

Questionnaire for the

REPORT OF **UKRAINE ON THE IMPLEMENTATION
OF THE CONVENTION ON ENVIRONMENTAL
IMPACT ASSESSMENT IN A TRANSBOUNDARY
CONTEXT**

in the period 2010–2012

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Date on which report was completed: 28.03.2013

PART ONE – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

In this part, please provide the information requested, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should describe the framework for your country's implementation, and not experience in the application of the Convention.

Article 2

General Provisions

1. List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2, para. 2).

The most important regulatory acts that regulate the implementation of the environmental impact assessment include:

- Law of Ukraine “On Ratification of the Convention on Environmental Impact Assessment in a Transboundary Context” of March 19, 1999 № 534-XIV (Bulletin of the Supreme Council of Ukraine. – 1999. - № 18. – Art. 153);
- Law of Ukraine “On the Protection of the Natural Environment” of June 25, 1991 № 1264-XII (Bulletin of the Supreme Council of Ukraine. – 1995. - № 8. – Art. 54);
- Law of Ukraine “On Environmental Expertise” of February 9, 1995 № 45/95-BP (Bulletin of the Supreme Council of Ukraine. – 1995. - № 8. – Art. 54);
- Law of Ukraine “On Appeals of Citizens” of October 2, 1996 № 393/96-BP (Bulletin of the Supreme Council of Ukraine. – 1996. - № 47. – Art. 256).
- The Code of Administrative Court Procedure of Ukraine of July 6, 2005 № 2747-IV (Official Bulletin of Ukraine. – 2005. - № 35-37. – Art. 446).
- Law of Ukraine “On the Licensing System in the sphere of Economic Activity” of September 6, 2005 № 2806-IV (Official Bulletin of Ukraine. – 2005. - № 39. – Art. 2429).
- Law of Ukraine “On Regulation of the Urban Development Activity” of February 2, 2011 № 3038-VI (Official Bulletin of Ukraine. – 2011. - № 18. – Art. 735).
- Resolution of the Cabinet of Ministers of Ukraine “On List of Activities and Objects of High Environmental Hazard” of July 27, 1995 № 554.
- Resolution of the Cabinet of Ministers of Ukraine “On Establishment of Inter-Agency Co-Ordination Council on Issues Related to the Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context” of April 2, 2008 № 295.
- Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure of Public Involvement in the Discussion of Issues Related to the Decisions that are Likely to Have Adverse Environmental Impact” of June 29.06.2011 № 771 (Official Bulletin of Ukraine. – 2011. - № 55. – Art. 2210).
- State building norms SBN A.2.2-1-2003 “Composition and Content of the environmental impact assessment (EIA) materials in designing and construction of enterprises, buildings and structures”, approved by the Order of the State Committee for Construction, Architecture and Housing Policy of Ukraine (Gosstroy of Ukraine) of December 15, 2003 № 214.
- Order of the Ministry of Ecology and Natural Resources of Ukraine (MENR of Ukraine) “On Approval of the Regulation on Public Participation in Decision-Making in the field of

the Environmental Protection” of December 18, 2003 № 168 (Official Bulletin of Ukraine. – 2004. - № 6. – Art. 357).

Indicate any further measures to implement the provisions of the Convention that are planned for the near future.

Aimed at the establishment of a legal basis for the due implementation of the Convention provisions the Ukrainian Party has drafted the Law of Ukraine “On amendments to several laws of Ukraine regarding the implementation of the provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters”. Currently, this draft is being considered by central executive bodies. Ukraine has plans to continue the work on the preparation and adoption of this draft law.

3. List the different authorities that are named responsible for the implementation of the EIA procedure in the transboundary context and domestically.

In line with the ‘Procedure for Participation of the Central Executive Bodies in Activity of the international Organizations, which Ukraine is the Member to’, adopted by the Resolution of the Cabinet of Ministers of Ukraine of September 13, 2002 № 1371, the following authorities are responsible for the cooperation with the meeting of Parties of the Espoo Convention: Ministry of Ecology and Natural Resources of Ukraine (hereinafter – MENR), Ministry of Foreign Affairs of Ukraine (hereinafter – MFA), Ministry of Infrastructure of Ukraine (hereinafter – MI), Ministry of Energy and Coal Industry of Ukraine (hereinafter – MECI), State Service of Ukraine for Emergencies, Ministry of Economic Development and Trade of Ukraine, State Agency of Ukraine for State Corporate Rights and Property Management, Ministry of Regional Development, Construction and Housing-and-Communal Services of Ukraine (hereafter - Minregion), Ministry of Justice of Ukraine.

The EIA procedure issues are under the competence of the Minregion and MENR. In addition, the MECI is involved into the EIA in a transboundary context procedure on issues related to energy object construction, and MI – in case of implementation of such projects as construction of motor-, water- and railways.

As long as the submission of official documentation between the states is made through the diplomatic channels only, MFA is also involved into the EIA in a transboundary context procedure.

4. Is there an authority in your country that collects information on all the transboundary EIA cases? If so, please name it.

Ministry of Ecology and Natural Resources of Ukraine.

5. Does your country have special provisions for transboundary EIA procedures for joint cross-border projects (e.g., roads, pipelines)?

No, there are no such provisions.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE CONVENTION

6. *Is appendix I to the Convention transposed fully into your country's national legislation? Please describe any differences between the national list and appendix I to the Convention.*

The activity included into the Appendix I to the Espoo Convention that is not covered by the Ukraine legislation in force (not included into the List of Activities and Objects of High Environmental Hazard) is deforestation of large areas (paragraph 17 of the Appendix I to the Espoo Convention).

