

**REPORT OF THE NETHERLANDS FOR 2003-2005
ON THE IMPLEMENTATION OF THE ESPOO
CONVENTION ON ENVIRONMENTAL IMPACT
ASSESSMENT IN A TRANSBOUNDARY CONTEXT**

for the period mid-2003 to end of 2005

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

Please provide the information requested below in Part I, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should not be used to describe your experience of applying the Convention, i.e. just the framework for its implementation.

Article 2

General Provisions

DOMESTIC IMPLEMENTATION OF THE CONVENTION

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

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

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

Section 7.38a

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

Section 7.38b

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

Section 7.38c

1. In the event of possible serious adverse effects on the environment in another country, the competent authority shall send to Our Minister:

- a. a copy of the notification referred to in section 7.12;
- b. a copy of the guidelines referred to in section 7.15;
- c. a copy of the environmental impact statement referred to in section 7.20;
- d. a copy of the application referred to in section 7.28 or of the draft of the decision in the preparation of which the environmental impact statement must be drawn up;
- e. a copy of the decision referred to in section 7.27.

2. When sending these documents, the competent authority shall request Our Minister to apply section 7.38a, subsection 1.

Section 7.38d

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

Section 7.38e

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

Section 7.38f

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

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

Section 7.38g

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

2. *Describe your national and transboundary EIA procedures and authorities (Art. 2.2):*

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

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

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

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

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

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

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

2: Public participation and recommendations: there are usually 4 weeks set aside for public participation. Participation is open to everyone. This participation and the recommendations focus on the guidelines for the desired content of the environmental impact report. An important element of this is the recommendations for the Commission's guidelines for the environmental impact assessment.

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

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

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

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

7: Participation, recommendations and hearing: anyone may comment on the environmental impact report and raise objections to the application or the draft decision. The deadline is at least 4 weeks but follows the period for objections to the procedure for the decision.

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

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

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

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

- b. *Describe how the different steps of the transboundary EIA procedure mentioned in the Convention fit into your national EIA procedure.*

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

- c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure. Also list the authorities responsible for the domestic EIA procedure, if they are different.*

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

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

No.

3. *Do you have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

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

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING EIA UNDER THE CONVENTION

4. *Is your country's list of activities subject to the transboundary EIA procedure equivalent to that in Appendix I to the Convention?*

All Espoo Convention Appendix I activities fall within the scope of EIA in the Netherlands. The Dutch EIA Decree contains more activities than included in Appendix I to the Convention. For the extra activities, and for cases where a significant adverse transboundary impact is considered likely, the Convention will be applied.

5. *Please describe:*

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

The Environmental Management Act contains procedural provisions for EIA and content requirements for the EIA documentation. Paragraphs 7.2 and 7.3 describe the procedure to determine whether an EIA is mandatory for an activity, by reference to an EIA Decree. The EIA Decree contains a list of activities for which an EIA is mandatory.

- b. *How a change to an activity is considered as a "major" change;*

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

- c. *How such an activity, or such a change to an activity, is considered likely to have a "significant" adverse transboundary impact (Art. 2.5, Guidelines in Appendix III); and*

It is primarily the decision of the competent authority whether an activity is likely to have a significant adverse transboundary impact. When it is obvious to the competent authority that a proposed activity in the Netherlands may have a significant adverse environmental impact on the environment in another country, the competent authority has to send a notification to the point of contact in the affected country and will have to publish the information in the areas of the affected country that are likely to be affected. The competent authority decides on a case-by-case basis, taking into consideration the specific situation: type of activity, type of effects and distance to the border.

- d. *How you would decide whether it is "likely" to have such an impact. (Art. 2.3)*

In a way it is a matter of 'using common sense' to determine if activities will likely have significant transboundary environmental effects. A basic assumption is to encourage applying the precaution-principle and treat your neighbouring countries like you would treat your domestic public. In practice competent authorities attitude is: if a proposed activity with environmental effects is located within 5 kilometers of the border, the competent authorities will inform authorities and the public on the 'other'-side of the border. If there are doubts about possible environmental effects, also when such activities have distance to the border over 5 kilometers, usually the

competent authority will contact the authorities in the affected country about these possible transboundary environmental effects and will give these authorities and public the opportunity to participate in the EIA-procedure.

