



Economic Commission for Europe**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****Fourth session**

Vilnius, 8–11 December 2020

Items 3 (c) and 8 (c) of the provisional agenda

Outstanding issues: draft decisions by the Meeting of the Parties to the Protocol**Adoption of decisions: decisions to be taken by the Meeting of the Parties to the Protocol****Draft third review of implementation of the Protocol****Note by the secretariat***Summary*

The 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 decided that a draft third review of implementation of the Protocol during the period 2016–2018 based on the reports by Parties would be presented at the fourth session of the Meeting of the Parties (ECE/MP.EIA/23.Add.3–ECE/MP.EIA/SEA/7.Add.3, decision II/1, para. 10).

This note presents the draft third review based on national reports received by 30 June 2019. The draft review has been finalized taking into account the comments made during and after the eighth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 26–28 November 2019).

The Meeting of the Parties to the Protocol is invited to review the draft document and subsequently to adopt the third review of implementation of the Protocol through its decision IV/5.



Introduction

1. This report presents the draft third review of the implementation of the Protocol on Strategic Environmental Assessment. It examines responses to a questionnaire on the Parties' legal implementation of, and their practical experiences with, the Protocol from 2016 to 2018, with a view to enhancing the implementation of, and compliance with, the legal provisions of the Protocol.

2. The report is structured as follows: section I, containing an outline of the methodology underpinning the draft third review; section II, comprising a review of certain aspects of the Parties' domestic legal and administrative frameworks implementing the Protocol; section III, containing a review of the Parties' practical application of, and experiences with, the Protocol during the survey period; and section IV, containing a summary of the main findings of the draft third review of implementation.

I. Methodology

3. The draft third review of implementation of the Protocol was prepared in line with the workplan adopted by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol at its third session (ECE/MP.EIA/23.Add.1–ECE/MP.EIA/SEA/7.Add.1, decision VII/3–III/3, annex I, item I.6). Parties reported on their implementation and practical experiences by completing a questionnaire produced by the Implementation Committee and approved by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment.¹

4. Based on the completed questionnaires received by 2 July 2019, the secretariat, with the assistance of consultants, prepared a draft review for consideration by the Implementation Committee at its forty-fifth session (Geneva, 10–13 September 2019) and the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its eighth meeting (Geneva, 26–28 November 2019). The draft review was then finalized, taking into account comments made by the Parties during and after the eighth meeting of the Working Group.

5. Only slightly more than 50 per cent of the Parties reported by the deadline of 31 March 2019. By 30 June, completed questionnaires had been received from 30 of the 32 Parties to the Protocol, plus Georgia and Kazakhstan,² who are not currently Parties to the Protocol. This gave a total of 32 individual responses.

6. Not all Parties answered every question; consequently, the number of responses (i.e. "n") as reported in the present document for individual questions is sometimes fewer than the maximum number of Parties that submitted the questionnaires. Furthermore, two respondents (Armenia and Serbia) objected to the information on the practical application of strategic environmental assessment provided in part two of the questionnaire being compiled in the present report. Their data have, therefore, been excluded from the analysis in section III below. It should be noted that there are questions where the respondents could provide multiple answers. Moreover, certain Parties provided multiple answers to questions for which the response options are meant to be mutually exclusive. Thus, the total number of data points for a question may exceed the number of respondents.

7. At the time of writing, Cyprus and Germany have not submitted a completed questionnaire. The European Union is a Party to the Protocol, but, as a regional economic integration organization rather than a State, considered it inappropriate to report. Instead, it sent a letter explaining recent changes to the European Union legislation on strategic

¹ Both blank (in English, French and Russian) and completed versions of the questionnaires are available on the Protocol's website. See www.unece.org/env/eia/implementation/review_implementation.html.

² It should be also noted that, in its answers, Kazakhstan referred, not to the current system, but to recently developed draft legislation that has not yet been adopted. However, its answers are considered among others and are included in the total number of responses.

environmental assessment³ and its implementation in European Union member States. The European Union also commented that the European Commission services were undertaking an evaluation of that legislation⁴ as part of the European Commission regulatory fitness and performance programme.⁵

8. Due to limitations placed on the length of this report, supplementary data, such as a list of transboundary strategic environmental assessment procedures initiated by Parties during the reporting period, will be made accessible on the Protocol website.

II. Review of Parties' implementation

9. The present section of the report examines the key findings from part one of the questionnaire, which focuses on the Parties' domestic legal and administrative framework implementing the Protocol.

A. General provisions

10. Question I.1 examines how the Parties have enacted the Protocol domestically. The majority of respondents set the framework for implementation of the Protocol, either directly in a single law, or as part of broader environmental legislation (see table 1 below) related to environmental impact assessment legislation and/or other legislation (for example, planning, land use or building acts).

Table 1

Main domestic legislative measures implementing the Protocol

<i>Legislative measures</i>	<i>Parties</i>
Strategic environmental assessment laws.	Albania, Finland, Luxembourg, Montenegro, Portugal, Republic of Moldova, Serbia and Ukraine.
Laws on environmental assessment (i.e. environmental impact assessment and strategic environmental assessment).	Armenia, Czechia, Denmark, Estonia, Georgia, Latvia, Poland, Slovakia and Spain.
Environmental protection laws (codes) and/or other laws.	Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Italy, Kazakhstan (draft), Lithuania, Malta, Netherlands, North Macedonia, Norway, Slovenia and Sweden.

11. A number of Parties report that they have also amended various sectoral legislative acts (for example, on land use, planning, building, nature and landscape protection, waste and water management), in order to align them with legislation on strategic environmental assessment. Austria states that, in total, it has implemented approximately 38 implementation acts, in addition to several ordinances.

B. Screening

12. Question I.2 asks the Parties to list the types of plans and programmes that require strategic environmental assessment under their domestic legislation. The plans and programmes most commonly referred to by the respondents were those expressly listed in

³ Directive 2001/42/EU of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, *Official Journal of the European Communities*, L 197 (2001), pp. 30–37.

⁴ <https://ec.europa.eu/environment/eia/sea-refit.htm>

⁵ See https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly_en.

article 4 (2). Some respondents include other sectors in their domestic legislation: for example, leisure and service (Armenia), traffic (Hungary), use of public maritime land and of marine environment (Spain), and the environment (Armenia and Ukraine). The possibility of an effect on a Natura 2000 site was a factor taken into account by European Union member States. In Ukraine, plans and programmes that are likely to have an effect on protected areas are also subject to strategic environmental assessment.

13. Several Parties require strategic environmental assessment for all plans and programmes that are likely to have significant environmental effects (for example, Sweden) and/or set a framework for future development consent decisions (for example, Norway).

14. Some Parties identify in their domestic legislation (at the national or regional level) specific types of plans and programmes that are always (or generally) subject to strategic environmental assessment procedures (Austria, Finland, Hungary, the Netherlands and Ukraine). In Albania, a detailed list of plans and programmes with significant negative effects on the environment that are subject to strategic environmental assessment was adopted through a decision of the Council of Ministers. In some cases, this approach is combined with the use of criteria and/or a case-by-case analysis for other plans or programmes that are not listed in the domestic legislation but that are deemed likely to have significant environmental effects or set a framework for future development consent (for example, Albania, Bosnia and Herzegovina and Hungary). When defining plans and projects that should be subject to strategic environmental assessment, Denmark follows the related position of the Court of Justice of the European Union.⁶ Subsequently, it reports that, despite listing specific plans and programmes, its legislation neither excludes nor narrows down the concept of plans and programmes further to the objectives of the European Union Strategic Environmental Assessment Directive⁷ and the Protocol, i.e. to provide for a high level of protection of the environment.

15. The majority of respondents (26 out of 32) have no explicit definition in their domestic legislation of what it means to “set the framework for future development consent” (question I.3); instead, they employ a variety of interpretations of and approaches to implementing this provision. Some respondents have transposed the phrase from the Protocol directly into national legislation (for example, Croatia). Most of the respondents interpret the phrase as setting the framework for projects, setting the framework for future construction permits or setting the framework/conditions for the approval/permitting of projects that may require an environmental impact assessment, without giving any additional details (for example, Albania, Bosnia and Herzegovina, Denmark, Italy, Kazakhstan, Lithuania, Norway, Serbia and Spain).

