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

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

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

**DECISION III/1
REVIEW OF IMPLEMENTATION**

Addendum

SUMMARY

1. This section of the draft review brings together the summaries from the remainder of the draft review.

Overview of domestic implementation

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

I. APPLICATION OF THE CONVENTION

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

4. To determine whether a change to an Appendix I activity is “major”, respondents again identified a case-by-case examination relying on expert judgement and, in certain instances, consultation of authorities (Bulgaria, Italy) or interested parties (Kyrgyzstan). For some respondents, this examination was aided by guidelines and/or criteria, usually qualitative, but in certain Parties quantitative as well (Austria, Czech Republic, Germany). Again, Hungary employed a complete set of quantitative thresholds, thus removing the need for expert judgement.
5. To determine whether an activity not listed in Appendix I should be treated as if it were so listed, respondents generally reported use of a case-by-case examination relying on expert judgement. Many respondents also noted that their national lists of activities were more extensive than Appendix I to the Convention (Austria, Canada, Finland, Germany, Italy, Netherlands, Poland, Switzerland, United Kingdom). The Republic of Moldova noted the possibility for its Central Environmental Department to extend the list of activity types. Again, Hungary provided an exception in that only those activities in its extensive activity lists were subject to Environmental Impact Assessment (EIA); a bilateral or multilateral agreement might have been used to overcome this restriction.
6. To decide whether a change identified in pursuance of Article 2, paragraph 5, (i.e. to an activity not listed in Appendix I, but treated as if it were so listed) is considered to be a “major” change, respondents generally identified a case-by-case examination relying on expert judgement, supported by the use of quantitative or, more commonly, qualitative criteria (Austria, Bulgaria, Hungary, Latvia, Netherlands). Bulgaria, again, reported providing opportunities for consultation of authorities. Once again, Hungary provided an exception by employing a complete set of quantitative thresholds, thus removing the need for expert judgement.
7. There was greater divergence among the respondents in the procedures applied to determine the significance of transboundary impacts of activities listed in Appendix I. Generally, a case-by-case examination was made using expert judgement, guidelines (Canada, Switzerland) and, in a number of countries, qualitative or quantitative (Latvia) criteria. Switzerland also had a particular interest in involving potentially affected Parties at this stage; in addition, it has a scoping procedure. In the United Kingdom, the consultations were quite wide, though only domestic, extending to non-governmental organizations. The Czech Republic did not apply a significance test; any potential transboundary impact implied the carrying-out of a transboundary EIA.
8. Regarding procedures applied to decide whether an activity not listed in Appendix I, or a major change to such an activity, is considered to have a “significant” adverse transboundary impact, about half of the respondents simply referred to the answer to the previous question. Generally, a case-by-case examination was made using expert judgement, guidelines (Canada, Switzerland, United Kingdom) and, in a number of countries, qualitative or quantitative (Latvia) criteria. Again, Switzerland also had a particular interest in involving potentially affected Parties at this stage. As in the case of listed activities, the Czech Republic did not apply a significance test; any potential transboundary impact implied the carrying-out of a transboundary EIA. Some respondents also noted that their national lists of activities were more extensive than Appendix I to the Convention (Hungary, Italy, Switzerland, United Kingdom). In Hungary only those activities in its extensive activity lists were subject to EIA; a bilateral or multilateral agreement might have been used to overcome this restriction, as might a request from a potentially affected Party.

II. NOTIFICATION

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

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

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

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

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

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

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

15. In determining when to send the notification to the affected Party, respondents indicated that this had to occur no later than notifying their own public (Austria, Czech Republic, Finland) or consultees (Sweden, Norway), or no later than when the development notice was issued (Italy, Netherlands, United Kingdom) or a decision taken to hold a public inquiry (France).

Switzerland was seeking to notify the affected Party at the scoping stage, whereas in Hungary and Slovakia the notification was sent on receipt of the development request. In Bulgaria, the proponent notified the public at the same time as the competent authority, which then decided whether there was a need for a transboundary EIA procedure and notified the affected Party accordingly. In Canada, Croatia, Germany and Poland, the likelihood of a significant transboundary impact was first determined. In practice, many of the above may have been equivalent.

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

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

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

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

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

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

22. Responsibility for requesting information was reported by approximately half of the respondents as being with the environment ministry and by the other half as being with the

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

23. The kind of information normally requested was reportedly quite varied, for example it was either general (Czech Republic), defined by law (Hungary) or specific to the case (Germany, Kyrgyzstan, United Kingdom), or it related to potential impacts (Bulgaria, Slovakia, Switzerland), the affected population (Bulgaria), publicity requirements (United Kingdom) or the state of the environment (Netherlands). The Czech Republic, Slovakia and the Netherlands reported that the information provided was generally sufficient, whereas Croatia said it was “not exactly”. The United Kingdom noted that a development decision could not have been made unless the EIA documentation was sufficient.

