

Annex II

**DECISION II/2
PRACTICAL APPLICATION OF THE CONVENTION ON
ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT**

The Meeting,

Emphasizing that it is imperative for Parties to ensure full practical and effective application of the Convention,

Noting in this regard the potential for further improving the application of the Convention,

Having considered the outcome of the workshop on the practical application of the Convention,

1. Recommends that more attention should be paid to the exchange of information in all stages of the procedure. In addition to the official contacts between the focal points and the points of contact, informal communication should be encouraged between authorities at different levels within a Party and between Parties, as well as between other stakeholders such as international financing institutions and NGOs. This could be achieved by building communication networks and by organizing training for the focal points and the points of contact;
2. Calls on Parties that are in the position of country of origin to be more proactive when notifying the affected country according to Article 3 of the Convention. In this regard they should pay particular attention to the requirements concerning timing and content of the notification so that the procedure may be started in a satisfactory way, enabling it to be implemented within the prescribed time frames and in line with other obligations;
3. Recommends the Parties to continue the exchange of information on the practical application of the Convention and to prepare guidelines on good practice;
4. Invites the Parties to provide cases to the database on environment impact assessment (ENIMPAS);
5. Adopts the document on the practical application as appended to this decision;
6. Requests the secretariat to publish this document in the UN/ECE Environmental Series in the official languages of the Convention;
7. Decides to take into account in the work-plan for the 2001-2003 period the outcome of the work on the practical application of the Convention and the document prepared in connection with the workshop on bilateral and multilateral cooperation (MP.EIA/2001/1).

Appendix I

I. ANALYSIS OF THE CASE STUDIES AND THE OUTCOME OF THE WORKSHOP

Introduction

1. As part of the work-plan agreed upon at the first meeting of the Parties, it was decided to carry out a study and hold a workshop on the practical application of the Convention. Terms of reference for submitting cases for a study on transboundary EIAs were sent to those who had indicated an interest as well as to all the points of contact of the Convention. The terms of reference appeared as a questionnaire structured around 13 different issues related to the practical application of the Convention. Countries were encouraged to cooperate in describing the cases with the other countries involved. The workshop was held in Helsinki, on 31 May and 1 June 1999. There were 44 participants from 27 different countries.
2. This document consists of a general analysis of the study of the cases submitted by the participants of the workshop itself. Specific articles of the Espoo Convention are also dealt with. The study of the cases is appended to the report. The findings indicate that the practical implementation of the Espoo Convention still needs improving. The report identifies problems and seeks solutions by analysing practical experience in ECE countries. It can be concluded that further guidance on good practice is needed.

A. Ad hoc application vs organized system

3. The practical application has many steps and involves a wide array of authorities. Documents and issues easily get lost in the system, unless it is clearly organized with clearly specified responsibilities. Some cases also show that there are several ways of streamlining procedures. One of the more successful ways appears to be informal meetings between points of contact, where the Parties plan the coming procedure in detail. The meetings could be broadened to include other stakeholders, such as local and regional authorities, and in some cases NGOs and international financing institutions (IFIs). Participation in setting the rules strengthens commitment to the procedure. The meeting documentation can serve as guidelines for the implementation of the Convention.
4. A generalization of the available information and experiences does not suggest that the Convention as such is difficult to apply in practice, but many examples show that difficulties arise unless clear routines or practices or rules are prepared for its application. The reason is simply that the application of the Convention can confront developers, authorities on both sides of the border and the public with a completely new situation and a new set of questions to which there are no standard answers. Finding answers ad hoc both to procedural and to substance matters takes time and easily creates confusion. If the procedural side of the practical application is clearly specified, the substance matter can also proceed more smoothly.

B. Differences in EIA procedures

5. The case studies clearly indicate that the differences in environmental impact assessment (EIA) procedures between neighbouring countries, or even between States and federal systems in federal countries, are sufficiently large to create difficulties for the application of the Convention. The Convention implicitly assumes that the EIA systems are similar in both the country of origin and the affected country and does not really give any guidance on how to deal with differences. These differences may relate to:

(a) Criteria for screening (which is often related to the whole EIA philosophy, see below);

(b) Criteria on significance;

(c) Philosophy of EIA with major differences arising, for instance, in connection with permit procedures. In some countries EIA is mainly connected with planning and only loosely attached to the permit procedure, in others the main connection is with the permit procedure. This leads to significantly different views on the appropriate timing of the EIA, the amount of work expected and the level of detail in EIAs. In some countries EIA is used very broadly on a wide range of activities, big and small, whereas other countries have reserved EIA procedures for large-scale activities only. This means that a demand for an EIA can have a very different meaning in two neighbouring countries;

(d) Type and tradition of public consultation and public participation;

(e) The role of the developer and different authorities. In some countries the developer submits material, but the EIA is largely carried out by the authorities, e.g. as part of land-use planning. In other countries the developer submits a full EIA to the authorities for evaluation. The competent authorities can be general environmental authorities or specific sectoral authorities. Further differences may arise in federal States in which EIA responsibilities can be divided differently between federal and State authorities depending on the type of activity.

