



**Economic and Social  
Council**

Distr.  
GENERAL

MP.EIA/2004/9  
31 March 2004

ORIGINAL: ENGLISH

**ECONOMIC COMMISSION FOR EUROPE**

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

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

**DRAFT DECISION III/8 TO BE TAKEN AT THE THIRD MEETING OF THE PARTIES  
Submitted by the Working Group on Environmental Impact Assessment**

**DECISION III/8  
GUIDANCE ON PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT  
ASSESSMENT IN A TRANSBOUNDARY CONTEXT**

The Meeting,

Recalling its decision II/3 on guidance on public participation in environmental impact assessment in a transboundary context,

Convinced that public participation forms an essential part of transboundary environmental impact assessment,

Noting that for many Parties, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters will contribute significantly to the strengthening of public participation in their implementation of the Convention on Environmental Impact Assessment in a Transboundary Context,

1. Recognizes the need for guidance to assist competent authorities and the public in organizing effective public participation in environmental impact assessment in a transboundary context;

2. Adopts the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context appended to this decision;

3. Invites Parties to provide information to the Working Group on Environmental Impact Assessment on the usefulness of the Guidance and any suggestions for its future development.

## Appendix

### **Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context <sup>\*/</sup>**

This Guidance has been developed according to decision II/3 by the Russian Federation (the Agency for Environmental Assessments, "ECOTERRA", represented by Nikolay Grishin) with the support of the United Kingdom (Jim Burns and Roger Gebbels), the secretariat of the UNECE Espoo Convention (Wiek Schrage), the European Commission (David Aspinwall and Thisvi Ekmektzoglou) and members of the UNECE Task Force on public participation in environmental impact assessment in a transboundary context.

The case studies of public participation in a transboundary EIA were presented by the following experts, members of the Task Force (shown in bold) and others: Tatyana Javanshir (Azerbaijan), Jacqueline Metodieva and **Katya Peicheva** (Bulgaria); Nenad Mikulic (Croatia); **Veronika Versh** (Estonia); **Leena Ivalo** and Ulla-Riitta Soveri (Finland); Georges Guignabel (France); **Gia Zhorzholiani** (Georgia); F6ris Edina (Hungary); Federica Rolle and Carmela Bilanzone (Italy); **Gulfia Shabaeva** and Tatyana Filkova (Kyrgyzstan); Daniela Pineta (Romania); **Nikolay Grishin** and Sergey Tveritinov (Russian Federation); **Jim Burns** and **Roger Gebbels** (United Kingdom).

## **Contents**

1. Introduction
  - 1.1. Role and benefits of public participation in environmental decision-making
  - 1.2. The background, mandate and aim of the guidance
  - 1.3. Case studies as the basis for the guidance
2. Public participation provisions of the Convention and their practical application
  - 2.1. Establishment of national EIA procedure that permits public participation
  - 2.2. Providing an opportunity for the public in an affected Party that is equivalent to that provided to the public in the Party of origin
  - 2.3. Financing and translation
  - 2.4. Notification of affected Party and public of Party of origin. Timing.
  - 2.5. Joint responsibility of concerned Parties for participation of public of affected Party in a transboundary EIA
  - 2.6. Distribution of the EIA documentation and submission of comments by the public of the affected Party
  - 2.7. Final decision and results of public participation
3. Recommendations for increasing effectiveness of public participation in a transboundary EIA
  - 3.1. Preliminary work with potential participants
  - 3.2. Contacts with potential affected Parties: Bilateral and multilateral agreements; Joint bodies

---

<sup>\*/</sup> The Guidance has been reproduced as received by the secretariat. Chapters 2.4 to 4 and the annexes are set out in two addenda to this document (MP.EIA/2004/9/Add.1 and Add.2).

- 3.3. Organizing points of contact for public
- 3.4. Role of the public
  
- 4. Final provisions
  - 4.1. Implementation of the guidance
  - 4.2. Review

Annexes

Annex 1. Text of the Convention

Annex 2. Case studies

## 1. INTRODUCTION

### 1.1 Role and benefits of public participation in environmental decision-making

1. Principle 10 of the Declaration of the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro (Brazil, 1992) emphasizes that environmental issues are best handled with the participation of all concerned citizens, at the relevant level. Agenda 21 adopted by UNCED recognized the important role of public participation in environmental impact assessment (EIA) in achieving sustainable development (item 23.2 of Agenda 21). The World Summit on Sustainable Development in Johannesburg (South Africa, 2002) developed further these provisions. The principles promoted by these conferences are fully integrated into the provisions of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context, <sup>\*/</sup> which came into force in 1997 (hereinafter referred to as the Convention).

