

REPORT OF **HUNGARY** FOR 2003-2005 ON THE IMPLEMENTATION OF THE ESPOO CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

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

Please provide the information requested below in Part I, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should not be used to describe your experience of applying the Convention, i.e. just the framework for its implementation.

Article 2

General Provisions

DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (Art. 2.2).*

Act. LIII. of 1995 on the general rules of environmental protection, Chapter VII. Articles 66-72, Articles 91-94 and Article 96 (2). (Herinafter: Environmental Act)
Governmental Decree No. 20/2001. (II. 14.) Korm. (herinafter: EIA Decree)

TRANSBOUNDARY EIA PROCEDURE

2. *Describe your national and transboundary EIA procedures and authorities (Art. 2.2):*
 - a. *Describe your EIA procedure and indicate which steps of the EIA procedure include public participation.*

The Hungarian EIA regulations noted in Point 1 above established a two phase procedure, in which the first phase is the Preliminary phase while the second one is the Detailed Examination phase. The Preliminary phase represents a screening and scoping procedure. The second Detailed phase is always mandatory in case of projects listed in chapter I/A of the EIA Decree. This chapter covers all activities in respect to Appendix I to the Convention. In case of projects listed in chapter I/B to the EIA Decree, a case by case decision of the competent environmental authority determines the need of the Detailed phase. The competent environmental authority decides on issuing environmental permit, based on the submitted documentation, standpoint of the co-authorities and comments of public.

Public participation is meaningful in both phases. The Preliminary phase allows written participation, while in the Detailed phase there is mostly a verbal, personal exchange between the developer, the environmental authorities and the members and organisations of public, including the concerned municipalities. In addition to these, written opinions also can be submitted by the members and organisations of the public to the environmental authorities.

- b. *Describe how the different steps of the transboundary EIA procedure mentioned in the Convention fit into your national EIA procedure.*

The rules of the transboundary EIA procedure are part of the EIA Decree as its Articles 24-28. These rules include all the steps of the transboundary procedure and

the developer and the environmental authorities shall follow these steps as soon as they recognise the possible transboundary effects (Article 25(1) of the EIA Decree) and also these rules describe the behaviour of the Hungarian authorities in case Hungary is the affected Party.

As a procedural guarantee to the recognition of possible transboundary effects of a planned Hungarian project, Article 6(6) of the EIA Decree stipulates that in the Preliminary Environmental Statement (ES) the experts of the developer shall examine the possibility of transboundary effects with the methodology available for the in-country effects as described in Article 6(5) of the EIA Decree. In the Detailed phase of the Hungarian EIA procedure there is also a reference to the transboundary EIA, in Article 15(8) which gives the necessary elements of the transboundary section of the detailed Environmental Impact Study (EIS):

- the method of consideration of the comments given by the public of the affected Party;
- the factors which entails with the transboundary effects;
- the effect-processes which exceed the borders;
- the elements of the environment which are sensitive to these effects, and the expected changes in them, taken into consideration the data given by the affected Party;
- determination of the outlines of the affected transboundary territories;
- the preventive and mitigation measures, together with the monitoring methodology;
- and
- the source of information and the used methodology.

- c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure. Also list the authorities responsible for the domestic EIA procedure, if they are different.*

Both in the transboundary and the domestic EIA procedure on the first instance the lead authority in Hungary is the Environmental, Nature Protection and Water Management Inspectorate, and all other authorities participate in the process, which have significant environmental aspects in their respective scopes of authority. Their participation is quite meaningful in the whole process (e.g. they give their input to the evidence taking process and also they give their mandatory opinion concerning the final decision). Such "co-authorities", as Act IV. of 1957 on the General Rules of Administrative Procedure addresses them, are enlisted in Annex 3 of the EIA Decree:

- in public health issues: the county institutes of the State Public Health and Sanitary Service;
- in local environmental and nature protection issues: the municipality clerk;
- in forest protection issues: the territorial directorates of the State Forestry Service
- in soil protection issues: the county plant and soil protection stations;
- in the issues concerning quantitative protection of arable lands: the district land register offices;
- in the issues of geology and mineral resources: the regional office of the Hungarian Geological Service;
- in the issues of protection of natural medical factors and medical sites: the Chief Directorate of Medical Sites and Medical Spas of the State Public Health and Sanitary Service;
- in cultural heritage issues: the Cultural Heritage Protection Office;
- in chemical safety issues: the county level catastrophe prevention directorates;

- in nuclear safety issues: the Nuclear Safety Directorate of the National Atomic Energy Authority;

Naturally, these co-authorities play their role in the EIA processes only when their specific issues emerge in the given cases. On second instance the respective superior authorities participate in the EIA procedures.

Finally, the Ministry of Environment and Water manages the communication with the foreign partners both in the position of affected Party and Party of origin. Also the Ministry organises the national level consultations on the project when Hungary is in the position of the affected Party.

- d. *Is there one authority in your country that collects information on all the transboundary EIA cases under the Convention? If so, name it. If not, do you intend to establish such an authority?*

The Ministry of Environment and Water assures a coordinated application, in that aspect it has information on the Espoo cases.