6. Contacts and careful planning in advance between countries are necessary to make the practical application of the Convention work smoothly without delays, especially when significant differences exist between the EIA legislation and procedures. Some of the problems can be solved through bilateral agreements that specify in sufficient detail the transboundary procedures, but the cases suggest that internal "issue management" documentation is also necessary. This is so because many countries and authorities may go through transboundary assessments infrequently and thus routines do not develop on their own.

C. Informal vs formal contacts and procedures

7. The Convention applies whenever "significant" impacts are expected. This means that the application has many discretionary elements, which call for negotiations between countries. The Convention specifies the formal negotiations and points of contact, but does not mention the informal contacts and negotiations that are common and useful in many border areas between

authorities at different levels. The administrative structures and traditions create differences with respect to negotiation mandates. The data seem to suggest that informal negotiations between local EIA authorities in border regions as well as with IFIs and NGOs should be encouraged throughout the process and especially in the starting phase, because they make it possible to exclude minor activities from the rather heavy, formal application of the Convention. In addition, contacts play a major role in building trust and goodwill along the implementation of the Convention. At the same time the links to the application should be sufficiently clear so that application can proceed as smoothly as possible, when the likely impacts are considered significant in the sense of the Convention. This creates a demand for formal contacts between the points of contact, but also informal contacts between local/regional authorities and the point of contact on a national and cross-border level. This balancing act between formal and informal treatment of activities is virtually impossible to regulate. It can be facilitated through education and meetings, but in the end regional and local environmental authorities will carry a significant part of the responsibility.

II. COMMENTS ON SPECIFIC ARTICLES ACCORDING TO THE OUTCOME OF THE CASE STUDIES AND THE WORKSHOP

8. This chapter contains the analysis of the comments on the specific articles of the Convention as they were collected during the preparation and analysis of the case studies and during the discussion held at the workshop.

A. Article 1: Definitions

9. International financing institutions (IFIs) are likely to be major actors in activities requiring EIAs, especially in countries in transition. The IFIs have their own routines and demand specific assessments (e.g. Environmental Procedure, EBRD, 1992). The IFIs are important actors in many transboundary activities but do not quite fit into the framework provided by the Convention. Special negotiations are needed to ensure agreement on how to use the Convention. The role of the IFI in the process that takes place between the countries should be clearly defined. The IFIs could serve as bodies that build contacts between the different stakeholders and promote the application of the Convention.

B. Article 2: General provisions

10. Differences in legislation between countries cause problems for determining the significance of likely impacts. General guidelines for determining significance are needed but are difficult to develop. Regional and national environmental programmes could be used as a basis for finding thresholds and criteria. Also, the list of activities in Appendix I to the Convention could be extended. The material from the study and the workshop did not include experience of implementing the Convention at the level of policies, plans and programmes. Implementation of the Convention at that level could solve some issues. A formal inclusion of policies, plans and programmes in the Convention is, however, not easy to achieve as has been demonstrated by the difficult task of developing an EU directive on the assessment of plans and programmes. Other issues raised under this Article are dealt with in detail under the respective procedural Articles.

C. Article 3: Notification

11. The workshop material and the discussions suggest some uncertainty with respect to what constitutes an informal contact and what is considered a formal notification. Standardized formats have not always been used and thus potentially affected Parties have been uncertain as to how to react. There are also some differences in the timing of the notification regarding the EIA procedure. The results show further that affected countries use several channels of information on environmental impacts and that not all information has been supplied by the country of origin. Situations in which key information is provided by an NGO suggest deficiencies in the information provided.

12. The results indicate that the official points of contact could be more proactive in informing potentially affected Parties and that there is potential for reducing confusion by using standardized formats and procedures for official notification, for example following the format adopted at the first meeting of the Parties (decision I/4), to distinguish it from unofficial contacts and to clarify the procedure. It is recommended that the official notification should be preceded by unofficial contacts, made firstly by the regional authorities to the point of contact in the country of origin and secondly by the country of origin to the affected country. The differences in EIA procedures between countries of origin and affected countries call for very explicit descriptions of the procedure to avoid misunderstandings and to focus requests for additional information on appropriate issues and appropriate levels of detail. Starting with a notification that is presented promptly in the right context gives the procedure an opportunity to succeed.