2. When governments enable the public to participate in decision-making, they help meet society's goal of sustainable and environmentally sound development. Public participation in environmental decision-making and, in particular, in EIA, may lead to some benefits in these processes. As a result of public participation, the process of decision-making, up to and including the final decision, becomes more transparent and legitimate. Public debate on proposed activities among all interested groups at an early stage of decision-making may prevent or mitigate conflicts and adverse environmental consequences of the decisions with transboundary impacts.

3. For many UNECE member countries, the provisions of the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters <sup>\*\*/</sup> provide the basic requirements on public participation in environmental matters. This is also the case in regard to the provisions on public participation in the development of plans and programmes under the Protocol on Strategic Environmental Assessment (SEA) adopted at the Kiev Ministerial Conference (2003) and signed by thirty-six States and European Community. <sup>\*\*\*/</sup>

---

<sup>\*/</sup> For brevity, the abbreviation "transboundary EIA" will be used henceforth instead of the term "environmental impact assessment in a transboundary context"; other terms in the guidance have the same sense as in the Convention.

<sup>\*\*/</sup> This Convention was adopted in 1998 in Aarhus and entered into force in 2001. More information on the Aarhus Convention, as it is known may be found at <http://www.unece.org/env/pp/>. See also the document "Public participation in strategic decision-making" (MP.PP/WG.1/2003/5, of 26 August 2003) prepared by Secretariat in consultation with Bureau to the Aarhus Convention.

<sup>\*\*\*/</sup> The text of the Protocol on SEA is available at <http://www.unece.org/env/sea/>.

## 1.2 The background, mandate and aim of the guidance

4. The importance of public participation in a transboundary EIA and the need for guidance on it were recognized by the Parties to the Convention at their first two meetings (ECE/MP.EIA/2, annex VI, item 4, and MP.EIA/2001/3, decision II/3).

5. At the first meeting of the Parties to the Convention (Oslo, 18-20 May 1998), it was agreed that the work-plan for the implementation of the Convention for 1998-2000 should include work to prepare guidance on public participation in transboundary EIA. A first draft version of guidance was developed by the Russian Federation, as lead country, with financial support from Italy.

6. The second meeting of the Parties of the Convention (Sofia, 26-27 February 2001) welcomed the work carried out by the Russian Federation in developing draft guidance. This meeting recommended the Parties to develop this guidance further, *inter alia* on the basis of case studies, and to put forward proposals for consideration at the third meeting of Parties. Further work was carried out by the Russian Federation as lead country with financial support from the United Kingdom and with the practical support of the Secretariat of the Convention. The Russian Federation nominated the Agency for Environmental Assessments "Ecoterra" to co-ordinate the practical work on this issue.

7. According to decision II/3 of the second meeting of the Parties, the aim of the guidance is to assist competent authorities and the public in organizing effective public participation in transboundary EIA.

## 1.3 Case studies as the basis for the guidance

8. As recommended by the second meeting of the Parties, case studies of public participation in transboundary EIA were used as the basis for the guidance. A special format for describing these case studies was developed by the Russian Federation with the assistance of the United Kingdom and further refined on the basis of comments received from the Parties. This format was sent by the Secretariat of the Convention to the focal points of the Convention with a request to present case studies.

9. The following countries submitted case studies: Azerbaijan, Bulgaria, Croatia, Estonia, Finland, France, Georgia, Hungary, Italy, Kyrgyzstan, Romania, Russian Federation and United Kingdom (Annex 2). The authors of these case studies were invited to participate in a meeting of experts of the UNECE Task Force on public participation in transboundary EIA in Moscow (25-27 September 2003) at which the case studies and draft guidance were discussed. Views expressed by delegates at this workshop have been taken into account in preparing this guidance as well as some ideas in the most relevant guidance on the practical application of the Convention. <sup>\*/</sup>

10. The procedure for effective public participation in transboundary EIA contains a number of aspects, some of which are clearly described in the Convention. Other important aspects, for example, translation, timing, public comments or obligations and financial aspects are left to the discretion of the Parties to define. This approach is consistent with other European law, e.g., the EU EIA Directive requires public consultation, but the detailed arrangements are for the EU Member States to lay down, consistently with the requirements of the Directive. This guidance provides recommendations based on practical implementation deriving from the case studies on the described aspects of public participation in transboundary EIA found in the Convention, as

---

<sup>\*/</sup> Appended to decision III/4 and developed by Finland in collaboration with Sweden and the Netherlands.

well as the ones left to the Parties' discretion.

