Annex IV

DECISION III/4
GUIDELINES ON GOOD PRACTICE AND ON BILATERAL AND MULTILATERAL AGREEMENTS

The Meeting,

Recalling its decision II/1 on bilateral and multilateral cooperation and its decision II/2 on the practical application of the Convention on Environmental Impact Assessment in a Transboundary Context,

Also 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 a workshop on good practice and on bilateral and multilateral agreements,

1. Endorses the Guidance on the Practical Application of the Espoo Convention, as appended to this decision;

2. Notes that the Parties can facilitate and greatly improve the practical application of the Convention through the appropriate organization of tasks and responsibilities within their countries;

3. Recommends that the Parties should take into account the contents of the Guidance when defining national procedures for the implementation of the Convention and when applying the Convention to specific cases;

4. Calls on the Parties to distribute the Guidance to authorities, specialists, developers, non-governmental organizations and other stakeholders to raise awareness of the contents of the Convention and to support them in applying the Convention;

5. Invites the Parties to provide information to the Working Group on Environmental Impact Assessment on activities to which they have applied the Guidance;

6. Also invites the Parties to submit to the secretariat their bilateral and multilateral agreements and arrangements, or electronic links thereto, which the secretariat shall make available on the Convention's web site.

Appendix

GUIDANCE ON THE PRACTICAL APPLICATION OF THE ESPOO CONVENTION [*/]

Contents

[*/] The Guidance has been reproduced as received by the secretariat.

(iii) Joint EIA
- Getting started
- Notification
- The assessment
- After the assessment

(iv) Policies, plans and programmes
(v) Post-project analysis

IV. Transposition into national legislation

V. Creating bi- and multilateral agreements and arrangements

I. INTRODUCTION

1. The Convention on Environmental Impact Assessment in a Transboundary Context, the so-called Espoo Convention (http://www.unece.org), hereafter the Convention, was signed in 1991. It requires that assessments be extended across borders between Parties of the Convention when a planned activity may cause significant adverse transboundary impacts. The Convention was a response to a growing concern about transboundary emissions and the emergence of environmental impact assessment as a tool to reduce the negative environmental effects of new activities.

2. The Convention came into force in 1997. Since then the number of Parties and the practical application of the Convention have increased steadily. This guidance document has been written for competent authorities in the Parties to the Convention. It provides hints and suggestions that can improve the practical application of the Convention and that may be used in forming bi-and multilateral agreements among Parties that have to deal with transboundary impacts on a regular basis. The overall approach taken in this guide is that the application of the Convention can and preferably should be part of a systematic way of managing international environmental requirements. In practice this means that all procedural stages should be documented and that clear responsibilities should be identified in advance for all the stages of the application of the Convention.

3. The guide may also be useful to the national Points of Contact regarding the notification as well as other local, regional, state or national authorities and to Non-Governmental Organisations (NGO), International Financing Institutions (IFI) and the public who are likely to become involved in the practical application of the Convention. The guide goes through each of the steps in the application of the Convention and identifies good practices based on accumulated experiences from the different Parties to the Convention.

4. The guide focuses on issues that

- have been identified to cause difficulties when applying the Convention, or that
- are important to take into consideration when developing bi- or multilateral agreement s to support the application of the Convention.

(i) The mandate

5. The Second Meeting of the Parties (Sofia, February 2001) to the Convention on Environmental Impact Assessment in a Transboundary Context – the Convention, decided to include the elaboration of guidance on practical application of the Convention and on bilateral and multilateral agreements and arrangements in the work plan for 2001-2004. The Netherlands, Finland and Sweden took the responsibility of acting as lead countries of the activity. The lead countries contracted the Finnish Environment Institute (SYKE) to co-ordinate the practical work.

6. Previous work under the work plan for 1998-2000 of the Convention has provided material to support the practical implementation of the Convention. The reports “Practical Application of the Espoo Convention” (Report of the second Meeting of the Parties, Annex II, http://www.unece.org/env/eia), “Bilateral and Multilateral co-operation in the framework of the Espoo Convention” (Report of the second Meeting of the Parties, Annex I, http://www.unece.org/env/eia) and "Current Policies, Strategies and Aspects of Environmental Impact Assessment in a Transboundary Context" (Environmental Series No. 6, UN/ECE, 1996) (http://www.unece.org) give background information and additional

suggestions. This guide provides a compilation of practical ideas for those involved in transboundary EIAs according to the Convention.

(ii) The need for systematic approaches in applying the Convention

7. Transboundary assessments according to the Convention have proved worthwhile. The transboundary approach ensures that assessments analyse entire spatial scale of impacts. In addition, transboundary assessments mitigate tensions between concerned Parties by providing information before rumours develop and by letting citizens in the affected Party present their opinions on activities that may have an impact on their environment.

8. Environmental impact assessments (EIA) are multidisciplinary in nature. The issues that arise are also affected by the knowledge and values of the different stakeholders and the public. EIAs in a transboundary context (henceforth transboundary assessments) are even more complex. In neighbouring Parties the EIA-process may be differently structured in legislation or carried out in practice in different ways depending on the historical and cultural background. Differences are commonly seen in criteria for identifying activities that should be subject to EIA, in the criteria for what is regarded as a significant environmental impact and in the philosophy of EIA including issues such as the role of EIA in decision making and the role of the public in the EIA.

