

Review of Implementation

of the Convention on
Environmental Impact Assessment
in a Transboundary Context
(2006–2009)



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**Review of Implementation
of the Convention on Environmental Impact
Assessment in a Transboundary Context
(2006–2009)**



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Preface

The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) was adopted in Espoo, Finland, on 25 February 1991 and entered into force on 10 September 1997. By mid-2010 there were 45 Parties to the Espoo Convention, as identified on the Convention's website (<http://www.unece.org/env/eia>). In 2001, the Parties adopted an amendment to the Convention allowing non-UNECE member States to become Parties.

The Espoo Convention is intended to help make development sustainable by promoting international cooperation in assessing the likely impact of a proposed activity on the environment. It applies, in particular, to activities that could damage the environment in other countries. Ultimately, the Espoo Convention is aimed at preventing, mitigating and monitoring such environmental damage.

The Espoo Convention ensures that explicit consideration is given to environmental factors well before the final decision is taken on activities with potential environmental impacts. It also ensures that the people living in areas likely to be affected by an adverse impact are told of the proposed activity. It provides an opportunity for these people to make comments or raise objections to the proposed activity and to participate in relevant environmental impact assessment procedures. It also ensures that the comments and objections made are transmitted to the competent authority and are taken into account in the final decision.

A Protocol on Strategic Environmental Assessment to the Espoo Convention was adopted on 21 May 2003 and entered into force on 11 July 2010; by mid-2011 it had 23 Parties. It applies the principles of the Espoo Convention to plans, programmes, policies and legislation.

At its second session, in 2001, the Meeting of the Parties to the Convention decided to undertake a review of the implementation of the Convention (MP.EIA/2001/11, annex). The review was undertaken on the basis of responses to a questionnaire circulated to all member States of the United Nations Economic Commission for Europe. At its third session, in 2004, the Meeting of the Parties adopted its first Review of Implementation (2003) (ECE/MP.EIA/6, annex I). It also decided to repeat the exercise, and so requested Parties to complete a revised and simplified questionnaire. The second Review of Implementation (2003–2005) was adopted by the Meeting at its fourth session (2008), and it was decided to continue with the next phase of the review (2006–2009).

At its fifth session, in 2011, the Meeting of the Parties, while regretting that one Party had not responded to the revised questionnaire, welcomed the reports by the Parties on their implementation, and adopted the Third Review of Implementation, as presented in this publication. It also noted its findings (presented in section 1.2 of the Review) and agreed again to repeat the review of implementation exercise for the sixth session of the Meeting of the Parties.

The Meeting of the Parties requested the Convention's Implementation Committee to take into account in its work general and specific compliance issues identified in this Third Review of Implementation. The Committee is responsible for the review of compliance by Parties with their obligations under the Convention. However, besides its importance to the Implementation Committee, this Review provides valuable information for Parties wishing to strengthen their implementation of the Convention, for States considering acceding to the Convention in their legal and administrative preparations, and for others wishing to understand better how the Convention is implemented in national legislation and applied in practice.

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Chapter 1

Introduction

This document presents the Third Review of Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context. It examines responses to a questionnaire on countries' implementation of the Convention in the period from 2006 to 2009. The review is a follow-up to the first and second reviews of implementation (respectively, ECE/MP.EIA/6, annex I, decision III/1; and ECE/MP.EIA/10, decision IV/1, annex).

This chapter describes the preparation of the review and introduces some of the strengths and weaknesses in the implementation of the Convention that are apparent from the responses to the questionnaire. Chapter 2 summarizes the responses to the questionnaire regarding the legal, administrative and other measures taken to implement articles 2–9 of the Convention, as well as practical experiences of applying the Convention.

1.1 Preparation of the review

The Meeting of the Parties decided at its fourth session to adopt a workplan that included an activity on compliance with and implementation of the Convention (ECE/MP.EIA/10, decision IV/7).

The workplan indicated that the Convention's Implementation Committee should prepare a questionnaire regarding the implementation of the Convention during the period from 2006 to 2009, on which the Convention's Working Group on Environmental Impact Assessment later agreed (ECE/MP.EIA/WG.1/2009/2, annex I). The Working Group also agreed that the questionnaire be distributed, and that the secretariat prepare the subsequent draft third review of implementation.

Completed questionnaires were received from 41 of the 44 States Parties to the Convention. The completed questionnaires are available on the Convention website¹ and are reflected in this review. The European Union (EU) is a Party to the Convention but, being a regional economic integration organization rather than a State, felt it inappropriate to complete the questionnaire, though it did provide information on recent research.

Albania did not submit a completed questionnaire. Bosnia and Herzegovina and Malta did not submit completed questionnaires either, but the Convention entered into force in the two countries after the reporting period 2006–2009.

1.2 Findings of the review

An analysis of the information provided in the completed questionnaires revealed a substantial increase in the application of the Convention, and the continuing development of national legislation and of bilateral and multilateral agreements to support its implementation. However, the analysis also revealed the following possible weaknesses or shortcomings in the Convention's implementation by Parties:

- Confusion about the respective functions of the point of contact for notification and the focal point for administrative matters;

¹ <http://www.unece.org/env/eia/welcome.html>.

- Appendix I (a list of activities covered by the Convention) not being reflected in full in reporting by some Parties;
- The frequent lack of a definition of “the public”, which might lead to a narrow interpretation in practice;
- A failure to recognize that article 3, paragraph 8, and article 4, paragraph 2, of the Convention state that the “concerned Parties” are responsible for ensuring opportunities for public participation;
- A failure to recognize that article 5 provides for transboundary consultations distinct from article 4, paragraph 2;
- A lack of experience in carrying out post-project analysis (art. 7);
- A continuing need for bilateral and multilateral agreements or other arrangements, particularly to address differences between Parties in: the content of the notification; language; time frames; how to proceed when there is no response to a notification or if there is disagreement about the need for notification; the interpretation of various terms; and the requirement for post-project analysis.

Chapter 2

Summary of responses to the questionnaire

Responses to questions in the questionnaire indicating a lack of experience have not been included below.

2.1 Article 2: General provisions

2.1.1 Domestic implementation of the Convention

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

Almost all respondents listed the general legal, administrative and other measures taken in their country to implement the provisions of the Convention, citing various acts, laws, codes, agreements, regulations, decrees, orders, resolutions, ordinances, instructions, circulars and guides, and referring to the Convention, the corresponding EU legislation and other treaties. The exceptions were Armenia and Azerbaijan, which were developing their legislation.

Question 2. Indicate any further measures to implement the provisions of the Convention that are planned for the near future.

Many Parties planned for the near future further measures to implement the provisions of the Convention or to extend its application to further activities (Armenia, Azerbaijan, Bulgaria, Belarus, Belgium, France, Germany, Hungary, Ireland, Kazakhstan, Kyrgyzstan, Lithuania, Montenegro, Poland, Republic of Moldova, Romania, Serbia, Slovakia, Switzerland, Ukraine).

2.1.2 Transboundary environmental impact assessment procedure

Question 3. Describe your country's national and transboundary environmental impact assessment (EIA) procedures and authorities (art. 2, para. 2):

Respondents described their country's national and transboundary environmental impact assessment (EIA) procedures and authorities.

(a) Describe the environmental impact assessment (EIA) procedure in your country and indicate which steps of the EIA procedure include public participation

Almost all respondents² described or summarized the EIA procedure in their country and indicated which steps of the EIA procedure included public participation. Besides the mandatory opportunity for commenting on the EIA documentation,³ a public hearing, as appropriate, and public information on many stages, respondents indicated other opportunities for public participation:

² I.e., 90 per cent or more of Parties reporting.

³ "EIA documentation" or sometimes "EIA report", "environmental impact study" or "EIA statement" in the completed questionnaires.

- In screening,⁴ by the seeking of public opinions in the screening decision (Hungary, Montenegro, Slovakia and, optionally, Spain) or by possibly reconsidering the screening decision in the light of representations by the public (Lithuania, Romania);
- By considering public opinions when deciding whether to participate as an affected Party (Czech Republic, Hungary, Republic of Moldova, Slovakia);
- An additional public hearing on the notice of the proposed activity (Armenia);
- In scoping⁵ (Belgium, Czech Republic, Denmark, Estonia, Finland, Lithuania, Montenegro, Netherlands, Norway, Portugal, Serbia, Slovakia, Spain, Sweden), though this was not provided for in all cases in some Parties (Austria, Canada), or might be limited to non-governmental organizations (NGOs) (Spain). In Latvia, the public might demand a public hearing at the scoping stage;
- By commenting on both draft and final EIA documentation (Kazakhstan, Latvia);
- By commenting on the expert review⁶ of the EIA documentation (Czech Republic, Serbia);
- An additional public hearing on the expert review of the EIA documentation (Armenia);
- Through access to justice on the final decision (Germany, Montenegro, Netherlands, among others).

(b) Describe how the different steps of the transboundary EIA procedure set out in the Convention fit into your country's national EIA procedure

Most respondents described how the different steps of the transboundary EIA procedure set out in the Convention fit into their country's national EIA procedure and legal provisions, or made reference to the legal provisions. Of particular interest were the replies by:

- Croatia, where the assessment according to national legislation was supplemented by an assessment under the Convention when an activity was likely to cause transboundary impact;
- Lithuania, where the national EIA law indicated that the Convention prevailed if provisions in the national law differed;
- The Republic of Moldova and Ukraine, where a transboundary EIA procedure had not been developed nationally and direct reference was made to the Convention.

(c) List the different authorities that are named responsible for different steps of the transboundary EIA procedure (notification, consultation between Parties, public participation, etc.). Also list the authorities responsible for the domestic EIA procedure, if they are different

Respondents identified the authority responsible for notification, frequently the ministry of environment, or a central environmental or planning department, committee or agency, and sometimes in cooperation with the ministry of foreign

⁴ "Screening" is the case-by-case determination of whether a proposed activity is subject to EIA or to notification.

⁵ "Scoping" is the case-by-case determination of the scope of the assessment.

⁶ "Expert review" by the competent authority of the EIA documentation and other information; sometimes "environmental impact expertise" or "opinion".

affairs. In many instances, the competent authority, often at a regional level but with support from the centre, was responsible for subsequent steps of the transboundary EIA procedure. In Austria, Belgium, Germany and Switzerland authorities at the level of the region (or Land or canton) often led the procedure from the start.

(d) Is there one authority in your country that collects information on all the transboundary EIA cases? If so, name it. If not, does your country intend to establish such an authority?

A clear majority⁷ of respondents identified a single authority in their country that collected information on all transboundary EIA cases. In most cases this was the ministry or department of environment; in others, a national environmental or planning agency or committee. However, in several Parties there was no such authority (e.g., Belgium, France, Luxembourg) and, in the case of Germany and Greece, there was no intention to establish such an authority, whereas the Republic of Moldova and Ukraine did intend doing so. In Greece and the Netherlands an authority gathered information on most cases; in Switzerland, on a more limited range of cases. In Norway, a renewed arrangement for collecting information was being discussed.

Question 4. Does your country have special provisions for joint cross-border projects (e.g., roads, pipelines)?

Very few Parties had special provisions for joint cross-border projects, the exceptions being Canada, which described a procedure; the Czech Republic, which referred to its legislation; Estonia and Finland, which referred to their bilateral agreement; Estonia, which also referred to its agreement with Latvia; and Kazakhstan, which referred to provisions with Azerbaijan and a guide for Central Asian countries. Switzerland had guidance on cross-border projects. Other respondents referred to ad hoc procedures (Bulgaria, France, Germany, Greece, Netherlands, Romania, Sweden), with Romania having used the same ad hoc procedure for two separate cases with Bulgaria. Italy and Poland suggested that provisions would be included in bilateral or multilateral agreements.