D. Articles 3 and 4: Public participation

13. The workshop material and discussions illustrate many different ways of organizing public participation. The practical arrangements of the public participation vary. In some cases the country of origin is actively involved; in others the authorities of the affected country take nearly full responsibility for arranging public participation. It is remarkable that there are cases in which public participation is better organized in transboundary EIAs than in national EIAs.

14. Two recurring issues are the amount of material to be translated and the language of translation. The cases show variation in both. There is also variation in who commissions the translations.

15. The material shows different approaches to the treatment of the results of public consultations. In one case the material was sent directly to the developer; in another the comments were sent to the official point of contact. The affected country did not make a summary of the comments from the public and did not provide a systematic examination of the input from the public. In one case the affected country appeared to agree with some of the public concerns by officially taking a stand against the activity.

16. The variation in the practical arrangements, issues concerning translation and the treatment of public input suggests that the practical application of the Convention can be greatly assisted by

negotiations and agreements in advance on burden sharing between the country of origin and the affected country concerning public participation. This could be an element of a formal bilateral or multilateral EIA agreement based on the Convention, or a separate practical agreement based for instance on minutes of meetings by points of contact or a joint body. Unofficial communication before notifying could assist in providing time to prepare for organizing public participation. A recommendable way of sharing responsibilities is that the affected country organizes the participation but the country of origin bears the cost. Similarly, it would probably be beneficial for countries to agree on the general principles for the treatment of the public input: should the authorities of the affected country summarize the information, raise key points or take a stand with respect to all issues before submitting the information to the country of origin or the developer.

17. In transboundary participation it is important to pay attention to the target group. This rules what needs to be translated, into which language and to what extent, and what the requirements are for timing.

E. Article 4: Environmental impact documentation

18. For this article, material received was limited to five cases. It showed, however, that although the documentation met most requirements of the Convention, the issue of alternatives was in most cases neglected. Consulting officially and unofficially with the affected Party at an early stage could assist in setting alternatives.

F. Article 5: Consultations

19. The material from the study and the workshop shows that consultations have generally been held and that several different means and media have been used. In some cases there have been some uncertainties over which authorities and/or bodies can or should participate in consultations. However, information on how comments and considerations have been taken into account in the activity itself has been transmitted to a varying degree. There are also examples of complete lack of information to the affected country on how comments have been considered.

20. The results suggest that the practical application of the Convention could be improved by developing a common understanding between countries not only on how consultations are to be held but also on how the results of comments and consultations are distributed across the border and which authority carries this responsibility. Attention should be paid to capacity-building of decision makers for the use of transboundary EIA material.

G. Article 6: Final decision

21. The final decision has in all case studies but one been sent to the affected country, but to different receiving authorities. The contents of the final decision vary depending on the decision procedure in the country of origin.

22. The workshop material and the discussions indicate that there is a potential source of confusion in the identification of the addressees of the final decision. In practice this risk is, however, fairly small if the other steps of the transboundary assessment have worked and created necessary contacts and routines. Countries may, however, wish to raise the issue in bilateral or multilateral negotiations to clarify this part of the process. This may be particularly useful in federal States or in countries whose final decision-making bodies are clearly separate from those supervising the EIA process.

H. Article 7: Post-project analysis

23. There is virtually no material on this in the case studies, nor was there any experience of it among the participants of the workshop. Post-project analysis is seen as a non-mandatory and demanding process. Instead, in many applications demand for joint monitoring has been included in the final decision as a result of consultations. The earlier conclusions on the need for and the usefulness of a clarification of responsibilities, ways and procedures for transmitting information and the role of different authorities on both sides of the border appear appropriate under this article as well.

Appendix II

CASE STUDIES ON THE IMPLEMENTATION OF THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

Introduction

1. This appendix gives detailed information on the case studies provided. The Convention has been in force since 1997. The experience of countries in implementing the Convention varies. Some countries have been involved in several procedures, some have experience only of a single transboundary EIA. This is not surprising, since many countries have only recently ratified the Convention (table 1).