PUBLIC PARTICIPATION

6. *Do you have your own definition of “the public” in your national legislation, compared to Article 1(x)? How do you, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your own public as required in Article 2, paragraph 6?*

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

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

7. *Describe how you determine when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure do you usually notify the affected Party? (Art. 3.1)*

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

8. *Describe how you determine the content of the notification? (Art. 3.2)*

The initiator writes the pre-starting note. This document contains the basic data for the project and is in accordance with the notification of intent. After publication of the pre-starting note the competent authority will set the guidelines. These guidelines indicate which alternatives and which environmental impacts have to be dealt with in the environmental impact report.

9. *Describe the criteria you use to determine the time frame for the response to the notification from the affected Party (Art 3.3, “within the time specified in the notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

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

If the time frame is not complied with, the whole procedure will suffer from delays.

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

10. *Describe when you provide relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in Article 3, paragraph 5. Already with the notification or later in the procedure?*

In most cases the information in accordance with Article 3, paragraph 5 (a) and (b), is submitted with the notification.

11. *How do you determine whether you should request information from the affected Party (Art. 3.6)? When do you normally request information from the affected Party? What kind of information do you normally request? How do you determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (Art. 3.6)?*

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

Information on the state of the environment is normally requested.

12. *How do you consult with the authorities of the affected Party on public participation (Art. 3.8)? How do you identify, in cooperation with the affected Party, the “public” in the affected area? How is the public in the affected Party notified (what kinds of media, etc are usually used)? What is normally the content of the public notification? Does the notification to the public of the affected Party have the same content as the notification to your own public? If not, describe why not. At what stage in the EIA procedure do you normally notify the public of the affected Party?*

This depends on the type of activity, the likely impact and the location (distance from the border). The competent authority and the point of contact in the affected country together can best identify the public and authorities to be informed. This can be done in a dialogue between those authorities (most of the time local and regional authorities).

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

Yes, the two notifications contain the same information.

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

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

Yes, the points of contact are made use of in this way.

14. *Do you provide any information to supplement that required by Article 3, paragraph 2? Do you, furthermore, follow the proposed guidelines in the report of the first meeting of the Parties (ECE /MP/2, decision I/4)? If not, in what format do you normally present the notification?*

Yes, the proposed guidelines are followed.

The competent authority sends the (translated) ‘notification of intent’, with an accompanying letter, to the affected Party (local, regional and national authorities).

QUESTIONS TO AFFECTED PARTY

15. *Describe the process of how you decide whether or not you want to participate in the EIA procedure (Art. 3.3)? Who participates in the decision-making, for example: central*

authorities, local competent authorities, the public and environmental authorities? Describe the criteria or reasons you use to decide?

In most cases the notification is followed by a positive response to participate in the EIA procedure. Criteria for participation are the expected transboundary impact and the level of public interest involved.

16. *When the Party of origin requests you to provide information relating potentially affected environment: (a) how do you determine what is “reasonably obtainable” information to include in your response; and (b) describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “promptly” in the context of responding to a request for information? (Art. 3.6)*

Information is “reasonably obtainable” if it is existing information. One could think of inventoried references to literature, research reports and publications. No further research has to be carried out.

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

Article 4

Preparation of the EIA documentation

QUESTIONS TO PARTY OF ORIGIN

17. *What is the legal requirement for the content of the EIA documentation (Art. 4.1)?*

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

18. *Describe your country’s procedures for determining the content of the EIA documentation (Art. 4.1).*

See response to question 17.

19. *How do you identify “reasonable alternatives” in accordance with Appendix II, alinea (b)?*

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

20. *How do you identify “the environment that is likely to be affected by the proposed activity and its alternatives” in accordance to Appendix II, alinea (c), and the definition of “impact” in Article 1(vii)?*

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

21. *Do you give the affected Party all of the EIA documentation (Art. 4.2)? If not, which parts of the documentation do you provide?*

Yes, all the EIA documentation is given to the affected Party.

