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MEETING OF THE PARTIES TO THE CONVENTION
ON ENVIRONMENTAL IMPACT ASSESSMENT
IN A TRANSBOUNDARY CONTEXT

Fourth meeting
Bucharest, 19–21 May 2008
Item 8(a) of the provisional agenda

REVIEW OF THE WORK DONE BY THE WORKING GROUP ON ENVIRONMENTAL
IMPACT ASSESSMENT AND ADOPTION OF DECISIONS

REVIEW OF IMPLEMENTATION OF THE CONVENTION

A review of the legal and administrative framework for implementation of Articles 2 and 3

Note by the secretariat

Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment (EIA) in a Transboundary Context decided at its third meeting to adopt a workplan (decision III/9, in ECE/MP.EIA/6, annex IX) that included an activity on “Compliance with and implementation of the Convention”. The activity included the preparation of a revised and simplified questionnaire by the Implementation Committee with the support of the secretariat. This review summarizes responses to the revised questionnaire regarding the implementation of Articles 2 (general provisions) and 3 (notification) of the Convention during the period 2003–2005.

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INTRODUCTION

1. This review summarizes responses to the revised questionnaire regarding the implementation of Articles 2 (general provisions) and 3 (notification) of the Convention during the period 2003–2005. The questionnaire is described in the annex to decision IV/1. Responses to questions indicating a lack of experience have not been included in this review. The questions are indicated in italics.

I. ARTICLE 2: GENERAL PROVISIONS

A. Domestic implementation of the Convention

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

2. Respondents listed the various legislation, agreements and circulars implementing the provisions of the Convention. Armenia and Azerbaijan did not have any implementing measures, though necessary legislation was being discussed in the former. Switzerland also was proposing implementing legislation, noting that the Convention applied directly.

B. Transboundary environmental impact assessment procedure

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

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

3. Respondents' descriptions of their national EIA procedures ranged from a concise outline of the procedural steps with a note of which steps involved the public (Armenia, Austria, Azerbaijan, Denmark, Finland, Georgia, Germany, Hungary, Italy, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, Turkmenistan, United Kingdom), to a more extensive explanation of the procedure (Canada, Czech Republic, Latvia, Netherlands, Slovakia, Ukraine). A key element in these descriptions was whether public participation was possible in screening (Canada, Lithuania, Romania, Sweden) or scoping (Canada, Czech Republic, Denmark, Estonia, Finland, Kazakhstan, Latvia, Lithuania, Netherlands, Norway, Slovakia), as well as once an environmental report has been prepared. Spain provided consultation of environmental non-governmental organizations (NGOs) in both screening and scoping. In Hungary, there was public participation in the "preliminary phase" of the EIA procedure, which combined screening and scoping.

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

4. To describe how the different steps of the transboundary EIA procedure in the Convention fit into their national EIA procedures, some respondents quoted or described their legislation (Austria, Canada, Estonia, Norway, Romania, Slovakia, The former Yugoslav Republic of Macedonia). Others summarized the key elements (Armenia, Azerbaijan, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Hungary, Italy, Kyrgyzstan, Latvia, Moldova, Netherlands, Poland, Spain). Bulgaria and United Kingdom simply reported full transposition of the Convention and of the EIA Directive (EC Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC), respectively. Similarly, in Denmark, Slovenia and Sweden the Convention's procedure corresponded to the national one; in Switzerland, it was carried out in parallel. Kazakhstan reported correspondence between the Convention's procedure and the national one, except with regard to paragraph (i) of Appendix II (non-technical summary). In Lithuania, where the Convention provided for EIA procedures differing from those in the national law, the provisions of the Convention were applied.

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

5. Respondents listed the authorities responsible for different steps of the national and transboundary EIA procedures. Most Parties (i.e. more than 20) indicated a role in transboundary EIA for their ministry of (or state agency, or similar, for) the environment (Armenia, Austria, Azerbaijan, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Norway, Poland, Romania, Slovakia, Slovenia, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkmenistan), but other respondents indicated the ministry of foreign affairs (Austria, Croatia, Czech Republic, France, Kyrgyzstan, Latvia, Norway, Romania, Spain). When Switzerland was the Party of origin, its Federal Office for the Environment might not be involved. In Germany, the federal government was rarely involved, with local, regional or, occasionally, state (*Land*) authorities being responsible.