Table 1. Status of countries that submitted a case

Country	Involvement as an affected country	Involvement as the country of origin	Date of signing the Espoo Convention	Date of ratifying the Espoo Convention
Italy	2	2-3	26 February 1991	19 January 1995
Croatia	2	2	-	8 July 1996
Ukraine	1	2	26 February 1991	19 March 1999
Hungary	0 (1)	0	26 February 1991	11 July 1997
Bulgaria	0	1	26 February 1991	12 May 1995
Sweden	7	2	26 February 1991	24 January 1992
Norway	0	1	26 February 1991	23 June 1993
Finland	0	6	26 February 1991	10 August 1995
Russian Federation	3	0	6 June 1991	-
Netherlands	10	20	26 February 1991	28 February 1995
Belgium	several	several	26 February 1991	2 July 1999

I. THE ARTICLES OF THE CONVENTION AND THEIR IMPLEMENTATION AS SUGGESTED BY THE CASES

A. A general description of the cases used in the study

2. Eleven cases were submitted to this study. In one case three countries were affected, while in the others there was only one affected country.

Table 2. Actors responsible for the submitted cases

Case-setting	Number of cases
Cases submitted by the affected country	4
Cases submitted by the country of origin	2
Cases submitted by the country of origin in cooperation with the affected country(ies)	2
Cases submitted by the country of origin as well as by the affected country	3 (2 cases described the same proposed project)

3. In the cases submitted, the developers were either private national companies (4) or public bodies or enterprises (7). In two cases the proposed project was going to be financed by an international body. The numbers in parentheses refer to the number of cases.

4. The proposed projects concerned:

- A flood dam;
- Dredging;
- An integrated installation for building materials;
- The exploitation of gas fields (2);
- Road construction (2);
- A nuclear power plant (2);
- Nuclear waste; and
- Intensive poultry rearing.

Table 3. Time schedule of the procedures

Cases	National EIA started	National EIA closed	National EIA in progress	Transboundary EIA started	Transboundary EIA closed	Transboundary EIA in progress
A	1996	1997		1998	1998	
B	1998	1998		1998		Final decision imminent
C	1992	1993		1992	1993	Held up
D	1996	1998		1997		EIS under preparation
E	1998		EIS under preparation	1999		EIS under preparation
F	1991	1998		1998		EIS under preparation
G	1998		In scoping phase	1998		In scoping phase
H	1998		EIS under preparation	1998		EIS under preparation
I	1997	1998		1997		Consultations taking place
J	1997	1998		1997	1998	
K	1994	1994		1994	1994	

5. The transboundary EIA process was said to have an effect on the time schedule of the EIA procedure in half the cases (3) where this item was mentioned, while in only one case was the transboundary EIA said to have an effect on the outcome of the EIA procedure.

B. The practical application of the Convention

6. The text from the Convention is in quotation marks and boldfaced, and the numbering follows the Articles of the Convention. Normal text describes the experiences from the cases. The maximum number of cases varies because:

(a) Information was not given in each case for each question (partly due to the fact that the countries cooperated in filling in the questionnaire in only two cases);

(b) One case is analysed in some parts as a single case and in other parts as two cases since the two countries involved are both affected countries as well as countries of origin;

(c) In one case there is one country of origin but three affected countries.

Article 1

DEFINITIONS

“For the purposes of this Convention,

(i) "Parties" means, unless the text otherwise indicates, the Contracting Parties to this Convention;”

7. In two cases the proposed activity in the country of origin was financed by an international body (EBRD and PHARE). These bodies played a major role in the transboundary EIA and affected for instance the determination of significance and the language used in the transmission of information.

Article 2

GENERAL PROVISIONS

“1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.”

8. No comments on this.

“2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.”

9. In three cases, the procedure has come to an end. The procedure lasted 1 to 2 years. The other cases are in progress. One has been suspended owing to a controversy concerning the significance of the transboundary effects, four are waiting for the environmental impact statement (EIS), one is in the scoping and one in the consultation phase. One is waiting for the final decision.

10. The question of transboundary impact was raised in the country of origin by: the developer (2); the national authorities (3); or the regional authorities (3); or the local authorities (1) - generally two of them in the same case. The question was often raised by the affected country, either by its State authorities (2), the public (1) or by a non-governmental organization (NGO) (2). In one case the question was raised by an international financing body.

11. The applicability was considered most often by the national authorities (4), but the

developer (1), local authorities (2) and the regional authorities (3) in the country of origin were also involved. In the affected country the applicability was considered most often by the regional authorities (5) or by the national authorities (3), but there were examples of both local authorities (2) and federal authorities (1) taking part as well.

“3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.”

12. In eight of the eleven cases the proposed project was listed in Appendix I. In none of the cases was the proposed activity started before the transboundary EIA (TEIA) was closed.

13. In four cases it was mentioned how the “significance” was determined: (i) through an existing EIA procedure; (ii) according to documentation from the international financing body; (iii) the project type determined it, the bilateral agreement demanded it; (iv) through best professional judgement.

14. In one case there was controversy over whether the proposed activity would have significant effects.

“4. The Party of origin shall, consistent with the provisions of this Convention, ensure that affected Parties are notified of a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.”