9. Neighbouring Parties can reduce difficulties that arise due to differences in legislation and practice by increasing the exchange of information on legislation and practices. Difficulties in applying the Convention have also arisen due to too complicated or poor organisation within a Party. Clear rules of procedure and with clearly identified responsibilities to organise the transboundary assessments have proved to help in carrying out the assessments.

10. For those Parties that frequently apply the Convention, bilateral or multilateral agreements/arrangements may be a practical way to overcome difficulties due to discrepancies between legislation and practice of the Parties. Henceforth the term “agreement” will be used to mean any kind of “bilateral and multilateral agreement or other arrangement” for transboundary assessments. Such agreements can provide a tailored framework for running the assessment procedure between the two Parties. These agreements are also important in regions where joint EIAs are common.

(iii) The Convention in the context of international environmental law

11. The Convention introduced a new way of dealing with transboundary impacts: the transboundary environmental impacts assessment (EIA). Environmental impact assessment existed in the national legislation of most Parties and thus it was technically possible to extend the assessment across the border under the Convention. This extension had also been made in the Council Directive on the assessment of the effects of certain public and private projects on the environment (No. 85/337/EEC, 03 2175, 5.7.1985, p. 40) as amended by Council Directive (No. 97/11/EC, 03 273, 14.3.1997, p.5) (http://europa.eu.int/comm/environment/eia) of the European Union and with the Convention this demand has been extended to cover all Parties to the Convention.

12. Although the Convention is the most specific piece of international legislation for transboundary impacts it is not the only one. For example the Convention on Long-range Transboundary Air Pollution (1979) (http://www.unece.org/env/lrtap/), the Convention on early notification on nuclear accidents (1986)

(http://www.iaea.or.at/worldatom/Documents/Infcircs/ Others/inf335.shtml) and the Convention on the control of transboundary movements of hazardous wastes and their disposal (1989) (http://untreaty.un.org/English/TreatyEvent2002/ Basel_Conv_16.htm) also deal with related issues. There are also three UN/ECE environmental conventions that refer to the Convention. These are the Convention on the Transboundary Effects of Industrial Accidents (http://www.unece.org/env/teia), The Convention of the Protection and Use of Transboundary Watercourses and International Lakes (http://www.unece.org/env/water) and the Convention on Access to Information, Public Participation in Decision- making and Access to Justice in Environmental Matters (http://www.unece.org/env/pp). Many general environmental global conventions such as the Biodiversity Convention (1992) (http://www.biodiv.org/) set requirements for environmental impact assessments and explicitly encourage also transboundary assessments.

II. PRACTICAL SOLUTIONS IN APPLYING THE CONVENTION

(i) Responsibilities

13. The competent authority is the authority that is designated by the Party to carry out the practical application of the Convention nationally and may also have the decision-making powers regarding a proposed activity. The competent authority may be, depending on the nature of the issue, a local, regional, state or national authority. The Point of Contact is the authority, which is designated by the Party to be the official contact towards other Parties and towards the Secretariat of the Convention. An updated list of the Points of Contact is available from the Secretariat or from the website: http://www/unece/org/env/eia.

14. Although the practical application is the responsibility of the competent authority, some tasks are clearly part of the mandate of the Point of Contact. The responsibilities of the two should be made clear and the information flow should be ensured between these two authorities in clear national rules of procedure or separately in each case. An agreement can help in defining the roles by designating contact points and their functions (e.g. mailbox, executive function, initiating function, use of a joint body). An agreement should also take note of other stakeholders such as the developer, International Financing Institutions (IFI) and Non-Governmental Organisations (NGO).

(ii) Management

15. The Convention requires Parties to take all appropriate and effective measures to prevent, reduce and control significant adverse environmental impacts from proposed activities. The environmental impact assessment process is carried out to achieve this. Successful management of the process and the related formal procedures depend on smooth practical application of the provisions of the Convention and on a reciprocal understanding of differences and similarities in the assessment procedures across the border.

16. Lack of understanding of the differences in EIA legislation in the Parties involved makes the application of the Convention often cumbersome or, in the worst case, unsuccessful as there are many elements in the Convention that require close cooperation between the Parties. Open discussions at an early stage reduce misunderstandings and help in avoiding friction between the Parties. As a last resort the Convention includes a formal legal dispute resolution process.

17. Negotiations can be organised before the actual start of transboundary EIAs on an ad hoc basis or by forming a permanent working group that discusses the practical matters of

ongoing and upcoming applications of the Convention. The following issues could be discussed:

- institutional arrangements;
- time schedules;
- translations; and
- cost sharing and other financial matters.

18. At a national level, permanent rules of procedure that specify as clearly as possible the different tasks and the responsibilities of all actors involved have been found useful. If no clear plans for the implementation of the Convention have been set in national primary or secondary legislation, the practical application of the Convention can be perceived to be complicated. This is due to the fact that it includes many steps and stakeholders.

19. Rules of procedure provide a basis for the process in each individual case. The level of detail and the degree of formalism in the rules of procedure may vary depending on the administrative culture. When a new application procedure is forthcoming, a plan for carrying out the application needs to be tailored according to the rules of procedure but taking into account the special circumstances of the case in question. It is advisable to go through all the stages of the application procedure and examine their practical implementation for each case in advance (see paragraph 21 below).

20. Parties with one or several agreements with varying combination of Parties build the national rules of procedure in consistency with the contents of the different agreements.