3. *Do you have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

There is no special provision. The developer shall carry out EIA for that particular part of a project that is physically located in a country according its national legislation.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING EIA UNDER THE CONVENTION

4. *Is your country's list of activities subject to the transboundary EIA procedure equivalent to that in Appendix I to the Convention?*

The list of projects when Detailed Examination is mandatory (Annex I/A. of EIA Decree) contains all the items of Appendix I of the Convention. This provision provides sufficient time to carry out transboundary EIA when it is necessary. The likelihood of transboundary impacts shall be examined in each and every preliminary ES, irrespective that they are in Appendix I of the Convention or in Annex I/A or I/B of the EIA Decree.

5. *Please describe:*

- a. *The procedures and, where appropriate, the legislation you would apply to determine that an "activity", or a change to an activity, falls within the scope of Appendix I (Art. 2.3), or that an activity not listed should be treated as if it were (Art. 2.5);*

The activities included in Appendix I to the Convention are listed in Appendix I/A to the Hungarian EIA Decree, which also includes quantitative thresholds. According to article 1, paragraph 2, points (a) and (c), these activities (except experimental activities unless they are carried out over a period exceeding two years) require a full EIA procedure, i.e. Preliminary (scoping) and Detailed impact assessment. Thus in the Hungarian EIA system the screening phase to determine the need for EIA process for the activities of Appendix I, is performed by the legislation itself. For the terms "large or major" applied in the Appendix I the EIA Decree identifies thresholds considering the suggestions of the relevant UN ECE guideline. There is no internal mechanism in the Hungarian law - except the projects under the scope of the EU EIA Directive - to initiate EIA procedure in connection with activities not listed in Appendix I. The general rules of the Convention could be used when an affected Party requests so. In connection with projects under the scope of

Directive 85/337EEC, the same transboundary EIA procedure can be applied if the affected Party or the Party of origin is Member State of the European Union.

Appendix 1/A of the EIA Decree lists the 49 most important activities, for which a full and detailed EIA is mandatory. Appendix 1/B contains 141 additional types of activities, for which the preliminary EIA is mandatory, but the full EIA process is dependent upon the discretionary decision of the environmental authority. In addition to these, as we have referred to it, if a neighbouring country insists that the Hungarian authorities initiate an EIA process for an activity that is not in either of the two mentioned appendices, a formal bilateral international agreement seems to be the only means by which an EIA might be undertaken.

b. How a change to an activity is considered as a “major” change;

Article 1(3) and 2 of the EIA Decree gives a detailed description of factors that qualify the modifications to an activity as significant. The factors are the following:

- The extension of an existing road to four or more lanes;
- The construction of a new railway track;
- Pipeline alignment changes resulting in a new alignment through a national protected area;
- A new emission that exceeds 25 % of the emission limit of any substance;
- New hazardous or nuclear waste, making necessary the construction of a new facility to handle it or to enlarge an existing facility by at least 25 %, or which requires the introduction of a new technology;
- The existing (permitted) emission is to increase by more than 25 % as an annual average;
- The existing use of underground or surface waters is to increase by more than 25 % as an annual average;
- The area occupied by the activity is to increase by at least 25 %; and
- Some dimension of the activity (e.g. capacity, production, extent etc.) is to increase by at least 25 %.

c. How such an activity, or such a change to an activity, is considered likely to have a “significant” adverse transboundary impact (Art. 2.5, Guidelines in Appendix III); and

As a procedure the issue is handled in a two-step process. According to article 25, paragraph 1, of the EIA Decree, the Environmental Inspectorate has to send documentation to the Ministry if there is a probability that a significant transboundary environmental effect would take place in connection with the proposed activity. According to paragraph 4 of the same article, the Ministry notifies the affected Party. The above-mentioned paragraph 1 expressly calls upon the inspectorate to take into consideration Appendix III to the Convention. The decision on the probability or harmfulness of an impact is based other Hungarian regulations referring to environmental elements or dangers.

By substance there is no difference in identification of significant impact related to Hungarian or non-Hungarian territory. By estimation of the potentially affected area which is integral part of content requirements the geographical extent can be identified. For determination of significance the same criteria are applied in any cases.

d. How you would decide whether it is “likely” to have such an impact. (Art. 2.3)

There is no direct definition of "likeliness" of such an impact in the Hungarian law. While the solution of deciding of this question is procedural (i.e. depends on the decision of the authorities, based on the proposals of the parties in the case), several substantial environmental laws regulating the management of environmental dangers shall be taken into consideration. In addition to that Article 6(5) and 6(6) of the EIA Decree might give the cue here, too. Article 6(6), as we already referred to, prescribes to use the methodology of estimation of domestic effects in Article 6(5) also for the transboundary cases. This way the preliminary ES shall examine the issues of factors and effect processes in connection with the planned new activity and also the probability of emergency. Article 6(5) refers further to Annex 2 of the EIA Decree that gives a detailed description of the methodology of establishing the affected area that is also a key issue in deciding about the likeliness of the transboundary impacts.

PUBLIC PARTICIPATION

6. *Do you have your own definition of “the public” in your national legislation, compared to Article 1(x)? How do you, 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 own public as required in Article 2, paragraph 6?*

Nor the Environmental Act, neither the EIA Decree contains (in the examined period) a definition of the public. However, Act LXXXI. of 2001 on the ratification of the Aarhus Convention inserted into the Hungarian law a definition of both the public and the concerned public.