2.1.3 Identification of a proposed activity requiring environmental impact assessment under the Convention

Question 5. Is appendix I to the Convention transposed into your country's national legislation? Does your country's legislation already cover the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7), and if so, how? Please describe any differences between the national list and appendix I to the Convention. Please explain how your country interprets terms such as "large" and "major" used in appendix I (including in items 4, 8, 11, 14, 16, 17 and, as appropriate, 22).

The legislation of a clear majority of Parties already covered, or went beyond, the revised appendix I in the second amendment, whereas others had legislation based on the current appendix I (Canada, Liechtenstein, Republic of Moldova), which Armenia and Azerbaijan were planning to implement. Some respondents reported slight differences, for example with respect to wind farms (Finland, Hungary). Portugal and landlocked Kyrgyzstan, the Republic of Moldova, Slovakia and Switzerland all excluded offshore hydrocarbon production from their lists of activities. The deforestation of large areas was not covered by Belarus, or by Kyrgyzstan and the Republic of Moldova, where such an activity was not permitted. Belarus and Kyrgyzstan also excluded trading ports and also inland waterways and ports for inland-waterway traffic; the Republic of Moldova excluded installations for the enrichment of nuclear fuels, and the mining of metal ores and coal, as such

⁷ I.e., 70 per cent or more of Parties reporting.

activities were not found there. Ukraine made direct reference to the Convention, rather than include appendix I in national legislation.

Many Parties, including EU member States, but also Belarus, Kyrgyzstan, Montenegro, Norway, the Republic of Moldova and Switzerland, had numerical thresholds in their list of activities requiring EIA, thus providing an interpretation of terms such as “large” and “major” used in appendix I.

Question 6. Please describe:

(a) The legislation and, where appropriate, the procedures your country would apply to determine that an “activity”, or a change to an activity, falls within the scope of appendix I (art. 2, para. 3), or that an activity not listed should be treated as if it were (art. 2, para. 5):

Many respondents indicated case-by-case examination (screening) as the procedure to determine that an “activity”, or a change to an activity, fell within the scope of appendix I, or that an activity not listed should have been treated as if it were. Of particular interest were the replies by:

- Parties that had a first list of activities for which EIA was mandatory and a second list requiring screening (e.g., Austria, Estonia, Hungary, Ireland, Netherlands, Norway, Poland, Republic of Moldova, Serbia, Spain, Sweden, the former Yugoslav Republic of Macedonia);
- Italy, France, Lithuania, Slovenia and Switzerland, which carried out screening for a much wider range of listed projects;
- Denmark, Estonia, Finland, Germany, Luxembourg, Romania and Slovakia, which applied the Convention to any activity, whether or not listed, likely to have significant adverse transboundary impact;
- Greece, which discussed with potential affected Parties unlisted activities for which transboundary impact was nonetheless considered possible;
- The Netherlands, which noted that bilateral agreements triggered notification for activities close to the border, and Estonia and Latvia, which had an agreement that covered activities either close to the border or likely to impact on territory close to the border;
- Portugal, where the Ministers of Environment and of the sector concerned might jointly decide that any other activity could be subject to EIA and thus transboundary EIA, if appropriate;
- The United Kingdom of Great Britain and Northern Ireland, which would consider whether it was necessary to apply the Convention’s requirements by administrative means for a planned activity not listed.

The Czech Republic, Poland and the former Yugoslav Republic of Macedonia also applied the Convention if requested by an affected Party; Hungary had a similar requirement in situations where both concerned Parties were EU member States.

(b) How your country conducts transboundary EIA cooperation (through points of contact, through joint bodies or within bilateral or multilateral agreements)

Respondents indicated how their countries conducted transboundary EIA cooperation. In a clear majority of Parties, such cooperation was through, or mainly through, the points of contact (or focal points, the two terms often being confused). Some respondents also referred to joint bodies (Estonia, Finland, Germany, Portugal, Spain) and bilateral agreements (Estonia, Finland, Germany, Liechtenstein, Lithuania, Netherlands, Poland, Portugal, Slovakia, Spain, Ukraine). Armenia had notified via the secretariat.

(c) How a change to an activity is considered as a “major” change

To determine when a change to an activity was considered to be a “major” change, respondents presented a range of approaches, though Armenia and Azerbaijan lacked such a mechanism. For some, a change was major if the activity would reach the threshold specified for the activity to be automatically subject to EIA (Belarus, Czech Republic, Finland, Germany, Lithuania, Montenegro, Netherlands, Norway, Switzerland, Poland (from 2010), the former Yugoslav Republic of Macedonia). For others, or for changes that did not reach the threshold, a case-by-case examination was carried out (approximately half of the respondents), with some respondents referring to criteria. Some respondents provided percentage changes that would qualify as major (Austria, Kyrgyzstan, and Poland until 2010).

Slovenia, Spain and the United Kingdom reported a different approach with activities and changes to activities being treated the same. Sweden considered all changes to be major unless they were minor and without significant risk to health or the environment.

(d) How such an activity, or such a change to an activity, is considered “likely” to have a “significant” adverse transboundary impact (art. 2, paras. 3 and 5, and the Guidelines in appendix III)

To determine whether such an activity, or such a change to an activity, was considered “likely” to have a “significant” adverse transboundary impact, a clear majority of respondents referred to a case-by-case examination, with some referring to the use of criteria; in Spain and the United Kingdom the criteria were similar to those in appendix III. Canada reported a step-by-step screening procedure to assess, in turn, if activities were adverse, significant or likely to have transboundary impacts. France, Finland, Germany, Latvia, Sweden and the United Kingdom indicated the consultation of relevant authorities or experts, if and as appropriate; in the United Kingdom, NGO experts might also be consulted. Finland could consult the possibly affected Party if necessary. In addition, both the Netherlands and Norway indicated a precautionary approach, notifying even if unsure that a significant adverse transboundary impact was likely; the Netherlands also referred to reciprocity with its neighbours. Again, Armenia lacked a procedure for this determination.

2.1.4 Public participation

Question 7. Does your country have its own definition of “the public” in national legislation, compared to article 1 (x)? 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?

A majority of Parties had a definition of “the public” in national legislation that was either the same as or similar to that in article 1 (x) of the Convention, which followed the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, or that was their own definition. A minority had no definition (Azerbaijan, Belgium (Walloon Region), Czech Republic, Kyrgyzstan, Liechtenstein, Netherlands, Poland, Sweden, Switzerland), but in the Czech Republic, Estonia, Ireland, the Netherlands and Poland “the public” included “everyone”.

Each respondent went on to report how their country as the Party of origin, together with the affected Party, ensured that the opportunity given to the affected Party’s public was equivalent to the one given to their country’s public. Some respondents indicated a focus on information to facilitate public participation in the affected Party, such as: the early or simultaneous provision of documentation; its provision in paper and electronic formats and posted on the Party of origin’s websites; the

provision of a wide range of information on the proposed activity⁸ and the EIA, public participation and decision-making procedures; translation of key documentation; and information on public participation in the Party of origin, including upcoming public hearings. Several respondents suggested consultations between the concerned Parties.

However, many respondents indicated that, having provided the necessary information, it was ultimately the affected Party's responsibility to organize public participation in the affected Party; for Spain this was made explicit in one bilateral agreement. On ratifying the Convention, France had declared that: "The Convention implies that it is the responsibility of each Party to ensure the public distribution within its territory of the EIA documentation, inform the public and collect its comments, except where different bilateral arrangements apply". Nonetheless, some respondents made clear their willingness to participate in public hearings in the affected Party, accompanied as necessary by the proponent.⁹

2.2 Article 3: Notification

2.2.1 Questions to the Party of origin

Question 8. Describe how your country determines when to send the notification to the affected Party, which is to occur "as early as possible and no later than when informing its own public"? At what stage in the EIA procedure does your country usually notify the affected Party (art. 3, para. 1)?

Respondents indicated how their country as the Party of origin determined at what stage in the EIA procedure to notify the affected Party, besides "as early as possible and no later than when informing its own public". This could only occur once transboundary impact was determined. For some respondents this might already be possible at the scoping stage (Finland, Germany, Hungary, Lithuania, Netherlands, Norway, Poland, Spain, Sweden, Switzerland), but others recognized that it might not occur until the EIA documentation was received by the competent authority (e.g., France, Kyrgyzstan, Liechtenstein, Slovenia). In several Parties the notification might (also) occur during or as a result of screening (Croatia, Czech Republic, Denmark, Greece, Ireland, Latvia, Montenegro, Netherlands, Romania, Serbia, Slovakia, the former Yugoslav Republic of Macedonia). In Austria, Bulgaria and the United Kingdom, the notification might even occur before the application for consent.

In the Republic of Moldova, the notification followed determination of the proposed activity's location, capacity and funding, and preceded preparation of the EIA documentation. Belarus suggested that advance notice might be given even before a site had been chosen. The Czech Republic pointed out that the notification also occurred on receipt of a request for notification from an affected Party.

Question 9. Does your country provide any information to supplement that required by article 3, paragraph 2?

Many Parties provided, with the notification, information to supplement that required by article 3, paragraph 2, including: that specified in article 3, paragraph 5 (Bulgaria, Germany, Hungary, Poland), if available (Switzerland); information on the EIA procedure (art. 3, para. 5 (a)) (Czech Republic, Sweden); the proponent's application for consent (Hungary, Ireland); the screening report (Lithuania); and the draft or final scoping report¹⁰ (Finland, Hungary, Lithuania), if available

⁸ "Proposed activity" or "project".

⁹ "Proponent" or "developer" of an activity.

¹⁰ "Scoping report", "EIA programme", "guidelines", "preliminary assessment documentation" or "initial assessment documentation" (which include screening too) or "report of fact-finding procedure".

(Switzerland). Finland translated the scoping report, or relevant parts of it. Some respondents indicated that they also sent additional information if there was a particular need (Denmark, Greece, Luxembourg, Netherlands), whereas others sent all available useful information (Czech Republic, Estonia, France, Germany, Kyrgyzstan, Poland). France, Ireland and the former Yugoslav Republic of Macedonia also sent the EIA documentation, as did Austria, if it was available.

Question 10. Does your country use the format for notification (as decided by the first meeting of the Parties, decision I/4, in document ECE /MP.EIA/2)? If not, in what format does your country normally present the notification?

Approximately half of the Parties used, sometimes in a general way, the format for the notification as decided by the first session of the Meeting of the Parties (ECE/MP.EIA/2, decision I/4, appendix). Hungary considered that the format was not suitable for a procedure with public participation in scoping. France had no standard format and no formal procedure for the notification, whereas Germany used any form that fulfilled the requirements of the Convention, taking into account the guidelines. Denmark sent its domestic notification of intent, translated as necessary, plus a letter. Finland usually sent a letter together with information covered by the scoping report. Switzerland sent a simple letter with key information.

Question 11. Describe the criteria your country uses to determine the time frame for the response to the notification from the affected Party (art. 3, para. 3, “within the time specified in the notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how does your country react?

Respondents described the criteria that their country used to determine the time frame for the response to the notification from the affected Party. Many Parties based the time frame on their legislation, whereas others indicated that their domestic time frame did not apply (Cyprus), or there was no applicable legislation (Ireland, Montenegro, Poland, Republic of Moldova, Serbia, Sweden). Estonia, Poland, Portugal and Spain referred to bilateral agreements, several others to a case-by-case determination and Kyrgyzstan to subregional guidance on transboundary EIA; Sweden also discussed the time frame with the affected Party, Latvia with the proponent. Respondents indicated a range of two weeks to three months for the response, with an average of about one month. Some respondents made clear that the time frame began with the receipt by the affected Party of the notification.