## **2. PUBLIC PARTICIPATION PROVISIONS OF THE CONVENTION AND THEIR PRACTICAL APPLICATION**

11. The following important aspects of public participation in transboundary EIA are established by the Convention:

- (a) establishment of a national EIA procedure regarding proposed activities listed in Appendix I to the Convention that permits public participation (Article 2.2); <sup>\*/</sup>
- (b) the opportunity for equivalent public participation in the EIA procedure for both the public of the affected Party and the public of the Party of origin (Article 2.6);
- (c) notification of the affected Party as early as possible and no later than when the Party of origin informs its own public about a proposed activity (Article 3.1); the notification shall contain the information provided in Article 3.2 of the Convention;
- (d) joint responsibility of the concerned Parties for the participation of the public of the affected Party in the areas likely to be affected in a transboundary EIA, giving this public the possibilities to make comments or objections (Article 3.8); this responsibility applies when the competent authority of the affected Party informs the Party of origin that it wishes to take part in the transboundary EIA procedure;
- (e) joint responsibility of the Parties concerned for the distribution of the EIA documentation and for submission of comments by the public of the affected Party in the areas likely to be affected (Article 4.2); and
- (f) a requirement that, in the final decision on the proposed activity, the Parties ensure that due account is taken of the comments on or objections to the proposed activity from the public of the affected Party in the areas likely to be affected. These include comments on the EIA documentation (Article 6.1).

12. These provisions may seem obvious and simple. In national EIA procedures and legislation they may well be routine, standard practices. But in a transboundary context they may be ill defined or perhaps not addressed at all. So when transboundary EIA cases arise they may present unfamiliar issues for which Parties are not always prepared – issues such as time allowed for responses, different consultation bodies, knowing whom to contact and the most suitable methods of doing so, language and translation issues, legal systems, etc.

13. This guidance seeks to address some of these issues by reflecting on information and practice taken from case study material submitted by several countries with experience of transboundary EIA.

### **2.1 Establishment of national EIA procedure that permits public participation**

14. Article 2.2 of the Convention requires Parties to establish a national EIA procedure that

---

<sup>\*/</sup> In references such as “Article 2.2” the first number refers to the Article of the Convention and is followed by the paragraph number in this article; in this particular case, Article 2, paragraph 2, of the Convention.

permits public participation. The Convention does not specify the detail of such a procedure recognizing that it is a matter for the national authorities to determine. But the provisions need to reflect the obligations that arise from compliance with the Convention. <sup>\*/</sup>

15. It is recommended that, as a minimum, national EIA procedures should include provisions that:

(a) the public is informed on any proposals relating to an activity with potential adverse environmental impacts in cases subject to an EIA procedure in order to obtain a permit for a given activity;

(b) the public in the areas likely to be affected is entitled to express comments and opinions on the proposed activity when all options are open before the final decision on this activity is made;

(c) reasonable time-frames are provided allowing sufficient time for each of the different stages of public participation in the EIA procedure;

(d) in making the final decision on the proposed activity, due account is taken of the results of the public participation in the EIA procedure.

16. The essence of public consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice. To achieve consultation, the consulting party must supply sufficient information to the consulted party to enable it to tender helpful advice. Sufficient time must be given by the consulting to the consulted party to enable it to do that, and sufficient time must be available for such advice to be considered by the consulting party. Sufficient, in that context, does not mean ample, but at least enough to enable the relevant purpose to be fulfilled. <sup>\*\*/</sup> The consulted party in this context is not a “Party” in the Convention sense, but it could extend to competent and environmental authorities, non-governmental organizations (NGOs), local community groups, individuals, etc.

17. Many countries have some elements in their national EIA procedures, which permit public participation (see Box 1).

## **2.2 Providing an opportunity for the public in an affected Party that is equivalent to that provided to the public in the Party of origin**

18. According to the Convention, the affected Party must express an interest in participating in the EIA procedure of the Country of origin, following notification. If this interest is expressed, Article 2.6 of the Convention states that the Party of Origin shall provide opportunities for the public of the affected Party to participate in the EIA process that are equivalent to those provided to the public in the Party of origin.