16. Some Parties did provide additional criteria for or clarifications on what they deem as setting the framework for future development consent. For example, it may be determined based upon: the degree to which a plan/programme sets the location of future projects; the nature and operating conditions; or the allocation of resources (Estonia, Georgia and Latvia). In the Netherlands, a plan will be considered to set the framework for future development consent if: (a) it designates a site or route for such activities; or (b) one or more sites or routes are considered for those activities in the plan. It is not clear from the response, however, whether these are the only criteria used. Some respondents identify whether plans or programmes set the framework for future development consent on a case-by-case basis (for example, Luxembourg, Malta, Portugal and Slovakia), while in Armenia, all plans and programmes in the listed spheres (sectors) are subject to strategic environmental assessment.

17. Similarly, most respondents (26 out of 31) appear not to specifically define in their legislation the phrase “plans and programmes ... which determine the use of small areas at local level” within the context of article 4 (4) (question I.4). Instead, they generally define the plans and programmes that may possibly require strategic environmental assessment in

⁶ Court of Justice of the European Union, *Dimos Kropias Attikis v. Ipourgos Perivallontos, Energias kai Klimatikis Allagis*, Case No. C-473/14, Judgment, 10 September 2015, para. 50.

⁷ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, *Official Journal of the European Communities*, L 197 (2001), pp. 30–37.

the legislation or decide this on a case-by-case basis, using applicable national and/or local criteria.

18. Examples of how this term is defined or interpreted domestically were given by some Parties:

- (a) plans/programmes covering 10 km² or less (Lithuania);
- (b) urban development plans at the local level (Croatia);
- (c) the area smaller than the entire cadastral area of the municipality which represents the area at the local level (Slovakia);
- (d) a single commune (i.e. the local level administrative unit) (Poland).

19. Denmark refers to the position of the Court of Justice of the European Union on the phrase “the use of small areas at local level” (identical wording is used in article 3 (3) of the Strategic Environmental Assessment Directive).⁸ Denmark states that it must be defined with reference to the size of the area concerned where the following conditions are fulfilled: the plan/programme is prepared and/or adopted by a local authority, as opposed to a regional or national authority; and, the area inside the territorial jurisdiction of the local authority is small in size relative to the territory of the jurisdiction.

20. In Armenia, all plans and programmes in the main economic sectors are subject to strategic environmental assessment.

21. Only two Parties (Georgia and Montenegro) define the term “minor modifications” (question I.5). In Georgia, the term is interpreted as referring to those modification that do not conceptually alter the contents of plans and programmes, while in Montenegro, “minor modifications” mean any modification that affects or changes a plan or programme. A case-by-case approach is applied by both of these respondents to determine whether the planned modifications are considered to be minor.

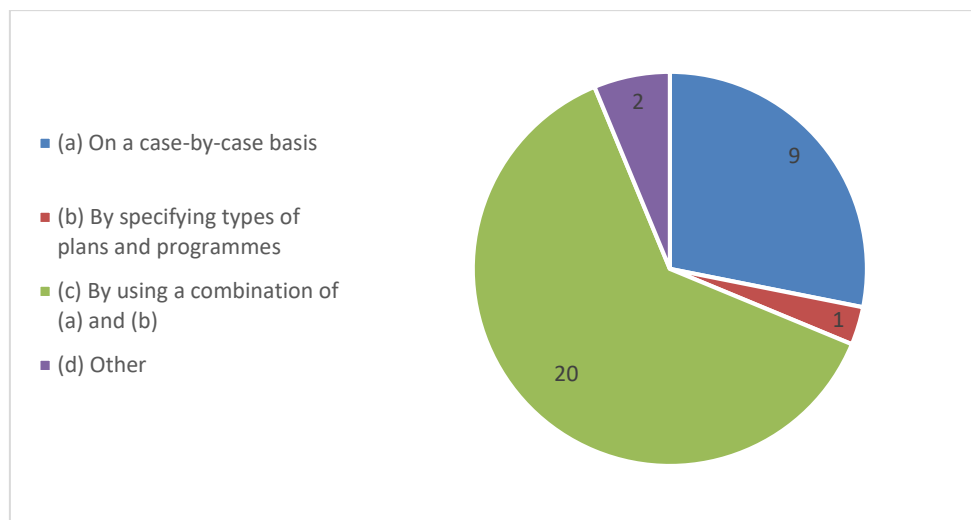
22. However, most Parties (30 out of 32) do not define “minor modifications”. Instead, these are screened through a case-by-case examination and/or using criteria. Austria reports that, in general, the type of plans and programmes for which minor modifications are possible are specified in domestic legislation. For some of these identified plans and programmes, thresholds are used in combination with other criteria such as specific land use.

23. Armenia reports that minor modifications to a plan or programme are not regulated under its legislation. The response from Bosnia and Herzegovina could not be classified without reviewing the text of their domestic legislation.

24. Figure I below illustrates how Parties determine what other plans and programmes should be subject to strategic environmental assessment, as per articles 4 (3) and (4) and 5 (1) (question I.6). Nine Parties determine this on a case-by-case basis, while the Republic of Moldova specifies the additional types of plans and programmes. The majority of respondents use a combination of these two methods.

⁸ Court of Justice of the European Union, *Associazione Italia Nostra Onlus v. Comune di Venezia and Others*, Case No. C-444/15, Judgment, 21 December 2016, paras. 69–74.

Figure I
Responses to question I.6: “How do you determine which other plans and programmes should be subject to a SEA?” (n=31)



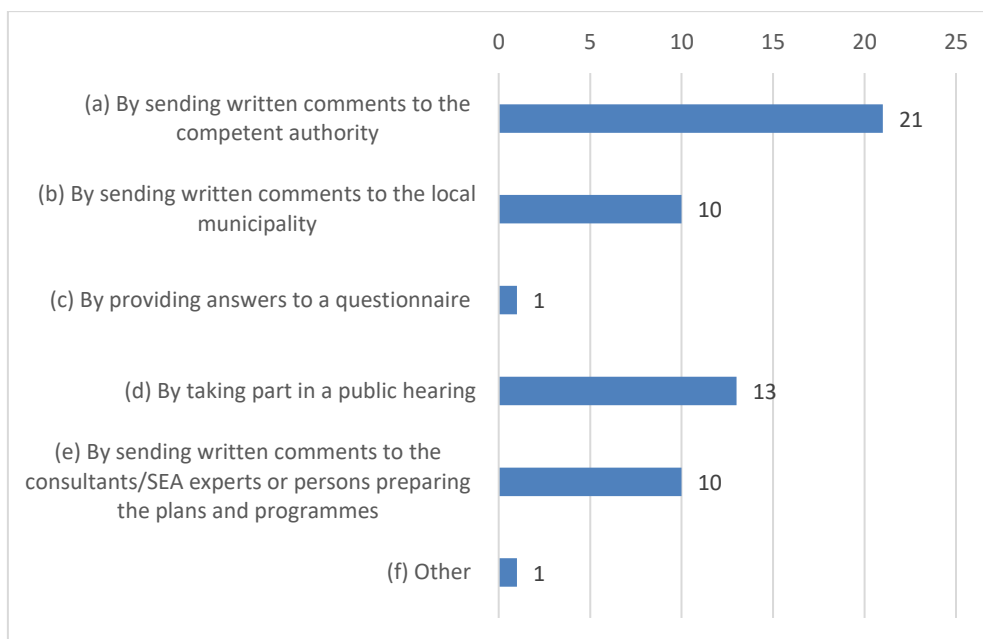
Abbreviations: SEA, strategic environmental assessment.

25. Two Parties (Armenia and Bosnia and Herzegovina) chose response option (d) “Other”. Armenia states that, although, according to the law, all plans and programmes require strategic environmental assessment, in practice, screening decisions appear to be made on a case-by-case basis. Bosnia and Herzegovina refers to the relevant part of its domestic legislation without providing any additional clarifications.