If an affected Party did not comply with the time frame, some Parties would send a reminder or call (Austria, Croatia, France, Luxembourg, Poland, Sweden, Switzerland, United Kingdom). Romania simply extended the time frame by two weeks. If the affected Party asked for an extension, several Parties would usually agree (Belarus, Croatia, Denmark, Romania, Slovakia, Slovenia, Sweden), or did so if justified (Hungary, Kyrgyzstan, Lithuania, Republic of Moldova, Serbia, Ukraine); Ireland would always agree. Others were more hesitant, indicating that an extension was possible or a short extension was considered (Belgium, Czech Republic, France, Latvia, Montenegro, Netherlands, Portugal, Spain, Switzerland). Bulgaria, Finland, Germany and Poland normally granted an extension as long as it did not delay the administrative procedure. Estonia had some flexibility, but would inform the proponent.

Ultimately, however, the Party of origin had to decide what to do if there was no response within the deadline, whether or not extended. Several Parties would then consider that the affected Party did not wish to participate in the EIA procedure (Belarus, France, Greece, Montenegro, Netherlands, Portugal, Republic of Moldova, Slovenia, Switzerland), or might so decide (Germany, United Kingdom). Croatia understood a failure to respond as agreement with the proposed activity. However, Luxembourg and Sweden dealt with a late response in the same way as one that arrived in time, Norway and Spain indicated some flexibility, and Hungary suggested

that a long delay could mean that the opinion of the affected Party would not be taken into consideration.

Question 12. Describe when your country provides relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in article 3, paragraph 5. Already with the notification, or later in the procedure?

Most Parties generally or always provided relevant information regarding the EIA procedure and the proposed activity and its possible significant adverse transboundary impact already with the notification, whereas several others provided only part of this information. In Germany and Sweden this depended on the need for translation. The Republic of Moldova made clear that this information was only provided later.

Question 13. How does your country determine whether it should request information from the affected Party (art. 3, para. 6)? When does your country normally request information from the affected Party? What kind of information does your country normally request? How does your country determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (art. 3, para. 6)?

Many Parties did not have legal provisions on whether they should request information from the affected Party. Austria, France, Greece and Luxembourg made clear that this was the proponent’s responsibility; for Kyrgyzstan, the affected Party should take the initiative. The timing of the request varied: with the notification (Finland, Hungary, Lithuania, Serbia); once the affected Party had responded positively (Czech Republic); during scoping (Romania, Slovakia); or during the preparation of the EIA documentation. Poland and Romania forwarded such a request when asked by the proponent. The time frame for a response from the affected Party to a request for information, which should be “prompt”, was sometimes specified in the request (Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Montenegro, United Kingdom), and was sometimes agreed between the concerned Parties (Croatia, Finland, Netherlands). Finland, Hungary, Serbia and Switzerland referred to the time frame for the response to the notification. Belarus specified one month, whereas Lithuania and Ukraine would not wait more than three months.

Question 14. Please describe:

(a) How your country cooperates with the authorities of the affected Party on public participation (art. 3, para. 8), taking into account that the Party of origin and affected Party are both responsible

Each respondent reported how their country as the Party of origin cooperated with the authorities of the affected Party on public participation, taking into account that the concerned Parties were both responsible. Many respondents noted cooperation between the concerned Parties leading, for example, to agreement on procedures, timing and documentation. Respondents also referred to the provision of information, including on their own procedures and in electronic format if possible.

For many respondents it was then generally and primarily, or solely, the responsibility of the affected Party to provide for public participation in the affected Party (Croatia, Finland, Hungary, Ireland, Lithuania, France, Luxembourg, Poland, Republic of Moldova, Romania, Serbia, Sweden, United Kingdom); Estonia, Finland, Portugal and Spain referred to bilateral agreements that made this responsibility clear.

However, Cyprus took a more proactive role, making sure that information was provided to the authorities and public in the affected Party. Kyrgyzstan reported the direct distribution of documentation by the Party of origin in the affected Party, down to local authority level. For Latvia, the competent authorities in the concerned Parties cooperated to ensure that the public and authorities in the affected Party

were given the opportunity to comment and object. The Czech Republic requested that certain actions be taken to publicize the notification, so that anybody might comment, and set out the full procedure for commenting. Slovakia made sure that the affected Party's public was informed at an early stage by the affected Party's authorities. Bulgaria and Germany suggested that the concerned Parties had to work together and, where the Party of origin had no administrative powers, the Party of origin could still provide support. The Netherlands informed the affected Party and asked which authorities to involve and about practicalities, such as newspaper announcements.

(b) How your country identifies, in cooperation with the affected Party, the "public" in the affected area

In response to the question on how their country identifies, in cooperation with the affected Party, the "public" in the affected area, respondents described either a methodological approach or reported on responsibility. For Belarus, Bulgaria, the Czech Republic, Estonia, Finland, France, Hungary, Kyrgyzstan, Poland, Romania, Serbia, Slovenia, Switzerland and Ukraine this was the responsibility of the affected Party; Portugal and Spain referred to their bilateral agreement that made this responsibility clear. The United Kingdom was prepared to identify the public concerned if requested by the affected Party. Several respondents indicated a dialogue between the concerned Parties to identify the public (Denmark, Greece, Netherlands, Norway, Sweden). Some referred to a case-by-case identification based on the geographical extent of the potential impact. The Netherlands stated that the identification was best done by the competent authorities of the concerned Parties together, often based on an initial proposal by the Party of origin's competent authority; alternatively, the affected Party decided and then informed the Party of origin. Sweden did not apply any restriction on whom to include, but might discuss with the affected Party whether there was a particularly important sector of the public and how to inform them in an appropriate way.

(c) 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?

Most respondents were unable to indicate, as the Party of origin, how the public in the affected Party was notified because they considered the public announcement¹¹ to be the responsibility of the affected Party. Nonetheless, several respondents noted the use of newspapers and the Internet, and the posting of information on their own website; proponents in Ireland often issued press notices across the border. The Czech Republic asked the affected Party to use public notice boards, the media and the Internet. The United Kingdom asked the affected Party whether it wished the United Kingdom to notify the affected Party's public.

The normal content of the public announcement included elements such as: the contact details of the proponent and of the competent authority of the Party of origin; a description of the proposed activity and its likely transboundary impact; the application for development consent; information on the decision to be taken and its timing, as well as on the EIA procedure; and information on where and until when documentation could be consulted, on any public hearing or information event and on the means and timing for submitting suggestions.

¹¹ "Public announcement" or "public notification" to inform the public of a proposed activity and of the possibility for making comments on or objecting to the proposed activity, or for making comments on related information, including the EIA documentation.

(d) 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. At what stage in the EIA procedure does your country normally notify the public of the affected Party?

Many respondents as the Party of origin expected the announcement to the affected Party's public to have the same content as the announcement to their own public. Many other Parties provided the same information to the affected Party. However, Estonia, Finland, France, Latvia, Poland, Serbia, Slovenia and the United Kingdom made clear that the affected Party determined the content; Portugal and Spain again referred to their bilateral agreement that made this responsibility clear. Further, Lithuania expected the announcement in the affected Party to focus on the transboundary impact, whereas the domestic public announcement did not. Sweden noted that, when translation was necessary, often only a summary of the attachments to the announcement was translated.

In response to the question on the stage in the EIA procedure at which the Party of origin normally notified the affected Party's public, several respondents again indicated that this was the responsibility of the affected Party. Others indicated that the affected Party's public was notified at the same time as the public of the Party of origin, or early enough for public participation to take place at the same time. Others referred to the timing of the notification of the affected Party. Croatia notified the affected Party's public after the public hearing had been held in the Party of origin.

Question 15. 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, decision I/3), and as listed on the Convention website (http://www.unece.org/env/eia/points_of_contact.htm)?

A clear majority of Parties made use of contact points for the purposes of notification, as decided at the first session of the Meeting of Parties, and as listed on the Convention website; France indicated that the focal point was copied, and Luxembourg that other authorities were copied. In Hungary, in certain important cases, the minister of environment might lead. Romania sent the notification through diplomatic channels with a copy to the point of contact. For Germany, the Netherlands, Poland, Portugal and Spain, bilateral agreements sometimes specified alternative points of contact, and in Ireland contact points in local authorities were used where appropriate.

2.2.2 Questions to the affected Party

Question 16. Describe the process of how your country decides whether or not to participate in the EIA procedure (art. 3, para. 3)? Who participates in the decision-making, e.g., central authorities, local competent authorities, the public, environmental authorities? Describe the criteria or reasons your country uses to decide.

For many Parties the process of deciding whether, as the affected Party, to participate in the EIA procedure was examined case by case, often with the decision being taken by the ministry of environment or the competent authority. A majority of Parties indicated consultation of other relevant authorities in their country, at central, regional and local levels, depending on criteria such as the nature of the proposed activity, the possible significance of the impact and the territory likely to be affected. The Czech Republic, Hungary, Kyrgyzstan, Montenegro, Sweden and possibly Bulgaria and the Republic of Moldova also sought the opinions of the public, whereas Luxembourg consulted environmental NGOs and Slovakia received comments from affected municipalities. Finland issued a public notice, made information publicly available and directly informed research institutes and at least one environmental NGO. Slovenia and Sweden consulted health and cultural heritage authorities.

Criteria used to decide included: the nature of the proposed activity; its location, distance from the border or proximity to international waters; the possible significance of the transboundary impact; and the level of public interest. Bulgaria and Croatia referred to the significance criteria in appendix III. Belarus, Bulgaria, Montenegro and Slovenia referred to criteria in their legislation.

Question 17. When the Party of origin requests your country to provide information relating to the potentially affected environment, how does your country determine what is “reasonably obtainable” information to include in its response? Describe the procedures and, where appropriate, the legislation your country that would apply in determining the meaning of “promptly” in the context of responding to a request for information (art. 3, para. 6)

In the context of a request by the Party of origin to provide information relating to the potentially affected environment, respondents explained how they determined what was “reasonably obtainable” information to include in their response, referring to the existence, accessibility and availability of information (to the public or the relevant authorities), and whether it was up to date. Some suggested that the information should already be available, or obtainable within the time frame specified by the Party of origin, and without a lengthy process or disproportionate cost. For some Parties there should be no need for further research or analysis, though Denmark might carry out additional analysis.

Respondents also described the procedures and, where appropriate, the legislation their country applied in determining the meaning of “promptly” in the context of responding to a request for information. Some respondents interpreted this term to mean “without undue delay” or “as soon as possible”. Bulgaria, Greece, the Republic of Moldova and Switzerland referred to the time frame specified by the Party of origin in its request, whereas several others indicated one month and Finland agreed the time frame with the Party of origin. Some respondents referred to the time necessary to collect the requested information, bearing in mind their other responsibilities. Belarus provided the information in its own language, whereas in Hungary translation delayed the response.

Question 18. Please describe:

(a) How your country cooperates with the authorities of the Party of origin on public participation (art. 3, para. 8), taking into account that the Party of origin and affected Party are both responsible

Regarding the affected Party’s cooperation with the authorities of the Party of origin on public participation, many respondents reiterated the affected Party’s primary or sole responsibility. Nonetheless, many respondents also noted cooperation and agreement between authorities in the concerned Parties, for example regarding practical arrangements (Netherlands) and the holding of public hearings (Sweden). The Netherlands and Poland referred to bilateral agreements in this regard. Denmark, Hungary, Slovakia and Sweden cooperated closely in the holding of hearings, as appropriate. As an example, Belarus as the affected Party informed the Party of origin of the timing and location of a hearing in Belarus. Kazakhstan noted also the support of NGOs and the project proponent.

(b) How your country identifies the “public” in the affected area

Many respondents indicated that their country, as the affected Party, identified the “public” in the affected area case by case depending on various criteria, such as: the nature of the proposed activity, the potential impact and its geographical area, and the distance from the border. In the Czech Republic and Sweden, everyone was included, though Sweden carried out a case-by-case identification to focus the public participation. In France, local authorities identified the public in the affected area based on siting information provided by the Party of origin. Croatia and Slovakia also sought the opinion of relevant authorities; Slovakia took into account advice from its

public on the identification of the “public” in the affected area. Azerbaijan would include the local population plus environmental NGOs from across the country.