6. For national EIA procedures, many indicated a role for their ministry of the environment (Armenia, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Italy, Kazakhstan, Latvia, Lithuania, Moldova, Norway, Slovakia, Slovenia, Spain, The former Yugoslav Republic of Macedonia) or environmental inspectorate, agency, authority, office or regional centre (Cyprus, Finland, Hungary, Lithuania, Romania, Switzerland), and for other national and local authorities (Czech Republic, Kazakhstan, Moldova, Poland).

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

7. In most Parties, there was one national authority that collected information on all the country's transboundary EIA cases under the Convention (Armenia, Austria, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Hungary, Italy, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Moldova, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Turkmenistan, United Kingdom). In Azerbaijan, France, Germany, Kazakhstan, the Netherlands and Ukraine there was no such body, but there were plans to create one in Azerbaijan. The arrangements in Norway were under review.

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

8. Most Parties had no special provisions for joint cross-border projects, unless in project-specific bilateral agreements (Armenia, Austria, Azerbaijan, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Georgia, Germany, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Moldova, Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, The former Yugoslav Republic of Macedonia, Turkmenistan, Ukraine, United Kingdom). Bulgaria indicated that the EIA procedure was organized jointly, including preparation of the EIA documentation by a common team of experts. Canada listed a series of topics to be discussed with the other Party. Finland's bilateral agreement with Estonia provided for joint EIA in such instances.

C. Identification of a proposed activity requiring environmental impact assessment under the Convention

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

9. Some country's lists of activities subject to the transboundary EIA procedure were equivalent to that in Appendix I to the Convention (Armenia, Cyprus, Denmark, Estonia, Hungary, Kyrgyzstan, Romania, Slovakia, Slovenia, Spain, The former Yugoslav Republic of Macedonia, Turkmenistan, United Kingdom), while other country's lists were more extensive (Austria; Bulgaria; Canada; Croatia; Czech Republic; France, expressed as criteria rather than a list; Germany; Italy; Liechtenstein; Moldova; Netherlands; Norway; Poland; Romania; Switzerland). The lists of Finland, Sweden and Ukraine included all the projects listed in Appendix I. Kazakhstan's list included the projects listed in Appendix I, as amended by the second amendment to the Convention. Lithuania's list was generally equivalent, but its bilateral

agreement extended the list to include any activity covered by domestic EIA procedures. Georgia (not a Party) and Latvia indicated that their lists were not equivalent, without specifying whether they were more or less extensive. Azerbaijan did not have such a list. Switzerland's list did not include wind farms.

Question 5. Please describe:

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

10. Respondents described their procedures and legislation:

- (a) For some respondents, every activity requiring a domestic EIA fell within the scope of Appendix I or was treated as if it did (Austria, Germany, Italy, Liechtenstein, Lithuania, Netherlands, Norway, Poland, The former Yugoslav Republic of Macedonia, United Kingdom), or might have been (Switzerland). Similarly, in Croatia any activity in Appendix I or requiring a domestic EIA fell within the scope of Appendix I or was treated as if it did;
- (b) Azerbaijan suggested a possible role for the secretariat or a panel of independent experts in case of uncertainty;
- (c) In Bulgaria, the competent authority determined whether an activity fell within the scope of Appendix I, and the concerned Parties might have, at the initiative of any Party, entered into discussions regarding whether an activity not listed in Appendix I should have been treated as if it did;
- (d) Cyprus' legislation specified thresholds to indicate which changes to activities fell within the scope of Appendix I or were treated as if they did;
- (e) In the Czech Republic, any activity in its first category of project subject to domestic EIA fell within the scope of Appendix I. A potentially affected Party might also request a transboundary EIA for such an activity;
- (f) Appendix I activities fell within Denmark's legislation;
- (g) In Finland, the competent authority determined whether an activity fell within the scope of Appendix I if it was unclear;
- (h) France's criteria identified activities requiring domestic EIA and which fell within the scope of Appendix I or were treated as if they did;
- (i) Hungary's legislation included the activities listed in Appendix I with the addition of quantitative criteria. These activities therefore fell directly within the scope of Appendix I;
- (j) In Kazakhstan, the project proponent determined whether an activity was listed in Appendix I. If not, reference has to be made to Appendix III;
- (k) Kyrgyzstan referred to situations where an activity was planned next to a transboundary river or included the laying of transboundary pipelines;
- (l) Slovakia had a list of activities in its legislation. If the concerned Parties so agreed, an unlisted activity that might have a significant adverse transboundary impact would have been treated as if it was listed;
- (m) Slovenia's screening procedure provided such a determination;

