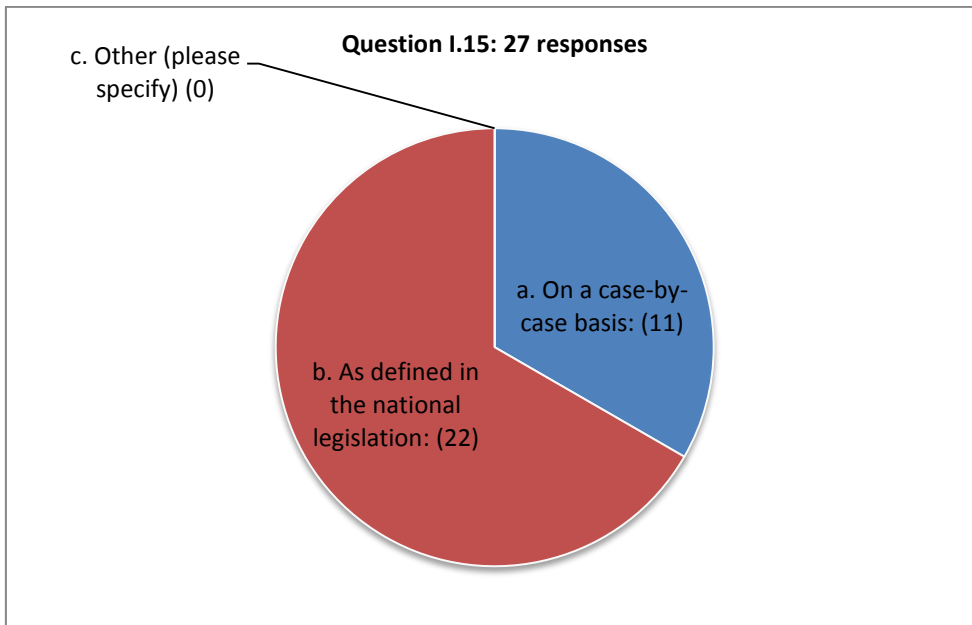
G. Article 9: Consultation with environmental and health authorities

Question I.15

48. A large majority of respondents said environmental and health authorities (article 9, para. 1) are defined in national legislation. About a third of respondents said the authorities are identified on a case-by-case basis.

49. In comments, Belarus noted that its environmental authorities are bodies associated with the Ministry of Natural Resources and Environmental Protection and the health authorities are bodies associated with the Ministry of Health. In the Netherlands responsibility is decentralized, with the Ministry of Infrastructure and the Environment the main responsible authority for environmental management. SEAs in the Netherlands can be performed at the national, provincial, or municipal levels and the authorities will be identified at the appropriate level. In Poland the authorities include the General Director for Environmental Protection, the Regional Director for Environmental Protection, the Sanitary Inspection Authority and the Director of the Maritime Office.

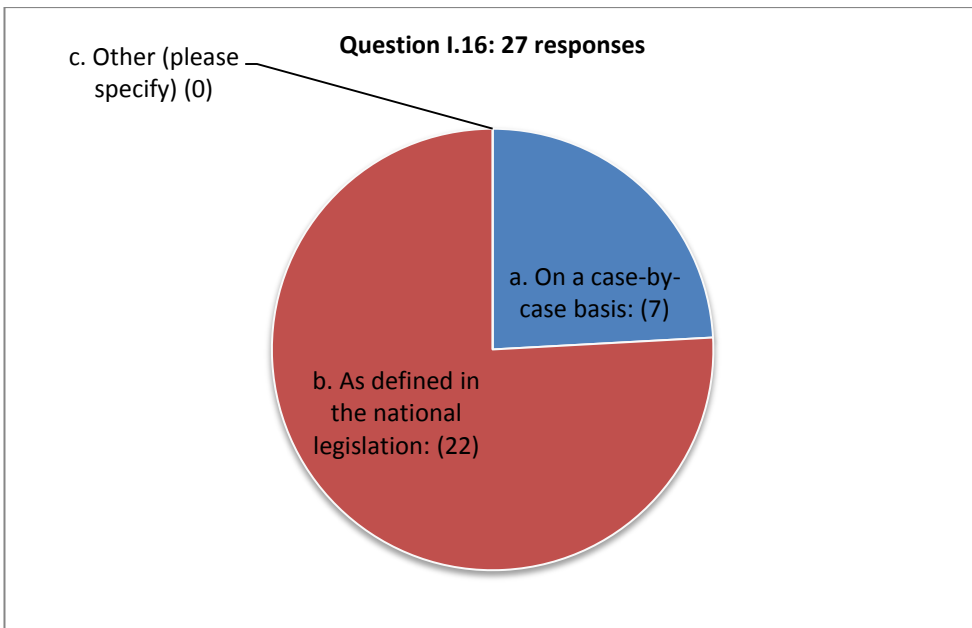
Figure 10
How are the environmental and health authorities identified (art. 9, para. 1)?



Question I.16

50. In a large majority of cases, respondents reported that the arrangements for informing and consulting the environmental and health authorities determined (article 9, para. 4) are defined in national legislation.

Figure 11
How are the arrangements for informing and consulting the environmental and health authorities determined (art. 9, para. 4)?



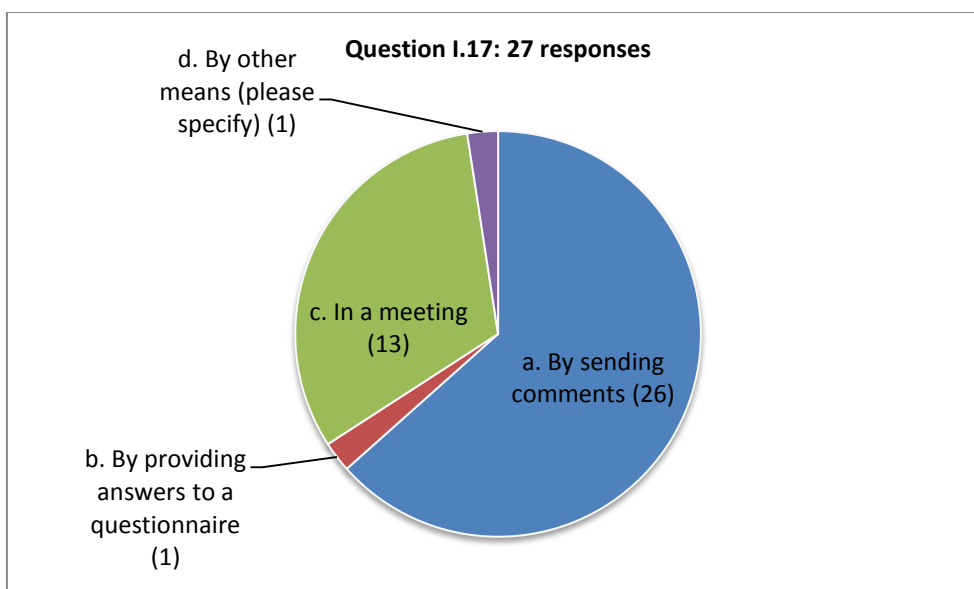
Question I.17

51. A large majority of respondents reported that environmental and health authorities express their opinion (in accordance with article 5, para. 2, article 6, para. 2, and article 9, para. 3) by sending comments, and in a substantial minority of cases those authorities express their opinion in a meeting. In Malta the authorities have other means of expressing their opinion: while there is no regulatory requirement, in practice a communication is made to the respective authorities telling them how comments may be submitted and the deadline for submitting them.

