



**Economic and Social
Council**

Distr.
GENERAL

MP.EIA/WG.1/1999/5
27 July 1999

ORIGINAL : ENGLISH

ECONOMIC COMMISSION FOR EUROPE

Meeting of the Parties to the Convention on
Environmental Impact Assessment in a
Transboundary Context
Working Group on Environmental Impact Assessment
(Geneva, 4-6 October 1999, Agenda item 4)

PROGRESS REPORT ON THE PRACTICAL APPLICATION OF THE CONVENTION

Submitted by the delegation of Finland

1. As part of the work-plan agreed at the first meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, Finland and Sweden - supported by the Commission of the European Communities - agreed to act as lead countries for a study and a workshop on the practical application of the Convention. In December 1998 all focal points received an invitation to the workshop and a request to supply information on cases from the secretariat.
2. The aim of the study and the workshop is to:
 - S Examine how assessments have been managed across borders;
 - S Provide examples of key difficulties and successful solutions with respect to managing the assessment, including the initiation of the transboundary EIA and the exchange of information throughout the process; and
 - S Give authorities that actually deal with transboundary assessment an opportunity to share their experiences and to improve their day-to-day handling of matters related to transboundary assessments.

Analysis of the case-studies

3. In February 1999, those who had indicated an interest in submitting a case study as well as all focal points received a questionnaire about 13 different issues related to the practical application of the Convention. Countries were encouraged to cooperate with the other countries involved in describing the case. There were no other instructions, except that English should be used.

4. Eleven cases studies were submitted. In two cases the countries involved had filled in the questionnaire together. Two cases were submitted by a country of origin, four by an affected country. There were three cases where the submitting country had played the role of both affected country and country of origin. In both cases the questionnaire was filled in from the perspective of a country of origin. Two described the same case. Two cases dealt with a process that had come to an end. In one case the procedure had only just been started while in the others the environmental impact study (EIS) or consultation stage had been reached. The analysis was carried out by the Finnish Environmental Institute. The participants who had signed up for the workshop in May 1999 received the case analysis. The final version of the case analysis will be submitted to the Working Group before its first meeting in October 1999. The main points that came out of the case study analysis are summarized below.

A. Specific articles

Article I: Definitions

5. The international investment banks played a major role in two cases. Their impact was seen for example when determining the significance and choosing the language for translation. The role of international organizations in implementing the Convention was seen to be somewhat unclear.

Article II: General provisions

6. The issue of implementation of the Convention was raised not only by the country of origin but also by the affected country, often their NGOs. In two cases there was no notification, because the issue was raised by the affected country. The applicability was considered most often by the country of origin, but there were cases where the affected country was involved as well.

7. The issue was raised and settled, and the transboundary EIA was usually carried out simultaneously with the national EIA. However, in one case it was carried out afterwards, in two cases it was raised and settled afterwards, and in one case it was raised and settled before the national EIA.

8. The significance was determined in line with the requirements of national EIA legislation, the international financing body, the project type, a bilateral agreement or professional judgement. In one case the determination of significance ended in controversy.

9. The opportunity to participate was not offered to the same groups in transboundary EIA as in national EIA. In fact, in some cases the opportunity to participate in transboundary EIA was wider than that given to participate in national EIA. This was explained by the lack of opportunity of public participation in national EIA.

Article III: Notification

10. The country of origin notified the affected country before EIA started in one case. In six cases the country of origin notified the affected country as EIA started and in two cases it did so after EIA had started. In two cases no notification was sent. In five cases the notification included other information and in three cases more information was provided upon request.

11. The countries of origin assessed the impacts on the basis of literature, with the help of the affected countries, with EIA tools, or by using results from NGOs. In six cases the affected country provided information and in one case there was a joint body to help.

Articles III and IV: Participation

12. Translation was relevant in seven cases. The notification was not translated into the affected country's language in half the cases, but it was translated as least partly into English in most cases. Only in one was it not translated into English.

13. The cases indicated that countries cooperate in ensuring participation by taking part in each other's hearings, providing lists of contacts, helping in advertising and translating and distributing material.

The comments made in the affected country were submitted either to the point of contact or directly to the developer.

Article IV: EIA documentation

14. The data were scarce. Few cases proposed alternatives.

Article V: Consultations

15. The consultations resulted in common monitoring programmes. They helped to clarify positions and attitudes, and the comments were taken into account in decision-making.

Article VI: Final decision

16. In five cases the final decision was communicated to the affected country through its ministry of the environment, another environmental body, its point of contact, or its provincial authorities.

