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Items 6 and 11 of the provisional agenda

Review of compliance, review of implementation and work done by the Implementation Committee

Adoption of decisions

Draft review of implementation, regarding legal, administrative and other measures taken to implement articles 2–4 of the Convention

Note by the secretariat

Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context decided that a draft third review of the implementation of the Convention, based on reports by Parties, would be presented at the fifth session of the Meeting of the Parties (ECE/MP.EIA/10, decision IV/1).

This note presents the first part of the draft third review, addressing the legal, administrative and other measures taken to implement articles 2–4 of the Convention, based on national reports.

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I. Introduction

1. This document presents the draft third review of the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context. It examines responses to a questionnaire on countries' implementation of the Convention in the period from 2006 to 2009. The review is a follow-up to the first and second reviews of implementation (respectively, ECE/MP.EIA/6, annex I, decision III/1; and ECE/MP.EIA/10, decision IV/1, annex).

2. This chapter describes the preparation of the review and introduces some of the strengths and weaknesses in the implementation of the Convention that are apparent from the responses to the questionnaire. Chapter II summarizes the responses to the questionnaire regarding the legal, administrative and other measures taken to implement articles 2–4 of the Convention. A separate document addresses measures taken to implement articles 5–9, as well as practical experiences of applying the Convention (ECE/MP.EIA/2011/3).

A. Preparation of the review

3. The Meeting of the Parties decided at its fourth session to adopt a workplan that included an activity on compliance with and implementation of the Convention (ECE/MP.EIA/10, decision IV/7).

4. The workplan indicated that the Convention's Implementation Committee should prepare a questionnaire regarding the implementation of the Convention during the period from 2006 to 2009, on which the Convention's Working Group on Environmental Impact Assessment later agreed (ECE/MP.EIA/WG.1/2009/2, annex I). The Working Group also agreed that the questionnaire be distributed, and that the secretariat prepare the subsequent draft third review of implementation. The workplan also indicated that the secretariat should present the draft review to the Working Group at the end of 2010 and to the fifth session of the Meeting of the Parties in 2011.

5. Completed questionnaires were received from 41 of the 44 States Parties to the Convention. The completed questionnaires are available on the Convention website¹ and are reflected in this draft review. The European Union (EU) is a Party to the Convention but, being a regional economic integration organization rather than a State, felt it inappropriate to complete the questionnaire, though it did provide information on recent research.

6. Albania did not submit a completed questionnaire. Bosnia and Herzegovina and Malta did not submit completed questionnaires either, but the Convention entered into force in the two countries after the reporting period 2006–2009.

B. Findings of the review

7. An analysis of the information provided in the completed questionnaires revealed a substantial increase in the application of the Convention, and the continuing development of national legislation and of bilateral and multilateral agreements to support its implementation. However, the analysis also revealed the following possible weaknesses or shortcomings in the Convention's implementation:

¹ <http://www.unece.org/env/eia/>.

- (a) Confusion about the respective functions of the point of contact for notification and the focal point for administrative matters;
- (b) Appendix I (a list of activities covered by the Convention) not being reflected in full in reporting by some Parties;
- (c) The frequent lack of a definition of “the public”, which might lead to a narrow interpretation in practice;
- (d) A failure to recognize that article 3, paragraph 8, and article 4, paragraph 2, state that the “concerned Parties” are responsible for ensuring opportunities for public participation;
- (e) A failure to recognize that article 5 provides for transboundary consultations distinct from article 4, paragraph 2;
- (f) A lack of experience in carrying out post-project analysis (art. 7);
- (g) A continuing need for bilateral and multilateral agreements or other arrangements, particularly to address differences between Parties in: the content of the notification; language; time frames; how to proceed when there is no response to a notification or if there is disagreement about the need for notification; the interpretation of various terms; and the requirement for post-project analysis.

II. Summary of responses to the questionnaire

8. Responses to questions in the questionnaire indicating a lack of experience have not been included below. The numbers indicated in bold italics within parentheses refer to the questions in the questionnaire, e.g. “**(24)**”.

A. Article 2: General provisions

1. Domestic implementation of the Convention

9. Almost all respondents listed the general legal, administrative and other measures taken in their country to implement the provisions of the Convention (art. 2.2) (**1**), citing various acts, laws, codes, agreements, regulations, decrees, orders, resolutions, ordinances, instructions, circulars and guides, and referring to the Convention, the corresponding EU legislation and other treaties. The exceptions were Armenia and Azerbaijan, which were developing their legislation.

10. Many Parties planned for the near future further measures to implement the provisions of the Convention or to extend its application to further activities (Armenia, Azerbaijan, Bulgaria, Belarus, Belgium, France, Germany, Hungary, Ireland, Kazakhstan, Kyrgyzstan, Lithuania, Montenegro, Poland, Republic of Moldova, Romania, Serbia, Slovakia, Switzerland, Ukraine) (**2**).

2. Transboundary environmental impact assessment procedure

11. Respondents described their country’s national and transboundary environmental impact assessment (EIA) procedures and authorities (art. 2.2) (**3**).

12. Almost all respondents² described or summarized the EIA procedure in their country and indicated which steps of the EIA procedure included public participation (**3 (a)**).

² I.e., 90 per cent or more of Parties reporting.