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

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

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

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

28. Again, several respondents indicated that it was for the affected Party to determine the content of the public notification (Finland, France, Germany). In addition, respondents indicated that certain information should have been included (Bulgaria, Croatia, Czech Republic, Slovakia) in accordance with their domestic law (Germany, Hungary, Norway), bilateral agreements (Italy) or decision I/4 of the Meeting of the Parties (Canada). Eight of twelve respondents indicated that

the notification to the public in the affected Party had the same content as the notification to their own public; three of the other four indicated that it might be the same but that it was then for the affected Party to decide the exact content of the notification to its public.

29. Once again, several respondents indicated that the timing of the notification to the public in the affected Party was for the affected Party to decide, though the Netherlands and Switzerland noted that they aimed to assure notification at the same time as their own public was informed. Croatia reported that the public in the affected Party was notified after the domestic public inquiry had been completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. PREPARATION OF THE EIA DOCUMENTATION

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

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

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

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

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

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

50. Several respondents reported the transfer and reception of comments as being organized between the Espoo points of contact (Bulgaria, Canada, Croatia, Czech Republic, Finland). Other respondents indicated that comments were sent, either directly or via the point of contact, to the competent authority (France, Germany, Hungary, Netherlands, Switzerland) and integrated into the EIA documentation (Estonia). In Kyrgyzstan the comments are sent to the Environment Ministry, either directly or via the project proponent. The United Kingdom noted that it would have accepted comments directly from the public and authorities in an affected Party. Indeed,

several Parties indicated a preference for comments being sent directly to the competent authority rather than via the point of contact (France, Germany, Netherlands, Switzerland). Only in Armenia was the recipient of comments not a permanent body.

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

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

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

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

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

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

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

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

58. Most respondents indicated that the Party of origin had taken into account their comments as affected Party (Austria, Croatia, Finland, France, Netherlands, Sweden). The Netherlands noted, however, that it had had to encourage a Party of origin to take account of some comments. Bulgaria and Poland reported a lack of feedback on how their comments were taken into account, while the United Kingdom recorded a lack of response to certain comments.

IV. TRANSFER AND DISTRIBUTION OF THE EIA DOCUMENTATION

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

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

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

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

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

environmental authorities. In addition, respondents answered according to (a) their intent, (b) their legislation, or (c) their experience, or lack of it.

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

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

64. Similarly to previous questions, the body responsible for receiving the EIA documentation in an affected Party was variously reported as being the point of contact (Austria, Canada, Croatia, Finland, Germany, Netherlands, Sweden, Switzerland, United Kingdom), the environment ministry (Bulgaria, Czech Republic, Estonia, Germany, Hungary, Italy, Lithuania, Norway, Poland, Slovakia) or agency (Canada, Sweden), the competent authority (Austria, Canada, Germany, Kyrgyzstan) or the Ministry of Foreign Affairs (Canada). (In certain countries, two of these bodies may be one and the same.) In all cases, the body was reportedly permanent.

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

66. Difficulties reported with the transfer included:

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

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

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

V. PUBLIC PARTICIPATION

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

69. In order to assure that the opportunity given to the public in the affected Party was equivalent to that in the Party of origin, respondents indicated various measures, including

discussing with the affected Party how this might best have been achieved (Austria, Bulgaria, Sweden, Switzerland, United Kingdom). Austria also noted the importance of early distribution of the EIA documentation, whereas Canada and Germany reported that they applied their domestic legislation in full to the participation of the public in the affected Party. Estonia reported that the public in the affected Party was in fact consulted before its own. Croatia and Hungary noted that comments received were considered according to the same criteria, irrespective of whether they came from the public in the Party of origin or the affected Party. The Czech Republic and Hungary noted the importance of distributing all information to the affected Party. France limited itself to including public participation methodologies in the dossier sent to the affected Party, whereas Italy reported that all its transboundary projects had been subject to bilateral agreements that set out equal requirements for public participation. The Netherlands assured equal participation at both the scoping and main consultation stages. Finland reported the importance of both timing and materials.

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

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

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

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

hearings at the time of notification and of release of the EIA documentation. Slovakia suggested it would be possible in certain circumstances.

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

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

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

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

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

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

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

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

81. Some respondents in their role of affected Party reported positively on the opportunity given to their public to participate in the EIA procedure (Austria, Croatia, Netherlands, Norway).

Austria reported having organized public information meetings, having had its public invited to a public hearing in a Party of origin and having had access to a very useful Internet web site in the Party of origin. Italy and Switzerland reported implementation of joint EIAs. France had recently introduced a law on public inquiries for projects affecting France. However, Bulgaria reported a very limited opportunity to participate and Hungary reported that it was only notified two years after the public participation had been completed. Sweden noted that despite effective publicity, public interest had been lacking.

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

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

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

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

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

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