(iii) The procedure

21. The procedure has distinct stages, each of which needs to be carried out in a way that serves the case in question, fits into the procedures and the culture of the Parties concerned and fulfils the requirements of the Convention. These stages include notifying the affected Parties, organising participation and information flow and providing EIA documentation and final results. In case the affected party decides not to participate in applying the Convention in the notified case, the process is stopped and it is up to the Party of origin to decide whether it carries out an EIA or not. An overall plan is needed for the entire procedure. Each step requires careful preparation before being carried out. National legislation plays an important role when applying the Convention. On the other hand, it may lead to rearrangement of the phases, e.g. the notification and transmission of EIA documentation.

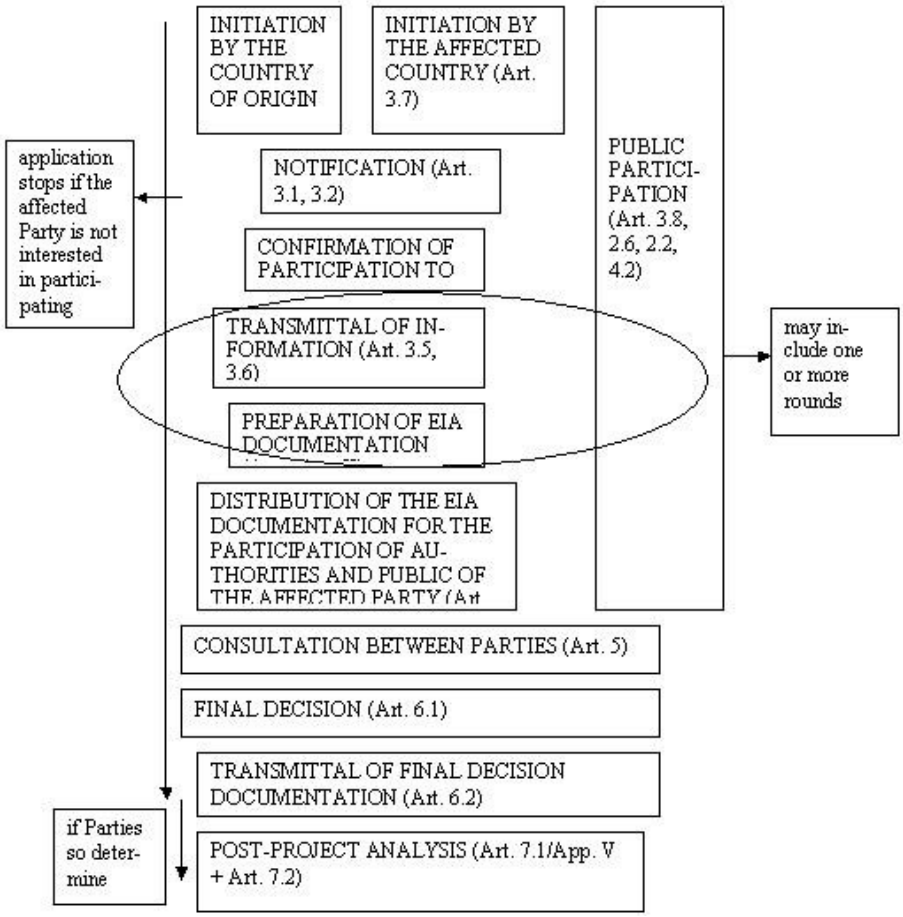
(iv) Initiating the process

22. According to the Convention, the practical application starts with a notification. In practice, there are tasks to be carried out before sending out the notification. This chapter gives an overview of the tasks involved in the initiation of the process and suggestions for how they can be carried out.

23. The legal or natural person who raises the question of applying the Convention in a Party may vary from case to case. It is important that the Convention is well known in those Parties that are Parties to the Convention. Authorities within different sectors and at all levels of administration in particular, but also NGOs, IFIs, developers and the public, should receive information on the Convention and its contents through various means such as environmental committees. In this way one can ensure that knowledge of potential cases reaches the

competent authorities and Points of Contact, which can officially initiate the procedure.

The flow-chart of the stages of an assessment according to the Convention



Screening

24. In the Convention, Appendix I includes a list of activities that automatically require an application of the Convention if significant impacts may extend across the border. The first task is thus to determine whether an activity may have significant impacts across borders. This exercise is often called screening. Some Parties may find that the list of activities in the Convention does not cover all relevant activities. An agreement could thus include further activities, which always require transboundary EIAs. Appendix III contains general criteria to assist in the determination of the environmental significance of activities not listed in Appendix I.

25. Furthermore, there may be other types of activities that in the special circumstances of the border area are likely to cause significant transboundary impacts. Such activities can be locally identified in advance to ensure smooth initiation of transboundary assessments. Special issues may also arise in the connection with the assessment of policies, plans and programmes and in issues related to long-range transport of pollutants. The concerned Parties should discuss the need to apply the Convention also in these cases (Article 2.5).

26. In most cases the Convention will be applied between neighbouring Parties. However it should be noted that the Convention does not only apply to transboundary impacts between neighbouring Parties but also to long-range transboundary impacts. Activities that can make long-range impacts in transboundary context include activities with air pollutants or water pollutants, activities potentially affecting migrating species and activities with linkages to climate change.

27. The legislation varies between Parties with respect to the criteria for initiating environmental assessments at the national level. This may confuse decision-making concerning the applicability of the Convention. International, national and regional environmental programmes may provide useful criteria to be used as a basis for finding thresholds and other criteria. In the ECE Environmental Series number 6, the chapter called "Specific methodological issues of Environmental Impact Assessment in a transboundary Context" (http://www.unece.org/env/eia) contains information on the determination of "significance". An agreement can define criteria such as large and major and thus provide mutually agreed threshold values.