22. *How is the transfer and reception of the comments from the affected Party organized? How does the competent authority in your country (as the Party of origin) deal with the comments? (Art. 4.2)*

Usually the comments on the EIA documentation are sent directly to the competent authority.

Article 7.37 of the Environmental Management Act states that the statement of the grounds on which the decision is based shall in any event indicate: "... c. what consideration has been given to the comments and recommendations submitted concerning the environmental impact statement."

23. *Describe the procedures and, where appropriate the legislation you would apply to determine the time frame for comments provided for in the words "within a reasonable time before the final decision" (Art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

The time frame for comments depends on the specific legislation to be applied (at least four weeks). "Within a reasonable time before the final decision" is interpreted so that in any case the comments from must be able to influence the decision.

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

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

24. *What material do you provide, together with the affected Party, to the public of the affected Party?*

In the scoping phase: the notification of intent (translated) and additional information on the procedure and the possibilities for input. After the preparation of the EIA documentation: the EIA documentation (with translated Summary) and additional information on the procedure and the possibilities for involvement and for making comments.

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

No, the Party of origin does not initiate a public hearing for the affected public as a rule.

Usually a public hearing takes place after the preparation of the EIA documentation. This hearing is open to the public of the affected Party, public authorities and other organizations.

QUESTIONS TO AFFECTED PARTY

26. *Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of the words "within a reasonable time before the final decision", this being the time frame for comments (Art. 4.2)?*

See responses to previous questions.

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

Normally, the public participation is organized in accordance with the legislation of the country of origin and with bilateral agreements.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

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

After the EIA documentation has been prepared, it will be sent (without undue delay) to the affected Party, made public and laid down for public inspection. In the accompanying letter the question will be posed whether there is a need for consultation.

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

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

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

The consultations are preferably organized in the country of Origin. However, if the situation occurs it may be organized in the country of the affected Party as well. Primarily, consultation will have to be carried out at an expert level. If problems remain unsolved, the national government level has to be involved besides the relevant regional and local authorities.

At first, the competent authority in the Party of origin and the point of contact and other relevant levels of government authorities in the affected Party participate (expert level). If no agreement is reached or solution found, the consultation continues involving the national government level.

Communication is usually in a meeting preceded by an exchange of written communications.

QUESTIONS TO AFFECTED PARTY

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

Consultations are normally first held at the expert level. If problems remain the national government level has to be involved besides the relevant regional and local levels.

At first the competent authority in the country of origin and the point of contact and other relevant levels of government authorities in the affected Party discuss or exchange information at an expert level. If no agreement can be reached or solution found, the consultation continues involving national government levels.

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

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

31. *Describe what is regarded as the “final decision” to authorize or undertake a proposed activity (Art. 2.3). Do all projects listed in Appendix I require such a decision?*

Yes, all projects listed in Appendix I require a decision. Examples of such decisions are: permits other legal decisions, legally binding spatial plans, land-use plans, regional plans, the adoption of a route or other plans.

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

Environmental Management Act:

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

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

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

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

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

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

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

See response to question 32.

35. *If additional information comes available according to paragraph 3 before the activity commences, how do you consult with the affected Party? If need be, can the decision be revised? (Art. 6.3)*

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

Article 7

Post-Project Analysis

36. *How do you determine whether you should request a post-project analysis to be carried out (Art. 7.1)?*

In the Environmental Act there is an obligation to make an evaluation of Environmental Impact Statement. Section 7.39 stipulates: The competent authority that has taken a decision, in the preparation of which an environmental impact statement was drawn up, shall investigate the effects of the activity concerned on the environment, either during or after its completion. In practice competent authorities use section 7.39 optional.

