Annex I

DECISION II/1
BILATERAL AND MULTILATERAL COOPERATION

The Meeting,

Having considered the most appropriate ways of effectively applying the Convention,

Recalling Article 8 of the Convention stipulating that the Parties may continue existing or enter into new bilateral or multilateral agreements or other arrangements in order to implement their obligations under the Convention and Appendix VI to the Convention containing elements for bilateral and multilateral cooperation,

Having considered the outcome of the workshop on bilateral and multilateral cooperation (practice and guidance) on questions of environmental impact assessment in a transboundary context,

1. Endorses the general conclusion of the workshop that, although bilateral or multilateral agreements or arrangements are not a prerequisite for the implementation of the Convention, they have proven to be a valuable tool for promoting the proper application of the Convention and decides that those agreements or arrangements are useful and effective for promoting and establishing contacts and cooperation between countries;

2. Adopts the document appended to this decision;

3. Recommends Parties to use the guidance set out in the document when preparing bilateral or multilateral agreements or arrangements as meant under Article 8 of the Convention;

4. Requests the secretariat to publish this document in the UN/ECE Environmental Series in the official languages of the Convention;

5. Decides to take into account in its work-plan for the 2001-2003 period the outcome of the work on bilateral and multilateral cooperation and the guidance prepared in connection with the outcome of the workshop on the practical application of the Convention.

Appendix

BILATERAL AND MULTILATERAL COOPERATION IN THE FRAMEWORK OF THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT */

Summary

1. A project on bilateral and multilateral cooperation was carried out within the framework of the work-plan for the implementation of the Espoo Convention (1998-2000). A request for information resulted in a compendium, a workshop in which presentations were made and experiences discussed, and ultimately in this document.

2. A general conclusion of the workshop was that bilateral (or multilateral) agreements or arrangements were and had already proven to be a valuable tool for promoting the proper application of the Convention.

3. Although at the workshop it was noted that the Convention applied not only to transboundary impacts between neighbouring countries but also to long-range transboundary impacts, attention was focused on bilateral agreements and arrangements between neighbouring countries.

4. The first step in preparing such agreements is to establish a bilateral forum, for example a working group. This can be done:

- On the basis of an already existing bilateral cooperation instrument; or
- Ad hoc, at the initiative of one or more countries.

5. The material provided showed that there were different types of agreements. First, there are general agreements which contain a statement or declaration of intent to apply the Convention. These agreements are prepared at the national government level and their text refers to the text of the Convention. Practical details will have to be dealt with in a different way, for example by creating a joint body or a joint commission.

6. Another possibility is a more specific agreement or arrangement. These agreements contain detailed guidance or recommendations for the application of the Convention. Both national governments and regional authorities should be involved in preparing them.

7. The establishment of a forum or mechanism for discussion, such as working group, should lead to an exchange of information on national legal and administrative EIA systems and on the interpretation of the provisions of the Espoo Convention.

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*/ The annexes to the guidance, the compendium, the questionnaire and the texts of the (draft) agreements will be available in the Database on Environmental Impact Assessment (Enimpas) and can be found at http://www.mos.gov.pl/enimpas

8. This can be done by:

- Initiating methodological research by independent experts to prepare a number of options as a start for further negotiations; or
- By the working group itself (the working group can be ad hoc or have a formal status and be based on an environmental cooperation agreement).

9. It is advisable to compare the provisions of the Convention and the national procedural steps. If necessary, the national procedures will have to be brought in line with the Convention. This comparison will lead to the identification of possible constraints and problems which can be overcome by the drafting of a bilateral agreement. Based on the report of the workshop in Baarn (Netherlands), key issues for inclusion in the agreement can be determined and solutions can be formulated.

10. Agreement should be reached on general principles of application of the Convention. Details of the procedure that should be followed whenever the Convention applies and the responsibilities of the respective authorities can also be covered.

11. One option is first to work out at high government level a formalized agreement on the main principles of the application of the Convention and then to establish a mechanism to work out the details of the process by establishing a joint body or commission representing also the regional and local authorities.

12. Another option is to start involving the regional level and prepare detailed practical step-by-step guidelines for the participants in the EIA process in a transboundary context answering the questions of practical application.

13. Practice has shown that (informal) contact between the authorities at an early stage of the process is important and a key to the successful application of the Convention. It is therefore recommended that good working relations should be created on a permanent basis between countries at national and regional levels.

Introduction

14. At the first meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (18-20 May 1998, Oslo, Norway), the work-plan for the implementation of the Convention for the period 1998-2000 was adopted. This work-plan contains, inter alia, an activity on aspects of bilateral and multilateral cooperation.