26. Eight respondents (Austria, Hungary, Italy, Latvia, Luxembourg, Poland, Serbia and Slovenia) do not have explicit domestic legislative provisions giving the public concerned the opportunity to participate in screening and/or scoping of plans and programmes (question I.7). Luxembourg indicates that the public may appeal against both decisions not to conduct a strategic environmental assessment and scoping decisions. In Latvia, screening decisions are published on the State Environmental Bureau web page. In Austria, guidance on strategic environmental assessment recommends involving the public during screening and scoping. In practice, at the scoping stage, the public has an opportunity to participate through round-table consultations. Austria also indicated that some provinces have foreseen the possibility of commenting on the outcomes of screening and scoping.

27. Twenty-four respondents provide opportunities for the public concerned to participate in screening and/or scoping, but six of them (Estonia, Finland, Malta, the Netherlands, Norway and Sweden) indicate that such opportunities are provided during scoping only. Of those respondents that provide opportunities for participation, the most popular ways of doing so are by allowing the public to send written comments to the competent authority or to take part in public hearings (see figure II below). One respondent (Bulgaria) uses questionnaires. The Netherlands indicates, under the response option “Other”, that the public can comment both orally and in writing. In addition, as needed, the competent authorities of the Netherlands also organize hearings or meetings for the public or other specific stakeholders.

Figure II
Responses to question I.7: “Do you provide opportunities for the public concerned to participate in screening and/or scoping of plans and programmes in your legislation?”
 (n=24)



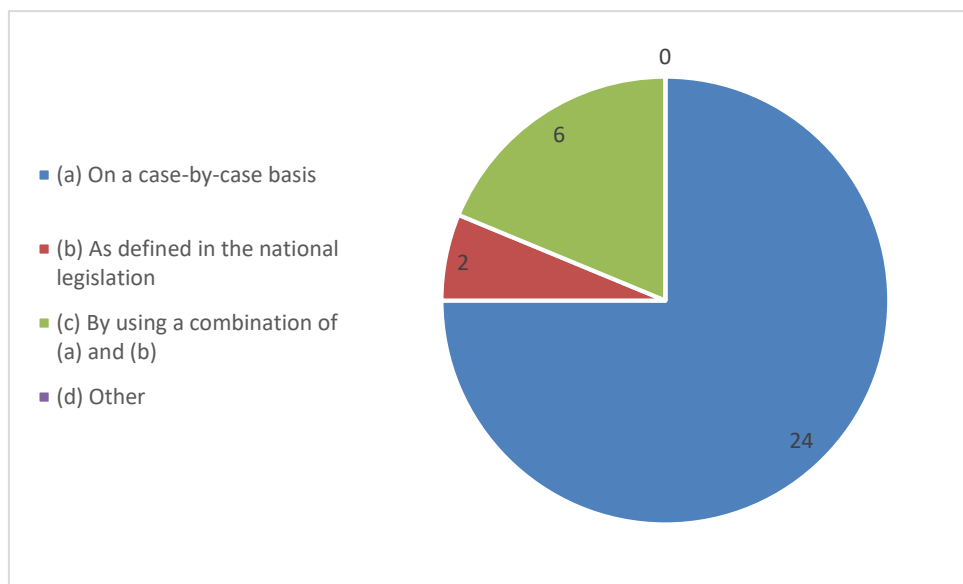
C. Scoping

28. Question I.8 examine how the Parties determine the relevant information to be included in the environmental report. The majority of respondents (30 out of 32) define the relevant information in their legislation. Most respondents also indicate that the required content is aligned with annex IV of the Protocol. Furthermore, when determining the relevant information to be included in the environmental report, 17 out of 32 respondents take into account the results of consultations with relevant authorities and the public (where such opportunities are provided in scoping).

D. Environmental report

29. Figure III below illustrates how the Parties determine “reasonable alternatives” in the context of the environmental report (question 1.9). The majority of respondents (24 out of 32) determine this on a case-by-case basis. Two respondents use national legislation (Bosnia and Herzegovina and Hungary) and six (Albania, Armenia, Croatia, Malta, Montenegro and the Republic of Moldova) combine legislative requirements with a case-by-case approach for the determination of reasonable alternatives. Austria and Poland comment that they neither have a definition of reasonable alternatives nor a requirement regarding the number of alternatives that should be considered.

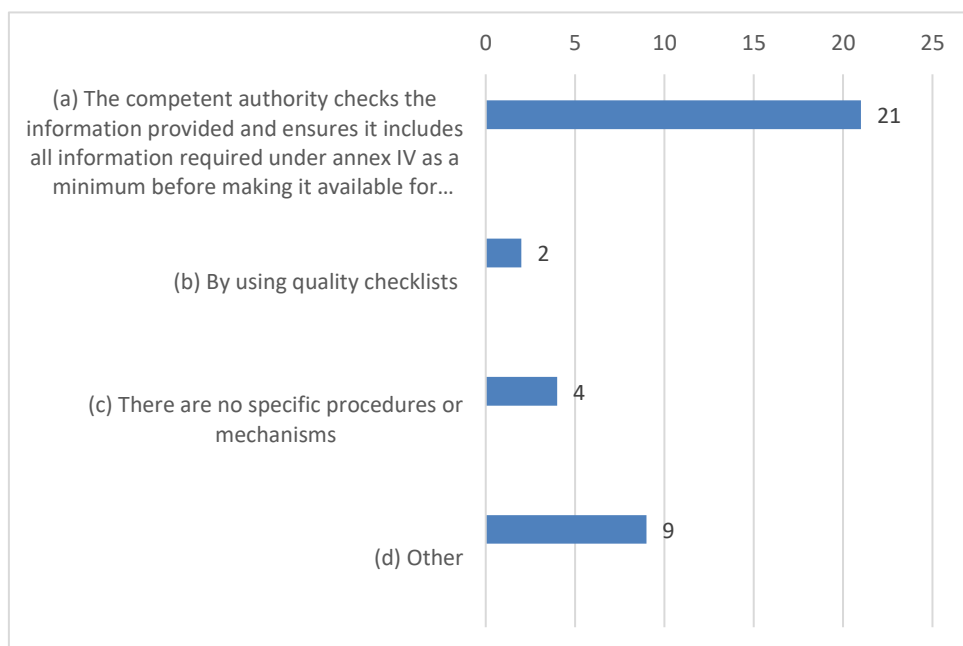
Figure III
Responses to question I.9: “How do you determine “reasonable alternatives” in the context of the environmental report?” (n=32)



30. Austria reports that it uses guidelines that recommend the elaboration of certain alternatives, including alternative sites, technologies and design of measures/activities or various combinations thereof. The zero alternative must also be elaborated. In Denmark, the scope of “reasonable alternatives” is determined by looking at the objectives and geographical scope of the plan/programme. The alternatives must be realistic in order to assess the possibility of reducing or avoiding the significant adverse environmental effects of the proposed plan/programme.

31. Question I.10 examines how Parties “ensure sufficient quality of the reports”. In most instances (21 out of 32; see figure IV below), the competent authority checks the information provided and ensures it includes all the information required under annex IV, as a minimum, before making it publicly available. Albania and Romania also use quality control checklists.

Figure IV
Responses to question I.10: “How do you ensure sufficient quality of the reports?” (n=32)



32. Nine Parties specify other means of quality assurance, including the use of guidelines to check the quality of reports (Austria and Finland) or using certified/qualified experts (for example, Czechia, Hungary, Luxembourg and Poland). Seven Parties indicate that a quality check is effectively undertaken during consultations with competent authorities and/or the public (Bulgaria, Czechia, Italy, Lithuania, Luxembourg, Montenegro and Poland). It is mandatory in the Netherlands for the competent authority to ask the Commission for Environmental Assessment of the Netherlands for advice on the environmental report. Bulgaria uses Interinstitutional Committees – consultative bodies of the competent environmental authorities – who, among other tasks, may evaluate the quality of environmental reports. In Czechia, if the quality of the environmental report is insufficient, it is returned to be further elaborated, while, in Montenegro, in such cases, the authority responsible for environmental protection may reject the plan/programme.