(c) How the public is notified (e.g., what kinds of media, etc., are usually used). What is normally the content of the public notification?

Respondents provided examples of how, as the affected Party, their country’s public had been notified. Most respondents indicated announcements in newspapers (national, regional, local) and postings on the Internet, but also mentioned press releases, the official journal (national, local), public noticeboards (including in municipal offices and in public libraries), bill posting, direct mailing, television or radio spots and direct contact with key NGO stakeholders. In some Parties the public announcement was routed through local authorities.

Respondents also provided examples of what was normally the content of the public announcement, repeating answers from their role as the Party of origin, with the addition of the contact details of the proponent’s EIA experts. In addition, France, Slovenia and Switzerland explicitly mentioned the inclusion of the EIA documentation. The United Kingdom noted that there might be a charge for a paper copy of the documentation.

(d) At what stage in the EIA procedure does your country normally notify its public?

Finally, respondents reported at what stage in the EIA procedure their country as affected Party normally notified its public. Several countries did so immediately upon receipt of the relevant information from the Party of origin (Austria, Bulgaria, Czech Republic, Denmark, Finland, Norway, Slovakia, Sweden). Montenegro did so within 5 days of receipt, Armenia within 7 days and Latvia within 14 days. Belarus and Hungary notified their public once they had prepared the necessary translations. However, Belarus, Estonia, Kazakhstan, the Republic of Moldova and Ukraine referred to the receipt of the EIA documentation. In contrast, Lithuania reported notifying their public at the scoping stage. Germany, the Netherlands and Poland suggested that the timing depended on when the Party of origin had notified the affected Party. The former Yugoslav Republic of Macedonia informed its public at the same time as it responded to the notification.

2.3 Article 4: Preparation of the environmental impact assessment documentation

2.3.1 Questions to the Party of origin

Question 19. What is the legal requirement for the minimum content of the EIA documentation (art. 4, para. 1, appendix II)?

In Denmark the legal requirement for the minimum content of the EIA documentation was similar to that in appendix II. All other respondents referred to, described or quoted their legislation to identify the legal requirement for the minimum content, with the exception of Armenia, which lacked such legislation. In addition, Greece, Kyrgyzstan, Romania, Slovakia and the United Kingdom indicated consistency with appendix II; Ukraine referred directly to appendix II.

Question 20. Describe your country’s procedures, if any, for determining the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4, para. 1).

In most Parties the competent authority determined case by case the content of the EIA documentation (scoping procedure), with Romania using a checklist approach and several others referring to criteria, but others did not (Armenia, Azerbaijan, Belarus, Republic of Moldova and Slovenia). In Kyrgyzstan, once the EIA

documentation had been prepared, it was reviewed and might, if necessary, be returned to the proponent for revision. In Italy a scoping procedure was only occasionally necessary. In France, Luxembourg, Montenegro, Portugal and the United Kingdom the proponent might ask the competent authority to define the scope; this was mandatory within a transboundary EIA procedure in Poland for activities subject to mandatory EIA. But in Austria, Bulgaria, Estonia, Finland, Lithuania, Norway and Switzerland, the proponent, or its EIA experts, prepared or drafted a scoping report.

In Latvia and the former Yugoslav Republic of Macedonia, the scoping report identified also the institutions and organizations to be consulted, whereas in Finland, the Netherlands and the former Yugoslav Republic of Macedonia it identified alternatives to be considered by the proponent. Many respondents referred to consultation of other authorities, with Spain also possibly consulting NGOs. The opinions of the public were taken into account in Croatia, the Czech Republic, Estonia, Finland, Hungary, the Netherlands and, as appropriate, Norway and Portugal. In Bulgaria and Finland, the competent (environmental) authority made a statement on the scoping report drafted by the proponent. The Netherlands and Romania both included recommendations by a separate committee or commission. Finland, Germany, Hungary, the Netherlands, Norway and Poland took into account the comments of the affected Party.

Question 21. How does your country identify “reasonable alternatives” in accordance with appendix II, paragraph (b)?

In several Parties (Bulgaria, Finland, Germany, Greece, Italy, Latvia, Liechtenstein, Lithuania, Montenegro, Poland, Romania, Spain, Sweden, United Kingdom) the proponent or its EIA experts identified “reasonable alternatives”, but in the Czech Republic, Greece, Poland and the former Yugoslav Republic of Macedonia the competent authority might propose alternatives too, with the Czech Republic making proposals within the constraints of the land-use plan; in Finland the competent authority specified the alternatives to be considered on the basis of the proposal by the proponent and of comments by the authorities, the public, NGOs and the affected Party. Many respondents referred to a case-by-case approach, taking into account the nature of the activity, its location and size. Ireland and Romania each referred to their guidelines. In Estonia, Hungary, Slovakia and Spain reasonable alternatives might emerge from scoping, with Slovakia indicating that these might be according to comments received from the public and authorities in the concerned Parties.

Various types of alternatives were mentioned, including the no-action alternative. A few respondents reported that the alternatives should be suitable for achieving the purpose of the proponent, should reduce the impact and should be within the proponent’s competence; Ukraine referred to environmental and economic acceptability.

Question 22. How does your country identify “the environment that is likely to be affected by the proposed activity and its alternatives” in accordance with appendix II, paragraph (c), and how does it define “impact” in accordance with article 1 (vii)?

“The environment that is likely to be affected by the proposed activity and its alternatives” was identified case by case, with some respondents suggesting that it was done by the proponent, others by the competent authority, or by a combination of the two. In Estonia, Finland, Hungary and Spain the affected environment was identified during scoping. Romania referred again to its scoping checklist. Finland, Norway and Slovakia suggested a role for the public and authorities of the concerned Parties.

For their definition of “impact” in accordance with article 1 (vii), some provided a definition or referred to their legislation, and some included public health (Czech Republic, Estonia, Finland, France, Hungary, Kazakhstan, United Kingdom) or socio-economic conditions (Finland, Hungary, Kazakhstan). Several suggested that the

definition was carried out case by case by the proponent or its EIA experts, whereas Romania once again referred to use of its scoping checklist by the competent authority. Austria and Norway consulted the affected Party.

Question 23. Does your country give the affected Party all of the EIA documentation (art. 4, para. 2)? If not, which parts of the documentation does your country provide?

A clear majority of respondents indicated that their country, as the Party of origin, gave the affected Party the complete EIA documentation, with Belgium, Canada and Romania confirming that this was subject to any privacy or access-to-information requirements. Poland's legislation required transmission only of that part necessary for the affected Party to assess the impact on it, but in practice gave the complete EIA documentation; this was probably also the case in Finland. Norway did not send separate expert reports that were not relevant to the transboundary impact. Sweden did not generally send background data and reports and, if having to provide a translation, sent only the non-technical summary and the most relevant parts of the EIA documentation, as discussed with the affected Party.

Question 24. How does your country cooperate with the authorities of the affected Party on distribution of the EIA documentation and the submission of comments (art. 4, para. 2), taking into account that the Party of origin and affected Party are both responsible? How does the competent authority in your country (as the Party of origin) deal with the comments (art. 4, para. 2)?

Respondents indicated how their country cooperated with the authorities of the affected Party on the distribution of the EIA documentation and the submission of comments, taking into account that the concerned Parties were both responsible. Most indicated that they provided the documentation to the affected Party, which was then responsible for distribution. Several respondents referred to cooperation between the concerned Parties in this respect, with the Czech Republic requesting certain actions be taken to publicize the public participation opportunity. Comments from the affected Party's public were submitted either directly to the Party of origin or through the authorities in the affected Party, with the routing sometimes varying case by case.

Respondents also reported on how their competent authority dealt with comments, with about half of them indicating that comments were taken into account by the competent authority in the final decision. Many (Croatia, Estonia, Hungary, Kyrgyzstan, Latvia, Lithuania, Republic of Moldova, Romania, Spain) also, or instead, sent the comments to the proponent or its experts for incorporation in the finalized EIA documentation (Belarus, Hungary, Republic of Moldova) or the proposed activity (Spain); or for the developer to answer (Croatia, Poland). Whether dealt with by the competent authority or the proponent or both, some Parties (Belarus, Denmark, Estonia, Germany, Latvia, Netherlands, Poland) required that information be provided on how the comments were addressed, or that an explanation be given if not. These answers were sent to the affected Party by Latvia and Romania. Finland sent its statement on the EIA documentation to the affected Party, including the summary of comments and opinions.

Question 25. Describe the procedures and, where appropriate, the legislation that define the time frame for comments provided "within a reasonable time before the final decision" (art. 4, para. 2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how does your country react?

The procedures and, where appropriate, the legislation that define the time frame for comments provided "within a reasonable time before the final decision" were described, with the time frame varying between one and three months, though with some flexibility case by case. Some Parties of origin decided alone on the time frame (Poland, Serbia, Republic of Moldova), whereas others discussed it with the affected

Party (Croatia, Kyrgyzstan, Latvia, Sweden, Ukraine) or it was defined in bilateral agreements (Estonia, Poland) or other arrangements (Ireland).

If the affected Party did not comply with the time frame, Sweden, Switzerland and the United Kingdom would send a reminder. If the affected Party asked for an extension, many Parties would usually agree, or did so if the request was justified; Ireland would always agree. Others were more hesitant, indicating that an extension would be considered or that there was some flexibility, but for others still it was contingent on the time frame of the administrative procedure (Denmark, Belgium, Kyrgyzstan, Netherlands, Romania, Poland, United Kingdom). Estonia had some flexibility but would inform the proponent. Bulgaria and Germany were not normally able to agree an extension because of the time frames in their legislation.

Ultimately, the Party of origin had to decide what to do if there was no response within the deadline, whether or not extended. Several Parties assumed that there were no comments (Belarus, France, Kyrgyzstan, Romania, Republic of Moldova, Slovenia, Switzerland), with some unable to take late comments into account (Denmark, Belgium, Hungary, Netherlands). Some others suggested more flexibility, taking into account (important) late comments too, as long as the decision had not been taken (Bulgaria, Czech Republic, Germany Hungary, Sweden, Spain).

Question 26. What material does your country provide, together with the affected Party, to the public of the affected Party?

Respondents listed the various materials that their country provided, together with the affected Party, to the affected Party's public: the application or request for development consent, a permit or an environmental decision; project documentation; the screening decision and scoping report; the EIA documentation (mentioned by most respondents) and its non-technical summary; an expert review of the EIA; and decisions already taken. A few respondents also mentioned: the statement of intent;¹² the notification; information on the EIA procedure; information on procedures and for commenting; a draft of the decision to be taken; notices and brochures; and additional studies.

However, materials were generally provided to the authorities in the affected Party for them to distribute to their public and authorities, as well as being made available on a website in the Party of origin. Germany and Hungary translated the non-technical summary and other parts of EIA documentation relevant to the transboundary impact. Denmark translated some summary information and the Netherlands translated the non-technical summary.

Question 27. Does your country initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?

Many respondents stated that their country did not, normally or ever, initiate a hearing for the affected public in the affected Party. Austria, Croatia, Germany, the Netherlands, Norway and Ukraine might initiate a public hearing in the affected Party if needed, but for Croatia and Germany this would require close cooperation between the concerned Parties; Sweden had experience of initiating such a hearing. More typically, Lithuania and Slovenia asked the affected Party to organize a hearing in the affected Party. Normally a hearing for the affected Party's public took place in the affected Party, organized by the affected Party's authorities and following discussion between the concerned Parties. Nonetheless, Hungary, Lithuania and Romania indicated that the proponent, perhaps together with their authorities, participated in hearings in the affected Party. For Belgium, Bulgaria,

¹² "Statement of intent" submitted by a proponent; sometimes "notification of intent", "pre-starting note" or "notification".