It should be taken into account that based on the provisions of the Constitution of Ukraine the Espoo Convention has direct affect in Ukraine and itself establishes rights and obligations for physical and legal persons. Therefore, when deforestation is proposed at large areas, the proponent should participate in the EIA in a transboundary context procedure. Non-conducting of the transboundary environmental impact assessment in this case, would constitute a violation of the current legislation of Ukraine, in view of what the body authorized to issue a permit, should reject its issuing.

7. *Does your country's legislation already cover fully the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7)?*

No. There are activities envisaged by the paragraphs 17, 20 (partially), 21, and 22 of the Appendix I to the Espoo Convention that are still uncovered by the legislation in force.

PUBLIC PARTICIPATION

8. *How does your country, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your country's public as required in article 2, paragraph 6?*

The equivalent opportunity for the public in the affected Party is ensured by the provision to this Party of EIA documentation in a language understandable for the public of the affected Party, or in English, as well as by providing the sufficient time for the preparation of the comments and proposals of the public and state authorities of the affected Party. After receiving the EIA documentation the affected Party, if necessary, shall translate it, and disseminate it among the public and state authorities of the affected Party, shall collect the comments and proposals of the public and state authorities and provide them to the Party of origin.

The Party of origin after receiving the comments and proposals of the affected Party shall, if necessary, translate them, and take these comments into the consideration when making the final decision.

After the final decision is made the Party of origin shall furnish to the affected Party this decision translated into Russian or English.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

9. *Describe how your country determines when to send the notification to the affected Party, which is to occur "as early as possible as and no later than when informing its own public".*

The EIA materials shall be prepared by the proponent of the proposed activity. The proponent should apply to the MENR to conduct EIA in a transboundary context prior to the submission of the EIA materials as part of project documentation for construction. The MENR shall initiate this procedure. After the comments and proposals of the affected Party are received, the MENR provide these materials to the proponent, who shall provide them with the project documentation for the expertise (review) of the project documentation for construction.

In case in the course of the expertise of the project documentation for construction it would be identified that the object is subject for the EIA in a transboundary context, and this procedure was not conducted, the conclusion of the expertise of the documentation for construction will be negative due to the fact that the project documentation for construction does not meet the requirements of the legislation in force. This circumstance is the basis for denial in permitting the construction of the relevant object (article 37 part 4 paragraph 2 of the Law of Ukraine “On Regulation of the Urban Development Activity”). Without this permit the proponent is prohibited from commencement of the construction works.

10. *Indicate whether and how the following provisions are reflected in your national legislation:*

- a. *The stage in the EIA procedure when your country usually notifies the affected Party (art. 3.1);*

The Ukrainian legislation does not determine the stage in the EIA procedure when the notification of the affected Party should take place. In practice, this notification is made at the design stage of the EIA materials as part of the feasibility study (hereinafter – FS).

- b. *The format for notification. Please indicate whether this is the format as decided by the first meeting of the Parties in its decision I/4 (ECE /MP.EIA/2, annex IV, appendix). If not, does your country use a format of its own (in which case, please attach a copy of it)?*

Ukraine is using the format for notification, adopted at the 1st meeting of the Parties in its decision I/4 (ECE/MP.EIA/2, Annex IV, Appendix).

- c. *The time frame for the response to the notification from the affected Party (cf. art. 3, para. 3, “within the time specified in the notification”), the consequence if an affected Party does not comply with the time frame, and the possibility of extending a deadline;*

The time-frame for the response to the notification depends on difficulty of the project. The Ukrainian Party considers as the reasonable the time-frame from 1.5 through 4 months.

In case the affected Party did not response to the notification, the Ukrainian Party will take measures to identify the reasons for lacking of this response (is not receiving of the notification by the affected Party the reason of no response or lack of interest by the affected Party to the proposed activity is the reason of no response). If these efforts would failure, the Ukrainian Party will consider this affected Party as not responded within the time specified by the Article 3 paragraph 4 of the Espoo Convention with all the ensuing consequences stipulated by this paragraph.

- d. *The request for information from the affected Party (art. 3 para. 6), necessary for the preparation of the EIA documentation;*

The Ukrainian legislation does not have particular legal procedure for the request for information from the affected Party necessary for the preparation of the EIA documentation. However, if the proponent would ask the MENR to request the affected Party to provide the information on the characteristics of the state of the environment, MENR is obliged to request the affected Party with the relevant letter. Otherwise the action (or rather inaction) of MENR would not meet the requirement to “utilize the authority with the purpose, which the authorized body is provided with” arising from the provisions of Article 2 part 3 paragraph 2 of the Code of Administrative Procedure of Ukraine (hereinafter – CAPU). The above mentioned inaction of the MENR would also not meet the requirement that an “action (inaction) shall be performed reasonably, *i.e.* taking into consideration all circumstances that are of importance for performing an action”, arising from the provisions of Article 2 part 3 paragraph 3 of the CAPU.

- e. *How your country cooperates with the authorities of the affected Party on public participation (art. 3, para. 8);*

The Part of origin shall provide the EIA and other necessary materials in Russian or English languages. The affected Party shall ensure the opportunity for the public that is likely to be affected by the proposed activity to familiarize with this documentation. If the affected Party is not a Russian or English speaking, the affected Party shall also translate the EIA materials to the language understandable for the public likely to be affected.

The state bodies of the affected Party shall collect the comments and proposals of the public and state authorities of the affected Party, translate them into the Russian or English and submit these comments and proposals to the Party of origin. The latter shall examine these comments and proposals and, after the consultations envisaged by the Article 15 of the Espoo Convention, take them into consideration when making the final decision. After the final decision was made the Party of origin shall furnish it in English or Russian to the affected Party, which in its turn shall ensure the opportunity to familiarize with the text of this decision for the public of the affected Party.

In case the Parties would make a decision on public hearings, the Party of origin shall ensure participation of the representatives of the proponent and specialists in the public hearings. The affected Party, as a rule, shall provide the venue for the public hearings.