15. The notification was sent in eight cases, in two cases it was not sent. In one case the countries disagree on whether a formal notification was sent or not.

“5. Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in Appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated. General guidance for identifying criteria to determine significant adverse impact is set forth in Appendix II.”

16. In three of the eleven cases the proposed project was not listed in Appendix I. In two of these cases this article was considered. In one case it was mentioned that the significance was determined according to the existing information on the environmental status and on a report on the expected environmental effects of the expansion. In the case where Article 2, paragraph 5, was not considered, transboundary EIA was carried out since it was listed in the provincial legislation of the affected country.

“6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding

proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.”

Table 4. Opportunity to participate in EIA and transboundary EIA (TEIA)

Opportunity given (number of cases)	Only in EIA	Only in TEIA notification	Both EIA and TEIA notification	In TEIA documentation	Both in EIA and TEIA documentation
EIA competent authorities	not relevant	8	not relevant	4	not relevant
Other authorities	3	1	5	2	2
NGO sectoral	2	2	3	-	1
NGO environm.	1	3	4	2	2
The public	3	2	4	2	2
Specialists	3	1	-	-	-
Municipalities	-	1	-	-	-
None	-	1	-	-	-

Note: The questionnaires filled in by the affected country alone lacked information on national EIA in two cases, while the country of origin did not answer the question of participation in TEIA in one case for notification and in two cases for EIA documentation. The question of participation in documentation was not relevant to four cases which had not yet reached this phase. The results from the case with three affected countries have been merged. There were, however, large differences in the opportunities given to participate.

17. It seems from the data that there is still a large variation in opportunity given to participate in the national EIA and the transboundary EIA. It was not, however, always the case that more opportunities were given nationally than in the affected country. Some national EIA procedures are purely authority-oriented.

Table 5. Means of consultation

Means of consultation in national EIA and transboundary EIA	Informal meetings	Hearings	Written statements	Formal negotiations
Local authorities				
• in EIA	2	2	2	-
• in TEIA	1	1	1	1
• in both	1	1	4	-
State, national authorities				
• in EIA	2	-	2	-
• in TEIA	1	2	1	2
• in both	2	-	3	1
State, regional authorities				
• in EIA	2	1	1	-
• in TEIA	1	2	2	1
• in both	2	-	3	-
Federal authorities				
• in TEIA	-	-	2	-
The public				
• in EIA	1	2	3	-
• in TEIA	-	3	2	1
• in both	1	1	2	-
Other				
• NGOs in EIA	-	2	2	-

Note: There were no data for three cases in EIA and four cases in TEIA. The results from the case with three affected countries have been merged. There were, however, large differences in their means of consultation.

18. There seems to be a difference in the means used when consulting in national EIA and in the transboundary EIA. In some countries the national EIA procedure have strict regulations on how consultations are to be carried out.

“7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.”

19. All cases were at the project level.

“8. The provisions of this Convention shall not affect the right of Parties to implement national laws, regulations, administrative provisions or accepted legal practices protecting information the supply of which would be prejudicial to industrial and commercial secrecy or national security.”

20. No points raised.

“9. The provisions of this Convention shall not affect the right of particular Parties to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention.”

21. This matter is dealt with in item 2 of the work-plan.

“10. The provisions of this Convention shall not prejudice any obligations of the Parties under international law with regard to activities having or likely to have a transboundary impact.”

22. No points raised.

Article 3

NOTIFICATION

“1. For a proposed 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.”

23. The question of starting a transboundary EIA was raised and settled simultaneously with the question of a national EIA in six cases, in one case before and in two cases after the question of a national EIA was raised and settled. The national and transboundary EIAs were carried out simultaneously in seven cases, in one case the national EIA had come to an end before the transboundary EIA started. Information was lacking from two cases that were submitted by an affected country.

24. Notification was sent in one case before (not a formal notification), in six cases simultaneously and in two cases after the public in the country of origin had been informed about the proposed activity (national EIA). In two cases no notification was sent. There seem to be differences in how formal the notification is/should be. In two cases no formal notification was sent, however, the same information was provided informally.

“2. This notification shall contain, inter alia:

(a) Information on the proposed activity, including any available information on its possible transboundary impact;”

25. All notifications contained information on the proposed activity, in three of them information on possible transboundary effects was included as well.

“(b) The nature of the possible decision; and”

26. This was true in one case. Information is missing from five cases.

"(c) An indication of a reasonable time within which a response under paragraph 3 of this Article is required, taking into account the nature of the proposed activity;"

27. This was included in four cases, but was missing from five notifications.

“and may include the information set out in paragraph 5 of this Article.”