15. The objective was to share information and experiences on what Parties and non-Parties had achieved through bilateral and multilateral agreements or arrangements and other forms of cooperation in attempting to implement their obligations under the Convention. On the basis of the information and experiences collected, further guidance should be developed.

16. As a first step in carrying out this activity, the focal points for the Convention were requested to provide information on bilateral and multilateral agreements or arrangements or other forms of cooperation in the implementation of the Convention through a questionnaire which included process and content elements.

17. On the basis of the compendium a workshop was held in Oegstgeest, Netherlands (20-22 February 2000), on experiences with bilateral or multilateral cooperation in the framework of the Espoo Convention. The participants exchanged views on the need for such cooperation, its form, on the process of preparing bilateral or multilateral agreements or arrangements, on the content of those agreements and on other specific issues of concern to them.

18. In response to the questionnaire, the following texts of (draft) agreements were provided:

- Agreement between the Government of the Republic of Latvia and the Government of the Republic of Estonia on Environmental Impact Assessment in a Transboundary Context;

- Draft agreement between the Government of the Republic of Estonia and the Government of the Republic of Finland on Environmental Impact Assessment in a Transboundary Context;

- Study draft of an Austrian-Hungarian bilateral agreement on the EIA Convention;

- Draft agreement between the Federal Republic of Germany and the Republic of Poland on the implementation of the Espoo Convention (version of July 1999). At the workshop the Polish delegation presented additional information on the January 2000 version of this draft agreement;

- Draft agreement between the Netherlands and the Federal Republic of Germany on EIA in a Transboundary Context (draft 1995);

- Draft agreement between the Netherlands and Belgium (Region of Flanders) (trial period from 1995).

19. All available material concerns agreements between neighbouring countries. However, it should be noted that the Convention applies not only to transboundary impacts between neighbouring countries but also to long-range transboundary impacts.

20. This document will cover the following issues: the process of initiating negotiations and drafting bilateral agreements; the form of such agreements; their content; and other forms of bilateral cooperation of relevance to the application of the Convention.

I. BACKGROUND AND HISTORY

21. The Convention provides a legal basis for bilateral or multilateral agreements or arrangements. Article 8 of the Convention provides that the Parties may continue existing or enter into new bilateral or multilateral agreements or arrangements or other arrangements in order to implement their obligations under the Convention. Appendix VI to the Convention contains elements for such agreements or arrangements. These agreements or arrangements are not a precondition for the application or the ratification of the Convention but should be seen as tools for its effective application.

22. By signing and ratifying the Convention, the Parties have accepted the obligation to carry out its provisions. The Convention sets out the principles and the procedural steps for the application of EIA in a transboundary context. The process contains the standard elements of an EIA process. The flow chart in figure I presents the procedure of the Convention for the application of EIA in a transboundary situation. The national implementation regulations on environmental impact assessment in a transboundary context are in most cases limited in detail. As a consequence, many practical questions about the application remain to be solved. Generally the need for more detailed arrangements is strongly felt by the various participants in the process of EIA in a transboundary context.

23. Even before the entry into force of the Convention, attention was paid to the topic of bilateral or multilateral agreements or arrangements on EIA in a transboundary context. In 1994 a workshop devoted to this issue took place in Baarn (Netherlands). In this workshop key elements were identified for inclusion in bilateral or multilateral agreements or arrangements. These elements include the field of application and practical issues such as the designation of contact points, the establishment of a joint body, how to notify, how to inform and involve the public, how to arrange the consultations between the Parties, translations and financial aspects. The report of the Baarn workshop was published in "Current Policies, Strategies and Aspects of Environmental Impact Assessment in a Transboundary Context Environmental Series" (No. 6 ECE/CEP/9).

24. The general conclusion of the Baarn workshop was that, in particular, problems of a practical and logistical nature could be overcome by bilateral or multilateral agreements. Another conclusion was that the effective application of EIA in a transboundary context seemed to require countries to have a more or less common understanding of the provisions of the Espoo Convention and to have incorporated the Convention into their legal and administrative system. Also, a good knowledge of the other countries' legal and administrative systems is important.

25. After the Convention came into force in 1997, a case-study analysis was carried out and a workshop took place in Helsinki (Finland) on the practical application of the Convention. The general observation regarding the application of the Convention at the Helsinki workshop was that it was crucial to clearly organize the process, to clearly define and specify responsibilities and to introduce clear routines, practices or rules.

26. At the time of the Baarn Workshop in 1994, experience with the preparation of bilateral agreements was virtually non-existent. Since the Convention entered into force, the need to solve practical problems by bilateral cooperation with neighbouring countries and the need to solve problems of a general nature and to get a common understanding have been strongly felt by the various actors in EIA processes in a transboundary context throughout the ECE region.

