

Elena Santer

## Overview of the decisions of the Meeting of the Parties under the Espoo Convention referring to establishments of a bilateral agreements

Training Workshop on the Practical Application of Transboundary Environmental Impact Assessment (EIA):  
Bilateral Agreements on Transboundary EIA  
16-17 March 2021

Action implemented by:



## 2008 Decision IV/2, para 14

The Meeting of the Parties “**Invites** the Government of Ukraine to enter into negotiations with its neighbouring Parties to cooperate in the elaboration of bilateral agreements or other arrangements in order to support further the provisions of the Convention, as set out in Article 8, and to seek advice from the secretariat. The Government of Ukraine is invited to report on progress with the elaboration of such agreements, particularly with Romania, to the Implementation Committee by the end of 2010 and to the fifth meeting of the Parties.”

Action implemented by:



## Follow up to decision IV/2 2011 Decision V/4, para. 22

The Meeting of the Parties “...appreciates in particular the steps taken by the Government of Ukraine to initiate negotiations with the aim of concluding bilateral agreements with the neighbouring countries that are Parties to the Convention”

Action implemented by:

## Follow-up to decision V/4

### 2014 Decision VI/4, paras 26-27

The Meeting of the Parties “[e]ncourages the Governments of Romania and Ukraine to further develop the bilateral agreement for improved implementation of the Convention (para. 27);

“Further **requests** the Government of Ukraine to inform Romania about existing **monitoring results** and to consult with Romania on the **post-project analysis**, according to article 7 of the Convention, as well as also to report to the Committee, eight months before the seventh session of the Meeting of the Parties, on the implementation of article 7 of the Convention;” (para. 26)

Action implemented by:



## Follow-up to decision VI/2

### 2019 Decision IS/1g, paras 16-17

The Meeting of the Parties “Welcomes the efforts made by the Governments of Ukraine and Romania to further develop the bilateral agreement for improved implementation of the Convention, while regretting that no progress was achieved;

**Encourages** the Governments of Ukraine and Romania to continue their cooperation in preparing a bilateral agreement or other arrangement to support further their implementation of the provisions of the Convention, as set out in article 8 of the Convention;” (paras, 16-17)

“**Requests** the Government of Ukraine to inform Romania about existing monitoring results” (para 18);

“**Requests** Ukraine to consult with Romania on the road map and its implementation” (para 14);

## Follow-up to decision IS/1g 2020 Decision VIII/4d, para. 13

The Meeting of the Parties **[e]ncourages** the Governments of Ukraine and Romania to:

- (a) Accelerate the preparation of the bilateral agreement or other arrangement to support further their implementation of the provisions of the Convention, as set out in article 8 of the Convention;
- (b) Agree on a harmonized transboundary network for the monitoring of the environmental status of the Danube Delta;
- (c) Consult on post-project analysis, according to article 7 of the Convention

Action implemented by:

## 2020 Decision VIII/5, para. 3

### Reporting and review of implementation of the Convention

The Meeting of the Parties “[n]otes the findings of the sixth review of implementation, including the following possible weaknesses or shortcomings in the Convention’s implementation by Parties:

(a) Parties’ definitions of and approaches to key terms in the Convention, such as “impact”, “transboundary impact” and “major change”, which has the potential to cause problems, particularly if the consequence is a lack of clarity about which proposed activities fall within the scope of the Convention (arts. 1 and 6);

...

(c) Only a minority of Parties have an explicit provision in their legislation on how to ensure application of article 6 (3), which requires that concerned Parties be updated on additional information that may trigger consultations and a new decision before work on an activity commences;

...

(d) There is only rudimentary experience in carrying out post-project analysis under article 7, with eleven Parties having no express provisions implementing this article in their legislation;

...

(e) Differing practices exist in relation to the translation of documentation for affected Parties. A number of difficulties and concerns are raised by the Parties about such practices, in particular concerning the quality of translations and proper integration of translation into time schedules for consultations and public participation;

...

(g) Bilateral and multilateral agreements or other arrangements under article 8 can be useful, in particular in addressing differences between Parties’ implementation practices;”

Action implemented by:

**Annex IV**

**DECISION III/4  
GUIDELINES ON GOOD PRACTICE AND  
ON BILATERAL AND MULTILATERAL AGREEMENTS**

The Meeting.

