

Economic Commission for Europe

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

Meeting of the Parties to the Convention
on Environmental Impact Assessment in
a Transboundary Context serving as the
Meeting of the Parties to the Protocol on
Strategic Environmental Assessment

**Working Group on Environmental Impact Assessment
and Strategic Environmental Assessment**

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**Exchange of good practices: Good practice recommendations on the
application of the Convention of nuclear energy-related activities**

**Draft Good practice recommendations on the application of
the Convention to nuclear energy-related activities**

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I. Introduction to the preparation of the good practice recommendations

1. In 2014, at its sixth session, the Meeting of the Parties to the United Nations Economic Commission for Europe (ECE) Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) requested the development of good practice recommendations on the application of the Convention to nuclear energy-related activities (see decisions VI/7¹ and VI/3-II/3²) for adoption at its next session in 2017.

2. The good practice recommendations aim to describe existing good practice on the application of the transboundary environmental impact assessment (EIA) procedures in the field of nuclear energy. Their objective is to facilitate the exchange of information and assist countries in the consistent practical application of the Convention by illustrating good practice and sharing experiences.

3. The present recommendations were prepared by consultants to the Convention secretariat (Environment Agency Austria, EAA), under the supervision of an editorial group established by the Meeting of the Parties³ taking into account the comments by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its fifth meeting in April 2016 (see ECE/MP.EIA/WG.2/2016/2, paras. 47–52). They incorporate information and responses to a survey provided by national EIA experts and focal points to the Espoo Convention, in most cases in consultation with national nuclear experts. The survey was designed to gather information and to identify existing good practice, but also challenges and experiences with the application of the Convention to nuclear-energy related activities relating to issues identified in the terms of reference adopted by the Working Group at its fourth meeting (Geneva, 26-28 May, 2015).⁴

4. Furthermore, the recommendations build on existing guidance documents on the application of the Espoo Convention and other relevant material, such as selected Opinions of the Implementation Committee. They have also been supplemented with good practice examples provided by countries that illustrate successful application of the Convention to nuclear energy-related activities. On 3-4 August 2016 the editorial group held a meeting in Vienna to complement the information and good practice examples gathered and to further refine the draft text of the recommendations.

5. In line with the terms of reference, the good practice recommendations address the following procedural steps under the Convention: screening; notification; environmental impact assessment documentation; public participation; consultation; examination of the information gathered and final decision; and post-project analysis. The present document covers the above steps in separate sections. Each section contains:

- (a) A description of the relevant provisions of the Espoo Convention

¹ Decision VI/7 Application of the Convention to nuclear energy related activities (http://www.unece.org/fileadmin/DAM/env/eia/meetings/Decision_VI.7_01.pdf)

² Decision VI/3-II/3 Adoption of the workplan (http://www.unece.org/fileadmin/DAM/env/eia/decisions/Decision_VI.3-II.3.pdf)

³ The editorial group consisted of one to two representatives from each of the following Parties: Austria, Belarus, Finland, France, Germany, the Netherlands, Poland, Ukraine and the European Union; as well as a representative from one non-governmental organization, namely the European Ecoforum, See decision VI/3-II/3

⁴ Good practice recommendations on the application of the Convention to nuclear energy-related activities / Terms of Reference (ECE/MP.EIA/WG.2/2015/3)

(b) A summary of approaches reported by respondents that reflect the most common statements and comments provided, but also point to the existence of different views and approaches among Parties;

(c) Good practice examples provided from countries⁵. Even if the examples are limited in number, they nevertheless provide valuable insights into the practical experiences with the application of the Convention;

(d) Good practice recommendations, which do not exclusively derive from the corresponding summary of approaches and good practice examples but also reflect the input from the editorial group and also in some cases refer to relevant Opinions of the Implementation Committee (referred to in footnotes).

II. Screening

A. Introduction

6. The purpose of screening under the Convention is to determine whether a proposed activity or a major change to an activity listed in appendix I to the Convention, is likely to cause a significant adverse transboundary impact. That is, screening will have to determine whether proposed nuclear activities, as well as major changes to existing ones, subject to a decision of a competent authority, (such as upgrades or extensions), fall under the scope of the Convention. In addition, if the proposed activity is not listed in appendix I but both the Party of origin and the potential affected Party(ies) agree that it is likely to cause a significant transboundary impact and should be treated as if it was listed, the activity will also fall under the Convention.

B. Summarized approaches

7. Most of the national legislations of the Parties to the Convention already fully cover the nuclear energy-related activities and installations listed in 2 (b) and 3 of the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7).⁶

8. There are no standardized procedures in place for determining whether a proposed nuclear energy related activity is subject to the Convention, but screening rather depends on the type of nuclear energy related activities. Some responses refer to criteria such as distance or public perception for determining whether an activity is likely to cause significant transboundary impacts.

9. Licences and time limits for nuclear energy-related activities vary among countries. Some licences are issued with a time limit while others are not, sometimes also depending on the type of activity.

10. Based on their national legislation or practice, some Parties also take into account the likelihood of a significant adverse transboundary impact from accidents beyond the design base when determining the applicability of the Convention.

⁵ Please note that each of the good practice examples solely reflect the perspective from the country that provided the example and highlights the practical experience in the position of either the Party of origin or affected Party.

⁶ Annex VII, Decision III/7, Second amendment to the Convention (<https://www.unece.org/fileadmin/DAM/env/documents/2004/eia/decision.III.7.e.pdf>).

11. The criteria and considerations for identifying a “major change” to nuclear energy related activities are usually determined on a case-by-case basis.

C. Good practice examples

Box 1

FINLAND (as Party of origin)

NPP Fennovoima – change in technology

In 2008, Finland notified its neighbours, the Baltic Sea subregion and also Austria by request according to the Espoo Convention about the planned construction of a new power plant in Finland by the developer Fennovoima Oy. In 2013, Finland notified these countries again about the same plant mainly due to changes regarding the planned reactor type that had not been examined in the first EIA.