Besides the mandatory opportunity for commenting on the EIA documentation,³ a public hearing, as appropriate, and public information on many stages, respondents indicated other opportunities for public participation:

- (a) In screening,⁴ by the seeking of public opinions in the screening decision (Hungary, Montenegro, Slovakia and, optionally, Spain) or by possibly reconsidering the screening decision in the light of representations by the public (Lithuania, Romania);
- (b) By considering public opinions when deciding whether to participate as an affected Party (Czech Republic, Hungary, Republic of Moldova, Slovakia);
- (c) An additional public hearing on the notice of the proposed activity (Armenia);
- (d) In scoping⁵ (Belgium, Czech Republic, Denmark, Estonia, Finland, Lithuania, Montenegro, Netherlands, Norway, Portugal, Serbia, Slovakia, Spain, Sweden), though this was not provided for in all cases in some Parties (Austria, Canada), or might be limited to non-governmental organizations (NGOs) (Spain). In Latvia, the public might demand a public hearing at the scoping stage;
- (e) By commenting on both draft and final EIA documentation (Kazakhstan, Latvia);
- (f) By commenting on the expert review⁶ of the EIA documentation (Czech Republic, Serbia);
- (g) An additional public hearing on the expert review of the EIA documentation (Armenia);
- (h) Through access to justice on the final decision (Germany, Montenegro, Netherlands, among others).

13. Most respondents described how the different steps of the transboundary EIA procedure set out in the Convention fit into their country's national EIA procedure and legal provisions, or made reference to the legal provisions (3 (b)). Of particular interest were the replies by:

- (a) Croatia, where the assessment according to national legislation was supplemented by an assessment under the Convention when an activity was likely to cause transboundary impact;
- (b) Lithuania, where the national EIA law indicated that the Convention prevailed if provisions in the national law differed;
- (c) The Republic of Moldova and Ukraine, where a transboundary EIA procedure had not been developed nationally and direct reference was made to the Convention.

14. Respondents identified the authority responsible for notification, frequently the Ministry of Environment, or a central environmental or planning department, committee or agency, and sometimes in cooperation with the Ministry of Foreign Affairs (3 (c)). In many

³ "EIA documentation" or sometimes "EIA report", "environmental impact study" or "EIA statement" in the completed questionnaires.

⁴ "Screening" is the case-by-case determination of whether a proposed activity is subject to EIA or to notification.

⁵ "Scoping" is the case-by-case determination of the scope of the assessment.

⁶ "Expert review" by the competent authority of the EIA documentation and other information; sometimes "environmental impact expertise" or "opinion".

instances, the competent authority, often at a regional level but with support from the centre, was responsible for subsequent steps of the transboundary EIA procedure. In Austria, Belgium, Germany and Switzerland authorities at the level of the region (or *Land* or *canton*) often led the procedure from the start.

15. A clear majority⁷ of respondents identified a single authority in their country that collected information on all transboundary EIA cases (3 (d)). In most cases this was the ministry or department of environment; in others, a national environmental or planning agency or committee. However, in several Parties there was no such authority (e.g., Belgium, France, Luxembourg) and, in the case of Germany and Greece, there was no intention to establish such an authority, whereas the Republic of Moldova and Ukraine did intend doing so. In Greece and the Netherlands an authority gathered information on most cases; in Switzerland, on a more limited range of cases. In Norway, a renewed arrangement for collecting information was being discussed.

16. Very few Parties had special provisions for joint cross-border projects (4), the exceptions being Canada, which described a procedure; the Czech Republic, which referred to its legislation; Estonia and Finland, which referred to their bilateral agreement; Estonia, which also referred to its agreement with Latvia; and Kazakhstan, which referred to provisions with Azerbaijan and a guide for Central Asian countries. Switzerland had guidance on cross-border projects. Other respondents referred to ad hoc procedures (Bulgaria, France, Germany, Greece, Netherlands, Romania, Sweden), with Romania having used the same ad hoc procedure for two separate cases with Bulgaria. Italy and Poland suggested that provisions would be included in bilateral or multilateral agreements.

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

17. The legislation of a clear majority of Parties already covered, or went beyond, the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7), whereas others had legislation based on the current appendix I (Canada, Liechtenstein, Republic of Moldova), which Armenia and Azerbaijan were planning to implement (5). Some respondents reported slight differences, for example with respect to wind farms (Finland, Hungary). Portugal and landlocked Kyrgyzstan, the Republic of Moldova, Slovakia and Switzerland all excluded offshore hydrocarbon production from their lists of activities. The deforestation of large areas was not covered by Belarus, or by Kyrgyzstan and the Republic of Moldova, where such an activity was not permitted. Belarus and Kyrgyzstan also excluded trading ports and also inland waterways and ports for inland-waterway traffic; the Republic of Moldova excluded installations for the enrichment of nuclear fuels, and the mining of metal ores and coal, as such activities were not found there. Ukraine made direct reference to the Convention, rather than include appendix I in national legislation.

18. Many Parties, including EU member States, but also Belarus, Kyrgyzstan, Montenegro, Norway, the Republic of Moldova and Switzerland, had numerical thresholds in their list of activities requiring EIA, thus providing an interpretation of terms such as “large” and “major” used in appendix I.

19. Many respondents indicated case-by-case examination (screening) as the procedure to determine that an “activity”, or a change to an activity, fell within the scope of appendix I (art. 2.3), or that an activity not listed should have been treated as if it were (art. 2.5) (6 (a)). Of particular interest were the replies by:

⁷ I.e., 70 per cent or more of Parties reporting.