28. Other information on the project was sent with the notification in five cases.

“3. The affected Party shall respond to the Party of origin within the time specified in the notification, acknowledging receipt of the notification, and shall indicate whether it intends to participate in the environmental impact assessment procedure.”

29. In six of the nine cases where notification (formal or informal) was sent, the affected country did respond to it. Additionally, in two cases the procedure was started by a contact from the affected country. The reason for not responding in one of the three cases was that the country of origin had not asked for a response.

“4. If the affected Party indicates that it does not intend to participate in the environmental impact assessment procedure, or if it does not respond within the time specified in the notification, the provisions in paragraphs 5, 6, 7 and 8 of this Article and in Articles 4 to 7 will not apply. In such circumstances the right of a Party of origin to determine whether to carry out an environmental impact assessment on the basis of its national law and practice is not prejudiced.”

30. No comments on this.

“5. Upon receipt of a response from the affected Party indicating its desire to participate in the environmental impact assessment procedure, the Party of origin shall, if it has not already done so, provide to the affected Party:”

31. The affected countries requested additional information in five cases, while in six cases they did not. (In one of these, the opportunity was not offered in the notification.) Other information was sent after the notification in two cases and in response to a request in another. In one case the kind of additional information was not defined.

“(a) Relevant information regarding the environmental impact assessment procedure, including an indication of the time schedule for transmittal of comments;

and”

32. The country of origin provided this information in seven cases.

“(b) Relevant information on the proposed activity and its possible significant adverse transboundary impact.”

33. The country of origin provided information on the proposed activity in seven cases and on significant adverse transboundary impact in three. Additionally, the country of origin provided information on safety assessment, possible risk and related consequences in one case.

34. The country of origin got hold of this information from:

- The point of contact in the affected country (4);
- Other authorities in the affected country (2);
- An NGO in the affected country (1);
- Literature (2);
- Investigations (3).

35. The possible transboundary impacts were assessed by the country of origin on the basis of literature (4), with help of the affected country (2), with EIA tools (2) or by using NGO results (1).

“6. An affected Party shall, at the request of the Party of origin, provide the latter with reasonably obtainable information relating to the potentially affected environment under the jurisdiction of the affected Party, where such information is necessary for the preparation of the environmental impact assessment documentation. The information shall be furnished promptly and, as appropriate, through a joint body where one exists.”

36. The country of origin asked for additional information from the affected country in two cases. In six cases it did not. Information was lacking from three cases. The affected country, however, provided information in six cases, but did not do so in four others. In one case this was not mentioned. A joint body acted in two cases.

37. Information was collected by the affected country:

- From regional environmental bodies;
- From neighbouring country’s Internet pages, experts in ministries, NGOs;
- Via e-mail;
- From authorities, county and municipal government, etc.;
- Through a public enquiry.

“7. 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 paragraph 1 of this Article, the concerned Parties shall, at the request of the affected Party, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. If those Parties agree that there is likely to be a significant adverse transboundary impact, the provisions of this Convention shall apply accordingly. If those Parties cannot agree whether there is likely to be a significant adverse transboundary impact, any such Party may submit that question to an inquiry commission in accordance with the provisions of Appendix IV to advise on the likelihood of significant adverse transboundary impact, unless they agree on another method of settling this question.”

38. Apart from the requested discussions, in five cases there were other discussions between the countries on whether transboundary impacts were likely to arise (meetings and coordinating bodies, including experts from both countries). In five cases no other discussions were held. Information was lacking from one case. In one case other information was provided at the request of the affected country.

39. Before the notification was sent cooperation between the countries was:

- Non-existent (3);
- Official (7);
- Unofficial-letter (5);
- Unofficial-phone (5);
- Unofficial e-mail (3);
- Unofficial-fax (1);
- Unofficial-meeting (5);
- Unofficial-through a bilateral agreement (1).

“8. The concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.”

40. Information was transmitted through:

- Reports (7);
- Official letters (7);
- Personal contacts (phonecalls, e-mails, letters...) (7);
- Meetings (3).

Table 6. Translations in transboundary EIA

Translation of the information	Into affected country's language (notification)	Into English (notification)	Into affected country's language (EIA documentation)	Into English (EIA documentation)
Not translated	3	1	2	3
Translated	1	-	2	3
Partly translated	2	5	1	1

Note: Translation was not an issue in four cases, where there was no language barrier between the countries. Data were missing from one case on notification.