Canada, Denmark and Switzerland a joint hearing might be held in one of the concerned Parties.

A majority of respondents declared that hearings in their country as the Party of origin were open for participation by the affected Party. However, in Cyprus, Greece and Italy there was no legal obligation to organize a hearing, though in Greece one was often held at the proponent's initiative. In the Netherlands, the need for a hearing was decided upon in consultation with the proponent. For Kyrgyzstan, Poland and Slovenia a hearing was held after the EIA documentation had been prepared.

2.3.2 Questions to the affected Party

Question 28. Describe the procedures and, where appropriate, the legislation your country would apply to determine the meaning of the words “within a reasonable time before the final decision”, this being the time frame for comments (art. 4, para. 2)?

Respondents described the procedures and, where appropriate, the legislation that their country, in the role of affected Party, applied to determine the meaning of the words “within a reasonable time before the final decision”, with this being the time frame for comments. Austria, Belgium, Bulgaria and Germany referred to the legislation of the Party of origin, and others (Croatia, Czech Republic, Estonia, Netherlands, Romania, Slovakia, Sweden, Switzerland, United Kingdom) referred to the time frame specified by the Party of origin, with the Czech Republic and Slovakia adjusting their time frames to fit, and Montenegro, Romania and the United Kingdom requesting an extension if they were unable to do so. In contrast, Denmark, Norway and the Republic of Moldova referred to their legislation; Greece used the domestic time frame unless requested otherwise. Some respondents gave a quantified response, of between three weeks and three months, with an average of about two months, and some with reference to bilateral agreements. For Estonia, Hungary and Lithuania sufficient time was needed to comment, and for Belarus and Hungary more time was needed when documentation required translation into their language.

Question 29. How does your country cooperate with the authorities of the Party of origin on the distribution of the EIA documentation and the submission of comments (art. 4, para. 2), taking into account that the Party of origin and affected Party are both responsible?

Respondents also described how their country cooperated with the authorities of the Party of origin on the distribution of the EIA documentation and the submission of comments. Austria, for example, gathered as much information as possible on public participation in the Party of origin in order to give an equivalent opportunity to its public.

More commonly, however, the affected Party received the documentation, together with a deadline for comments, and made the documentation available to its authorities and public, while often also publishing it on a website; the affected Party then gathered comments to send back to the Party of origin (e.g., Finland, Lithuania, Switzerland). However, the Netherlands, if requested, assisted the Party of origin in informing the public and making the EIA documentation available, and the public usually submitted its comments directly to the Party of origin. Hungary distributed information in accordance with the Party of origin's legislation. Hungary also incorporated public comments into its standpoint, which was translated into English and sent to the Party of origin together with the original comments in its own language. Norway and Slovakia distributed summary information domestically.

Question 30. Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, with the legislation of the Party of origin, with ad hoc procedures, or with bilateral or multilateral agreements?

Regarding the organization of the public participation in the affected Party, a majority of respondents indicated that this was the responsibility of the affected Party in accordance with its own legislation, taking into account bilateral agreements (Bulgaria, Estonia, Latvia, Montenegro, Portugal, Spain, Ukraine), or in compliance with the time frame specified by the Party of origin (Austria, Germany, Poland, Switzerland, United Kingdom). For Belgium and the Netherlands, the public participation was organized in accordance with the Party of origin's legislation and bilateral agreements. Belgium also referred to ad hoc procedures, as did Sweden. The Czech Republic and Italy referred to the legislation of both Parties concerned. Finland, Kyrgyzstan, Latvia, Lithuania, Norway, Romania and Switzerland referred to a dialogue with the Party of origin regarding participation arrangements.

2.4 Article 5: Consultations

2.4.1 Questions to the Party of origin

Question 31. At which step of the EIA procedure does the consultation in accordance with article 5 generally take place? Describe the procedures and, where appropriate, the legislation your country would apply to determine the meaning of "undue delay", with regard to the timing of the entry into consultation? Does your country normally set the duration for consultations beforehand? If there seems to be no need for consultation, how does your country determine not to carry out consultations?

Several respondents provided confusing answers regarding consultations, not having understood that these were as described in article 5. Nonetheless, some respondents did indicate at which step of the EIA procedure the consultations in accordance with article 5 generally took place. France, the Republic of Moldova and Serbia had no legislation providing for consultations, but Serbia had always required consultations. Lithuania always offered consultations, the Netherlands and Poland proposed consultations in the letter accompanying the EIA documentation, Finland set the time frame for consultations when sending the EIA documentation and following its legislation, and the Czech Republic made arrangements shortly after receipt of that documentation. For Estonia, consultations occurred at the request of the affected Party.

For Austria, Bulgaria, Germany, Serbia and Slovakia, consultations might take place at any stage, and in Kazakhstan and Switzerland they preferably started during scoping. However, for Croatia and Latvia consultations occurred once the EIA documentation had been prepared and, for Romania and the United Kingdom, once it had been transmitted to the affected Party. For Austria, Belarus, Hungary, Lithuania and Poland it was later, usually after the public participation, when all comments and objections had been received by the Party of origin, and for Bulgaria and Germany later still, once those comments had been assessed by the Party of origin. Norway generally held consultations during the public hearing stage, whereas in Slovenia they might occur after the hearing or much earlier, after receipt of the EIA documentation. The United Kingdom generally expected that adequate EIA documentation would minimize the need for formal consultations.

Few respondents described the procedures and, where appropriate, the legislation their country applied to determine the meaning of "undue delay", with regard to the timing of the entry into consultations, but the Netherlands expected to enter into consultations in the same period as that for comments on the EIA documentation.

Austria, the Czech Republic, Denmark, Finland, Norway and Serbia normally set the duration for consultations beforehand, with the possibility of an extension in the Czech Republic and Denmark. For Estonia, Germany and Latvia, the duration was agreed between concerned Parties. Croatia, the Netherlands and Slovakia did not set the duration beforehand; in Montenegro and Ukraine the duration was set once consultations had begun.

Austria, Bulgaria, the Czech Republic and Germany reported that the affected Party informed the Party of origin if it did not wish to carry out consultations, or simply did not respond to the offer of consultations; for Bulgaria, the affected Party might also have indicated earlier that there was no need for consultations. For Croatia, the EIA or the expert review of the EIA might reveal that there was no transboundary impact and so no need for consultations; for Belarus, the absence of comments from the affected Party also implied that consultations were unnecessary. Hungary, Norway and Romania indicated a need to check with the affected Party. If no consultations had been needed, Slovakia and Ukraine included evidence of that in the final decision.

Question 32. On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, or exchange of written communications?

In many Parties consultations were arranged at the national level. For Belgium, Denmark and the Netherlands consultations might first be held at the expert level but, if problems remained unresolved, higher-level authorities might need to intervene. Some, such as Latvia and Poland, indicated that the arrangements depended on the importance or complexity of the case. Besides the competent authorities and authorities with specific environmental responsibilities from the concerned Parties, some respondents indicated the involvement of the proponent (Austria, Czech Republic, Finland (for part of the time), Latvia, Switzerland) and the public (Bulgaria, Serbia, Slovakia). The Czech Republic emphasized that the Party of origin organized the consultations. Parties typically communicated in consultations by written communications followed, as necessary, by a meeting. France and Romania emphasized that a meeting was not always needed. Finland agreed a written memorandum after consultations.

2.4.2 Questions to the affected Party

Question 33. On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means does your country usually communicate in consultations, for example by meeting or by the exchange of written communications? How does your country indicate if there is no need for consultations?

Respondents in their role of affected Party gave very similar responses regarding arrangements for consultations. Austria indicated the involvement of the proponent; Bulgaria, of the public and NGOs; Slovakia, of the public. Bulgaria, Germany, Poland and Romania expected to inform the Party of origin if there was no need for consultations; Austria simply would not ask the Party of origin to carry out consultations. Finland sought consultations in particular if it was unclear whether its comments had been taken into account in the EIA documentation.

2.5 Article 6: Final decision

2.5.1 Questions to the Party of origin

Question 34. 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?

Respondents identified for each type of activity listed in appendix I to the Convention what was regarded as the “final decision” to authorize or undertake a proposed activity. Broadly, two approaches were reported: either the EIA was integrated into the permitting or development consent procedure; or the EIA led to a separate environmental permit that was a precondition to development consent.

For several respondents the final decision was a decision on a permit, building permit, permit procedure or consolidated permit procedure (Austria, Belgium, Cyprus, Czech Republic, Denmark, Ireland, Sweden), or an authorization (Spain). In Bulgaria, Estonia, France, Germany, Latvia, Luxembourg, the Netherlands, the former Yugoslav Republic of Macedonia and the United Kingdom, this “permit” or development consent allowed the proponent to proceed with the activity. In Germany, private projects usually required a permit or licence, whereas public infrastructure projects required a planning appraisal or plan approval. The Netherlands and Norway identified the final decision as a decision under an act on a certain type of activity: Norway noted that there might be more than one such decision and it varied as to which was last and therefore “final”. In Switzerland, too, some activities required several decisions.

In contrast, for some respondents the final decision was an environmental decision or permit or a final statement¹³ on the EIA procedure (Greece, Hungary, Lithuania, Montenegro, Poland, Portugal, Serbia, Slovakia, Slovenia), this being a precondition to a construction permit. Romania had a hybrid approach, with the final decision being a development consent, which was a construction authorization issued by local authorities (except for deforestation); an environmental agreement was both an integral part of, and a precondition to, the development consent. In Finland, the final decision for certain activities was an environmental permit whereas for others a sectoral permitting procedure was followed.

Among those countries with a system of State ecological expertise, for Belarus, a final decision was an approval given only on the basis of a positive conclusion of the State ecological expertise; whereas the Republic of Moldova’s national legislation did not use the term “final decision”, but the positive conclusion of the State ecological expertise constituted permission for the further development of project documentation.

All projects listed in appendix I required a final decision in most Parties.

Question 35. How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity (art. 6, para. 1)?

To indicate how the EIA procedure (including the outcome) in their country, whether or not transboundary, influenced the decision-making process for a proposed activity, many respondents referred to the various elements of the procedure that were important: the EIA documentation; the expert review of the documentation; the comments received; the competent authority’s opinion; the public hearing; and consultations.

For many Parties a positive environmental decision (or permit, statement, EIA decision or conclusion of State ecological expertise) was a precondition to a subsequent decision or procedure, such as development consent or a permitting procedure (Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Greece, Hungary, Kyrgyzstan, Montenegro, Poland, Portugal, Republic of Moldova, Slovakia, Slovenia). In Hungary and Poland, the conditions attached to the environmental

¹³ A final evaluation by the competent authority of the proposed activity where this differs from the final decision; sometimes “EIA statement” or “summary”.

decision had to be included in the subsequent construction or building permit, and in the Czech Republic an explanation had to be given if such conditions were not included. In Montenegro, fulfilment of the conditions in the EIA approval was a precondition for issuing a usage permit. In Slovakia, the final EIA statement had to be taken into account in the subsequent permitting decision. In Romania the development consent included conditions set in an environmental agreement, which was in turn based on the EIA outcomes, documentation and comments.

Question 36. 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)?

In a clear majority of Parties 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 their country. Latvia, Liechtenstein and the Republic of Moldova were unclear in their responses, whereas Armenia and Azerbaijan indicated a lack of experience and Ukraine confirmed that it took this approach provided that comments were correct and did not pose a threat to national security.