Box 2

AUSTRIA (as affected Party)

NPP Paks

Hungary carried out an EIA for the extension of the lifetime of the NPP Paks. Assuming that this activity might impact its environment, Austria requested to be notified according to the Espoo Convention. In 2005, Hungary notified Austria, thus allowing for Austria to participate in the transboundary procedure. This offered the possibility for the Austrian public and authorities to put forward their concerns to Hungary for further consideration.

Box 3

GERMANY (as Party of origin)

NPP ISAR-1 (decommissioning)

In the as of yet uncompleted approval procedure for the decommissioning of NPP Isar 1, Germany and the European Commission in its evaluation had come to the conclusion that the project did not have significant adverse transboundary impacts. Austria nevertheless requested to be notified, and on the basis of the documents provided to it, requested to participate in the environmental impact assessment regarding the project. The authorities designated by Austria as well as the Austrian public were subsequently involved in the EIA process as of 2014. Austrian representatives attended a public hearing held on 22.07.2014. In addition, a separate meeting for consultations with the Austrian authorities was organized on 4.11.2014.

D. Good practice recommendations

12. **Early information builds trust.** Given the nature of nuclear energy-related activities (involving their potentially wide scope of severe impacts, great public concern and national interests) it could be considered good practice if a Party of origin already informed potentially affected Parties about its screening procedures through formal or informal exchange of information at an early stage potentially giving a possibility to comment.
13. **Consideration of accidents beyond design base.** Parties of origin could take accidents beyond the design base into account when determining potential transboundary effects.
14. **Upgrade works during the life cycle.** If upgrade works during the life cycle are planned, Parties are to be aware that these works may fall under “major change” causing significant transboundary effects.
15. **Extension of the lifetime of a nuclear power plant.** Parties should take into account that in one specific case (in 2014) the Meeting of the Parties⁷ has found “that the extension of the lifetime of the nuclear power plant, subject of the proceedings, after the initial licence had expired, should be considered as a proposed activity under Article 1, paragraph (v) of the Convention”.⁸
16. **Exchange of experiences.** Exchange of experiences with screening procedures in a transboundary procedure proves to be beneficial.

III. Notification

A. Introduction

17. Notification requires the determination of the potentially affected Parties to be notified under the Convention. For a proposed nuclear energy-related activity listed in appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.
18. Regarding the content of notification, article 3 of the Espoo Convention lists (a) information on the proposed activity, including any available information on its possible transboundary impact, (b) the nature of the possible decision, and (c) an indication of a reasonable time within which a response is required, taking into account the nature of the proposed activity.

⁷ See ECE/MP.EIA/20/Add.1,ECE/MP.EIA/SEA/4/Add.1, decision VI/2, annex I, para. 54.

⁸ See ECE/MP.EIA/20/Add.1,ECE/MP.EIA/SEA/4/Add.1, decision VI/2, para 68.

B. Summarized approaches

19. Parties of origin apply different criteria to determine the potentially affected Parties from nuclear energy-related activities. Some Parties choose for example criteria based on the normal operation of a planned installation, while some other Parties consider also design base and beyond design base accidents. Additionally to official notifications, Parties of origin sometimes also informally inform a broader range of Parties not necessarily potentially affected about proposed nuclear energy-related activities. Parties that consider themselves as potentially affected sometimes proactively request for notification of a project when significant adverse impacts cannot be excluded from their point of view.

20. In accordance with the obligation to notify any potentially affected Party as early as possible, several Parties of origin inform the potentially affected Parties at the scoping stage, allowing them to take part in the scoping procedure.

21. Apart from the technical characteristics of the proposed activity and information on its possible transboundary impact, information about the Party of origin's permitting system and decision-making procedure is often regarded as particularly helpful in facilitating the notification process.

22. The time frames for affected Parties within which they should respond whether they intend to participate in the transboundary EIA procedure mostly vary between 1 to 3 months also depending on the nature of the proposed nuclear activity. In practice, the competent authorities of several Parties of origin are willing to extend the deadlines specified in the notification, if requested by the affected Party.

23. In case of differing national languages between the Party of origin and the affected Party, notifications are mostly sent in English while some countries are also notified in Russian. The material intended for the affected Party's public (especially the non-technical summary) is mostly translated into the respective national language.

24. Several Parties have bilateral agreements in place, which determine in advance specific forms (e.g. adjusted template) to be used for notification, i.e. specifying issues such as required contents, time frames, language and translation, or mechanisms to enable equal treatment of the public in both countries.

C. Good practice examples

Box 4

POLAND (as Party of origin)

First NPP in Poland

The transboundary EIA procedure with respect to the planned construction of a first nuclear power plant in Poland was initiated in 2015. At the scoping stage, immediately after the receipt of the relevant information from the developer, Poland sent 13 official notifications (to its neighbours, the Baltic Sea countries and, as a result of SEA for Polish NPP Programme, to Austria) in three languages (English – as lingua franca, German and Lithuanian – due to requirements in the respective bilateral agreements). Additionally to the official notifications, Poland informed 13 further countries located up to 1000 km from the potential localisation of the NPP (corresponding to the distance of a possible impact in case of an accident beyond the design). All the 13 officially notified countries indicated their wish to take part in the EIA procedure as affected Parties and two of the informally informed countries asked for an official notification. As a result, 15 countries were notified and commented on the scope of the EIA report (almost all Parties responded within the given time frame).

