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

Ninth session

Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

Fifth session
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Item 3 (b) and 8 (b) of the provisional agenda

Outstanding issues: draft decisions by the Meeting of the Parties to the Convention

Adoption of decisions: decisions to be taken by the Meeting of the Parties to the Convention

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

Note by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment

Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context decided that a seventh review of implementation of the Convention during the period 2019–2021 based on Parties' reports would be presented at the ninth session of the Meeting of the Parties (Geneva, 12–15 December 2023) (ECE/MP.EIA/30/Add.1–ECE/MP.EIA/SEA/13/Add.1, decision VIII/2–IV/2).

This note presents the seventh review based on national reports received by 30 June 2022. The review has been finalized considering the comments made during and after the eleventh meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 19 – 21 December 2022) and the further adjustments agreed on by the Working Group at its twelfth meeting (Geneva, 13– 15 June 2023).

The Meeting of the Parties is invited to consider the adoption of the seventh review of implementation of the Convention through its decision IX/5.

I. Introduction

1. This report presents the seventh review of implementation of the Convention on Environmental Impact Assessment in a Transboundary Context. It examines responses to a questionnaire on the Parties' implementation of the Convention and their practical experiences with the Convention during the period 2019–2021.

2. The methodology underpinning the seventh review is outlined in section II below. Section III contains a review of certain aspects of the Parties' domestic legal and administrative frameworks implementing the Convention. Section IV contains a review of the Parties' practical application of, and experiences with, the Convention during the survey period. Section V contains a summary of the seventh review's main findings.

3. Due to limitations on the length of this report, the lists of transboundary cases in 2019–2021 provided by Parties, and other supplementary data will be made accessible on the website for the Convention.[1]

II. Methodology

4. The seventh review of implementation was prepared in line with the workplan adopted by the Meeting of the Parties to the Convention at its eighth session (Vilnius (online), 8–11 December 2020) (ECE/MP.EIA/30/Add.1–ECE/MP.EIA/SEA/13/Add.1, decision VIII/2–IV/2). Parties reported on their implementation and practical experiences by completing a questionnaire produced by the Implementation Committee and approved by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment. Blank (in English, French and Russian) and completed versions of the questionnaires are available on the Convention website.[2]

5. Based on those completed questionnaires received by 30 June 2022, the secretariat, with the assistance of a consultant, prepared a draft review for consideration by the Working Group at its eleventh meeting (Geneva, 19–21 December 2022). The draft review was then finalized taking into account the comments made by the Parties during and after the meeting and submitted for adoption by the Meeting of the Parties to the Convention at its ninth session (Geneva, 12–15 December 2023).

6. Only 21 Parties out of 45 (47 per cent) reported by the deadline of 30 April 2022. By 30 June 2022, completed questionnaires had been received from 34 Parties to the Convention (75 per cent) and these responses are addressed in this review. The completed questionnaire submitted for Belgium contained the responses from four administrative entities: the Flemish, Walloon and Brussels Capital Regions, and the Federal Government. The responses of said four administrative entities varied greatly; therefore, in line with established practice, the data from each of the administrative entities have been included in the results presented in this report.

7. At the time of writing (July–September 2022), Bulgaria, Cyprus, Germany, Italy, Kyrgyzstan, Liechtenstein, North Macedonia, Portugal, Serbia and Ukraine had not submitted a completed questionnaire; Cyprus, Germany, Italy and Portugal did so after that period. The European Union also did not complete the questionnaire, but instead provided information on follow-up on the implementation of European Union environmental impact assessment legislation; the publication of a notice on changes to and extensions of projects; and new case law. Consequently, these Parties are not addressed in the review results. Although not reflected in the present review of implementation, the completed questionnaires that were submitted at a later stage are nonetheless available on the Convention website.

8. Georgia (not currently a Party to the Convention) also submitted a completed questionnaire. Its data are included in the analysis.

9. Not all Parties (and the non-Party) that responded answered every question; consequently, the number of responses (i.e. n) for individual questions is sometimes lower

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

[2] See www.unece.org/environment-policy/environmental-assessment/review-implementation-2019.

than the maximum, with the maximum number of responses being 38. Unless otherwise stated in this report, the number of respondents to an individual question is 38 (i.e. n=38).

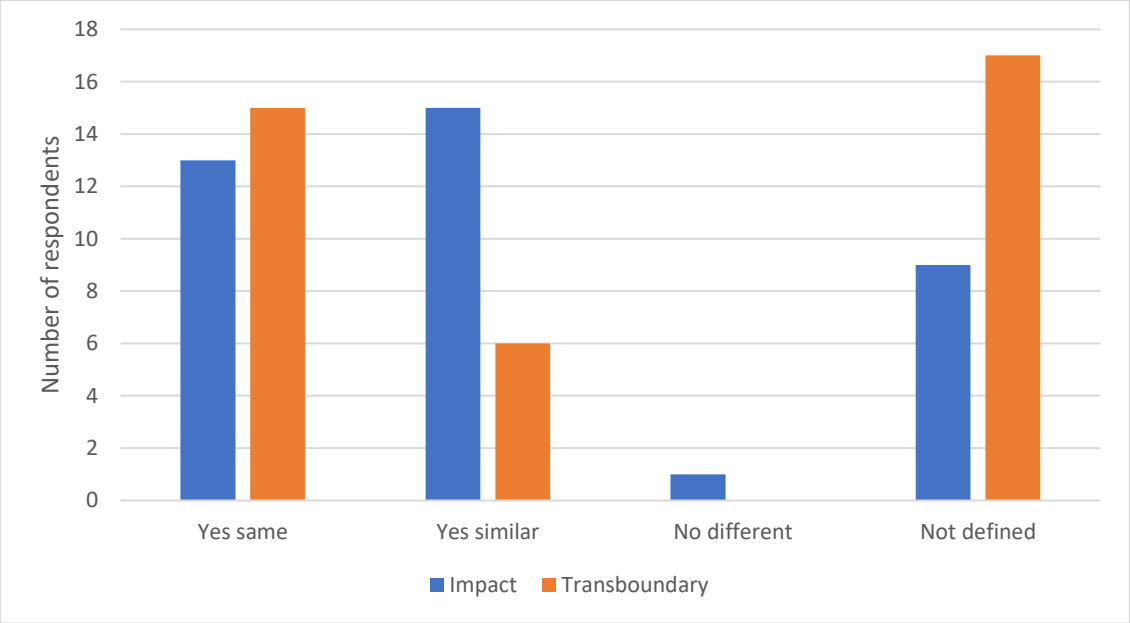
III. Review of Parties' implementation

10. This section of the report examines the key findings from the first part of the questionnaire, which focuses on the Parties' domestic legal and administrative framework implementing the Convention.

