United Nations ECE/MP.EIA/2017/9

Economic and Social Council

Distr.: General
4 April 2017

Original: English

Economic Commission for Europe

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

Seventh session
Minsk, 13–16 June 2017
Item 6 of the provisional agenda
Review of compliance, implementation and the activities by the Implementation Committee

Fifth review of implementation of the Convention on Environmental Impact Assessment in a Transboundary Context

Note by the secretariat

Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context decided that a draft review of implementation of the Convention during the period 2013–2015 based on the reports by Parties would be presented at its seventh session (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1, decision VI/1, para. 11).

This note presents the draft fifth review, covering the period 2013-2015, based on national reports received by 30 April 2016. The draft review has been finalized taking into account the comments made during and after the sixth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 7–10 November 2016).

The Meeting of the Parties to the Convention is invited to adopt the fifth review of implementation of the Convention through decision VII/I.

GE.17-05398(E)
1705398

Contents

Page

I. Introduction 5

A. Preparation of the review 5

B. Findings of the review 6

II. Summary of responses to the questionnaire 7

A. Article 1: Definitions 7

B. Article 2: General provisions 9

C. Article 3: Notification 12

D. Article 4: Preparation of the environmental impact assessment documentation 18

E. Public participation (article 3, para. 3, and article 4, para. 2) 21

F. Article 5: Consultations on the basis of the environmental impact assessment documentation 23

G. Article 6: Final decision 23

H. Article 7: Post-project analysis 26

I. Article 8: Bilateral and multilateral cooperation 27

III. Practical application during the period 2013–2015 30

A. Experience in the transboundary environmental impact assessment procedure during the period 2013–2015 30

B. Experience in using the guidance in 2013–2015 34

C. Clarity of the Convention 36

Figures

1. Is the definition of impact for the purpose of the Convention the same in your legislation as in article 1? 7

2. Is the definition of transboundary impact for the purpose of the Convention the same in your legislation as in article 1? 8

3. How do you identify the public concerned? 9

4. Please describe any differences between the list of activities in your national legislation and appendix I to the Convention, if any 10

5. Identify the competent authority or authorities responsible for carrying out the EIA procedure in your country 11

6. Is there an authority in your country that collects information on all the transboundary EIA cases? 11

7. As Party of origin, when do you notify the affected Party? 13

8. Please define the format of notification 14

9. As a Party of origin, what information do you include in the notification? 15

10. As a Party of origin, does your national legislation contain any provision on receiving a response to the notification from the affected Party in a reasonable time frame? 16

11. How do you inform the public and authorities of the affected Party? 17

12. On what basis is the decision made to participate (or not) in the transboundary EIA procedure as affected Party? 17

13. If the affected Party has indicated that it intends to participate in the EIA procedure, how are the details for such participation agreed, including the time frame for consultations and the deadline for commenting? 18

14. How do you ensure sufficient quality of the EIA documentation as Party of origin? 19

15. How do you determine the relevant information to be included in the EIA documentation in accordance with article 4, paragraph 1? 20

16. How do you determine "reasonable alternatives" in accordance with appendix II, paragraph (b)? 20

17. How can the public concerned express its opinion on the EIA documentation of the proposed project? 21

18. Please indicate whether your national EIA legislation requires the organization of a public hearing on the territory of the affected Party in cases where your country is the country of origin. 22

19. Please indicate whether your national EIA legislation requires the organization of public hearings in cases where your country is affected 22

20. Does your national EIA legislation have any provision on the organization of transboundary consultations (expert, joint bodies, etc.) between the authorities of the concerned Parties? 23

21. Please indicate all points below that are covered in a final decision related to the implementation of the planned activity 24

22. Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and the public in your country? 25

23. Is there any regulation in the national legislation of your country that ensures the implementation of the provisions of article 6, paragraph 3? 25

24. Do all activities listed in appendix I (items 1-22) require a final decision to authorize or undertake such an activity? 26

25. Is there any provision regarding post-project analysis in your national EIA legislation? 27

26. Does your country have any bilateral or multilateral agreements based on the Convention? 27

27. What issues do these bilateral agreements cover? 28

28. Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for joint cross-border projects (e.g., roads, pipelines)? 29

29. Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for nuclear power plants? 30

30. Does your country object to the information on transboundary EIA procedures that you provide in this section being compiled and made available on the website of the Convention? 30

31. Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects or that of an NPP? 32

32. Would your country like to introduce a case in the form of a Convention "case study fact sheet"? 33

33. Has your country carried out post-project analyses in the period 2013–2015? 34

34. Has your country used in practice the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context? 34

35. Has your country used in practice the Guidance on Subregional Cooperation? 35

36. Has your country used in practice the Guidance on the Practical Application of the Espoo Convention? 35

37. Has your country had difficulties implementing the procedures defined in the Convention, either as Party of origin or as affected Party, because of a lack of clarity of the provisions? 36

I. Introduction

1. This document contains the Fifth Review of Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). It examines responses to a questionnaire on countries' implementation of the Convention in the period 2013–2015.

2. This chapter describes the preparation of the review and the major findings. Chapter II summarizes the responses regarding the legal, administrative and other measures taken by Parties to implement the Convention. Chapter III focuses on Parties' practical experiences in applying the Convention.

3. Due to length limitations for the review it does not include the lists of transboundary cases in 2013–2015 provided by Parties, which can be accessed from the Convention website,[1] except in the few cases where the Parties objected to that information being made available. Moreover, the suggested improvements to the questionnaire that were provided by some Parties have been submitted directly to the Implementation Committee under the Convention and its Protocol on Strategic Environmental Assessment and to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment to inform any modification of the subsequent questionnaires on implementation.

A. Preparation of the review

4. The Fifth Review of Implementation was prepared in line with the workplan adopted by the Meeting of the Parties to the Convention at its sixth session (ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3, decision VI/3–II/3).

5. Parties reported on their implementation by completing a questionnaire produced by the Implementation Committee and approved by the Working Group. Based on the completed questionnaires received by 30 April 2016, the secretariat, with the assistance of a consultant, prepared the draft review for consideration by the Implementation Committee and by the Working Group. The present draft review was then finalized taking into account the comments made during and after the sixth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 7–10 November 2016).

6. Completed questionnaires were received by 30 April 2016 from 33 of the 45 Parties to the Convention. They are available on the Convention website,[2] and are reflected in this review.[3] The European Union is a Party to the Convention, but, being a regional economic integration organization, felt it inappropriate to return a completed questionnaire. Instead, as in the past, it sent a paper explaining the current law, as embodied in the latest legislative changes to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive). The paper focused in particular on

[1] See http://www.unece.org/env/eia/implementation/review_implementation.html.

[2] See http://www.unece.org/?id=41378. Reports received after 30 April will also be available from this website, but are not reflected in the review.

[3] Belgium's separate regions provided different responses, all of which have been counted. Also, some States gave more than one answer to particular questions where the answers may appear mutually exclusive. This may account for apparent anomalies in figures.

the changes introduced by the 2014 amendment of the EIA Directive,[4] and also listed the related environmental impact assessment (EIA) guidance documents.

7. At the time of writing, the former Yugoslav Republic of Macedonia had not submitted a completed questionnaire.

B. Findings of the review

8. An analysis of the national reports showed that most Parties are fully engaged in implementing the Convention and broadly satisfied with the clarity of its provisions. There are a substantial number of bilateral and multilateral arrangements and agreements in place to implement the Convention, although less than half of the Parties participate in such arrangements and agreements.

9. The objective of the Fifth Review is to enhance the implementation of and compliance with the Convention. With this in mind, this review identifies the following possible weaknesses or shortcomings in the Convention's implementation by Parties that may need to be addressed:

(a) There are differences in Parties' definitions of and approach to key terms in the Convention, such as "impact", "transboundary impact", "major change" and "final decision"; this 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 (articles 1 and 6);

(b) The national reports show that there is no standardized practice on the organization of transboundary consultations in accordance with article 5 — i.e., Parties' approach to such consultations differs, with four Parties even treating them as optional. The procedure for and participants in such consultations differ from Party to Party;

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

(d) While the majority of Parties report they have an express provision regarding post-project analysis in their national legislation, very few of the bilateral agreements and arrangements that were reported by Parties have provisions regarding post-project analysis and very few Parties reported that they had carried out such analyses in the period 2013–2015, even though this was identified as an issue in the fourth review (article 7);

(e) There are several sets of guidance under the Convention, three of which were expressly mentioned in the questionnaire sent to Parties — namely, the sets of guidance on public participation, practical application and subregional cooperation.[5] The first two are not widely used, and the third is scarcely used at all;

(f) There is a continuing need for bilateral and multilateral agreements or other arrangements and best practice, including agreements, to address differences between

[4] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

[5] Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7), Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8) and Guidance on Subregional Cooperation (ECE/MP.EIA/6, annex V, appendix).

Parties' practice with respect to types of projects raising particular issues, such as joint cross-border projects or nuclear power plants (article 8);

(g) There is a lack of clarity about translation requirements. In the absence of an express provision in the Convention, a number of difficulties were reported concerning translation and interpretation, leading, in some cases, to serious problems particularly concerning delays and public participation;

(h) A number of Parties continue to report late.

Some of these issues are similar to those identified in the Second Review of Implementation of the Protocol (ECE/MP.EIA/WG.2/2016/9).[6]

II. Summary of responses to the questionnaire

10. There follows a summary of responses to the questionnaire. Where possible, the responses are presented in the form of charts.

11. Wherever the summary refers to a proportion of Parties (for example a majority of Parties, just over half the Parties, etc.), it is referring to Parties that responded to the questionnaire, or to a particular question, by 30 April 2016.

12. Throughout the summary there are references to specific answers from Parties. These references have been chosen from the answers of many different Parties in order to give the reader a sense of the range and variety of answers. Making reference to a limited number of selected responses is not intended to prejudice other responding Parties that may also have acted in the manner described in the summary.

A. Article 1: Definitions

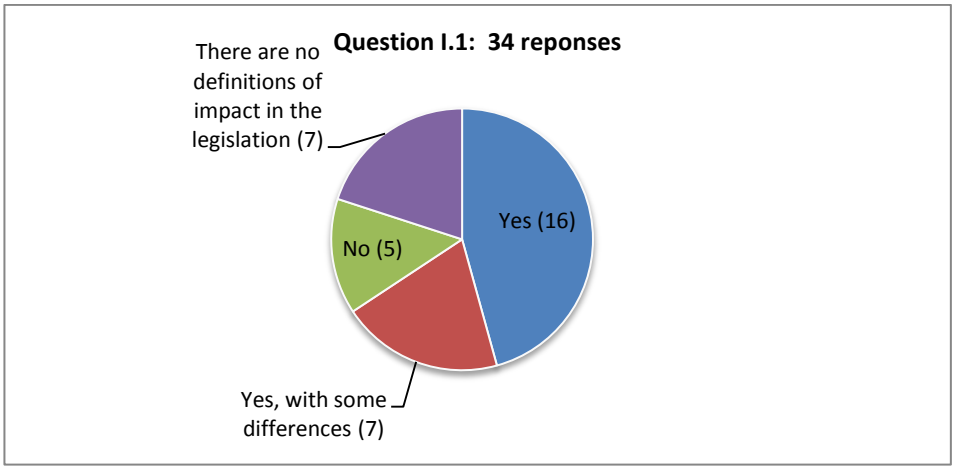
Question I.1

13. Just under half of the Parties reported that they had the same definition of "impact" as the Convention. Of those that reported some differences, two (Switzerland and Liechtenstein) said their legislation did not expressly include socioeconomic impacts.

14. Canada, Belgium (Flemish Region and Federal Government), France, Ireland, Luxembourg, and Poland report no definition of impact in their legislation.

[6] The review of the Protocol also contains findings on translation, bilateral agreements, reporting and guidance.

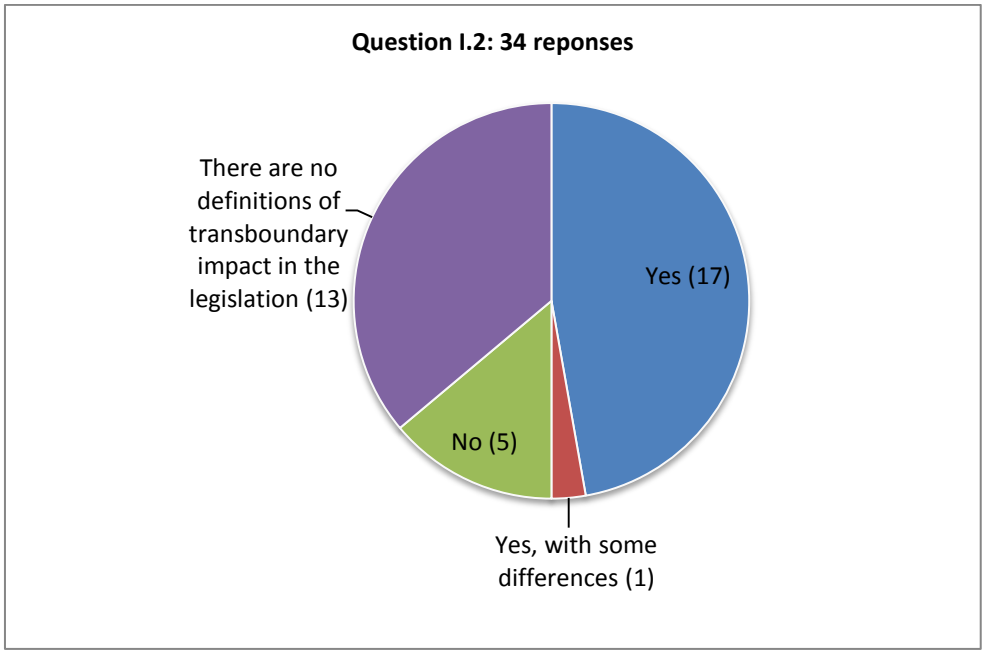
Figure 1
Is the definition of impact for the purpose of the Convention the same in your legislation as in article 1?