52. Some respondents added comments to their answers. For example, in Czechia the authorities have the same right to express opinions as the public. In Estonia comments can be sent to the competent authority, the persons preparing the strategic planning document and also to SEA experts, and the authorities can participate in public hearings. In Romania the authorities participate in working groups that finalize the draft plan or programme. In Austria informal meetings may be arranged.

Figure 12

How can the environmental and health authorities express their opinion (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 3)?

**H. Article 10: Transboundary consultations****Question I.18**

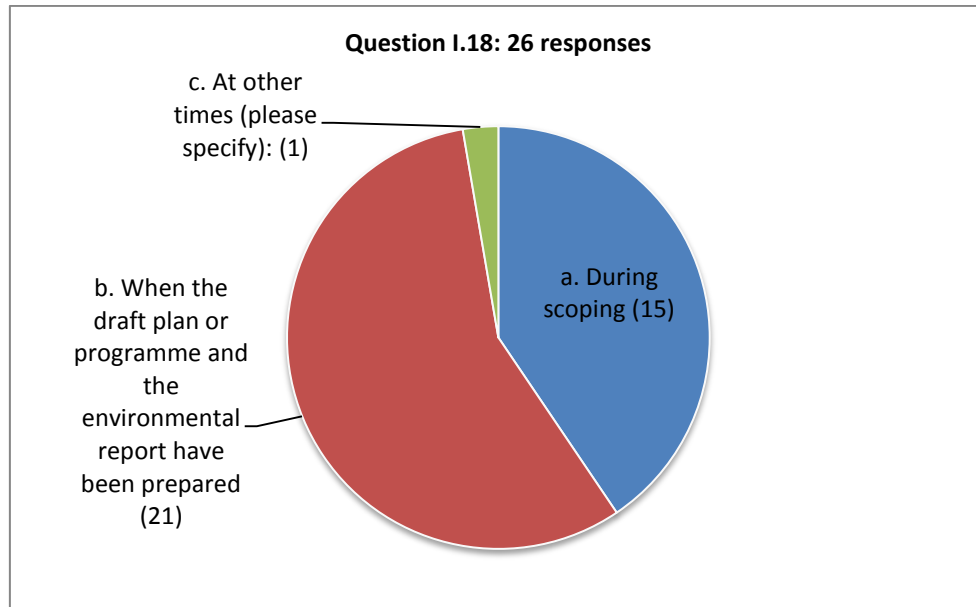
53. A considerable number of respondents notify an affected Party during scoping as well as when the draft plan or programme and the environmental report have been prepared, giving the affected Party plenty of time to engage.

54. In its comments, Serbia referred to its national legislation which requires its relevant ministry to contact an affected State within the shortest possible period, and at the latest when informing its own public. The notification must contain a description of the plans and programmes, together with all the available information on their possible impact, the nature of the decision that may be adopted and the period within which another State can notify its intention to participate in the decision-making procedure. In Slovakia notification is at an

early stage and before the national public is informed. In Armenia the notification is given when the draft plan or programme and the environmental report have been prepared.

Figure 13

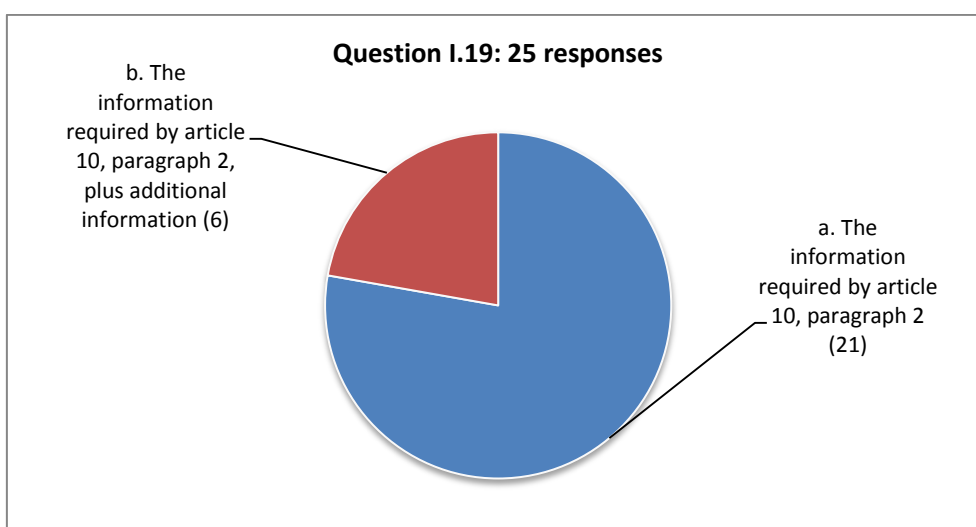
As a Party of origin, when do you notify the affected Party (art. 10, para. 1)?



Question I.19

55. A substantial majority of Parties explained that, as a Party of origin, they include the information required by article 10, paragraph 2, in a notification. Some Parties include additional information: in Bosnia and Herzegovina if the transboundary impact of the plan or programme has been identified, the report has to contain information about the transboundary impacts; in Estonia the notification includes the name and description of the strategic planning document, information on the person who prepares and adopts it, schedules for the preparation of the document and for carrying out the SEA, a short description of the likely environmental impacts and the deadline for responding to the notification and submitting comments; Germany provides information on the plan or programme (as far as already available), on the planning and decision-making procedure and on the scoping procedure; Hungary includes the entire consultation documentation of the plan or programme, the environmental report, the description of the decision-making process, information on public participation and a request to respond; and Slovenia includes the draft plan or programme and the environmental report.

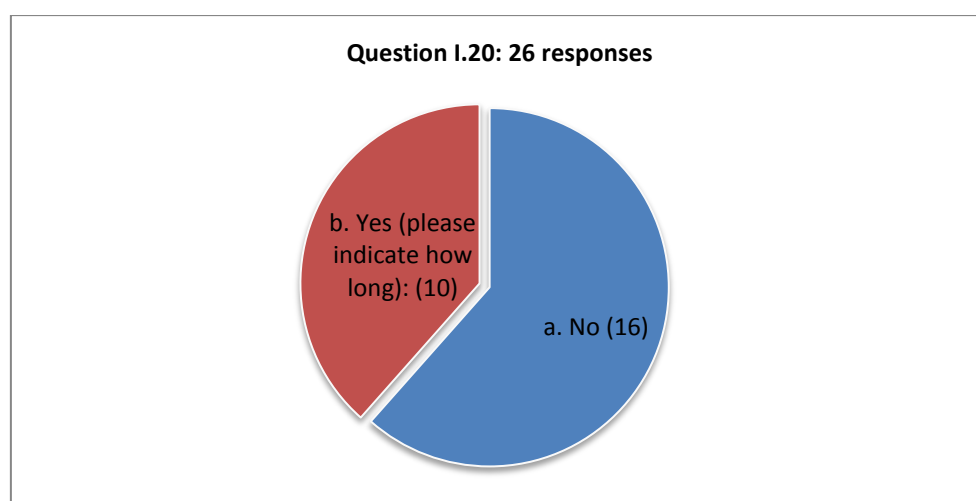
Figure 14
As a Party of origin, what information do you include in the notification (art. 10, para. 2)?