All of the documents that are displayed for the Hungarian public to make comments on are sent to the affected Party roughly at the same time as Hungarian public received them, requesting comments from the public of the affected Party. The comments received from the public of the affected Party shall be considered the same way as the Hungarian public's.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

7. *Describe how you determine 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 do you usually notify the affected Party? (Art. 3.1)*

Notification is a two-step process according to Hungarian law. First the inspectorate sends the materials about the request and the activity immediately to the Ministry of Environment and Water after receiving the request by the activity proponent (art. 25, para. 1, of EIA Decree) - in all cases where the inspectorate concludes that significant transboundary environmental impacts may occur. We have to note that according to the General Rules of Administrative Procedure, a request with a seriously faulty or missing attachment is not considered a valid request and is not able to trigger the legal consequences of issuing the request for the decision of the administrative body (e.g. starting the procedural deadlines). After receiving the file from the inspectorate, the Ministry examines the file and send the notification to the affected Party immediately (art. 25, para. 4, of the EIA Decree).

8. *Describe how you determine the content of the notification? (Art. 3.2)*

Concerning the content of the notification, Article 25(4) of the EIA Decree refers back to the Convention, so the notification is put together according to Article 3(2) of the Convention.

9. *Describe the criteria you use to determine the time frame for the response to the notification from the affected Party (Art 3.3, “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 do you react?*

According to article 25, paragraph 4, of the EIA Decree, the Ministry has to specify the time frame for the response “in harmony with the deadline for the national EIA process”. This deadline is specified in article 91 of the Environmental Act (ninety days), while in Article 92(2) there is 30 days specified for the procedure of the co-authorities - this means altogether a 120 days frame for the Hungarian EIA process - having in mind that some procedural steps can proceed in parallel, whereas others cannot. Depending on the complexity and the number of participating consultative authorities and other participants, the time frame given to the affected Party can range from thirty to sixty days

The consequences differ according to the length of the delay. Hungarian practice will certainly not totally dismiss an opinion just because of a couple of days delay, but there is not enough experience. Smaller delays can result in a shorter period available for the authorities on the Hungarian side and for other participants to interpret, evaluate and answer the comments. Lack of response from the applicant or from other participants, however, could be considered serious shortcomings. Longer delays could make it impossible to take the opinion of the affected Party into consideration. In case of mutual practice or even unilaterally, the Hungarian authorities might be willing to delay the process, or using the possibility of article 37 of the General Administrative Code and Article 26(6)b per analogiam, could even suspend the process. A letter from the affected Party informing the Ministry about the fact and the causes of the delay could help in triggering off these more advantageous solutions, but we have to be aware that keeping the 120 days timeframes is a basic policy goal of the Hungarian environmental authorities.

10. *Describe when you provide 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?*

The information in accordance with Article 3, paragraphs 5 (a) and (b) of the Convention is submitted with the notification.

11. *How do you determine whether you should request information from the affected Party (Art. 3.6)? When do you normally request information from the affected Party? What kind of information do you normally request? How do you determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (Art. 3.6)?*

Article 25, paragraph 1, item (bb) of the EIA Decree, prescribes that the inspectorate shall specify what kind of information is required from the affected territory of the affected Party for the preparation of the detailed EIA documentation. Paragraph 4 of the same article, in describing the responsibilities of the Ministry furthering the information to the affected Party, refers back to paragraph 1. The request is attached to the notification.

The nature of the information requested from the affected Party is determined by the requirements of the EIA documentation (the information is requested in the scoping phase, so the applicant is in the position to use all of the received information in the detailed, final EIA documentation prepared for the second phase of the Hungarian EIA process).

As concerns the actual practice, we have very little experience in that respect, but generally we ask the affected Party to send information only in cases where the transboundary effects can be specified already in the Preliminary phase. For example, when the air pollution is the main impact:

- immission data;
- sensitive receptors to air pollution;
- meteorological data

in the affected area. (Article 69, paragraph 2, and article 71, paragraph 1, of the Environmental Act and article 6, paragraphs 1 to 9, article 14, paragraphs 1 to 7, and article 15, paragraphs 1 to 8 of the EIA Decree, contain the requirements of the content of the EIA documentation).

According to an interpretation of the Hungarian regulation (reading together article 25, paragraphs 1, 4 and 5), Hungary asks at the same time for a response on the affected Party's wish to participate and for information about the affected territories. See the terms and deadlines of the response to the notification in the answers to the previous questions. However, Hungary considers that prompt provision of information is hardly feasible except for countries having extensive computerized and connected environmental databases.

12. *How do you consult with the authorities of the affected Party on public participation (Art. 3.8)? How do you identify, in cooperation with the affected Party, the "public" in the affected area? How is the public in the affected Party notified (what kinds of media, etc are usually used)? What is normally the content of the public notification? Does the notification to the public of the affected Party have the same content as the notification to your own public? If not, describe why not. At what stage in the EIA procedure do you normally notify the public of the affected Party?*

Hungary has very scarce experiences in the position of Party of origin, in this period there is one still ongoing case. According to the affected Party receives all the materials what the Hungarian public receives and all the further dissemination tasks rest on the affected Party.