19. The Convention does not define what is meant by “equivalent”. In a given situation it is for the Party of origin to decide what constitutes “equivalent”. At one level the method of public participation offered to the public in the affected Party might be identical to the provisions afforded to the public in the Party of origin; while at another level, different methods may be

---

<sup>\*/</sup> They may also need to reflect, as appropriate, the provisions of the Aarhus Convention for Parties having also ratified that Convention; and the EU EIA Directive (Directive 85/337/EEC, as amended by Directive 97/11/EC and by Directive 2003/35/EC) for Member States of the EU.

<sup>\*\*/</sup> Consultation as defined by the United Kingdom High Court.

applied to reflect different circumstances and public needs. The Convention does not specify that the means of public participation in EIA procedure in the Party of origin and the affected Party should be identical - only that the opportunity provided to the public of the affected Party should be equivalent.

### **Box 1: Elements of effective national EIA procedures for public participation**

- The public in Finland, France, Italy, the United Kingdom, and in other countries that are member States of the European Union, is informed in accordance with the EC EIA Directive (Directive 85/337/EEC, as amended by Directive 97/11/EC and by Directive 2003/35/EC <sup>\*/</sup>), i.e. at the very early stage of the procedure (Annex 2, case studies 2.6, 2.7, 2.8 and 2.10).
- According to the EU Legislation (EIA Directive), a reasonable time-frame for different phases of the EIA procedure shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making:
  - in Croatia and in Italy EIA documentation is available to the public during periods of 30 days (case study 2.8);
  - in Estonia at least 2 weeks should be given for public comments on the EIA programme (a programme of investigations that should be carried out for preparing EIA report) and for the EIA statement (case study 2.4);
  - Finland provides 4 weeks for public discussion of the EIA programme and 7 weeks for discussion of the EIA report (case study 2.7);
  - in the United Kingdom, for marine dredging projects a period of 10 weeks is allowed for initial consultation. A further period of 6 weeks is allowed to comment on the initial consultation summary and any supplement to the Environmental Statement prepared in response to these consultations (case study 2.10).
- In the Russian Federation, EIA documentation and the results of public discussion about a proposed activity, **organized** by local government, should be presented by the proponent to the environmental authority (state environmental expertise) for checking and receiving the permit (national legislation).
- Information about the EIA procedure and the results of proposed activities may be put into the web site of the competent authorities (Finland, case study 2.7; Hungary, case study 2.3).

### **How have Parties approached this?**

20. In general, the case studies (Annex 2) have shown practical examples of how Parties to the Convention have addressed these issues. Some countries have included in their national legislation provisions for participation of the public of an affected Party; others have made arrangements for this through other means, discussed in this section. The case studies have indicated that equivalent

---

<sup>\*/</sup> EU Member States do not need to apply Directive 2003/35/EC until June 2005.



opportunities for public participation in EIA procedures in the Party of origin and in the affected Party were often realized in practice (see Box 2). In some case studies, the public of the Party of origin and the public of the affected Party were informed about the start of EIA procedure at the same time and more particularly from the very beginning of this procedure.

**Box 2: Case studies where the public of concerned Parties was informed about the EIA procedure and about the opportunity to take part in this procedure at an equivalent time**

- The operator of the project (case study 2.1) informed the public of all concerned Parties (Azerbaijan, Georgia, Turkey) about the start EIA procedure and about the possibility to take part in this procedure at the equivalent time – from the very beginning of the EIA procedure.
- The same situation (informing the public of the concerned Parties from the very beginning of the EIA procedure) occurred in some joint projects: Bulgaria/Romania (case study 2.2), Italy/Croatia (case study 2.8), Estonia/Finland (case study 2.4) and Finland/Sweden (case study 2.6).

---

Note: It is up to the concerned Parties (both Party of origin and affected Party) to ensure that the public of the affected Party in the areas likely to be affected is informed of the proposed activities

21. Another way in which an “equivalent opportunity” was given to the public in an affected Party was demonstrated by the case study of a proposal to construct the Finnish nuclear plant “Loviisa 3” (case study 2.5). Here the proponent prepared, translated and distributed information about the proposed project and a summary of the EIA programme and EIA report to representatives of the public of both the Party of origin and the affected Party. Information was made available in both the Finnish and Russian languages.