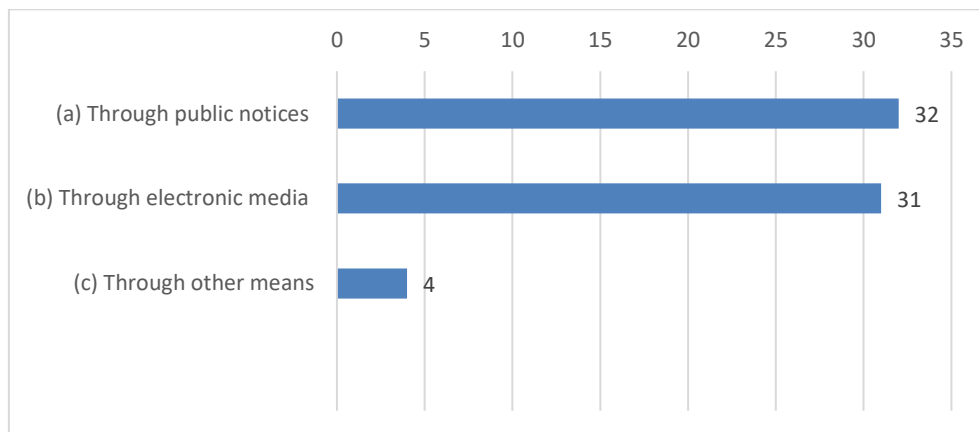
33. Two respondents (Georgia and Lithuania) indicate that there are no specific procedures or mechanisms for assessing quality.

E. Public Participation

34. Figure V below demonstrates that virtually all respondents ensure the “timely public availability” of a draft plan/programme and the environmental report through both public notices and electronic media. In addition, Estonia indicates that other means are also employed, such as publication in the electronic journal of official announcements, in newspapers and via letters.

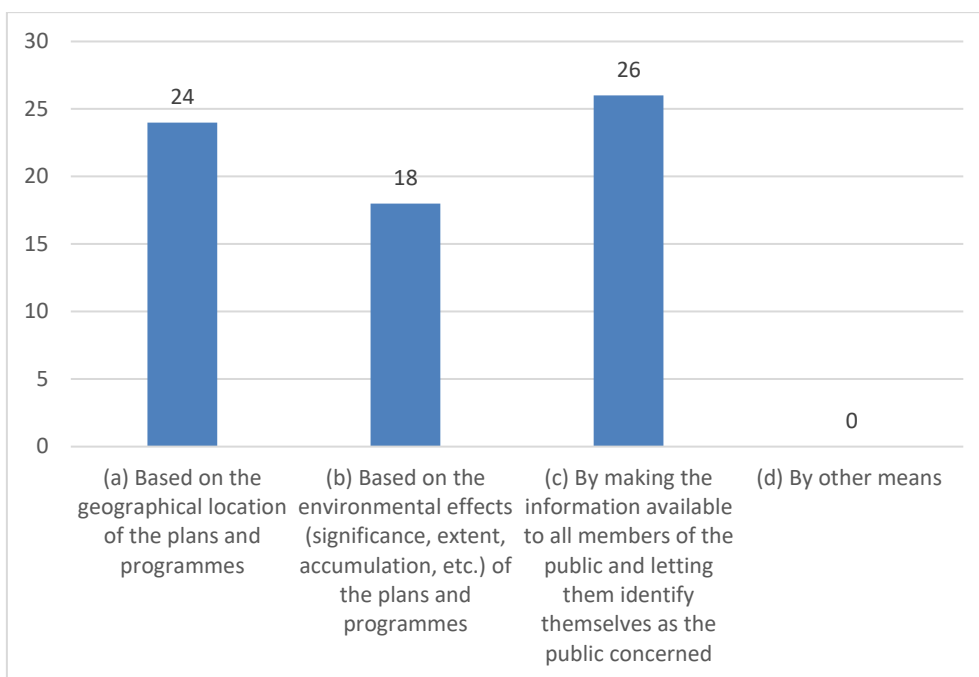
Figure V

Responses to question I.11: “How do you ensure the “timely public availability” of draft plans and programmes and the environmental report?” (n=32)



35. The majority of respondents identify the public concerned (question I.12) based on the geographical location of the plan/programme and/or by making the information available to all members of the public and letting them determine whether they constitute the public concerned (see figure VI below). Many respondents (18 out of 32) also identify the public concerned based on the nature of the environmental effects (significance, extent, accumulation, etc.) of the plan/programme.

Figure VI
Responses to question I.12. “How do you identify the public concerned?” (n=32)



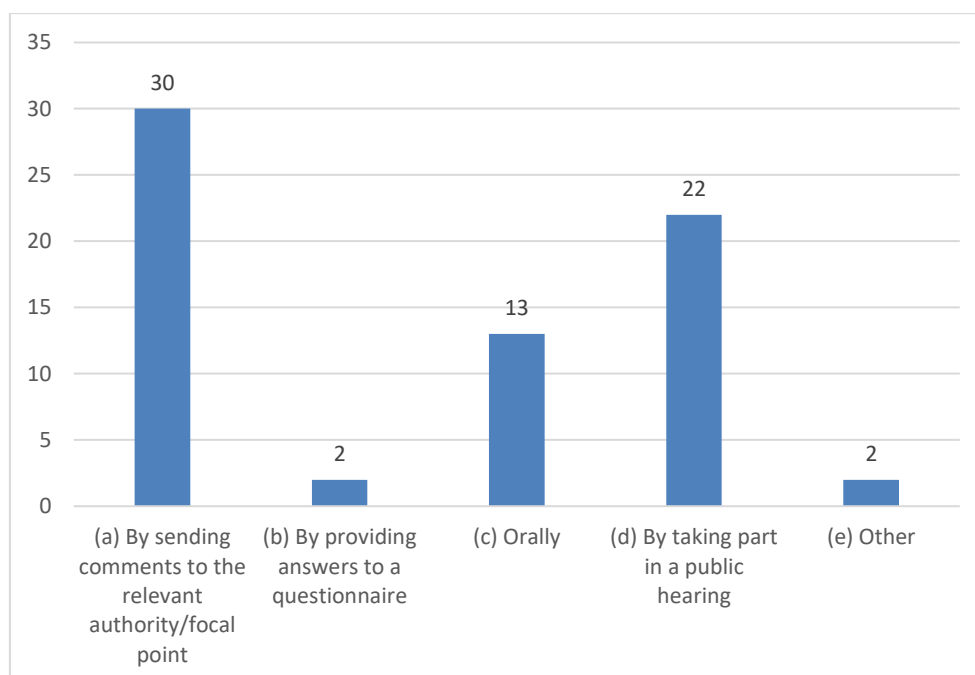
36. Several Parties (4) indicate that they do not distinguish between the “public” and the “public concerned” in strategic environmental assessment; instead, they allow everybody to express their opinion on the plan/programme. However, in order to communicate effectively and efficiently when it concerns a regional or local plan, the plan/programme is usually announced regionally and/or locally.

37. The Portuguese Environment Agency maintains a national register of non-governmental organizations, whose contacts are available for public participation purposes, and these organizations are usually consulted.

38. Figure VII below illustrates how the public concerned can express its opinion on the draft plan/programme and the environmental report (article 8 (4)) (question I.13). The data indicate that the public can do so primarily by sending comments to the relevant authority or focal point (30 out of 32), and by taking part in a public hearing (22). Thirteen respondents indicate that the public concerned may express its opinion orally during public hearings. Armenia and Bulgaria also allow the public to express its opinions via a questionnaire.

Figure VII

Responses to question I.13. “How can the public concerned express its opinion on the draft plans and programmes and the environmental report?” (n=32)



39. Two Parties (Czechia and Sweden) note in their reports that they arrange public hearings only for certain types of plans/programmes. For example, land use plans always require a public hearing in Czechia. Malta indicates that specific details on the consultation (including, where the documentation is available and how comments can be submitted and by when) are indicated in the notice of availability of the plan/programme, and the environmental report must be published in the Government Gazette, as a minimum.

40. In Denmark, the public are only able to make comments during the periods when there is public consultation. However, Denmark notes that it constitutes good administrative practice to take into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities, even though no formal consultation is required at the screening stage. Nevertheless, when answering this question, Denmark did not select option (a) “By sending comments to the relevant authority/focal point”.