27. It has become clear that, although some Parties and non-Parties are involved in preparing bilateral or multilateral agreements on the application of the Convention, as yet there is only one formalized agreement. Nevertheless, the answers to the questionnaire, the draft agreements provided and the exchange of information and experiences at the workshop made it possible to define guidance, also making use of the general principles of international law such as the principles of sovereignty, equality, reciprocity, the polluter-pays and the precautionary principles.

II. INITIATING NEGOTIATIONS AND DRAFTING BILATERAL OR MULTILATERAL AGREEMENTS

28. The reason for starting negotiations on a bilateral or multilateral agreement is, in most cases, that countries are aware that such agreements may promote the efficient and timely application of the Convention by creating clarity, routines and rules. The material provided makes it clear that there are different ways to start preparations and to conduct negotiations on a bilateral or multilateral agreement on the application of the Espoo Convention.

29. The first step is to define the substance of the future agreement and to decide on the authorities to be involved in the preparatory work and on the structure of a body (for example a working group or commission) to carry out the preparatory work.

30. It is crucial, both in preparing and drafting the agreement and for the application of the Convention in practice, to create good working relations between government authorities on a national and regional level. A working group could be established either:

- On the basis of an already existing formal bilateral or multilateral environmental cooperation mechanism (working group with a mandate); or
- On an ad hoc basis.

31. The first option entails an obligation to report or present the outcome of the work to a higher body, which could lead to a more result-oriented approach. The second option demands that special attention should be given to the group's mandate and reporting.

32. It is recommended that the national or federal government should be involved in negotiating and drafting the agreement as it regards the implementation and application of a convention between States. It is also strongly recommended that the regional authorities should be involved in this process since they too are concerned by the application of EIA. Consideration could be given to the possibility of consulting also other stakeholders in the process of EIA in a transboundary context during the drafting process.

33. At the beginning of the drafting process it is important to have a good grasp of the national EIA systems and the legal and administrative systems involved and to arrive at a common understanding of the provisions of the Convention. An approach that has proven its value is to carry out methodological research, including a comparative analysis, before the start of the negotiations. Such an approach provides an opportunity for a comparative analysis of the EIA legislations and administrative practices of the Parties involved and for formulating different options and possible solutions. The outcome of this research could form an input and a basis for further work by a drafting group.

III. TYPES OF AGREEMENTS OR ARRANGEMENTS

34. From the material provided it can be concluded that there are agreements with a general content and those with a specific content.

General agreement

35. The text of the agreement is short and refers back to the Convention. Those agreements are negotiated and signed at high level (national or federal government level). They have the character of a reciprocal statement of intent to apply the Convention in practice. The key elements are mentioned only in a general way. The agreement gives a mandate and creates a mechanism for dealing with detailed practical questions at a later stage, for example by creating a joint body or commission to work out practical details and in some cases even to handle individual cases.

Specific agreement/administrative arrangement

36. These agreements or arrangements are mostly meant to give practical guidance on the application of the Convention. They include a number of general issues and a more or less detailed scheme with practical guidance for each step in the procedure for all participants in the process. Those agreements do not reformulate the text of the Convention but supplement it with practical details. They include the key elements and give detailed information on every element identified. Such agreements are prepared with the cooperation of regional authorities and may be in the form of a handbook, guideline or recommendation for applying the provisions of the Convention in practice.

37. A general agreement refers back to the provisions of the already signed or ratified Convention. Therefore, it is likely that such an agreement can be reached within a reasonable time. The only formalized agreement provided (Agreement between Estonia and Latvia) and the draft agreement between Estonia and Finland are examples of this approach. Both set up a joint commission on EIA in a transboundary context. These commissions will have the task of solving the practical problems of applying the Convention, either on a case-by-case basis (by establishing an ad hoc working group per case) or by developing further guidance for the process.

38. A specific agreement provides solutions to questions about the application of the Convention in practice. A prerequisite for the formulation of such an agreement or arrangement is a detailed comparison between the procedural requirements of the Convention and the (national)

procedural steps in the EIA procedures of the Parties involved. This approach is focused on solving practical questions and on providing detailed guidance for the procedure. Involving regional authorities can be important, if, for example, the national legislation gives them a role in the application.

39. Experience shows that regardless of the outcome of the negotiations and discussions in preparing a bilateral agreement or arrangement, the process itself promotes cooperation between authorities on both sides of the borders and creates opportunities for better understanding and a more effective application of the Convention. Another observation is that it might be advisable to include a trial period with an evaluation before formalizing agreements containing detailed practical guidance. It should be noted that, whatever type of agreement is chosen, a regular update will be necessary to respect changes in the EIA legislation and other relevant legislation. This may influence the choice of the form of the agreement.