- (n) Sweden noted that activities not listed in Appendix I, but for which a domestic EIA was mandatory, would have been treated as if they were listed based on a case-by-case evaluation using legal criteria;
- (o) Turkmenistan (not a Party) suggested the concerned Parties agreement on such a determination; and
- (p) Denmark, Italy and Romania also indicated that any activity not listed but that might have been likely to have a significant adverse transboundary impact was treated as if fell within the scope of Appendix I. Similarly, in Latvia, if an initial assessment revealed that an activity not listed was nonetheless likely to have a significant adverse transboundary impact, the activity was treated as if fell within the scope of Appendix I. Finland also indicated that such a “screening decision” might be made, giving special consideration to criteria such as those in Appendix III. In the United Kingdom, this might have been achieved by administrative means.

b. How a change to an activity is considered as a “major” change

11. Many countries had legal criteria for determining whether a change to an activity was considered as a “major” change (Austria; Canada; Czech Republic; Denmark; Finland; France; Germany; Hungary, both quantitative and qualitative; Kyrgyzstan, including a 10% increase in production; Latvia; Lithuania; Netherlands; Norway; Poland, with a 20% increase in emissions or consumption of raw materials or energy; Romania; Slovakia; Switzerland; The former Yugoslav Republic of Macedonia; United Kingdom). Several others required a case-by-case examination (Azerbaijan; Bulgaria; Cyprus; Finland and Germany, in certain cases; Italy; Kazakhstan; Liechtenstein; Slovakia). Estonia reported the need for EIA was considered if the change involved an amendment to the development consent; Sweden similarly required an EIA if a new permit was required. Slovenia considered that changes to an activity were cumulative and an EIA was mandatory whenever a threshold in its list of activities subject to EIA was crossed.

c. How such an activity, or such a change to an activity, is considered likely to have a “significant” adverse transboundary impact (Art. 2.5, Guidelines in Appendix III)

12. Some countries had legal criteria for determining whether a “significant” adverse transboundary impact was likely (Austria, Canada, Germany, Hungary, Italy, Norway, Poland, Romania, Slovakia, Spain, Switzerland, The former Yugoslav Republic of Macedonia). In Bulgaria, application was mandatory for Appendix I activities, but a case-by-case examination was undertaken for changes. In Croatia, the Parties concerned agreed on the meaning of “significance”. Many respondents reported that a case-by-case examination was undertaken (Cyprus, Denmark, Finland, France, Georgia, Germany, Latvia, Liechtenstein, Lithuania, Netherlands, Slovakia, Sweden, United Kingdom), with Switzerland and the United Kingdom also referring to published guidelines on whether projects were likely to have significant environmental effects. Kazakhstan simply listed a number of criteria. Kyrgyzstan indicated locational criteria. In Slovenia and Ukraine, the EIA itself determined impact significance. Finland, Kyrgyzstan, Slovakia and Switzerland referred to possible consultations with potentially affected Parties.

d. How you would decide whether it is “likely” to have such an impact. (Art. 2.3)

13. Regarding whether an activity was “likely” to have such an impact. (Art. 2.3), Austria and Norway interpreted “likely” to mean “a certain possibility”. Several countries used legal criteria (Bulgaria, Canada, Estonia, Germany, Romania); Kyrgyzstan and Switzerland referred to Appendix III. A regulation was required for definition of such criteria in The former Yugoslav Republic of Macedonia. Hungary indicated that various legal provisions might help in the procedural determination. Again in Croatia, the Parties concerned agreed on the meaning of “likely”. Many countries decided case-by-case (Armenia; Cyprus; Denmark; Finland; Germany; Italy; Latvia; Liechtenstein; Lithuania; Netherlands, while applying the precautionary principle; Slovakia; Sweden; United Kingdom). In France, all impacts considered might be “likely”. Finland and Kyrgyzstan referred to possible consultations with potentially affected Parties. In Slovenia and Ukraine, the EIA itself determined impact likelihood.