Question 37. How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (art. 6, para. 2)

In a clear majority of Parties, the obligation to submit the final decision to the affected Party was normally fulfilled by sending a copy of the decision; in the Czech Republic this had to be done within 15 days of taking the decision. A majority of respondents confirmed that the final decision contained the reasons and considerations on which the decision was based. In addition, Parties sent: the outcome of consultations (Croatia); the final statement on the EIA (Slovakia); the reasons for the decision (Montenegro, Norway, the former Yugoslav Republic of Macedonia); conditions applied to the decision (Romania); measures to be taken by the proponent (Montenegro); both the environmental decision and final licensing decision (Portugal); any other information related to the project (Cyprus); or other information made available to the Party of origin's public (France).

Germany and Poland translated the final decision as appropriate with respect to legislation and agreements. Romania and Serbia sent the final decision in English, and Sweden sent it in Swedish to the Nordic countries, but otherwise translated either the entire decision or only a summary.

Question 38. If additional information becomes available according to article 6, paragraph 3, before the activity commences, how does your country consult with the affected Party? If need be, can the decision be revised?

Should additional information become available before the activity commenced, several respondents indicated that their country would inform the affected Party accordingly and might start a consultation process. France and Luxembourg, in contrast, noted that an activity could be carried out once authorized, though Luxembourg would alter the operating conditions if necessary.

In such a situation, the decision might be revised in Bulgaria, Croatia, Finland, Germany, Greece, Italy, Kazakhstan, Montenegro, Norway, Poland, Portugal and Spain, if deemed necessary, whereas in Austria the possibilities to revise a valid decision were strictly limited. In the Netherlands the competent authority took corrective measures and examined whether the decision needed to be revised. Latvia decided on measures to prevent or reduce impact. In Kyrgyzstan the final decision might be reviewed, as in the Republic of Moldova in case of fundamental new information. In the United Kingdom the development consent could be annulled. In Estonia, it was possible to revise conditions on a development consent if the information was significant. For Romania, consultations would lead to establishing

whether the decision had to be revised. In Sweden, a decision might be recalled if, for example, an unpredicted significant adverse effect occurred or permit conditions were not fulfilled. Finally, in Hungary the competent authority might revoke or modify an environmental permit if the circumstances at the time of issuing the permit had significantly changed; in contrast, in Ireland, the decision was taken on the basis of the best information available at that time.

2.6 Article 7: Post-project analysis

Question 39. How does your country determine whether it should request a post-project analysis to be carried out (art. 7, para. 1)?

In Austria, Montenegro and Spain a post-project analysis was always required, as it was in Slovakia (where existing monitoring measures were always used) and in the Netherlands, where, however, the legal requirement was not always followed in practice. In France, post-project analysis was mandatory for certain types of activity, but for many other respondents this was decided case by case. Italy carried out post-project analysis if requested, but for Estonia, Finland and Latvia bilateral agreements provided for the concerned Parties to agree on whether post-project analysis should be carried out. In Croatia the final decision included an obligation to monitor and exchange results. In Germany it was incumbent on the competent authority to ensure compliance with conditions in the final decision. Kazakhstan undertook post-project analysis one year after operation of an activity began. In Lithuania monitoring results might trigger a post-project analysis and Belarus, as affected Party, requested such an analysis for activities that were likely to have a significant adverse transboundary impact, or that had no equivalent in its own territory.

Question 40. Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how does your country inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to article 7, paragraph 2?

Where, as a result of post-project analysis, it was concluded that there was a significant adverse transboundary impact by the activity, respondents indicated how they informed the other Party and consulted on necessary measures to reduce or eliminate the impact. Several Parties would inform the other Party and initiate consultations. For Romania the affected Party would normally receive the results of the analysis anyway. Estonia made reference to its bilateral agreements, Italy to a written procedure. For Greece the post-project analysis would include provisions to cover this eventuality. Estonia might subsequently amend conditions on the development consent or ultimately repeal it if well justified, whereas Latvia might consult with the affected Party on measures to prevent or reduce impact. In Slovakia the person undertaking the activity would have to arrange measures so that the actual impacts corresponded to those indicated in the EIA documentation.

2.7 Article 8: Bilateral and multilateral agreements

Question 41. 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.

Many respondents listed their country's bilateral or multilateral agreements based on the Convention, but many other Parties had no such agreements. Belarus, Belgium, the Czech Republic, Lithuania, the Netherlands, Poland and Ukraine were discussing draft agreements, and Germany and Poland were revising existing

agreements. Italy had only case-specific agreements, whereas Ireland had an informal protocol with Northern Ireland (United Kingdom). For Austria, Belgium, Finland, Latvia, Poland and Slovakia elements of appendix VI had been used, but some of Germany's agreements were not based on the Convention, instead responding to other practical needs such as water management. Estonia, Finland and Latvia each highlighted the provision in their bilateral agreements for a joint body on EIA; Slovakia highlighted provisions addressing language issues.

Question 42. Has your country established any supplementary points of contact pursuant to bilateral or multilateral agreements?

A clear majority of Parties had not established any supplementary points of contact pursuant to bilateral or multilateral agreements, but the following exceptions were cited: Belgium (Flemish Region) with the Netherlands; Belgium (federal authority under multilateral agreements); Germany with the Netherlands; Germany with Poland; and Ireland with Northern Ireland and Wales (United Kingdom). The bilateral agreement between Portugal and Spain had created a bilateral body.

2.8 Article 9: Research programmes

Question 43. Are you aware of any specific research in relation to the items mentioned in article 9 in your country? If so, describe it briefly.

Most respondents were not aware of any specific research in relation to the items mentioned in article 9 in their country, or none specifically relating to transboundary EIA. Some others cited examples such as research on:

- Climate change and environmental assessment, follow-up, regional environmental frameworks, and significance (Canada);
- The effects of offshore wind farms (Denmark);
- The impacts arising from the Nord Stream project (Finland);
- The effects on birdlife of wind farms, a methodology for evaluating landscape impacts and a methodology for assessing the cumulative effects of wind farm developments (Norway);
- A methodological manual and guidelines per environmental component (Poland);
- The assessment of impacts on the Danube Delta (Romania);
- Scoping (United Kingdom);
- The application and effectiveness of EU directives on environmental assessment, and guidance on the interpretation of their project categories (EU).

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

Question 44. If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?

Question 45. If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?

Question 46. If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?

Some Parties soon planned to ratify both amendments to the Convention (Belarus, Denmark, Kyrgyzstan, Latvia, Portugal, Serbia); the second amendment only (Poland, Switzerland); or the Protocol on Strategic Environmental Assessment (Cyprus, Denmark, Kyrgyzstan, Poland). In Lithuania, draft ratification documents for all three instruments had been approved and were to be discussed by Parliament in autumn 2010. Hungary had completed its domestic procedure for ratification of the Protocol in April 2010. In Belgium the procedure for ratification of the two amendments had begun in spring 2010. In Armenia and Portugal, the ratification procedure for the Protocol was ongoing. The Republic of Moldova planned to ratify the two amendments in 2010, Finland and Slovenia in 2011. France planned to ratify all three instruments, but the procedure might take one to two years for the first amendment and the Protocol, as these required the adoption of legislation. The Republic of Moldova planned to ratify the Protocol in 2014. Azerbaijan, Greece and the United Kingdom were considering ratification of all three instruments; Armenia was considering ratification of the two amendments.

2.10 Cases during the period 2006–2009

Question 47. Does your country's national administration have information on the transboundary EIA procedures that were under way during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If your country does not have any experience of applying the Convention, why not?

Question 48. Does your country object to the above list of transboundary EIA procedures being included in a compilation of such procedures to be made available on the website of the Convention? (Indicate "yes" if you object.)

A clear majority of respondents listed the transboundary EIA procedures that were under way during the period 2006–2009, identifying for each whether their country was the Party of origin or the affected Party. Armenia, Azerbaijan, Canada, Cyprus, Liechtenstein and Luxembourg indicated that they had no experience of applying the Convention in the period, and the United Kingdom was only aware of notification of activities prior to application for development consent. The national administrations of France and Germany did not have full information on the transboundary EIA procedures that were undertaken in the period, but both indicated experience. No respondent objected to its list of transboundary EIA procedures being included in a compilation to be made available on the Convention website.

Question 49. Are there projects other than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.

A clear majority of respondents were not aware of any projects other than those mentioned above for which a transboundary EIA procedure should have been applied, but was not. However, Kazakhstan reported that a draft preliminary EIA of a planned nuclear power plant had concluded that its impact would not exceed an environmentally acceptable level. In addition, some Parties observed that

neighbouring States had not notified them about activities for which they had considered themselves as affected Party:

- Because of differences in activities listed as subject to EIA (Czech Republic);
- For an activity in the Russian Federation, which is not a Party to the Convention (Lithuania);
- For an activity in Ukraine, which the Implementation Committee determined was not subject to the Convention (Republic of Moldova).¹⁴

Question 50. Provide information on the average duration of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.

Respondents provided information on the average duration of whole transboundary EIA procedures, ranging from six months to three-and-a-half years. However, procedures usually lasted somewhat less than a year in some Parties (Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Kyrgyzstan, Republic of Moldova, Romania), whereas Latvia, Slovenia and Sweden reported averages of over two years. The duration was dependent on, among other factors, the nature of the proposed activity, the number of Parties involved and the quality of the EIA documentation.

Many respondents also provided information on the duration of the individual steps, though comparison between these durations was difficult as the definitions of steps differed substantially, for example:

- One month for screening;
- Between one and three months for scoping, depending on whether there was public participation;
- Between one and four months for notification and response;
- Between 3 and 12 months for preparation of the EIA documentation;
- Three weeks for translation of the EIA documentation by the affected Party;
- Between one and three months for distribution of the EIA documentation and the collection of comments in the affected Party, and a further one to three months for any public hearing;
- Between one and two months for consultations;
- Between two and six months for the final decision.

2.11 Experience of the transboundary environmental impact assessment procedure in 2006–2009

Question 51. If your country has had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.

Many respondents stated that, on the basis of their practical experience, the implementation of the Convention had supported the prevention, reduction or control of possible significant transboundary environmental impacts. Only Italy suggested that this was not the case, because of the nature of the activities to which the Convention had been applied. Respondents described specific examples and cited general benefits, including:

¹⁴ Committee reference EIA/IC/INFO/2.

- Closer cooperation, with a higher level of mutual information and understanding and an opportunity to express concerns;
- Better EIA, with a broader examination of environmental threats, better consideration of environmental issues and understanding of impacts, better EIA documentation overall and opportunities for and improved public participation;
- Improved proposed activities, with a higher level of environmental safety, better and broader environmental protection and mitigation measures, the introduction of monitoring and an early warning system, specific conditions on the development consent or permit and proper implementation of the activity;
- A better environment, with a reduced environmental impact.

However, in the Czech Republic the procedure had a limited impact on the final decision, especially for smaller projects, and in Germany the procedure rarely led to rejection of a proposal.

2.11.1 Interpretation of terms

Question 52. How has your country interpreted in practice the various terms used in the Convention, and what criteria has your country used to do this? Key terms include the following: “major change” (art. 1 (v)), “a reasonable time” (art. 3, para 2 (c), art. 4, para. 2), “promptly” (art. 3, para. 6) and “a reasonable time frame” (art. 5). (Do not provide references to answers to earlier questions 6 (b), 11, 13, 25 and 31.) If your country experiences substantial difficulties interpreting particular terms, does your country work together with other Parties to find solutions? If not, how does your country overcome the problem?

Respondents indicated how their country interpreted in practice the various terms used in the Convention, and what criteria were used. Many respondents indicated possible discussion between concerned Parties on these points.

Respondents reported diverse approaches to the interpretation of a “major change”, including:

- In Austria, it led to a significant increase in emissions, output or land-take, or it might have a potentially significant impact on the safety performance of activities with possible long-range transboundary impact;
- In the Walloon Region (Belgium), it was a 25 per cent or more increase in production;
- In the Netherlands, it was determined with respect to environmental standards, sensitive areas and cumulative effects;
- In Poland, it led to the transformation or change of use of land, defined in strict relation to a case-by-case determination;
- In Romania, it was likely to have a significant adverse transboundary impact;
- In Sweden, it was identified following discussion with the affected Party.