Question I.2

15. Precisely half of the Parties said that they used the same definition of "transboundary impact" as the Convention. Some Parties (for example, Austria and France) commented that, while there was no explicit definition of transboundary impact in their legislation, in effect their national law and practice would give effect to the Convention. The Walloon Region of Belgium reported that the definition is the same with some differences: Walloon legislation states the procedure to be used when a project is likely to have significant effects on the environment.

Figure 2
Is the definition of transboundary impact for the purpose of the Convention the same in your legislation as in article 1?



Question I.3

16. Approximately a third of Parties did not define "major change" in their legislation (e.g., Canada and France). The remainder identified "a major change" in different ways: in some Parties whether there was a major change is determined by screening (Germany and Lithuania) and/or a major change is identified with reference to its impact on the environment (Azerbaijan and Bosnia and Herzegovina) or with reference to specific criteria and thresholds (Hungary and the Walloon Region of Belgium).

Question I.4

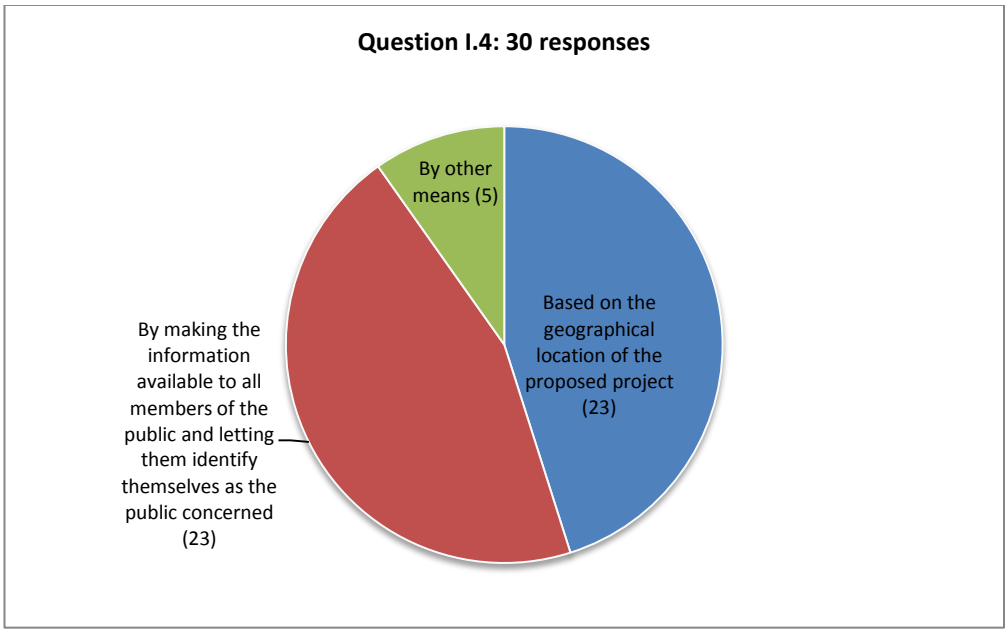
17. The majority of Parties identified the "public concerned" both on the basis of the geographical location of the proposed project and by making information available to all members of the public and letting them identify themselves as the public concerned.

18. Some Parties, when explaining what other means of identification were used, explained that the "public concerned" were identified with reference to their rights. For example, in the Czechia the public concerned includes physical persons whose rights or obligations may be affected and in Portugal the term includes holders of subjective rights or legally protected interests under the environmental decision-making process.

19. In its comments, Azerbaijan said the public concerned includes persons whose constitutional right to live in a clean and healthy environment is engaged. Some Parties commented that they have special provisions with respect to non-governmental organizations (NGOs): in Hungary environmental NGOs are always considered to be "concerned" and in Malta the public concerned includes NGOs promoting environmental protection. Belarus reported that the public is notified of the beginning of public hearings through the mass media and the Internet, and the public is provided with access to the EIA report by the project owner and/or local authorities.

20. While article 2, paragraph 2, requires Parties to implement the provisions of the Convention by legal, administrative or other measures, and there is no express requirement to implement by legislation, full and effective compliance with the Convention requires Parties to have consistent interpretations of key terms in order fully to cooperate with each other in the environmental assessment of proposed activities that are likely to cause a significant adverse transboundary impact. Where implementing measures do not fully comply with the requirements of the Convention they risk undermining effective partnerships between Parties, and other differences in approach may need monitoring and addressing, where necessary.

Figure 3
How do you identify the public concerned?



B. Article 2: General provisions

Question I.5

21. The majority of Parties implement the Convention by acts adopted by their legislature; generally those acts provide for both domestic and transboundary EIA procedures. In many cases that legislation is supplemented by executive acts.

22. Azerbaijan reported that draft legislation is being prepared. Denmark is in the process of consolidating requirements on EIA and strategic environmental assessment into a single law. In Kazakhstan and Switzerland the Convention is self-executing, and in Hungary the Convention is implemented by legislation that has a general environmental scope.

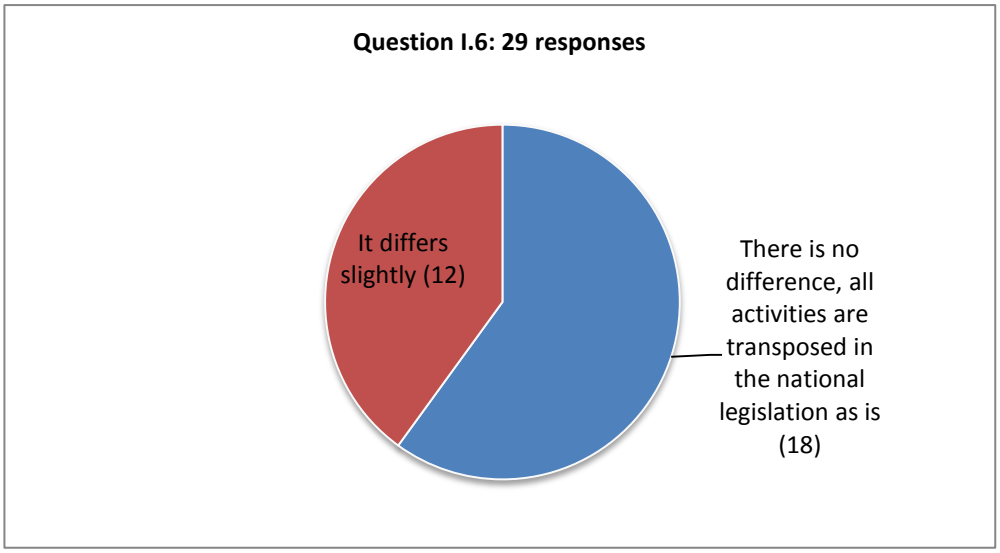
Question I.6

23. The majority of Parties reported that there was no difference between their national legislation and appendix I to the Convention. Some European Union members and other States reported that European Union law required a larger list of activities than appendix I as it is in force at the moment, because European Union legislation implements the second amendment of the Convention, which is not yet in force. Canada reports that some of the

project types in the amended appendix I to the Convention, such as construction of a new road, do not fall within Canadian Environmental Assessment Act 2012, but that this shortfall may be addressed by the Minister of the Environment and Climate Change using statutory powers to require EIA if the Minister is of the opinion that the proposed project may cause environmental effects or public concerns that warrant an environmental assessment.

Figure 4

Please describe any differences between the list of activities in your national legislation and appendix I to the Convention, if any



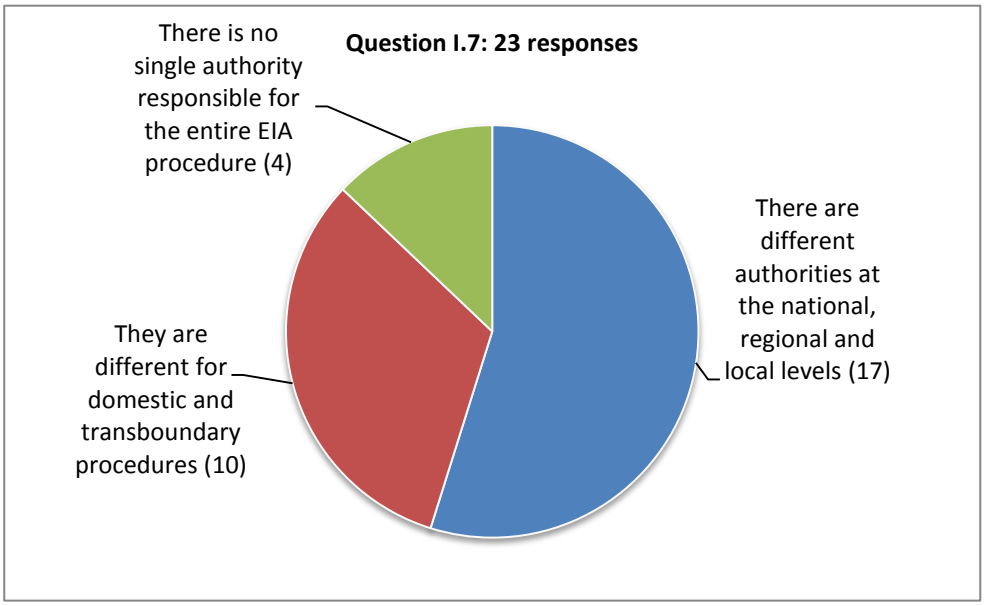
Question I.7

24. The majority of Parties have different competent authorities responsible for carrying out the EIA procedure at the national, regional and local levels, and a substantial minority (10 Parties) reported that the authorities were different for domestic and transboundary procedures.

25. The identity of the competent authorities responsible for carrying out EIA procedures can depend on a number of factors, including whether a Party has a federal structure (e.g., Belgium and Switzerland) and whether proposed projects fall within different legislation engaging different competent authorities (e.g., Kazakhstan and Ireland). Nineteen Parties provided the names of their responsible authority or authorities. In most cases an environmental ministry or authority was the competent authority, although federal countries tended to devolve responsibility to local government and authorities.

Figure 5

Identify the competent authority or authorities responsible for carrying out the EIA procedure in your country

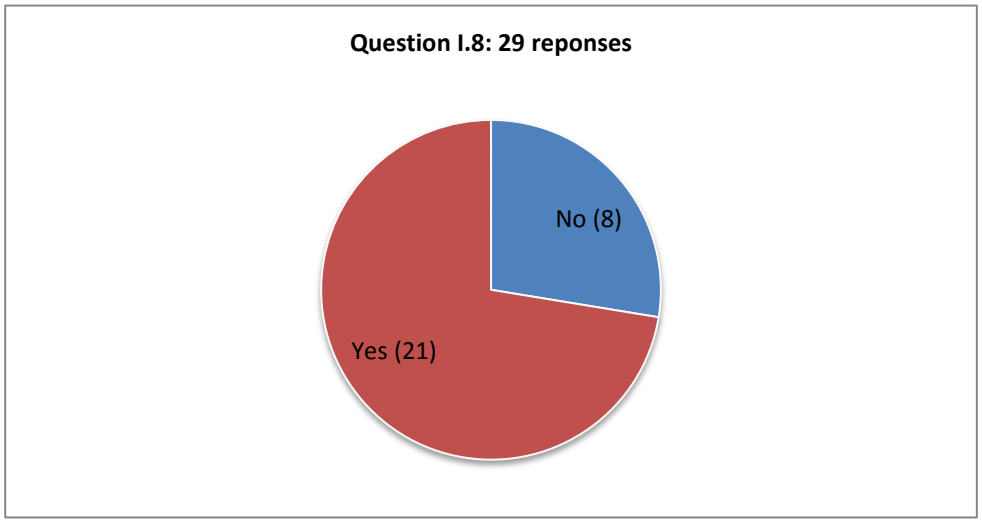


Question I.8

26. A large majority of Parties reported that an authority collected information on transboundary EIA cases; in most of those Parties that authority was the environment ministry and in some of them it was an environment agency (Austria and Sweden) or a central governmental body responsible for EIA or SEA (e.g., Poland).

Figure 6

Is there an authority in your country that collects information on all the transboundary EIA cases?