4. Public participation

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

14. Some respondents had a definition of “the public” (Armenia, Finland, France, Germany, Italy, Kazakhstan, Lithuania, Moldova, Slovakia, The former Yugoslav Republic of Macedonia, Turkmenistan, Ukraine). Cyprus, Slovenia and the United Kingdom had a definition through transposition of the EIA Directive. In addition, Latvia, Hungary and Romania had a definition through transposition of the Aarhus Convention¹. Poland’s law referred to “everyone” having the right to submit comments; similarly, the Czech Republic refers to “anyone” commenting or attending a public hearing. Kyrgyzstan, Liechtenstein, Sweden and Switzerland did not have a definition, but Spain expected to have one shortly.

15. To ensure, together with the affected Party, that the opportunity given to the public of the affected Party is equivalent to the one given to their own public, countries indicated:

- (a) Consultation of or agreement with the affected Party (Austria, Finland, Kyrgyzstan, Norway, Bulgaria, Estonia);
- (b) Consideration (Cyprus) or equal consideration (Croatia, Hungary, Lithuania) of the comments from the public in the affected Party;
- (c) Equal opportunities for nationals and non nationals (Canada);
- (d) Public hearings in both Parties (Switzerland).

16. Denmark and the Netherlands provided information at the scoping stage as well as once the full EIA documentation was available. Sweden invited the Party of origin to decide on appropriate means of informing the public. Bulgaria noted that the affected Party was responsible for providing an equivalent opportunity, whereas France, Italy and Spain suggested

¹ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

that it was the sole responsibility of the affected Party. This was also the experience to date in the United Kingdom. Similarly, in the Czech Republic it was for the affected Party to follow its legislation. In contrast, Germany's legislation also applied to public participation in the affected Party and Slovenia's legislation included provisions ensuring public participation in the affected Party. Poland facilitated public participation in the affected Party "as soon as possible".

II. ARTICLE 3: NOTIFICATION

A. Questions to the Party of origin

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

17. A notification was sent to the affected Party:
- (a) As early as possible (Austria, Cyprus, Germany, Poland, Turkmenistan);
 - (b) No later than when informing their own public (Austria, Cyprus, Finland, Slovenia, Turkmenistan), usually (Czech Republic);
 - (c) At the same time as informing their own public (Azerbaijan, France, Moldova, Romania, Sweden), in principle (Denmark);
 - (d) At the time of the first public hearing on the scoping (Norway);
 - (e) Once the national authorities had determined a need for EIA (Bulgaria, Estonia, Latvia, Slovenia) or transboundary EIA (Germany, Hungary, Poland);
 - (f) Within five days of determining, or being informed by an affected Party, that a transboundary impact, was likely (Czech Republic);
 - (g) Once the project proponent had declared the start of the preparation of the project and EIA documentation (Kyrgyzstan);
 - (h) Before approval of the scope or, if screening determines the need for a transboundary EIA, before scoping (Lithuania);
 - (i) During scoping (Spain), if possible (Germany, Poland, Switzerland);
 - (j) After receipt (Finland, Slovak Republic) or approval (Azerbaijan) of the scope;
 - (k) At the time of the first session of the review body, once a likely impact had been determined (Croatia);
 - (l) At some stage between the national authority becoming aware of the project and the domestic public being informed (Italy, United Kingdom);
 - (m) Sometimes during initial planning stages, but sometimes during preparation of the EIA, when the possible impact became known (Canada);
 - (n) No later than the permitting procedure (Switzerland);
 - (o) Before the public participation procedure began (Germany);
 - (p) On completion (Moldova) or before publication (Liechtenstein) of the EIA documentation;
 - (q) When publishing the "notification of intent" domestically (Netherlands).

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

18. Regarding the content of the notification, Bulgaria, Croatia, Hungary and Lithuania simply indicated that it was according to the Convention. The Czech Republic referred to its legal requirements, which addressed the requirements of Article 3.2. Others indicated compliance: with both the Convention and the EIA Directive (Latvia); with decision I/4 on the format for notification (Romania); or with all domestic and international legal instruments and bilateral agreements (The former Yugoslav Republic of Macedonia). Kazakhstan referred to Article 3.2 and to the Convention's guidance; Kyrgyzstan to domestic legislation and guidelines. Article 3.2 guided Moldova in determining the content. In Germany, the notification contained all available information needed by the affected Party to determine whether it wished to participate. Other countries included in the notification:

- (a) A notification letter (France);
- (b) A project description (Austria, Cyprus, Estonia, Finland, Italy, Netherlands, Norway, Slovenia, Sweden, Turkmenistan), including its possible emissions and consumption of raw materials, energy, etc. (Poland);
- (c) The possible alternatives and environmental protection measures (Poland);
- (d) A copy of the application for consent for the project (Liechtenstein);
- (e) The reasons why EIA had been initiated (Estonia);
- (f) Information on its possible (transboundary) impact (Austria, Cyprus, Denmark, Estonia, Finland, Poland, Slovakia, Slovenia, Turkmenistan);
- (g) Relevant parts of the scope (Finland, Slovakia);
- (h) The preliminary assessment and terms of reference, if at the scoping stage (Switzerland);
- (i) Where applicable, the draft EIA documentation (Austria);
- (j) The EIA documentation (Liechtenstein), if available (Moldova);
- (k) Information on the EIA procedure (Finland, Spain, Sweden);
- (l) Information on the competent authority (Switzerland);
- (m) Information on the permitting or decision-making (Cyprus, Finland, Slovakia, Slovenia, Sweden, Switzerland);
- (n) An invitation to participate and to propose consultation procedures (Norway);
- (o) Information on how to provide comments (Finland, Liechtenstein) and on deadlines for a response or for comments (Finland, Slovakia, Slovenia, Switzerland);
- (p) An offer to provide additional information (Italy);
- (q) The same information as made available domestically (France), if only at the permitting stage (Switzerland);
- (r) The same information as made available domestically for scoping (Spain);
- (s) Full information on the basis of which affected Party could make an informed decision (United Kingdom).

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

19. In describing the criteria used to determine the time frame for the response to the notification from the affected Party, Bulgaria listed a series of characteristics of projects and their potential impacts. Others respondents gave specific time frames:

- (a) Four weeks (Romania);
- (b) Twenty to thirty days (Czech Republic);
- (c) Thirty days (Croatia, Germany, normally, Italy, Kyrgyzstan, Moldova, Slovenia, The former Yugoslav Republic of Macedonia) in a bilateral agreement (Poland);
- (d) Six weeks (Liechtenstein);
- (e) Thirty to sixty days (Hungary);
- (f) One to two weeks after the end of the public hearings (Finland);
- (g) Two months if at the notification stage (Switzerland);
- (h) Two months in one bilateral agreement (Estonia).

20. Others referred to:

- (a) National legislation (Croatia, France, Netherlands, Slovakia);
- (b) Bilateral agreements (Slovakia);
- (c) Domestic procedures (Denmark, Finland, Norway) with some flexibility (Spain) or with a factor to allow transboundary consultations (United Kingdom);
- (d) Agreement between the authorities and the proponent (Latvia), with the affected Party also being consulted (Sweden).

21. In Estonia, Latvia, Poland and Sweden, there was no time frame in the national legislation, but Cyprus’ legislation specified that domestic EIA time limits would not apply to transboundary EIA

22. Respondents went on to describe the possibility of sending a reminder (Croatia, France, Sweden, United Kingdom), or even suspending the procedure (Hungary), if no response was received. Many countries would have allowed an extension (Croatia, Estonia, France, Italy, Norway, Sweden, Switzerland), which might only be short (Denmark, Netherlands), limited to two weeks (Romania), needed to be justified (Kyrgyzstan, Lithuania, Moldova) or should not delay the national procedure (Finland, Poland). In Germany, it was the competent authority that decided on allowing an extension. An extension might have been discussed bilaterally in the Czech Republic, Latvia and Slovenia, with Latvia allowing an extension of up to 30 days. Estonia needed to keep the proponent informed of such an extension. An extension might have delayed the whole procedure in some countries (Denmark, Italy, Netherlands, United Kingdom); a late response, without a prior request to extend the deadline, might not be taken into consideration (Hungary, United Kingdom). Finally, Croatia and France might have taken a lack of response to indicate no objection to the project and Germany indicated that it was then for the competent authority to decide whether to continue with the transboundary EIA procedure.