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

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

Article 8

Bilateral and multilateral agreements

38. *Do you have any bilateral or multilateral agreements based on the EIA Convention (Art. 8, Appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on Appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

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

1. Agreement between the Government of the Netherlands and the Federal Republic of Germany on EIA in a transboundary context. This bilateral agreement is formalized in June 2005 and is published on the Conventions website.
2. Draft agreement Netherlands-Belgium/Flemish on EIA in a Transboundary Context. This bilateral agreement is yet not formalized.

Both these agreements contain some general principles on applying EIA in a transboundary context and provide step-by-step practical guidance on the process for those involved. Items dealt with are:

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

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

39. *Have you established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

Yes, a supplementary point of contact has been established.

Article 9

Research programmes

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

No

Ratification of the amendments to the Convention and of the Protocol on SEA

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

The intention is to put forward proposed legislation in Parliament in autumn 2006. This proposed legislation designs a new comprehensive system for environmental assessment, including SEA en EIA. Ratification of the amendments to the Convention and of the Protocol on SEA will be combined with this legislation. Parliamentary proceeding is planned in 2007. In 2008 formal ratification is expected.

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

See response to question 41.

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

See response to question 41.

PART II – PRACTICAL APPLICATION DURING THE PERIOD 2003-2005

Please report on your practical experiences of applying the Convention (not your procedures described in Part I), whether as Party of origin or affected Party. The focus here is on identifying the best practice as well as difficulties Parties encountered in applying the Convention in practice to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve application of the Convention.

CASES DURING THE PERIOD 2003-2005

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

No, personally I do not have any practical experience in applying the Convention. The provinces, regional and local authorities near the borders with Germany and Belgium do have a lot of experience in applying the Convention. They are most of the time the competent authorities in EIA-procedures. The provinces of Groningen, Drenthe, Overijssel, Gelderland, Limburg, Noord-Brabant and Zeeland provided information on EIA-procedures in their regions.

45. *Does your national administration have information on the transboundary EIA procedures that were underway during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If you have not provided a list of transboundary EIA procedures in connection with previous reporting, also provide a list of those procedures. If possible, also indicate for each procedure why it was considered necessary to apply the Convention.*

The national administration does have some information on the transboundary EIA procedures. This information is not complete. There is an indicative list, which gives an impression on procedures underway during the period 2003-2005 in the regions. The national administration opinion is that there is no need for a detailed and correct list of all EIA-procedures in the regions. The provinces and other involved authorities are requested to inform the national administration but there is no formal obligation to do it.

The EIA-cases listed in the table in the attached separate Annex gives an impression on transboundary EIA-procedure in the period 2003-2005 in the Netherlands, Belgium, Germany and UK.

It is an Annex because it was not possible to copy the table in this document!

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

No

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

In general there is no difference in the average durations for transboundary EIA procedures or domestic EIA procedures. The average duration of EIA procedures on industrial projects

is about 1-2 years. The average duration of EIA procedures on spatial planning, landuse plans and other plans is about 2-3 years.

EXPERIENCE OF THE TRANSBOUNDARY EIA PROCEDURE IN 2003-2005

48. *If you have had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

In general the objective for EIA is to improve the decision-making process by taking in account possible environmental effects. If also transboundary environmental impacts are taken in account it will improve the quality of the EIA and in the end also the final decision. Significant environmental impacts must stand the test on national and international legal standards. If so the competent authority will give permission for the proposed activity.

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

These terms are in general comparable with terms used in dutch legislation. There are no substantial difficulties in interpreting particular terms. Some of these terms are practically explained in the bilateral agreements. The bilateral agreements with Germany en Belgium gives practical solutions and suggestions how to get along with the Convention, and more specific some times how to work with these terms, in EIA procedures.

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

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

Most of the time it is a matter of 'using common sense' and own expert-judgement to determine if a activity will likely have significant transboundary environmental effects. A basic assumption is to encourage applying the precaution-principle and treat your neighbouring countries like you would treat your domestic public. In practice competent authorities attitude is: if a proposed activity with environmental effects is located within 5 kilometers of the border, the competent authorities will give specific attention to possible transboundary impact. If there is adverse transboundary impact the competent authority informs authorities and the public in the affected country. If there are doubts about possible environmental effects, also when such activities have a distance to the border over 5 kilometers, usually the competent authority will contact the authorities in the affected country and start a dialogue on the possible transboundary environmental effects and gives these authorities and public the opportunity to participate in the EIA-procedure.