13. *Do you 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 listed on the Convention website at http://www.unece.org/env/eia/points_of_contact.htm?*

Yes, the points of contact are made use of in this way. However, in certain priority cases (for instance, because of widespread public, economic or political interests) the international communication might be initiated or partly led by the Minister of Environment him/herself.

14. *Do you provide any information to supplement that required by Article 3, paragraph 2? Do you, furthermore, follow the proposed guidelines in the report of the first meeting of the Parties (ECE /MP/2, decision I/4)? If not, in what format do you normally present the notification?*

Generally the notification provides some supplementary information even if the Hungarian law does not specify specific requirements. Article 25, paragraph 4 of the EIA Decree refers directly to the text of the Convention in that matter ("the Ministry prepares the notification according to the rules of the Convention"). First of all we send the information prescribed by Article 3(5) of the Convention. In addition to the notification, the Ministry attaches to it the proponent's application for the proposed activity, the preliminary EIA documentation and a request for information further to Article 3, paragraph 6, of the Convention if necessary. We also describe in the notification the expected steps of the Hungarian EIA procedure.

Yes, the proposed guidelines are followed, but only in part. In our opinion the content suggested by decision I/4 can be applied directly by countries that have adopted a one-step EIA procedure. In Hungary the process is a two-step one with public participation in the

Preliminary phase. This way Hungary has to send the notification and supplementary information at an earlier stage of EIS preparation than countries with one step-process (or with two step process but with no public participation in the first phase).

QUESTIONS TO AFFECTED PARTY

15. *Describe the process of how you decide whether or not you want to participate in the EIA procedure (Art. 3.3)? Who participates in the decision-making, for example: central authorities, local competent authorities, the public and environmental authorities? Describe the criteria or reasons you use to decide?*

According to article 27, paragraph 1 (a) of the EIA Decree, the Ministry asks the opinion of the inspectorate, the statutory consultant authorities (co-authorities) and the concerned public on the proposed activity in the Party of origin and also on the necessity of participation in the Espoo process. An example of when Hungary chose to participate is when discharges from the foreign activity or natural resource exploitation might affect the state of environment in Hungary; it is relatively easy to decide whether a location is close to the border or whether, should an accident occur, Hungarian territory might be polluted according to earlier experience.

16. *When the Party of origin requests you to provide information relating potentially affected environment: (a) how do you determine what is “reasonably obtainable” information to include in your response; and (b) describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “promptly” in the context of responding to a request for information? (Art. 3.6)*

(a) In general, we could describe the Hungarian legal approach as we consider "obtainable" all the information the authorities collect or possess according to their legal responsibilities. Article 27, paragraph 4 of the EIA Decree underlines the information which is readily available at the Ministry or at the inspectorate and the consultative authorities. In addition to this, information that is not available or requires a lengthy process either to find it or to produce it is not considered reasonably obtainable.

(b) According to article 27, paragraphs 1 and 4, after receiving the notification, the Ministry performs the necessary translations and asks for opinions and data from the competent inspectorate and consultative authorities and sends Hungary's answer and the requested information to the Party of origin. There are no fixed procedural deadlines for these activities. The prompt answer in some cases can include only so called meta-information about the available database requesting the Party of origin to specify its information need.

Article 4

Preparation of the EIA documentation

QUESTIONS TO PARTY OF ORIGIN

17. *What is the legal requirement for the content of the EIA documentation (Art. 4.1)?*

The Hungarian EIS documentations contain all of the elements of Appendix II of the Convention (as determined by Articles 14-15 of the EIA Decree and Article 71(1) of the Environmental Act) in a detailed way.

18. *Describe your country's procedures for determining the content of the EIA documentation (Art. 4.1).*

In all cases the environmental inspectorate determines the content of the EIA documentation (Detailed EIS) after receiving the Preliminary Environmental Study (Preliminary ES). In its decision on the content of the Detailed EIS, the inspectorate follows the opinions of the co-authorities and takes into consideration the inputs from the members and organisations of the public (including the concerned municipalities, too). It is important to note that in the explanatory part of the decision that closes the Preliminary phase of the process and establishes the requirements of the Detailed EIS there shall be a three-part analysis of the public opinion: analyses of their factual, professional and legal parts.

19. *How do you identify “reasonable alternatives” in accordance with Appendix II, alinea (b)?*

There is no requirement in the Hungarian environmental law that would make the inclusion of alternatives in the EIA documentation mandatory, although there are regulations that suggest that alternatives in the EIA documentation are desirable. Article 6(1) stipulates:

"In explanation of the necessity of the investment (as prescribed by Article 69(2) a) of the Environmental Act), there shall be a part in the Preliminary ES that
a) describes the reasons why the applicant prefers the planned solution or solutions
b) did environmental viewpoints played a certain role in this decision or not and if they did, what actually they were."

Article 6(2) of the EIA Decree goes further:

"In the description of the possible locations and technologies (as prescribed by Article 69(2) a) of the Environmental Act) the Preliminary ES shall contain the following items:
a) in the chapter describing the history of planning:
aa) a short description of alternatives that were examined but rejected;"

Furthermore, according to Article 9a) of the EIA Decree:

"In the decision about the content of the Detailed EIS the Environmental Inspectorate shall specify that alternative or those alternatives in connection which the authority holds the actual realization possible within proper circumstances."