IV. CONTENT OF THE AGREEMENTS

Elements to be included in the agreement

40. The report of the Baarn workshop lists the key elements for inclusion in bilateral and or multilateral agreements or arrangements for the application of EIA in a transboundary context and puts forward possible solutions:

- The area of application of the Convention (activities listed in Appendix I, activities not listed in Appendix I, the determination of "significance");
- Institutional arrangements (designation of contact points, establishment of a joint body);
- Procedural aspects such as: notification; how to involve the public of the affected Party; submission of comments; public hearings and consultations between the Parties (participants, subjects); decision (how to reflect comments of the authorities and the public, publication, possibilities for appeal); post-project analysis; dispute prevention and settlement; joint EIA; translation; financial aspects.

41. From the (draft) agreements and from the other material provided in response to the questionnaire, it can generally be concluded that most of these key elements have guided the work in this field. In all the available drafts the above-mentioned key elements are included to some extent. "Timing" evolved as a new key element.

Activities to be included in the agreement

42. The description of activities in Appendix I to the Convention is in some cases rather general (for example, by the use of words as "large" or "major"). To ensure a common interpretation, countries could specify what they understand by the terms used in the Convention, for instance by agreeing on threshold values. By mutual agreement, countries could also treat activities not listed in Appendix I as if they were listed. There are different ways of doing this, such as drawing up a common catalogue of additional activities; developing further detailed

criteria for such additional activities; agreeing that the Convention applies to all activities under the EIA procedure of the country of origin or deciding on a case-by-case basis whether or not the Convention applies.

43. The material provided shows that the countries try to define the activities mentioned in Appendix I more precisely than in the Convention, and to extend the field of application. They use the different approaches mentioned above. New sources for lists of activities are also the annexes to the EC Directive on EIA (97/11/EC) and the Aarhus Convention.

44. Another issue affecting the applicability of the Convention concerns the "sensitive areas". It is important that countries should inform each other on "sensitive areas" in the border region in order to be able to decide on the applicability of the Convention. As far as the determination of "significance" is concerned, the criterion "location in an area within a certain distance from the border" is included in several draft agreements (the examples include distances of 5 or 15 kilometres from the border). It should be noted that this is only a very rough indication, as the relevance may differ per activity. Activities with long-range impacts should also be included. In fact, a different distance could be set for every activity, based on its possible impacts. Reference should be made to earlier work under the Convention described in part three (Specific methodological issues of environmental impact assessment in a transboundary context) of ECE Environmental Series No. 6. It contains information on the determination of "significance".

Institutional arrangements (nomination of contact points and joint bodies)

45. Several articles of the Convention require the country of origin to transmit documents to the affected country and vice versa. The Convention does not contain more specific information on the authority to be addressed. So a list of points of contact has been prepared in accordance with Article 3 of the Convention (notification). The list is included in annex III to the report of the first meeting of the Parties to the Espoo Convention (ECE/MP.EIA/2). It contains contact points at national or central government level. In addition, it could be useful for the effective application of the Convention to designate contact points at the regional level. Decision I/3 taken at the first meeting of the Parties provides for this. The importance of clarity on the contact point should be stressed because the contact point has the important role of deciding on the participation of the possibly affected Party in the EIA procedure.

46. In addition, the contact point may be given other responsibilities and functions. It is usually the first contact for the Party of origin to which it sends the notification. The contact point may have different functions such as: a mail-box function (the contact point submits all the information it receives from the country of origin to the respective authorities, which then take action); an executive function (the contact point distributes the information to the respective authorities and the public of the affected country, and collects their comments and reactions and submits them to the country of origin); and an initiating function (the contact point is responsible merely for the first formal contact between the Parties and submits a list of authorities in the affected country to be directly addressed by the authorities of the country of origin).

47. All agreements laid down institutional arrangements: either contact points were designated or joint bodies were established to perform the role of contact point. The contact points

established have mainly intermediary, facilitating functions.

48. Special attention may be required when authorities at different governmental levels could perform the tasks of contact point. For example, in a federal State an agreement may provide that a contact point should be appointed at the regional level, whereas, when consultations are held, the federal government should be involved, given its responsibility for international affairs. This level should then also be informed (e.g. by sending a copy of the notification to the federal point of contact).

49. The responsibilities of the different government levels in the process of EIA in a transboundary context are at present not always clearly defined. It is, therefore recommended that they should be defined either in the bilateral or multilateral agreement itself or, where appropriate, in an internal administrative order or recommendation of the respective country. For the sake of timely application, this clarification is important.