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

In a transboundary EIA there is a separate chapter or paragraph providing information and documentation on transboundary aspects of the proposed activity.

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

On a regular basis multi-criteria-analyses is used to compare alternatives.

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

The bilateral agreement Netherlands-Germany states to translate: the notification of intent, the EIA-procedure, including timeframes and the rules for participation, the EIA summary, a summary of the request for a permit or draft decision for a landuseplan or other plans and the final decision. If activities in the Netherlands affect Belgium/Wallonia usually the same documents will be translated. In the Netherlands and Belgium/Flanders the language is the same, so there are no difficulties on matters of translation.

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

The procedure and legal system of the Party of origin is leading. Public hearings are organized in the country of the Party of origin. If necessary there are translators available. In case of public participation affected parties can participate like domestic authorities or other involved parties or the public. Translated announcements are published in the local newspapers of affected countries. Sometimes there are complaints from the public or authorities about the procedure and the EIA when not all EIA documents or information is translated. Most of the regional authorities have their own points of contact for transboundary EIA procedures. In some cases the regional authority collects participation documents from other authorities and the public and takes care for sending these documents to the competent authority in the neighbour country. Some German and Dutch competent authorities use a common list and invite parties on this list on a regular basis to participate in EIA procedures.

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

If consultation is necessary it takes a lot of time to organize it. Bureaucratic procedures in neighbour countries have their own usage and culture. The recommendation is to be aware of these different administrative procedures and cultural aspects. Sometimes there is a need to translate more EIA documents and procedure to get a better understanding of each others interests or to get an agreement about the EIA documents which are relevant for translation.

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

The final decisions are published in local newspapers in the affected country. Detail information is available at proper authorities in the affected country.

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

No.

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

The bilateral agreement Netherlands-Germany and the draft bilateral agreement Netherlands-Belgium/Flanders are very useful in application of the Convention. Joint cross-border projects appear on a regular basis. For example: railway projects, motorway projects and waterway projects (Westerschelde), crossborder pipelines for oil or gas transport, electricity transport, crossborder industrial sites and nature development projects

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

No.

CO-OPERATION BETWEEN PARTIES IN 2003-2005

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

There are differences in the legal systems of the Netherlands, Germany and Belgium. Sometimes difficulties arise on technical issues. In general translation on legislative issues, dialogue on these issues and exchange of expertise on differences between legal systems increases knowledge and understanding on legal systems in neighbouring countries *vice versa*.

EXPERIENCE IN USING THE GUIDANCE IN 2003-2005

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

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

No.

b. Guidance on subregional cooperation; and

No.

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

No.

CLARITY OF THE CONVENTION

53. Have you had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in Part I or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which you encounter when actually applying the Convention.

There are no difficulties in implementing the procedures of the Convention. In general the obligations and procedures in transboundary EIA are regulated in the Environmental Management Act (see responses in part I of the questionnaire). Practical application of the Convention is regulated by bilateral agreement or draft bilateral agreement.

AWARENESS OF THE CONVENTION

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

In summer en autumn 2005 the relevant regional en local authorities in the east of the Netherlands near the German border are made aware of the formalized bilateral agreement Netherlands-Germany. The regional authorities (provinces) encouraged the local authorities to use the bilateral agreement in transboundary EIA procedures. The agreement contain some general principles on applying EIA in a transboundary context and provide step-by step practical guidance on the process for those involved.

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

There is no need to improve the application of the Convention in the Netherlands. The bilateral agreement Netherlands-Germany and the draft bilateral agreement Netherlands-Belgium/Flandres are very usefull in application of the Convention.

SUGGESTED IMPROVEMENTS TO THE REPORT

56. Please provide suggestions for how the report may be improved.

No suggestions.