Question I.20

56. The majority of Parties reported that, as a Party of origin, their legislation does not indicate a reasonable time frame for the transmission of comments from the affected Party (article 10, para. 2). Ten respondents did have legislative time frames, ranging from 30 days for Bosnia and Herzegovina, Croatia, Serbia and Spain to 90 days for Italy — with six weeks for the Netherlands and Norway, at least eight weeks for Denmark, two months for Albania and 60 working days for Armenia.

Figure 15
As a Party of origin, does your legislation indicate a reasonable time frame for the transmission of comments from the affected Party (art. 10, para. 2)?



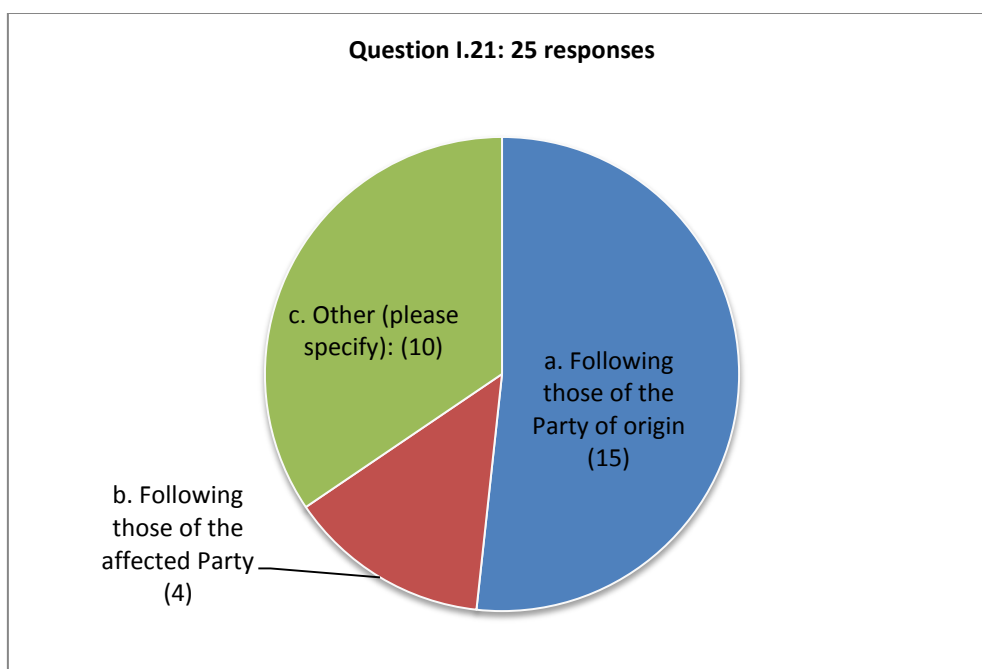
Question I.21

57. Respondents explained how detailed arrangements, including the time frame for consultations, are agreed (article 10, paras. 3 and 4) if the affected Party has indicated that it wishes to enter into consultations. In the majority of cases, those arrangements are agreed

following those of the Party of origin; in a few cases those arrangements are agreed following those of the affected Party. Sometimes other means are used to settle those arrangements. Among other means, Albania indicated that the arrangements are governed by a national decision. In Bosnia and Herzegovina the rules and time frames for consultations are harmonized with the provisions of the Protocol. Bulgaria, Denmark, Malta, Poland and Slovakia agree detailed arrangements on a case-by-case basis. In Italy, broad principles are set out in national legislation, leaving the details to be agreed later on a case-by-case basis. Luxembourg ensures compliance with this obligation within the framework of bilateral relations between the two States affected. Spain envisages that the majority of cases will be dealt with pursuant to its agreement with Portugal. A range of comments described the detail of arrangements, including how agreements between the affected Party and the Party of origin are reached and how the wishes of other Parties are accommodated.

Figure 16

If the affected Party has indicated that it wishes to enter into consultations, how are the detailed arrangements, including the time frame for consultations, agreed (art. 10, paras. 3 and 4)?



I. Article 11: Decision

Question I.22

58. The majority of respondents explained how, in accordance with article 11, paragraph 1, they ensure that when a plan or programme is adopted due account is taken of the conclusions of the environmental report, mitigation measures and comments received in accordance with articles 8 to 10.

59. As far as the environmental report is concerned, in some countries (Czechia and Germany) the issue is governed by legislation: once participation of the authorities and the public is complete, the competent authority must review the accounts and assessments of the environmental report. In Finland, when a plan or programme is approved a reasoned opinion has to be provided on how the environmental report was taken into account. In

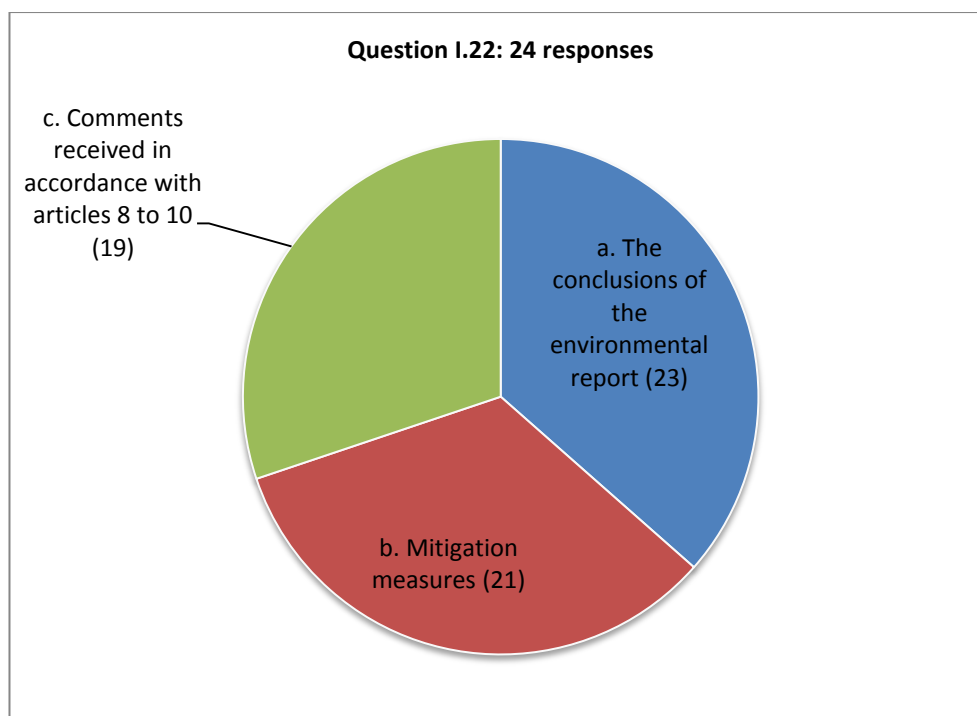
Poland, when a plan or programme is adopted there must be a written summary, containing a justification, inter alia, of how the findings and conclusions of the environmental report were taken into account.