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

23. Countries provided with the notification: relevant information regarding the EIA procedure (Italy, Moldova) and proposed activity (Croatia, Cyprus, Estonia, Slovenia) and its possible significant adverse transboundary impact (Cyprus, Estonia, Moldova, Slovenia). Several Parties (Austria, Bulgaria, Finland, France, Hungary, Norway, Poland, Romania, Slovakia) sent all the information above with the notification, as did Denmark, Liechtenstein and the Netherlands, generally. Countries also sent the remaining information once a response had been received from the affected Party (Austria, Cyprus, Estonia, Latvia), or at the request of the affected Party (Croatia). The Czech Republic sometimes sent the information with the notification and sometimes once a response had been received. Spain sent the above information in the scoping phase, as did Switzerland as far as information on transboundary impacts was available at that stage. The former Yugoslav Republic of Macedonia sent the information immediately after starting the EIA procedure and the United Kingdom sent the information as early as possible between notification and response. In Germany, the competent authority decided on the timing, taking into account the need for translation. Kyrgyzstan sent preliminary information with the notification, followed later by more comprehensive information. Sweden sent the information available in the relevant language with the notification.

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

24. Respondents noted diverse means of determining whether to request information from the affected Party:

- (a) Depending on borders and on the complexity and significance of the impact (Bulgaria);
- (b) If insufficient information on the environment potentially affected in the affected Party (Bulgaria, Estonia);
- (c) If needed to determine transboundary impact (Croatia);
- (d) Depending on the activity (Slovakia) or type of activity (Czech Republic);
- (e) At the initiative of the competent authority (Finland);
- (f) As defined in legislation (Hungary);
- (g) As determined by the proponent or its consultant (Romania);
- (h) When the affected Party was invited to provide information and to suggest significant issues to be addressed in the EIA documentation (Spain);
- (i) If comments from the affected Party required clarification (United Kingdom).

25. In France, there was not a role for the authorities in requesting information; this was the responsibility of the proponent or its consultant. Finland similarly indicated that the proponent would normally gather such information.

26. The timing of such a request was:
- (a) In the scoping phase (Hungary, Netherlands, Romania, Spain, Switzerland);
 - (b) While preparing the EIA documentation (Estonia);
 - (c) With the notification (Hungary, Lithuania);
 - (d) At an 'early stage' (Denmark);
 - (e) Before the procedure began (Finland);
 - (f) Once the affected Party had indicated that it wished to participate (Czech Republic, Kyrgyzstan);
 - (g) Determined case by case (Slovakia).
27. In the United Kingdom, the timing varied but information on publicity arrangements was requested during notification. The kinds of information normally requested:
- (a) Related to the potential impacts (Bulgaria, Switzerland);
 - (b) Related to the affected population (Bulgaria);
 - (c) Comprised a catalogue of available data plus environmental indicators (Croatia);
 - (d) Were determined by the needs of the EIA (Germany, Hungary, Romania, Sweden);
 - (e) Were on the state of the environment (Netherlands) in the affected area (Slovakia, Slovenia).
28. The time frame for a response was variously:
- (a) Defined in the request (Bulgaria, Estonia, United Kingdom);
 - (b) Agreed between the points of contact (Croatia); one month (Turkmenistan);
 - (c) As soon as possible (Germany);
 - (d) The same as for the response to the notification (Finland), while recognizing that some information might take longer to provide (Hungary);
 - (e) As defined by the affected Party (Kyrgyzstan);
 - (f) Determined case by case (Slovakia);
 - (g) Two months when the competent authority was federal (Switzerland).

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

29. Several Parties discussed public participation arrangements between the concerned Parties (Bulgaria, Canada, Denmark, Estonia, Finland, Germany, Kyrgyzstan, Latvia, Netherlands, Norway, United Kingdom), or exchanged correspondence to this effect (Romania). In Austria, Germany and Slovakia the determination of the extent of impacts identified "the public" in the affected area, while in Croatia "the public" was the population of a county or

smaller or similar administrative area. In Armenia, the public was those exposed to the impact, meaning the population of the affected region or community. For Bulgaria, the Czech Republic, Kyrgyzstan, Romania and Switzerland the affected Party, not the Party of origin, identified the public; Germany considered that this was the responsibility of the concerned Parties. For Switzerland, the relevant authority in the affected Party was responsible for informing that country's public, but Switzerland sought to inform the affected Party's public at the same time as its own, upon submission of the project information by the proponent. Finland noted that the affected Party was in a better position to identify the public in the affected area. Slovenia indicated a case-by-case determination based on the affected Party's legislation and through consultations between the concerned Parties.