The early involvement of the affected Parties and the information of also a broader range of Parties have advantages that lead to facilitate the entire procedure. First of all, early involvement of the affected Parties enables to establish effective and optimal time frames and costs for the EIA procedure and it prevents late participation of affected Parties on request (at the final step of EIA). Broad input from affected Parties at the scoping stage helps developing adequate and comprehensive EIA documentation based on exhaustive analyses and investigations. Moreover, early and broad involvement of the affected Parties helps to achieve high transparency of the procedure.

Box 5

AUSTRIA (as affected Party)

Hungary NPP Paks II

Notification was carried out at the beginning of the EIA procedure in 2015 for the construction of two new nuclear units in Paks NPP. Hungary notified Austria in the scoping phase. Hungary sent Austria the necessary information on the scoping procedure (e.g. duration of the public participation in Hungary) in order to give the Austrian public equivalent possibilities to participate. The scoping document was translated into German by Hungary. Hungary prolonged the time limit for Austria to deliver its comments. The communication between the Parties was carried out electronically, and the related information was provided on websites and in paper form.

From the Austrian point of view, the early notification allowed Austria to voice its concerns and request for information to be considered in the environmental documentation in due time. The information regarding the scoping procedure given by Hungary and the translation of the document by the Hungarian Party enabled Austria to initiate the public participation procedure without delay. Hungary was flexible and supportive regarding time limits for sending Austrian comments. The cooperation was efficient also due to the use of electronic means.

Box 6

SLOVAKIA (as Party of origin)

Enlargement of the repository for radioactive waste in Mochovce

Regarding the project „Enlargement of the repository for radioactive waste in Mochovce”, Slovakia notified Austria (2011) in the scoping phase when the national EIA procedure was initiated. The notification documentation was both in Slovak and in German language and included the announcement of the project, preliminary documentation (in both languages) and inquired whether Austria intended to participate in a transboundary EIA procedure. At Austria’s request Slovakia agreed to extend the deadline for responding. The e-mail communication between the contact points from Austria and Slovakia was conducted in English.

Box 7

FINLAND (as Party of origin)

Fennovoima Oy's encapsulation plant and final disposal facility of spent nuclear fuel

At the end of June 2016 Germany and 8 other countries received notification from Finland concerning Fennovoima Oy's encapsulation plant and the final disposal facility of spent nuclear fuel. The announcement was sent the same day as the EIA programme was made public in Finland prior to the start of the public commenting period. Countries were offered a translation of the EIA programme in due time before the set time period to comment.

For GERMANY as affected Party, the chosen timing of notification prior to launching the commenting period in the Party of origin was very useful. It provided the authorities of the affected Party with sufficient time to coordinate amongst each other, in particular –as in this case – more than one activity was subject to notification and thus more than one authority in charge in the affected Party. In addition, the time could be well used to prepare for the public participation, in particular for internal administrative procedures (combined with several authorities in charge) that are time consuming and would otherwise shorten the time frame for the public in the affected Party to comment, constituting a disadvantage relative to the Party of origin's public.

D. Good practice recommendations

25. **Wide notification.** Given the great public concern and national interests involved when it comes to nuclear energy-related activities, a wide notification i.e. beyond neighbouring Parties could prevent later misunderstandings and potential disputes. In this context, willingness to involve Parties that were at first not notified but proactively requested for notification in accordance with article 3, paragraph 7 of the Convention could prevent potential disagreements later on.⁹

26. **Responsibilities associated with the notification.** Information on the project has to be provided in sufficient quality in order to help the affected Party to decide whether it wishes to participate in the transboundary procedure. The translation of the notification documentation by the Party of origin into the language of the affected Party should be provided beforehand; this supports the initiation of the participation procedure and helps keeping the given timeframes. If no previous cooperation in applying the Convention exists between the Party of origin and the affected Party, the practicalities connected to notification should be agreed in advance between the points of contacts for notification (e.g. length and timing of public hearing, languages –bilingual, trilingual- used by the affected Party).

⁹ See also relevant opinions of the Implementation Committee MP.EIA/WG.1/2003/3, para. 8; and ECE/MP.EIA/WG.1/2006/4, para. 13 (a), ECE/MP.EIA/WG.1/2007/3, para. 13, ECE/MP.EIA/WG.1/2007/4, para. 28, ECE/MP.EIA/WG.1/2006/4, para. 13 (b), ECE/MP.EIA/WG.1/2006/4, para. 13 (c), ECE/MP.EIA/WG.1/2006/4, para. 13 (d) (decision IV/2, annex III)

27. **Early notification.** In accordance with article 3 para. 1, affected Parties must be notified as early as possible, and no later than when the Party of origin's own public is informed about the proposed activity. Notification might otherwise come too late to influence key aspects of the documentation and therefore not meet the needs of the affected Parties.¹⁰ Informal contacts in advance of the official notification could also facilitate the later procedures (provided that, to avoid misunderstandings, it is made clear whether these contacts represent a formal notification or an informal prior information notice). Moreover, it would be useful for the affected Party to be informed whether and when the Party of origin's public is informed.

28. **Reasonable time frame.** It is recommended to provide affected Parties reasonable time frames to respond to a notification (i.e. to indicate whether they intend to participate in the transboundary EIA procedure) that also take into account different forms of administrative structure in the Parties, such as federal structures. This could assure an adequate involvement of all national and sub-national authorities.¹¹

29. **Timely response.** It is recommended that affected Parties respond as early as possible within the time frame specified by the Party of origin, so as to allow the Party of origin to proceed with the next steps. A swift response is particularly recommended if the affected Party has already been accorded an extended time frame to respond.¹²

30. **Information about the Party of origin's permitting system and decision making procedure.** Aside from the information specified in article 3 paragraph 2, the notification could already include preliminary timeframes for subsequent steps in the transboundary EIA procedure (e.g. using the format for notification available on the Convention website¹³) to allow the affected Party to prepare for the necessary steps. Information on the national development consent procedures following the EIA procedure could be given explaining in particular how the outcome of the EIA will be taken into account in the subsequent procedures respectively the final decision.