(a) Parties that had a first list of activities for which EIA was mandatory and a second list requiring screening (e.g., Austria, Estonia, Hungary, Ireland, Netherlands, Norway, Poland, Republic of Moldova, Serbia, Spain, Sweden, the former Yugoslav Republic of Macedonia);

(b) Italy, France, Lithuania, Slovenia and Switzerland, which carried out screening for a much wider range of listed projects;

(c) Denmark, Estonia, Finland, Germany, Luxembourg, Romania and Slovakia, which applied the Convention to any activity, whether or not listed, likely to have significant adverse transboundary impact;

(d) Greece, which discussed with potential affected Parties unlisted activities for which transboundary impact was nonetheless considered possible;

(e) The Netherlands, which noted that bilateral agreements triggered notification for activities close to the border, and Estonia and Latvia, which had an agreement that covered activities either close to the border or likely to impact on territory close to the border;

(f) Portugal where the Ministers of Environment and of the sector concerned might jointly decide that any other activity could be subject to EIA and thus transboundary EIA, if appropriate;

(g) The United Kingdom of Great Britain and Northern Ireland, which would consider whether it was necessary to apply the Convention's requirements by administrative means for a planned activity not listed (art. 2.5).

20. The Czech Republic, Poland and the former Yugoslav Republic of Macedonia also applied the Convention if requested by an affected Party; Hungary had a similar requirement in situations where both concerned Parties were EU member States.

21. Respondents indicated how their countries conducted transboundary EIA cooperation (**6 (b)**). In a clear majority of Parties, such cooperation was through, or mainly through, the points of contact (or focal points, the two terms often being confused). Some respondents also referred to joint bodies (Estonia, Finland, Germany, Portugal, Spain) and bilateral agreements (Estonia, Finland, Germany, Liechtenstein, Lithuania, Netherlands, Poland, Portugal, Slovakia, Spain, Ukraine). Armenia had notified via the secretariat.

22. To determine when a change to an activity was considered to be a "major" change (**6 (c)**), respondents presented a range of approaches, though Armenia and Azerbaijan lacked such a mechanism. For some, a change was major if the activity would reach the threshold specified for the activity to be automatically subject to EIA (Belarus, Czech Republic, Finland, Germany, Lithuania, Montenegro, Netherlands, Norway, Switzerland, Poland (from 2010), the former Yugoslav Republic of Macedonia). For others, or for changes that did not reach the threshold, a case-by-case examination was carried out (approximately half of the respondents), with some respondents referring to criteria. Some respondents provided percentage changes that would qualify as major (Austria, Kyrgyzstan, and Poland until 2010).

23. Slovenia, Spain and the United Kingdom reported a different approach with activities and changes to activities being treated the same. Sweden considered all changes to be major unless they were minor and without significant risk to health or the environment.

24. To determine whether such an activity, or such a change to an activity, was considered "likely" to have a "significant" adverse transboundary impact (art. 2.3, art. 2.5, appendix III) (**6 (d)**), a clear majority of respondents referred to a case-by-case examination, with some referring to the use of criteria; in Spain and the United Kingdom

the criteria were similar to those in appendix III. Canada reported a step-by-step screening procedure to assess, in turn, if activities were adverse, significant or likely to have transboundary impacts. France, Finland, Germany, Latvia, Sweden and the United Kingdom indicated the consultation of relevant authorities or experts, if and as appropriate; in the United Kingdom NGO experts might also be consulted. Finland could consult the possibly affected Party if necessary. In addition, both the Netherlands and Norway indicated a precautionary approach, notifying even if unsure that a significant adverse transboundary impact was likely; the Netherlands also referred to reciprocity with its neighbours. Again, Armenia lacked a procedure for this determination.

4. Public participation

25. A majority of Parties had a definition of “the public” in national legislation that was either the same as or similar to that in article 1 (x) of the Convention (7), which followed the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, or that was their own definition. A minority had no definition (Azerbaijan, Belarus, Belgium (Wallonia Region), Czech Republic, Kyrgyzstan, Liechtenstein, Netherlands, Poland, Sweden, Switzerland), but in the Czech Republic, Estonia, Ireland, the Netherlands and Poland “the public” included “everyone”.

26. Each respondent went on to report how their country as the Party of origin, together with the affected Party, ensured that the opportunity given to the affected Party’s public was equivalent to the one given to their country’s public (art. 2.6). Some respondents indicated a focus on information to facilitate public participation in the affected Party, such as: the early or simultaneous provision of documentation; its provision in paper and electronic formats and posted on the Party of origin’s websites; the provision of a wide range of information on the proposed activity⁸ and the EIA, public participation and decision-making procedures; translation of key documentation; and information on public participation in the Party of origin, including upcoming public hearings. Several respondents suggested consultations between the concerned Parties.

27. However, many respondents indicated that, having provided the necessary information, it was ultimately the affected Party’s responsibility to organize public participation in the affected Party; for Spain this was made explicit in one bilateral agreement. On ratifying the Convention, France had declared that: “The Convention implies that it is the responsibility of each Party to ensure the public distribution within its territory of the EIA documentation, inform the public and collect its comments, except where different bilateral arrangements apply”. Nonetheless, some respondents made clear their willingness to participate in public hearings in the affected Party, accompanied as necessary by the proponent.⁹

B. Article 3: Notification

1. Questions to the Party of origin

28. Respondents indicated how their country as the Party of origin determined at what stage in the EIA procedure to notify the affected Party (art. 3.1) (8), besides “as early as possible and no later than when informing its own public”. This could only occur once transboundary impact was determined. For some respondents this might already be possible at the scoping stage (Finland, Germany, Hungary, Lithuania, Netherlands, Norway, Poland,

⁸ “Proposed activity” or “project”.

⁹ “Proponent” or “developer” of an activity.

Spain, Sweden, Switzerland), but others recognized that it might not occur until the EIA documentation was received by the competent authority (e.g., France, Kyrgyzstan, Liechtenstein, Slovenia). In several Parties the notification might (also) occur during or as a result of screening (Croatia, Czech Republic, Denmark, Greece, Ireland, Latvia, Montenegro, Netherlands, Romania, Serbia, Slovakia, the former Yugoslav Republic of Macedonia). In Austria, Bulgaria and the United Kingdom, the notification might even occur before the application for consent.