A. Key concepts

11. Questions I.1.1. and I.1.2. in the questionnaire examine, respectively, how the Parties define 'impact' and 'transboundary impact' in their domestic legislation. The responses indicate that many Parties have transcribed the definitions of these two terms contained in the Convention into their domestic legislation (13 and 15 for "impact" and "transboundary impact", respectively) or use definitions similar to those contained in the Convention (15 and 6, respectively) (see figure 1).

Figure 1
Responses to questions I.1.1.–I.1.2. (n=38)



12. Seventeen respondents do not define 'transboundary impact' in their national legislation. A number of Parties (e.g., France and Sweden) state that their consideration of impact is not delimited geographically and hence should automatically address transboundary concerns, wherever relevant. The United Kingdom of Great Britain and Northern Ireland defines transboundary impacts in terms of significant effects in European Economic Area States.

13. A smaller number of respondents (9) do not define the term "impact". This generally appears to be because different terminology is used. For example, the legislation of the United Kingdom of Great Britain and Northern Ireland refers to "aspects of the environment likely to be significantly affected by the development" rather than impacts, while the Canadian legislation refers to "an assessment of the effects". All respondents except three (Azerbaijan, Belarus and Ireland) take cumulative impacts into account in transboundary procedures (question I.1.6). Azerbaijan and Ireland both state that there are mechanisms in place to ensure that cumulative impacts are addressed, where relevant. Belarus gives no explanation for its response.

14. It is not possible on the basis of the questionnaire data to assess to what extent the Parties' domestic definitions of "impact" are compatible, in a strict legal sense, with the Convention's definition. However, some Parties note that their domestic definitions of

"impact" are more extensive than that in the Convention. Examples of the types of additional issues covered include:

(a) Second order and cumulative impacts;

(b) Urban structures and townscape;

(c) Natural hazards.

15. Question I.1.3 asks Parties to describe how they define "major change" in their domestic legislation. A number of respondents (12) do not use the term "major change", but in most cases they provide examples of alternative approaches they use. Respondents state that they use thresholds (12 cases), criteria (12), and a case-by-case analysis (13) to determine whether major changes to an existing project will take place, with 7 respondents using a combination of approaches. For example, Canada notes that it uses thresholds and criteria, in addition to engaging in consultation with potentially affected Parties. Poland comments that, in determining whether a proposal constitutes a major change, the competent authority may take into account the "characteristics of the planned project or activity, the type and characteristics of the technology used, the characteristics of the environment potentially affected, the extent of the change and other determinants of importance for the area."

16. Thirty respondents identify the public "of the affected Party in the areas likely to be affected" (question I.1.4) based on geographical location and twenty-nine by making the information available to all members of the public and letting them identify themselves as the public concerned. Other methods used include consideration of the extent and significance of potential impacts (Estonia and United Kingdom of Great Britain and Northern Ireland) and by reference to a definition of the characteristic that must be met in order to be classed as the "public concerned" (Czechia).

17. Methods used to determine the "significance" of the environmental impact of activities falling within the scope of the Convention (question I.1.5) are summarized in table 1.

Table 1
Methods used to determine significance (n=38)

Method	*Number of respondents*
Thresholds	25
Criteria related to location	31
Criteria related to nature of proposed activity	26
Criteria related to size of proposed activity	25
Criteria related to effects	27
Other	4

B. General provisions

18. Fifteen respondents report slight differences between the list of activities in their domestic legislation and the contents of appendix I to the Convention (question I.2.2). The differences mainly arise from their domestic legislation encompassing more types of activities than are listed in appendix I and/or because they follow the specifications of European Union environmental impact assessment legislation. Furthermore, the actual number of respondents with slight differences is higher than this figure indicates as several respondents who chose option (a) (no difference) noted in the comments that their provisions were more extensive.

19. No respondents reported gaps (option (c)) in their transposition of appendix I. However, Luxembourg notes that offshore hydrocarbon production (point 15, first line) is omitted because it does not have a coastline. A further two Parties (Belarus and Canada) state that while their domestic legislation does not include all developments listed in appendix I, there are mechanisms in place through which the omitted projects will be analysed to

determine the need for environmental impact assessment. It should be noted, however, that six of the responding Parties (Armenia, Belarus, Belgium, Bosnia and Herzegovina, Ireland and Kazakhstan) have not yet ratified the second (2004) amendment to the Convention, which altered the contents of appendix I. Consequently, the respondents are using, and basing their response upon, different iterations of appendix I.

20. Seven respondents do not have an authority responsible for collecting data on transboundary environmental impact assessment cases (question I.2.4). In the remaining cases, the data is typically collected by a governmental entity (a ministry, an environmental agency/bureau, or a federal office).

C. Environmental impact assessment documentation

21. Question 1.4.1 examines how Parties determine "the relevant information to be included in the environmental impact assessment documentation in accordance with article 4 (1)". This provision states that "[t]he environmental impact assessment documentation … shall contain, as a minimum, the information described in appendix II". The approaches used by respondents are presented in table 2. It is evident that most respondents use a combination of approaches, including referring to appendix II and comments received during consultation and participation activities. A number of respondents who selected option (e) (by using other means) refer to specifications of what the environmental impact assessment documentation must contain in their domestic legislation. Reference is also made to checklists (Romania) and meetings with the developer and lead expert(s) (Belgium, Federal Government).