31. **Availability of documents.** The information could be provided through a range of means, including at least electronically. Large data sets should be placed at existing websites providing that their respective link is accurately described. These websites should not be changed during the commenting period without informing the notified Parties about any modifications to the web links.¹⁴

¹⁰ See also opinions of the Implementation Committee : ECE/MP.EIA/WG.1/2006/4, para. 13 (a), ECE/MP.EIA/WG.1/2007/3, para. 13, ECE/MP.EIA/WG.1/2007/4, para. 28, ECE/MP.EIA/WG.1/2006/4, para. 13 (b), ECE/MP.EIA/WG.1/2006/4, para. 13 (c), ECE/MP.EIA/WG.1/2006/4, para. 13 (d) (decision IV/2, annex III.

¹¹ See Implementation Committee's opinions referred to in footnote 10; see also decision V/4, para.7; and ECE/MP.EIA/IC/2010/2, para.20.

¹² See footnote 10

¹³ <http://www.unece.org/env/eia/notification.html>

¹⁴ See footnote 10, decision V/4, para. 8(a), cf. ECE/MP.EIA/IC/2010/2, para. 43; and ECE/MP.EIA/IC/2010/2, para. 43; and ECE/MP.EIA/IC/2012/6, annex I, para. 33

32. **Bilateral agreements.** Parties, in particular neighbouring countries, could develop bilateral agreements, to facilitate the implementation of their obligations under the Convention, including regarding the notification procedure, and which could also cover nuclear energy-related activities. Such agreements may address for example the timing of notification, means and language of communication, format and contents of the notification, time frames for the response (decision whether to participate in the transboundary procedure).¹⁵

33. **Point of contact.** The notification should always be sent (at least in copy) to the point of contact for notification in the affected Party¹⁶ unless otherwise provided for in bilateral or multilateral agreements. In case of changes of the contact details of its point of contact and/or focal point the Party should also inform the Espoo secretariat about these changes.

IV. EIA documentation

A. Introduction

34. The environmental impact assessment documentation to be submitted to the competent authority of the Party of origin shall contain, as a minimum, the information described in appendix II. The Party of origin shall provide the affected Party, in case where one exists through a joint body, with the environmental impact assessment documentation. The concerned Parties shall arrange for distribution of the documentation to the authorities and the public of the affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin within a reasonable time before the final decision is taken on the proposed activity.

B. Summarized approaches

35. Concerning the level of detail of the EIA documentation that would allow for a good understanding of its contents, several Parties highlight the usefulness of carrying out a scoping procedure with early participation of the affected Parties, or at least including scoping documents to the notification and a comprehensible non-technical summary. In general, affected Parties require information to be detailed enough to be able to assess the potential significant transboundary impacts.

36. Some Parties indicate that the EIA documentation should address specific issues such as the assessment of the likelihood and impacts of design base accidents and – sometimes also beyond design base accident scenarios; the evaluation of and prevention and mitigation measures for transboundary impacts during normal operation of a nuclear power plant; and information about safety procedures in cases of accidents. Safety aspects

¹⁵ See opinions of the Implementation Committee, *op.cit.*, footnote 10 ECE/MP.EIA/IC/2009/2, para. 24; and ECE/MP.EIA/2011/4, para. 47; ECE/MP.EIA/IC/2010/2, para. 21; ECE/MP.EIA/IC/2010/2, para. 43; and ECE/MP.EIA/IC/2010/4, para. 29.

¹⁶ A list of points of contact for notification nominated in accordance with decision I/3 (See ECE/MP.EIA/2, annex III) is available at: http://www.unece.org/env/eia/points_of_contact.html. see also relevant opinions of the Implementation Committee, *op.cit.*, footnotes 10 and 14.

to protect human health and the environment are commonly regarded to be one of the most important and the most discussed issues in relation to nuclear energy-related activities.

37. In accordance with article 4 and appendix II to the Convention Parties also include in the EIA documentation a description of alternative scenarios and provide in detail reasonable alternatives, for example in terms of location and technology, to the proposed activity, considering also the no-action alternative. Alternative means of energy production or balancing demand and supply are national issues of the Party of origin and therefore more adequately addressed at the political and strategic level.

38. Due to Parties' differing legislation and practice regarding the relevant procedural stage for the EIA, the timing of the preparation of the EIA documentation varies among countries. In this respect, ensuring in parallel an early notification and an adequate level of technical detail in the accompanying EIA documentation remains challenging.

39. For the proper dissemination of the EIA documentation to the affected Party's public, mostly electronic formats including web-pages are used, although some Parties also provide hard copies in addition.

C. Good practice examples

Box 8

FINLAND (as Party of origin)

NPP Fennovoima (2014)

Finland's EIA report (in 2014) regarding the Fennovoima NPP dealt also with safety issues including severe accidents which fall under the International Nuclear Event Scale (INES) levels 6 or 7 with a significant "source term" (i.e. the release to the atmosphere of radioactive matter). Finland submitted in addition a supplementary report with more detailed information as part of the EIA documentation material.

Box 9

AUSTRIA (as affected Party)

NPP Fennovoima

In 2008-2011, Austria took part in the transboundary EIA procedure regarding the construction of a new nuclear power plant in Finland. Austria had been able to comment the EIA report that dealt also with safety issues including severe accidents, and the supplementary report with more detailed information. Austria considers it good practice to describe in the EIA report all the necessary effects caused by a proposed activity on the environment, including on human health and safety, and to make the full documentation available in English, with a summary paper in German and in 8 other languages within the Baltic Sea subregion.