29. In the Republic of Moldova, the notification followed determination of the proposed activity's location, capacity and funding, and preceded preparation of the EIA documentation. Belarus suggested that advance notice might be given even before a site had been chosen. The Czech Republic pointed out that the notification also occurred on receipt of a request for notification from an affected Party.

30. Many Parties provided, with the notification, information to supplement that required by article 3, paragraph 2 (9), including: that specified in article 3, paragraph 5 (Bulgaria, Germany, Hungary, Poland), if available (Switzerland); information on the EIA procedure (art. 3.5 (a)) (Czech Republic, Sweden); the proponent's application for consent (Hungary, Ireland); the screening report (Lithuania); and the draft or final scoping report¹⁰ (Finland, Hungary, Lithuania), if available (Switzerland). Finland translated the scoping report, or relevant parts of it. Some respondents indicated that they also sent additional information if there was a particular need (Denmark, Greece, Luxembourg, Netherlands), whereas others sent all available useful information (Czech Republic, Estonia, France, Germany, Kyrgyzstan, Poland). France, Ireland and the former Yugoslav Republic of Macedonia also sent the EIA documentation, as did Austria, if it was available.

31. Approximately half of the Parties used, sometimes in a general way, the format for the notification as decided by the first session of the Meeting of the Parties (ECE/MP.EIA/2, decision I/4, appendix) (10). Hungary considered that the format was not suitable for a procedure with public participation in scoping. France had no standard format and no formal procedure for the notification, whereas Germany used any form that fulfilled the requirements of the Convention, taking into account the guidelines. Denmark sent its domestic notification of intent, translated as necessary, plus a letter. Finland usually sent a letter together with information covered by the scoping report. Switzerland sent a simple letter with key information.

32. Respondents described the criteria that their country used to determine the time frame for the response to the notification from the affected Party (art. 3.3) (11). Many Parties based the time frame on their legislation, whereas others indicated that their domestic time frame did not apply (Cyprus), or there was no applicable legislation (Ireland, Montenegro, Poland, Republic of Moldova, Serbia, Sweden). Estonia, Poland, Portugal and Spain referred to bilateral agreements, several others to a case-by-case determination and Kyrgyzstan to subregional guidance on transboundary EIA; Sweden also discussed the time frame with the affected Party, Latvia with the proponent. Respondents indicated a range of two weeks to three months for the response, with an average of about one month. Some respondents made clear that the time frame began with the receipt by the affected Party of the notification.

33. If an affected Party did not comply with the time frame, some Parties would send a reminder or call (Austria, Croatia, France, Luxembourg, Poland, Sweden, Switzerland, United Kingdom). Romania simply extended the time frame by two weeks. If the affected

¹⁰ "Scoping report", "EIA programme", "guidelines", "preliminary assessment documentation" or "initial assessment documentation" (which include screening too) or "report of fact-finding procedure".

Party asked for an extension, several Parties would usually agree (Belarus, Croatia, Denmark, Romania, Slovakia, Slovenia, Sweden), or did so if justified (Hungary, Kyrgyzstan, Lithuania, Republic of Moldova, Serbia, Ukraine); Ireland would always agree. Others were more hesitant, indicating that an extension was possible or a short extension was considered (Belgium, Czech Republic, France, Latvia, Montenegro, Netherlands, Portugal, Spain, Switzerland). Bulgaria, Finland, Germany and Poland normally granted an extension as long as it did not delay the administrative procedure. Estonia had some flexibility, but would inform the proponent.

34. Ultimately, however, the Party of origin had to decide what to do if there was no response within the deadline, whether or not extended. Several Parties would then consider that the affected Party did not wish to participate in the EIA procedure (Belarus, France, Greece, Montenegro, Netherlands, Portugal, Republic of Moldova, Slovenia, Switzerland), or might so decide (Germany, United Kingdom). Croatia understood a failure to respond as agreement with the proposed activity. However, Luxembourg and Sweden dealt with a late response in the same way as one that arrived in time, Norway and Spain indicated some flexibility, and Hungary suggested that a long delay could mean that the opinion of the affected Party would not be taken into consideration.

35. Most Parties generally or always provided relevant information regarding the EIA procedure and the proposed activity and its possible significant adverse transboundary impact (art. 3.5) already with the notification (**I2**), whereas several others provided only part of this information. In Germany and Sweden this depended on the need for translation. The Republic of Moldova made clear that this information was only provided later.

36. Many Parties did not have legal provisions on whether they should request information from the affected Party (art. 3.6) (**I3**). Austria, France, Greece and Luxembourg made clear that this was the proponent's responsibility; for Kyrgyzstan, the affected Party should take the initiative. The timing of the request varied: with the notification (Finland, Hungary, Lithuania, Serbia); once the affected Party had responded positively (Czech Republic); during scoping (Romania, Slovakia); or during the preparation of the EIA documentation. Poland and Romania forwarded such a request when asked by the proponent. The time frame for a response from the affected Party to a request for information, which should be "prompt" (art. 3.6), was sometimes specified in the request (Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Montenegro, United Kingdom), and was sometimes agreed between the concerned Parties (Croatia, Finland, Netherlands). Finland, Hungary, Serbia and Switzerland referred to the time frame for the response to the notification. Belarus specified one month, whereas Lithuania and Ukraine would not wait more than three months.