Table 2
Determining relevant information to be included in environmental impact assessment documentation (n=38)

Approach employed	*Number of respondents*
Using appendix II to Convention	31
Using comments received from authorities concerned during scoping phase, if applicable	30
Using comments from members of public during scoping phase, if applicable	27
Determined by proponent based on its own expertise	9
Other	8

22. Quality control measures used to ensure environmental impact assessment documentation is of sufficient quality (question I.4.2) primarily involve a Party of origin authority checking the content of the documentation against appendix II to the Convention (35), while quality control checklists are also used by 6 respondents. Other quality control measures employed include drawing upon additional actors, over and above the domestic competent authority, to assess quality. For example, in the Netherlands an independent expert body (Netherlands Commission for Environmental Assessment) must provide independent advice for certain developments. Competent authorities in the Netherlands can also voluntarily seek advice from this expert body where their involvement is not a mandatory. The requirement under European Union environmental impact assessment legislation to ensure the work is completed by competent expert(s) was also cited by several Parties.

23. The meaning of "reasonable alternatives" (appendix II (b)) is typically determined on a case-by-case basis (23, question I.4.3) and/or following the definition in the respondent's domestic legislation (14). In practice, interpretations of what constitutes "reasonable alternatives" appear to vary considerably between the Parties. Canadian operational policy differentiates between "alternatives to" and "alternative means" to structure the consideration of reasonable alternatives. In Slovakia two forms of alternatives are typically considered – alternative locations and technologies – while Montenegro appears to have developed detailed guidelines. Some respondents note that reasonable alternatives may be specified by the competent authority or expert bodies during scoping. Austrian legislation does not specify

the exact nature of the alternatives to be considered; instead, the proponent must present the reasoning underpinning the alternatives selected.

D. Public participation and consultation with environmental and health authorities

1. Notification

24. When functioning as the Party of origin, respondents state that they notify affected Parties primarily during scoping (24) or after the environmental impact assessment documentation has been prepared and the domestic procedure commences (17, question I.3.1). A number of respondents (e.g., United Kingdom of Great Britain and Northern Ireland) explain that notification timing is often a function of when their administration first becomes aware of the proposed activity. Thus, when the authorities are involved in scoping, notification will occur at this stage, but scoping is not a mandatory activity for all developments for several respondents.

25. While some respondents note that the time at which notification occurs varies, they state that it is always initiated before or at the same time as public consultation is initiated domestically. Only two Parties indicate that notification may occur, in some instances, after the domestic procedure has been completed (Ireland and the United Kingdom of Great Britain and Northern Ireland), although it appears that Ireland means that affected Parties will be informed of the final decision.

26. The responses to questions I.3.2 (format of notification) and I.3.3 (information included in notification) are summarized in tables 3 and 4, respectively.

Table 3
Format used for notifications (n=36)

Format used	*Number of responses*
Tabular format (based on ECE/MP.EIA/2, annex IV, decision I/4, appendix, table 1)	7
Letter containing all information detailed in decision I/4	8
Combination of tabular format and letter	2
Standardized domestic format	2
No official format	17

Table 4
Information included in notification (n=36)

Information included under art. No.	*Number of responses*
3 (2) (a)	35
3 (2) (b)	29
3 (2) (c)	33
3 (5) (a)	33
3 (5) (b)	31
Additional information	4

27. The nature of the additional information provided in notifications (see table 4) includes: information on the accredited experts and the coordinator who will prepare the environmental impact assessment documentation (Belgium, Flemish Region); an “intended activity submission” (Latvia); and the developer’s application for development consent (Estonia).

28. The length of time Parties of origin allow for receiving a response to a notification (question I.3.4) varies, but one to two months appears to be typical. In most cases (18, n=36), the time frame for an affected Party to respond to a notification is not defined in the Party of origin's domestic legislation; 13 respondents indicate that the time frame is established on a case-by-case basis; and 3 respondents note that their legislation defines only that they must provide a reasonable time frame for the response, indicating that a level of flexibility exists.

29. The only reported procedural provisions or "'consequences" if an affected Party does not respond by the deadline (question I.3.5) are that the Party concerned risks being excluded from transboundary consultations. Most respondents express an openness to extend the deadline if requested to do so, although Denmark observes that this is not always possible due to domestic timetables.

30. Parties of origin generally inform the public and authorities in the affected Party via the "point of contact" to the Convention (33, n=37, question I.3.6). Some use additional approaches, either instead of or as well as contacting the point of contact, including contacting the national environmental authority and publishing the notification in newspapers (e.g., the Netherlands). Where bilateral agreements exist, these normally specify which organisation(s) should be contacted.

31. Decisions on whether or not to participate in transboundary procedures as an affected Party (question I.3.7) are predominantly made by the notified authority on its own (18, n=37), based on the opinions of competent authorities (16), or on the opinion of the competent authorities and the public[3] (20). Question 1.3.8 examines how the Party of origin determines the time schedule for transmittal of comments from an affected Party under article 3 (5) (a). Most respondents (24, n=37) determine the time schedule based on their national rules, although in some cases (7) a combination of the rules of both the Party of origin and the affected Party are used. A small number of respondents (4) decide this issue on a case-by-case basis (e.g., Georgia and Malta).

2. Public participation

32. Question I.3.9 explores the Parties' implementation of article 2 (6). When operating as the Party of origin, equivalence is primarily provided for in the national legislation (24, n=34), while in 12 instances it is determined on a case-by-case basis in consultation with the affected Party(ies). When operating as an affected Party, respondents state that equivalence is agreed with the Party of origin on a case-by-case basis (17, n=33) or is specified in the national legislation (16).

33. Responses to question I.3.10 on how the public in an affected Party can express its opinion on environmental impact assessment documentation as part of the participation process are summarized in table 5. While some respondents state that other approaches are used (option (d)), these were very similar to, and in some instances covered by, options (a)–(c).