30. Respondents gave a variety of means for notifying that public:

- (a) Through the media (Bulgaria, Canada, Czech Republic, Germany, Slovenia);
- (b) In newspapers (Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Germany, Latvia, Netherlands, Slovenia) or the official journal (Croatia);
- (c) By advertisements (Sweden);
- (d) On notice boards (Czech Republic);
- (e) In public buildings (Sweden);
- (f) Via the Internet (Canada, Czech Republic, Germany, Latvia, Romania);
- (g) By post (Canada, Latvia);
- (h) By direct presentations (Slovenia);
- (i) By any other means (Denmark).

31. The public notification contained information:

- (a) On the activity (Bulgaria, Denmark, Estonia, Germany, Latvia, Netherlands, Sweden, Switzerland);
- (b) The activity's potential impacts (Bulgaria, Estonia, Germany, Latvia, Sweden, Switzerland);
- (c) Specified in decision I/4 (Canada);
- (d) On the public hearing (Croatia, Latvia, Netherlands);
- (e) On the notification, documentation and expert opinion (Czech Republic);
- (f) On contact details for the competent (Germany) and the authority proponent (Denmark);
- (g) On the decision-making procedure (Denmark, Netherlands);
- (h) On arrangements for accessing information (Latvia, Sweden);
- (i) On commenting arrangements (Denmark, Estonia, Germany, Latvia, Netherlands), including any public hearing (Denmark, Slovakia).

32. Croatia, Kyrgyzstan, Switzerland and the United Kingdom provided the EIA documentation. Austria provided to the affected Party the text of the domestic public announcements; both Austria and Norway provided all documents available to their domestic public and Slovakia all documents needed for the information of the affected Party's public. Austria normally provided information early on to enable public inspection in both countries at the same time. Bulgaria similarly intended that its notification of the affected Party be forwarded early on to the affected public. Denmark and the Netherlands notified the affected Party's public

at the same time as their own, but in Croatia this only took place after the domestic public hearing.

33. In a number of Parties (Canada, Croatia, Czech Republic, Denmark, Netherlands, Slovenia, Switzerland), the notification to the public of the affected Party had the same content as the notification to their own public; Bulgaria reported that it should be so, but this was not the case in the United Kingdom because the affected Party had always taken responsibility for the notification of its public and public participation in the affected Party was according to the affected Party's procedures. France, Kyrgyzstan, Spain and Sweden made it clear that this matter was fully the responsibility of the affected Party, though Sweden enquired what measures were to be taken by the affected Party and Kyrgyzstan expected the proponent to bear the costs. The Czech Republic, Hungary, Lithuania and Moldova simply provided all the information to the affected Party, which was then responsible. Finland noted that it was usually the affected Party that informed its public and defined the content of the notification. Germany provided the same information to the affected Party and considered that the public participation should have taken place at the same time as the domestic public participation. Latvia asked the affected Party to take responsibility for the notification; Italy determined arrangements case by case; Estonia had a bilateral agreement that clarified the affected Party's responsibility for the notification of its public; Germany tried to ensure an adequate procedure in the affected Party. In Poland, neither the national legislation nor bilateral agreements obliged direct notification of the public in the affected Party.

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

34. Many Parties made use of, or would use, the contact points for the purposes of notification (Armenia, Austria, Bulgaria, Canada, Croatia, Denmark, Finland ("very useful"), Italy, Kazakhstan, Latvia, Lithuania, Netherlands, Norway, Poland, Slovakia, Slovenia, Sweden, Switzerland, United Kingdom). The Czech Republic sometimes did, Kyrgyzstan responded that it did not. France did so, but also advised proponents to make earlier informal contacts in the affected Party. Hungary normally did so, though in certain priority cases the Minister of Environment would initiate the notification, in part or in full. In Romania, to date, more senior officials in the Ministry of Environment had signed notifications, or diplomatic channels were used, with a copy being sent to the contact point. In Estonia, the Minister of Environment had instead sent notifications, whereas in Spain notifications had instead been sent through the Ministry of Foreign Affairs. Germany had used these contact points if there was no alternative authority known or specified in an agreement. Moldova sent notifications to the ministry specified, not to the individual within the ministry.