Box 10
SLOVAKIA (as Party of origin)

New NPP Jaslovské Bohunice

Slovakia notified Austria about the planned construction of a new NPP in Jaslovské Bohunice. Austria participated in the respective transboundary EIA procedure from March 2014 until June 2016. The EIA report was issued in August 2015. Besides all the basic information about the project, the site, the current environment etc., the report also contained – regarding transboundary impacts - an assessment of the radiological impacts of the operation of the new NPP for both the normal operation and under accident conditions. The inclusion in the documentation of an assessment of the project's impacts in case of a severe accident was much appreciated by the Austrian public, since this addressed an important safety issue of concern to it. The Slovakian authority issued the final EIA statement on the NPP in April 2016.

D. Good practice recommendations

40. **Preliminary information by scoping documents.** Carrying out a scoping procedure with early participation of the affected Party or Parties, and/or including scoping documents to the notification, could facilitate the good understanding of the contents of the EIA documentation and consequently simplify the consultation procedures.¹⁷

41. **Comprehensible non-technical summary.** Since the non-technical summary is a key-element for informing the public, its content should be drafted in a clear and simple, i.e. non-technical language¹⁸ and provided as a separate document or at least as a separate chapter of the EIA documentation.

42. **Translation of documentation.** It is recommended that, as a minimum, the non-technical summary and those parts of the EIA documentation that are necessary to provide an opportunity to the public of the affected Party to participate (e.g. transboundary impacts) are translated into the national language of the affected Party (principle of equivalence¹⁹ and polluter pays principle)²⁰. In case of more than one national language, the concerned Parties should agree into which language the documentation shall be translated, with a preference to one which is used in both Parties.

43. **Details about the reactor type.** The EIA documentation should contain details about the reactor type or, if not possible at that stage, a sufficient level of information on all reactor types under consideration.

¹⁷ See also ECE/MP.EIA/2011/4; and ECE/MP.EIA/WG.1/2006/4, para. 18; decision IV/2, annex III, para. 29; and ECE/MP.EIA/IC/2009/4, para. 26

¹⁸ See also ECE/MP.EIA/IC/2009/2, para. 16

¹⁹ Article 2, paragraph 6 of the Convention

²⁰ See also decision V/4, para. 6 (c), cf. ECE/MP.EIA/IC/2010/2, para. 35, and ECE/MP.EIA/IC/2010/4, paras. 19(c) and 20; and ECE/MP.EIA/IC/2010/2, para. 35; and decision V/4, para. 6(f), cf. ECE/MP.EIA/IC/2010/2, para. 35

44. **Relevant information.** The EIA documentation should identify and assess all impacts of a nuclear energy related activity throughout the whole life cycle taking also into consideration its impacts on climate and risks.²¹

45. **Descriptions of alternatives.** Alternatives regarding location and technology of the proposed activity as well as the no-action alternative should be described in a comparable and transparent manner.²²

46. **Risk and accidents.** In order to assess the transboundary impact of the proposed activity on the environment, including on human health and safety, it is recommended to use any relevant information available such as, for example, information obtained through a risk assessment carried out pursuant to other relevant assessment procedures in line with the national legislation and/or regulatory requirements or obtained through other reliable and significant sources.

V. Public participation

A. Introduction

47. Under the Convention, the public of the affected Party has the right to make comments on and to express objections to proposed activities (art. 3, para. 8 and art. 4, para. 2). The Parties concerned need to ensure that opportunities provided to the public of the affected Party are equivalent to those of the Party of origin (art. 2, para. 6).

B. Summarized approaches

48. For most Parties to the Convention, the environment ministries are the competent authorities for coordinating transboundary assessment procedures and ensuring that authorities and the public in the areas likely to be affected are provided with possibilities to comment on the proposed activities.

49. The developer of nuclear-related activities is mostly referred to as being responsible for the preparation of the EIA documentation and for contributing to the organization of public participation procedures by the public authorities. Depending on the countries, the developer may also be in charge of co-organizing the public hearing with the public authorities, including the related translation and interpretation services, and the evaluation of the received comments during the procedure.

50. With respect to the start and stages of public participation in the transboundary EIA procedures, most Parties of origin in practice involve the public from the notification stage onwards. In several countries the public is generally kept informed about the process. The relevant information from a Party of origin is also shared with the public in the affected Party.

51. When notifying their affected public, the authorities of the Parties of origin and affected Parties already rely strongly on digital communication and dissemination, although in many countries the (additional) use of printed media such as newspapers, official bulletins or billposting at the project location are still a standard.

²¹ See part A of the Geneva Declaration (see ECE/MP.EIA/20.Add.3–ECE/MP.EIA/SEA/4.Add.3), adopted by the Meeting of the Parties to the Convention at its sixth session (Geneva, 2–5 June 2014),

²² See also ECE/MP.EIA/IC/2009/2, para. 39; and ECE/MP.EIA/IC/2010/2, para. 33; and ECE/MP.EIA/IC/2013/2, annex, para. 54.

52. Among affected Parties, approaches vary on how their public's comments reach the Party of origin: some competent authorities collect the comments and submit them with their own comments to the Party of origin; in other affected Parties the public is free to send comments directly to the Party of origin; for which purpose it is useful to indicate an official office e-mail-address in the notification

53. For some Parties, English or Russian is used as lingua franca into which at least the non-technical summary is translated, but several Parties of origin also offer translation of additional parts of the documentation and/or translation into the language of the affected Party for informing the public. Apart from a few exceptions, translation costs are normally borne by the competent authorities or the project developer in the Party of origin according to the "polluter pays – principle".

54. For affected Parties, translation of documents in good quality is essential, together with sound (simultaneous) interpreting services during public meetings, even though it sometimes remains difficult to ensure them both. Inadequate translation is often attributed to the technical nature of the terminology involved but also to a lack of resources (in the Party of origin).