28. It may be advisable to notify neighbouring Parties also of activities that appear to have a low likelihood of significant transboundary impacts. It is better to inform potentially affected Parties and let them decide on their participation instead of taking the risk of ending up in an embarrassing situation in which other Parties demand information on activities that have already progressed past the EIA phase. There are several cases where the affected Party has wished only to be kept informed.

29. In cases where an affected Party feels that it is likely that the Convention should be applied although it has not received a notification, the affected Party may initiate discussions on the issue of significance with the Party of origin (Article 3.7). Sometimes, the public in the affected Party raises the issue of negative impacts from another Party's activity and demands the Parties to start exchanging information according to the Convention (Article 3.7). The public can submit these requests to the competent authorities in the affected Party, either directly, or through authorities at local, regional or national level. Clear rules on screening will help in dealing with this kind of situations and in resolving any disputes that may arise.

Institutional arrangements

30. The Convention specifies the formal steps and Points of Contact, but has no provisions on the informal contacts and negotiations that occur in many border areas between authorities at different levels. Formal contacts and negotiations must be carried out to meet the legal requirements of the Convention. It is nevertheless worth contacting the Point of Contact well in advance to give the Party time to get organised. It may also be useful to designate a "contact point" at the regional or even local level.

31. It is important to trigger informal negotiations throughout the process and especially at the start. Such negotiations should be conducted between:

- Points of Contact, developer and responsible authorities within the Party of origin;
- responsible authorities in border regions within and between Parties;
- the developer, authorities and IFIs; and
- the developer, authorities and NGOs.

32. The IFIs play a major role in EIAs in many Parties of the Convention. The IFIs are not, however, Parties of the Convention and are thus not able to apply formally the Convention although practically all IFIs have internal rules for EIAs. It is therefore advisable to clarify the relationships between the IFI and the actual Parties to the Convention. In this way the internal rules of the IFI for EIAs can be matched with the legal requirements of the Parties as well as the Convention.

Financial aspects

33. The application of the Convention has several financial implications. The "polluter pays" principle has been interpreted to mean that e.g. translation costs of the various EIA documents should be covered by the Party of origin, respectively by the developer. Furthermore there are some procedural steps with clear financial implications (publication in the affected Party, presentation of the documentation for public inspection, public hearings etc.).

34. It is necessary to go through the financial arrangements in an early phase. When all actors are informed early of their future responsibilities they are able to reserve finances and to link the matter with other processes. Agreements may specify financial aspects such as:

- costs of special transboundary studies;
- costs of translations; and
- costs of public hearings and other participatory procedures in the affected Party.

35. The costs can be covered by

- the developer;
- the affected Party;
- the Party of origin;
- an IFI;

or by a combination of two or more of the above mentioned bodies.

36. In some cases e.g. NGOs may provide contributions in kind by translating additional documentation of specific interest to the organisation, for example wildlife inventories.

Time schedule

37. It is in the interest of everyone involved in a transboundary EIA that time schedules are specified as clearly as possible. The authorities involved can prevent or minimize possible delays by planning the time schedule at an early stage. Opportunities to combine steps of the EIA procedure can be explored to increase efficiency. For example, the provision of extra information after a confirmation of the participation by the affected Party may be unnecessary if the notification already contains the complete information.

38. The timing of the application procedure process should be set at the initiation phase so that the entire process is given a clear structure with a start and an end. Then all Parties are aware of the time sequencing involved. The timing should be discussed with everyone concerned in an early phase. Parties may have strict rules on time schedules for public participation and these may cause difficulties in linking the transboundary EIA to the national EIA. IFIs may also have their own rules concerning timing. By identifying the different

requirements at an early stage it may be possible to develop a smooth process that avoids delays and/or rushes that may be intimidating for those participating in the transboundary EIA.

39. Clear rules on the timing are as important as the actual allocation of time for each step. Timing is important especially:

- in sending the formal notification;
- in responding to the notification;
- in public consultation and participation; and
- in informing of the final decision.

(v) The notification (Articles 2.4, 3.1 and 3.2)

40. Notification is the formal and mandatory start of the application procedure. Informal contacts may have preceded the notification. The notification may be passed between the official Points of Contacts or by other authorities, which are responsible for this step according to national legislation or through agreements. To avoid misunderstandings, the notification or a copy of it should be sent to the Point of Contact, which will then pass the notification to the actually responsible authority. The pre-notification (informal) contacts are highly recommendable to give both Parties time to get prepared for the coming procedure. The importance of the official notification lies in the formality it gives to the procedure. The format for notification can be found in the Convention's website (http://www.unece.org/env/eia).

Timing the notification

41. The notification must be sent the latest when the public in the Party of origin is being informed of the national EIA process. It is recommendable to send the notification as early as possible, favourably before the scoping, if such a phase is being carried out (see paragraphs 37 to 39 above). All Parties that have been identified to be potentially affected should receive a notification. In the case of joint transboundary EIAs, i.e. when two Parties to the Convention are simultaneously affected Parties and Parties of origin, e.g. in connection with transboundary-transport routes, reciprocal formal notifications help to clarify the roles of both Parties.