37. Each respondent reported how their country as the Party of origin cooperated with the authorities of the affected Party on public participation (art. 3.8), taking into account that the concerned Parties were both responsible (**I4 (a)**). Many respondents noted cooperation between the concerned Parties leading, for example, to agreement on procedures, timing and documentation. Respondents also referred to the provision of information, including on their own procedures and in electronic format if possible.

38. For many respondents it was then generally and primarily, or solely, the responsibility of the affected Party to provide for public participation in the affected Party (Croatia, Finland, Hungary, Ireland, Lithuania, France, Luxembourg, Poland, Republic of Moldova, Romania, Serbia, Sweden, United Kingdom); Estonia, Finland, Portugal and Spain referred to bilateral agreements that made this responsibility clear.

39. However, Cyprus took a more proactive role, making sure that information was provided to the authorities and public in the affected Party. Kyrgyzstan reported the direct distribution of documentation by the Party of origin in the affected Party, down to local

authority level. For Latvia, the competent authorities in the concerned Parties cooperated to ensure that the public and authorities in the affected Party were given the opportunity to comment and object. The Czech Republic requested that certain actions be taken to publicize the notification, so that anybody might comment, and set out the full procedure for commenting. Slovakia made sure that the affected Party's public was informed at an early stage by the affected Party's authorities. Bulgaria and Germany suggested that the concerned Parties had to work together and, where the Party of origin had no administrative powers, the Party of origin could still provide support. The Netherlands informed the affected Party and asked which authorities to involve and about practicalities, such as newspaper announcements.

40. In response to the question on how their country identifies, in cooperation with the affected Party, the "public" in the affected area (*14 (b)*), respondents described either a methodological approach or reported on responsibility. For Belarus, Bulgaria, the Czech Republic, Estonia, Finland, France, Hungary, Kyrgyzstan, Poland, Romania, Serbia, Slovenia, Switzerland and Ukraine this was the responsibility of the affected Party; Portugal and Spain referred to their bilateral agreement that made this responsibility clear. The United Kingdom was prepared to identify the public concerned if requested by the affected Party. Several respondents indicated a dialogue between the concerned Parties to identify the public (Denmark, Greece, Netherlands, Norway, Sweden). Some referred to a case-by-case identification based on the geographical extent of the potential impact. The Netherlands stated that the identification was best done by the competent authorities of the concerned Parties together, often based on an initial proposal by the Party of origin's competent authority; alternatively, the affected Party decided and then informed the Party of origin. Sweden did not apply any restriction on whom to include, but might discuss with the affected Party whether there was a particularly important sector of the public and how to inform them in an appropriate way.

41. Most respondents were unable to indicate, as the Party of origin, how the public in the affected Party was notified (what kinds of media, etc., were usually used) (*14 (c)*) because they considered the public announcement¹¹ to be the responsibility of the affected Party. Nonetheless, several respondents noted the use of newspapers and the Internet, and the posting of information on their own website; proponents in Ireland often issued press notices across the border. The Czech Republic asked the affected Party to use public notice boards, the media and the Internet. The United Kingdom asked the affected Party whether it wished the United Kingdom to notify the affected Party's public.

42. The normal content of the public announcement included elements such as: the contact details of the proponent and of the competent authority of the Party of origin; a description of the proposed activity and its likely transboundary impact; the application for development consent; information on the decision to be taken and its timing, as well as on the EIA procedure; and information on where and until when documentation could be consulted, on any public hearing or information event and on the means and timing for submitting suggestions.

43. Many respondents as the Party of origin expected the announcement to the affected Party's public to have the same content as the announcement to their own public (*14 (d)*). Many other Parties provided the same information to the affected Party. However, Estonia, Finland, France, Latvia, Poland, Serbia, Slovenia and the United Kingdom made clear that the affected Party determined the content; Portugal and Spain again referred to their

¹¹ "Public announcement" or "public notification" to inform the public of a proposed activity and of the possibility for making comments on or objecting to the proposed activity, or for making comments on related information including the EIA documentation.

bilateral agreement that made this responsibility clear. Further, Lithuania expected the announcement in the affected Party to focus on the transboundary impact whereas the domestic public announcement did not. Sweden noted that, when translation was necessary, often only a summary of the attachments to the announcement was translated.

44. In response to the question on the stage in the EIA procedure at which the Party of origin normally notified the affected Party's public, several respondents again indicated that this was the responsibility of the affected Party. Others indicated that the affected Party's public was notified at the same time as the public of the Party of origin, or early enough for public participation to take place at the same time. Others referred to the timing of the notification of the affected Party. Croatia notified the affected Party's public after the public hearing had been held in the Party of origin.

45. A clear majority of Parties made use of contact points for the purposes of notification, as decided at the first session of the Meeting of Parties (ECE/MP.EIA/2, decision I/3), and as listed on the Convention website (15); France indicated that the focal point was copied, and Luxembourg that other authorities were copied. In Hungary, in certain important cases, the Minister of Environment might lead. Romania sent the notification through diplomatic channels with a copy to the point of contact. For Germany, the Netherlands, Poland, Portugal and Spain, bilateral agreements sometimes specified alternative points of contact, and in Ireland contact points in local authorities were used where appropriate.

2. Questions to the affected Party

46. For many Parties the process of deciding whether, as the affected Party, to participate in the EIA procedure (art. 3.3) (16) was examined case by case, often with the decision being taken by the Ministry of Environment or the competent authority. A majority of Parties indicated consultation of other relevant authorities in their country, at central, regional and local levels, depending on criteria such as the nature of the proposed activity, the possible significance of the impact and the territory likely affected. The Czech Republic, Hungary, Kyrgyzstan, Montenegro, Sweden and possibly Bulgaria and the Republic of Moldova also sought the opinions of the public, whereas Luxembourg consulted environmental NGOs and Slovakia received comments from affected municipalities. Finland issued a public notice, made information publicly available and directly informed research institutes and at least one environmental NGO. Slovenia and Sweden consulted health and cultural heritage authorities.