22. Equivalent opportunities in public participation have also been demonstrated through the case studies with respect to time limits for commenting on or objecting to a proposed activity. The case studies (see Box 3) showed that the Party of origin takes responsibility for establishing the time limits for comments by members of the public to be submitted on the proposed activity. In many of the case studies, identical time limits were established for the public of all the concerned Parties. In such cases, it is important to ensure that the available time is not reduced by the time taken for the transmission of documents, or other communications, between Parties. This is discussed further in section 2.4 below.

**Box 3: Equivalent time limits for commenting on or objecting to a proposed activity for public in the areas likely to be affected in concerned Parties**

- The operator of the project (case study 2.1) established the equivalent time limits (a 60-day period of public discussion of the project before the permitting procedure and then 45-90 days during that procedure) for the public of all concerned Parties in Azerbaijan and Georgia according to an Agreement between the Parties.
- An equivalent time limit (1 month/30 days) was established for the public of both Parties for two joint projects: Bulgaria/Romania (case study 2.2) and Italy/Croatia (case study 2.8).
- The competent authority of the Party of origin (Estonia, case study 2.4) gave the public of the affected Party (Finland) more time (1 month) for commenting or objecting, than to its own public (2 weeks for the EIA programme; 3 weeks for EIA statement).
- An equivalent time limit (60 days) was established by the Party of origin (Finland, case study 2.5) for its public and for comments from the affected Party (Russian Federation).
- Equivalent time limits were established by the Party of origin (Finland) for its public and for the public of the affected Party (Sweden) in two projects: 4 weeks for the EIA programme and 7 weeks for the EIA report (case study 2.6); 6 weeks for the EIA programme and 7 weeks for the EIA report (case study 2.7).
- An equivalent time limit (10 weeks for initial consultations, and then a further period of 6 weeks to comment on the initial consultation summary and any supplement to the environmental statement prepared in response to the consultations) was established by the Party of origin (United Kingdom, case study 2.10) for the public of this Party and for receiving comments from affected Parties in the case of a marine dredging project.

23. However, one should also bear in mind Article 3.8 of the Convention, which provides that the Party of origin together with the affected Party shall ensure that the public of the affected Party in the areas likely to be affected is informed of, and is given the opportunity to make comments or objections on, the proposed activity. The responsibility therefore lies on both concerned Parties. The authorities in the affected Party will wish to satisfy themselves that the Party of origin has allowed sufficient time so that effective consultation with the public in the affected Party can be undertaken.

### **2.3 Financing and translation**

24. The financial aspect is one of the most important aspects of the public participation procedure in transboundary EIA. Financial support for organizing this procedure may be necessary to cover the costs of:

- (a) translating the EIA documentation into the language of the affected Party;
- (b) translating the comments and recommendations of the public of the affected Party into the language of the Party of origin;
- (c) disseminating EIA materials (including booklets, brochures) within the affected Party;

(d) payment for information distributed through, e.g. newspapers, radio, TV, e-mail or Internet;

(e) organizing public hearings and meetings of the public of the Parties concerned, etc.

25. Not all of the activities listed above will need to be carried out for every project. For example, even when countries do not share a common, official language, translation may not always be required if it is agreed that the public in an affected Party is sufficiently conversant with the language of the Party of origin to make it unnecessary. These are matters on which it is appropriate for the competent authorities in the Party of origin and the affected Party to reach agreement, either in the context of formal bilateral or multilateral agreements or on a case-by-case basis.

26. As is evident from the case studies (see Box 4) the costs of organizing public participation projects may vary very considerably from one case study to another, reflecting different economic circumstances and possibly different methods of undertaking the public participation. Moreover, in some cases the figures may not completely represent all of the costs associated with the public participation procedure. Some costs are difficult to quantify – for example additional administration time to deal with competent authorities in an affected Party or translating documents received in the language of an affected Party.

27. For many countries the question is: in a transboundary EIA, where such costs are likely to arise, who is responsible for meeting the costs of participation by members of the public in the affected Party? The Convention itself is silent on the question of costs for translation and other associated costs though the question has been discussed and it has been recommended that the Party of origin should normally meet such costs. In accordance with decision II/1, in general, the Party of origin is responsible for translation as well as for the cost. According to the Guidance on the Practical Application of the Espoo Convention (as appended to decision III/4), the cost of public participation in a transboundary EIA (including the translation) can be covered by:

(a) the developer (proponent);

(b) the Party of origin;

(c) the affected Party;

(d) an International Financial Institution;

(e) a combination of two or more of the above mentioned bodies.