The EIA procedure road-map is an important tool for cooperation of the Parties. This document, as a rule, shall describe the procedural actions, which either of the Parties shall perform to ensure the EIA procedure implementation. The road-map might also specify the issues of EIA materials translation, issues related to financing of various activities and other issues.

- f. *When and how the public in the affected Party is notified (what kinds of media, etc., are usually used). What is normally the content of the public notification?*

Following the established practice the notification is furnished to the responsible person of the affected Party, who notifies the concerned public of the affected Party. In this case the notification shall be prepared using the format for the notification as decided by the first meeting of the Parties in its decision I/4 (ECE/MP.EIA/2, Annex IV).

g. When and how the public in the Party of origin is notified (what kinds of media, etc. are usually used). What is normally the content of the public notification?

In case Ukraine acts as the party of origin, the concerned public in Ukraine shall be notified through the publication of the statement of intent in printed media (paragraph 1.6 of SBN A.2.2-1-2003). The mass media means that provide for a reasonable opportunity for the concerned public to familiarize with the text of the statement of intent shall be used to this end (paragraph 9 of the Procedure of Public Involvement in the Discussion of Issues Related to the Decisions that are Likely to Have Environmental Impact). In addition, several local councils shall make the statement of intent publicly available on their official websites.

The content of the statement of intent shall be identified pursuant to the Annex «Г» to SBN A.2.2-1-2003. It shall include: information on investor (name, postal and electronic addresses); information on the construction site (track) location (options to be provided); information on activity (object); technical and technological data; characteristics of socio-economic needs of the proposed activity; characteristic of needs in resources under the construction and operation of the relevant object; information on transport arrangements (in the course of object construction and operation); information on environmental and other limitations of the proposed activity for each option; information on the necessary environmental-engineering preparation and protection of area for each option; information on likely environmental impact of the proposed activity (in the course of object construction and operation); information on production wastes and possibility for their re-use, recycling, neutralization, or safe disposal of; information on EIA implementation scope; information on public participation.

h. Whether the notification to the public of the affected Party has the same content as the notification to your country's public. If not, describe why not.

The notification to the public in the affected Party has not the same content as the notification to the public in Ukraine. The Ukrainian public shall be notified pursuant to the requirements of the Ukrainian legislation, while the public of the affected Party shall be notified according to the requirements of the affected Party legislation. The mentioned requirements are not always match.

11. Does your country make use of contact points for the purposes of notification, as decided at the first meeting of Parties (ECE/MP.EIA/2, annex III, decision I/3), and as listed on the Convention website (http://www.unece.org/env/eia/points_of_contact.htm)?

Yes, it makes use.

QUESTIONS TO AFFECTED PARTY

12. Indicate whether and how the following provisions are reflected in your national legislation:

a. How your country decides whether or not to participate in the EIA procedure (art. 3, para. 3)?

The Ukrainian Party shall respond to the notification on participation in the transboundary EIA procedure within the time specified by the Party of origin. Separately, the Ukrainian legislation does not provide for the obligation to respond to a notification within in the above time. At the same time, the provisions of Article 2 part 3 paragraph 5 of the CAPU provides for the responsibility of all executive bodies and officials to act *bona fide*. The body or official responsible for the Convention implementation, which without valid reasons did not comply with the timing specified in the Article 3 paragraph 3 of the Espoo Convention, will be considered as the one that did not comply with the responsibility stipulated in the Article 2 part 3 paragraph 5 of the CAPU. In view of the above, a separate binding of an obligation to respond to a notification on participation in the EIA in a transboundary context procedure seems to be inexpedient.

b. The request from the Party of origin for information (art. 3, para. 6), necessary for the preparation of the EIA documentation;

The Ukrainian legislation does not directly fix such a requirement. At the same time, there is a danger that failure in providing this information may result in the EIA errors and, ultimately, in a lack of measures to mitigate or eliminate the adverse impact of a proposed activity on the environment within the jurisdiction of Ukraine. With not providing the information on the state of the environment that is likely to be impacted by the proposed activity the executive body, which has the ability for providing such information, would be considered as breached the requirement of the Article 2 part 3 paragraph 5 of the CAPU stipulating for the responsibility to act *bona fide*.

c. How your country cooperates with the authorities of the Party of origin on public participation (art. 3, para. 8);

The state body of the Party of origin shall furnish the notification on the commencement of the transboundary EIA procedure. The Ukrainian Party shall respond to this notification within the time specified by the Party of origin. Thereafter, the Party of origin shall provide the Ukrainian Party with the materials on the transboundary environmental impact assessment through the diplomatic channels. In parallel to this, the Party of origin shall provide the Ukrainian Party with the electronic copy of the transboundary EIA materials. The Ukrainian Party shall publish these materials on the official MENR website to ensure the opportunity for public to familiarize with them.

After the comments and proposals from the public are collected, the Ukrainian Party shall translate them into English or Russian and furnish to the Party of origin.

After the final decision is made the Party of origin shall provide the Ukrainian Party with it. The latter shall aware public on this decision after translating it into Ukrainian (if necessary).

d. When and how the public is notified (e.g., what kinds of media, etc., are usually used).

Immediately after receiving the transboundary EIA materials from the party of origin, the Ukrainian Party shall publish these materials on its official website.