55. The timeframe during which comments are collected after the publication of the related notice for the public to comment varies significantly - from two weeks to three months- among Parties, and sometimes also within the same country for different activities.

56. Public hearings are widely seen as the most appropriate format for public engagement, since the bulk of the comments from the public can be addressed through a direct exchange with it. The comments provided during the hearings are usually documented in the minutes. These minutes, or a summary of the public comments received during the EIA procedure, are either included in the EIA report and/or the competent authority's official EIA statement, in the EIA documentation, or made available separately on the competent authorities' website.

57. In general, the most common issues of concern and high interest for the public are human health and safety, particularly for the case of an accident. Another issue often raising public concern is the quality of the documentation (e.g. its translation or its overly technical contents).

58. Key elements of a good public participation process from the affected Parties' point of view, include: (i) early information about the project; (ii) a clear and transparent EIA documentation and a proper translation of its relevant parts into the language of the affected Party; (iii) online-availability of the documentation; (iv) a sufficient timeframe for commenting by the affected public; (v) sufficient opportunities to participate in public hearings in the territory of the Party of origin and/or the affected Party; (vi) an informative presentation of the activity and its transboundary impacts during the public hearing, together with high quality interpretation services; and lastly (vii) the subsequent feedback from the Party of origin on how the comments by the public have been taken into account.

C. Good practice examples

Box 11
AUSTRIA (as affected Party)

NPP Paks II

In 2015, Hungary as a Party of origin offered proactively to hold a public hearing in Austria as part of the transboundary EIA regarding its planned construction of a nuclear power plant (Paks II). This public hearing was organized by Austria with the full support of Hungary. At the hearing all necessary Hungarian experts were present and the whole delegation agreed to stay as long as needed to properly answer all questions raised from the public.

Box 12
AUSTRIA (as affected Party)

New units to Jaslovské Bohunice NPP

During the transboundary EIA procedure that had started in 2014 regarding the planned construction by Slovakia of new NPP units, Austria organized a public hearing to complement the public participation requirements, after its public had already been given the opportunity to provide comments on the project and its documentation. The hearing was prepared in close cooperation with the contact point of the Party of origin, and with the involvement of the project developer regarding preparations and timetable. The preparatory work began approximately two months before the hearing that was successfully conducted in Vienna on 18 November 2015. All technical equipment was provided by the affected Party.

Box 13
FINLAND (as Party of origin)

Fennovoima Oy's encapsulation plant and final disposal facility of spent nuclear fuel

Response to public interest in affected Party, Sweden:

During the 2013-2014 transboundary EIA procedure regarding the Fennovoima Oy NPP in Finland, a strong interest arose in Northern Sweden towards the planned new nuclear power plant. The authorities in Finland and Sweden decided therefore to organize an ad-hoc public meeting in Luleå, the capital of the province of Norrland, during the commenting period of the EIA documentation. This allowed interaction between the public and authorities in Sweden with the Finnish competent authorities (responsible for EIA and Espoo Convention matters, as well as permitting and radiation safety authorities) and the developer.

Box 14

GERMANY (as affected Party)

NPP Jaslovské Bohunice

The public hearing for the Jaslovské Bohunice NPP in Slovakia had been scheduled for 23 September 2015, with the public participation for that project taking place in the German state, Bavaria, between 18 September and 17 October 2015. The Bavarian Government had only been informed about the procedure by the Slovakian government with a letter dated on 07 September 2015. Since the Bavarian public could not participate in the public hearing due to this late notice, the competent authority (Bavarian State Ministry for the Environment and Consumer Protection) asked for a public meeting to be held in Bavaria later on. This was accepted by the Slovakian government as a voluntary service to the Bavarian public. As a result, the public hearing was held in Munich, on 25 November 2015.

D. Good practice recommendations

59. **Early and timely public information.** Early and timely information about the project, when all options are open, allows for effective involvement of the public in the EIA process.

60. **Organization of public participation for affected Parties.** The Parties of origin should provide the affected Parties with all relevant information in a timely manner to allow for the organization of public participation (e.g. for making information available on the internet or through the authorities, organizing public hearings etc.). Sufficient time for the organization before the public participation starts but also for the follow up of the public participation procedures (e.g. collecting comments) is necessary.

61. **Reasonable and equal timeframes for the public to express its opinion.** The provided timeframes during which comments are collected should be sufficiently long to allow for high quality public contributions.²³ These timeframes should allow equal opportunity for the public of the Parties of origin and of the affected Parties to participate.

62. **Open and transparent process.** The Party of origin should allow the affected public access to the EIA documentation and possible other information provided to facilitate an open and transparent public participation process. In case of any relevant updates to the EIA documentation or changes in the public participation process in the Party of origin, the affected Party should be informed in order to take subsequent steps (principle of equivalence).²⁴

63. **Public hearing.** If the Party of origin organizes a public hearing on its territory, the public of the affected country should be invited in sufficient time before the hearing. Adequate interpretation services should be provided. For practical reasons it may be more useful to organize an additional public hearing on the territory of the affected Party. The respective authorities of the affected Party and the Party of origin should preferably

²³ See also Decision V/4, para. 6 (c), cf. ECE/MP.EIA/IC/2010/2, para. 35, and ECE/MP.EIA/IC/2010/4, paras. 19(c) and 20; and ECE/MP.EIA/IC/2010/2, para. 35; and decision V/4, para. 6(f), cf. ECE/MP.EIA/IC/2010/2, para. 35.

²⁴ See also Decision V/4, para. 6 (c), cf. ECE/MP.EIA/IC/2010/2, para. 35, and ECE/MP.EIA/IC/2010/4, paras. 19(c) and 20.

collaborate on organizational matters and agree on prior clarification of related financial issues.