60. Turning to the mitigation measures, Romania reports that the conclusions, inter alia, of the mitigation measures must be integrated into the administrative act giving environmental approval issued by the competent environmental authority. In Bulgaria, there is a statutory requirement for the developer of a plan or programme to submit a summary to the competent authority for the SEA procedure that includes information about, inter alia, compliance of the plan or programme with the mitigation measures set out in the SEA statement of the competent environmental authorities. In Austria, the concerned authorities must describe in a written summary how, among other things, mitigation measures have been taken into account.

61. Finally, with respect to taking into account comments received in accordance with articles 8 to 10, respondents noted a number of methods: in Sweden there is a statutory requirement for those comments to be taken into account before a plan or programme is adopted or becomes a basis for regulations; in the Netherlands, the competent authority is obliged to give the reasons for decisions taken on a draft plan or programme, including considerations of the comments and views expressed by the public and the relevant authorities; and, in Denmark, the comments are taken into account in the final decision.

Figure 17

When a plan or programme is adopted, explain how your country ensures, in accordance with article 11, paragraph 1, that due account is taken of:
(a) the conclusions of the environmental report; (b) mitigation measures; and
(c) comments received in accordance with articles 8 to 10



Question I.23

62. Respondents informed their own public and authorities (article 11, para. 2) in a number of ways, including using the notice board of the competent authority (Bulgaria), relevant local, regional and national papers or magazines (Denmark) and the local newspaper (Norway), the Official Gazette (Portugal), public notices or electronic media (Austria) and through an official website (Bulgaria, Croatia and Czechia).

63. Those respondents that gave a deadline for informing their public authorities tended to require notification within approximately two weeks or less after adoption: for example, 15 days (Spain); 14 days (Bulgaria); 8 days (Romania); 7 business days (Czechia); and 5 days (Slovakia).

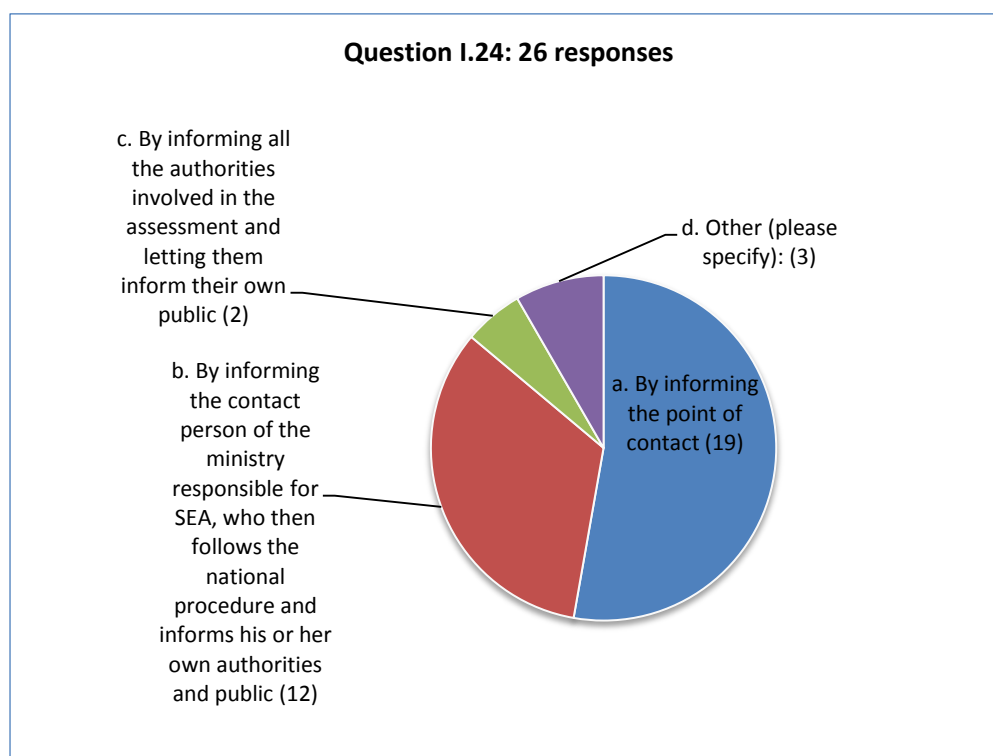
Question I.24

64. The respondents were asked to describe how they implemented article 11, paragraph 2, i.e., how the public and the authorities were informed when a plan or programme is adopted (including provision of information on how the plan or programme integrates environmental and health considerations, how comments received were taken into account and the reasons for adopting the plan or programme in the light of the reasonable alternatives considered). The majority of respondents inform the public and authorities of the affected Party by informing the point of contact. A substantial minority inform the public and authorities of the affected Party by informing the contact person of the ministry responsible for SEA, who then follows the national procedure and informs the authorities and public.

65. Parties mentioned a number of other options for informing the public and authorities of the affected Party: in the Netherlands the public and authorities that have submitted comments are informed personally of the final plan or programme; in Poland the national legislation does not indicate precisely how notification is to be carried out, but it does give the General Director for Environmental Protection the responsibility of informing an affected Party that participates in a transboundary SEA; and Luxembourg deals with the issue on a case-by-case basis.

66. A number of comments were made on this issue. Germany observed that in the event of a transboundary EIA the procedure to be followed should be discussed and agreed between the Party of origin and the affected Party. In Spain information is disseminated through the Ministry of Foreign Affairs and Cooperation. In Estonia, the person responsible for the preparation of the strategic planning document must inform the affected Party. Armenia has no practical experience of the issue. In Czechia the approving authority is obliged to inform the public and the authorities. Poland informs the point of contact or the contact person of the ministry responsible for SEA of the affected Party, who in turn informs the authorities and the public of the affected Party.

Figure 18

How do you inform the public and authorities of the affected Party (art. 11, para. 2)?**J. Monitoring****Question I.25**

67. Virtually all respondents that replied to the questionnaire described the legal requirements for monitoring the significant environmental, including health, effects of the implementation of the plans and programmes adopted under article 11 (article 12, paras. 1 and 2).

68. There are a number of approaches to implementing the requirements of article 12. Serbia reports it has a monitoring programme that provides, for each plan or programme monitored, a description of the objectives, the environmental status monitoring indicators, the rights and obligations of the competent authorities, what to do in the event of unexpected adverse effects and other elements on a case-by-case basis. Other States enshrine monitoring obligations in legislation, including Bosnia and Herzegovina, Czechia and Slovenia.