28. It may be helpful to consider each of these possible options.

(a) The proponent meets the costs

29. It is a generally accepted principle of environmental protection that the “polluter pays”. If this were applied in EIA cases under the Convention it would suggest that the responsibility for meeting essential costs should fall to the proponent or to the competent authority in the Party of origin.

<b>Box 4: Assessment of cost of public participation in a transboundary EIA in affected Party according to case studies (Annex 2)</b>			
Case study reference (in Annex 2)	Party of origin (PO) / affected Party (AP)	Cost of public participation in AP	Responsibility for meeting the cost of public participation
2.1	Azerbaijan / Georgia <sup>*/</sup>	US\$ 1,500,000 <sup>**/</sup>	Proponent (operator)
2.2	Bulgaria / Romania <sup>*/</sup>	No information	Public hearings – their participants; Translation – local authorities and joint bodies
2.3	Croatia / Hungary	€16,000	Competent authority of AP
2.4	Estonia / Finland	No information	Proponent
2.5	Finland / Russia	€1,500 +	Proponent
		+ €500	NGO in AP
2.6	Finland / Sweden	No information	Proponent
2.7	Finland / Sweden	about €8,000 – 10,000	Proponent
2.8	Italy / Croatia <sup>*/</sup>	about €5,000 – in each country	Proponent (joint company)
2.9	Kyrgyzstan / Kazakhstan	US\$ 500	NGO
2.10	United Kingdom / France, Belgium, Denmark, Germany, Netherlands	US\$ 80,000	Proponent
		US\$ 300	Competent authority of PO

30. Analysis of the case studies received suggests that this concept is broadly supported by proponents and also by the competent authorities in the Party of origin. In seven of the ten case studies the proponent accepted responsibility for the financial aspects of public participation in transboundary EIA procedure in Party of origin and affected Party (see Box 4).

31. There is, however, no requirement for this in the Convention. On the other hand, the proponent has an obligation to pay the cost of an EIA procedure in accordance with the national legislation of some countries, for example, in accordance with Finnish EIA law:

<sup>\*/</sup> All concerned Parties are effectively both the Party of origin and the affected Party.

<sup>\*\*/</sup> This cost included the cost of public participation in the second project, the South Caucasus Pipeline (gas pipeline), which was planned in the same pipeline route.

The Finnish Act on EIA procedure (section 22) states that “the developer shall answer for the cost of investigating and publishing information on environmental impact and related hearings, and for the cost of translation needed to assess transboundary impact.”

32. In preparing national EIA regulations, this provision of the Finnish EIA Act may serve as a useful example of how a legislative provision may be made to provide for costs that may arise in transboundary EIA.

33. Unless provided for in national law, it may not be possible to require a proponent to meet the costs associated with public participation in transboundary EIA. In such cases the competent authority will only be able to request the proponent to meet the costs. A good way of resolving costs issues may be bilateral or multilateral agreements between concerned Parties. <sup>\*/</sup>

34. Most proponents of major schemes that fall within the scope of the Convention are, however, likely to be aware of their environmental responsibilities and the need to ensure there is an understanding of the activity and its potential effects on all affected Parties. Project proponents should be generally aware that it is in their interests for the successful implementation of their project to reassure the public and affected Parties that appropriate safeguards and mitigation measures have been built into the project. Project proponents may be expected to work closely with the competent authorities in both the Party of origin and the affected Party to achieve this result. As analysis of the case studies suggests, they have generally been supportive and have provided for the costs of translation.

In the United Kingdom, the proponent of a major marine dredging scheme agreed on a voluntary basis to meet the cost of translating all of the EIA documentation into the languages of five countries that could have been affected by its proposal. The proponent also paid for translation costs to send initial notification letters to all five countries. The estimated cost to the proponent was in the region of US\$ 80,000 (case study 2.10).

35. While proponents may agree to meet costs of translation and other costs relating to public participation in a transboundary EIA, there has to be recognized that they will be unlikely to meet unlimited, unspecified and unnecessary costs. It is important to remember that at this stage the proponent is not guaranteed to be given development consent for the proposed activity. The proponent may agree to meet reasonable costs to improve the likelihood of getting such consent; but equally it will not wish to incur expense of little value.