41. In the cases where translation was relevant, it was missing from half the notifications, but was compensated with a translation into English. This was seen as useful when the document was addressed to administrators or where several countries were affected (common language). Also, the involvement of international financing bodies brought about the use of English. Especially the EIA document was more frequently translated into English than into the language of the affected country.

42. In the cases where language was an issue, the affected country used, in communication with the country of origin, its own language in four cases and English in five cases, often with a combination of the two. In one case the affected country used in some parts the language of the country of origin. In notification, the affected country commissioned the translations in two cases and the country of origin in six, while responsibility for the translation of the EIA documentation was borne by the country of origin in four cases and by the affected country in three. There was some contradictory information about the country bearing responsibility for the translations. This could mean that both countries had responsibility for some parts of the translation.

43. Participation took place mainly at the stages of notification, EIA documentation and consultation (see tables 4 and 7). In three cases there was participation at other stages as well, namely through a public inspection of the draft study programme as well as through informal contacts.

44. The affected country played an active role in ensuring public participation in most cases (8). This was carried out in two cases through the NGOs in the affected country. One affected country admitted that it had not played an active role in ensuring public participation. In one case transboundary participation did not work: public participation took place only on the national level. Data were missing from another case.

45. The affected country helped the public participation in the following ways:

- By encouraging the active participation of citizens;

- Its ministry of the environment provided translations, organized hearings and invited the country of origin to the hearings;
- By coordinating the participation through an environmental NGO;
- By providing publications and putting announcements in the newspapers;
- There was a public enquiry.

46. The countries cooperated in ensuring the participation in the affected country in the following ways:

- Experts from the country of origin took part in the hearing;
- The affected country provided the country of origin with a list of authorities and NGOs that should receive the information and gave the country of origin advice on newspaper advertising.

Table 7. A comparison between the opportunity for public participation given and the opportunity used. (See note in table 4)

Participation opportunity/ practice (number of cases)	Opportunity to participate (notification)	Participated in practice (notification)	Opportunity to participate (EIA documentation)	Participated in practice (EIA documentation)	Participated in practice (consultation)
EIA competent authorities	8	8	5	4	5
Other authorities	6	5	5	2	3
Sectoral NGOs	5	4	1	1	1
Environmental NGOs	7	6	5	2	2
The public	6	4	5	3	2
Other: - specialists	1	2			
- municipalities on the coast	1	1			
- mass media	-	-			
None	1	1			
Data missing	1	2	2	2	-
Not at this stage	-	-	4	3	4

47. In most cases those stakeholders that were provided with an opportunity to participate used it. This reflects the need of the public to participate.

Table 8. The means of consultation in notification and EIA documentation for different stakeholders

Means of consultation	Informal meetings	Hearings	Written statements	Formal negotiations
Local authorities				
- in notification	2	2	4	1
- in documentation	1	-	3	-
State, national authorities				
- in notification	2	1	3	3
- in documentation	2	1	2	2
State, regional authorities				
- in notification	2	1	3	1
- in documentation	2	1	2	-
Federal authorities				
- in notification	-	-	2	-
The public				
- in notification	1	2	2	1
- in documentation	-	3	3	-
NGOs, specialists				
- in notification	-	-	1	-
- in documentation	-	2	1	-

Note: There were no data from four cases in notification and from two cases in documentation. The documentation phase had not yet been reached in four cases. The results from the case with three affected countries have been merged. There were, however, large differences in their means used in consulting.

48. Written statements were the most common means in consulting in notification and EIA documentation. Face-to-face meetings were used as well, especially in the notification phase.

Article 4

PREPARATION OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION

“1. 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.”

**CONTENT OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION
(APPENDIX II)**

“Information to be included in the environmental impact assessment documentation shall, as a minimum, contain, in accordance with Article 4:”

49. Data received from five cases.

“(a) A description of the proposed activity and its purpose;”

50. In four cases out of five.

“(b) A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no -action alternative;”

51. In two cases out of five.

“(c) A description of the environment likely to be significantly affected by the proposed activity and its alternatives;”

52. In four cases out of five, although in one case the alternatives were not discussed.

“(d) A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;”

53. In three cases out of five.

“(e) A description of mitigation measures to keep adverse environmental impact to a minimum;”

54. In four cases out of five.

“(f) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;”

55. In three out of five.

“(g) An identification of gaps in knowledge and uncertainties encountered in compiling the required information;”

56. In three out of five.

“(h) Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis;”

57. In all five cases.

“(i) A non-technical summary including a visual presentation as appropriate (maps, graphs, etc.)”

58. In all five cases.

“2. The Party of origin shall furnish the affected Party, as appropriate through a joint body where one exists, 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.”