Table 5
Forms of participation for public in an affected Party (n=38)

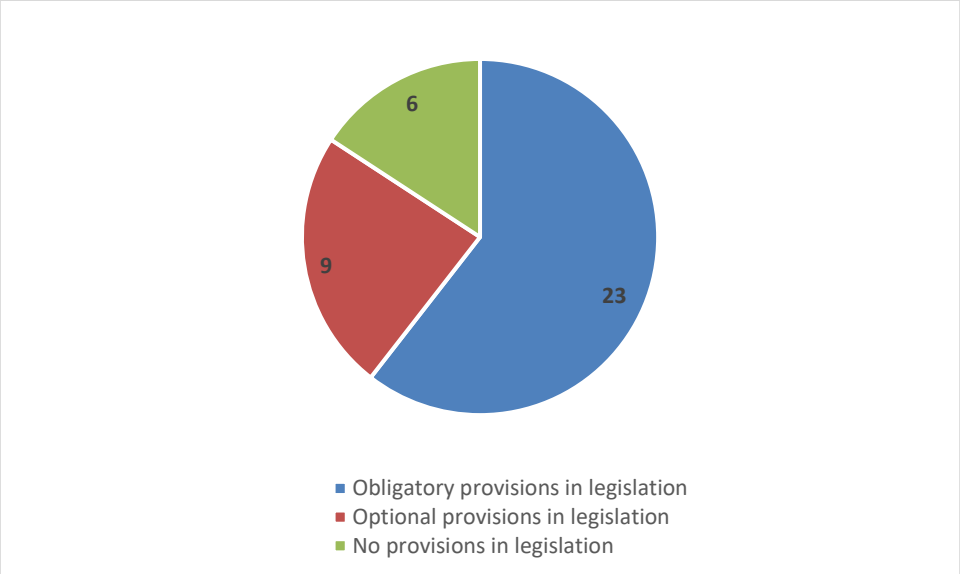
Form of participation	*Number of responses*
A. Sending comments to competent authority	29
B. By taking part in public hearing on territory of affected Party	25
C. By taking part in public hearing on territory of Party of origin	19
D. Other	7

[3] Most respondents selected more than one option. The formulation of question I.3.7 complicates the analysis of the responses.

3. Consultations with authorities

34. Question I.5. concerns the Parties' domestic legal provisions for the organization of transboundary consultations between the authorities of the Parties concerned under article 5 (responses summarized in figure 2). In most cases, respondents have established obligatory provisions for transboundary consultations between the authorities of the Parties concerned. Six Parties, however, indicate there are no such provisions in their domestic legislation: Croatia, Denmark, Netherlands, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland. In at least one case, this is a result of how the question has been interpreted, with the United Kingdom of Great Britain and Northern Ireland noting that its legislation does not specify how consultations should be organized. A number of other respondents lacking legal provisions state that they rely on other mechanisms to ensure that the required consultations take place. For example, the Netherlands states that procedures for consultations are stipulated in at least one multilateral agreement, while Sweden notes that it is part of the national competent authority's remit to ensure compliance with article 5.

Figure 2
Responses to question I.5. (n=38)



4. Final decision

35. Question I.6.1 asks the Parties to state from a list of options all those points that they "should take due account of in the final decision on the proposed activity". Virtually all respondents report that the following points are covered in the final decision:

(a) Conclusions of the environmental impact assessment documentation;

(b) Comments received in accordance with articles 3 (8) and 4 (2);

(c) Outcome of the consultations as referred to in article 5;

(d) Outcomes of the transboundary consultations;

(e) Comments received from the affected Party(-ies);

(f) Mitigation measures.

36. A notable exception to this trend is Kazakhstan, which only selects option (e), without providing a corresponding explanation.

37. Five respondents include additional considerations in making final decisions, including, for example, an independent expert report on the environmental impact assessment documentation (Czechia). However, it appears that a number of Parties interpret question I.6.1 as asking what information should be included in a public statement of the final decision. Thus, they refer to information on, amongst other things: how and when the decision can be challenged; and the mitigation measures that the developer must implement.

38. All respondents other than Denmark, Lithuania and Switzerland indicate that comments received from "the authorities and the public of the affected Party and the outcome

of the consultations" are taken into consideration in the same way as responses from the authorities and the public in the Party of origin (question I.6.2). Denmark indicates that no differentiation is made in their legislation between domestic and non-domestic entities, which implies that comments received from an affected Party would be treated in an equivalent way to domestic inputs. Switzerland notes that "[t]he competent authority will take the comments into account, mention or refer to them in the decision and also explain its reasoning in dealing with them and how it took them into account". Lithuania states that the outcomes of consultations are treated equivalently but highlights some differences in the ways in which it receives consultation responses in cases of transboundary consultation.

39. All respondents except Canada and Finland indicate that all activities listed in appendix I (items 1–22) to the Convention, and major changes thereto, require a final authorization decision before they can be undertaken (question I.6.4). Canada states in an accompanying explanation that a political decision may be taken at the Cabinet level where there is no other final authorization point. Finland comments that it is procedurally challenging to cover "deforestation of large areas" (i.e. appendix I (17)), in part because deforestation activities are typically undertaken as a part of construction or mineral extraction projects. It suggests that the definition of the activity in appendix I (17) is too narrow.

40. Fifteen respondents state that their domestic legislation contains provisions transposing article 6 (3) (question I.6.3). This figure has increased by two since the previous review of implementation and the response rate was higher in that period (n=46). All other respondents indicate that no such provisions exist in their domestic legislation. Austria notes that under domestic legislation the possibility to revise a final decision is strictly defined and limited to specific legal and natural persons enjoying locus standi. Nevertheless, they also comment that "there is always the political possibility to reopen consultations on request of the affected Party in order to find solutions". Several respondents (e.g., Estonia and Kazakhstan) comment that a request to reopen a final decision can be made if significant additional information becomes available, while Denmark and Greece note that it is possible under their domestic legislation to review and/or revoke a planning permit where the final decision was reached on the basis of inadequate information.

5. Post-project analysis

41. Question I.7. asks the Parties whether they have "any provision regarding implementation of post-project analysis in [their] national environmental impact assessment legislation". The question references article 7 (1).

42. Eight respondents indicate that their domestic legislation does not include provisions to implement article 7 (1). Of these eight, Azerbaijan indicates this omission is addressed in draft secondary legislation, while Hungary notes that, in such instances, the text of the Convention itself is directly applicable nationally. The United Kingdom of Great Britain and Northern Ireland and Ireland have no specific legal requirement for post-project analysis, but they note that it, nevertheless, frequently takes place. Belgium (Brussels Capital and Walloon Regions) describes the role of an inspection service in compliance monitoring and enforcement. No explanation for the lack of a regulatory requirement on post project analysis is provided by Croatia or Finland.

6. Bilateral and multilateral cooperation

43. Fourteen respondents report the existence of bi-or multilateral agreements on the implementation of the Convention (question I.8.1). The Multilateral Agreement among the Countries of South-Eastern Europe for Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context is the most frequently mentioned multilateral agreement.