64. **Direct feedback from the public of the affected Party.** The Party of origin should be aware that in some affected Parties the comments from the public are sent directly to the Party of origin and are not collected by the competent authorities of the affected Party.

VI. Consultation

A. Introduction

65. In accordance with article 5, the Party of origin shall, after completion of the environmental impact assessment documentation, without undue delay enter into consultations with the affected Party concerning, inter alia, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact.

B. Summarized approaches

66. Consultations between the authorities involved in a transboundary EIA procedure are commonly carried out at least in written form, however, without excluding additional possibilities for question-answer sessions or meetings (e.g. expert meetings). The extent of interaction also depends on the complexity or significance of the respective project as well as the (informal) agreements between the Parties in the forerun of consultations.

67. Regarding the timing and duration, the average length of consultation periods among the Parties is between one and two months. However, depending on the complexity of the nuclear energy-related project concerned, in practice there also exist cases where consultations have taken up to six months. Consultation meetings are commonly scheduled to last one day.

68. Consultations that are carried out on the basis of the completed and publicly available EIA documentation usually focus on further information, (written) comments and questions (e.g. on nuclear safety issues) requested by the affected Party as well as answers by the Party of origin. Organizational issues are often discussed and agreed between the Parties on a case by case basis before the date of a consultation meeting.

69. Financial costs regarding a consultation meeting (e.g. the venue or interpretation), but not the related travel expenses and accommodation, are mostly paid by the Party that hosts the meeting, independently of whether that is the Party of origin or the affected Party.

70. When it comes to the outcomes of the consultations and their use, some Parties of origin forward them to the affected Parties while others do not (only) publicize them separately, but (also) include them in the publicly available final version of the EIA report, which then is a basis to be at least considered for the final decision on the activity. For some Parties of origin the outcome of the EIA procedure is a binding basis for all subsequent proceedings, such as license applications by the developer.

C. Good practice examples

Box 15

ROMANIA (as Party of origin)

NPP Cernavoda

Consultations regarding the Cernavoda NPP took place between the Romanian and Austrian environmental authorities under art. 5 of the Convention, in March 2008. During these consultations, after visiting the project site, the Austrian Party requested details on certain information contained in the EIA documentation. The discussed topics related to the current state of the work on Units 3 and 4, the reactor core, seismic risk, reactor containment and nuclear safety assessment. The discussions were attended by representatives of the Austrian and Romanian environment ministries, Romanian National Commission for Nuclear Activity Control and “Nuclearelectrica” S.A. National Company the Environment Agency Austria and the Austrian Institute for Applied Ecology.

Box 16

AUSTRIA (as affected Party)

NPP Mochovce units 3 and 4:

The transboundary EIA -procedure with Slovakia on the project “Nuclear Power Plant Mochovce 3 and 4” was initiated in early 2009. Two public hearings were conducted in Slovakia and in Austria, subsequent to the receipt and the completion of the public inspection of the screening and the EIA documentation. The public comments and expert statements gathered were sent to the Slovakian authority for consideration. Therefore during the subsequent bilateral consultations further questions and subjects could be discussed. Other results of the consultations included an agreement to hold further bilateral technical experts’ workshops on various specific safety questions regarding the project. This agreement was also included into the final EIA statement. Since then, two of such expert workshops have taken place within the framework of a “dialogue on safety issues”. The final EIA-statement on the project which was released by the Slovakian authority in early 2010 foresees to continue the bilateral dialogue on safety issues.

D. Good practice recommendations

71. **Timely and transparent information.** The full and completed EIA documentation should be made available to the affected Parties well ahead before the consultations among the authorities of the concerned Parties. New or additional information becoming available at a later stage in the EIA procedure may initiate additional consultations.²⁵

²⁵ See also ECE/MP.EIA/IC/2013/2, annex, para. 52; and ECE/MP.EIA/IC/2009/2, para. 25.

72. **Openness for a serious dialogue.** Proactive willingness by Parties of origin to address and take seriously the most important issues from the affected Party's point of view should be at the core of in depth-discussions during consultations.

73. **Thorough evaluation of all comments of affected Parties prior to the consultation meetings.** A thorough evaluation of all available comments allows all Parties concerned to properly prepare for the consultation meetings, which ensures the efficiency and the quality of the meetings. The affected Party should submit questions to be addressed during the consultations in sufficient time before the consultation meeting to permit better preparation and facilitate discussions.

74. **Duration of the consultation period.** The duration of the consultation period should be long enough to allow consultations on all relevant issues. More than one consultation meeting may be necessary or it might be agreed that additional written answers can be provided after the meeting.

75. **Well-planned consultation meetings.** Planning the consultation well may involve, inter alia, agreeing on the agenda, proper translation and interpretation in case of differing national languages and the prior clarification of related financial issues, providing the minutes. The relevant authorities and experts of the Party of origin have to be present and translation issues have to be clarified beforehand. Question –answer sessions allow detailed discussions including additional issues which may arise during the consultations.²⁶

VII. Examination of the information gathered and the final decision

A. Introduction

76. The Party of origin shall provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based

B. Summarized approaches

77. In general the result of the EIA process (including comments received from public participation and through consultation) has to be taken into due account and constitutes a (binding) basis for the final decision on the proposed activity by the responsible state administration. In some countries the outcome of the EIA procedure is a self-standing decision that is binding with respect to the subsequent development consent, while in other countries in which the EIA is part of the development consent procedure the final decision is the development consent.

78. All information gathered through the public participation and the consultation procedures are taken into due account in the final decision, and reasons have to be given if certain aspects examined in the EIA procedure will not be incorporated or otherwise addressed in the final decision.