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

35. Many Parties followed the proposed guidelines for the content of the notification in decision I/4 (Austria; Bulgaria; Croatia; Estonia; France; Germany, possibly; Latvia; Lithuania;

Moldova; Netherlands; Norway, Poland; Romania; Slovenia; Sweden). Hungary only followed the guidelines in part because of a two-step notification procedure, whereas the United Kingdom did not follow the guidelines, but provided full information to enable the affected Party to make an informed decision on whether to take part in the EIA procedure. Kyrgyzstan relied on national guidelines, the Czech Republic on national legislation. The Czech Republic, Denmark and Kyrgyzstan did not follow the guidelines appended to decision I/4. The Czech Republic, Denmark (if necessary), Finland, France, Germany (possibly), the Netherlands, Romania, Slovakia and Sweden provided supplementary information in the notification, and Croatia and France provided additional information if so requested.

B. Questions to the affected Party

Question 15. Describe the process of how you decide whether or not you want to participate in the EIA procedure (Art. 3.3)? Who participates in the decision-making, for example: central authorities, local competent authorities, the public and environmental authorities? Describe the criteria or reasons you use to decide?

36. The decision, as affected Party, on whether to participate in a transboundary EIA procedure depended on:

- (a) The likely significance of the impact (Austria, Denmark, Germany, Norway, Slovenia, United Kingdom);
- (b) Whether a transboundary impact was likely (Estonia, Hungary, Lithuania, Netherlands, United Kingdom);
- (c) The type or nature of the activity (Lithuania, Poland);
- (d) The activity's distance from the border (Lithuania, Poland);
- (e) The level of public interest (Denmark, Netherlands);
- (f) Criteria (Romania) defined in national legislation (Bulgaria, Germany, Poland) or in the Convention (Croatia, Poland).

37. Who participated in the decision-making depended on the territory likely to be affected (Austria, Poland), depended on the proposed activity (Estonia), or was:

- (a) Competent, concerned or relevant authorities (Czech Republic, Estonia, Finland, Germany, Hungary, Norway, Poland, Romania, Slovakia, Slovenia);
- (b) Local authorities (Denmark, Estonia, Kyrgyzstan, Romania, Slovakia, Sweden, Switzerland);
- (c) Central authorities (Denmark, Estonia, Finland, Hungary, Latvia, Liechtenstein, Lithuania, Moldova, Romania, Slovakia, Slovenia, Sweden, Switzerland, Turkmenistan, Ukraine);
- (d) The public (Hungary, Sweden);
- (e) NGOs (Finland; Kyrgyzstan; Moldova, possibly);
- (f) Research institutes (Finland).

Question 16. When the Party of origin requests you to provide information relating potentially affected environment: (a) how do you determine what is "reasonably obtainable" information to include in your response; and (b) describe the procedures

and, where appropriate, the legislation you would apply to determine the meaning of “promptly” in the context of responding to a request for information? (Art. 3.6)

38. “Reasonably obtainable” information was:

- (a) Already available to the authorities (Cyprus, Hungary, Romania);
- (b) Existing (Croatia, Denmark, Moldova, Netherlands, Slovenia) or available (Liechtenstein);
- (c) Readily (Croatia, Hungary, Switzerland) or publicly available (Germany, United Kingdom);
- (d) Obtainable within the time frame specified (Czech Republic, Denmark, Latvia, Slovakia, and necessary for the EIA documentation);
- (e) Available at proportionate cost (United Kingdom);
- (f) Necessary to determine the transboundary impact (Poland).

39. Information that was not reasonably obtainable was:

- (a) Classified (Bulgaria);
- (b) Not available or requiring a lengthy process to find or produce (Hungary);
- (c) Requiring research (Netherlands, Switzerland) or analysis (Moldova);
- (d) Confidential or commercially sensitive, or legally restricted or prejudicial to legal proceedings (United Kingdom).

40. Canada, Romania, Latvia, Liechtenstein, Poland and Turkmenistan indicated that “promptly”, in the context of responding to a request, meant without undue delay once the information was available. Denmark and Germany suggested “as soon as possible”. The Netherlands noted that information had to be collected from various sources, whereas Bulgaria noted the need to take into account the nature of the material requested and whether raw data had to be processed for this express purpose. Bulgaria, the Czech Republic, Moldova, Slovakia and Switzerland also suggested that “promptly” meant within the time frame of the request; Finland suggested the deadline would be agreed between the concerned Parties. In Croatia, general administrative procedures required a response within 30 days. Slovenia indicated one month. Romania made reference to its implementation of the Aarhus Convention, which similarly provided for a one-month time frame. Austria’s single practical experience was of responding within a few weeks; in Hungary, no deadlines were defined though, in practice, requested information that was available could be provided within a few weeks.

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