Question I.9

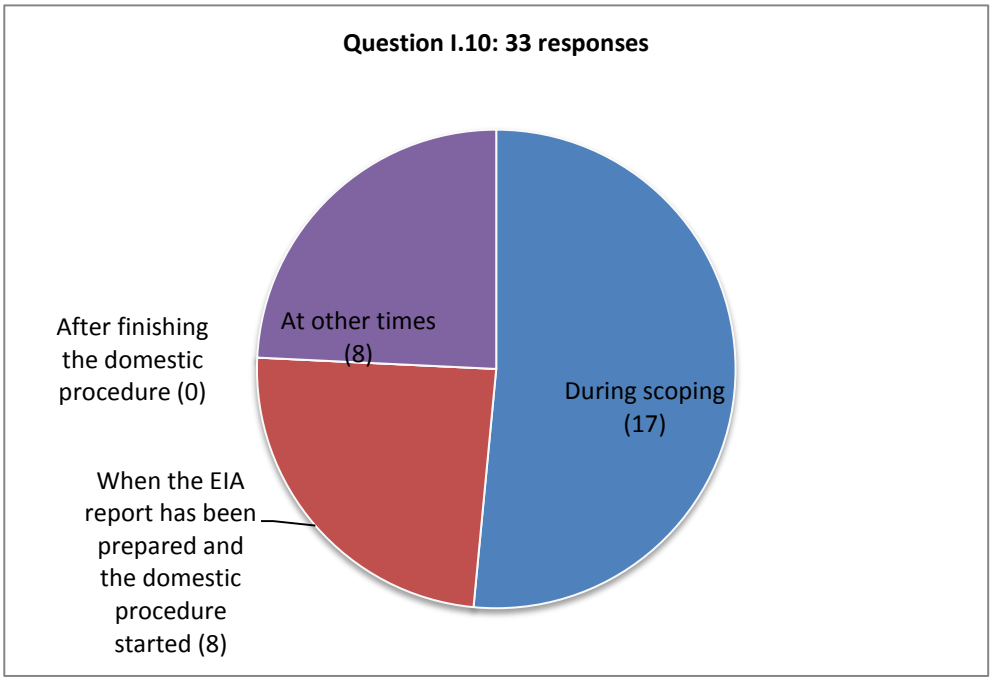
27. Parties reported a variety of ways of implementing article 2, paragraph 6, to ensure that the opportunity given to the public of the affected Party is equivalent to that given to the public of the Party of origin. While there was no overall trend, a range of approaches was described. In Albania the environment ministry, in cooperation with the developer, organizes public hearings at the developer's cost. When a Party of origin, Denmark asks the affected Party what kind of information they need for their public participation procedure before notifying or consulting pursuant to the Convention. Under the 2008 bilateral agreement between Portugal and Spain, the affected Party shall promote public consultation according to its domestic EIA legal framework. In Slovenia, domestic legislation provides for the affected public in another Party to participate on the same terms as the Slovenian affected public. Romania ensures that relevant documentation appears on the website of the affected Party. Latvia draws attention to ensuring equivalent opportunities for the affected public by ratifying and implementing the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

C. Article 3: Notification

Question I.10

28. A majority of Parties reported that, when implementing article 3, paragraph 1, it notified the affected Party during scoping. Of those Parties that reported that they notified at other times, there was a variety of responses. Denmark reported notifying at a procedural stage when a "notification of intent" was made. In Bulgarian legislation there is a backstop: the environment minister is obliged to inform concerned Parties of a proposed activity as early as possible and no later than when informing its own public as required by the Convention. Under German legislation the affected Party must be informed in "good time", and the Government considers it as good practice for the affected Party to be informed by the Party of origin at the scoping stage.

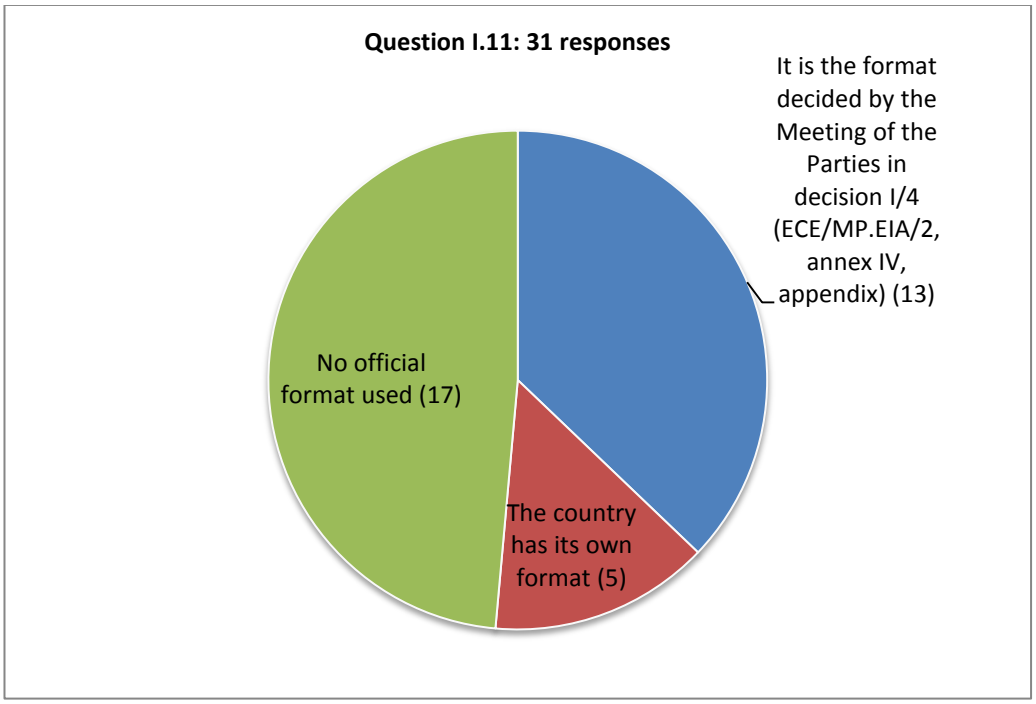
Figure 7
As Party of origin, when do you notify the affected Party (art. 3, para. 1)?



Question I.11

29. Less than half of the responding Parties use the format of notification decided by the Meeting of the Parties to the Convention (decision I/4). Of the majority that develop their own format or have no official format, some notify by an official letter, which matches the description in decision I/4 (Estonia and Ireland). Germany reports that bilateral agreements with the Netherlands and Poland include formats that are recommended for notification. Switzerland uses a standard letter template.

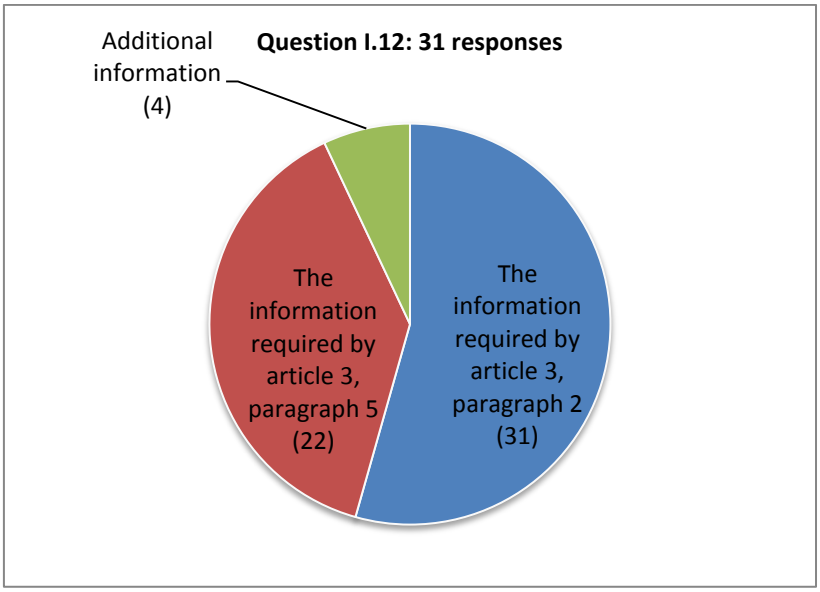
Figure 8
Please define the format of notification



Question I.12

30. All Parties reported that when acting as a Party of origin they included in the notification the information required by article 3, paragraph 2, and the majority reported they included the information required by article 3, paragraph 5. Additional information that may be provided may depend on the specific project. In Sweden information about a public hearing is included if it is possible to arrange for one jointly on both sides of the border. Similarly, Switzerland will provide information on any preliminary inquiry there may be together with the necessary contact information.

Figure 9
As a Party of origin, what information do you include in the notification (art. 3, para. 2)?



Question I.13

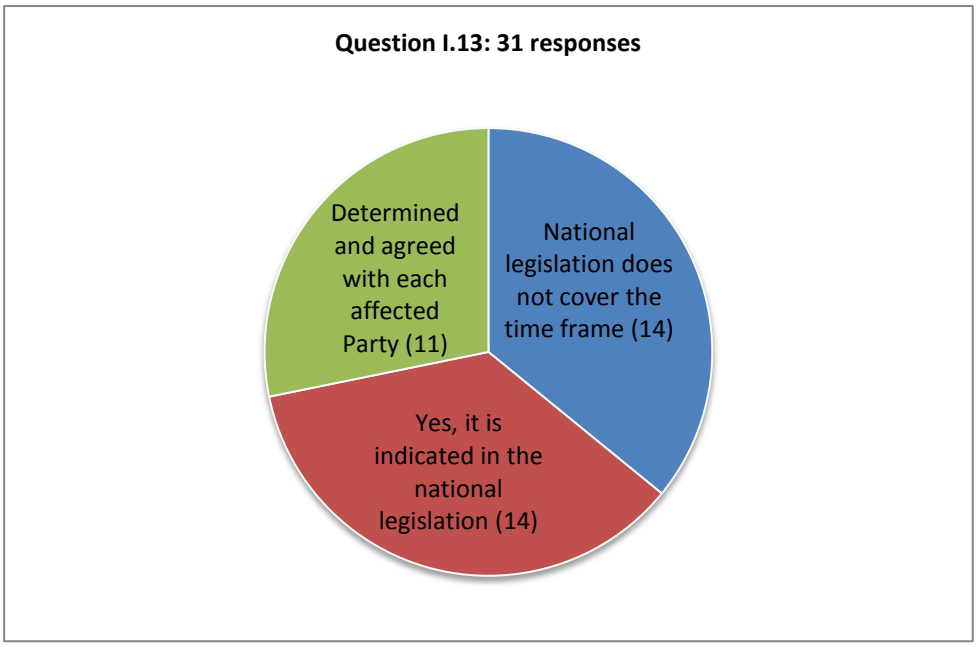
31. Just under half the Parties reported that their national legislation covered the time frame for receiving a response to the notification from the affected Party for the purposes of article 3, paragraph 3. The same number of Parties reported that the time frame was not covered in national legislation. A range of time frames was specified in national legislation. Bulgaria, at the shorter end of the range, reports that the time specified is two or three weeks, while the time frame for Italy, which is at the longer end, is 60 days starting from the date of notification.

32. About a third of Parties determined and agreed time frames with each affected Party. Such agreement may be provided for in bilateral agreements (the Netherlands), or requested when an affected Party is notified (Malta). Hungary reports an average of 6 to 19 weeks, while Switzerland reports an average of one to three months.

33. In general, where a Party does not comply with the time frame, it is dealt with pragmatically. There may be a range of consequences. Czechia in practice will always extend a deadline if the affected Party requests it, and Poland will usually give a reasonable additional time for a reply. A number of Parties said that their national law did not provide for consequences if the deadline was not met (Canada and Malta). Denmark added that if the time frame was not complied with, the whole procedure would suffer from delays, and Germany asserted that best practice was that an extension might, inter alia, be granted if it would not cause any delay in the development consent procedure.

Figure 10

As a Party of origin, does your national legislation contain any provision on receiving a response to the notification from the affected Party in a reasonable time frame (art. 3, para. 3, "within the time specified in the notification")?



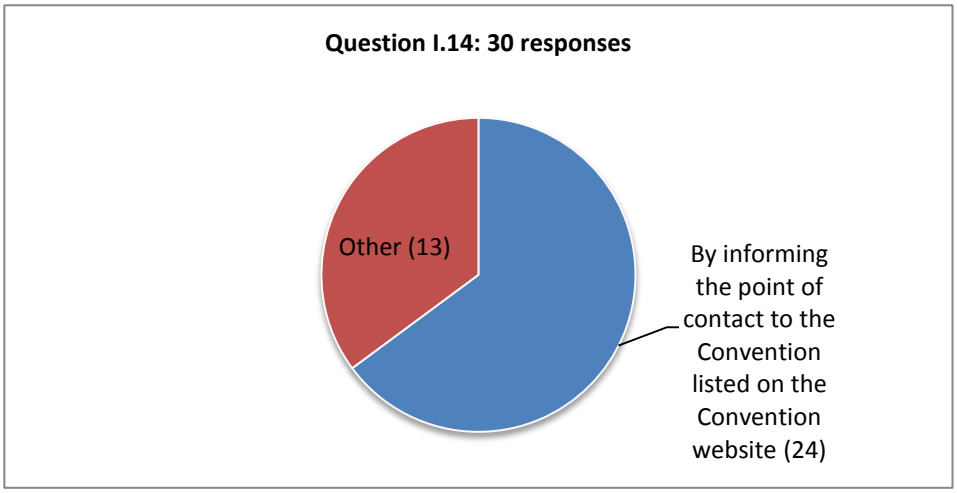
Question I.14

34. About two thirds of the Parties inform the public and authorities of the affected Party for the purposes of article 3, paragraph 8, by informing the point of contact to the Convention listed on the Convention website. Just over a third used other means.

35. In describing other means of informing the public authorities of the affected Party, a number of points were made. In some cases where the competent authority of the affected Party is known, the Party of origin (Belgium and Denmark) will notify that authority directly, sometimes as well as the affected Party's point of contact. Sometimes notifications will be made pursuant to bilateral agreements or arrangements (Ireland and Spain). Some Parties notify through the ministry of foreign affairs (Luxembourg and Portugal).

36. Germany explained that, under article 3, paragraph 8, of the Convention, the concerned Parties must cooperate to identify the public in the affected Party, and that to a certain extent the Party of origin depends on the affected Party because the former has no administrative powers in the latter's territory. Romania said that the affected Party identifies its own potentially affected public, and may indicate in correspondence that a public hearing is needed.