42. In agreements, the moment of notification should be specified. The precise time of the notification depends on whether the EIA procedure of the Party of origin includes: (a) a formal stage with mandatory public participation for the identification of issues to be studied; (b) a formal identification stage without participation; or (c) no such formal stage at all. The formal stage for the identification of issues to be examined in the EIA, often called scoping, provides a suitable moment for an early notification.

Contents of notification (Article 3.2)

43. The contents of the notification are specified in Article 3.2. In addition, the UN/ECE working group has provided a format of notification (Report of the first meeting of the Parties, http://www.unece.org/env/eia). It is recommended to add "other" information (Article 3.5) already to the notification. This speeds up the process since it removes one round of information exchange. The additional information on the activity and its likely impacts also helps the affected Party to consider whether it wants to be part of the EIA or not.

Responding to the notification and confirmation of participation (Article 3.3)

44. Parties should always respond to notifications within the time specified by the Party of origin. A negative response to the Party of origin is also important. The Party of origin can then proceed in planning the national EIA process. While responding to the notification and confirmation of participation, the time of carrying out environmental impact assessment specified in national legislation of the Parties should be taken into account.

(vi) Transmitting information (Articles 3.4 to 3.7)

45. If a potentially affected Party decides not to participate and indicates this in its reply to the notification, the application procedure ends. On the other hand, if the affected Party wants either to be informed or to participate, the application procedure continues with further exchange of information.

46. If other information has not been provided to the affected Party already in the notification, it must be sent as soon as the affected Party has expressed its interest in participating in the process. The exchange of information then continues between the Parties throughout the process. The time limits given by the responsible body should be followed. The time limits should preferably be agreed upon in advance so that the time limits are both legally acceptable and realistic (see paragraphs 37 to 39 above).

Selection of material

47. The documentation has to include all relevant items mentioned in Appendix II of the Convention. The identification of alternatives is usually felt to be the most difficult part in preparing the documentation but also among the most important ones. The alternatives set the scene for the entire assessment and thus they should be identified at an early stage.

Submitters and receivers of information

48. The Convention provides (Article 3.8 and 4.2) that both concerned Parties shall ensure that the public of the affected Party is informed and be provided with possibilities of making comments. Comments of the public to the EIA documentation may be sent by the public either to the competent authority or, where appropriate, through the Party of origin. The Convention does not contain more specific information on the authority to be addressed.

49. The Parties should know from the very beginning, at the latest at the time of notification, which the concerned authorities are that exchange information. The roles may vary depending on the type of information exchange:

- sending documents (e.g. notification);
- providing information to the public; and
- sending comments of the public.

50. It should be clear how the information from the public is transferred to the Party of Origin. It should be clarified who is responsible for informing the public of the affected Party and the way that comments of the public shall be transferred.

51. Documents like the notification and the EIA documentation will always be passed between the authorities of the respective Parties. For the provision of information to the public and the transmission of comments of the public there are various options:

- the responsibility is with an authority of the affected Party (Point of Contact 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 Point of Contact or competent authority in the affected Party;
- the responsibility for informing the public of the affected Party is with the authority in the Party of origin (competent authority) or the proponent (developer); the public of the affected Party sends comments directly to the competent authority of the Party of origin; or even directly to the proponent and sends copies of the comments to the competent authority of the affected Party; or
- there is a shared responsibility between authorities in both Parties.

52. The advantage of the first option is that the authority of the affected Party is usually well informed of the ways and means of publishing and making available the EIA documents for public inspection. 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. 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 Party of origin. This will enhance the timing of the process. A disadvantage may be that the authority of the Party of origin is not familiar with the local ways of publishing and practice regarding making available documents for public inspection. The advantages of both alternatives could be combined by the third option: sharing the responsibility between the authorities or both Parties but that needs a further specification and division of tasks.

53. Agreements give a forum for defining the roles and responsibilities in information flow.

Public participation (Articles 2.2, 2.6, 3.8 and 4.2)

54. The Convention requires that the public of the affected Party be given the opportunity to participate in the environmental impact assessment process. Participation is specified in the Convention as a right to be informed and a right to express views. Thus the practical application of the Convention should include these aspects. One of the main challenges of public participation arises from the fact that the legislation and practice concerning public participation vary between Parties. Therefore, participation methods need to be tailored to fit the practices of the affected Party.

55. Apart from the broad public, bodies worth consulting include different authorities, specialists, IFIs and NGOs on both sides of the border. To pass information in correct form, in relevant scope and in the most appropriate language, the stakeholders and the target groups need to be clearly defined. Many stakeholders may hold information and may positively take part in gathering information. The competent authority should, however, ensure that the information is non-biased and of adequate quality (see also paragraphs 33 to 35 above).

56. Public participation is considered very important in the application of the Convention and thus there is guidance specifically meant for planning the participatory process. This guidance is being developed and will be available on the website of the Convention (http://www.unece.org/env/eia). Detailed arrangements on informing the public on the involvement in the transboundary process may be included in an agreement. An agreement could make clear what the roles and responsibilities are in informing the public and in transferring the comments of the public to the competent authority of the Party of origin.

57. The UNECE Convention on access to information, public participation and access to justice in environmental matters (the Aarhus Convention, 1998) sets the basic requirements on public participation (http://www.unece.org/env/pp).

Translation of documents

58. A special feature of the practical application of the Convention is the many languages of the concerned Parties. Studies have shown that even minor difficulties in understanding the language may retard participation of the public and the authorities. This is the case with closely related languages such as the Scandinavian, German-based and Slavic languages.