20. *How do you identify “the environment that is likely to be affected by the proposed activity and its alternatives” in accordance to Appendix II, alinea (c), and the definition of “impact” in Article 1(vii)?*

Appendix 2 of Environmental Decree on “Rules of determination of the affected territory” gives a detailed description of the identification of the likely affected environment. The full affected territory is the sum of the territory of the direct effects and of the territory of the indirect effects. This territory is larger in the preliminary phase and narrows down as the process of EIA goes forward. The text of the Appendix makes it clear that the extension of affected territory might differ according to the affected environmental elements (e.g. air, water, soil). It is important to note in this respect that according to Article 68(3) of the Environmental Act, during the EIA process all the operations directly connected to the planned activity and also the environmental effects of faults and accidents shall be revealed.

21. *Do you give the affected Party all of the EIA documentation (Art. 4.2)? If not, which parts of the documentation do you provide?*

Yes, all the EIA documentation is given to the affected Party.

22. *How is the transfer and reception of the comments from the affected Party organized? How does the competent authority in your country (as the Party of origin) deal with the comments? (Art. 4.2)*

There is no specific rule in the Hungarian EIA laws on the transfer and reception of the comments from the affected Party. However, according to the practice the ministry of environment of the affected Party transmits the comments to the Hungarian ministry and it forwards them immediately to the environmental inspectorate responsible to handling the given case. The inspectorate then send the comments immediately to the project proponent for use in compiling the detailed EIA documentation.

According to Article 8, Paragraph 3 of the EIA Decree, the inspectorate takes into consideration the factual, professional and legal elements of the comments and analyses them in the written explanation of its decision (similarly to the analysis of the public opinion). Article 8 of the Hungarian EIA Decree expressly refers to articles 24 to 26 on the relevant international (Espoo) rules. In addition to this Article 26(3) of the Decree stipulates:

"The inspectorate with consultation with the co-authorities may order additional work on the Environmental Impact Study if it seems to be necessary according to the comments received on the consultations with the affected Party or coming from the public of the affected Party."

23. *Describe the procedures and, where appropriate the legislation you would apply to determine the time frame for comments provided for in the words "within a reasonable time before the final decision" (Art. 4.2)? 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 do you react?*

Hungary's general approach is not to exceed the deadline when making a decision on an environmental permit, which allows approximately 120 days for the entire procedure. Similarly to the earlier answer: the decision might be brought without consideration of the delayed comments, but if the comments arrive before the decision is actually taken, the inspectorate shall consider them. There are legal possibilities (According to Article 26 (6) b) of the EIA Decree and Article 37 of the General Administrative Procedure Act) to suspend the process until the comments of the affected Party (and the results of consultation) arrive, but it depends on the mutual practice of the countries in question and on the circumstances of the case (for example, the affected Party sends a letter requesting an extension).

24. *What material do you provide, together with the affected Party, to the public of the affected Party?*

The material provided is:

- the request and the preliminary ES together with the notification;
- the detailed EIS (plus the translations of its international chapter and also of the non-technical summary, performed by the applicant, according to Article 26(2) of the EIA Decree);
- the decision on environmental permit and
- the decisions, if any, resulted from legal remedies.

25. *Do you 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?*

Hungary does not initiate a hearing on the territory of the affected Party. However, the draft Hungarian-Slovak bilateral agreement (not in force yet) proposes such an arrangement that in the affected country the affected Party organizes the public hearing. There is no mention of the public of the affected Party in the legal provisions on notification about a public hearing in the EIA Decree or in the Environmental Act.

The hearing held in Hungarian territory is addressed to the concerned public of Hungary. However, the Hungarian Party in its international EIA procedures takes into consideration Article 3(8) of the Espoo Convention, so there is no legal exclusion if some of the concerned individuals or the organizations from the affected Party wishes to participate on the hearing, but it could not entail with additional financial burden on the proponent or on the Hungarian authorities (e.g. the interpreters should be brought and paid by the foreign participants).

QUESTIONS TO AFFECTED PARTY

26. *Describe the procedures and, where appropriate, the legislation you 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. 4.2)?*

As affected Party, the Hungarian EIA Decree does not specify any deadlines for the process, which means that every action shall take place immediately or as soon as possible. However, Hungary has to consider the time taken by the consulting authorities and the public in forming their opinions, which is not less than thirty days providing the same time period what is available in the national procedure.

27. *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, or with the legislation of the Party of origin, or with ad hoc procedures, or with bilateral or multilateral agreements?*

When Hungary is the affected Party, the Ministry of Environment and Water shall organize public participation according to Article 27, Paragraph 5b and 5c of the EIA Decree. The Ministry, after performing the necessary translations of the EIA documentation received from the Party of origin, shall

- organise to disseminate information to and receiving comments from the public of the possibly affected territory, including the municipalities, if necessary, and
- organise public meeting and invite the representative of the Party of origin to participate in it.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

28. *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 you would apply to determine the meaning of “undue delay”, with regard to the timing of entry into consultation? Do you normally set the duration for consultations beforehand? If there seems to be no need for consultation, how do you determine not to carry out consultations?*

There is no experience with consultations since the cases when Hungary is the Party of origin haven't reached yet the consultation phase.