Article 4

Preparation of the environmental impact assessment documentation

QUESTIONS TO PARTY OF ORIGIN

13. *Indicate the legal requirements in your country, if any, related to:*

a. *The content of the EIA documentation (art. 4, para. 1; appendix II);*

Pursuant to the paragraph 2.1 of SBN A.2.2-1-2003 the EIA documentation shall include:

- Information on physical and geographical features of the area and site (track) of construction of the object of design;
- General characteristic of object of design;
- Assessment of the proposed activity impact on the natural environment (including: climate and microclimate, air environment, geological environment, water environment, soils, flora and fauna, protected objects);
- Assessment of the proposed activity impact on the social environment;
- Assessment of the proposed activity impact on the technogenic environment;
- Information on the integrated measures to provide for the regulatory state of the environment and its safety;
- Assessment of environmental impact during the construction.

b. *The procedures for determining the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4, para. 1);*

The Ukrainian legislation does not stipulate for such procedure.

c. *The identification of “reasonable alternatives” in accordance with appendix II, paragraph (b);*

The proponent under the identification of the alternative should take into consideration all circumstances affecting the choice of alternative. The selected alternative should represent the result of the best balance between the adverse consequences for the rights, freedoms of various subjects and objectives of the final decision. If the alternative would not meet these requirements the state body that make the final decision should reject the adoption of the positive final decision. In case the body authorized to make the final decision would not make it, the administrative court would have grounds for cancellation of such a decision (Article 2 part 3 paragraphs 3 and 8 of the CAPU).

d. *The procedures and format for providing the EIA documentation domestically;*

The procedures for providing the documentation. In accordance with the Article 31 part 1 of the Law of Ukraine “On Regulation of the Urban Development Activity” the project documentation for construction of objects with high environmental hazard, as well as objects for the environmental impact assessment in a transboundary context, shall include the EIA materials. The above documents shall be submitted by the proponent to the expert organizations for expertise (review) of the construction projects.

Requirements for the format of EIA documentation. The requirements for the content of the EIA materials are provided in the paragraphs 2.1-2.48 of SBN A.2.2-1-2003. For more details please refer to the response for question 13(a).

- e. *The procedures and format for providing the EIA documentation to the affected Party. If there is a difference between the procedures and format domestically and for the affected Party, please explain;*

There is no separate procedure for the provision of the EIA documentation to the affected Party stipulated by the Ukrainian legislation in force. The regular procedure for submitting the documentation to the foreign states is used. Moreover, to shorten the time for receiving of the EIA documentation by the affected Party the copies of the documentation are also submitted via e-mail.

In line with the paragraph 1.6 of SBN A.2.2-1-2003 the proponent shall prepare the EIA materials. These materials shall correspond to the acting legislation. One of the requirements of the legislation for the content of the EIA documentation is the requirement to provide the EIA materials in language accessible for the concerned public in the affected Party and in amount necessary to ensure the transboundary EIA procedure. Based on this the MENR of Ukraine requires to provide the materials necessary for the procedure of the EIA in a transboundary context. In case these requirements were not met the activity of the proponent might be limited or terminated. Decision on limitation or termination of economic activity shall be made by the state environmental inspection. The procedure for these decisions making is adopted by the Resolution of the Verkhovna Rada of Ukraine (parliament) of October 29, 1992 № 2751-XII.

- f. *The procedures for the examination of, and the deadlines for comments on, the EIA documentation domestically, and how the comments submitted domestically are addressed;*

This procedure shall be determined with the several legal documents. The proponent of the proposed activity shall publish the statement of intent (paragraph 1.6 of SBN A.2.2-1-2003); proponent shall prepare the EIA documentation (paragraph 1.6 of SBN A.2.2-1-2003); executive committees of local councils or regional administrations shall determine the form and timing for public discussions (hearings) of the EIA materials (this timing shall not be less than 1 month) (paragraph 2.2 of the Regulation for Public Participation in Making Decisions in the sphere of Environmental Protection, adopted by the Order of the MENR of December 18, 2003 № 168 (hereinafter – Regulation for Public Participation)); when making the final decision the executive body shall take into the consideration the comments and proposals of the public (Article 2 part 3 paragraphs 3 and 8 of CAPU).

- g. *The procedures for the examination of, and the deadlines for comments on, the EIA documentation from the affected Party, and how the comments submitted by the affected Party are addressed;*

There is no separate procedure for the examination of comments to the EIA documentation from the affected Parties in Ukraine. The following procedure had been developed in practice: in case the comments were received from the affected Parties the MENR shall provide these comments and proposals to the state authority that will make the final decision or to the body responsible for the preparation of the final decision. For instance, in case of construction of the nuclear power plant the body making the final decision will be the Verkhovna Rada of Ukraine. The body responsible for the preparation of the corresponding draft law in this case will be MECI. Therefore, the comments and proposals of the affected Parties will be submitted by the MENR to MECI. If, taking into consideration the comments and

proposals, the revision of the project documentation for construction is required, the MECI shall request the proponent to make revisions to the project documentation for construction. At the same time, the MECI independently or jointly with the proponent shall draft the response to the affected Party and provide it to the MENR to submit to the affected Party.

h. The procedures for public hearings domestically;

The body authorized to make the final decision shall determine the date and venue for the public hearings and notify the public and the state bodies not later than 30 days prior to the hearings (paragraph 2.6 of the Regulation on Public Participation). The paragraph 2.7 of the Regulation on Public Participation determines the content of the aforementioned notification.

The public hearings shall begin with the presentation of the project proponent. The content of this presentation is determined in the paragraph 2.8 of the Regulation on Public Participation. The public has the right to provide the comments and proposals orally or in written in the course of the hearings. The course of public hearings is recorded in the minutes (paragraph 2.11 of the Regulation on Public Participation).

When making the final decision the authorized body shall duly account the proposals and comments of the public and state bodies (paragraph 2.11 of the Regulation on Public Participation, Article 2 part 3 paragraphs 3 and 8 of CAPU).

i. The procedures for public hearings held on the territory of the affected Party.

The public hearings procedure in the affected Party is not regulated by the Ukrainian legislation. In practice the Ukrainian Party proceeds from the fact that the public hearings shall be conducted with the availability of the comments from the public and necessary participation of the affected Party. Lack of cooperation from the affected Party makes the public hearings practically impossible in its territory.