47. Criteria used to decide included: the nature of the proposed activity; its location, distance from the border or proximity to international waters; the possible significance of the transboundary impact; and the level of public interest. Bulgaria and Croatia referred to the significance criteria in appendix III. Belarus, Bulgaria, Montenegro and Slovenia referred to criteria in their legislation.

48. In the context of a request by the Party of origin to provide information relating to the potentially affected environment (art. 3.6), respondents explained how they determined what was "reasonably obtainable" information to include in their response (17), referring to the existence, accessibility and availability of information (to the public or the relevant authorities), and whether it was up to date. Some suggested that the information should already be available, or obtainable within the time frame specified by the Party of origin, and without a lengthy process or disproportionate cost. For some Parties there should be no need for further research or analysis, though Denmark might carry out additional analysis.

49. Respondents also described the procedures and, where appropriate, the legislation their country applied in determining the meaning of "promptly" in the context of responding to a request for information. Some respondents interpreted this term to mean

“without undue delay” or “as soon as possible”. Bulgaria, Greece, the Republic of Moldova and Switzerland referred to the time frame specified by the Party of origin in its request, whereas several others indicated one month and Finland agreed the time frame with the Party of origin. Some respondents referred to the time necessary to collect the requested information, bearing in mind their other responsibilities. Belarus provided the information in its own language, whereas in Hungary translation delayed the response.

50. Regarding the affected Party’s cooperation with the authorities of the Party of origin on public participation (art. 3.8) (**18 (a)**), many respondents reiterated the affected Party’s primary or sole responsibility. Nonetheless, many respondents also noted cooperation and agreement between authorities in the concerned Parties, for example regarding practical arrangements (Netherlands) and the holding of public hearings (Sweden). The Netherlands and Poland referred to bilateral agreements in this regard. Denmark, Hungary, Slovakia and Sweden cooperated closely in the holding of hearings, as appropriate. As an example, Belarus as the affected Party informed the Party of origin of the timing and location of a hearing in Belarus. Kazakhstan noted also the support of NGOs and the project proponent.

51. Many respondents indicated that their country, as the affected Party, identified the “public” in the affected area (**18 (b)**) case by case depending on various criteria, such as: the nature of the proposed activity, the potential impact and its geographical area, and the distance from the border. In the Czech Republic and Sweden, everyone was included, though Sweden carried out a case-by-case identification to focus the public participation. In France, local authorities identified the public in the affected area based on siting information provided by the Party of origin. Croatia and Slovakia also sought the opinion of relevant authorities; Slovakia took into account advice from its public on the identification of the “public” in the affected area. Azerbaijan would include the local population plus environmental NGOs from across the country.

52. Respondents provided examples of how, as the affected Party, their country’s public had been notified (**18 (c)**). Most respondents indicated announcements in newspapers (national, regional, local) and postings on the Internet, but also mentioned press releases, the official journal (national, local), public noticeboards (including in municipal offices and in public libraries), bill posting, direct mailing, television or radio spots and direct contact with key NGO stakeholders. In some Parties the public announcement was routed through local authorities.

53. Respondents also provided examples of what was normally the content of the public announcement, repeating answers from their role as the Party of origin, with the addition of the contact details of the proponent’s EIA experts. In addition, France, Slovenia and Switzerland explicitly mentioned the inclusion of the EIA documentation. The United Kingdom noted that there might be a charge for a paper copy of the documentation.

54. Finally, respondents reported at what stage in the EIA procedure their country as affected Party normally notified its public (**18 (d)**). Several countries did so immediately upon receipt of the relevant information from the Party of origin (Austria, Bulgaria, Czech Republic, Denmark, Finland, Norway, Slovakia, Sweden). Montenegro did so within 5 days of receipt, Armenia within 7 days and Latvia within 14 days. Belarus and Hungary notified their public once they had prepared the necessary translations. However, Belarus, Estonia, Kazakhstan, the Republic of Moldova and Ukraine referred to the receipt of the EIA documentation. In contrast, Lithuania reported notifying their public at the scoping stage. Germany, the Netherlands and Poland suggested that the timing depended on when the Party of origin had notified the affected Party. The former Yugoslav Republic of Macedonia informed its public at the same time as it responded to the notification.

C. Article 4: Preparation of the environmental impact assessment documentation

1. Questions to the Party of origin

55. In Denmark the legal requirement for the minimum content of the EIA documentation (art. 4.1, appendix II) (19) was similar to that in appendix II. All other respondents referred to, described or quoted their legislation to identify the legal requirement for the minimum content, with the exception of Armenia, which lacked legislation. In addition, Greece, Kyrgyzstan, Romania, Slovakia and the United Kingdom indicated consistency with appendix II; Ukraine referred directly to appendix II.

56. In most Parties the competent authority determined case by case the content of the EIA documentation (scoping procedure) (art. 4.1) (20), with Romania using a checklist approach and several others referring to criteria, but others did not (Armenia, Azerbaijan, Belarus, Republic of Moldova and Slovenia). In Kyrgyzstan, once the EIA documentation had been prepared, it was reviewed and might, if necessary, be returned to the proponent for revision. In Italy a scoping procedure was only occasionally necessary. In France, Luxembourg, Montenegro, Portugal and the United Kingdom the proponent might ask the competent authority to define the scope; this was mandatory within a transboundary EIA procedure in Poland for activities subject to mandatory EIA. But in Austria, Bulgaria, Estonia, Finland, Lithuania, Norway and Switzerland, the proponent, or its EIA experts, prepared or drafted a scoping report.