Recalling its decision II/1 on bilateral and multilateral cooperation and its decision II/2 on the practical application of the Convention on Environmental Impact Assessment in a Transboundary Context,

Also recalling Article 8 of the Convention, stipulating that the Parties may continue existing or enter into new bilateral or multilateral agreements or other arrangements in order to implement their obligations under the Convention, and Appendix VI to the Convention, containing elements for bilateral and multilateral cooperation,

Having considered the outcome of a workshop on good practice and on bilateral and multilateral agreements,

1. Endorses the Guidance on the Practical Application of the Espoo Convention, as appended to this decision;

2. Notes that the Parties can facilitate and greatly improve the practical application of the Convention through the appropriate organization of tasks and responsibilities within their countries.

**Appendix**

**GUIDANCE ON THE PRACTICAL APPLICATION  
OF THE ESPOO CONVENTION<sup>27</sup>**

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## Guidance on the Practical Application of the Espoo Convention

[Environment Policy](#) ▷ [Environmental assessment](#) ▷

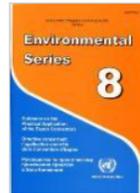
**Published:** April 2006

### Guidance on the Practical Application of the Espoo Convention

Available in English, French and Russian 🇷🇺. (Also issued earlier in English, French, German and Russian.)

(ECE/MP.EIA/8, 75 pp., no. 8 in the Environment Series)

At their second meeting, the Parties decided to elaborate guidance on the practical application of the Convention and on bilateral and multilateral agreements and arrangements and, at their third meeting, the Parties endorsed the guidance presented in this publication. The Meeting of the Parties recommended that the individual Parties take into account the contents of the guidance when defining national procedures for the implementation of the Convention and when applying the Convention to specific cases. The Meeting of the Parties also called upon the individual Parties to distribute the guidance to authorities, specialists, developers, non-governmental organizations and other stakeholders to raise awareness of the contents of the Convention and to support them in applying the Convention.



# EU4Environment

Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova, Ukraine

## 5. CREATING BI- AND MULTILATERAL AGREEMENTS AND ARRANGEMENTS (Articles 2.2 and 8 and Appendix VI)

96. As noted throughout this guide there are many issues that can be agreed upon in advance by Parties which expect to have transboundary assessments on a regular basis. The Convention provides a legal basis for agreements (Articles 2.2 and 8). Annex VI to the Convention contains elements for such agreements. These agreements are not a precondition for the application or ratification of the Convention but should be seen as a way of achieving effective application.

97. The study on bilateral agreements ("Bilateral and Multilateral co-operation in the framework of the Convention" (<http://www.uncece.org/env/eia>)) has shown that there are different types of agreements. First there are general agreements, which contain a statement or declaration of intent to apply the Convention. Those agreements are prepared on national government level. The text of those agreements mainly refers to the text of the Convention. Practical details will have to be dealt with in a different way, for example by creating a joint body or joint Commission.

98. Another type of agreement is a more specific agreement. Those agreements contain detailed practical guidance or recommendations for the application of the Convention in practice. National government levels as well as regional level authorities are involved in preparing those agreements. Some Parties have signed bilateral agreement on how to carry out EIAs in a transboundary context between them. More agreements of this kind are on the way and there are many draft agreements under negotiations. The Convention refers to these agreements as well as to multilateral agreements (Article 2.9).

99. In addition, there are several other agreements that support the application of the transboundary assessments. These include general environmental agreements between two or more Parties. The challenge in developing successful agreements is to

take into account the national legislative requirements, same schedule, on steps and on the order of the steps from both Parties in a way that satisfies both Parties.

100. A tentative list of the general contents of a bi- or multilateral agreement is as follows:

- area of application of the Convention;
- criteria for deciding what is a significant impact;
- naming people or organizations to act as contact points;
- setting up a joint body;
- notifying those who need to know;
- providing information and publicity;
- public participation (public hearings, information meetings, ensuring comments are passed on);
- consultation between the concerned parties;
- reaching a decision;
- post project analysis;
- preventing disputes or settling them;
- arranging translations; and
- deciding who pays.

Action implemented by:

## Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities

35. **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, which could also cover nuclear energy-related activities. Such agreements may address, for example, the timing of notification, the means and language of communication, the format and contents of the notification and the time frames for the response (decision whether to participate in the transboundary procedure).<sup>19</sup>
82. 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 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 predetermined in bilateral agreements.