As concerns the relevant legislation, according to article 26, paragraph 2 of the EIA Decree, the inspectorate that receives the detailed EIS from the applicant shall send it to the Ministry immediately, which furthers it to the affected Party also without delay, and, as noted in the previous point, the Ministry initiates the consultations together with sending the materials. This altogether means that initiation of consultation takes place at the relative beginning of the detailed EIA process. The effective timing of consultation requires to consider that the affected Party needs time to organize exchange processes back in her country. Regarding the situation when it seems to be no need for consultation, the Convention does not provide possibility to avoid it. At least the Party of origin shall initiate it.

29. *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, exchange of written communications?*

Hungary has no experience in that aspect. According to the EIA Decree consultation is arranged at the ministry level. The Ministry always involves the inspectorate in the consultations and in case of necessity it also can involve the co-authorities (Art. 26, para. 2 of the EIA Decree).

QUESTIONS TO AFFECTED PARTY

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

We have very limited experience on that field. Consultations as affected Party are not even regulated by the Hungarian laws, although we can use the rules of the reverse situation *mutatis mutandis*. According to this, we use for the consultations both the national and regional levels. The concerned Environmental Inspectorate shall always take part in the consultations, while the co-authorities take part only in case of important professional issues belonging to their scope of authority (with analogical use of art. 26, para. 2 of the EIA Decree).

Communication is taking place usually in a personal meeting of officials and experts, while written consultations can also occur by either letter being sent to the Party of origin if there is no need for further personal consultations or otherwise in a personal meeting session it can be agreed, that certain details would be arranged in a correspondence.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

31. *Describe what is regarded as the “final decision” to authorize or undertake a proposed activity (Art. 2.3). Do all projects listed in Appendix I require such a decision?*

In the Hungarian environmental legal system the EIA decision (on the environmental permit) that closes the Detailed assessment phase is considered a final independent decision of the environmental authorities, in term that there is a separate set of administrative legal remedies against this decision (appealing to the chief environmental inspectorate and also an administrative court revision process) and also that if the EIA decision is negative, the

project will not be performed. An environmental permit of legal force is a precondition for application for a construction permit.

All of the Appendix I projects undergo an EIA procedure and require environmental permit.

32. *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. 6.1)*

As it concludes from the Hungarian legal situation described in the previous point, the decision of the EIA procedure is totally independent from the other parts of the long decision making process a large environmentally significant investment usually must undergo in procedural legal sense. This means that the EIA decision can be positive or negative and can contain any conditions of the investment notwithstanding of the other decisions. However, if the EIA decision is negative, the proponent cannot initiate any such permitting processes that follow the EIA procedure (usually, there is a formal requirement in such permitting procedures to attach the positive EIA decision, the environmental permit with legal force to the request for other permit). In addition to these, the statements of the EIA decision shall be taken into consideration in the construction permitting processes as mandatory elements of the realisation of the planned activity.

33. *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 public in your country (Art. 6.1)?*

Article 8, paragraph 3 of the EIA Decree, as quoted above, handles these comments in parallel, in a completely identical way.

34. *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. 6.2)*

As we also noted above, there are detailed instructions in the EIA Decree about the content of the reasoning part of the EIA decision. In addition to that, Article 43 of the General Administrative Procedural Law obliges the authorities to give reasoning in their decisions in general terms: the summary of all the meaningful facts of the procedure, their evaluation with the evidences having been taken into consideration and also the exact references to the legal regulations the decision was based on.

Article 26(4) of the EIA Decree stipulates that the inspectorate sends its decision immediately to the Ministry, which furders it also immediately to the affected Party. The same procedure applies to the cases when legal remedies are used by the parties and further decisions are brought.

35. *If additional information comes available according to paragraph 3 before the activity commences, how do you consult with the affected Party? If need be, can the decision be revised? (Art. 6.3)*

There is no specific provision in the EIA Decree about it, general provisions of the Administrative Procedural Act are applicable in such a case.

If the case is finished with legal force, only extraordinary legal remedies can take place, which have stringent procedural and time constraints.

An additional legal tool to touch the EIA decision with legal force is the initiation of a supervision and modification process on substantial legal reasons according to Article 70(3) of the Environmental Act:

"The Environmental Inspectorate revokes the permit (...) if the circumstances of the time of issuing the permit have significantly changed "

According to the implementation rule of this regulation, Article 22 of the EIA Decree stipulates:

"The Environmental Inspectorate can modify the environmental permit upon request or ex officio in case the circumstances of the time of issuing the permit have significantly changed but the full revocation of the permit is not necessary."

Article 7

Post-Project Analysis

36. *How do you determine whether you should request a post-project analysis to be carried out (Art. 7.1)?*

There are no special rules in the Hungarian EIA laws about post-project analysis of the transboundary cases, although Article 19(1)a) of EIA Decree creates the general opportunity of such procedures:

"In the decision on environmental permitting the authority may determine as a condition to the permit

a) regular environmental monitoring, including establishment of measurement, observation and control systems."