59. Although the Convention does not specify issues of language, it is important that information is provided in a language understood by those participating. The Parties are recommended to plan and decide upon responsibilities concerning translations in the initiation phase. The target group needs to be well defined before planning the translations is taking place.

60. It is necessary to decide:

- which parts of the documents are planned to be submitted to:
  - the affected Party,
  - the regional/local level in the affected Party, and
  - the public in the affected Party;
- what language requirements are set by the chosen target groups;
- which documents will be translated into which language;
- in which language the responses can be given;
- who is responsible for the translations and the quality both in given and received information; and
- who covers the costs of translations both in given and received information.

61. Translating into English or Russian instead of the language of the affected Party is sometimes done when there is an IFI involved or when the assessment deals with more than two Parties. It is important that at least parts of the documents are translated to the language of the affected Party.

62. Needs for translations are determined according to the language differences between the Parties. These matters can be generally specified in an agreement between Parties: which documents should be translated, who is responsible for the translations, for their quality and for their costs. Agreements can also set requirements on time allocated to translations and the timing of translations. In agreements Parties can also state who is responsible for the interpretation at hearings.

(vii) Screening the likelihood of significant adverse transboundary impacts by the affected Party (Article 3.7)

63. The Party of origin should have carried out the screening of the potential adverse impacts of the planned activity in the initiation phase. Even if the Party of origin comes to the conclusion that the Convention does not have to be applied, the affected Party may have another view and thus initiate discussions with the Party of origin. If no common view is

reached, any of the Parties may ask an inquiry commission in accordance with the provisions of Appendix IV to give advice. One way to avoid situations of this kind is to open unofficial discussions with the affected Party already in the initiation stage or to just notify the affected Party.

(viii) Preparation of the EIA documentation (Articles 4.1 and 4.2)

64. Once the developer has compiled all the material in the environmental impact assessment nationally and in the affected Parties, he or she produces documentation. When the assessment is based on an application of the Convention, the documentation shall cover, as a minimum, the items that are listed in the Appendix II of the Convention.

65. The documentation has to be provided to the affected Party. In practice the documentation may be sent to the Point of Contact of the affected Party or to another authority of the affected Party, which is responsible for this step according to national legislation or if both Parties so agreed in general (e.g. in an agreement) or for the specific case. In both cases the delivery may be carried out through a joint body, where one exists and where this is appropriate.

66. The document shall be provided to the public for comments, which are collected later. According to the Convention, both Parties are jointly responsible for the distribution and collection of comments. It is necessary to decide which Party shall perform this task and which way. The paragraphs on transmitting information suggest how to arrange the information flow. It is important to decide these issues in the initiation phase or at the latest immediately after the notification. It is also highly important to provide time limits for the submission of the documentation and especially for the public to respond. The time limits should be realistic both from the participants' and from the authorities' point of view.

(ix) Consultations (Article 5)

67. After completing the documentation, the Party of origin has to initiate without delay consultations with the affected Party. Matters to be decided upon when planning the consultation process include:

- which authorities and bodies can and should participate in consultations;
- how and when consultations are carried out; and
- how the Parties are informed of the consultations outcomes and their use.

68. Due to the sensitivity of different cultures to issues such as participation and time-frames, agreements could include provisions on the consultations.

Timing

69. A reasonable time- frame for the duration of the consultations has to be set (see also paragraphs 37 to 39 above). One way is to agree on a case-by-case basis on the time-frame within which the consultations has to be finished. The consultations should always be conducted before the final decision is made so that their outcome can affect the decisions and the conditions it may specify for the activity.

Issues

70. Article 5 suggests issues to be discussed in consultations, e.g. possible alternatives to the proposed activity, other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity and any other appropriate matters relating to the proposed activity. Another important item worth to negotiate is monitoring during the construction phase. It seems likely that Parties propose in consultations additional items (e.g. specific mitigation measures, monitoring and post-project analysis).

Roles of different stakeholders in consultations

71. The Convention does not unambiguously specify who should participate in consultations. Official consultations should, however, take place at sufficiently high level because they represent negotiations between national states. The Parties may wish to include other bodies in the consultations. It may be essential to meet more often and to start with an exchange of information at an expert level (e.g. experts of sector authorities). In order to ensure that consultations will focus on the most important items, the presence of experts has been found useful. Consultations may also be done in writing (see also paragraphs 37 to 39 above).

Means to be used in consultations

72. In consultations it is useful to use many different means in order to ensure efficient information flow in different consultation phases, taking into account cultural differences in communication and negotiation. The different forms include:

- A joint body;
- Meetings of experts;
- Electronic meetings/exchange of emails or official letters;
- Meetings of medium and high-level officials (see also paragraph 71 above).

(x) Final decision (Article 6.1)

73. The Party of origin has to provide the final decision with the reasons and considerations to the affected Party. These should also reflect the impact on the affected Party.

74. Trust may be raised by clearly specifying how comments of the authorities and the public of the affected Party and the outcome of the consultations will be dealt with. However, this does not mean that the Party of origin has to strictly follow the proposals or requests of the affected Party in detail, but it will have to take them into due account and to balance them against other items according to existing legislation. The basic premise is that comments are treated equally, irrespective of national boundaries. If it is unclear how the comments of the authorities and the public of the affected Party are considered, future motivation to participate is affected negatively and distrust may arise. If individuals in the affected Party have the right to appeal against the decision in the Party of origin, the information about such a right of appeal should be given in the decision or in an annex to it (see also paragraphs 54 to 57 above).