79. Financial costs connected with the dissemination of the final decision and the subsequent information are mostly paid by the Party of origin. If the affected Party needs a

²⁶ See also Decision IV/2, annex III, para. 32, and ECE/MP.EIA/WG.1/2006/4, para. 17; and ECE/MP.EIA/8, section 2.9, ECE/MP.EIA/IC/2009/2, para. 24.

translation of the final decision, the bearing of the related costs has to be decided between the Party of origin and the affected Party. In some cases such details have been pre-determined in bilateral agreements.

80. When it comes to issues with regard to the rights to appeal against the final decision by foreign citizens, approaches vary.

C. Good practice examples

Box 17

AUSTRIA (as affected Party)

Examination of the information gathered and final decision in general

As a rule, during the consultations under the Convention, Austria as the affected Party agrees with the Party of origin on a deadline for the submission of its “final expert statement”. This final statement evaluates the information available (e.g. environmental documentation, the public participation and consultation) and gives concrete recommendations aiming at reducing possible negative impacts of the project. This final statement has to be taken into consideration by the competent authority of the Party of origin when preparing its final decision on the proposed activity. The final expert statements are supposed to support not only the Austrian public and authorities but also to contribute to a discussion based on scientific arguments within the Parties concerned.

Box 18

ROMANIA-AUSTRIA (as Party of origin and affected Party)

NPP Cernavoda

After the public consultation procedure and bilateral expert consultations with Romania regarding the Cernavoda NPP in 2008, Austria submitted a final expert statement to Romania for further consideration in the EIA and decision making procedure. The final expert statement evaluated and considered the environmental report, comments from the public and outcome of the bilateral consultations. It contained various conclusions and recommendations aiming at mitigating and minimizing negative transboundary impacts of the project to be taken into consideration within the subsequent EIA and other permitting procedures. Romania reacted on a voluntary basis in written form regarding the final expert statement before the EIA decision was issued. Romania’s response to Austria’s final expert statement enabled Austria to see how Romania dealt with the final recommendations, which gave more transparency to the procedure.²⁷

²⁷ <http://www.umweltbundesamt.at/umweltsituation/uvpsup/espooverfahren/rumaenien/uvpcernavoda/>

Box 19
FINLAND (as Party of origin)

NPP Fennovoima

In Finland, the transboundary EIA is carried out before the government takes a so called “decision of principle” on a new facility. During the EIA procedure on the Fennovoima NPP, Finland sent to Austria not only the statement of the competent authority for EIA but also additional information and a report which answered Austria’s questions including also as regards worst case severe accident scenarios. Later on Finland submitted its decision of principle. Besides proactively providing Austria with all relevant information and documents, Finland considered Austria’s comments and concerns in a transparent way.

D. Good practice recommendations

81. **Defining the final decision.** The final decision resulting from the EIA procedure does not always correspond to the license related to the nuclear activity but is to be complemented by another act, as determined by the respective national laws. It is recommended that the Party of origin clarifies in time (e.g. during notification) its legislation and practice regarding the final decision. A final decision could mean e.g. one or more decisions of the competent authority or authorities giving permit to construct a nuclear power plant.²⁸

82. **Submitting the final decision.** Once issued, the final decision including the associated documents should be sent to the affected Parties in a timely manner to be made publicly available. The information, the final decision and the associated documentation of the EIA process should not only be made available in the language of the Party of origin but at least in the agreed lingua franca or also in the language(s) of the affected Parties, if bilaterally agreed, and provided in an electronic format.²⁹

83. **Addressing the Point of Contact.** The final decision shall always be sent to the point of contact for notification of the affected Party under the Convention.

84. **Information on the right to appeal.** The Party of origin should provide information in the final decision about the right to appeal for the public in the Party of origin as well as for citizens of affected Parties clearly explaining the process and the timing to appeal.³⁰

85. **Feedback on comments by the public.** A documentation attached to the decision should explicitly describe how the public comments were taken into account. If the Party of origin submits a report on e.g. a public meeting held in the country of an affected Party those parts concerning the affected Party should be translated.³¹

²⁸ See also ECE/MP.EIA/10, decision IV/2, annex I, para. 61; and decision V/4, para. (i), cf. ECE/MP.EIA/IC/2009/2, para. 21.

²⁹ See also ECE/MP.EIA/2011/4, para. 51.

³⁰ Ibid.

³¹ See also decision V/4, para. 6 (g), in: ECE/MP.EIA/15, cf. ECE/MP.EIA/IC/2010/2, para. 40.

VIII. Post project analysis

A. Introduction

86. The concerned Parties, at the request of any such Party, shall determine whether, and if so to what extent, a post-project analysis shall be carried out, taking into account the likely significant adverse transboundary impact of the activity for which an environmental impact assessment has been undertaken pursuant to this Convention. Post-project analysis undertaken shall include, in particular, the surveillance of the activity and the determination of any adverse transboundary impact. Such surveillance and determination may be undertaken with a view to achieving the objectives listed in appendix V.

B. Summarized approaches

87. Not all Parties carry out post-project analyses in accordance with article 7. However several environmental aspects of nuclear facilities are to be monitored over the time of construction, operation and decommissioning. These monitoring and reporting activities are governed and determined by laws and procedures that are separate from the Convention procedures.

88. Some Parties agree on monitoring and reporting mechanisms (including their scope and timing), during the bilateral consultation process or – depending on the final decision, at a later stage.

89. The bearing of financial costs related to post project analysis shall be agreed between the concerned Parties, however related approaches vary.

90. Concerning the access to information by the public of the Party of origin and of the affected Parties related to post-project analysis, not enough information was yet made available.

C. Good practice example

91. For the post project analysis no good practice examples were made available.

D. Good practice recommendations

92. **Agreeing on monitoring and reporting mechanism.** The concerned Parties could agree on monitoring and reporting mechanisms during consultations. The Party of origin could send relevant monitoring reports for information and to be commented by the affected Parties.