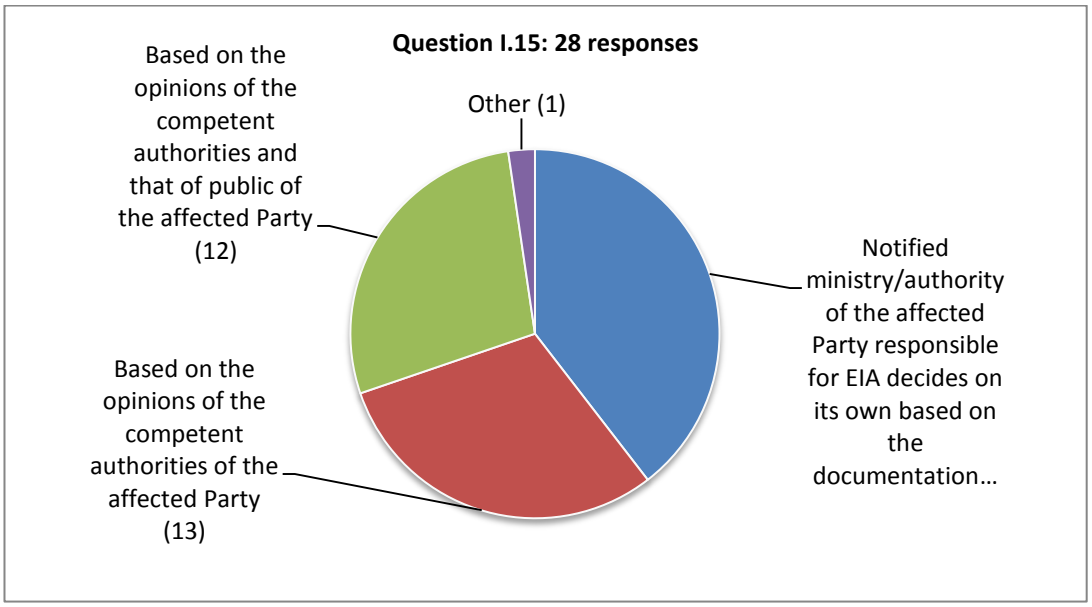
Figure 11
How do you inform the public and authorities of the affected Party (art. 3, para 8)?



Question I.15

37. Parties indicated that there were one or more reasons for their decisions, under article 3, paragraph 3, on whether to participate in the transboundary EIA procedure as an affected Party. For the majority of them, the notified ministry or authority responsible for EIA will make the decision on its own based on the documentation provided by the Party of origin, and approximately one third of the Parties will base their decision on the opinions of their competent authorities and/or the opinions of the competent authorities and those of the public. Bosnia and Herzegovina, for example, specified that all those criteria were taken into account. The Brussels Capital Region of Belgium specified another reason: the region is in the middle of the country and has had no procedure falling within the scope of the Convention.

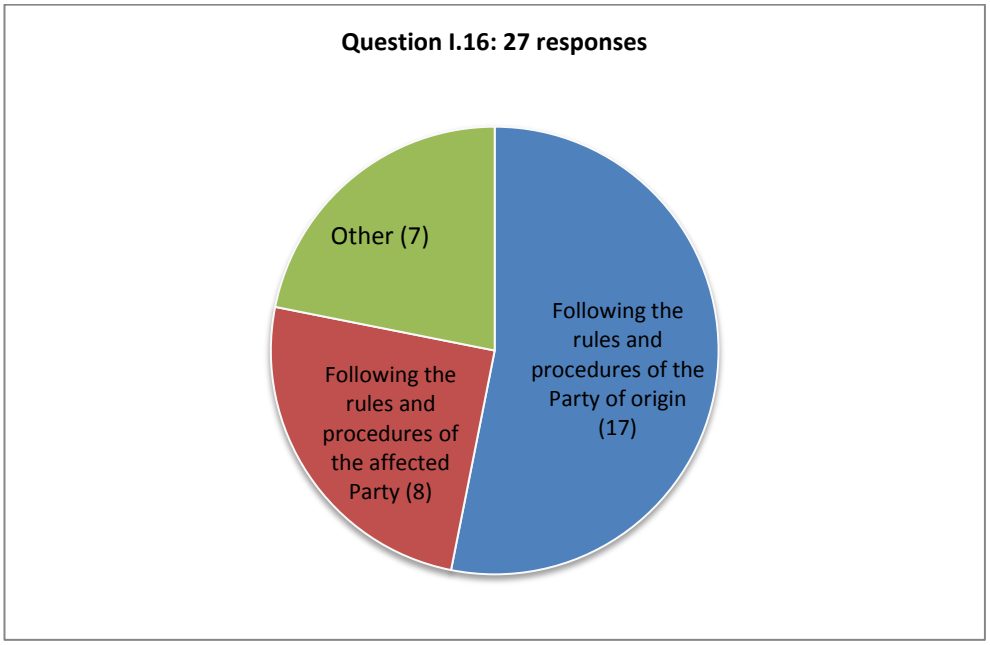
Figure 12
On what basis is the decision made to participate (or not) in the transboundary EIA procedure as affected Party (art. 3, para. 3)?



Question I.16

38. The Parties described how the details for the application of article 5 on consultations were agreed. The majority of Parties agreed details following the rules and procedures of the Party of origin. Approximately a quarter of Parties followed the rules and procedures of the affected Party and approximately a quarter of Parties used other means. For example, Liechtenstein follows the rules and procedures of the trilateral agreement it has with Austria and Switzerland, and other Parties (e.g., the Netherlands and Spain) follow bilateral agreements.

Figure 13
If the affected Party has indicated that it intends to participate in the EIA procedure, how are the details for such participation agreed, including the time frame for consultations and the deadline for commenting (art. 5)?

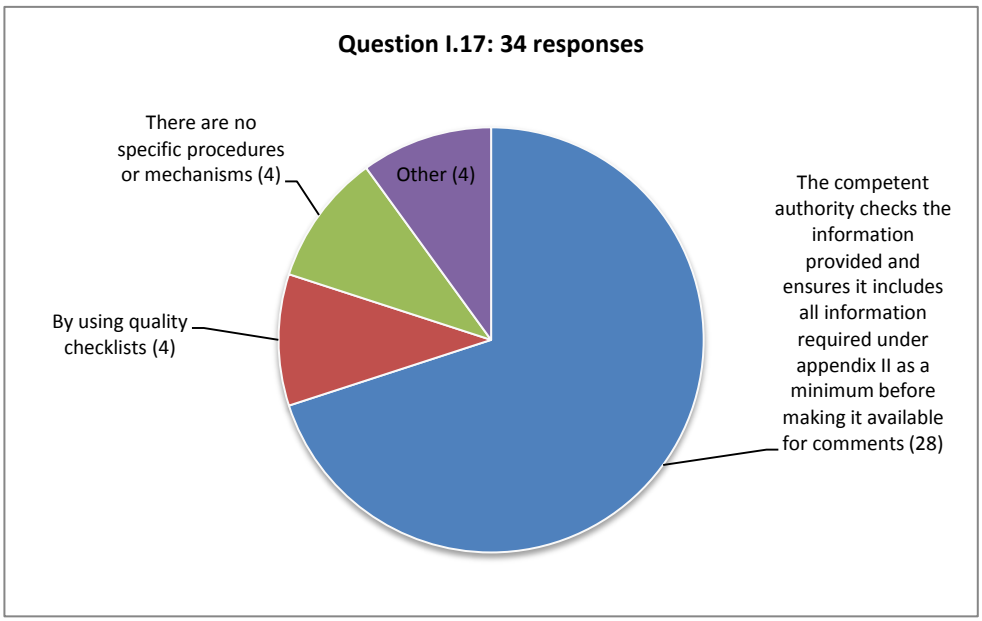


D. Article 4: Preparation of the environmental impact assessment documentation

Question I.17

39. The overwhelming majority of Parties ensure sufficient quality of the EIA documentation as Party of origin through the following means: the competent authority checks the information provided and ensures it includes all information required under appendix II to the Convention, as a minimum, before making it available for comments. A range of other options for quality checks was identified. In Estonia a person with an EIA licence checks documentation. In most cases in the Netherlands, the Netherlands Commission for Environmental Assessment gives independent advice. In Switzerland it is up to the applicant to establish whether documentation complies with legal requirements, and the specialized environmental protection service can ask the applicant to carry out additional inquiries.

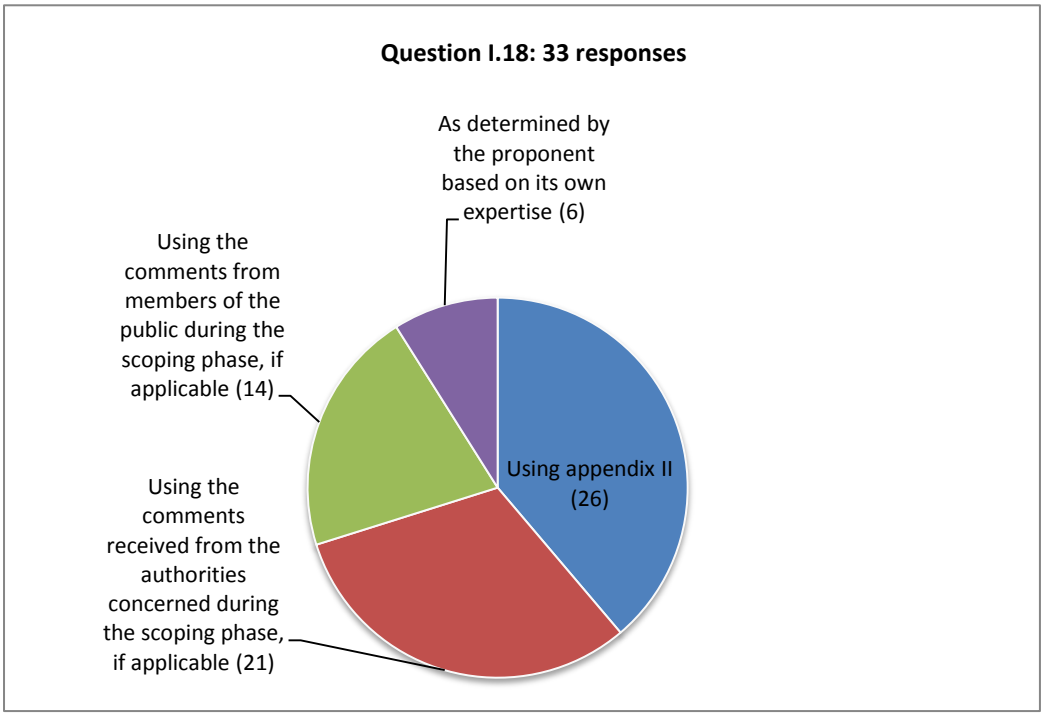
Figure 14
How do you ensure sufficient quality of the EIA documentation as Party of origin?



Question I.18

40. The majority of Parties determine the relevant information to be included in the EIA documentation in accordance with article 4 by using appendix II and by using the comments received from the authorities concerned during the scoping phase, if applicable. A number of Parties described other means for determining the relevant information to be included in the EIA documentation. In Austria, Canada, Ireland and Lithuania the contents are determined in accordance with the relevant applicable legislation. In Estonia EIA documentation is provided by a licensed expert and in the Netherlands the Netherlands Commission for Environmental Assessment may be consulted.

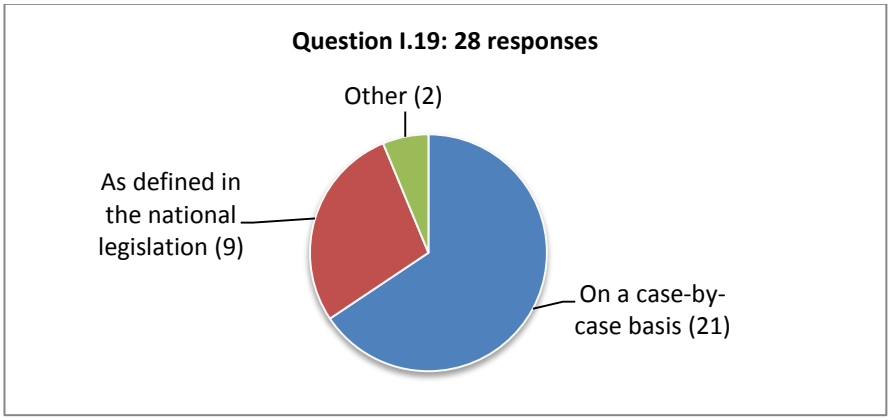
Figure 15
How do you determine the relevant information to be included in the EIA documentation in accordance with article 4, paragraph 1?



Question I.19

41. The majority of Parties determine "reasonable alternatives" in accordance with appendix II, paragraph (b), on a case-by-case basis. About a third determine "reasonable alternatives" as defined in the national legislation. Parties made a number of comments in this regard. In Romania, a certified expert will identify reasonable alternatives. In Latvia, the developer is responsible for identifying reasonable alternatives. In Germany, the identification of reasonable alternatives depends on the type of project in question and on the specific legal requirements for development consent.

Figure 16
How do you determine "reasonable alternatives" in accordance with appendix II, paragraph (b)?