QUESTIONS TO AFFECTED PARTY

14. Indicate the legal requirements in your country, if any, related to:

a. The procedures and deadlines for comments on the EIA documentation to be submitted to the Party of origin;

The Ukrainian legislation does not provide for such procedure. In practice the following procedure is used: after the EIA documentation is received from the Party of origin, MENRR shall publish it on its official website to ensure the opportunity for the public to provide the comments and proposals. At the same time MENR shall submit letters to the central executive bodies, deputy heads of which are members of the Inter-Agency Co-Ordination Council on Issues Related to the Implementation of the Espoo Convention, with the request to examine the received EIA documentation and provide their comments and proposals. Moreover, the request to examine the EIA documentation shall be submitted to the Academy of Sciences of Ukraine and Ministry of Health of Ukraine.

The timing for examination of the EIA documentation shall be determined taking into consideration the time specified by the Party of origin. After the comments and

proposals are received from the public and aforementioned central executive bodies the MENR shall furnish the comments and proposals to the Party of origin.

- b. The procedures for public participation in the review of the EIA documentation domestically, and the authority responsible for the execution of the aforementioned procedures;*

After the EIA materials are received the MENR shall publish them on its official website. In case of availability of comments from the public and request for the public hearings the MENR shall conduct the hearings. After the comments and proposals from the public are collected, the MENR shall translate them into Russian or English and furnish them to the Party of origin.

- c. The procedures for the examination of the EIA documentation domestically.*

This procedure is determined by several legal documents. The proponent of the proposed activity shall publish the statement of intent (paragraph 1.6 of SBN A.2.2-1-2003); the proponent shall prepare the EIA documentation (paragraph 1.6 of SBN A.2.2-1-2003); executive committees of the local councils or regional administrations shall determine the form and timing for the public discussion of the EIA materials (this timing should not be less than 1 month) (paragraph 2.2. of the Regulation for Public Participation); when making the final decision the executive body shall take into the consideration the comments and proposals of the public (Article 2 part 3 paragraphs 3 and 8 of CAPU).

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

15. Indicate the legal requirements in your country, if any, related to the following provisions:

- a. The procedures for cooperation with the affected Party related to consultations;*

There is no such procedure in Ukraine.

- b. The stages, procedures and deadlines for consultations with the affected Party;*

There are no such requirements in Ukraine.

- c. The stages, procedures and deadlines for consultations domestically, and who participates in the consultations.*

There are no such requirements in Ukraine.

QUESTIONS TO AFFECTED PARTY

16. Indicate the legal requirements in your country, if any, related to the following provisions:

- a. The procedures for interaction with the Party of origin related to consultations;*

There is no such procedure in Ukraine.

- b. *The stages, procedures and deadlines for consultations domestically, and who participates in the consultations.*

There are no such requirements in Ukraine.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

17. *Indicate the legal requirements in your country, if any, related to the following provisions:*

- a. *The definition of "final decision" related to the implementation of the planned activity; the content of decisions; and procedures for their adoption;*

The Ukrainian legislation does not provide for the definition of the "final decision". Most frequently the permit for the construction works acts like the final decision. The specificities of the procedure for issuing this permit are determined with the Article 37 and others of the Law of Ukraine "On Regulation of the Urban Development Activity". The Resolution of the Cabinet of Ministers of Ukraine of April 13, 2011 № 466 adopted the form of the permit for the construction works. This permit provides for the right to conduct the construction works, and is issued by the State Architecture-Construction Inspection. The timing for issuing the permit is 10 work days.

The permit for the construction works shall be obtained only by subjects, who propose the construction of objects of IV and V categories of difficulty.

The permit for the construction works is issued based on the report of the expertise of the project documentation for construction. This report shall contain, *inter alia*, the assessment of sufficiency of measures to protect the environment and population health. The above expertise shall be carried out by the expert institutions, which meet the criteria adopted by the Resolution of the Cabinet of Ministers of Ukraine of May 11, 2011 № 560. In case of negative conclusion of this expertise the State Architecture-Construction Inspection should deny the issuing of the permit for the construction works. The denial in issuing of the permit for the construction will make the construction of the relevant object impossible. Thus, in case if the final decision is the permit for the construction works then the final decision is split between the report of the expertise of the project documentation for construction and permit for the construction works.

The Ukrainian legislation also provides for the requirements for other types of decisions, which could be considered as the "final decision" within the meaning of the Article 6 of the Espoo Convention. In particular, pursuant to the Article 2 of the Law of Ukraine "On the Procedure for Decision-Making on Location, Design, Construction of Nuclear Installations and Facilities for Radioactive Waste Management of the National Significance" of September 8, 2005 № 2861-IV (hereinafter – the Law № 2861-IV) the final decision with regards to the nuclear installations and facilities for radioactive waste management of the national significance shall be made in a form of the law of Ukraine, which particularly should contain the following information: the proposed location for the installation or facility; for the nuclear installations – number of reactors, their type and general characteristics etc.

Article 5 of the Law № 2861-IV provides for a list of documents that should be attached to the draft law on the location of the nuclear installation and facility for the radioactive waste management of the national significance. They include feasibility study. The procedure for the feasibility study is determined by the paragraph 5 of SBN A.2.2-3:2012 “Content and composition of the project documentation for construction”, adopted by the Order of Minregion of March 3, 2012 № 98. The EIA documentation shall be the integral part of the feasibility study. As the feasibility study (and the EIA documentation as part of it) is the document that is attached to the draft law on the location of the nuclear installation, the feasibility study development process should be the integral part of the decision-making on location of the nuclear installation.

b. For each type of activity listed in appendix I, identify what is regarded as the “final decision” to authorize or undertake a proposed activity (art. 6 in conjunction with art. 2, para. 3); also provide the term used in the national legislation in the original language. Do all projects listed in appendix I require such a decision?