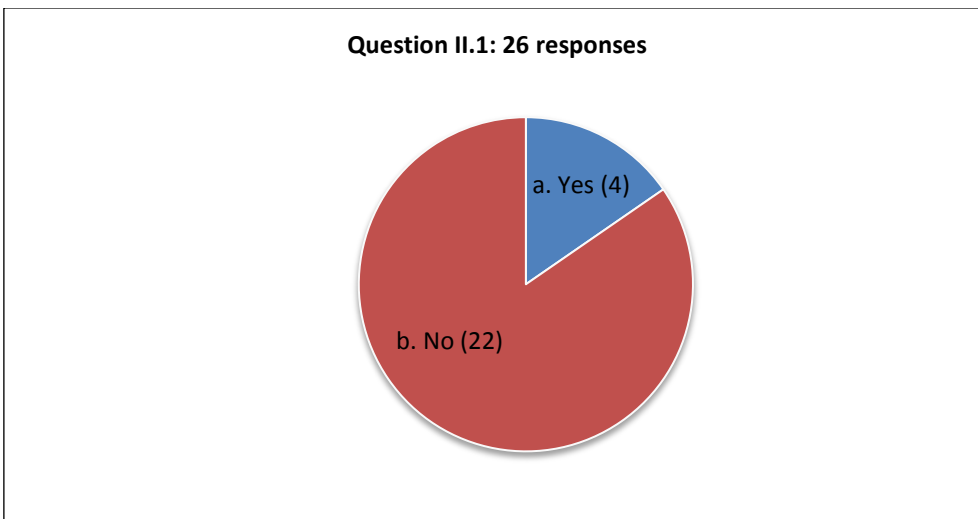
69. There are various approaches to the allocation of responsibility for monitoring. In Sweden the decision-making authority or municipality must acquire knowledge about the significant environmental impact caused by the realization of the plan or programme in order to make authorities or municipalities aware of unexpected impacts so that appropriate remedial measures may be taken. In Slovenia the planning authority is responsible for monitoring. In Bulgaria the developer is obliged to identify environmental monitoring measures and indicators, and after the necessary agreement with authorities is obliged to submit periodical reports to the competent environmental authority.

III. Practical application during the period 2013–2015

70. This chapter describes the practical application of the Protocol during the period 2013–2015. Four respondents objected to the information on SEA procedures they provided in part two of the questionnaire being compiled and made available on the website of the Protocol (question II.1).

Figure 19

Does your country object to the information on SEA procedures provided in this section being compiled and made available on the website of the Protocol?



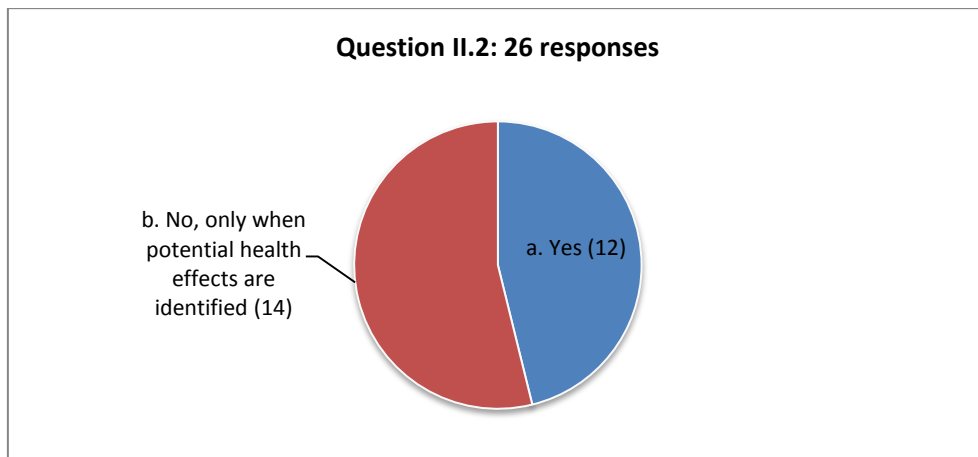
A. Consideration of health effects

Question II.2

71. A majority of respondents reported that SEA documentation only includes specific information on health effects when potential health effects are identified.

Figure 20

Does your SEA documentation always include specific information on health effects?



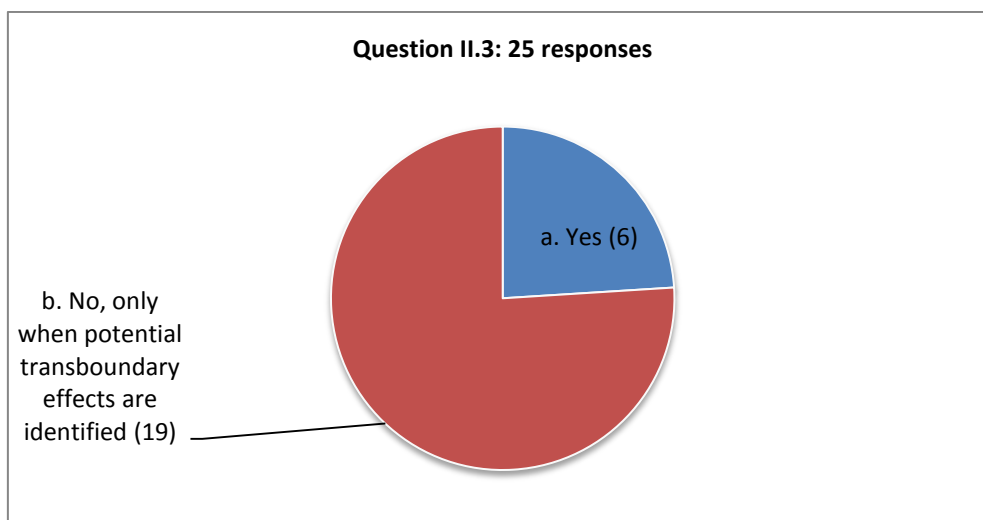
B. Domestic and transboundary implementation in the period 2013–2015

Question II.3

72. A considerable majority of respondents reported that their SEA documentation did not include specific information on potential transboundary environmental, including health, effects except when such potential effects are identified.

Figure 21

Does your SEA documentation always include specific information on potential transboundary environmental, including health, effects?



C. Cases during the period 2013–2015

Question II.4

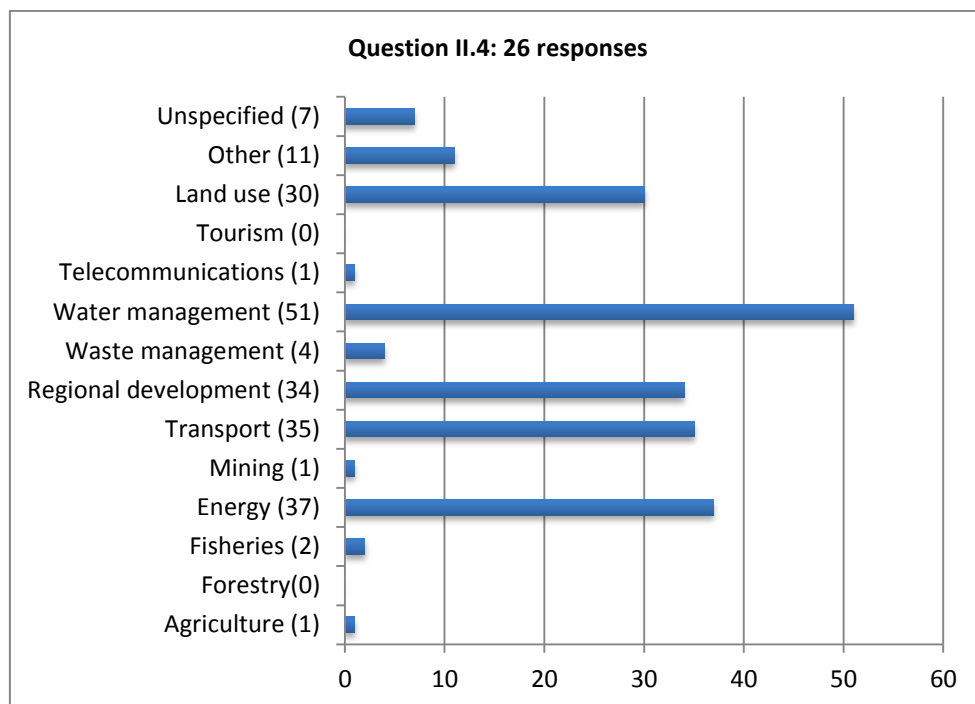
73. According to the Protocol, environmental, including health, considerations should be taken into account in the development of plans or programmes.