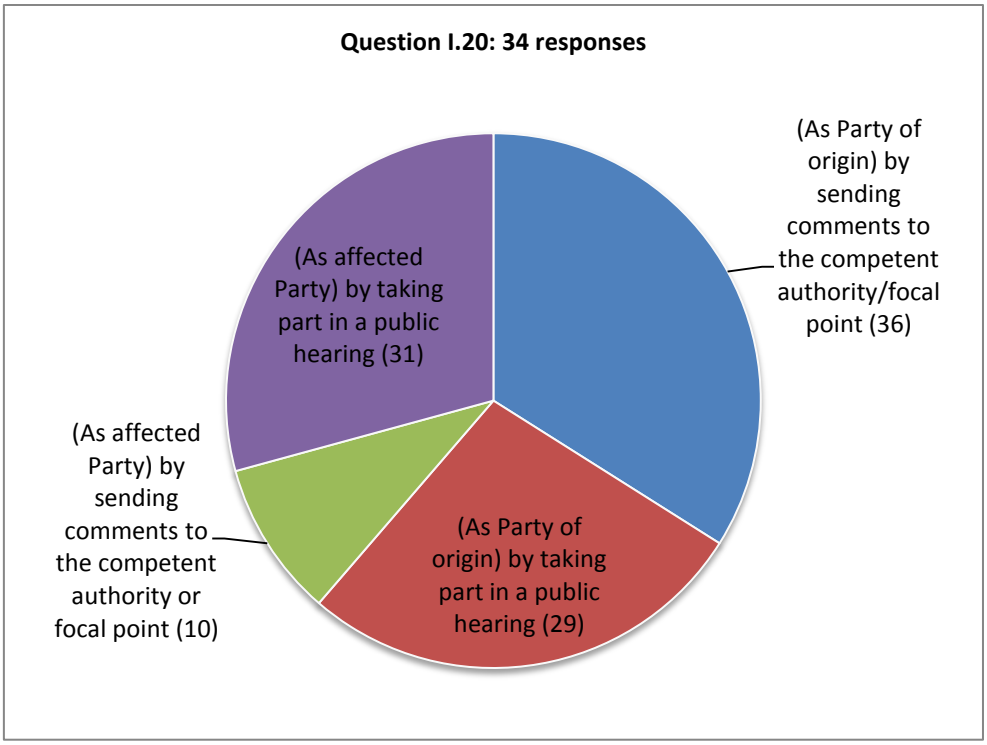


E. Public participation (article 3, para. 3, and article 4, para. 2)

Question I.20

42. The Parties explained how the public concerned express their opinion on the EIA documentation of the proposed project. In almost all cases, when Parties act as Parties of origin the public of the affected Party can submit comments through their competent authority or focal point and can take part in a public hearing. In almost all cases when Parties act as affected Parties their own public can take part in a public hearing and in approximately a third of cases their public can send comments to the competent authority or focal point. A number of pragmatic and ad hoc arrangements are in place to allow both the public of Parties of origin and affected Parties to express an opinion on EIA documentation. For example, when Armenia is the Party of origin both Parties mutually agree on the consideration of public opinion; in Lithuania the public may send comments to the preparer of the EIA documents; and Canada allows members of the public to participate at various stages of the environmental assessment process.

Figure 17
How can the public concerned express its opinion on the EIA documentation of the proposed project?

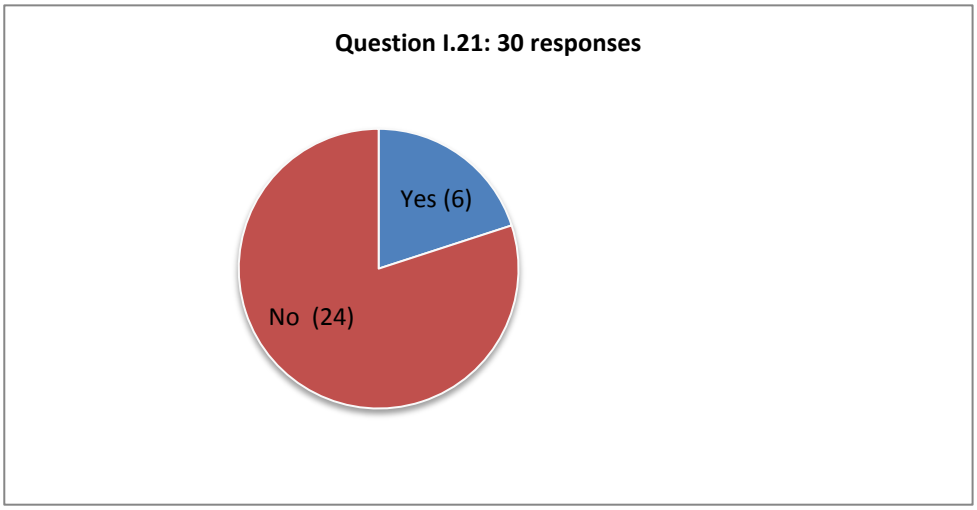


Question I.21

43. The majority of Parties reported that their legislation did not require the organization of a public hearing on the territory of the affected Party, but of those Parties a number report that their legislation does not preclude the establishment of joint procedures for public hearings on the territory of another country (e.g., Canada), and some Parties were prepared to agree with the affected Party to organize a public hearing on the latter's territory (Lithuania and Poland). The national legislation of six Parties (Albania, Armenia, Bosnia and Herzegovina, Latvia and Romania) requires the organization of a public hearing on the territory of the affected Party in cases where their country is the country of origin.

Figure 18

Please indicate whether your national EIA legislation requires the organization of a public hearing on the territory of the affected Party in cases where your country is the country of origin

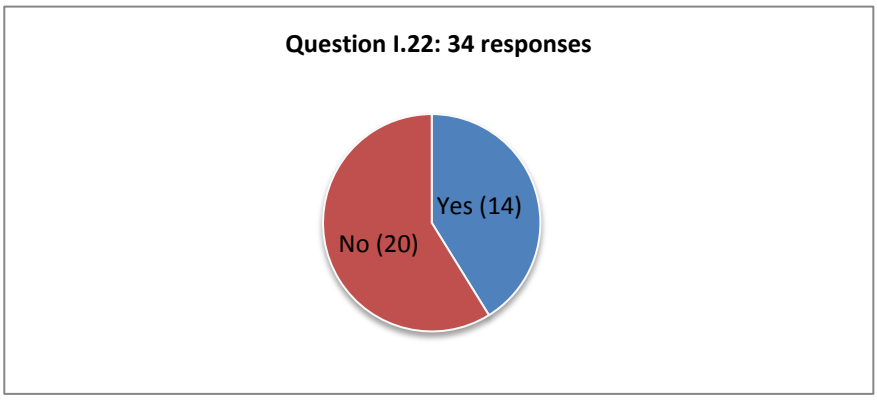


Question I.22

44. While the majority of Parties said that national EIA legislation did not require the organization of public hearings, a number of Parties indicated this is optional (Liechtenstein) in cases where a country is the affected Party, and can be decided on a case-by-case basis (Albania.) In the absence of specific provisions in national law a Party may make a decision on the basis of the practical guidance available (Azerbaijan). Officials, for example a prefect in France or the Regional Director for Environmental Protection in Poland, may choose to convene a public hearing.

Figure 19

Please indicate whether your national EIA legislation requires the organization of public hearings in cases where your country is affected



F. Article 5: Consultations on the basis of the environmental impact assessment documentation

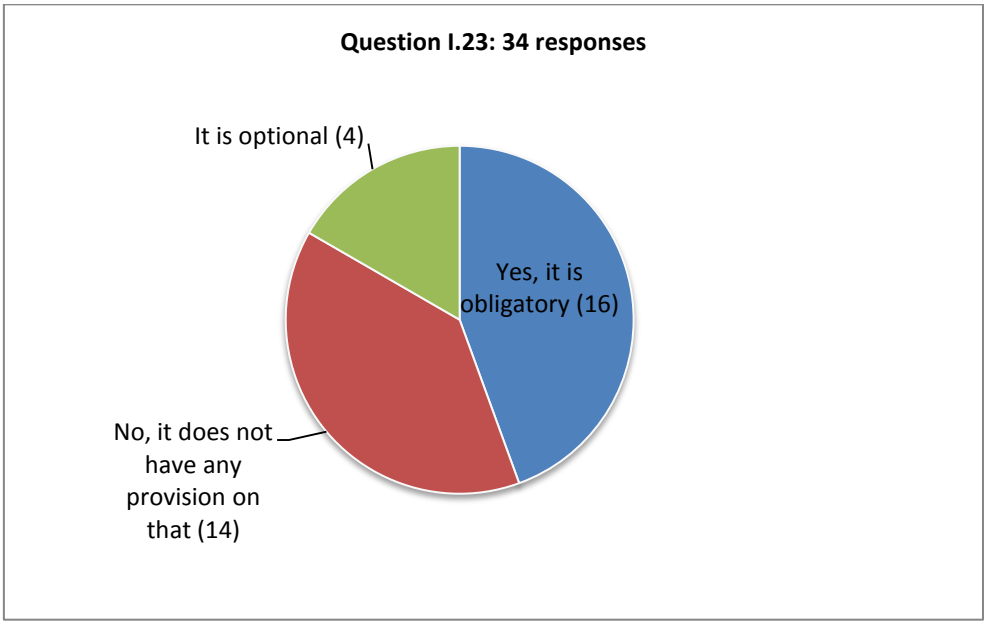
Question I.23

45. Slightly less than half of the Parties reported that their national EIA legislation made transboundary consultations compulsory. Four Parties responded that such consultations were optional. So, for example, in Spain such consultations are undertaken under the Convention with Portugal. The Brussels Capital Region, Ireland and Ukraine also report that consultations are optional.

46. Bosnia and Herzegovina reported that, despite the absence of legislative provision for consultations, there are always meetings with project developers and consultations are possible in all phases. In Portugal the specific procedures for transboundary consultations depend on the scope and characteristics of the project and are determined on a case-by-case basis, and Romania reports that consultations with the Party of origin are agreed through correspondence between the focal points of the concerned Parties.

Figure 20

Does your national EIA legislation have any provision on the organization of transboundary consultations (expert, joint bodies, etc.) between the authorities of the concerned Parties?



G. Article 6: Final decision

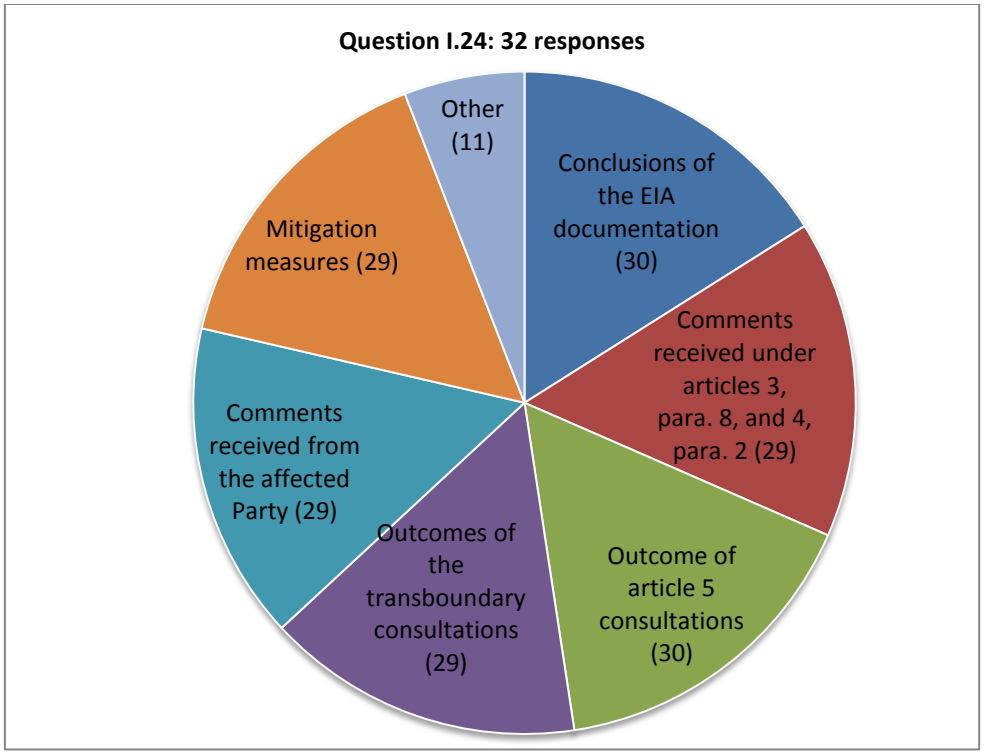
Question I.24

47. The overwhelming majority of Parties reported that the final decision related to the implementation of the planned activity, within the meaning of article 6, paragraph 1, includes the following: conclusions of the EIA documentation; comments received in accordance with article 3, paragraph 8, and article 4, paragraph 2; the outcome of the consultations as referred to in article 5; the outcomes of the transboundary consultations; the comments received from the affected Party; and mitigation measures. In Azerbaijan,

there is no express provision on the contents of the final decision, and French law does not have an exhaustive list of what is to be covered.

48. Among the other information that may be included in the final decision is the following: information on how and until when the decision can be challenged (Hungary); the deadline or deadlines for initiating a post-project evaluation of the environmental effects (the Netherlands); environmental risk assessment and public health risks, and the conclusion of public ecological examinations (Kazakhstan); and environmental conditions and a number of other points listed in national legislation (Sweden).