In other aspects the rules of the Convention on determination of post-project analysis are directly applicable and the consultations with the other Party may provide a good forum to determine on this issue.

37. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how do you inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to Article 7, paragraph 2?*

Articles 73-76 of the Environmental Act prescribe environmental supervision on such operating facilities that might cause environmental pollution. Since the rules on environmental supervision do not contain all the necessary specific details of procedural rules, the generally accepted Hungarian practice refers back to the rules of EIA process. Anyway the Parties can agree on handling such a situation case by case during the consultation.

Article 8

Bilateral and multilateral agreements

38. *Do you have any bilateral or multilateral agreements based on the EIA 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.*

None.

39. *Have you established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

No, we haven't.

Article 9

Research programmes

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

These types of programmes being more general are undertaken independently of EIA regulation and implementation in the framework of numerous environmentally focused research programmes. More specifically, the Hungarian Party has carried out international comparative legal researches on transboundary and national level EIA regulations as a part of background and preparatory operations to the future Hungarian-Slovakian bilateral Espoo agreement.

Ratification of the amendments to the Convention and of the Protocol on SEA

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

The preparation work for the ratification are scheduled on the second half of 2006.

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

The same as 41.

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

There is no definite time schedule for this task at the time being.

PART II – PRACTICAL APPLICATION DURING THE PERIOD 2003-2005

Please report on your practical experiences of applying the Convention (not your procedures described in Part I), whether as Party of origin or affected Party. The focus here is on identifying the best practice as well as difficulties Parties encountered in applying the Convention in practice to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve application of the Convention.

CASES DURING THE PERIOD 2003-2005

44. *Do you have any practical experience of applying the Convention in this period (yes/no)? If you do not have any such experience, why not?*

yes

45. *Does your national administration have information on the transboundary EIA procedures that were underway 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 you have not provided a list of transboundary EIA procedures in connection with previous reporting, also provide a list of those procedures. If possible, also indicate for each procedure why it was considered necessary to apply the Convention.*

- Novo Virje hydro power plant (Croatia is the Party of origin) - this investment is close to the border with direct intervention to the water regime on the Drava river, that is a border river for the two countries and supports an important nature protection area in Hungary;

- Gold mining in Rosia Montana (Romania is the Party of origin) - the planned technology seems to endanger the safety of some Hungarian rivers in case of an accident (as it happened already in 2001 in connection with the Tisza river and its tributaries).

- Nuclear power plant operation period extension in Paks, Hungary. Austria requested her notification referring to possible occurrence of accident beyond design-base which may affect its territory, Croatia also has signed interest. Hungary made possible their participation according to rules of the Espoo Convention with the reservation that due to the scale of probability of such an accident, it cannot be considered as an event with likely significant transboundary impact..

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

No.

47. *Provide information on the average durations of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

The very few cases Hungary has had up to now makes no possibility to count an average. In our estimation, however, broad public attention and shown political interest could be the

main factors which can make the transboundary EIA procedures significantly more time consuming than a less interesting, simple EIA.

EXPERIENCE OF THE TRANSBOUNDARY EIA PROCEDURE IN 2003-2005

48. *If you have 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.*

We have had no finished case.

49. *How have you interpreted in practice the various terms used in the Convention, and what criteria have you used to do this? Key terms include the following: “promptly” (Art. 3.6), “a reasonable time” (Art. 3.2(c), Art. 4.2), “a reasonable time-frame” (Art. 5), and “major change” (Art. 1(v)). If you are experiencing substantial difficulties interpreting particular terms, do you work together with other Parties to find solutions? If not, how do you overcome the problem?*

Promptly means in our understanding: "immediately after the necessary procedural steps were taken"; reasonable time: is a time primarily determined by the Party active in the given procedural step with a due consideration of the length of the the national procedural steps (upper limit) and also the time necessary for translation and internal information dissemination (lower limit, the minimum time). Taking all of these into consideration, for instance the process according to Article 4.2. of the Convention a longer period may be accepted as reasonable, because the documents the affected Party shall handle are is more volumous and detailed.

50. *Share with other Parties your experience of using the Convention. In response to each of the questions below, either provide one or two practical examples or describe your general experience. You might also include examples of ‘lessons learned’ in order to help others.*

a. *How in practice have you identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?*

We refer back to Point 45: It seemed to be plausible to start an Espoo process once the location was very close to the Hungarian border and the activity itself presented direct intervention into the hydrological regime of the Hungarian water system. Even if the location is far from the border but there is a likelihood of accidents where water pollution can effect Hungarian waters as well, due to certain technologies, especially where the same technology has a bad history.

b. *Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How do you determine how much information to include in the EIA documentation?*

According to the Hungarian legislation a chapter on the transboundary environmental effects is provided in every EIS, based on the information and comments received from the affected Party. When Hungary is the affected Party, after the notification it usually provides suggestions on the content of the EIS.

c. *What methodology do you use in impact assessment in the (transboundary) EIA procedure (for example, impact prediction methods and methods to compare alternatives)?*

We do not use any special assessment methodology which would be different from the national EIA methodologies. Naturally, the focus of examination might be

shifted in the transboundary EIA processes, for instance the transmission calculations might play a bigger role in such procedures.