57. In Latvia and in the former Yugoslav Republic of Macedonia, the scoping report identified also the institutions and organizations to be consulted, whereas in Finland, the Netherlands and the former Yugoslav Republic of Macedonia it identified alternatives to be considered by the proponent. Many respondents referred to consultation of other authorities, with Spain also possibly consulting NGOs. The opinions of the public were taken into account in Croatia, the Czech Republic, Estonia, Finland, Hungary, the Netherlands and, as appropriate, Norway and Portugal. In Bulgaria and Finland, the competent (environmental) authority made a statement on the scoping report drafted by the proponent. The Netherlands and Romania both included recommendations by a separate committee or commission. Finland, Germany, Hungary, the Netherlands, Norway and Poland took into account the comments of the affected Party.

58. In several Parties (Bulgaria, Finland, Germany, Greece, Italy, Latvia, Liechtenstein, Lithuania, Montenegro, Poland, Romania, Spain, Sweden, United Kingdom) the proponent or its EIA experts identified "reasonable alternatives" (appendix II, para. (b)) (21), but in the Czech Republic, Greece, Poland and the former Yugoslav Republic of Macedonia the competent authority might propose alternatives too, with the Czech Republic making proposals within the constraints of the land-use plan; in Finland the competent authority specified the alternatives to be considered on the basis of the proposal by the proponent and of comments by the authorities, the public, NGOs and the affected Party. Many respondents referred to a case-by-case approach, taking into account the nature of the activity, its location and size. Ireland and Romania each referred to their guidelines. In Estonia, Hungary, Slovakia and Spain reasonable alternatives might emerge from scoping, with Slovakia indicating that these might be according to comments received from the public and authorities in the concerned Parties.

59. Various types of alternatives were mentioned, including the no-action alternative. A few respondents reported that the alternatives should be suitable for achieving the purpose of the proponent, reduce the impact and be within the proponent's competence; Ukraine referred to environmental and economic acceptability.

60. “The environment that is likely to be affected by the proposed activity and its alternatives” (appendix II, para. (c)) (22) was identified case by case, with some respondents suggesting that it was done by the proponent, others by the competent authority, or by a combination of the two. In Estonia, Finland, Hungary and Spain the affected environment was identified during scoping. Romania referred again to its scoping checklist. Finland, Norway and Slovakia suggested a role for the public and authorities of the concerned Parties.

61. For their definition of “impact” in accordance with article 1 (vii), some provided a definition or referred to their legislation, and some included public health (Czech Republic, Estonia, Finland, France, Hungary, Kazakhstan, United Kingdom) or socio-economic conditions (Finland, Hungary, Kazakhstan). Several suggested that the definition was carried out case by case by the proponent or its EIA experts, whereas Romania once again referred to use of its scoping checklist by the competent authority. Austria and Norway consulted the affected Party.

62. A clear majority of respondents indicated that their country, as the Party of origin, gave the affected Party the complete EIA documentation (art. 4.2) (23), with Belgium, Canada and Romania confirming that this was subject to any privacy or access-to-information requirements. Poland’s legislation required transmission only of that part necessary for the affected Party to assess the impact on it, but in practice gave the complete EIA documentation; this was probably also the case in Finland. Norway did not send separate expert reports that were not relevant to the transboundary impact. Sweden did not generally send background data and reports and, if having to provide a translation, sent only the non-technical summary and the most relevant parts of the EIA documentation, as discussed with the affected Party.

63. Respondents indicated how their country cooperated with the authorities of the affected Party on the distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the concerned Parties were both responsible (24). Most indicated that they provided the documentation to the affected Party, which was then responsible for distribution. Several respondents referred to cooperation between the concerned Parties in this respect, with the Czech Republic requesting certain actions be taken to publicize the public participation opportunity. Comments from the affected Party’s public were submitted either directly to the Party of origin or through the authorities in the affected Party, with the routing sometimes varying case by case.

64. Respondents also reported on how their competent authority dealt with comments, with about half of them indicating that comments were taken into account by the competent authority in the final decision. Many (Croatia, Estonia, Hungary, Kyrgyzstan, Latvia, Lithuania, Republic of Moldova, Romania, Spain) also, or instead, sent the comments to the proponent or its experts for incorporation in the finalized EIA documentation (Belarus, Hungary, Republic of Moldova) or the proposed activity (Spain); or for the developer to answer (Croatia, Poland). Whether dealt with by the competent authority or the proponent or both, some Parties (Belarus, Denmark, Estonia, Germany, Latvia, Netherlands, Poland) required that information be provided on how the comments were addressed, or that an explanation be given if not. These answers were sent to the affected Party by Latvia and Romania. Finland sent its statement on the EIA documentation to the affected Party, including the summary of comments and opinions.

65. The procedures and, where appropriate, the legislation that define the time frame for comments provided “within a reasonable time before the final decision” (art. 4.2) were described (25), with the time frame varying between one and three months, though with some flexibility case by case. Some Parties of origin decided alone on the time frame (Poland, Serbia, Republic of Moldova), whereas others discussed it with the affected Party

(Croatia, Kyrgyzstan, Latvia, Sweden, Ukraine) or it was defined in bilateral agreements (Estonia, Poland) or other arrangements (Ireland).