74. Respondents provided the approximate number of transboundary SEA procedures initiated during the period 2013–2015 and listed them, grouped by the sectors listed in article 4, paragraph 2. Transboundary SEA procedures were most frequent in the following areas: town and country planning or land use; water management; regional development; transport; and energy.

75. Respondents experienced a range of SEA procedures. Armenia, for example, had no practical experience of transboundary SEA procedures. In contrast, Poland reported 31: 6 as the Party as origin and 25 as the affected Party.

Figure 22⁵

Please provide the (approximate) number of transboundary SEA procedures initiated during the period 2013–2015 and list them, grouped by the sectors listed in article 4, paragraph 2



D. Experience with the strategic impact assessment procedure in 2013–2015

Question II.5

76. A large majority of respondents reported no substantial difficulties in interpreting particular terms in (or particular articles of) the Protocol. Germany said that there had been no substantial problems and mentioned that it had been helped by bilateral agreements. Germany and the Netherlands have a common declaration on transboundary EIA and SEA, and Germany and Poland have extended the scope of their bilateral agreement on EIA to cover SEA.

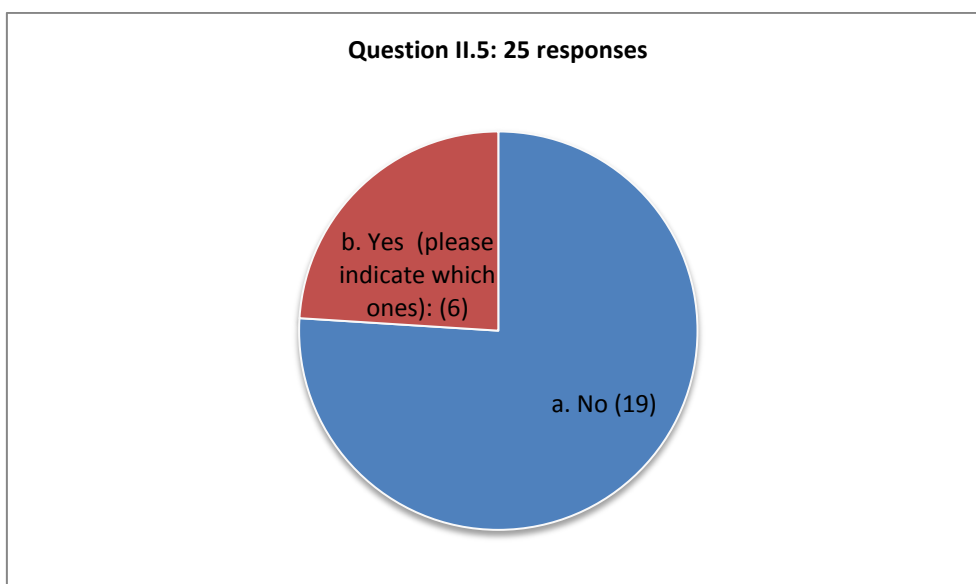
77. The following practical substantial difficulties were reported: the determination of the contents and level of detail for the environmental report and finding reasonable alternatives (Austria); a lack of clarity in the legislation about the language of the documentation provided for public consultation and what part needed to be translated into the national language of the affected country (Bulgaria); the interpretation of article 4, paragraph 4, and article 12 (Italy); a lack of clear legal definitions of some terms such as “significant impact” or “reasonable alternatives” (Poland); difficulties during transboundary consultation with respect to administrative procedures, and translation of only a summary

⁵ The chart is based on incomplete information because some respondents grouped their SEAs by the sectors listed in article 4, paragraph 2, and some did not; and because some respondents were unable to quantify the number of SEA procedures initiated during the reporting period.

of the SEA report (Portugal); definition of “minor modification” (Slovakia); and failure to synchronize processes on each side of a border (Slovenia).

Figure 23

Has your country experienced substantial difficulties in interpreting particular terms (or particular articles) in the Protocol?



Question II.6

78. Germany stated that the best way to resolve issues about interpretation of the Protocol is to work through bilateral agreements. Estonia also found it helpful to cooperate and exchange information with other Parties, particularly regarding transboundary SEA. Portugal entered into a bilateral protocol with Spain in 2008 that simplified formalities. Slovenia works with other respondents to find solutions.

79. Other means of overcoming interpretation problems included guidance, collection of SEA examples, fact sheets, information exchange among authorities, case studies and sharing best practices (Austria and Italy).

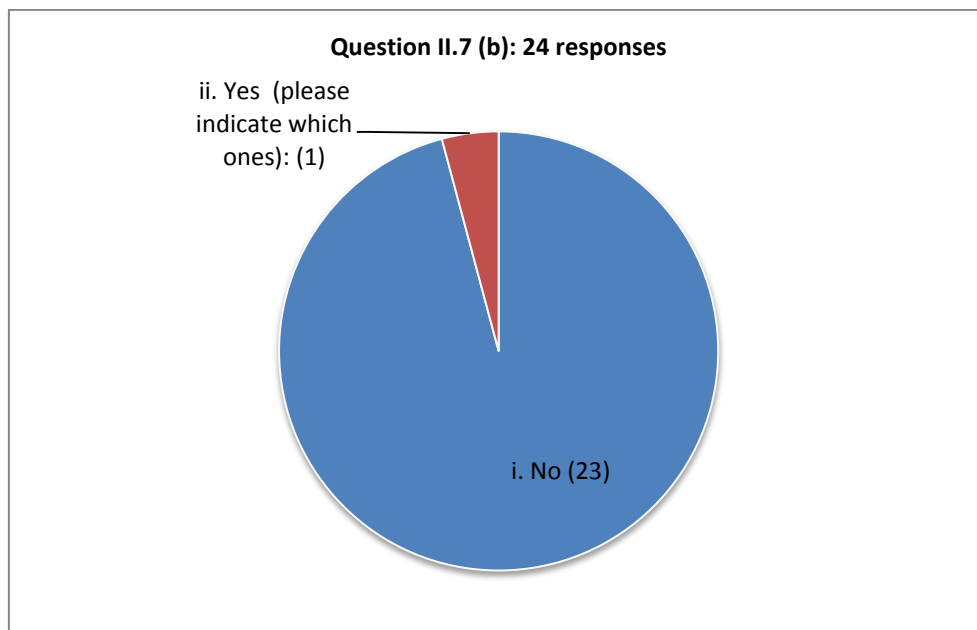
Question II.7

80. A little less than half the respondents volunteered details of their monitoring. A detailed list of best practice from the responses could be taken into account when preparing any new guidance.