50. In some (draft) agreements an important role is given to joint bodies. For example, the Joint Commission on EIA in a Transboundary Context in the Estonian-Latvian agreement is a permanent and open-ended institution and has the right to establish ad hoc working groups. The Commission has been given the task of drawing up a set of mandatory elements for the notification; establishing the exact procedure for informing the public; deciding on the procedure for the participation of the public of the affected Party; and setting the time frame for the duration of the consultations between the Parties. Furthermore, the Joint Commission has a role in post-project analysis and joint EIA. A comparable role is given to the commission in the draft Estonian-Finnish agreement. Taking into account the possible workload, the establishment of a joint commission could be a good solution if the number of cases to which the Espoo Convention will apply is expected to be limited and for a country that does not have too many neighbouring countries.

Procedural aspects

51. The Convention requires a number of procedural steps, most of which are standard in any EIA procedure. Given that there are considerable differences in the various EIA systems and in the legal and administrative systems in the ECE region, the Convention itself cannot go into much detail. Practice has shown that there is therefore a need to work out the different steps on a bilateral or multilateral basis. Such a schedule or step-by-step description could contain information on time frames, on the tasks of the various participants, on which authority sends which information to whom at what stages of the process, on the tasks related to organizing the public participation, etc.

52. Some agreements contain only a general description of the steps (for example, the agreement between Estonia and Latvia and the draft agreement between Estonia and Finland). On the basis of those agreements the preparation of further detailed guidance, either ad hoc for each specific case or generic, is a task for the joint commission. Other agreements contain a step-by-step description of the tasks for the participants in the process and the timing (for example, the draft agreement between Germany and Poland, the draft agreement between the Netherlands and Germany and the draft agreement between the Netherlands and Belgium/Flanders). Such an

agreement does not require more detailed guidance in the application.

Notification

53. Article 3, paragraph 1, of the Convention requires the Party of origin, in cases where a proposed activity (listed in Appendix I) is likely to cause a significant adverse transboundary impact, to notify any Party which it considers may be an affected Party "as early as possible and no later than when informing its own public about that proposed activity". It is important to note that the Convention requires public participation after the notification and the decision of the affected Party to join in the procedure. The precise time of notification depends on whether the EIA procedure of the Party of origin includes:

- A scoping process with mandatory public participation;
- A scoping process without such participation;
- No scoping process at all.

54. Some situations provide good opportunities for an early notification, whereas others might pose difficulties and could even be out of line with the requirements of the Convention. The definition of the moment of notification is an important one and could be agreed upon in a bilateral or multilateral agreement or arrangement.

55. The information to be given with the notification documentation is defined in Article 3, paragraph 2, of the Convention: information about the proposed activity, available information on its possible transboundary impact, the nature of the decision and a time frame for response. Scoping documents could easily be used for such a notification. A format for the content of a notification was developed and agreed at the first meeting of the Parties (ECE/MP.EIA/2, annex IV, decision I/4). That annex contains detailed information on the content and the form of a notification.

56. After a positive response on the participation of the possibly affected country, further information can be given according to Article 3, paragraph 5. It might be possible and useful in some cases to give this information already in the first step. The affected Party would then have more information at an earlier stage and could react more promptly and in more detail. It might also be helpful for the affected country to receive a document with a separate chapter dedicated to the possible transboundary impacts or a report highlighting the relevant passages if they are contained elsewhere.

57. Article 3, paragraph 6, of the Convention provides that the Party of origin may ask the affected Party for "reasonably obtainable information" about the affected environment for the preparation of the EIA documentation. To obtain this information as soon as possible, it is useful to ask for it in the notification. In that case the affected Party could, with its response to the notification, provide at least the available information about obviously affected areas (e.g. protected areas). Available data could also be properly presented during the scoping process, where such a process is carried out.

58. A bilateral or multilateral arrangement could specify what is meant by "reasonably obtainable information". For instance, it could lay down that the environmental information relating to the state of the environment in the affected areas of the affected Party and available to its official bodies can be transmitted. In that case a contact point with an executive task could play a supporting role in collecting the available information within the affected country and in submitting it to the country of origin. As this stage of the EIA process can be very important for the preparation of the EIA documentation, it would be useful to have an exchange of views by experts.

59. Countries may wish to include in a bilateral or multilateral arrangement a provision concerning the possibility of ending the information and participation process mentioned in Article 3, paragraphs 1 to 6, of the Convention. If the affected Party has indicated that it intends to participate in the EIA procedure but later wants to end its participation, a specific bilateral clause may state that "the affected country shall inform the country of origin to that effect in the same way as it has stated its intention to take part in the procedure".