In one case the affected country was not informed and in one case no final decision was made.

B. General analysis

Ad hoc application vs. organized system

17. Several respondents considered the Convention's procedures to be heavy and complicated. This may, however, be due to a lack of experience, as in cases in which a routine had developed, the procedure was fluent. Informal meetings, guidelines and clear routines can all help implementation.

Differences in EIA procedures

18. Differences in EIA procedures were seen as the main challenge for the implementation. There were differences in criteria for screening, criteria on significance, the EIA philosophy (level of detail, link with permit procedure), the tradition of public consultation and participation and in the role of the developer and the different authorities. Sharing information, meetings, bilateral agreements and joint bodies were seen as ways to meet this challenge.

Informal vs. formal contact and procedures

19. Even though the Convention does not mention negotiations other than the official ones between focal points or points of contact, the cases suggested that negotiations between EIA authorities in border regions should be encouraged. It should not be forgotten, however, that the link between a specific case and the negotiations should stay clear so that the procedure of the Convention can be applied smoothly.

C. Workshop

20. The Workshop took place in Helsinki, on 31 May and 1 June 1999. There were 44 participants from 27 countries (Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Netherlands, Norway, Poland, Russian Federation, Slovenia, Spain, Sweden, Ukraine, United Kingdom and Uzbekistan), the Commission of the European Communities and the European Bank for Reconstruction and Development (EBRD). Apart from two lectures, one on the Convention itself and one on the analysis, the Workshop consisted of short case study presentations on a restricted theme, working group sessions on the different articles and issues and working group presentations. There were three working group sessions and altogether 13 groups.

21. The participants came to the following preliminary conclusions and recommendations:

- Careful planning makes all the difference, so the countries and stakeholders involved should agree on rules for implementation at an early stage. This helps to avoid arguments and commit stakeholders.

- The implementation of the Convention should build trust and goodwill between the countries. It should create conditions for decision-making based on facts. "Reciprocity" implies that countries should treat their neighbours the way their neighbours treats them.
- Regional and national environmental programmes are seen as a starting point in **determining significance**. More guidance on the Convention can help when countries disagree on "significance", implementation or the final decision.
- **Contacts in varying forms** are essential. The participants discussed official and unofficial contacts, as well as the level of contacts from local, regional to national and federal level in depth. There is a great need for transboundary links on a regional level. International organizations, NGOs and the developer are seen as unofficial players. They are the supporters of the procedure. However, the procedure is a legal one and should be carried out as the Convention's articles require.
- **Public participation** is difficult but important, even if countries have different public participation traditions and legal provisions. Therefore, although much of the practical work is carried out on a regional level, a close link between the regional level and the point of contact should be maintained. The point of contact should be kept fully informed as he is responsible for the implementation.
- In one interesting example of cooperation a joint body discussed upcoming transboundary cases and followed ongoing procedures.
- The need for contact stems mainly from the diverging EIA legislation in different countries. It is particularly important to share information on this issue. Bilateral agreements offer a more permanent solution.
- To encourage participation, the affected country should take responsibility for the practical arrangements whenever possible. Financial arrangements should be made beforehand. The country of origin could give an unofficial "early warning". Meetings in the affected country should be held in its language. Detailed information needs to be provided only for specialists, general information is sufficient for the public. This should be taken into account when deciding on the need for translations.
- A prompt **notification** is a good start to the procedure. It should be sent at an early stage and according to the standardized format adopted by the Meeting of the Parties (ECE/MP.EIA/2, annex IV).
- There are several stages in the **exchange of information**. Clear rules and different means are used to help each piece of information reach its target group.

- The ECE database is an essential sources of information on transboundary EIA.
- The point of contact in the affected country should summarize the comments made during the public participation before passing them on to the country of origin. It is good practice to communicate the final decision to everybody participating in the process.
- It is, in principle, feasible to apply the Convention to **policies, plans and programmes**, but this should be decided on a case-by-case basis.

22. A more detailed analysis structured according to the articles of the Convention will be presented in the full report of the Workshop.

D. Future activities

23. The draft report, including the case analysis, the Workshop proceedings as well as the suggested good practice will be submitted for comments to the Working Group on Environmental Impact Assessment at its first meeting in October 1999. The participants will be able to comment on the draft report until December 1999. The second draft will be submitted to the Working Group at its second meeting in May 2000. The final report will be submitted in July 2000. It will be on the agenda of the second meeting of the Parties, which is scheduled to take place in October 2000.