For the types of activity listed in the Appendix I paragraphs 1, 4-11, 13, 14 (in part of on-site extraction and processing of metal ores or coal) and 16, as well as for thermal power stations and other combustion installations with a heat output of 300 megawatts or more (Appendix I paragraph 2), – the final decision is the permit for the construction works. In the national language: “дозвіл на виконання будівельних робіт”.

For the types of activity listed in the Appendix I paragraphs 2 (other than thermal power stations and other combustion installations with a heat output of 300 megawatts or more) and 3 – the final decision is the law of Ukraine on location, design, construction of nuclear installations and facilities for radioactive waste management of the national significance. In the national language: «Закон України про розміщення, проектування, будівництво ядерних установок» or, in case of facilities for radioactive waste management of the national significance – «Закон України про розміщення, проектування, будівництво об’єктів, призначених для поводження з радіоактивними відходами, які мають загальнодержавне значення».

For the types of activity listed in the Appendix I paragraph 12 – the final decision is the permit for special water use obtained with the special permit for subsoil use. In the national language: «дозвіл на спеціальне водокористування» и «спеціальний дозвіл на користування надрами».

For the types of activity listed in the Appendix I paragraphs 14 (in part of extraction and processing of metal ores or coal) and 15 – the final decision is the special permit for subsoil use. In the national language: «спеціальний дозвіл на користування надрами».

For the type of activity listed in the Appendix I paragraph 17 – the final decision is the felling permit if the deforestation of large areas is carried out within the main felling. In the national language: «лісорубний квиток». If the the deforestation of large areas is carried out within the sanitary clear-cuttings – the final decision will be the permit for the sanitary clear-cuttings. In the national language: «дозвіл на проведення санітарної суцільної рубки».

c. The procedures for informing of the "final decision" domestically and for the affected Party;

In case when the final decision is the law of Ukraine, the general procedure of public informing through its publication in the official printed media is applied. The Ukrainian laws shall be published within 15 days after their adoption and signing in the Official Bulletin of Ukraine, *Законы Украины в течение 15 дневного срока с момента их принятия и подписания подлежат опубликованию в Официальном вестнике Украины*, in the newspaper “Governmental Courier”, in the newspaper “Voice of Ukraine”, the newspaper “Vedomosti of the Verkhovna Rada of Ukraine”, in the information bulletin “Official Presidential Herald of Ukraine”. The laws of Ukraine come into force after 10 days from the date of their official publication, unless otherwise stipulated by the laws, but in any case not before the date of their publication in the official printed media (paragraph 4 of the Decree of the President of Ukraine “On the Procedure for Official Promulgation of Regulatory Legal Acts and their Entry into Force” of June 10, 1997 № 503/97).

Information on the permitting documents, constituting a final decision within the meaning of Article 6 part 1 of the Espoo Convention, is contained in the register of the permitting documents. Anyone could obtain information from this register through paying for the relevant services.

There is no separate procedure for informing of the affected Party in the Ukrainian legislation. The following procedure is used in practice: the final decision shall be translated into English or Russian and furnished via the diplomatic channels to the affected Party. At the same time the copy of this document is submitted via email.

d. 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)?

Yes, the mentioned comments and outcomes of the consultations are taken into consideration during the final decision making along with the comments from the state bodies and public of Ukraine (based on the provisions of the Article 2 part 3 of CAPU).

e. The opportunity to review the decision if, before the activity is implemented, additional information becomes available according to article 6, paragraph 3.

Yes, there is such an opportunity. This could be done by the body that has made the final decision. Pursuant to the Article 4-1 part 7 of the Law of Ukraine “On the Permitting System in the Sphere of Economic Activity” the laws could determine other grounds for annulling of permitting document, except as provided in this part. All final decisions, except the law of Ukraine, are permitting documents. Therefore, they could be annulled based on other grounds stipulated by the laws. Since the Espoo Convention has the highest legal force against the laws of Ukraine, the grounds for annulling of permitting documents determined by it will comply with the requirements of the Article 4-1 part 7 of the Law of Ukraine “On the Permitting System in the Sphere of Economic Activity”. In view of this, the provisions of the Article 6 part 3 of the Espoo Convention become the reason for annulling of permitting documents.

It is also possible to annul the decision in the court in case described in the question. In this case, the annulment of the final decision will act as the actions of the court to protect the rights of citizens with the relevant claim.

In case when the final decision is the law of Ukraine it could be reviewed in the course of the legislative procedure.

Article 7

Post-Project Analysis

18. Indicate the legal requirements in your country, if any, related to:

a. Post-project analysis (art. 7, para. 1);

There are no such legal requirements in Ukraine.

b. Procedures for informing of the results of post-project analysis.

There are no such legal requirements in Ukraine.

Article 8

Bilateral and multilateral agreements

19. Does your country have any bilateral or multilateral agreements based on the Convention (art. 8, appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.

In the reporting period Ukraine did not sign any bilateral or multilateral agreements based on the Espoo Convention. At the same time, such draft bilateral agreements with several states are under the negotiations.

20. Has your country established any supplementary points of contact pursuant to bilateral or multilateral agreements?

The supplementary points of contact were not established.

Article 9

Research programmes

21. Are you aware of any specific research in relation to the items mentioned in article 9 in your country? If so, describe it briefly.

The system of integrated environmental monitoring of the Danube delta was launched in Ukraine. It was established in connection with the Danube - Black Sea Deep-Water Navigation Canal construction and operation project. This system includes programmes for the environmental and engineering monitoring of the Danube delta. The objective is to study the impact of the Danube - Black Sea Deep-Water Navigation Canal construction and operation project on the Danube delta environment located in Ukraine and Romania.