(b) The Party of origin meets the costs

36. If the proponent is unwilling or unable to meet the costs of translation, etc., the competent authority in the Party of origin must consider whether it has to meet them. For most projects within scope of the Convention, approval will be subject to a development consent procedure administered by the competent authorities. These procedures may require the proponent to pay an application fee or consent fee designed to offset the administrative, management and legal costs associated with processing the application. Fees will vary from country to country and they may be a fixed rate or variable. However, a common feature may be a wish to recover legitimate costs properly incurred by the competent authority in handling the application.

---

<sup>\*/</sup> See the document “Bilateral and multilateral cooperation in the framework of the Convention on environmental impact assessment in a transboundary context”, approved by the Meeting of the Parties as decision II/1 (ECE/MP.EIA/4), or the section 3.2 of this guidance.

37. For transboundary EIA projects, Parties may wish to consider whether there is any need for a scale of charges or fees that is greater than applies to other projects without transboundary effects. It will be for Parties to consider whether or how this could be done and whether a ceiling on fee levels should be imposed so that a proponent would have certainty about costs or whether costs would be chargeable to the proponent on a cost-recovery basis. Whichever method is used, it is important that costs are properly controlled to reflect only those that are essential to the procedure of public participation in transboundary EIA and that the funding arrangements are transparent.

(c) An affected Party meets the costs

38. It may be unlikely that an affected Party will be asked to meet costs arising from its decision to take part in the EIA procedure for a project originating in another country that is likely to have significant environmental effects in the affected Party. It is more likely that the costs associated with public participation will be met by the Party of origin, as recommended by the Meeting of the Parties. However, in exceptional circumstances it may be necessary if no other source of funds is available. And though it may be unexpected and unwelcome, it may not be wholly negative.

39. Taking responsibility for these costs means that the affected Party assumes control of the procedure. Since it is meeting costs that would normally be met by the Party of origin, the affected Party will be able to argue for extensions of time allowed for consultation to ensure adequate translation of documentation, if required, and to ensure adequate public consultation with members of the public in the affected Party. Within the time scales agreed with the Party of origin, it can control the procedure, ensuring that the public participation for the project is at least as comprehensive as that set for projects authorized under its own national procedures. If these are better than those of the Party of origin this may be an advantage.

40. Nor need it be expensive if the only costs in the affected Party are incurred in advertising the development and giving details of where to find details of the EIA documentation and where and how to make comments or objections.

41. In providing comments to the Party of origin, an affected Party that had to meet its own costs may feel under no obligation to submit its comments in the language of the Party of origin.

42. In one case study under consideration (a multipurpose hydropower system on the River Drava, near the border between Croatia and Hungary, case study 2.3) the summary of the environmental impact study (sent in English) and relevant parts from the whole documentation concerning the transboundary impacts and the statement of the competent authority of the Party of origin were translated by the competent authority of the affected Party.

(d) An international financial institution meets the costs

43. International financial institutions (IFIs) generally would not be responsible for directly undertaking public consultation or covering the costs of it for a proposed project. Most IFIs have environmental procedures and policies that require that EIA, including public participation, is undertaken before they will take a decision whether to finance projects that have the potential for significant environmental impacts (see, for example, the environmental policy and procedures of the European Bank of Reconstruction and Development (EBRD), available at <http://www.ebrd.com/about/enviro/index.htm>).

44. Although IFIs may not directly provide funds for the public consultation, they do play a very important role in benchmarking against international standards and increasing the expectation of the public to have adequate information and opportunities for participation in an EIA procedure. Some IFIs, such as EBRD, have specific commitments to the Espoo Convention in their policies; some have other relevant commitments such as the World Bank Group's Safeguard Policies on International Waterways. Any project seeking IFI financing will need to ensure that their planning process includes provisions to meet the relevant standards.

(e) A combination of two or more of the above-mentioned bodies

45. There may also be occasions, for example when it is intended that transboundary projects such as roads and bridges will be jointly proposed and executed, when a Party is both Party of origin and affected Party. In such cases the concerned Parties will probably develop a joint management team to develop and oversee the project and the relevant EIA procedures. Given the circumstances, it is likely that each Party will simply assume responsibilities for public participation as determined under its own national EIA procedure.