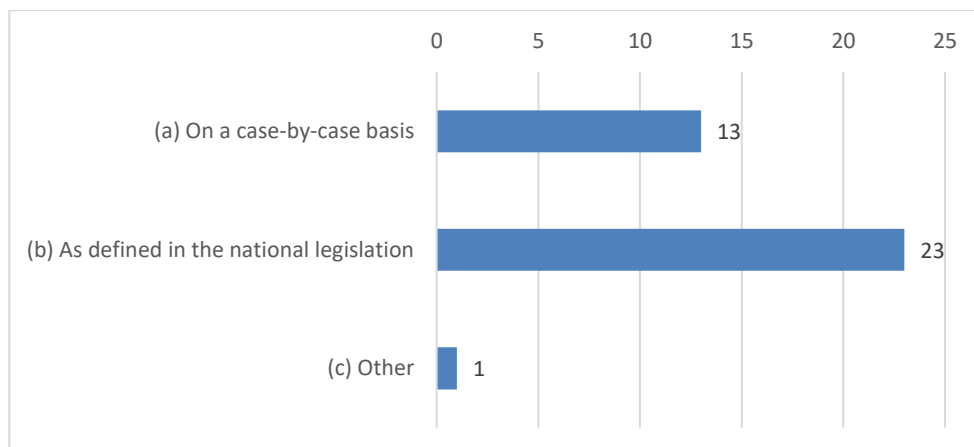
41. Question I.14 examines how Parties define the term “within a reasonable time frame”. The majority of respondents (29 out of 30) do not use a specific definition of “reasonable time frame”, rather this is effectively determined by the number of days allocated to particular consultation exercises. In a few cases (5), the time frame is defined on a case-by-case basis.

42. It should be noted that several Parties interpret this question as referring to the number of days considered to be reasonable. Some of these respondents selected option (c) “Yes”, thus stating that they have a definition, and provided information on the number of days allowed for responses, while others selected option (a) “No, the time frame is determined by the number of days fixed for each commenting period”.

F. Consultation with environmental and health authorities

43. The majority of respondents define the environmental and health authorities (art. 9 (1)) in their domestic legislation (23 out of 31, question 1.15). Seven respondents state that these authorities are defined on a case-by-case basis (Denmark, Italy, Luxembourg, Malta, North Macedonia, Norway and Sweden), while some (Bosnia and Herzegovina, Croatia, Estonia, Finland, Latvia and Spain) combine the approaches set out in options (a) and (b) (see figure VIII below).

Figure VIII
Responses to question I.15 “How are the environmental and health authorities identified?” (n=31)



44. Malta reports that, currently, the responsible authority shall inform the authorities that are likely to be concerned by the environmental effects arising from a plan/programme and any other authority, which may also include an authority or authorities likely to be concerned about the health effects. Given its recent accession to the Protocol, Malta states that it is currently undertaking the necessary legal amendments in order to include health authorities.

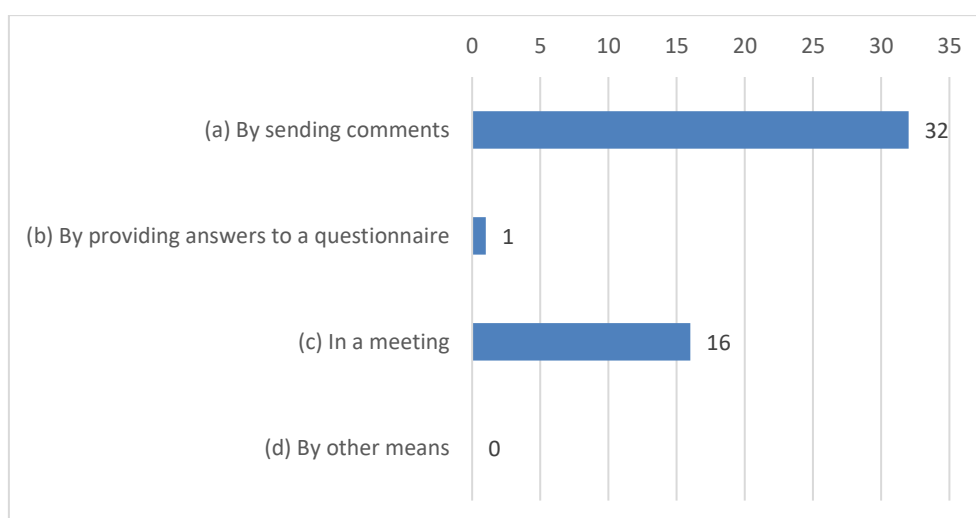
45. In response to question I.16, most respondents (27 out of 32) report that the arrangements for informing and consulting the environmental and health authorities are specified in their domestic legislation. Four Parties (Luxembourg, Malta, the Netherlands and Sweden) determine the arrangements on a case-by-case basis. Estonia and Slovenia use both approaches.

46. In Denmark, the extent to which the authorities may provide comments on the draft plan/programme is governed by its nature/type. Italian legislation establishes equivalent provisions for informing and consulting the public, the public concerned and environmental authorities. According to the answers of Italy to question I.11, a public notice is published in the national/regional Official Journal and the draft plan/programme and the environmental report are published on the websites of the competent strategic environmental assessment and planning authorities. However, Italy does not indicate whether the authorities are expected to constantly monitor publications or websites, or how such arrangements work in practice. Furthermore, Italy only refers to the environmental authorities; it is unclear whether any arrangements exist for informing and consulting the health authorities.

47. All respondents report that their national legislation requires consultations with environmental and health authorities (question I.17). However, these answers are to be considered in the light of the answers to questions I.15 and I.16, specifically regarding consultations with health authorities.

48. All respondents indicate that environmental and health authorities can express their opinion by submitting written comments (see figure IX below). In addition, one half of the respondents (16 out of 32) state that meetings with relevant authorities may be organized. In Romania, a special working group is formed for consultations, consisting of representatives of the sectoral authority responsible for a plan or a programme, the competent environmental authorities, health authorities and other authorities concerned by the effects of the plan/programme. All the authorities from the working group submit their opinion on the environmental report to the environmental authority, which takes them into account when making the final decision. The sectoral authority can adopt the final plan/programme only if it is approved by the environmental authority.

Figure IX

Responses to question I.18. “How can the environmental and health authorities express their opinion?” (n=32)**G. Transboundary consultations**

49. Question I.19 examines at what point Parties, when acting as a Party of origin, notify affected Parties further to article 10 of the Protocol. Over half of the respondents (17 out of 32) notify affected Parties during scoping. Twenty-four respondents indicate that notification takes place when the draft plan/programme and the environmental report have been prepared; eight of those twenty-four respondents chose both options (a) “During scoping” and (b) “When the draft plan or programme and the environmental report have been prepared”.

50. Austria observes that, according to article 10 of the Protocol, the notification must include the environmental report and the draft plan or programme. In Austria, in some cases, the potentially affected Party/Parties is/are unofficially informed before the official notification is sent. Several other Parties use “informal notifications” during the scoping stage (for example, the Netherlands and Spain).

51. The issue of the type of information that Parties include in a notification is examined in question I.20. Most Parties (27 out of 31) explain that, as a Party of origin, they included the information required by article 10 (2). Several Parties include additional information, such as:

(a) The name and description of the strategic planning document, information on the authorities preparing and adopting it, schedules for the preparation of the document and for carrying out the strategic environmental assessment, a short description of the likely environmental impacts and the deadline for responding to the notification and submitting comments (Estonia);

(b) The entire consultation documentation for the plan/programme, the environmental report, the description of the decision-making process, information on public participation and a request to respond (Hungary).