Regarding a “reasonable time” it was not always possible to determine whether the response related to the notification (art. 3, para. 2 (c)) or the comments on the EIA documentation (art. 4, para. 2). The Netherlands and Norway indicated six weeks as a basis, Denmark eight. Hungary and Romania gave 30 days for a response to the notification. Hungary gave 30 days for comments on the notification too (art. 3, para. 8); but if notification only occurred once the EIA documentation had been

prepared, Hungary gave from 70 to 80 days for a response to the notification and for comments on the documentation (art. 4, para. 2).

To interpret “promptly” (art. 3, para. 6), Denmark and the Netherlands discussed with the other Party the provision of information, the Walloon Region (Belgium) reacted without delay and Romania within about six weeks of receiving the request.

The “reasonable time frame” for consultations (art. 5) was eight weeks for Denmark, six weeks or more for Norway, and around a month for Romania. Hungary agreed with the affected Party on a period of between three and six weeks.

Several Parties reported no substantial difficulties interpreting particular terms. Belarus noted a difficulty interpreting the term “as early as possible” (art 3, para. 1). Lithuania noted difficulties when the concerned Parties had different legislated procedures, with some providing for scoping, for example. Slovenia once had difficulties in establishing a reasonable time frame, but worked with the other Party to find a solution.

Question 53. 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.

2.11.2 Screening

(a) How in practice has your country identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?

Respondents shared their country’s experience of using the Convention in practice, providing practical examples and general experience. Respondents indicated how in practice their country identified proposed activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact, with many simply referring to a case-by-case approach. However, Lithuania noted that the proponent had always been first to identify such activities, whereas Denmark had been contacted by proponents, the public, NGOs and competent authorities.

Finland, Greece and Sweden had consulted the affected Party during screening; Denmark discussed upcoming cases with its neighbours. Croatia, Romania and Spain had been asked to notify by an affected Party; Germany and the Netherlands notified if they were unsure whether there was a need to do so. Several Parties highlighted activities proposed close to an international border.

2.11.3 Chapter on transboundary issues

(b) 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?

Many Parties provided, usually or always, a separate chapter on transboundary issues in the EIA documentation (53 (b)), and this was recommended in Finland and Germany and would be done in future in the Walloon Region (Belgium). In Slovenia this was not an obligation and it varied in Switzerland. A separate chapter was not provided in Italy, the Republic of Moldova, Romania and Serbia. Respondents gave diverse answers to the question on how much information to include in the EIA documentation, which necessarily depended on the case and had to provide sufficient relevant information.

2.11.4 Methodology

(c) What methodology does your country use in impact assessment in the (transboundary) EIA procedure (e.g., impact prediction methods and methods to compare alternatives)?

No Party identified a specific methodology for the transboundary EIA procedure, with methods necessarily determined case by case. Some respondents identified typical EIA methods. In Bulgaria, Estonia, Germany, Greece, Lithuania and Switzerland, the methodology was normally determined by the proponent or its EIA experts, though in Italy the methodology for domestic EIA was specified in the legislation.

2.11.5 Translation

Need for translation

(d) 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?

Translation is not addressed in the Convention and is sometimes a complication in the transboundary EIA procedure, with Slovenia identifying it as the key technical problem: reaching an agreement on translation took time and caused delays. Sweden gave an example of a refusal by the proponent to translate, following a request by the affected Party for translation, which had led to a delay of six months. However, for some combinations of concerned Parties, translation was not generally a problem, for example: between Scandinavian countries; between the Netherlands and the Flemish Region of Belgium; between France and the Walloon Region of Belgium; between Switzerland and its neighbours; in Central Asia; and within the former Yugoslavia. Germany, Lithuania, the Netherlands, Poland and Spain explained that their bilateral agreements provided solutions, whereas Kyrgyzstan referred to subregional guidance.

Early steps

Austria and Romania translated the project description, into English in Romania's case. The Netherlands and Poland translated the notification; Denmark, Greece and the former Yugoslav Republic of Macedonia translated the notification into English. In Hungary, the screening and scoping reports were translated into English or the language of the affected Party.

EIA documentation

If translation was needed, several Parties had translated at least the non-technical summary into the language of the affected Party (Belgium, Croatia, Denmark, Germany, Hungary, Netherlands, Norway, Romania, Spain) or into English (Greece, Hungary, Romania, Serbia). Austria, Belgium, Hungary, Lithuania, the Netherlands, Poland and, according to their bilateral agreement, Portugal and Spain had also translated the transboundary chapter (or equivalent), as necessary; in Lithuania the translation had been into English, Russian or the language of the affected Party. Denmark, Finland, Greece and Norway cited examples of cases for which the full EIA documentation had been translated, with Denmark and Finland having provided the documentation in English. The Czech Republic explained how, despite a lack of legal provisions, it normally arranged translation into English of the table of contents of the EIA documentation and, in particular cases, of the non-technical summary and the transboundary chapter; in special circumstances the proponent had provided the full EIA documentation in the language of the affected Party. Finland translated into

the language of the affected Party all material provided for public information, and had provided simultaneous interpretation at some public hearings.

Consultations and final decision

Bulgaria conducted consultations in English, unless otherwise provided in bilateral agreements. Poland and Slovenia provided interpreters during consultations. Germany translated parts of the final decision, but expected reciprocal action by the affected Party.

Responsibilities

In Bulgaria, the legislation required the proponent to translate the non-technical summary and the EIA report, or part thereof. In Poland, the proponent had been required, in line with the legislation, to prepare suitable documentation in the language of the affected Party. In Romania and Serbia, the legislation required that the proponent translate the EIA documentation into English. In Spain, the proponent was responsible for translation of the transboundary chapter into the language of the affected Party. In France and in the former Yugoslav Republic of Macedonia, the translation costs were borne by the proponent. In Sweden, the proponent was responsible for translating as necessary the notification and the EIA documentation, in part or completely. Austria and Italy referred to the concerned Parties agreeing on what had to be translated, whereas the Flemish Region (Belgium) noted discussion between the competent authority and the proponent; Hungary was usually able to persuade the proponent to translate all necessary documentation into the language of the affected Party.

As affected Party, Hungary asked the Party of origin to provide translations into Hungarian. Latvia and Lithuania asked for at least the non-technical summary in their own languages, with Lithuania also expecting the transboundary chapter. Latvia as affected Party also asked for interpretation for public hearings on its territory. Poland requested translation of the non-technical summary and the transboundary chapter and, under bilateral agreements, received also correspondence and further documentation in Polish. France noted that the State bore the costs of translations unless provided otherwise under a bilateral agreement. Ukraine's draft bilateral agreements foresaw the Party of origin being responsible for the cost of translation and interpretation into English or Russian.

Difficulties

Respondents went on to describe difficulties experienced as affected Party relating to translation and interpretation. Austria and the Netherlands noted a lack of translation, and were joined by Belarus in complaining about poor translations. Austria and the Netherlands then had to translate themselves, as appropriate. Poland noted receipt of huge documentation and not knowing what to translate. Poland and Slovenia found that translation was time-consuming and expensive.

2.11.6 Public participation

Organization

(e) 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? What has been your country's experience of the effectiveness of public participation? 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?)

Respondents reported on how their country organized transboundary public participation in practice. Many respondents indicated that their country, as the Party of origin, had not organized public participation in an affected Party, which itself organized such participation (Austria, Belgium, Czech Republic, Estonia, France, Hungary, Italy, Kyrgyzstan, Poland, Republic of Moldova, Romania, Slovenia, Switzerland). This was generally the case also for Denmark, Finland and Norway, and for Portugal and Spain according to their bilateral agreement. Lithuania, as Party of origin, and Slovenia, as affected Party, expected the comments from the affected Party's public to be submitted to the affected Party's authorities and then sent on to the Party of origin. Austria, Italy, the Netherlands and the Republic of Moldova had allowed the public of the affected Party to participate in the procedure in the Party of origin, with the Netherlands providing interpretation if a large attendance was expected.

However, Denmark and the Netherlands reported placing advertisements in the affected Party's newspapers, and Finland, the Netherlands and Norway, as Parties of origin, had organized, or helped to organize, public hearings in the affected Party. For an activity in Lithuania, the proponent attended hearings in the affected Party, as did experts for an activity in Belarus; Romania had sent a delegation comprising representatives of the Ministry of Environment, the competent authority and the proponent, together with an interpreter; Kyrgyzstan had sent representatives of the competent authority, the proponent and NGOs. Kyrgyzstan also noted funding by the proponent and by a donor of the hearing in the affected Party.

Effectiveness

Italy considered that public participation improved the final decision. For Poland, the effectiveness of participation depended on proper notification of the public, while the level of participation depended on how controversial the proposed activity was. Slovenia considered that effectiveness was increased by the competent authority being active. Sweden noted that there was most public interest when there was media coverage; otherwise, participation was often limited to NGOs.

Difficulties

Most respondents reported that they were not aware of any difficulties with the participation of their public or the public of another Party, or that there had not been complaints from the public about the procedure. However, Belgium reported a complaint by an NGO to the Implementation Committee regarding a proposed activity in its territory, and Slovenia had experienced difficulties when the affected Party's public submitted comments both in the affected Party and directly in the Party of origin.

As affected Party, Austria observed that the public found it difficult to understand isolated public participation steps as they related to a procedure in the Party of origin, and when its comments were not taken into account as it would expect. Slovenia noted that the already lengthy public-hearing procedure was further lengthened by the need to translate documents; on one occasion the Party of origin

had taken the final decision while Slovenia was still conducting public participation as an affected Party.

Lithuania as Party of origin had heard complaints about the quality of interpretation in a public hearing in the affected Party. Hungary observed that hearings were costly and often poorly attended, and that it was difficult to decide on the timing during the day.

2.11.7 Consultations

(f) 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?

Most respondents reported that they were not aware of any significant difficulties during consultations, for example, over timing, language and the need for additional information. Sweden observed that there were differences between Parties regarding the meaning of consultations. It was apparent from the responses that the term “consultations” had been misunderstood by many respondents.

Austria and Romania observed that the affected Party wished to settle issues as carefully as possible, whereas the Party of origin normally wished to end consultations as soon as possible. Belarus, as Party of origin, reported delays in a transboundary EIA procedure caused by what it considered to be an unwarranted demand by an affected Party to postpone consultations. Latvia, as affected Party, noted that insufficient time had sometimes been provided for submission of comments after consultations; Serbia, too, had difficulties with timing. The Czech Republic and Poland, as Party of origin, had provided a translator during consultations; as affected Party, the Czech Republic had no experience of consultations and the transboundary EIA procedures had gone well without them.

Estonia, as affected Party, considered that consultations under article 5 had supported the prevention of possible significant transboundary environmental impacts, and Poland considered that they had supported the prevention, reduction and control of such impacts. For Hungary, as affected Party, consultations had led to a better understanding of the Party of origin’s legislation and to clarification of impacts.

2.11.8 Final decision

(g) 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

Respondents provided diverse examples of the form, content and language of the final decision, when it was issued and how it was communicated to the affected Party and its public. Several reported translation in part or completely of the final decision (Austria, Germany, Lithuania, Romania), in accordance with bilateral agreements (Poland), or as needed (Finland (into English), Netherlands, Norway), whereas others indicated that it was always sent in the Party of origin’s language (Hungary, Slovenia). Bulgaria and Croatia reported publication on their respective Government website, and many reported sending the final decision to the affected Party; in the Netherlands the final decision had to be sent to all those who had commented, wherever they were. Romania included information on public rights concerning access to justice; Hungary included information on opportunities to appeal.

2.11.9 Post-project analysis

(h) Has your country carried out post-project analyses and, if so, on what kinds of projects?