44. There is evidence that a small number of new agreements, of both a formal and informal nature, have been developed in recent years and that some existing bilateral agreements are undergoing revision. Azerbaijan and Kazakhstan ratified a Protocol on Environmental Impact Assessment in a Transboundary Context to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, in 2019 and 2021, respectively. Poland has conducted extensive discussions with the Republic of Slovakia on the establishment of a bilateral agreement, but dialogue between Poland and Belarus has recently been suspended. The Netherlands is updating its agreements with

Germany and Belgium (Flanders Region). Lastly, Norway reports that an informal agreement on practices was established between Finland, Norway and Sweden in 2017.

45. The broad contents of existing bi- and multilateral agreements (question I.8.2) are summarized in table 6. The bilateral agreement between Germany and Poland also addresses arrangements for the translation of documentation and dispute resolution.

Table 6
Content of bi- and multilateral agreements implementing Convention, (n=15)

Content of agreement	*Number of responses*
Institutional, administrative and other arrangements	15
Specific conditions of subregion concerned	7
Harmonization of Parties' policies and measures	6
Undertaking joint environmental impact assessment, development of joint monitoring programmes, intercalibration of monitoring devices and harmonization of methodologies	5
Establishment of threshold levels and more specified criteria for defining significance of transboundary impacts related to location, nature or size of proposed activities	4
Developing, improving and/or harmonizing methods for identification, measurement, prediction and assessment of impacts, and for post-project analysis	2
Developing and/or improving methods and programmes for collection, analysis, storage and timely dissemination of comparable data regarding environmental quality in order to provide input into environmental impact assessment	2
Other	2

Note: Although Belarus and Luxembourg state that they do not currently have any bi- or multilateral agreements under question I.8.1, they provide answers to question I.8.2. These data presumably reflect the contents of draft agreements and/or guidelines. Data supplied by Montenegro are not included in the table, as the country did not use the same categories as those employed in the questionnaire when responding to the question.

IV. Practical application and experiences

46. This section of the report examines the key findings from the second part of the questionnaire, which focuses on Parties' practical experiences with the application of the Convention. The responses provide Parties and future Parties with valuable information for monitoring and improving the Convention's actual application.

1. Number and types of transboundary procedures

47. Responding Parties report that they initiated 118 transboundary procedures for activities listed in appendix I as Parties of origin during the survey period and participated in 178 procedures as affected Parties. Two countries report having initiated more than 20 cases as Parties of Origin: Belgium (39) and Sweden (25). All other respondents who reported cases initiated 10 procedures or fewer as the Party of Origin. Four Parties report participating in more than 10 procedures as an affected Party: Netherlands (38); Poland (28); Norway (17); and Sweden (17). All other respondents participated in 10 or fewer procedures. Fifteen Parties plus Georgia did not report on any transboundary procedures in 2019–2021.

48. The largest number of procedures by a considerable margin was reported for wind farms: 47 procedures were initiated by Parties of origin[4] and affected Parties participated in 84 procedures. Other types of activities for which a comparatively large number of cases were reported include major quarries and mining facilities (13 cases reported by Parties of origin and 8 by affected Parties); certain motorways and express roads (11 cases reported by Parties of origin and 9 by affected Parties), and certain installations for the intensive rearing of poultry or pigs (11 cases reported by Parties of origin and 12 by affected Parties).

49. It is noteworthy that wind farms and certain installations for the intensive rearing of poultry or pigs were added to the projects listed in appendix I through the second amendment to the Convention (ECE/MP.EIA/6, annex VII, decision III/7). The introduction of the second amendment in 2017 thus has likely increased markedly the number of transboundary procedures, based on the data presented by the respondents. It is also noteworthy, within this context, that not all Parties have ratified and/or transposed the amendments to the Convention (see para. 19 above).

50. Several Parties report participating in transboundary procedures for projects of a type not listed in appendix I. These include a small hydropower development, mixed-use residential developments, flood management projects, an airport development and a small wastewater treatment plant.

51. A more detailed breakdown of the types of projects for which transboundary procedures have been undertaken is available on the website for the Convention.[5] It is important to note that there is a high degree of uncertainty about the accuracy of data on the occurrence of transboundary cases. Not all Parties maintain comprehensive records of their involvement in transboundary procedures, and it is unclear, in many instances, whether respondents who provide no data on transboundary cases actually had no cases to report or choose not to complete this part of the questionnaire. One Party (Austria) objects to its project lists collected under question II.2 being posted online, noting, in its response to question II.3, that "non-central data collection could be misleading". These data have, therefore, been omitted from the information online.

2. Impacts and issues addressed in transboundary environmental impact assessment

52. All but two Parties who responded to question II.18 indicate that alternatives of various types are considered in practice during transboundary environmental impact assessments. In some cases, there is a mandatory requirement to consider alternatives, while in others it is compulsory only where they have been considered by the project proponent. The two respondents that state alternatives were not considered explain that this is because no transboundary procedures were undertaken during the survey period.

53. The types of alternatives considered vary between respondents. Swedish legislation provides an instructive description of relevant alternatives: alternative designs; alternative sites; alternative technologies, size, scope, safeguards, restrictions, precautionary measures and other relevant aspects; and alternative ways of achieving the same purpose. In Slovakia, there is a requirement to present at least two alternatives, plus the no-action or zero alternative.

54. All respondents to question II.19 who had practical experience in the survey period indicate that impacts upon biodiversity and climate change are always considered. Many respondents note that the consideration of issues such as circular economy, smart and sustainable cities, and renewables are addressed partially, indirectly (e.g., through mitigation measures), or only when relevant.

55. Two Parties state explicitly that cumulative impacts are not taken into account in their country's practices (question II.20). The Republic of Moldova notes that this omission is addressed in their draft legislation, while no explanation is provided by Belarus.

[4] Seventeen of the cases of transboundary procedures for wind farms were initiated by Sweden (i.e. the Party of Origin), with Belgium (Federal Government) and Lithuania accounting for a further 9 and 8 cases, respectively.