60. The material provided shows that those parts of the agreements concerning notification deal mainly with its timing and do not contain much detail on the content. The above-mentioned format for notification may be used as guidance.

Information and public involvement

61. The Convention contains several provisions with regard to the information and involvement of the public of the affected Party (Art. 2, para. 6, Art. 3, para. 8, Art. 4, para. 2). To fulfil these requirements, the concerned Parties should inform the public clearly about these opportunities. A capacity-building programme could be considered. As the opportunities for the public to be involved differ from country to country, information should be given to the public in the affected Party about the participation process and the formal procedure in each case. This could, for example, be given either in a public advertisement, in the publication announcing the public hearing or in a special information brochure. More detailed arrangements could be made in a bilateral or multilateral agreement on this issue.

62. There are considerable differences in the formal national obligations concerning public participation (e.g. different forms of public involvement). This may lead to asymmetric situations, although the requirements of the Convention will limit them. In the future the Aarhus Convention may also limit these differences. Countries may want to investigate to what extent it is beneficial to coordinate their provisions on public participation. There is general agreement that the EIA procedure and decision-making procedure of the Party of origin should be followed.

63. Another issue is how and by whom the public of the affected Party should be informed and how the comments of that public should be submitted to the competent authority of the country of origin. There are various options:

- The responsibility lies with an authority of the affected Party (contact point or other authority); it is possible that the public of the affected Party sends comments either directly to the competent authority of the Party of origin or through the contact

point or other authority in its own country;

- Responsibility for informing the public of the affected country lies with the authority in the Party of origin (competent authority) or the proponent; the public of the affected Party sends comments directly to the competent authority of the Party of origin;

- There is a shared responsibility between the authorities in both countries.

64. The advantage of the first option is that the authority of the affected Party is usually well informed of the ways of publishing and making the EIA documents available for public inspection, etc. A drawback, depending on the specific arrangements, could be the timing, especially when the comments of the public are first sent to the authority in the affected Party.

65. The advantage of the second option is that the information can be provided directly to the public and that the comments can be sent directly to the country of origin. This will speed up the process. A disadvantage may be that the authority of the country of origin is not familiar with local ways of publishing and practice regarding making documents available for public inspection. The advantages of both options could be combined by sharing the responsibility between the authorities in both countries.

66. Various approaches are taken. In most cases there is close cooperation between the authorities of the countries concerned. New opportunities for a timely flow of information may result from the use of the Internet.

67. Although public hearings are not explicitly mentioned in the Convention with regard to public participation, several countries use them in this way. The question arises whether public hearings should be held in the country of origin or in the affected country. It is important that this question should be solved in close cooperation between the Parties. Consultations should not be held in the affected country, if this country does not wish it. If the Parties opt for a public hearing in the affected country, it is recommended that the country of origin finances the necessary translation. If the Parties decide on a public hearing only in the country of origin, it is recommended that interpretation should be provided to the participants from abroad, where necessary.

68. If (affected) individuals of the affected Party are given a right to appeal against the decision, extra information on these possibilities may be necessary, for instance in a special information brochure.

Consultations between the Parties

69. Article 5 of the Convention provides that, after the completion of the EIA documentation, the Party of origin should enter into consultations with the affected Party. It is not stated, however, at which level such consultations should take place.

70. In general, official consultations are at the highest level because they take place between

national States, where the responsibility for foreign affairs lies. The participation is up to the respective States to decide and could, for example, be indicated in the reply to the request for consultations.

71. On the subject of consultations, Article 5 of the Convention already mentions some issues to be dealt with. There can, of course, be more issues, depending on the situation. It seems likely that the country that asks for consultations will also propose items that should be discussed (e.g. specific mitigation measures, monitoring, post-project analysis) and that the other country in responding to the request will also propose others. In accordance with the provisions of the Convention, the consultations take place before the final decision is taken so that their outcome can be taken into account.

72. Article 5 provides that at the beginning of the consultations a reasonable time frame should be set for their duration. One way could be to agree on a deadline for the end of consultations on a case-by-case basis.

73. In many cases it may be useful and even essential to meet more often and to start with an exchange of information at expert level (e.g. experts of sectoral authorities). To ensure that the consultations will focus on the most important items, these experts may discuss subjects of common interest in order to find solutions. Parties should be able to ask for such an expert exchange whenever there is a need for it. As already indicated above and according to Article 3, paragraph 6, it is possible to meet and exchange information about the affected environment in the affected country for the preparation of the documentation. Another possibility is to meet at the level of an (existing) joint body.