Action implemented by:

## Guidance on Notification according to the Espoo Convention

Environment Policy ▷

Environmental assessment ▷

**Published:** November 2009

### Guidance on Notification

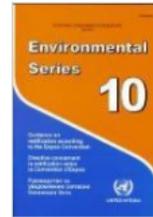
according to the Espoo Convention

Available in [English](#), [French](#) and [Russian](#) .

(ECE/MP.EIA/12, 68 pp., no. 10 in the Environment Series)

At their first meeting, in 1998, the Parties to the Espoo Convention adopted a format for notification and recommended that Parties use the format to the extent possible when transmitting a notification according to article 3 of the Convention. The Meeting of the Parties has since endorsed guidance on the practical application of the Convention and adopted guidance on public participation in environmental impact assessment in a transboundary context; both these guidance documents discuss practical approaches to notification.

Nonetheless, through the second review of implementation of the Convention (ECE/MP.EIA/11), the Implementation Committee under the Convention became aware that Parties continue to encounter difficulties in the notification procedure. The Committee therefore requested that this compilation of guidance on notification should be published to assist Parties.



49. The final report of the Task Force on Legal and Administrative Aspects (ENVWA/WG.3/R.12, para. 36) concluded that “... **translation is required in any case where language differences exist and where the language in a document ... may not be understood by those who read it**”. This report also concluded that “... **the Party of origin should be responsible for translations and bear the related costs, unless the concerned Parties have agreed otherwise**” (ENVWA/WG.3/R.12, para. 41). **This leaves the option of bilateral agreements on the issue of translation open to the Parties.**

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## Guidance on the Practical Application of the Espoo Convention

[Environment Policy](#) > [Environmental assessment](#) >

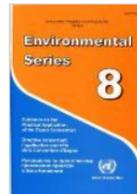
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The challenge in developing successful agreements is to take into account the national legislative requirements on time schedule, on steps and on the order of the steps from both Parties in a way that satisfies both Parties.

Action implemented by:

## IC opinions that could be useful when developing bilateral agreements

### Application of article 3.7, decision VIII/4, para.12 a

(a) Appendix IV of the Convention regarding the inquiry procedure is not applicable unless the preconditions in article 3 (7) had been met,<sup>14</sup> namely:

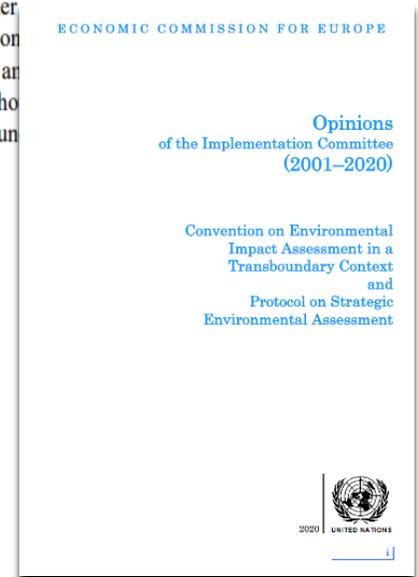
(i) When a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in appendix I, and when no notification has taken place in accordance with article 3 (1), it may, in accordance with article 3 (7), request exchange of sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. The affected Party should make its request as soon as it becomes aware of a proposed activity that it considers to have a likely significant adverse transboundary impact. The subsequent exchange should be conducted within a reasonable time frame;

(ii) Moreover, to implement article 3 (7) the concerned Parties should:

- Exchange information that is sufficient and within the scope of the Convention for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. Moreover, if available, the Party of origin should provide the environmental impact assessment documentation for the proposed activity to the Party that considers itself affected
- Hold discussions on whether a significant adverse transboundary impact on the territory of the affected Party is likely; and document the outcomes of those discussions, preferably as joint statements or meeting minutes signed by the Parties concerned, but as a minimum, as part of official correspondence
- Endeavour to agree on another method of settling that question<sup>15</sup>

### Unilateral termination of the transboundary procedure by the Party of Origin, decision VIII/4, para. 12 b

(b) A notification by a Party of origin regarding a proposed activity under articles 2 (4) and 3 (1) of the Convention, followed by the indication by the affected Party of its intent to participate in the environmental impact assessment procedure further to the Convention, constitutes a mutual agreement between the Parties concerned to the Convention. Consequently, and following the mutual agreement at the request of the Parties, the subsequent steps of the transboundary procedure should be conducted in accordance with the Convention prior to a decision to authorize or to unilaterally terminate the activity;<sup>16</sup>



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