[5] See https://unece.org/environment-policy/environmental-assessment/review-implementation-2019 (forthcoming)

56. In response to question II.21 on whether health issues are considered in practice, two Parties (Republic of Moldova and Switzerland, n=36) state that they are not. In the case of the Republic of Moldova, they had no practical experience during the survey period. Switzerland reports that health issues are considered separately, but that a focus on well-being and impacts such as noise in environmental impact assessment means that many of aspects of health are, in effect, addressed. All other respondents (34) take health issues into account.

3. Translation and interpretation practices

57. Questions II.5.–II.11. examine various aspects of translation and interpretation practices under the Convention. The first of these questions asks in what language(s) the environmental impact assessment documentation is made available by affected Parties to their own public. The documentation is typically supplied in the national language (or languages), although English is accepted in many instances (15, n=32). Other languages are also deemed to meet the requirement for effective public participation by certain affected Parties, including Russian by the Republic of Moldova and Swedish and Danish by Norway.

58. Respondents generally expect the Party of origin to ensure, wherever relevant, that translation is undertaken before the documentation is sent to an affected Party (question II.7) and it is normally the project proponent that organizes and pays for translation. There are some exceptions: for example, a federal ministry in Austria might organize the translation of documentation in some (unspecified) instances. Some exceptions are also made by affected Parties. Finland, for example, has organized and funded the translation of documentation from Norwegian (where Norway was the Party of origin) into Sami languages. As an affected Party, Romania accepts documentation in English, but may fund their translation into Romanian to encourage participation nationally. Poland has observed that, over time, the amount of translated documentation it receives as an affected Party has increased markedly. It suggests that this is because Parties to the Convention have become increasingly aware of the benefits of good consultation and participation practices.

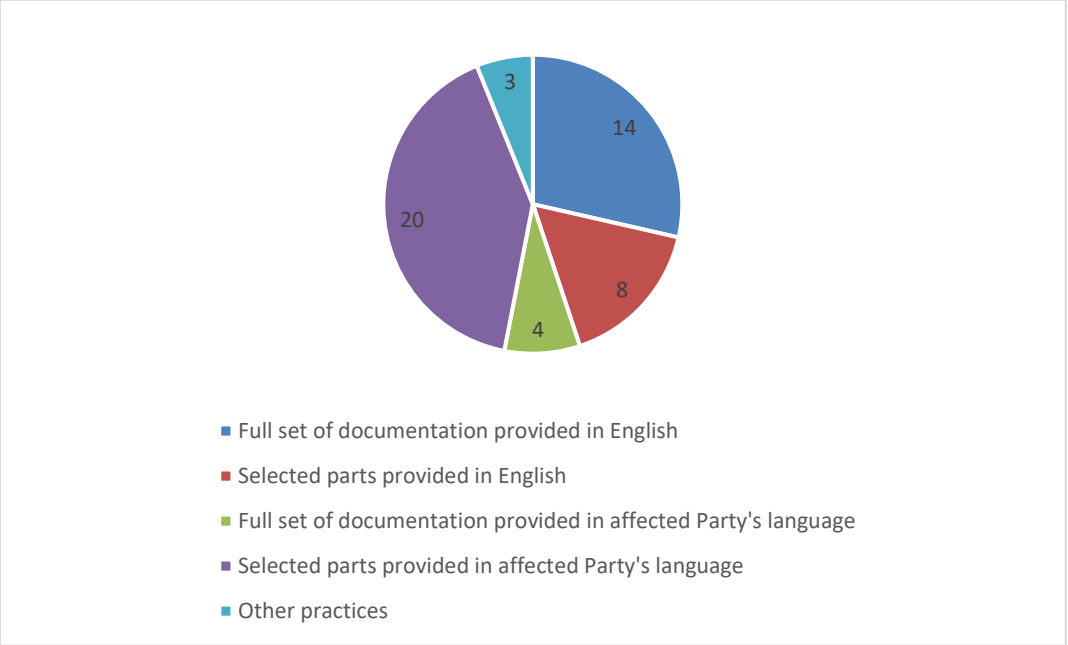
59. Information on how documentation is translated and into which languages by the Party of origin (question II.10) is summarized in figure 3. Twenty-eight respondents (n=33) state that the environmental impact assessment documentation in its entirety is translated into English or the relevant national language. In other instances, it is normally the section on transboundary impacts and the non-technical summary that are translated (question II.8).

60. Sweden uses a case-by-case approach to determine what parts to translate, while in Norway, the parts to be translated are agreed in consultation with the affected Party(ies). Some respondents translate documentation into a combination of languages. For example, Lithuania states that the summary is translated into the national language(s) of the affected Party upon request and the documentation in its entirety is translated into English.

61. Where untranslated documentation is received by an affected Party, Poland typically translates the non-technical summary and the chapter describing transboundary impacts, but it may translate additional material, where deemed necessary. Austria states that it is frequently necessary to translate all the documentation it receives, if it has not been translated by the Party of origin, because it is not possible to determine in advance what parts might be important.

62. Responses to question II.11, on how the costs of interpretation at public participation events are covered, follow a similar trend. Most respondents indicate that project proponents (17, n=25) and/or a competent authority in the Parties of origin (6) pay for interpretation, but there are instances (3) in which an affected Party may fund interpretation.

Figure 3
Responses to question II.10



63. A number of difficulties with translation and interpretation practices are reported (question II.6), including:

- Notifications sent out without any information on the project being supplied in the potentially affected Party's national language
- Receipt of documents that are not in a linguistically accessible form (e.g., official language of affected country)
- Receipt of insufficient and/or poorly translated material on the project and its transboundary impacts
- A lack of provisions for interpretation at public participation events held on the territory of the Party of origin
- A failure by Parties of origin to budget for interpreters at meetings in, or involving, an affected Party

64. Several respondents commented on the cost-burden and time required for translating documents. The United Kingdom of Great Britain and Northern Ireland has received requests for translating extensive amounts of documentation, which it argues can be "disproportionately time consuming and expensive", and, in the country's opinion, may be unnecessary where no significant effect is expected to occur in the territory of the Party concerned.

65. The quality of written translations and of interpretation during consultation and participation activities is felt by a few respondents to be problematic in some instances. For example, it is claimed that, in one instance, automated software (such as Google Translate) was probably used to perform the translation and the documentation contained numerous mistakes. As was the case in the sixth review of implementation, respondents emphasized that is difficult for the Party of origin (whether that be the developer, the focal point or a relevant ministry) to perform quality control checks on translated documents. Canada comments that it is extremely difficult to find reliable translators for certain languages, for example, Western Greenlandic.