Consultations on the basis of additional information after the decision

75. In case additional information relevant to the decision is obtained after the final decision but before the activity is started, the Party of origin should deliver this information to the concerned Parties. If one of them so requires, additional negotiations have to be carried out on the revision needs of the decision e.g. monitoring, additional conditions or mitigation measures etc.

Responsibilities

76. The Point of Contact or other authorities, responsible according to the legislation of the Party of origin or to an agreement, may send the final decision to the affected Party. For the way by which the authorities and the public of the affected Party are informed and provided with the final decision, see paragraphs 48 to 53 above.

77. In an agreement roles in dissemination of the decision could be dealt with in detail.

III. SPECIFIC ISSUES

(i) Dispute prevention and settlement (Article 15)

78. The Convention includes a framework and procedure for dispute resolution. The first requirement is to have negotiations between the concerned Parties. This article refers to negotiations after the dispute has arisen. Information exchange and negotiations before the application of the Convention reduce the likelihood of a dispute in a first place and are thus worth carrying out. Dispute resolution mechanisms can also be included in agreements based on the Convention.

(ii) Long-range impacts (Article 1.8)

79. The definition of transboundary impact used in the Convention includes long-range impacts, which means that it is mandatory to examine the likelihood of long-range impacts, as well.

The activities and the impacts

80. Identifying types of activities that may have long-range impacts is the first step. The main difficulty lies in deciding when a specific activity contributes significantly to a long-range impact. For example, industrial pollutants travelling long distances may cause long-range impacts, but the contribution of a single activity is often very small. On the other hand, an activity that causes impacts on migrating animals, have transboundary long-range implications. Agreements may list specific activities to be screened for long-range impacts.

The area

81. When the activities have been identified, the possible affected Parties for the impacts of these activities should be found. The difficulties relate to deciding on ‘realistic’ areas of impact in order to determine which Parties of the Convention may be affected and thus informed of the activity. Thinking of areas or regions as geographical entities such as river basins, watersheds, mountain regions and waterways, and identifying the mechanisms through which impacts may occur, helps in dealing with the scale of impacts. A crucial issue will be the magnitude of the impact due to the activity relative to other ‘background’ effects caused by other activities.

Dealing with the complexity

82. When long-range impacts are in question, the setting is far more complicated than in a two-Party transboundary assessment. For example, there may be several affected Parties with different languages. To keep translations at a realistic level it is advisable to use, as appropriate, one or several of the three official UN languages in the notification (see also paragraphs 58 to 62 above). Problems may also arise when legislative requirements of various Parties have to be considered. Database on EIA in a transboundary context, EnImpAs (http://www.unece.org/env/eia) including information from legislation in different nations would support the practical application. Each Party could contribute to this data source by providing regularly updated information on their legislation into the web, in one or several of the official UN languages.

(iii) Joint EIA (Article 2.1 and Appendix VI, item (g))

83. A joint EIA is a special case in applying the Convention. In practice two situations may occur:

- joint projects with impacts on one or both of the two Parties of origin (e.g. boundary-crossing motorway), and
- joint projects with impacts not only on the two Parties of origin but also on other Parties (e.g. pipelines in a water basin)

84. In the first case, the Parties should agree when starting the projects, whether they are going to carry out two separate EIAs, (i.e. two different procedures including the elaboration of two different EIA documentations and notify each other), or whether some or most of the steps will be carried out jointly. The ways in which the steps of the EIA procedure may be joined, and in which the tasks may be distributed between the two Parties, are manifold. In the second case, Parties will also have to cope with the problem of how the participation of these other affected Parties may be carried out. From the practical point of view, it may be helpful to share the responsibilities among the Parties, but the obligation to carry out the process rests separately on those Parties that count themselves as Party of origin. To make the joint EIA smooth, the roles of the two Parties should be specified from the beginning for each stage of the assessment. Parties which are expected to have joint transboundary assessments on a regular basis, for example because they are geographically located in such a way that resources or pathways overlap borders, can resolve many issues by developing bilateral agreements on transboundary EIA.

Getting started

85. A joint EIA can be initiated by holding a preparatory meeting between the two (or several) joint Parties of origin to prepare the notification and the procedure. At this meeting the practical issues such as time schedules, level of participation and steps to be taken should be decided upon. It is worth specifying separate time schedules for each Party to respect the national legislation. However, informing the other Parties help to build a flexible time schedule that suits all the Parties and is known by all of them. One way to solve the practical issues is to form a joint body. The body could meet regularly throughout the process and have a general coordination role with respect to the schedules and other practical matters related to the process management. Meetings may be held face to face or by using electronic devices such as email and AV-equipment.

Notification

86. Notification should be sent to all the affected Parties. At this stage, the notification may be exchanged because of the dual roles: Party of origin and affected Party. In addition there may be third Parties involved, which are only affected by the activity. The reasons for cross-notification are: (1) to fulfil the requirements of the Convention; (2) to keep the process well defined; and (3) to keep it connected to the national EIA process. The documents may be partly the same and they should include cross-references so that the receiver knows that the different notifications deal with the same case.