66. If the affected Party did not comply with the time frame, Sweden, Switzerland and the United Kingdom would send a reminder. If the affected Party asked for an extension, many Parties would usually agree, or did so if the request was justified; Ireland would always agree. Others were more hesitant, indicating that an extension would be considered or that there was some flexibility, but for others still it was contingent on the time frame of the administrative procedure (Denmark, Belgium, Kyrgyzstan, Netherlands, Romania, Poland, United Kingdom). Estonia had some flexibility but would inform the proponent. Bulgaria and Germany were not normally able to agree an extension because of the time frames in their legislation.

67. Ultimately, the Party of origin had to decide what to do if there was no response within the deadline, whether or not extended. Several Parties assumed that there were no comments (Belarus, France, Kyrgyzstan, Romania, Republic of Moldova, Slovenia, Switzerland), with some unable to take late comments into account (Denmark, Belgium, Hungary, Netherlands). Some others suggested more flexibility, taking into account (important) late comments too, as long as the decision had not been taken (Bulgaria, Czech Republic, Germany Hungary, Sweden, Spain).

68. Respondents listed the various materials that their country provided, together with the affected Party, to the affected Party's public (26): the application or request for development consent, a permit or an environmental decision; project documentation; the screening decision and scoping report; the EIA documentation (mentioned by most respondents) and its non-technical summary; an expert review of the EIA; and decisions already taken. A few respondents also mentioned: the statement of intent;¹² the notification; information on the EIA procedure; information on procedures and for commenting; a draft of the decision to be taken; notices and brochures; and additional studies.

69. However, materials were generally provided to the authorities in the affected Party for them to distribute to their public and authorities, as well as being made available on a website in the Party of origin. Germany and Hungary translated the non-technical summary and other parts of EIA documentation relevant to the transboundary impact. Denmark translated some summary information and the Netherlands translated the non-technical summary.

70. Many respondents stated that their country did not, normally or ever, initiate a hearing for the affected public in the affected Party (27). Austria, Croatia, Germany, the Netherlands, Norway and Ukraine might initiate a public hearing in the affected Party if needed, but for Croatia and Germany this would require close cooperation between the concerned Parties; Sweden had experience of initiating such a hearing. More typically, Lithuania and Slovenia asked the affected Party to organize a hearing in the affected Party. Normally a hearing for the affected Party's public took place in the affected Party, organized by the affected Party's authorities and following discussion between the concerned Parties. Nonetheless, Hungary, Lithuania and Romania indicated that the proponent, perhaps together with their authorities, participated in hearings in the affected Party. For Belgium, Bulgaria, Canada, Denmark and Switzerland a joint hearing might be held in one of the concerned Parties.

71. A majority of respondents declared that hearings in their country as the Party of origin were open for participation by the affected Party. However, in Cyprus, Greece and

¹² "Statement of intent" submitted by a proponent; sometimes "notification of intent", "pre-starting note" or "notification".

Italy there was no legal obligation to organize a hearing, though in Greece one was often held at the proponent's initiative. In the Netherlands, the need for a hearing was decided upon in consultation with the proponent. For Kyrgyzstan, Poland and Slovenia a hearing was held after the EIA documentation had been prepared.

2. Questions to the affected Party

72. Respondents described the procedures and, where appropriate, the legislation that their country, in the role of affected Party, applied to determine the meaning of the words "within a reasonable time before the final decision", with this being the time frame for comments (art. 4.2) (28). Austria, Belgium, Bulgaria and Germany referred to the legislation of the Party of origin, and others (Croatia, Czech Republic, Estonia, Netherlands, Romania, Slovakia, Sweden, Switzerland, United Kingdom) referred to the time frame specified by the Party of origin, with the Czech Republic and Slovakia adjusting their time frames to fit, and Montenegro, Romania and the United Kingdom requesting an extension if they were unable to do so. In contrast, Denmark, Norway and the Republic of Moldova referred to their legislation; Greece used the domestic time frame unless requested otherwise. Some respondents gave a quantified response, of between three weeks and three months, with an average of about two months, and some with reference to bilateral agreements. For Estonia, Hungary and Lithuania sufficient time was needed to comment, and for Belarus and Hungary more time was needed when documentation required translation into their language.

73. Respondents also described how their country cooperated with the authorities of the Party of origin on the distribution of the EIA documentation and the submission of comments (art. 4.2) (29). Austria, for example, gathered as much information as possible on public participation in the Party of origin in order to give an equivalent opportunity to its public.

74. More commonly, however, the affected Party received the documentation, together with a deadline for comments, and made the documentation available to its authorities and public, while often also publishing it on a website; the affected Party then gathered comments to send back to the Party of origin (e.g., Finland, Lithuania, Switzerland). However, the Netherlands, if requested, assisted the Party of origin in informing the public and making the EIA documentation available, and the public usually submitted its comments directly to the Party of origin. Hungary distributed information in accordance with the Party of origin's legislation. Hungary also incorporated public comments into its standpoint, which was translated into English and sent to the Party of origin together with the original comments in its own language. Norway and Slovakia distributed summary information domestically.

75. Regarding the organization of the public participation in the affected Party (30), a majority of respondents indicated that this was the responsibility of the affected Party in accordance with its own legislation, taking into account bilateral agreements (Bulgaria, Estonia, Latvia, Montenegro, Portugal, Spain, Ukraine), or in compliance with the time frame specified by the Party of origin (Austria, Germany, Poland, Switzerland, United Kingdom). For Belgium and the Netherlands, the public participation was organized in accordance with the Party of origin's legislation and bilateral agreements. Belgium also referred to ad hoc procedures, as did Sweden. The Czech Republic and Italy referred to the legislation of both Parties concerned. Finland, Kyrgyzstan, Latvia, Lithuania, Norway, Romania and Switzerland referred to a dialogue with the Party of origin regarding participation arrangements.