81. Poland was the only Party that wished to present a case: the transboundary SEA procedure for the Polish Nuclear Power Programme.

Figure 24

Would your country like to present a case to be published on the website of the Convention and its Protocol as a “case study fact sheet”?



Question II.8 (a)

82. Less than half of the respondents offered concrete examples of difficulties in relation to translation and interpretation.

83. Germany mentions that translation has proven to be one of the most difficult topics in transboundary EIA and SEA in practice — “a permanent source of trouble and discussions” — and strongly recommends that translation should be clearly regulated in bilateral agreements, which makes things much easier.

84. Finland considers that the translation of documents is an important prerequisite, especially for the participation of the public; it feels that when it acts as Party of origin it provides adequate translated material, and hopes for reciprocal treatment.

85. Portugal reports that the main difficulty with translation is that only a summary of the SEA report has to be presented in both languages, which limits understanding of a plan or programme. It may also be difficult to understand comments made in another language. A bilateral protocol with Spain addresses translation issues.

86. As an affected Party, Hungary mainly receives SEA documentation in English; since it is necessary to make the environmental report available to the Hungarian public in Hungary, the Ministry for Agriculture is burdened with the translation of the documentation.

87. Estonia finds that its two bilateral agreements with Finland and Latvia help it to address translation issues.

Question II.8 (b)

88. There is no consistency on translation, and there were a variety of explanations of what respondents translate as Parties of origin. Austria will translate the draft plan or programme and the environmental report, or parts of it, into the language of the affected Party. Croatia translates only basic information and the non-technical summary, although if

it is dealing with a country from the former Yugoslavia it will prepare no translation. In Czechia, there is no mandatory translation so sometimes there is no translation at all, but if plans or programmes are likely to have potential significant effects on a neighbouring country, the proponent translates the most relevant parts of the programme and the environmental report. In Denmark, if there are transboundary issues there will be a summary of the SEA report in English. Estonia translates the draft strategic planning document and the SEA report, either into English or into the official language of the affected Party. In Finland, the draft plan or programme and the environmental report, or parts of them, are translated into the relevant languages.

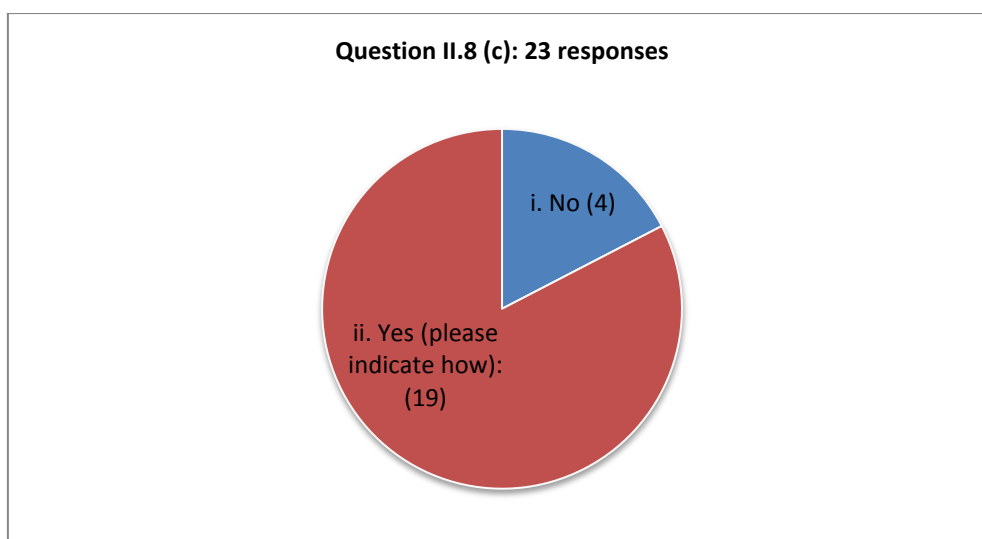
89. There is little available Protocol guidance on translation, although paragraph 50 (d) of the Good Practice Recommendations on Public Participation in Strategic Environmental Assessment quotes the recommendations of the Implementation Committee under the Espoo Convention on translation, and notes that similar arrangements could be used for SEA.

Question II.8 (c)

90. A considerable majority of respondents report that they have carried out transboundary public participation according to article 10, paragraph 4. Some respondents, for example Croatia and Portugal, have national legislation that sets out the procedures for public participation. Austria and Estonia are influenced by article 2, paragraph 6, of the Espoo Convention. Portugal and Spain have a bilateral agreement that allows the public from both respondents to participate in the early stages of environmental assessment procedures. Czechia referred to “Update Number 1 of the Spatial Development Policy of the Czech Republic”, in relation to which there was an agreement with Austria concerning the participation of the Austrian public.

Figure 25

Has your country carried out transboundary public participation according to article 10, paragraph 4?



Question II.8 (d)

91. A number of respondents expressed a positive view on the effectiveness of public participation. Croatia considers the engagement of the public to be an important factor, and Portugal reports that, although in some circumstances public participation has not been particularly significant, in others it has made an important contribution to protecting the

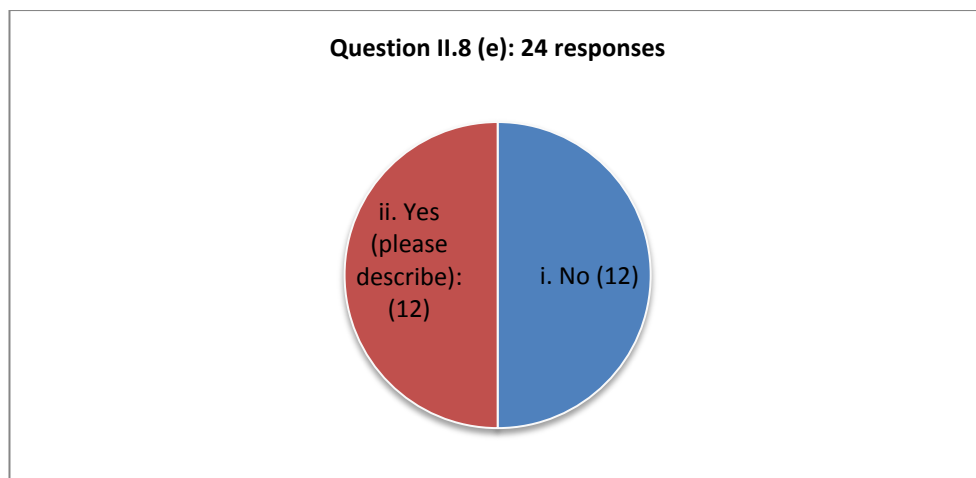
public’s interest by ensuring, at an early stage, that relevant concerns about the plans and programmes are taken into consideration. Czechia indicates that the most inspiring comments come from environmental and health authorities. Spain asserts that suggestions from the public improve the plans and programmes. Poland told of the effectiveness of public participation with respect to the transboundary SEA for the Polish Nuclear Power Station, notwithstanding the challenges (for example, dealing with 35,000 comments in German). Slovakia compares public participation to a long distance race.