The assessment

87. When the Parties interested in participating in the joint EIA have been identified it is rational to carry out screening, scoping, the documentation and possibly other steps jointly, although there may be special features of the impacts on one side of the border that warrant partly separate analyses. Joint bodies are likely to be useful in ensuring e.g. coherent documentation. If the Parties give very different weighs to the impacts, a joint assessment is more difficult to carry out and is likely to require extensive negotiations throughout the assessment. In these cases a joint body consisting of EIA authorities with general supervisory function is highly recommendable.

After the assessment

88. All the Parties of origin will make the decisions on the activities separately. This is due to the national legislation and it is also supported by the requirements of the Convention. On the other hand, monitoring that extends over more than one Party's territory is useful to carry out jointly, for example by forming a joint task force or by using some bi- or multilateral body for dealing with the case specific monitoring.

(iv) Policies, plans and programmes (Article 2.7)

89. The Convention requires that the Parties endeavour to apply the Convention to level of policies, plans and programmes. Thus, it is not mandatory as such. There is still a lack of tradition and experience. However, the recent EC Directive on SEA 2001 (Directive 2001/42/EC of the European parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment) (http://europa.eu.int/comm/environment/eia/sea- legalcontext.htm) sets requirements for Member States of the European Union to carry out transboundary assessments also for plans and programmes. This requirement will cover also UNECE countries in the future because a Protocol on Strategic Environmental Assessment under Espoo Convention was finalized in January 2003.

90. The level of policies, plans and programmes has been considered important in the context of the Convention and thus an ad hoc working group has been set up to develop a protocol on strategic environmental assessment under the auspices of the Convention. If the assessment of PPPs is included in a bi- or multilateral agreement it is essential to agree on the type of PPPs that are made subject to transboundary assessments on a reciprocal basis. For example transport is one sector that is advisable to be included in the list.

(v) Post-project analysis (Article 7)

91. Post project analysis is not a mandatory activity that would be included in all transboundary EIAs. Still, the Convention provides that the Parties shall determine at the request of one of the Parties whether a post-project analysis shall be carried out. In practice both concerned Parties may have different views whether such an analysis is necessary. As a result of consultations on such an issue a post-project analysis may or may not be carried out.

92. If a post project analysis is carried out as an application of the Convention, it has to analyse, as a minimum, both the activity as well as its potential adverse transboundary impacts. If the post project analysis provides unexpected results, the Party of origin has to inform the affected Party and carry out consultations concerning necessary measures.

93. A post project analysis can be included in the final decision as a requirement related to the monitoring of the activity. Alternatively, it could be made part of the overall plan for the transboundary assessments from the start of the procedure. A post project analysis is typically based on the monitoring of the activity and its impacts. Monitoring can also be carried out jointly by the Parties and within the territory of all Parties concerned. The Parties should exchange any results gained of the monitoring. Requirements concerning post project analysis can be included in agreements on transboundary EIA.

IV. TRANSPOSITION INTO NATIONAL LEGISLATION (Article 2.2)

94. A ratification of the Convention is based on a transposition of the requirements of the Convention into national legislation. This can be achieved by including the necessary transboundary considerations into the national EIA legislation, wherever such legislation exists. The requirements of the Convention may also be included in different pieces of legislation, e.g. those covering environmental protection or physical planning.

95. The transposition of the requirements of the Convention ensures that national authorities organise the practical application of the Convention. The requirements of the Convention can be further strengthened and clarified by specifying in primary or secondary legislation issues such as the responsibilities of different authorities and the rules of procedures of joint bodies. The national legislation may thus help the other Parties to understand the relationship of a Party to the requirements of the Convention and helps in identifying links between the EIA procedures of the Parties.

V. CREATING BI- AND MULTILATERAL AGREEMENTS AND ARRANGEMENTS (Articles 2.2 and 8 and Appendix VI)

96. As noted throughout this guide there are many issues that can be agreed upon in advance by Parties which expect to have transboundary assessments on a regular basis. The Convention provides a legal basis for agreements (Articles 2.2 and 8). Annex VI to the Convention contains elements for such agreements. These agreements are not a precondition for the application or ratification of the Convention but should be seen as a way of achieving effective application.

97. The study on bilateral agreements ("Bilateral and Multilateral co-operation in the framework of the Convention" (http://www.unece.org/env/eia) has shown that there are different types of agreements. First there are general agreements, which contain a statement or declaration of intent to apply the Convention. Those agreements are prepared on national government level. The text of those agreements mainly 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 joint Commission.

98. Another type of agreement is a more specific agreement. Those agreements contain detailed practical guidance or recommendations for the application of the Convention in practice. National government levels as well as regional level authorities are involved in preparing those agreements. Some Parties have signed bilateral agreement on how to carry out EIAs in a transboundary context between them. More agreements of this kind are on the way and there are many draft agreements under negotiations. The Convention refers to these agreements as well as to multilateral agreements (Article 2.9).

99. In addition, there are several other agreements that support the application of the transboundary assessments. These include general environmental agreements between two or more Parties. The challenge in developing successful agreements is to take into account the national legislative requirements on time schedule, on steps and on the order of the steps from both Parties in a way that satisfies both Parties.

100. A tentative list of the general contents of a bi- or multilateral agreement is as follows:

- area of application of the Convention;
- criteria for deciding what is a significant impact;
- naming people or organizations to act as contact points;
- setting up a joint body;
- notifying those who need to know;
- providing information and publicity;
- public participation (public hearings, information meetings, ensuring comments are passed on);
- consultation between the concerned parties;
- reaching a decision;
- post project analysis;
- preventing disputes or settling them;
- arranging translations; and
- deciding who pays.