Most respondents indicated that their country had not carried out post-project analyses, at least in a transboundary context. Others, however, provided examples of planned activities that had been subject to post-project analysis, including: an offshore gas field (Croatia) and a gas pipeline (Denmark); wind farms (Denmark); a bridge (Denmark); nuclear power plants (Hungary, Romania) and other power plants (Hungary, Poland); a metallurgical plant (Kazakhstan); roads and railways (Poland); manufacturing plants (Poland); a hydroelectric power plant (Portugal and Spain); and an oil terminal (Republic of Moldova).

2.11.10 Joint projects

(i) 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.)

Austria, Croatia, Denmark, Germany, Italy, the Netherlands, Norway, Romania, Sweden and Switzerland provided information on successful examples of organizing transboundary EIA procedures for joint cross-border projects. For example:

- Italy referred to a bilateral agreement for the Brenner Tunnel;
- Finland and Sweden referred to the Nord Stream gas pipeline, with Sweden stressing the importance of regular and frequent meetings between points of contact, focal points and representatives of the permitting authorities. Finland identified the simultaneous notification and distribution of information, the coordination of public hearings and the translation of scoping and EIA documentation;
- Norway referred to the Skanled gas pipeline, for which effective meetings had been held at critical steps, with e-mail communication among focal points in between meetings;
- The Netherlands cited the establishment of a bilateral working group;
- Romania referred to joint projects with Bulgaria for a bridge across, and navigation improvements to, the Danube River, both of which saw public participation in scoping and the establishment of a joint body.

2.11.11 Good practice cases

(j) 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"?

Many respondents were unwilling to name examples of good practice cases, or had none. Others named examples: the Netherlands and Slovakia wrote of nuclear power plants in their countries, Belgium about one in neighbouring France. Sweden referred to the Skanled gas pipeline, Denmark, Finland and Sweden referred to the Nord Stream pipeline. As Parties of origin, Switzerland noted a transport infrastructure project and Belgium referred to a wind farm. Montenegro, as affected Party, noted a hydroelectric power plant in Croatia. Portugal referred to the

hydroelectric use of the Bemposta River and expressed a willingness to introduce the case in the form of a Convention case study fact sheet.

2.11.12 Means of applying the Convention

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

Respondents identified the most common means of applying the Convention, which was through:

- Points of contact, at least at the start (Bulgaria, Croatia, Denmark, Hungary, Italy, Montenegro, Sweden, Switzerland);
- Focal points (many Parties);
- Bilateral agreements (Italy, Netherlands, Poland, Portugal);
- Focal points, joint bodies and bilateral and multilateral agreements (Bulgaria, Estonia, Germany, Latvia).

2.12 Cooperation between Parties in 2006–2009

Question 54. Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries?

Respondents indicated how their country had overcome difficulties arising from different legal systems in neighbouring countries, with some referring to general approaches, others referring to specific experiences. Denmark noted that much time and patience had been needed to understand and overcome differences between legal and administrative systems and cultures. Austria, Estonia, Germany, Italy, Lithuania, Portugal and Spain noted the importance of bilateral and multilateral agreements, whereas Germany and Switzerland highlighted the process of the elaboration of such agreements and Kyrgyzstan referred to subregional guidance on transboundary EIA. France was flexible in its application of the Convention. The Netherlands generally followed the Party of origin's legislation. Romania noted the compatibility of national systems implementing EU legislation. Austria and Estonia referred to the importance of bilateral meetings and consultations. Switzerland also noted that shared practical experience for joint projects had helped overcome difficulties.

Germany noted, with respect to the Nord Stream gas pipeline, the agreement among States to use the longest time frame legislated in the various States concerned and to provide for public participation in the scoping phase. Norway reported that for the Skanled gas pipeline the concerned Parties had produced a table summarizing the different legal systems, time frames and key steps; this had helped in reaching a compromise approach.

2.13 Experience in using the guidance in 2006–2009

Question 55. Has your country used in practice the following guidance (see subparas. (a)–(c) below), 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:

Respondents provided information on their country's use in practice of the guidance adopted by the Meeting of the Parties. Denmark and Estonia emphasized the importance of practical experience rather than guidance.

(a) Guidance on public participation in EIA in a transboundary context

Some Parties had found the guidance on public participation in EIA in a transboundary context useful in practice (nine respondents), including when preparing for a public hearing (Belarus); as a source of ideas (France); for notification (Latvia); in drawing up bilateral agreements (Netherlands); and in drawing up legislation and norms (Republic of Moldova). In Armenia, the guidance had been translated and distributed.

(b) Guidance on subregional cooperation

About half of the respondents indicated that their country had not used the guidance on subregional cooperation in practice. However, some Parties had found this guidance useful in practice (Italy, Kyrgyzstan, Lithuania, Republic of Moldova), and in drawing up a multilateral agreement (Greece) or legislation and norms (Republic of Moldova).

(c) Guidelines on good practice and on bilateral and multilateral agreements

About half of the Parties had used the guidelines on good practice and on bilateral and multilateral agreements, also published as guidance on the practical application of the Convention. It was used in practice (eight respondents) and in drawing up bilateral and multilateral agreements (Belarus, Netherlands, Romania, Switzerland); for notification (Latvia); and for drawing up legislation and norms (Republic of Moldova). Norway also suggested that the completed questionnaires be used to update this guidance.

2.14 Clarity of the Convention

Question 56. 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? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in part one above or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which your country encounters when applying the Convention.

A minority of respondents indicated that their country had not had difficulties implementing the Convention's procedure, either as Party of origin or as affected Party. Others referred to difficulties with translation (Italy, Lithuania, Netherlands, Poland, Switzerland) and with time frames (Lithuania). Switzerland noted the question of which country's criteria should be used to determine the significance of impact in the affected Party. Norway drew attention to the challenging situation where there were many Parties of origin or affected Parties. Belarus reported a situation in which it had been Party of origin and the concerned Parties had disagreed over the format for notification, leading to a delay in the affected Party's response to what Belarus had considered was a notification.

Several respondents observed the continuing confusion over the various provisions for comments, objections and consultations (art. 2, para. 6; art. 3, para. 8; art. 4, para. 2; and art. 5) (Netherlands, Norway, Switzerland), and specifically what constitutes consultations under article 5 (Romania, Sweden). Greece and Poland observed that the provisions for joint activities were unclear. Poland also noted a need for a clear definition of the time frame for consultations. Sweden noted the mismatch between the number of steps in the Convention and the larger number of steps in its domestic legislation. Kyrgyzstan observed the need for thresholds for all activities listed in appendix I, and a specific distance to an international border in appendix III.

A few respondents identified strengths in their country's implementation of the Convention, such as the opportunity to participate and comment (Latvia) and that all

relevant stakeholders were included to find the best solution (Norway). Respondents also identified weaknesses, such as a need for: more awareness of the Convention (Kyrgyzstan); a clearer central overview of cases to ensure procedures were followed by local competent authorities (Norway); and legislation on transboundary EIA (Republic of Moldova).

As Party of origin, Croatia observed that it was difficult to speed up the procedure in the affected Party, and that a time frame needed to be introduced into article 4, paragraph 2. As affected Party, Austria observed that the Convention had not been applied to certain activities that, according to its legislation, would have been subject to the Convention. Austria also noted the lack of provisions on translation of documentation; the lack of a separate transboundary chapter had complicated translation for Hungary.

2.15 Awareness of the Convention

Question 57. 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.

Most respondents indicated that their country had undertaken activities to promote awareness of the Convention among stakeholders (e.g., the public, local authorities, consultants and experts, academics, investors). Several Parties provided information on their website (Bulgaria, Estonia, Germany, Kyrgyzstan, Lithuania, Netherlands, Romania) or referred to the Convention in national guidance (Estonia, Lithuania, Netherlands, Poland, Sweden); the Netherlands provided a helpdesk.

Others raised awareness more actively, for example:

- By hosting a subregional workshop (Armenia);
- Within bilateral and trilateral awareness programmes (Austria);
- Through seminars for public agencies, planning organizations, research organizations and university professors (Belarus);
- By an EU-funded promotion project (Croatia);
- By providing information to new authorities, stakeholders, NGOs, developers, etc. (Denmark);
- By a local seminar and through training of competent authorities (Finland);
- By sending information to NGOs (France);
- In meetings of the national EIA association (Germany);
- In national meetings of authorities (Germany, Netherlands, Switzerland);
- In regular workshops with inspectorates (Hungary);
- Through annual workshops for central Government, local authorities, NGOs, etc. (Kazakhstan);
- Through workshops for parliamentarians, central Government, local authorities, project organizations, project proponents, teachers, NGOs, etc. (Kyrgyzstan);
- Within a donor project on EIA (Montenegro);
- By writing to NGOs and offering the possibility to take part in meetings (Norway);

- Indirectly, as part of EIA promotional activities (Portugal);
- Through seminars for ministries, departments, design institutes and the public (Republic of Moldova);
- Through presentations to NGOs (Romania).

Austria financially supported the participation of NGOs. In Austria, Croatia, Italy and Romania the Convention was well known.

Question 58. 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? What relevant legal or administrative developments are proposed or ongoing?

About half of the respondents indicated that their country did not see a need to improve the application of the Convention in their country. Others identified areas requiring improvement, such as the need to: amend the current law (Armenia); adopt new legislation and guidance (Azerbaijan); develop practical experience on the basis of recent legislation (Belarus); work with neighbouring countries to improve the efficiency of the procedure (Croatia); develop more guidance on transboundary cooperation (France); raise awareness (France, Switzerland); adopt a new regulation on EIA and eventually an environmental code (Kyrgyzstan); receive assistance from the secretariat (Montenegro); communicate regularly with competent authorities (Netherlands); make the polluter pay and the Party of origin provide documentation in the language of the affected Party (Poland); ratify a multilateral agreement (Serbia); improve internal governance and communication between ministries (Slovenia); gather information on cases (Switzerland); and adopt new legislation (the former Yugoslav Republic of Macedonia). Finland had launched a review of its experience.

Some suggested how application was to be improved: inclusion of carbon capture and storage activities into national legislation in line with the amendment of the relevant EU legislation (Germany); signature of a new bilateral agreement (Lithuania); and development of a new law on EIA and a regulation on transboundary EIA (Republic of Moldova). Sweden suggested that it might be necessary to delegate responsibility to the regional authority, cutting out the central body, in cases when the Party of origin tightly limited the time frame for consulting regional or local authorities.

2.16 Suggested improvements to the report

Question 59. Please provide suggestions for how this report may be improved.

Some respondents suggested how the questionnaire might be improved. Several observed that it should be shorter and simpler. Some observed that questions often included many subquestions (Norway), and suggested that the long questions be broken down (Estonia, Latvia). The Netherlands proposed removal of some questions, Germany that closed (yes/no) questions be preferred. Many suggested that overlaps and repetition be avoided. Finland suggested that any changes to the questions be made clear in the questionnaire.

Azerbaijan suggested removing questions on the definition of terms and focusing instead on practical difficulties. Norway observed confusion over the different questions addressed to the Party of origin and the affected Party; Germany proposed that these questions be combined. The Netherlands suggested that questions on legislation and practice be better differentiated. Italy proposed that EU member States only need be asked about practical experience, unless there was a major change to the EU legislation. Norway pointed out the confusion over the term “consultations”. Germany proposed that, if gathering similar data on implementation of the Convention’s Protocol, use of a single questionnaire for both instruments might soften the administrative burden.

Switzerland suggested that the questionnaire might be structured by theme, such as public participation, rather than by article, and that the results of the review of implementation might be used to improve application of the Convention and be taken into account in the workplan. Norway proposed that the questionnaire be broken up, with a core questionnaire focused on possible implementation problems, other questions in a second questionnaire, and good practice addressed elsewhere, e.g., in the workplan.