52. Over half of the respondents (18 out of 32) report that, as a Party of origin, their legislation does not specify a reasonable time frame for the transmission of comments from an affected Party (question 1.21). Several of these respondents indicate that the time frame is agreed jointly with an affected Party. Fourteen respondents specify time frames in their domestic legislation, ranging from 30 to 90 days (see table 2 below)

Table 2
Parties' responses to question I.21. "As a Party of origin, does your legislation indicate a reasonable time frame for the transmission of comments from the affected Party?" (32)

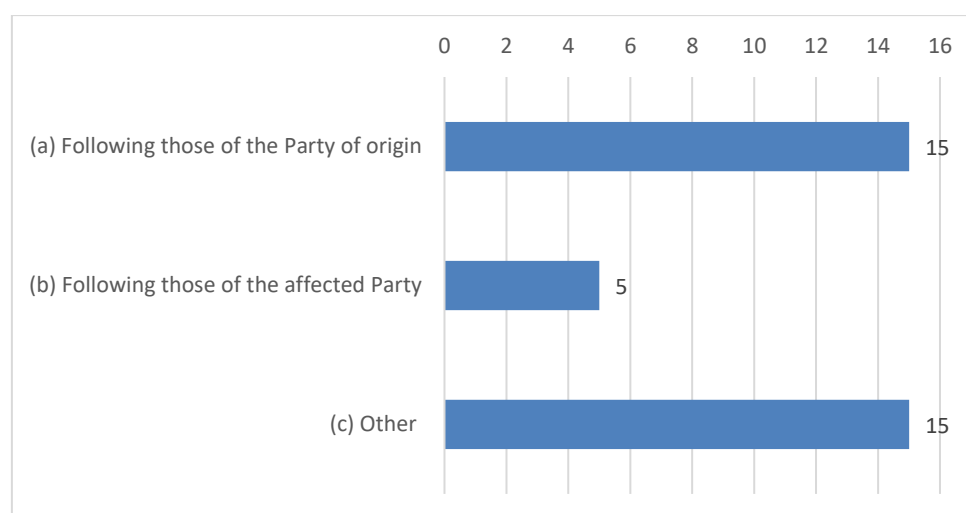
<i>Party</i>	<i>Yes/No (14/17)</i>	<i>Time frame for the transmission of comments</i>
Albania	Yes	Not more than two months
Armenia	Yes	60 working days
Austria	No	
Bosnia and Herzegovina	Yes	30 days
Bulgaria	No	
Croatia	Yes	30 days
Czechia	No	
Denmark	-	Specific reasonable time frame is calculated on the basis of, for example, the complexity of the case and the geographical scope
Estonia	No	In practice, the time frame of 30 to 60 days is usually proposed by the Party of origin for the commenting period
Finland	No	60-day time frame for all plans and programmes and 30 days for land use plans to indicate that the affected Party wishes to enter into consultations. If consultations begin – reasonable time frame for comments
Georgia	No	
Hungary	No	Mutually agree on the deadline
Italy	Yes	90 days starting from the notification of the declaration of interest to participate in the procedure; the Party of origin and the affected Party can jointly agree on alternative deadlines and the approach to submitting of comments
Kazakhstan	No	
Latvia	No	Agreed with the affected Party on case-by-case basis
Lithuania	No	Consultations with the affected Party on the reasonable time frame
Luxembourg	No	Consultations with the affected Party on the reasonable time frame
Malta	Yes	Agreed on a case-by-case, depending on the plan and programme
Montenegro	No	Consultations/mutual agreement
Netherlands	Yes	Six weeks
North Macedonia	Yes	Two months
Norway	Yes	Minimum six weeks
Poland	No	Agreed with the affected Party

Party	Yes/No	
	(14/17)	Time frame for the transmission of comments
Portugal	No	Reasonable time frame determined on a case-by-case basis by mutual agreement
Republic of Moldova	Yes	45 days
Romania	No	Usually agreed with the affected Party a time frame of around four to five weeks
Serbia	Yes	30 days
Slovakia	No	
Slovenia	No	
Spain	Yes	A reasonable time frame that must not exceed three months
Sweden	Yes	The time frame should be reasonable and at least 30 days
Ukraine	Yes	Not less than 30 days

53. Question I.22 examines how detailed arrangements, including the time frame for consultations, are agreed on (art. 10 (3) and (4)) if an affected Party indicates that it wishes to enter into consultations. In the majority of cases (see figure X below), the arrangements follow the domestic legislative provisions of the Party of origin. Five Parties indicate that the arrangements follow the domestic legislative provisions of the affected Party, with three of them stating that both options (a) and (b) are used, or providing comments explaining that detailed arrangements are agreed on a case-by-case basis. Some Parties also report on bilateral agreements that they have with other Parties (for example, Portugal, the Netherlands and Slovakia).

Figure X

Responses to question I.22. “If the affected Party has indicated that it wishes to enter into consultations, how do the Parties agree on detailed arrangements?” (n=31)



H. Decision

54. Question I.23 reviews the implementation of article 11 (1) of the Protocol. Most respondents report that their legislation requires that due account be taken of the conclusions of the environmental report (27 out of 27), mitigation measures (23) and comments received in accordance with articles 8 to 10 (22) when a plan/programme is adopted. Five respondents

also indicate that information must be provided in the written summary (Austria, Bulgaria, Denmark, Hungary and Italy), including information on how the environmental report, comments, mitigation measures, and some other information (for example, how environmental considerations are integrated into the plan/programme, monitoring measures and the reasons for adopting the plan/programme in the light of the alternatives) have been taken into account. Several respondents indicate that such information must be a part of the decision on adoption of the plan/programme (Finland and Spain), included in the justification of the decision (Norway), or attached to the decision (Georgia).

55. In Romania, the conclusions of the environmental report, the mitigation measures and what are deemed to be the “justified” comments of the public, including those received from transboundary consultations, are integrated with the environmental approval issued by the competent environmental authority. The planning authority must adopt the plan/programme only in the form for which the environmental approval was issued.

56. One Party (North Macedonia) did not select option (c) about taking into account comments received in accordance with articles 8 to 10. No further explanations were provided by the respondent; hence, further clarification is recommended.

57. Respondents inform their own public and authorities (art. 11 (2)) (question I.24) in a number of ways, including using public notices, relevant local, regional and national newspapers or magazines (for example, Italy, Malta, the Netherlands, Norway, Portugal, the Republic of Moldova and Spain), and individual notices sent to the concerned authorities and the public (Estonia and Slovakia). Most respondents also use electronic media, including the websites of the planning and/or environmental authority. Some provinces in Austria also may use public events to inform the public.

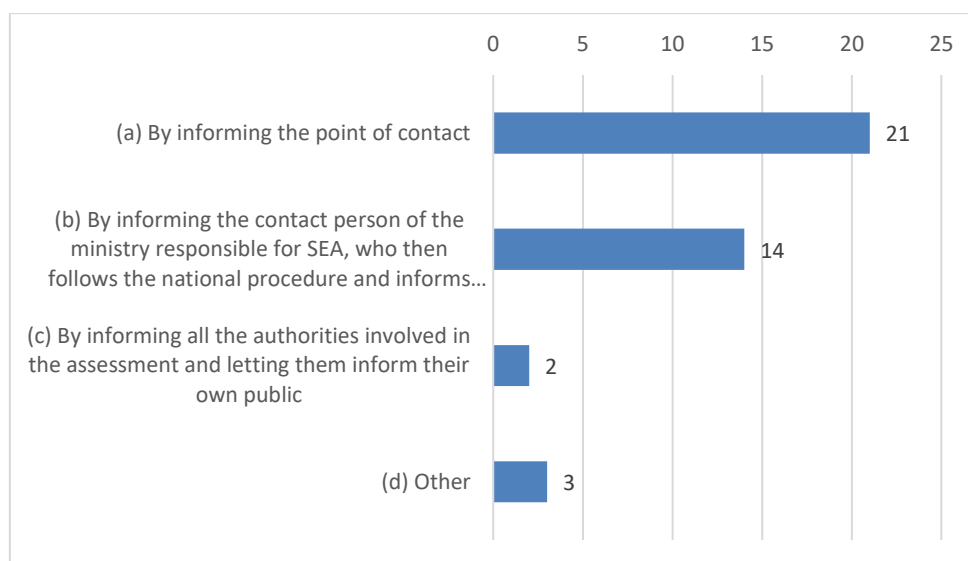
58. Many Parties indicate that their legislation contains requirements to directly inform the environmental authorities and/or authorities that had been consulted in the process. In Bulgaria, the planning authority notifies the competent environmental authority within 14 days of the final adoption of the plan/programme, including about the publication of the decision. In Ukraine, the planning authority must post on the official website, within five working days of the date of adoption, the plan/programme as adopted, the measures envisaged for monitoring of effects of its implementation, and the consultation statements from public authorities and the public. The environmental authority must be informed about the decision in writing.