In 2011 Ukraine, Romania and Moldova had commenced the implementation of the project "Joint environmental monitoring, assessment and exchange of information for integrated management of the Danube delta region" under the aegis of UNECE and the International Commission for the Protection of the Danube River. One of the project goals is the examination of the impact of the Danube - Black Sea Deep-Water Navigation Canal construction on the Danube delta environment.

Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment

22. If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?

Ukraine did not ratify the first amendment to the Convention. It is not possible to provide the concrete timing for the ratification.

23. *If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Ukraine did not ratify the second amendment to the Convention. It is not possible to provide the concrete timing for the ratification.

24. *If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?*

Ukraine did not ratify the Protocol on SEA. The draft Law of Ukraine on the ratification is developed and is under the agreement with the central executive bodies.

PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2010–2012

Please report on your country's practical experiences in applying the Convention (not your country's procedures described in part one), whether as Party of origin or affected Party. The focus here is on identifying good practices as well as difficulties Parties have encountered in applying the Convention in practice; and the goal is to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve its application.

Ukraine has initiated and participated in several transboundary EIA procedures during the specified period. Due to lack of the relevant bilateral agreements on the basis of the Espoo Convention, the biggest challenge in these procedures was the agreement of timing of the individual stages of EIA in a transboundary context.

CASES DURING THE PERIOD 2010–2012

25. *If your country's national administration has a list of transboundary EIA procedures that were under way during the reporting period, in which your country was Party of origin or affected Party, please list it.*

Yes, the state authorities have the information on such procedures.

Ukraine was the Party of origin in the project for construction and operation of the 3rd and 4th units at the Khmelnytsky nuclear power plant.

Ukraine was the affected Party in the following projects:

- "The interim spent nuclear fuel facility in Bohunice" (Slovakia);
- "The expansion of facility in Mochovce of the national repository system for low radioactive, medium radioactive waste and the construction of storage facilities for very low-level radioactive waste" (Slovakia);
- "Liquid RAW Final Treatment Facility in Javis, located close to Mochovce" (Slovakia);
- "Thermal power plant in Galati free zone" (Romania).

26. *Does your country object to the inclusion of the above list of transboundary EIA procedures in a compilation of such procedures to be made available on the website of the Convention? (Indicate “yes” if you object.)*

No objections.

27. *Provide information and explanations on the average duration of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

The average duration of of transboundary EIA procedures is 7-8 months. The greatest part of this time is taken by the preparation of comments and proposals by the affected Parties (from 4-6 months). Such duration could be explained by the necessity in translation of the EIA materials from English into the language of the affected Party, as well as the need to involve qualified experts to the examination of the EIA materials. Often, the officers of the respective state authorities do not have sufficient scientific knowledge for the consideration of these materials, and affected Parties should attract scientists specialized in the relevant field of knowledge. Involvement of these specialists or specialized institutions is connected with the necessity for tendering procedures.

The notification procedure, considering the use of additional electronic forms of information exchange takes relatively short time. In this case, after the notification is received in electronic form the responsible person of the affected Party is provided with the opportunity to work on a response to the notification before the latter is delivered through the diplomatic channels. Also the shortening of the notification procedure is taking place when the Party of origin is furnishing directly the EIA materials instead of the notification. In this case the EIA materials are acting as the notification and the EIA materials simultaneously. The stage of consultations pursuant to the Article 5 and informing on a final decision made takes little time. The accounting of comments and proposals of the affected Parties is included into the procedure for decision making and practically coincides with the national procedure for decision making.

EXPERIENCE IN THE TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE DURING THE PERIOD 2010–2012

28. *If your country has had practical experience in the transboundary EIA procedure during the reporting period, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

Yes. This experience was gained. The implementation of the Convention has very insignificantly impacted the reduction of a transboundary impact on the environment.

29. *Please share with other Parties your country’s experience of using the Convention in practice. In response to each of the questions below, either provide one or two practical examples or describe your country’s general experience. You might also include examples of lessons learned in order to help others:*

- a. *Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How does your country determine how much information to include in the EIA documentation?*

The assessment of the transboundary impact on the environment is covered by the separate section of the EIA materials. For instance, the “Assessment of the environmental impact” is the part of the feasibility study “The construction of the 3rd and 4th units of Khmelnitsky nuclear power plant” (volume 13 of it), a separate

part of which is the document “Assessment of transboundary transport under normal and emergency regimes”.

The EIA documentation for projects with the transboundary environmental impact should include the information required by the SBN A.2.2-1-2003 and Appendix II to the Espoo Convention.

- b. Translation is not addressed in the Convention. How has your country addressed the question of translation? What does your country usually translate? What difficulties has your country experienced relating to translation and interpretation, and what solutions has your country applied?*

When Ukraine was acting as the Party of origin, the translation issues were addressed as follows: if the affected Party was the state with the majority of population understanding Russian, the proponent was obliged to provide the EIA materials in Russian. These materials the MENR furnished to the affected Party through the diplomatic channels and e-mail.

If the affected Party was the state the majority of population in which does not understand Russian, the proponent was obliged to ensure the translation of the EIA materials into English. These materials were thereafter furnished to the affected Party.

The big difficulty in the Espoo Convention implementation was the fact that if Ukraine was the affected Party, the Party of origin was provided the EIA materials or final decision in English at best, while in some cases – in its national language. This resulted in that the EIA materials or final decision were made publicly available in a language, which is not understandable by the majority of the Ukrainian population, and the public participation procedure in the transboundary EIA was obtaining the features of mere formality. There was no such problem when the EIA materials were provided by the Party of origin in Russian.