4. Additional difficulties experienced during public participation and consultation activities

66. Most Parties have not experienced serious difficulties with either public participation procedures or consultations between authorities under article 5 (question II.12). A common concern by those reporting problems is that of time frames and deadlines. Several respondents comment that the time frames they are given as an affected Party are too short. Croatia

remarks that the public often requests longer time frames and Norway observes that increasing public awareness over time about a project can lead to demands for multiple participation events. Switzerland observes that delays were experienced when a Party of origin sent a notification to someone other than the official "point of contact". Consultation activities conducted under article 5 may also create delays. The delays may be a result of the complexity of bureaucratic systems (e.g., in decentralized administrations) or because an extended period of time is needed to organize meetings involving individuals from multiple ministries and/or agencies. Denmark notes that waiting beyond the specified deadline to receive the results of participation and consultation activities from affected Parties can be politically challenging given strict deadlines domestically for decision-making. Poland describes a series of difficulties that it has experienced, including:

- Differences in expectations, legal procedures and practices between a Party of origin and an affected Party
- Processing large quantities of comments (i.e. several thousand) received from the public in an affected Party can impose large costs on a Party of origin where they need to be translated
- Delays in the "investment process" created by affected Parties failing to meet deadlines
- Delays created by the need to request that additional material be translated into Polish or to arrange translation
- Challenges in relation to the communication of the final decisions made by Parties of origin

5. Post-project analysis

67. Only a small number of respondents (6) undertook post-project analysis during the review period (question II.13). The Netherlands provides, as an example of its post-project analysis practices, an Internet link to monitoring activities for a project involving salt extraction in the Wadden Sea.[6] Internet links to authorized developments for which post-project analysis is being undertaken are also provided by Belgium (Federal State).[7]

6. Successful and good practice cases

68. The Parties were asked to provide at least one written example of the reported cases of practical implementation (question II.4) and 15 Parties did so. The broad characteristics of the cases reported is summarized on the website for the Convention. The Parties were also asked to describe "the procedural step(s) considered to represent good practice and then explain why" (questionnaire, annex III, sect. III).

69. A few of the examples reported had the potential for developing good practice case studies: for example, on translation practices (Czechia); notification practices (Estonia); post-project analyses (Poland); or demonstrating the value of bilateral agreements (Spain). However, the information provided in the majority of examples contained insufficient evidence of good practice.

70. The Parties were also asked to provide examples of what they consider constitute good and/or successful practices (question II.15). Examples were provided by eleven countries, and these are published on the Convention's website.

71. Seven Parties report having successful examples of organizing transboundary procedures for joint cross-border projects, construction of nuclear power plants, and lifetime extension of nuclear power plants (question II.14) (see table 7), although few respondents provide information on what made the procedures a success.

[6] See www.rijksoverheid.nl/documenten/rapporten/2020/08/31/zoutwinning-waddenzee-advies-auditcommissie-over-de-nulmeting-en-het-meetjaar-2019.

[7] See https://odnature.naturalsciences.be/mumm/en/windfarms/list?type=1; and https://odnature.naturalsciences.be/mumm/nl/commercial-and-industrial-activities/list?type=5&sorts[projectLastUpdate]=0.

Table 7
Parties reporting successful examples for specific project categories

Project category	*Party reporting successful example(s)*
Joint cross-border	Ireland, Malta, Slovakia, Sweden
Construction of nuclear power plants	Ireland
Lifetime extension of nuclear power plants	Ireland, Finland, Luxembourg, Slovenia

72. Finland provides the following example of good practices in response to question II.14. As part of a procedure for the lifetime extension of a nuclear power plant, Finland contacted those Parties it considered to be affected Parties, but it also sent information on the activity to all Parties to the Convention and gave them an opportunity to request a notification if they considered themselves affected.

73. Sweden notes that some difficulties were experienced in a joint cross-border procedure with Finland concerning the timing of consultation and public participation due to differences in their national legislation. They report that difficulties were minimized through effective cooperation between the "points of contact" to the Convention and the project proponents in the two countries.

7. Use of official United Nations Economic Commission for Europe guidance

74. Patterns of official ECE guidance usage during the review period are summarized in table 8 (question II.23). The data indicate that awareness and use of official ECE guidance documents, other than those on relatively specialized issues or of limited spatial relevance (i.e. subregional cooperation and for Central Asian countries), is commonplace. Indeed, guidance on public participation and the practical application of the Convention are used by almost all respondents. It is noteworthy that the proportion of respondents using these two guidance documents has increased markedly in comparison to practices reported in the fifth and sixth reviews of implementation (respectively, ECE/MP.EIA/2017/9 and ECE/MP.EIA/2020/8).

Table 8
Use of official United Nations Economic Commission for Europe guidance documents by Parties to the Convention and non-Parties

Guidance document	*Used in practice*	*Not used in practice*	*Number of respondents (n)*
Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7)	24	7	31
Guidance on subregional cooperation (ECE/MP.EIA/6, annex V, appendix)	8	23	31
Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8)	27	4	31
Guidance on the applicability of the Convention to the lifetime extension of nuclear power plants (ECE/MP.EIA/2020/9)	16	15	31
Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities (ECE/MP.EIA/24)	17	14	31
Revised Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries (ECE/MP.EIA/28)	3	29	32

Guidance document	*Used in practice*	*Not used in practice*	*Number of respondents (n)*
Guidance on Notification according to the Espoo Convention (ECE/MP.EIA/12)	22	10	32

75. The most frequent reason given by respondents for not using official ECE guidance was that it was considered irrelevant. A small number of respondents (5) consider certain guidance documents to be outdated.

8. Use of "focal point" and "point of contact" networks

76. The long-term strategy and action plan for the Convention (ECE/MP.EIA/2020/3−ECE/MP.EIA/SEA/2020/3, item II.A.7.) recommends that use be made of the "focal point" and "point of contact" networks in implementing the Convention. Thirty-two respondents use these two contact networks (question II.16) and they appear to be highly valued. For example, Finland describes the networks as "vital" to the operation of the Convention.