59. Most respondents (see figure XI below) inform the public and authorities of the affected Party via the point of contact regarding notification⁹ (question I.25). Some Parties also indicate that, if the affected Party has nominated a contact person for transboundary strategic environmental assessment, this person will be informed; otherwise, it will be the point of contact under the Convention on Environmental Impact Assessment in a Transboundary Context that receives the information.

⁹ The list of national points of contact for notification established by decision I/2 of the Meeting of the Parties (ECE/MP.EIA/SEA/2) is available on the Convention’s website (www.unece.org/env/eia/contacts.html) and is kept up-to-date by the secretariat based on the information provided by countries.

Figure XI

Responses to question I.25. “How do you inform the public and authorities of the affected Party?” (n=29)



60. Fourteen Parties indicate that they inform the public and authorities of the affected Party via the contact person at the affected Party’s ministry responsible for strategic environmental assessment of the draft plan/programme in question, who then follows the national procedure and informs the other relevant authorities and the public (Italy, Slovenia and Ukraine chose only this option, while 11 others selected this response in addition to stating that they inform the point of contact). Serbia informs all the affected Party’s authorities involved in the assessment and allows them to inform the public. Some respondents (Albania, North Macedonia and Spain) report that they send information through diplomatic channels.

I. Monitoring

61. Question I.27 asks the Parties to describe their legal requirements for monitoring significant environmental, including health, effects as set out in article 12 of the Protocol. Most respondents provide information on the authorities responsible for monitoring the effects of plans and programmes in order to identify unforeseen adverse effects and undertake appropriate remedial action. Some provide information on the scope of monitoring, its duration, monitoring measures and indicators. About one third of respondents indicate that there is a requirement to send monitoring data to the environmental authority and/or make these data public (for example, Albania, Bulgaria, Georgia, Italy, Latvia, Portugal and Ukraine).

III. Practical application

62. This section of the report examines the key findings from part two of the questionnaire, which focuses on Parties’ practical experiences with the application of the Protocol.

63. Data on the number of transboundary strategic environmental assessment procedures initiated during the period 2016–2018 (question II.4) are summarized in table 3 below. The largest number of procedures initiated as a Party of origin during this period was 20 (Slovakia).

64. Transboundary strategic environmental assessment procedures appear to have been most frequent in the following sectors during the survey period: town and country planning or land use, water management, nuclear policy and radioactive waste management, transport, and energy.

Table 3
Transboundary strategic environmental assessment procedures initiated during the period 2016–2018^a

<i>Party of Origin/ Affected Party^b</i>	<i>Agriculture</i>	<i>Forestry</i>	<i>Fisheries</i>	<i>Energy</i>	<i>Industry</i>	<i>Transport</i>	<i>Regional Development</i>	<i>Waste management</i>	<i>Water management</i>	<i>Telecommunication</i>	<i>Tourism</i>	<i>Town and country planning</i>	<i>Land use</i>	<i>Other</i>	<i>Total</i>
Austria				3		3		8							14
Bosnia and Herzegovina									2			7			9
Bulgaria				0/1				0/1				0/1			0/3
Croatia				2		1		1	2						6
Czechia				0/1			0/2	0/1					0/2		0/6
Finland												2/3		0/1	2/4
Hungary						0/4		1/1	0/1						1/6
Italy				0/1		3/2		1/1	0/1		1/0		1/0	1/0	7/5
Latvia												1/3	0/2		1/5
Lithuania				0/1								6/5			6/6
Luxembourg		1		1				2				1		1	6
Montenegro				1/1		1/1			1/1						3/3
North Macedonia				1										1	2
Poland				0/3		0/1						1/0			1/4
Portugal												1/1			1/1
Romania				0/2				1				2/0			2/3
Slovakia				0/4					1/0			11/4		8/0	20/8
Spain									3						3

^a The chart is based on incomplete information because not all respondents grouped their strategic environmental assessment procedures by the sectors listed in article 4 (2). Furthermore, some respondents were unable to quantify the number of strategic environmental assessment procedures initiated during the reporting period.

^b Some Parties, but not all, separated out the transboundary procedures when they were involved as (a) the Party of origin and (b) as an affected Party.

A. Information contained in the environmental report

65. Over half of the respondents (16 out of 29) state that the environmental report only includes specific information on health effects when potential health effects are identified (question II.2), while the remaining respondents (13) indicate that information on health effects is always included.

66. Question II.3 asks whether the environmental report always includes specific information on potential transboundary environmental, including health, effects. The majority of the respondents report that strategic environmental assessment documentation includes such information only when such potential transboundary effects are identified (21 out of 30). Nine Parties state that such information is always included in strategic environment assessment documentation.

B. Difficulties experienced

67. The majority of respondents (25 out of 32) report no substantial difficulties in interpreting particular terms contained in, or particular articles of, the Protocol (question II.5). The substantial practical difficulties reported include: determination of the contents of, and level of detail for, the environmental report, and finding reasonable alternatives (Austria); the interpretation of article 4 (4) (the terms “small areas at local level” and “minor modifications”), and article 12 (Georgia and Italy); controversy over article 10 (1) (Lithuania¹⁰ and Sweden); and difficulties during transboundary consultation with respect to administrative procedures and translation of insufficient documentation (Portugal).

68. A number of respondents (5 out of 12) state, in response to question II.6, that the best way to overcome problems is through cooperation and regular or case-by-case dialogue between the Parties to reach mutual agreement (Czechia, Denmark, Estonia and Montenegro), as well as bilateral agreements (Portugal). Other means of overcoming problems suggested by the respondents include: guidance, publishing a collection of strategic environmental assessment examples or fact sheets, information exchange among authorities, case studies and sharing best practices (Austria and Italy); and, judicial interpretations (for example, “small areas at local level”) (Italy).

69. Sweden reports difficulties interpreting the requirements regarding when the notification should be carried out when the national planning process includes more than two phases of consultation, but this was solved by limiting the consultation to two phases (on scoping and the environmental report).

70. Question II.8 (a) examines what, if any, difficulties Parties have experienced in relation to transboundary consultations. About half of the respondents (15 out of 32) indicate that they have experienced problems with translation and provide some concrete examples of difficulties, including: issues of time and resources required for translating documentation; the quality of translations; problems with the translation of only some parts of the documentation or summaries; a need to translate the documentation into multiple foreign languages; and, difficulties in understanding comments made in a foreign language.

71. Finland considers early cooperation between the points of contacts of the affected Party and the Party of origin to be important in facilitating translation. Estonia reports that its two bilateral agreements with Finland and Latvia help it to address translation issues.

72. One respondents (Poland) also comments that, from the point of view of the affected Party, the quality of environmental reports is sometimes inadequate; there is insufficient explanation of how the comments received in accordance with articles 8 to 10 of the Protocol have been taken into account; and, the adopted plan/programme is not made available to the affected Party.

¹⁰ See also answer to question I.19.

73. The Netherlands sometimes received the notification from the Party of origin after the consultation period had already started or when there was insufficient time to organize the transboundary consultation before the starting date of the public consultation. In all such cases “an equal consultation period was demanded [by the Netherlands] but [that] caused delays in the transboundary [strategic environmental assessment] procedures”.

C. Monitoring

74. About two thirds of respondents (n=19) have experience with monitoring according to article 12 and some indicate having examples of good practices (question I.7 (a)). A list of examples of existing practice extracted from the national reports will be made available on the Protocol’s website. Conversely, no monitoring was carried out during the survey period, or possibly at all,¹¹ in the following Parties: Montenegro, North Macedonia, Norway and Ukraine.

D. Case studies

75. No respondents express a willingness to prepare a case study for publication on the website of the Convention and its Protocol (question I.7 (b)).