- c. How has your country organized transboundary public participation in practice? As Party of origin, has your country organized public participation in affected Parties and, if so, how? Has your country experienced difficulties with the participation of its public or the public of another Party (e.g., have there been complaints from the public about the procedure)?*

The following procedure for ensuring the public participation has emerged in practice: when Ukraine was acting as the Party of origin, the Ukrainian Party provided the EIA materials to the affected Party. The affected Party independently disseminated these materials among the public and collected the comments and proposals from the public and state authorities of the affected Party. The affected Party had organized and conduct the public hearings, if necessary. In these cases the Ukrainian Party ensured the participation of the representatives of the proponent in the public hearings in the affected Party.

Difficulties, as a rule, were related to lack of information on what assistance or participation of the Ukrainian Party is required by the affected Parties for due ensuring of the participation. For instance, the EIA materials on the construction of the 3rd and 4th units of Khmel'nitsky NPP were provided to the Belarus Party on May 11, 2012. As of September 6, 2013 the Ukrainian Party did not receive any information on what assistance or participation of the Ukrainian Party is required by the Belarus Party to duly ensure the public participation in this project. Belarusian NGO “Ecodom” has repeatedly expressed complaints that the

Ukrainian party violated the requirements of the Espoo Convention by not conducting the public hearings in the Republic of Belarus on the above project.

- d. *Describe any difficulties that your country has encountered during consultations, for example over timing, language and the need for additional information. As an affected Party, have consultations under article 5 supported the prevention, reduction or control of possible significant transboundary environmental impacts?*

There are no difficulties.

- e. *Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public;*

The final decision was translated into Russian for Parties the majority of population in which understands Russian, and into English for the other affected Parties. This decision was provided to the body responsible for the implementation of the provisions of the Espoo Convention in the affected Parties so that these bodies ensure that the decision is communicated to the public in these countries.

- f. *Has your country carried out post-project analyses and, if so, on what kinds of project?*

Post-project analysis was made on the Danube - Black Sea Deep-Water Navigation Canal construction project (phase I)».

- g. *Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your country's experiences describing, for example, means of cooperation (e.g., contact points, joint bodies, bilateral agreements), institutional arrangements, and how practical matters are dealt with (e.g., translation, interpretation, transmission of documents, etc.);*

There are no such examples.

- h. *Name examples of good practice cases, whether complete cases or good practice elements (e.g., notification, consultation or public participation) within cases. Would your country like to introduce a case in the form of a Convention's "case study fact sheet"?*

There are no such examples.

- i. *Identify the most common means of applying the Convention (e.g., through focal points, joint bodies, multilateral agreements).*

To ensure the proper implementation of procedures stipulated by the Espoo Convention the road-map was used. The latter is the document that determines which Party and in what period should carry out any of the activities aimed at the implementation of the Espoo Convention. The same road-map determines in what language any of the Parties should submit the notification, transboundary EIA materials, comments on and proposals to the EIA materials, and the final decision.

CO-OPERATION BETWEEN PARTIES IN 2010–2012

30. *Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries? If so please specify.*

There are no such examples.

EXPERIENCE IN USING THE GUIDANCE IN 2010–2012

31. *Has your country used in practice the following guidance, adopted by the Meeting of the Parties and available online? Describe your country's experience with using these guidance documents and how they might be improved or supplemented.*

a. *Guidance on public participation in EIA in a transboundary context (ECE/MP.EIA/7);*

Yes.

b. *Guidance on subregional cooperation (ECE/MP.EIA/6, annex V, appendix);*

Yes.

c. *Guidelines on good practice and on bilateral and multilateral agreements (ECE/MP.EIA/6, annex IV, appendix).*

Yes.

The above guiding documents allow for more clear and integrated implementation of the provisions of the Espoo Convention, and organize and carry out in practice the procedures stipulated in it.

CLARITY OF THE CONVENTION

32. *Has your country had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear?*

The Ukrainian Party experienced some difficulties in implementing the provisions of the Espoo Convention, but these difficulties were not caused by lack of clarity of the provisions of the Convention.

AWARENESS OF THE CONVENTION

33. *Has your country undertaken activities to promote awareness of the Convention among stakeholders (e.g., the public, local authorities, consultants and experts, academics, investors)? If so, describe them.*

Ukraine has conducted the following activities to raise awareness of the Espoo Convention during the reporting period:

March 9, 2010 – The workshop for governmental officers to improve their skills in the practical implementation of the provisions of the Espoo Convention was organized in the MENR;

May 29-31, 2011 – The workshop for the representatives of the design and research institutions, as well as the governmental officials was held in Yalta, where the draft regulations developed by the MENR and aimed at improving the EIA procedure in Ukraine, including the procedure of the EIA in a transboundary context, were discussed;

September 13-14, 2011 - The workshop for the representatives of the governmental bodies was held in Yalta, where also the draft regulations developed by the MENR and

aimed at improving the EIA procedure in Ukraine, including the procedure of the EIA in a transboundary context, were discussed.

34. *Does your country see a need to improve the application of the Convention in your country and, if so, how does it intend to do so?*

Ukraine finds it necessary to improve the procedure for the EIA in a transboundary context. It is planned to implement through the adoption of the Law of Ukraine that will regulate the whole EIA procedure, and which will separately regulate the procedure for the transboundary EIA. Several alternative draft Laws are developed, and they are under the interagency agreement.

SUGGESTED IMPROVEMENTS TO THE REPORT

35. *Please provide suggestions for how this report may be improved.*

It is necessary to reduce the number of questions, while detail the remaining ones. To this end, it is important to select the most relevant questions.

The report would be more substantial if such questions as “is there a procedure...” would be substituted with the questions “how does your country implement...” certain procedural requirements. Very often the actions related to the implementation of the provisions of the Espoo Convention, are not particular procedures, but are part of other, more common procedures. Therefore, the representative of a Party may respond negatively to the question “whether there is a particular procedure...”, and the valuable experience of the Party in the implementation of the provisions of the Espoo Convention may remain undiscovered.

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