59. These are some of the comments and statements made to the affected country by those who participated:

- Destabilization of the ecological state, damage to lakes in a national park;
- Environmental effect to be taken into account, comparison of alternatives for energy development in the country of origin;
- Impact on the brown bear population;
- Effects of high water level, impact on estuarine biodiversity, impact on protected areas.

60. The comments were sent unchanged to the developer (1) or to the country of origin (2). In the first case, the affected country sent a general disapproval of the project to the country of origin.

61. The communication of the EIA documentation is discussed under Article 5.

Article 5

CONSULTATIONS ON THE BASIS OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION

“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.”

62. From the eleven cases, six have reached the phase of consultations on EIA documentation. In five of these consultations have been taken place and in one case there was no consultation.

63. The consultations included the following:

- A joint body formed by EIA authorities held meetings to consult the TEIA document;
- Materials on TEIA were widely discussed in the affected country by local environmental bodies experts as well as local State authorities;
- Meeting of experts were held, letters were exchanged through diplomatic channels;
- E-mail were exchanged.

“Consultations may relate to:

(a) Possible alternatives to the proposed activity, including the no-action alternative and possible measures to mitigate significant adverse transboundary impact and to monitor the effects of such measures at the expense of the Party of origin;”

64. As a result of the consultations:

- It was decided to establish a common monitoring programme;
- There was a clarification of the positions and attitudes of both sides and of the ways to reach a common understanding;
- The comments from the consultations were partly taken into account in the decision-making process.

“(b) Other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity; and

(c) Any other appropriate matters relating to the proposed activity.

The Parties shall agree, at the commencement of such consultations, on a reasonable time-frame for the duration of the consultation period. Any such consultations may be conducted through an appropriate joint body, where one exists.”

65. In four cases the affected country was informed of how its comments had been taken into account; two affected countries were promised that they would receive this information later, in two cases the affected country was not informed at all. The affected country was informed in meetings, discussions, hearings and through letters.

Article 6

FINAL DECISION

“1. The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to Article 3, paragraph 8 and Article 4, paragraph 2, and the outcome of the consultations as referred to in Article 5.”

66. There is information from two cases on how the comments from the affected country were considered in the EIA by the country of origin:

- The comments were considered, relevant points were made and a reply was given;
- The project implementation has been suspended until the EIS is finalized and approved;
- The EIS from the other country has been considered in the decision-making process;
- The comments and statements made by the affected country can be found in the explanatory part of the decision document.

“2. 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.”

67. The final decision was conveyed by the country of origin to the affected country in five cases and soon will be in a sixth. In one case the decision was not provided to the affected country. In another there was no final decision, because the country of origin held that the proposed activity would not have any transboundary effects.

68. The final decision contained:

- Approval of the project and measures to protect the environment as well as a monitoring plan;
- Information that the project was stopped for economic reasons;
- Approval (with conditions on the implementation) of the project on the country of origin's side of the border;
- A decision to go ahead with the proposed project.

69. The final decision was distributed in the affected country to:

- The ministry of the environment (2);
- The regional environmental body (1);
- The point of contact and provincial government authorities (1).

70. In one case the appeal from the affected country against the decision to go ahead with the project resulted in a suspension of the building works.

“3. If additional information on the significant transboundary impact of a proposed activity, which was not available at the time a decision was made with respect to that activity and which could have materially affected the decision, becomes available to a concerned Party before work on that activity commences, that Party shall immediately inform the other concerned Party or Parties. If one of the concerned Parties so requests, consultations shall be held as to whether the decision needs to be revised.”

Article 7

POST-PROJECT ANALYSIS

“1. 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. Any 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.”

71. In one case out of the six that had reached this phase, a post-project analysis has been requested (by the affected country). However, the consultations are still taking place and thus the contents and arrangements will be defined later. Additionally, in one case environmental monitoring was requested.

“2. When, as a result of post-project analysis, the Party of origin or the affected Party has reasonable grounds for concluding that there is a significant adverse transboundary impact or factors have been discovered which may result in such an impact, it shall immediately inform the other Party. The concerned Parties shall then consult on necessary measures to reduce or eliminate the impact.”

Article 15

SETTLEMENT OF DISPUTES

“1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other method of dispute settlement acceptable to the parties to the dispute.”

72. In one case the countries did not agree on whether there was a significant transboundary impact or not. Consequently, the procedure is not moving forward. The proposed activity is listed in Appendix I to the Convention.

“2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depository that for a dispute not resolved in accordance with paragraph 1 of this Article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

- (a) Submission of the dispute to the International Court of Justice;**
- (b) Arbitration in accordance with the procedure set out in Appendix VII.”**

“3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this Article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.”