E. Translation practices

76. Over half of the respondents (19) provide information on what documentation they translate as Parties of origin (question II.8 (b)). Overall, there is no consistency in translation practices adopted by Parties of origin. Five respondents (Austria, Hungary, Montenegro, Romania and Serbia) indicate that they usually translate the entire plan/programme and environmental report. Others translate part of the plan/programme (or its description) and the part(s) of the environmental report that is/are related to the transboundary effects, and/or the non-technical summary.

77. Some Parties provide the documentation in English, but affected Parties often request that the documentation be translated into their national language(s). Many respondents (9) provide such translations or, in addition to English documents, provide a summary in the relevant national language(s.)

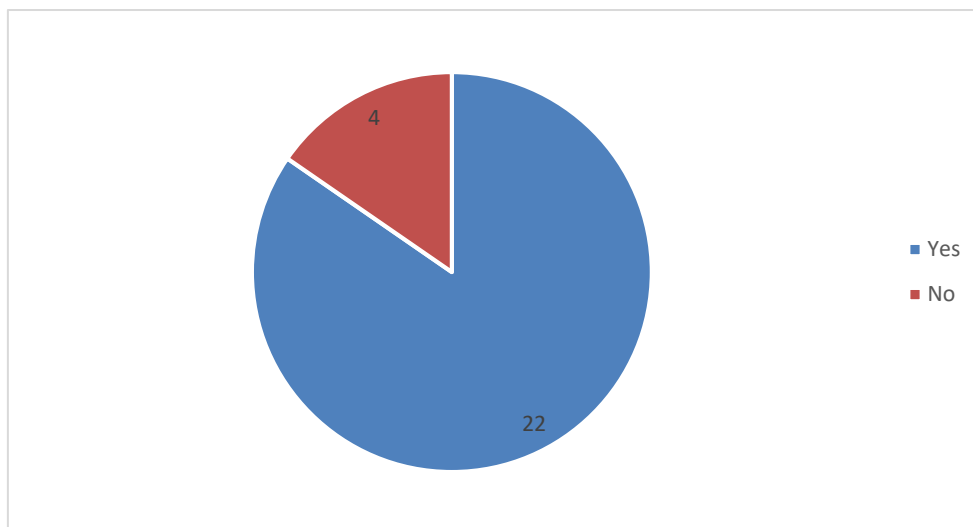
F. Public participation in a transboundary context

78. The majority of respondents (22 out of 26) report that they have carried out public participation in a transboundary context pursuant to article 10 (4) (question II.8 (c)) (see figure XII below), which requires them to ensure the participation of the public concerned and the authorities in the affected Party/Parties. Some respondents indicate that they follow the principle that the public and authorities in the affected Party should be provided with opportunities to participate that are equivalent to the opportunities provided to their counterparts in the Party of origin (for example, Austria, Estonia and Poland). The most common approaches respondents use to achieve this as the affected Party include: notification of their own public and providing access to the information through the electronic and/or printed media; sending the information to and consulting with the environmental and health authorities; and transmission of the comments received from the public and authorities to the Party of origin. Some Parties may also organize public hearings on the territory of the affected Party (for example, the Netherlands (as a Party of origin) and Ukraine (as the affected Party).

¹¹ It is not clear from some of the Parties’ responses whether they are referring to monitoring during the survey period for this review or monitoring activity since domestic legislation was enacted.

Figure XII

Responses to question II.8 (c). “As an affected Party, has your country ensured the participation of the public concerned and the authorities?” (n=26)



79. A number of respondents express a positive view of the effectiveness of public participation in response to question II.8 (d). However, the Parties report that, in many cases, public interest in plans and or programmes is lower than for projects. The effectiveness of public participation is often felt to depend upon the level of detail or “concreteness” of the plan/programme. Furthermore, the public is more active when a draft plan/programme sets the framework for a controversial activity with possible significant negative effects.

80. Only four respondents report on their experiences of organizing transboundary strategic environmental assessment procedures for joint cross-border plans and programmes (Latvia, the Netherlands, Poland and Romania; question II.8 (e)).

G. Experience in using guidance

81. Seven respondents indicate that they used the *Resource Manual to Support Application of the UNECE Protocol on Strategic Environmental Assessment*¹² during the survey period: Armenia, Bulgaria, Montenegro, Poland, Portugal, Romania and Slovenia (question II.9). Armenia and Portugal indicate that this documentation was used during the preparation of national guidance.

82. There were some concrete proposals for improving the above-mentioned *Resource Manual*, such as the inclusion of: specific guidance or good practice recommendations on transboundary consultations; examples or tools to determine when an environmental impact should be considered as significant and a chapter about risks; and, more comprehensive information on monitoring. A recommendation was made to make an official translation of the *Resource Manual* into the languages of the Parties in order to reach a wider audience.

H. National awareness of the Protocol

83. Over half of the respondents believe that awareness of the Protocol’s application needs to be improved in their country (question II.10). There were a number of proposals for improving the application of the Protocol, including: raising awareness among, and the capacity of, the authorities and other stakeholders; supporting the application of the Protocol by issuing guidelines and developing electronic toolkits; updating legislation; and, developing bilateral or multilateral agreements with neighbouring countries

¹² United Nations publication, ECE/MP.EIA/17.

IV. Conclusions

84. An analysis of the national reports on the Parties' implementation of the Protocol in the period from 2015 to 2018 confirms most of the conclusions reached in the second review of implementation (see ECE/MP.EIA/SEA/2017/9, para. 9) and a number of the conclusions of the first review of implementation (see ECE/MP.EIA/SEA/2014/3, para. 8 (c), (f) and (g)). It also provides further details on possible weaknesses or shortcomings in the Protocol's implementation by Parties as follows:

(a) A variety of approaches exist to interpreting the term "set the framework for future development consent" referred to in article 4 (2) of the Protocol, with the majority of Parties having no explicit definition of this term in their domestic legislation; The Parties also experience difficulties in interpreting the provisions of article 4 (4), in particular the terms "small areas at local level" and "minor modifications". These deficiencies might have the potential to cause problems, particularly if the consequence is a lack of clarity about which plans and programmes fall within the scope of the Protocol;

(b) The Parties' legislation and practice continue to differ considerably regarding the opportunities provided to the public concerned to participate in screening and scoping further to articles 5 (3) and 6 (3) of the Protocol, which might complicate the Protocol's implementation. Seven Parties report an absence of legislative provisions for the public concerned to participate in screening and/or scoping, while six Parties indicate that such opportunities are provided during scoping only;

(c) Some Parties seem to find it difficult to appropriately address health aspects and impacts in strategic environmental assessments. Parties may wish to consult the *Resource Manual* for further information on the matter;

(d) Consultations are complicated by difficulties arising from Parties' differing practices in relation to the translation of documentation during transboundary consultations, in particular concerning the quality of, and time and resources required for, the translation, and with regard to the integration of the translation into time schedules for consultations and public participation;

(e) Further bilateral agreements or other arrangements to facilitate transboundary consultations between Parties might be useful, in particular to improve efficiency and to address differences between Parties' implementation practices, including language-related issues, time frames, public participation, the interpretation of various terms and the organization of transboundary consultations;

(f) A wide range of implementation practices and experiences are reported by the Parties and this information could be used in developing material to enhance the Protocol's implementation and practical application. As no Parties volunteer to provide case studies, consideration might be given to the ways in which ECE can facilitate the creation of such material;

(g) Many Parties continuously fail to fulfil their obligation to report (in accordance with art. 14 (7)) in a timely manner;

(h) Relatively few Parties use the *Resource Manual* but it is unclear whether this is due to a need to update or complement the *Resource Manual* or parts of it. At the same time, a number of Parties requested that the current *Resource Manual* be translated into their national languages.

85. The main additional conclusions drawn from the draft third implementation review are as follows:

(a) Ensuring quality of the environmental reports is an area of improvement in the application of the Protocol. Promoting use of quality control approaches could be recommended. Parties have also expressed the desire for adequate explanations to be provided of how the comments received in accordance with articles 8 to 10 have been taken into account;

(b) Differing monitoring practices are applied to implement article 12 of the Protocol, resulting to difficulties concerning the scope of monitoring, its duration, monitoring measures and the use of indicators.