74. The draft agreement between Germany and the Netherlands contains a detailed description of the consultation. It defines it as a formal contact between States (i.e. the national and federal levels are involved). If one of the countries concerned asks for a consultation, there is an exchange of information at the expert level first. If this does not lead to an acceptable solution, the consultation will continue on the national and federal level.

Decision

75. Often the question is raised as to how the comments of the authorities and the public of the affected country are taken into account. According to the Convention (Art. 6), due account has to be taken of the outcome of the EIA, including the documentation, as well as the comments received on it and the outcome of the consultations. How this is done in detail is up to the different national systems to decide. At least it means that the comments of the authorities and the public of the affected country and the outcome of the consultations are taken into consideration in the same way as comments from the authorities and the public of the Party of origin.

76. The Party of origin has to provide the final decision with reasons and considerations to the affected Party. These should also reflect the impact on the affected country. For the dissemination of the decision to the relevant bodies of the affected country or for giving information on it to the public, the contact point could again be useful. The competent authority of the country of origin can also be responsible for publishing the decision in the affected country,

if the Parties agree. In a bilateral or multilateral agreement this could be dealt with in detail, e.g. in the same way as with the publication of the EIA documents.

77. In some cases the (affected) individuals of the affected Party have the right to appeal against the decision in the Party of origin. Information about such a right of appeal could be given in the decision or in an annex to it.

Post-project analysis

78. Article 7 of the Convention stipulates that the concerned Parties, at the request of any such Party, shall determine whether, and if so to what extent, a post-project analysis shall be carried out, taking into account the likely significant adverse transboundary impact of the activity.

79. As mentioned in Appendix V to the Convention, the objectives of post-project analysis are to monitor the compliance with the conditions set out in the approval of the activity, review an impact for proper management and in order to deal with uncertainties and verify past predictions in order to transfer experience to future activities of the same type. The requirements in national legislation on post-project analysis vary considerably. In a limited number of countries post-project analysis is a mandatory part of the EIA and the decision-making process.

80. The need for post-project analysis should be raised as early as possible, but at the latest in the decision-making phase. It is necessary to determine the role of the affected Party in carrying out the post-project analysis, in deciding the responsibility for the post-project analysis, how to inform the affected Party of the outcome, and whether the public will be informed. Alternatively, these aspects could also be decided on a case-by-case basis by the concerned Parties.

81. The bilateral or multilateral arrangements provided contain only limited information on this topic.

Dispute prevention and settlement

82. The dispute settlement mechanisms in the Convention (Art. 3, para. 7, and Art. 15) may take a long time. For example, arbitration according to Appendix VII to the Convention or the submission of the case to the International Court of Justice may be very time-consuming. Article 15, paragraph 1, makes it possible to try to find quicker mechanisms than those provided for in the Convention.

83. In a bilateral or multilateral agreement such a mechanism could be included. One agreement provides that if a dispute arises between the Parties about the interpretation or the application of the agreement, they shall seek a solution by negotiation or by any other method of dispute settlement acceptable by them. Another draft agreement gives a role to the joint commission. It states that if a dispute arises between the Parties over the interpretation or application of the agreement, the Parties shall seek a solution through negotiations in the joint commission or through any other method of dispute settlement acceptable to both Parties.

84. At their first meeting, the Parties to the EIA Convention decided to include in the work-plan an activity to establish non-compliance guidelines for the Convention. The results of this activity may offer further guidance on this subject.

Joint EIA

85. With regard to transboundary EIA, there are cases where the project itself crosses the border (e.g. a linear project such as a highway, railroad or waterway, cables or pipelines). Either of the concerned Parties is then at the same time Party of origin and affected Party. In those cases a new form of EIA cooperation and coordination could be developed. The question is whether there is a need to identify the applicable procedure or to develop a new coordinated procedure. It has to be decided which steps and elements (for example, timing, alternatives, impacts, baseline studies) really need joint action and which can be done according to either national system.

86. In a bilateral or multilateral agreement for joint EIAs, a role could be given to a joint body. It could be stated that the joint body should decide on the necessity of the joint EIA and define the procedure of the joint EIA for each case separately.

87. Another possibility would be for the competent authorities of both Parties to decide on the necessity for and the procedure and content of a joint EIA. Otherwise, for EIA processes for linear projects crossing the border of the Parties or other activities that need EIA processes in both countries, both Parties could run separate EIA processes but they may combine or coordinate the scope of the EIA documentation, the public hearings and discussions relating to the two processes and they may combine the consultations on the EIA documentation.

Translation of documents

88. It has become apparent that language differences will need specific attention in transboundary EIAs. It is important that both the authorities and the public in the affected Party understand the information transmitted by the Party of origin, as well as the procedural steps and legal aspects.