- d. *Translation is not addressed in the Convention. How have you addressed the question of translation? What do you usually translate? What difficulties have you experienced relating to translation and interpretation, and what solutions have you applied?*

For Hungary acting as Party of origin the Hungarian legislation (Article 26(1) of the EIA Decree) stipulates that the international chapter and the non-technical summary shall be translated to the language the affected Party requests.

As affected Party, we translate the content list of the EIS and based on this, also the chapters especially relevant for us as the affected Party, and usually the summary of the whole EIS.

Sometimes it is difficult to identify the relevant parts, in order not to translate voluminous materials in vain. Translation is time-consuming and expensive, this might cause problems in keeping the deadlines in such processes. An other problem is that it is extremely difficult to get a high quality professional translation between smaller, less used in professional circle languages. Even if the two neighbouring countries frequently share a bilingual population, these people are not always able to translate the sophisticated professional text of an EIA.

- e. *How have you organized transboundary public participation in practice? As Party of origin, have you organized public participation in affected Parties and, if so, how? What has been your experience of the effectiveness of public participation? Have you experienced difficulties with the participation of your public or the public of another Party? (For example, have there been complaints from the public about the procedure?)*

In cases where Hungary is the affected Party, the Hungarian Ministry of Environment and Water organizes public participation. The dissemination of information and receiving of comments may take place through the webpage of the ministry, through "Green Spider", an NGO e-mail network, through the offices of the public information service of the Ministry and of the regional inspectorates. In certain occasions the Ministry hires professional public opinion researchers (for preparing questionnaires in order to reveal the attitudes of the public concerning a priority case). After receiving EIA documentation the Ministry organises public meetings with participants invited from the Party of origin (the proponent, the concerned authorities, EIA consultants).

As a Party of origin we don't organise public participation in territory of the affected Party.

As concerns the difficulties: mainly NGOs are active, the individual members of the public in general not so much. Even if it is so, we need to underline that our authorities in their EIA cases frequently receive useful information from the members and organisations of the public.

- f. *Describe any difficulties that you have encountered during consultations, for example over timing, language and the need for additional information.*

We have no information in that respect.

- 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.*

We have no information in that respect.

h. Have you carried out post-project analyses and, if so, on what kinds of projects?

We have no information in that respect.

i. Do you have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your experiences describing, for example, any bilateral agreements, institutional arrangements, and how practical matters are dealt with (contact points, translation, interpretation, transmission of documents, etc.).

We have no information in that respect.

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

Rosia Montana mining project in Romania: notification was sent in time and in a properly detailed form, suggestion made by Hungary on the scope of EIA was accepted by the competent authority of the Party of origin.

Novo Virje hydro power plant in Croatia: the Hungarian request to provide additional documentation and the terms of reference for the content of the documentation addressing transboundary impacts were accepted and the technical and hydrological chapters were very well elaborated.

CO-OPERATION BETWEEN PARTIES IN 2003-2005

51. Do you have any successful examples of how you have overcome difficulties arising from different legal systems in neighbouring countries?

No difficulties occurred due to differences in the legal systems.

EXPERIENCE IN USING THE GUIDANCE IN 2003-2005

52. Have you used in practice the following guidance, recently adopted by the Meeting of the Parties and available on-line? Describe your experience of using these guidance documents and how they might be improved or supplemented.

a. Guidance on public participation in EIA in a transboundary context;

We have no information in that respect.

b. Guidance on subregional cooperation; and

We have no information in that respect.

c. Guidelines on good practice and on bilateral and multilateral agreements.

We have used the Guidelines excessively in the preparation of the mentioned draft Slovak-Hungarian bilateral Espoo agreement and also in one concrete case during the preparation to the consultations.

CLARITY OF THE CONVENTION

53. Have you 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 I 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 you encounter when actually applying the Convention.

We had difficulties in interpretation of the term "accident" especially with the effect of the statistical probability on the application of this term. A similar problem is that the term "likely" is not clear, and in practical cases the parties could come up with very different concept concerning likeliness.

An other practical problem is that in certain Espoo processes the Parties seem to insist on the official high level (diplomatic) channel of communication. Such way as a letter is transported to the Ministry of Foreign Affairs, to the same ministry of the other country and than to the Ministry of Environment and further down to its authorities, the majority of the consigned time expires and a substantial answer hardly can be put together. In general, the use of the contact points is vital for the effective transboundary proceedings.

AWARENESS OF THE CONVENTION

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

The EIA section of the homepage of the Ministry deals with Espoo topics amongst others, and the guidance prepared by the UN ECE on the practical implementation of the Espoo Convention have been translated into Hungarian.

55. Do you see a need to improve the application of the Convention in your country and, if so, how do you intend to do so? What relevant legal or administrative developments are proposed or on-going?

As the numbers of the transboundary EIA cases increase, it will make necessary a broader distribution of tasks between national and regional level, and also in general, more resources ensured to these tasks will have to be reconsidered.

SUGGESTED IMPROVEMENTS TO THE REPORT

56. Please provide suggestions for how the report may be improved.

While we agree with the content of the report, the length of reviewed period may be extended, since the transboundary EIA procedures usually take considerable time and also the regulation does not change frequently.