46. But specific arrangements may also need to be made to ensure that members of the public in all affected countries have access to a single EIA report that provides information about the effects of the whole of the project and proposed mitigation measures. There may also need to be arrangements to ensure an exchange of information so that the decision-makers are fully aware of the views expressed by the public on the other side of the frontier.

47. In the case of the project to construct a bridge over the River Danube between the cities of Vidin in Bulgaria and Calafat in Romania (case study 2.2), the participants from relevant authorities in both countries, from NGOs and from the concerned public paid the costs of participation in the hearings themselves. The translation of the documentation was organized by joint Project Implementation and Management Units, which were established in the structures of the competent authorities of both countries as a result of agreement between the Governments. The local municipalities in each country covered the costs of the organization and translation into the Romanian and Bulgarian languages in the public hearings.

48. Other means of funding are also possible on an *ad hoc* basis. For example, in the case of the Nuclear Power Plant "Loviisa-3" in Finland (case study 2.5), the proponent met the cost of translation and publishing the EIA booklets in the language of the affected Party, and an NGO of the affected Party met the cost of dissemination of these booklets through the public of the affected Party and of receiving their comments.

49. It is important to emphasize that not every development will need a complex public inquiry or a series of public meetings. But it is essential that public participation is carried out effectively, in particular if these are not features of the national EIA procedures in the concerned Parties. In such cases the cost of public participation may be very small, especially in comparison with overall budget of the proposed activity, but it is recommended to include cost of public participation in the budget of this activity.

**50. It may be recommended that the proponent of an activity should have financial obligations for organizing public participation in Party of origin and in affected Party, including payment for translation and dissemination of EIA materials for the public.**

51. A key issue in effective public participation in a transboundary EIA procedure is the

availability of adequate information about the proposed activity, its likely effects on the environment and the measures proposed to mitigate them. While it may not always be necessary, a good and timely translation of the EIA documentation into the language of the affected Party will greatly facilitate meaningful involvement in the EIA procedure of the authorities and members of the public in the affected Party.

52. On the other hand, a poor translation may impede the process if in translation key information is “lost” or inadvertently misrepresented. Given the detailed, technical nature of some environmental reports this may occasionally happen. Difficulties with translation may never be entirely eliminated but they may be reduced if the proponent responsible for carrying out the EIA ensures the documentation is written in clear and easily understandable language.

53. Those responsible for organizing public involvement in a transboundary EIA procedure should also pay special attention to preparing relevant EIA documentation for the public of the concerned Parties in language that is clear and understandable. This is especially the case when preparing summary documents, such as the non-technical summary of EIA documentation. For many people, these summaries will be all that they will have time, or take trouble, to read. It is therefore important that the summary provides the essential information and is presented clearly and concisely, avoiding language that may create difficulties in translation to another language.

54. Responsibility for translation is a particular case of a general responsibility for financial aspects of the procedure of public participation in a transboundary EIA. The case studies indicated that the proponent usually assumes responsibility for financial aspects, such as translation of transboundary EIA materials (Box 4). In the case of joint projects of two Parties, payment for the translation may be by joint bodies or joint private firms of these Parties. This was done in the case of the bridge over the River Danube between Bulgaria and Romania (case study 2.2) and the Italian-Croatian under-sea gas pipeline (case study 2.8), respectively.

55. In the majority of case studies presented, the summary of the EIA documentation was translated for the public of affected Parties (case studies 2.1, 2.3, 2.4, 2.5, 2.7, 2.8, 2.10). The Party of origin or the proponent may decide to translate either all or the majority of the EIA documentation. At the very least, the non-technical summary of the EIA documentation should be translated, and additional information may be provided to the public of the affected Party upon request.

56. Another possible way of dealing with the issue of translation is the possibility for the full EIA documentation to be presented by the Party of origin or the proponent to the public of the affected Party upon request without translation. This was the case in the Finnish nuclear power plant “Loviisa-3”; the proponent presented the full EIA report in the English language upon the request of an NGO of the affected Party (case study 2.5). This is likely to be helpful in cases where the Parties share a common working (or official) language and the documentation exists in this language.

57. It would be useful, if financial responsibility for organizing public participation in affected Party, including volume of translated materials, responsibility for translation, number of copies were determined in the first stage of consultation or/and fixed in the agreement between concerned Parties.