89. On the other hand, given the cost of translation, it may be necessary to distinguish between documents that require translation and other documents which need not be translated. Bilateral and multilateral agreements could specify which documents should be translated.

90. Often the question is raised as to who is responsible for translations and/or the costs of these. In general, the Party of origin is responsible for the translations as well as for the costs. Concerning the safeguarding of the quality of translations, one possibility could be to establish or nominate an organization to translate and guarantee professional standards.

91. Another aspect that a bilateral or multilateral agreement should deal with is the additional time needed for the translation in many cases. For example, the agreement could state that the documents should be translated before they are transmitted or that the respective (national) legal time frames can be respected for this purpose (probably extended by a postal delivery time frame, where appropriate).

92. For consultations or public hearings, interpretation should be provided. A bilateral or multilateral agreement could state that it is the responsibility of either the Party of origin or the country which hosts the meeting.

93. In a bilateral agreement Parties can also state that the Party of origin is responsible for providing the affected Party with the information and documentation to be evaluated in a mutually agreed language instead of in the language of the affected Party.

94. Alternatively, an agreement may determine the need for translations and interpretation following the principle that, as a rule, the Party of origin submits any document in the language of the affected Party, whereas the affected Party may respond in its own language. Regarding the EIA documentation, the agreement could restrict the translation to parts concerning the environment of the affected Party or to those parts of the EIA documentation that enable the affected Party to evaluate the transboundary impacts and the non-technical summary. With regard to the hearings and consultations and other meetings, the agreement could state that the Party of origin should provide for interpretation and that the costs of translation and interpretation should be borne by that Party.

Financial aspects

95. The application of the Convention has several financial implications. The question of who pays for the translation of the various EIA documents, the comments and the interpretation in meetings has already been covered. The general principle that "the polluter pays" is the leading principle. Furthermore, there are some procedural steps with financial implications (publication in the affected country, presentation of the documentation for public inspection, public hearings, etc.).

96. The agreement between Estonia and Latvia states that the Party of origin shall be responsible for bearing the costs of the EIA procedure according to national legislation and that the Parties shall finance the expenses of their members of ad hoc working groups. The draft agreement between Estonia and Finland provides that both Parties are responsible for (arranging and) bearing the costs of public participation in their respective countries unless the Parties agree on other arrangements. The Austrian-Hungarian study draft agreement suggests that any costs in connection with the participation of the affected Party in public hearings should be borne by the participants.

97. The costs of EIA in a transboundary context could cause a problem for smaller, regional authorities. National funding may be a solution.

Timing

98. In the practical application of the Convention, time is of the essence, perhaps more so than costs. Lack of preparation, lack of clarity and unawareness of the steps and duties may easily delay the application of the EIA and the decision-making procedure. The exchange of documents, especially the notification, may be delayed and this may have consequences for the timing of the

EIA procedure in the country of origin. Late answers and reactions resulting from a late involvement of authorities or the public may also lead to the need for extra time to complete the EIA procedure.

99. The authorities involved can prevent or minimize these delays by including in bilateral agreements opportunities for combining steps of the EIA procedure of the Convention. For example, providing extra information after a confirmation of the participation by the affected Party may be unnecessary if the notification already contains this information.

100. In the preparation of a bilateral agreement or arrangement, timing should be included as a key element. Preventing delays without reducing the quality of the involvement of the public and the authorities in the affected Party will have a positive impact on the proponent and the decision maker. A more efficient application resulting from the attention paid to these time aspects will contribute to a positive attitude to the application of the Convention.

V. OTHER FORMS OF BILATERAL OR MULTILATERAL COOPERATION OF RELEVANCE TO THE APPLICATION OF THE EIA CONVENTION

101. In response to the questionnaire, overviews of existing agreements on transboundary environmental cooperation were presented and other mechanisms for transboundary cooperation in the field of EIA were listed.

102. General cooperation agreements may, as has been mentioned above, form the formal basis for setting up working groups to draft an agreement on the practical application of the Espoo Convention.

103. Agreements which focus on items other than EIA may, however, partly meet the provisions of the Convention by recommending that their Parties should inform and consult each other on activities which are likely to cause significant transboundary impacts without making reference to the Convention. If such agreements exist parallel to EIA agreements, it may be useful or even necessary to find a way to integrate such other agreements into the EIA procedure to avoid double work and conflicts. Other agreements may also serve the purposes of the Convention by providing forums for discussing transboundary impacts.

104. Finally, Parties should be aware of the possibilities for incorporating the provisions of the Convention in other new or existing agreements or for making an explicit connection.

Figure I

Flow chart
Convention: main procedural steps