Figure 21
Please indicate all points below that are covered in a final decision related to the implementation of the planned activity (art. 6, para. 1)

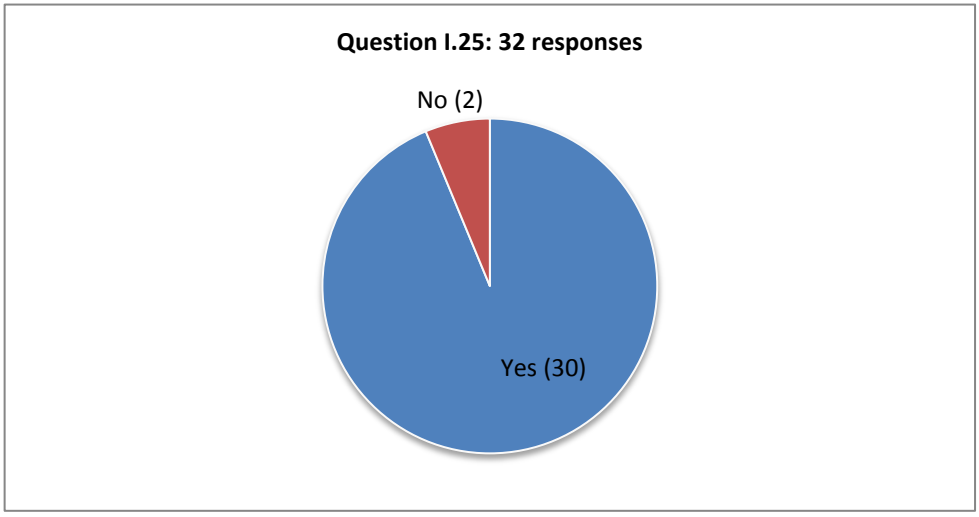


Question I.25

49. Nearly all the Parties said the comments of the authorities and the public of the affected Party and the outcome of the consultations were taken into consideration in the same way as the comments from the authorities and the public in the Party of origin. In their comments on this issue, Poland and Portugal mentioned that there were statutory requirements to take into account the comments of the authorities and public of the affected Party. Others, like Canada and France, would not in practice make any distinction between the authorities and public of the affected Party and the Party of origin. Armenia reports that if the comments and the outcome of the consultations are not taken into consideration then justification is provided.

Figure 22

Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and the public in your country (art. 6, para. 1)?

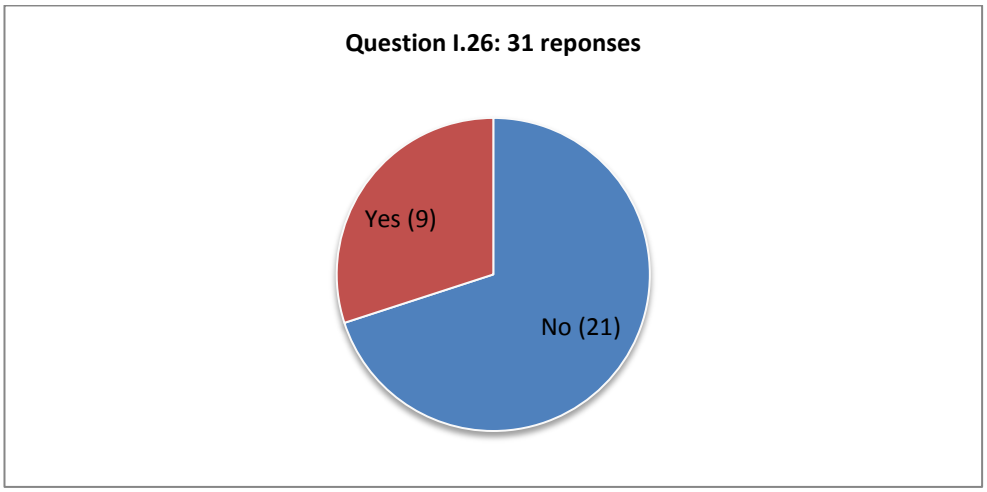


Question I.26

50. The majority of Parties do not have national legislation that ensures the implementation of the provisions of article 6, paragraph 3. In a minority of Parties (Belarus, Denmark, Estonia, Finland, Kazakhstan, the Netherlands, Romania, Slovenia and Sweden) there are express provisions in national legislation providing for implementation of article 6, paragraph 3. In Albania, if the authorities receive new information on negative impacts it will officially inform the affected Party, which may require consultations on the revision of a decision. In some Parties (Germany and Poland) general principles of law may require the revision of decisions if new information comes to light. Austria observes that, while its legal system strictly limits the circumstances in which a decision may be revised, there is always the possibility of reopening consultations if the affected Party so requests.

Figure 23

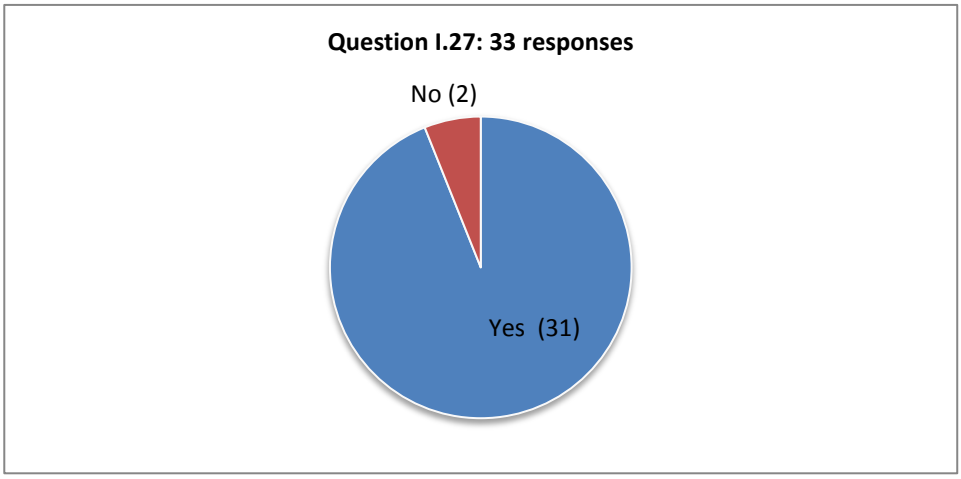
Is there any regulation in the national legislation of your country that ensures the implementation of the provisions of article 6, paragraph 3?



Question I.27

51. In the majority of Parties all activities listed in appendix I require a final decision to authorize or undertake such an activity; the exceptions were Canada and Kazakhstan.

Figure 24
Do all activities listed in appendix I (items 1-22) require a final decision to authorize or undertake such an activity?



Question I.28

52. Several Parties (including Kazakhstan, Latvia and Poland) reported legal requirements that identify what is regarded as the "final decision" for a type of activity listed in appendix I. In some Parties (e.g., Azerbaijan and Ireland) there were no specific provisions in national law on what amounts to a "final decision".

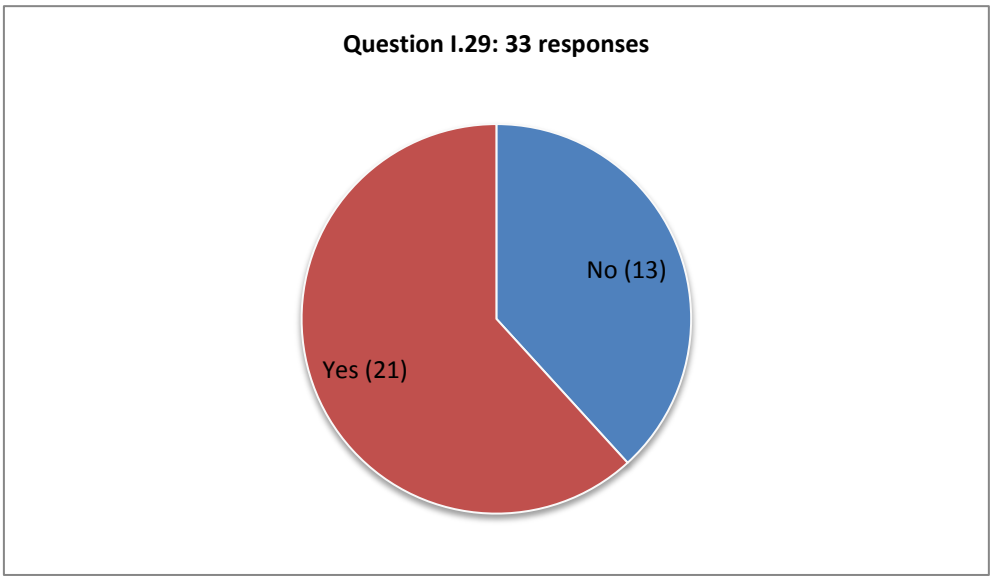
H. Article 7: Post-project analysis

Question I.29

53. A majority of Parties reported that post-project analysis was expressly provided for in national legislation, and there were extensive accounts of the procedure for such analysis and the communication of its results. A number of Parties reported provisions for post-project analysis in bilateral agreements and arrangements. For example, Lithuania reported that its bilateral agreement with Poland included a provision for post-project analysis. Similarly, Germany reported that its bilateral agreement with Poland also included such provisions. Parties identified competent authorities for post-project analysis, for example the Minister of Environment and Water and/or the Director of the Regional Inspectorate of Environment and Water in Bulgaria.

54. While there is no special provision in Hungarian legislation for post-project analysis, the relevant rules of the Convention are directly applicable, and in the event of a request from an affected Party for post-project analysis consultations may determine how to proceed.

Figure 25
Is there any provision regarding post-project analysis in your national EIA legislation (art. 7, para. 1)?

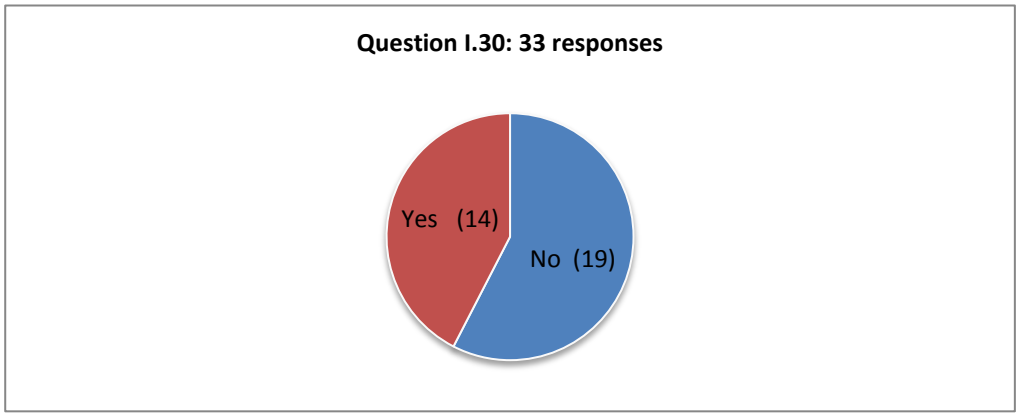


I. Article 8: Bilateral and multilateral cooperation

Question I.30

55. Slightly less than half of the Parties reported bilateral agreements and arrangements based on the Convention. For example Kazakhstan reported an agreement with the Russian Federation, Austria a bilateral agreement with Slovakia, and Latvia a bilateral treaty with Estonia. There were also agreements and arrangements that had more than two Parties: Switzerland reported a draft trilateral agreement with Austria and Liechtenstein, and a procedural guide for the specific region of the Upper Rhine, prepared by France, Germany and Switzerland. Belarus reported that it was currently drafting bilateral agreements with Poland, Lithuania and Ukraine.

Figure 26
Does your country have any bilateral or multilateral agreements based on the Convention (art. 8, appendix VI)?



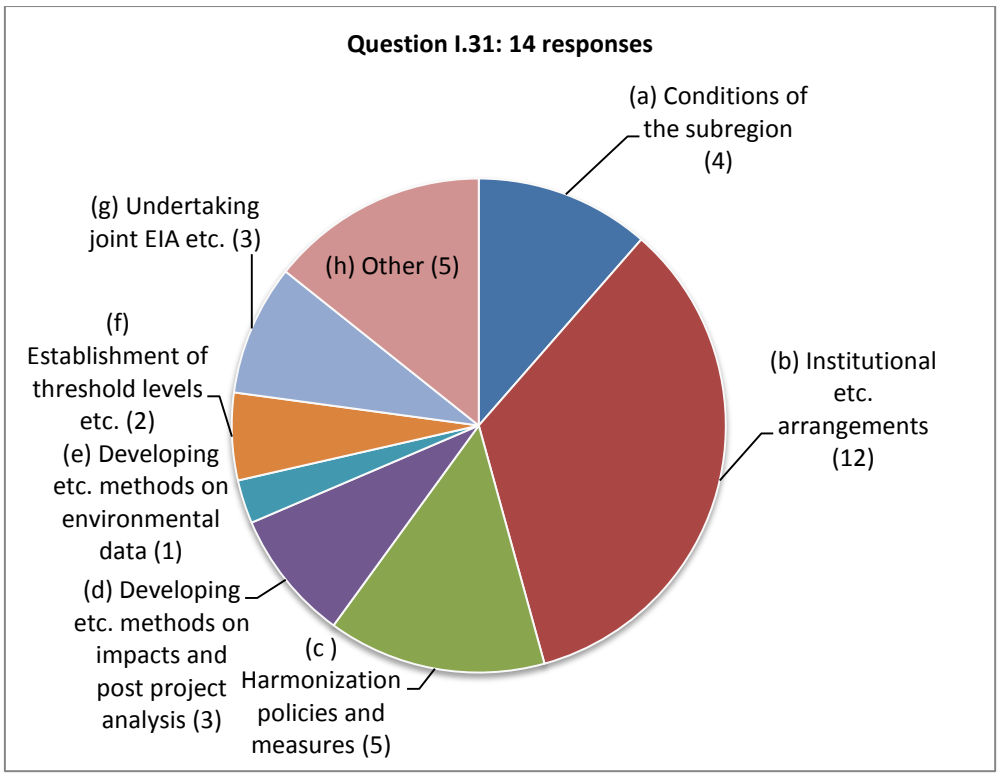
Question I.31

56. Parties reported that bilateral agreements cover a range of issues, most commonly specific conditions of the subregion concerned; institutional, administrative and other arrangements; and the harmonization of the Parties' policies and measures.