Question II.8 (e)

92. Half of the respondents had examples of organizing transboundary SEA procedures for joint cross-border plans and programmes and half did not. Hungary applied joint SEA procedures with respect to a number of cross-border cooperation programmes, where the programmes were treated as if they came from a single country. Lithuania reported on the special territorial plan for the “Section of gas interconnection Poland-Lithuania located within the territory of the Republic of Lithuania”, part of a bilateral project with Poland. Although the SEA procedures are being carried out separately, both respondents share relevant information in order to ensure that the alternatives chosen by both sites maintain the integrity of the project. Another example was the operational programme of cross-border cooperation between Czechia and Poland. Procedures were agreed bilaterally, and a Czech-Polish working group was established. Translation issues were addressed and the whole programme and the whole environmental report were translated into the Polish language. Public hearings were attended by an interpreter.

Figure 26

Does your country have examples of organizing transboundary SEA procedures for joint cross-border plans and programmes?



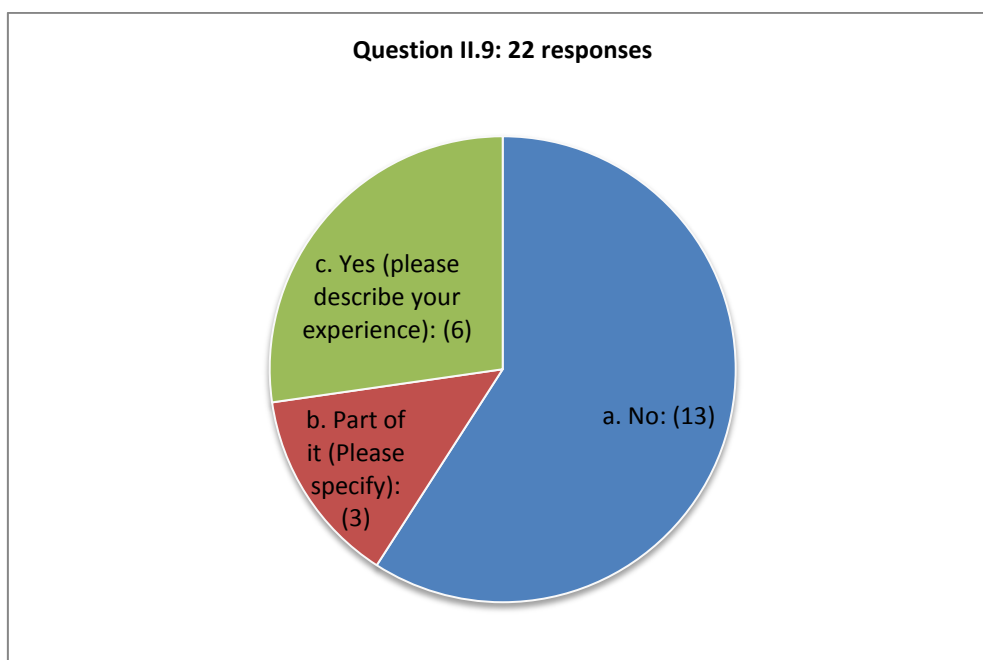
E. Experience regarding guidance in 2013–2015

Question II.9

93. The majority of respondents were not aware of any use in their country of the Resource Manual. Four respondents (Estonia, Lithuania, Romania and Spain) described individual circumstances in which the Resource Manual was used. There were no concrete proposals for improving and supplementing the Manual.

Figure 27

Are you aware of any use in your country of the online *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment*?



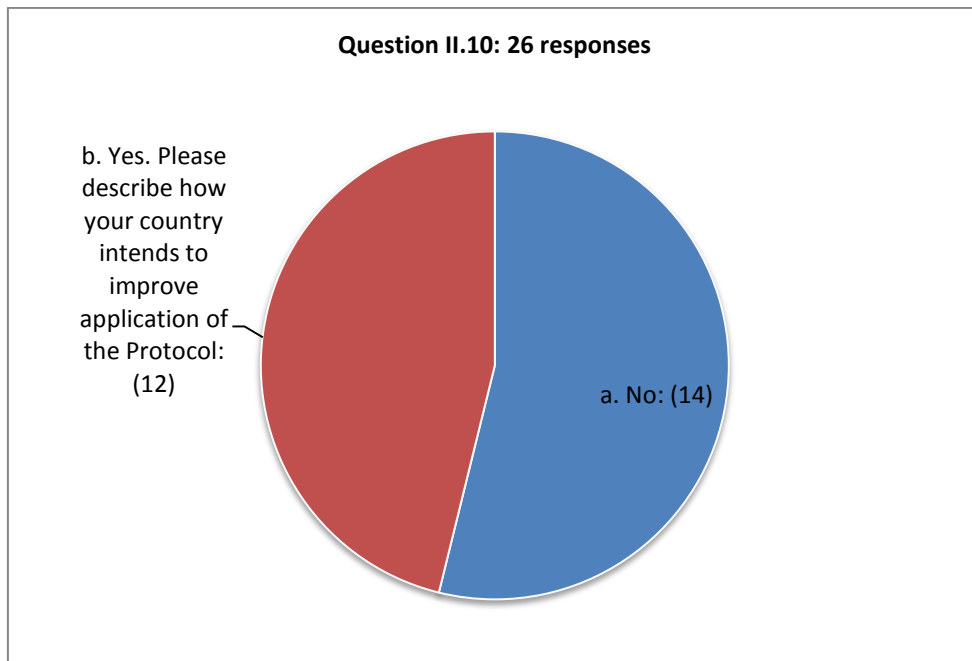
F. Awareness of the Protocol

Question II.10

94. While the majority of respondents saw no need to improve the application of the Protocol in their country, a substantial number saw a need to improve the Protocol's application.

95. There were a number of proposals for improving the application of the Protocol including: raising the awareness of the authority responsible for drafting the plans or programmes of the importance of the SEA process (Albania); implementation of a pilot project and amending domestic legislation in the light of the experience gained (Armenia); showing the positive effects and advantages of SEA (Austria); supporting the application of the Protocol by guidelines, an electronic toolkit, holding a regular meeting of SEA authorities, establishing an SEA practice group, collecting examples of SEA and making them publically available and publication of relevant material on a website (Austria); developing bilateral or multilateral agreements with neighbouring countries (Croatia and Slovakia); improvement of practice on a case-by-case basis (Denmark); using practical experience when reviewing and updating legislation (Estonia); appropriate modification of legislation (Finland and Sweden); and use of research and development to develop practical tools and approaches to ensure the good quality of SEAs (Finland).

Figure 28
Does your country see a need to improve the application of the Protocol in your country?



IV. Suggested improvements to the report

96. The Netherlands was the only responding Party to suggest improvements to the report, considering that an editable PDF format with text fields to fill in might be easier, and that a web form would be even easier, and might also facilitate processing the forms submitted. The Netherlands also suggested that the scope of some questions was not clear.