9. Quality control practices

77. Quality control practices employed by the Parties and non-Parties (question II.17) revolve around a competent authority or expert body undertaking an analysis of the documentation to verify that it meets the minimum requirements: for example, by comparing the contents against the requirements of the national legislation or appendix II to the Convention. In some cases, the assessment appears to examine quality in more detail (e.g., in the Netherlands for certain projects). A few respondents also highlight the role of mandatory scoping as a quality control mechanism and of legal requirements that assessments be undertaken by qualified or approved practitioners.

10. Contribution to implementation of the Sustainable Development Goals

78. Perspectives varied on the contribution made by transboundary environmental impact assessments to the Sustainable Development Goals (see table 9) (question II.22). Of those respondents that report a significant contribution, Sustainable Development Goals 13 (climate action), 14 (life below water) and 15 (life on land) were mentioned several times. Two respondents also cite a contribution to Sustainable Development Goals 3 (good health and well-being) and 7 (affordable and clean energy). Canada observes that assessment have contributed somewhat, but not significantly, to the implementation of Sustainable Development Goals 5 (gender equality) and 16 (peace, justice and strong institutions).

Table 9
Contribution of transboundary environmental impact assessments to Sustainable Development Goals (n=29)

Contribution made	*Number of responses*
Significant contribution	13
Some contribution	11
No contribution	7

79. Sweden believes transboundary environmental impact assessment makes a contribution to the Sustainable Development Goals but notes that it is extremely difficult to support such a claim analytically. The country, therefore, selected the option 'no contribution'. Several other respondents also comment on the difficulties of generating evidence to support claims of a positive contribution.

11. Clarity of the Convention

80. Six Parties report specific difficulties in implementing the Convention (Albania, Armenia, Czechia, Poland, Slovakia and Switzerland) that result from a lack of clarity in the legal provisions (question II.24 and II.12). These include:

(a) Uncertainty over whether transboundary impacts should be considered under the legislation of the Party of origin or under that of the affected Party;

(b) Uncertainty over, and a lack of specification of, provisions for translation;

(c) A lack of clarity about the meaning of "major change" and "significant impact";

(d) Imprecise descriptions of project categories in appendix 1.

81. Armenia reports that, while the provisions of the Convention are clear, there are no provisions for its application in the country's geographical region. Albania comments that, in one case, an affected Party refused to accept the documentation it supplied because it was presented as an environmental and social impact assessment. Poland reports problems with the clarity of articles 2 (1), 3 (8) and 5. Azerbaijan argues for the use of a similar approach to that of the European Union in describing the projects in appendix 1.

12. Contribution to funding workplans

82. Question II.26 examines Parties' financial contributions to the funding of joint workplans under the Convention and its Protocol on Strategic Environmental Assessment during the survey period. Of the responding Parties, by far the largest contributors were Switzerland (total pledged contribution of CHF 148,000) and Norway (240,000 Norwegian krona, plus $247,500, although two thirds of the latter sum appear to have been paid outside the survey period). France made a contribution of €70,000. Seven Parties and Georgia either stated they had not provided a direct contribution or did not provide information on financial contributions during the survey period (Armenia, Belarus, Bosnia and Herzegovina, Croatia, Greece, Kazakhstan and United Kingdom of Great Britain and Northern Ireland). Of the above-mentioned Parties, only Armenia listed plans to contribute directly to the 2021−2023 funding period.

83. Thirteen Parties report having made in-kind contributions during the survey period. The in-kind contributions included: the provision of officers for the treaty bodies (Belarus, Finland, Hungary, Slovenia); supporting the development of guidance documents and/or the long-term strategy (Belarus, Finland, Ireland, Luxembourg, the Netherlands, Poland, the United Kingdom of Great Britain and Northern Ireland); translating national implementation reports (Canada); and organizing a subregional meeting (Estonia).

V. Findings

84. The reviews of implementation aim to enhance the implementation of, and compliance with, the legal provisions of the Convention, including by identifying possible weaknesses in Parties' implementation that may need to be addressed. Many of the conclusions reached in the fifth and sixth reviews of implementation remain valid and are worth being reiterated by the Meeting of the Parties to the Convention at its ninth session (Geneva, 12–15 December 2023).[8] [9]The main additional conclusions drawn from the seventh review of implementation are as follows:

(a) A number of Parties to the Convention are yet to ratify and/or transpose the amendments to the Convention, to ensure unified application of the Convention to all its Parties;

(b) Challenges continue to be raised by the Parties regarding translation and interpretation practices. Further emphasis on, and/or assistance with, the establishment of bi- or multilateral agreements could be provided to the Parties, as such agreements appear to be effective in ameliorating many of the common challenges with translation and interpretation practices;

[8] Decision IX/5 on reporting and review of implementation of the Convention (ECE/MP.EIA/2023/8).

[9] Those conclusions of the sixth review that are no longer valid are to be found in ECE/MP.EIA/2020/8, paras. 62 (b) and (f) and 63 (b).

(c) The “focal point” and “point of contact” networks are both used and valued, but there is a need to ensure that contact information is kept up to date by the Parties. It is therefore vital that any changes in national contacts be reported to the secretariat promptly;

(d) Use of official ECE guidance by the Parties has increased in comparison to usage trends reported in the sixth review. Efforts to promote awareness about, and use of, guidance documents should continue;

(e) Some Parties gained experience in the use of electronic technologies for remotely conducting consultation and participatory activities during the coronavirus disease (COVID-19) pandemic. Promoting lessons learned and good practices for the use of remote communication technologies could help to promote effective and efficient consultation and participation practices;

(f) Twelve Parties and Georgia report that transboundary environmental impact assessment made a significant contribution to the implementation of the Sustainable Development Goals, but multiple respondents to this question emphasized the difficulties in generating robust evidence documenting contributions;

(g) In the reporting period, an increased number of Parties failed to report on time and also to return their completed questionnaires within two months after the reporting deadline (10 Parties compared to 3 in the previous review). Consequently, the proportion of Parties represented in the data underpinning the review of implementation has decreased from 93 per cent in the sixth report to 75 per cent in the seventh report;

(h) An increased number of Parties provided examples of good practice, which indicates the usefulness and potential of the questionnaires as tools for collecting good practice in the future.