57. There were extensive accounts of other issues, not expressly listed in the questionnaire, that were covered by bilateral agreements. For example, among the issues covered by the bilateral agreement between Poland and Germany are: translation obligations; determination of the competent authorities; the scope and content of notification; the method for sending notifications and replying; the deadline for responses; the requirements for the content for EIA documentation; and the rules for organizing public participation in the affected Party.

58. There are agreements relating to specific areas that include provisions on transboundary EIA. For example, on nuclear matters there is an agreement between Hungary and Austria on issues of common interest regarding nuclear facilities, and there is an agreement on mutual notification and cooperation in the field of nuclear safety and radiation protection between Czechia, Hungary and Slovakia. Hungary also mentions the Agreement on Cooperation in Environmental and Nature Protection Matters between Hungary and Slovakia, which promotes implementation of the Convention. Kazakhstan reports a bilateral agreement with the Russian Federation on joint use and protection of transboundary water bodies, article 6 of which relates to transboundary EIA.

Figure 27
What issues do these bilateral agreements cover (appendix VI)?



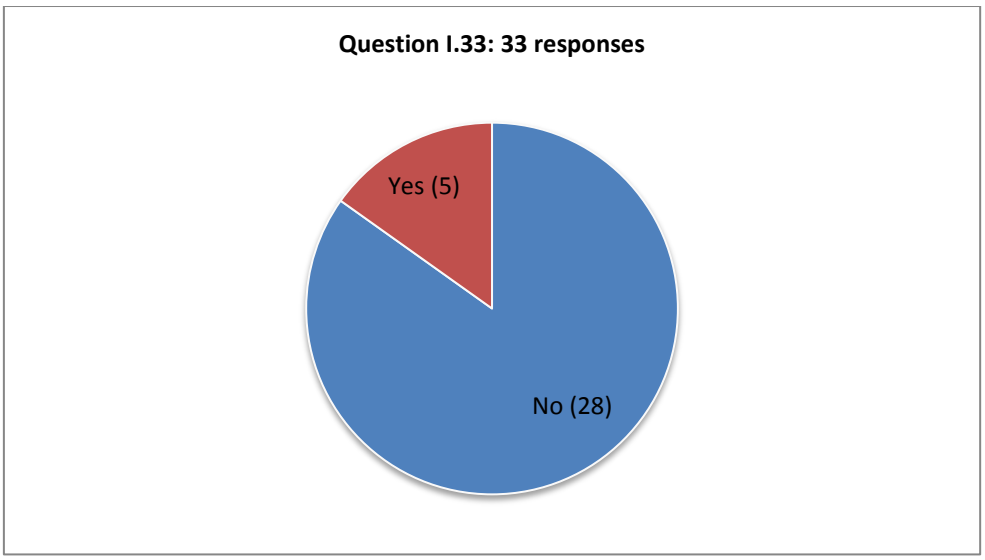
Question I.32

59. A number of Parties described how transboundary EIA procedures were incorporated into domestic EIA procedures, covering issues such as notification, the participation of the public concerned, consultation with the affected Party, considering the views received and making the final decision available. Parties' descriptions of the steps followed when EIA in a transboundary context is separate from the national procedure also appeared to meet the requirements of the Convention.

Question I.33

60. Five Parties reported special provisions or informal arrangements concerning transboundary EIA procedures for joint cross-border projects. For example, Bosnia and Herzegovina had an arrangement with respect to the Brcko district, and Estonia reported that bilateral agreements included a general provision regarding joint EIA — practical experience of joint EIA was acquired, for example, with respect to the "Balticconnector" natural gas pipeline between Finland and Estonia. Ireland reported an informal agreement with Northern Ireland, and Denmark had bilateral agreements concerning specific projects.

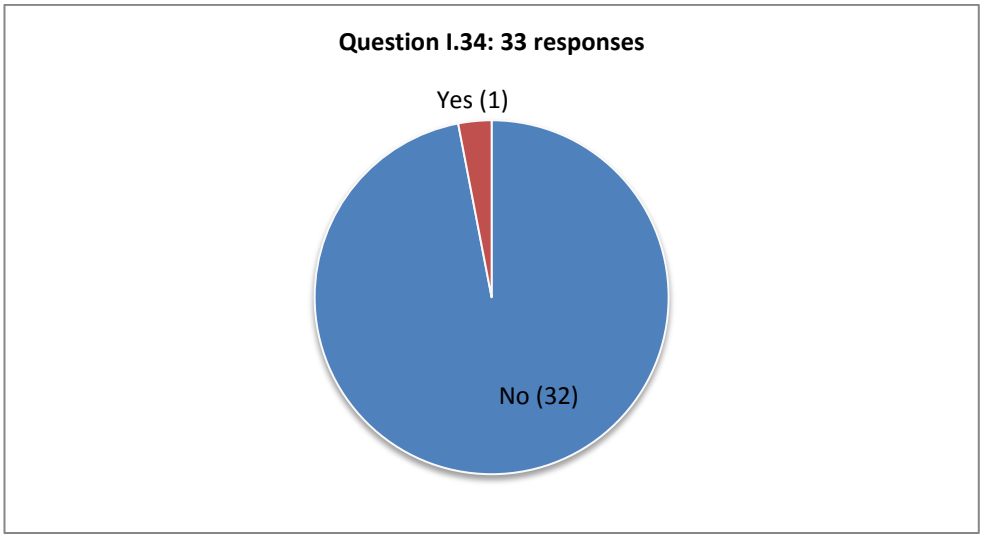
Figure 28
Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for joint cross-border projects (e.g., roads, pipelines)?



Question I.34

61. Only one country reported special provisions or informal arrangements concerning transboundary EIA procedures for nuclear power plants (NPPs). Germany reported that its nuclear legislation contained special provisions for nuclear power activities; however, the provisions have the same content as the provisions of its EIA act. While there are no bilateral agreements under the Convention at the Swiss federal level, there are a number of bilateral agreements concerning the exchange of information regarding nuclear matters, especially with neighbouring countries (Austria, France and Italy).

Figure 29
Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for nuclear power plants?



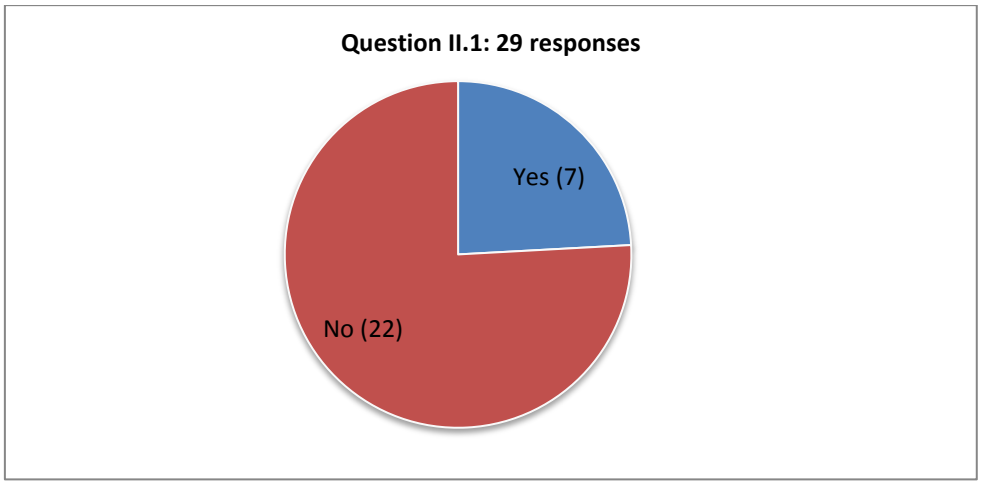
III. Practical application during the period 2013–2015

A. Experience in the transboundary environmental impact assessment procedure during the period 2013–2015

Question II.1

62. There were seven objections to information on the transboundary procedures being compiled and made available on the website of the Convention.

Figure 30
Does your country object to the information on transboundary EIA procedures that you provide in this section being compiled and made available on the website of the Convention?



Question II.2

63. Parties reported a wide range of transboundary EIA procedures during the period 2013–2015. The number of procedures reported by Parties of origin ranged from 1 (Portugal) to 12 (Sweden). The number of procedures reported by affected Parties ranged from 1 (Azerbaijan) to 24 (Czechia).

64. Germany reported that it had only limited knowledge of the number and details of transboundary EIAs because in most cases the authorities of the Länder (federal states) served as competent authorities for transboundary EIA.

65. One of the most thoroughly reported procedures was the international EIA procedure for the NPP blocks at Paks in Hungary, starting in 2013, with notification of all the 7 neighbouring countries and all the European Union member States, as well as Switzerland upon the request of Greenpeace Switzerland.

Question II.3

66. In the absence of an express provision in the Convention relating to translation, a number of problems were reported concerning translation and interpretation and a number of solutions were identified.

67. Affected Parties in particular reported translation problems. Austria states that, in the absence of a bilateral agreement, the lack of obligations with respect to translations can cause serious problems: it can take a long time before receiving a translation, and there can be delays, leading to a disrupted procedure, in particular with respect to public participation. Hungary also reports that translation issues can cause significant delays, and Ukraine asks the Party of origin to translate documentation into Russian or Ukrainian.

68. Parties' practice indicated differing approaches towards what should be translated. For example, the Flemish Region of Belgium recommended a translation of the project and a summary of the transboundary impact; in Spain developers must include a specific chapter in the EIA documentation about transboundary effects that has to be translated into the affected Party's language; and, in Poland, relevant documentation, including scoping documentation, the EIA documentation and any additional information requested by the affected Party, is translated by the developer.

69. Parties reported a number of ways to address translation issues, for example through bilateral agreements (the Netherlands and Poland), the use of English (Sweden, when other Parties involved are not from the Nordic region), an express provision in national law (Hungary) and the provision of a courtesy translation (Luxembourg).

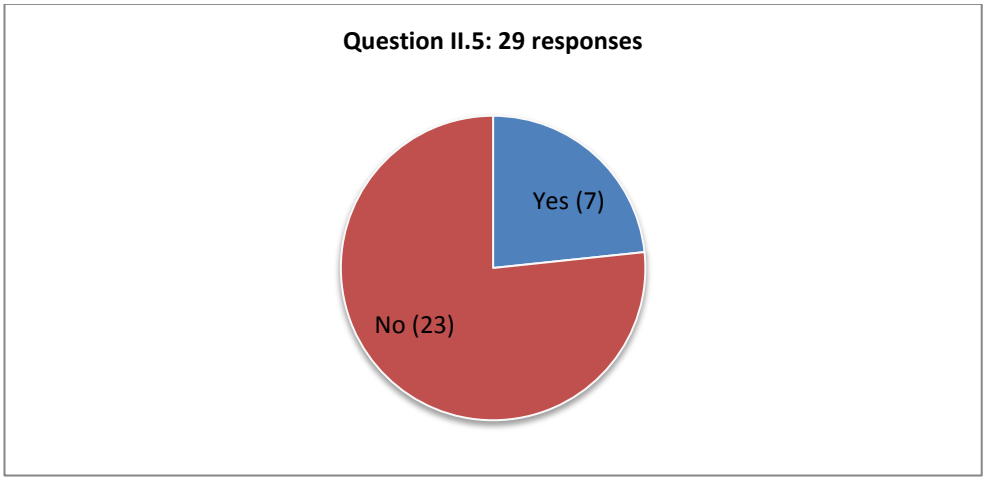
Question II.4

70. Parties described a number of difficulties encountered with respect to transboundary public participation. In some cases, German competent authorities have found it challenging to ensure that appropriate documents and comments are translated. Luxembourg reports that it can be difficult to identify affected persons. Poland reported a range of difficulties, including diverging interests among stakeholders, consultation meetings focusing too much on political issues, failures with respect to timing causing delays in projects, and differences in understanding the definition and purpose of consultation. Sweden reported some problems with notifications and the provision of information, such as information about projects being sent directly by developers in the Party of origin without sufficient details, including on the possible transboundary impacts, as well as notifications without the full contact information.

Question II.5

71. Seven Parties (Belarus, Bulgaria, Czechia , Estonia, Finland, Hungary and the Netherlands) reported successful examples of organizing transboundary EIA procedures for joint cross-border projects or that of an NPP.

Figure 31
Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects or that of an NPP?



Question II.6

72. Several countries described successful examples of organizing transboundary EIA procedures for joint cross-border projects or NPPs.

73. Belarus described the example of the NPP in the Ostrovets area, which had involved public hearings in Austria, Belarus, Lithuania and the Ukraine and consultations with authorities in Austria, Latvia, Lithuania, Poland and Ukraine. A post-project analysis programme has been developed and approved and sent to all countries that participated in consultations.

74. Estonia referred to the Balticconnector natural gas pipeline for which a joint EIA was carried out between Estonia and Finland simultaneously. An ad hoc working group was established to discuss practical matters and national procedures were coordinated and streamlined. The Netherlands reported that joint cross-border projects occurred on a regular basis, for example a joint EIA procedure had been established for the purposes of a combined EIA and strategic environmental assessment project with Belgium for the preservation of a tidal area.

75. Although Austria has no NPPs, it continuously participates in transboundary EIA procedures dealing with NPPs or other nuclear energy-related issues. On some of these occasions public hearings or expert consultation meetings are also held in Austria in order to inform the Austrian public and let it participate actively.

Question II.7

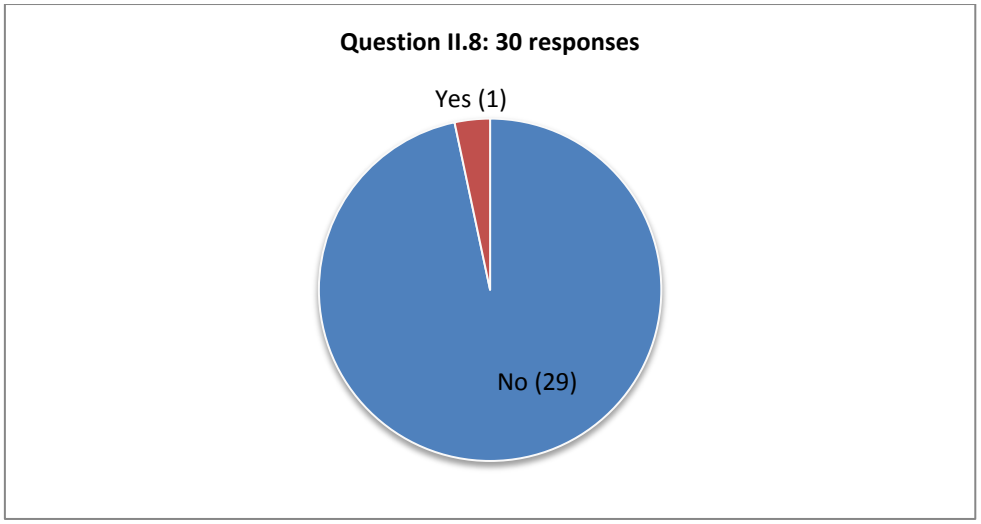
76. Six Parties provided examples of good practice cases. Austria drew attention to four cases all concerning Slovakia: the enlargement of a deposit for radioactive waste (Mochovce); the integral deposit for radioactive waste (Bohunice); the NPP Bohunice III; and the enlargement of storage capacity for spent fuel (Bohunice). Bulgaria referred to the investment proposal for the decommissioning of Units 1–4 of the Kozloduy NPP, the

investment proposal for "Facility for Treatment and Conditioning of Radioactive Waste with a High Volume Reduction Factor at Kozloduy Nuclear Power Plant Facility (HVRF)" and the investment proposal for "Construction of new nuclear power of the latest generation of NPP, Kozloduy" at Site 2. Denmark mentioned the Nord Stream Project and the Skanled Gas Pipe Line, and in particular joint meetings concerning points of contact and the developer and agreements on the timing of notification and consultation letters. Poland referred to its practice in four areas: with respect to the deadline for the affected Party; keeping informal contacts with other Parties; dealing with consultation outcomes before making the final decision; and providing written translation and interpretation. The Netherlands mentioned its bilateral agreement with Germany. Switzerland said that the Convention is not generally implemented completely as contemplated in the theory, but in the end they achieve good results.

Question II.8

77. Hungary volunteered to present the investment proposal for "Facility for Treatment and Conditioning of Radioactive Waste with a High Volume Reduction Factor at Kozloduy Nuclear Power Plant Facility" as a good practice case for the "case study fact sheet".

Figure 32
Would your country like to introduce a case in the form of a Convention "case study fact sheet"?

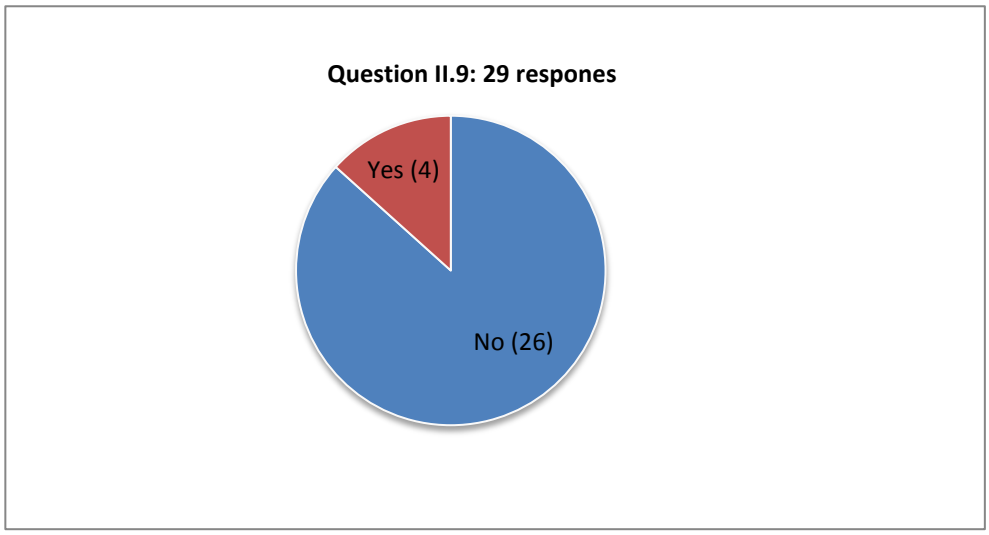


Question II.9

78. Very few Parties (Belarus, the Belgian Federal Government, the Netherlands and Ukraine) reported carrying out post-project analyses in the period 2013–2015, and fewer still mentioned challenges in implementation and lessons learned. The Netherlands said that its Environmental Management Act obliges the competent authority to make an evaluation of the EIA report, but there is no central registration of post-project analyses. Ukraine noted its monitoring of the Danube Delta. Belarus referred to its regulation on the EIA procedure that stipulates that, as necessary, the EIA report should describe a programme on post-project analysis. It also referred to the post-project analysis programme for its NPP (see question II.6 above).

Figure 33

Has your country carried out post-project analyses in the period 2013–2015?

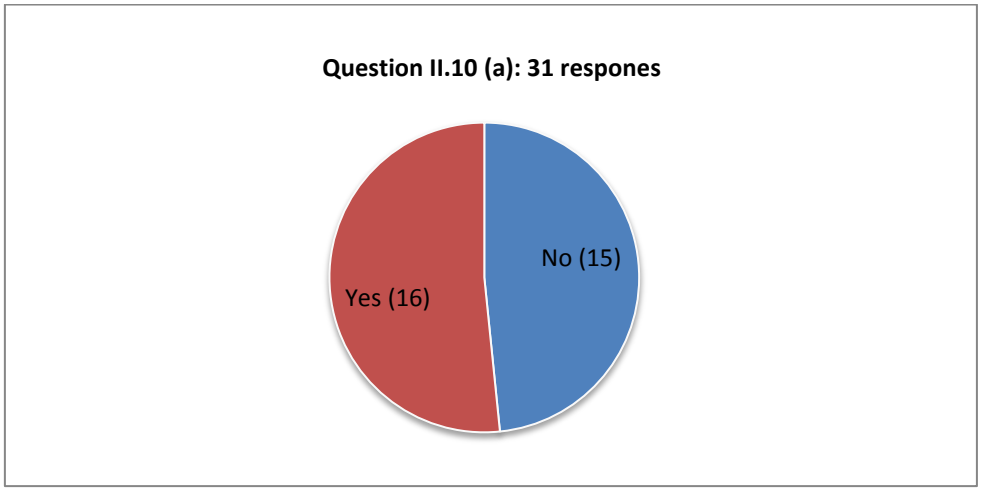


B. Experience in using the guidance in 2013–2015

Question II.10

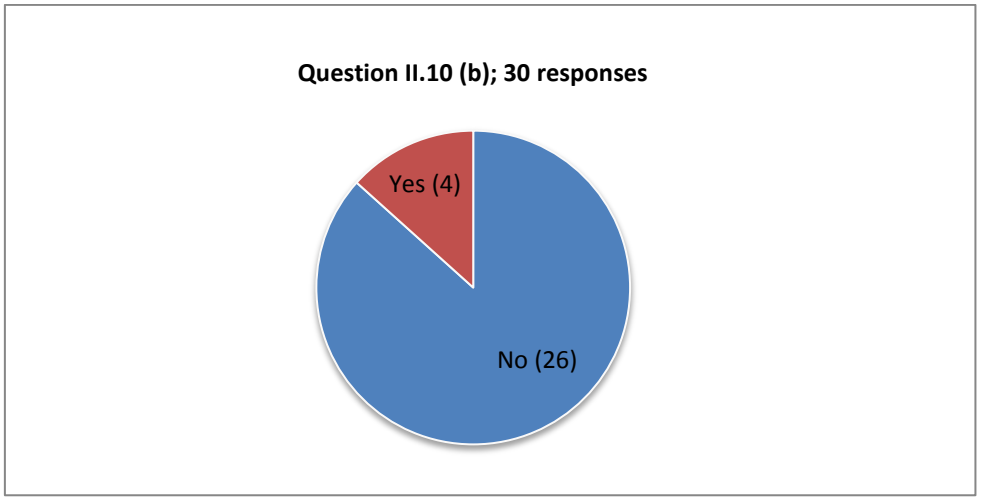
79. Just over half of the Parties have used the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context. Slovenia reports this guidance is practical and supports full implementation and capacity-building. Poland sometimes uses this guidance, but finds that other Parties are not familiar with it and it is therefore hard to apply it mutually. Several Parties use this guidance only at particular stages: Latvia uses it at the notification stage, while Lithuania uses it most often with respect to finance, translation and explaining the "polluter pays" principle to developers.

Figure 34
Has your country used in practice the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7)?



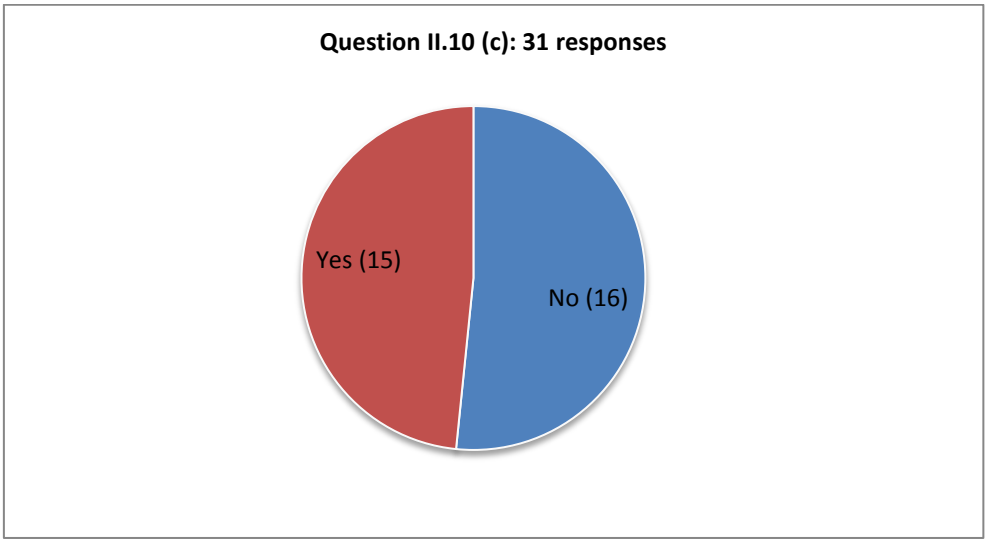
80. Very few Parties (Bulgaria, Finland, Romania and Ukraine) have used the Guidance on Subregional Cooperation.

Figure 35
Has your country used in practice the Guidance on Subregional Cooperation (ECE/MP.EIA/6, annex V, appendix)?



81. Just under half of the Parties have used the Guidance on the Practical Application of the Espoo Convention. Switzerland used it to seek information on which legislation (that of the affected Party or of the Party of origin) is to be used to assess the impact of a project, and failed to find the answer. Azerbaijan used the Guidance to prepare its draft EIA law, and Sweden found the guidance satisfactory. Switzerland suggests this guidance should be updated, taking into account the opinions of the Implementation Committee.

Figure 36
Has your country used in practice the Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8)?



82. Parties' responses to questions about the three sets of guidance were striking, in that only slightly more than half reported using the public participation guidance and slightly less than half used the guidance on practical application. The guidance on subregional cooperation has virtually fallen into disuse, with only four Parties having consulted it in the period under consideration. Very little detail was given on experience in using any of the

guidance. While Slovenia sees no need for new guidelines, Switzerland says the guidance is useful but should be updated based on the needs of the Parties and taking into account the recommendations of the Implementation Committee.

C. Clarity of the Convention

Question II.11

83. Nearly three quarters of the Parties reported no difficulties because of a lack of clarity in the Convention's provisions. Among Parties that mentioned difficulties, the following were mentioned as lacking clarity: the deadline for responses; when a project or activity falls within the scope of the Convention, in particular if there is a modification or (major) change (Austria); the language and translation regime (Austria, Germany, Switzerland and Ukraine); ineffective and unclear procedure for consultation under article 5 (Germany and Poland); the meaning of "individually or jointly take appropriate and effective measures" in article 2, paragraph 1 (Poland); the difference between "directly to the competent authority of the Party of origin" and "through the Party of origin" in article 3, paragraph 8 (Poland); the meaning of "final decision" for the purposes of article 6 (Poland); the relationship between article 2, paragraph 6, article 3, paragraph 8, article 4, paragraph 2, and article 5 insofar as those provisions relate to public participation and/or consultations (Switzerland); and with respect to time frames for carrying out the procedures (Ukraine).

Figure 37
Has your country had difficulties implementing the procedures defined in the Convention, either as Party of origin or as affected Party, because of a lack of clarity of the provisions?