

## **The Espoo Convention and the Convention on Biological Diversity**

Following the sixth meeting of the Conference of the Parties to the Convention on Biological Diversity (COP-6), held in The Hague, The Netherlands, from 7 – 19 April 2002, where 32 decisions were adopted, the Executive Secretary of the Convention on Biological Diversity (CBD) addressed the Secretariat of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) regarding a number of interesting links between the two Conventions.

Of particular relevance to the EIA Convention is section A of decision VI/7 of the COP-6 on further development of guidelines for incorporating biodiversity-related issues into environmental impact assessment (EIA) legislation or processes and in the strategic environmental assessment (SEA). In paragraph 3 of this decision, the Conference of the Parties requested that current experiences in environmental impact assessment and strategic environmental assessment procedures that incorporate biodiversity-related issues, as well as experiences of Parties in applying the guidelines adopted by the COP, be compiled and disseminated through the clearing-house mechanism and other means of communication. EIA procedures should refer to other relevant national, regional and international legislation, regulations, guidelines and other policy documents, including the Espoo Convention. The Executive Secretary of the CBD was also requested, in light of this information, to prepare in collaboration with relevant organisations proposals for further development and refinement of the guidelines, particularly to incorporate all stages of the EIA and SEA processes taking into account the ecosystem approach.<sup>1</sup>

Correspondingly, the Parties to the Espoo Convention are asked for further assistance in the implementation of decisions VI/7 and to keep the CBD Secretariat updated on activities relevant to the CBD.

Please find below a list with Parties to both Conventions as well as the relevant Articles of the CBD as well the information contained in decision VI/7.

### **How many countries are Parties to both the Espoo Convention and the Convention on Biological Diversity?**

The CBD, to date, has 157 members and the Espoo Convention 40, with the following **32 Parties** incurring rights and duties under both Conventions:

- |               |                 |                         |
|---------------|-----------------|-------------------------|
| 1. Armenia    | 12. Finland     | 23. Portugal            |
| 2. Austria    | 13. France      | 24. Republic of Moldova |
| 3. Azerbaijan | 14. Germany     | 25. Romania             |
| 4. Belarus    | 15. Greece      | 26. Slovenia            |
| 5. Belgium    | 16. Hungary     | 27. Spain               |
| 6. Bulgaria   | 17. Italy       | 28. Sweden              |
| 7. Canada     | 18. Ireland     | 29. Switzerland         |
| 8. Croatia    | 19. Luxembourg  | 30. Ukraine             |
| 9. Cyprus     | 20. Netherlands | 31. United Kingdom      |
| 10. Denmark   | 21. Norway      | 32. European Community  |
| 11. Estonia   | 22. Poland      |                         |

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<sup>1</sup> Cf. COP-5 decision VI 'The Ecosystem Approach', <http://www.biodiv.org/decisions/default.asp?lg=0&m=cop-05&d=06>

## **1. Relevant Articles of the Convention on Biological Diversity**

Most importantly,

### **Article 14      Impact Assessment and Minimizing Adverse Impacts**

1. Each Contracting Party, as far as possible and as appropriate, shall:

- (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;
- (b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;
- (c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;
- (d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and
- (e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.

Accordingly, Art. 14, paragraph 1 requires, as far as possible and appropriate, each Contracting Party to introduce procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity, with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures. Para. 1 (c) encourages each Party to promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under its jurisdiction or control likely to significantly affect adversely the jurisdiction, and the conclusion of bilateral, regional or multilateral arrangements. This provision is consistent with existing international principles relating to transfrontier cooperation (e.g. Espoo Conv.).

### **Article 2      Use of Terms (*selected*)**

For the purposes of this Convention:

"Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

"Biological resources" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

"Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

"Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

#### **Article 4           Jurisdictional Scope**

Subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party:

- (a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and
- (b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.

#### **Article 5           Cooperation**

Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.

#### **Article 7           Identification and Monitoring**

Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

- (a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;<sup>2</sup>
- (b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling [etc.]
- (d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.

#### **Article 17          Exchange of Information**

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

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<sup>2</sup> For Annex I see <http://www.biodiv.org/convention/articles.asp?lg=0&a=cbd-a1>

## **2. Relevant Articles of the Espoo Convention**

Firstly, while the Espoo Convention does not mention biodiversity protection and conservation explicitly, there is nevertheless sufficient scope to incorporate such considerations. The following **Articles of the Espoo Convention** might therefore be of particular interest to the application and implementation of the CBD. Secondly, the draft **Protocol on Strategic Environmental Assessment (SEA)** explicitly incorporates biodiversity considerations. This protocol is likely to be adopted at the fifth Ministerial Conference “Environment for Europe” in May 2003 in Kiev, Ukraine and relevant provisions will be reviewed below. Thirdly, decision II/2, taken at the second meeting of the Parties in February 2001, provides for a comprehensive review of experience with the implementation of the Espoo Convention. It might be of particular interest to the Secretariat and the Parties to the CBD to take these previous experiences of the Parties to the Espoo Convention and the corresponding lessons learned into account when developing EIA guidelines. Decision II/2 and the analysis contained therein can be found on page 1. As far as possible, relevant provisions have been highlighted in bold.

For instance in Article 1 (vii) "Impact" is defined as **‘any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors**; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors.

Article 2 (General Provisions) spells out the aims of the Convention:

1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.
2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.
3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.
4. The Party of origin shall, consistent with the provisions of this Convention, ensure that affected Parties are notified of a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.
5. Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in Appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated. **General guidance for identifying criteria to determine significant adverse impact is set forth in Appendix III.**

Correspondingly, Appendix III provides

1. In considering proposed activities to which Article 2, paragraph 5, applies, the concerned Parties may consider whether the activity is likely to have a significant adverse transboundary impact in particular by virtue of one or more of the following criteria:

- (a) Size: proposed activities which are large for the type of the activity;
- (b) Location: proposed activities which are located in or close to an area of special environmental sensitivity or importance (such as wetlands designated under the Ramsar Convention, national parks, nature reserves, sites of special scientific interest, or sites of archaeological, cultural or historical importance); also, proposed activities in locations where the characteristics of proposed development would be likely to have significant effects on the population;
- (c) **Effects:** proposed activities with particularly complex and potentially adverse effects, **including those giving rise to serious effects on humans or on valued species or organisms, those which threaten the existing or potential use of an affected area and those causing additional loading which cannot be sustained by the carrying capacity of the environment.**
2. The concerned Parties shall consider for this purpose proposed activities which are located close to an international frontier as well as more remote proposed activities which could give rise to significant transboundary effects far removed from the site of development.

## **2. Strategic Environmental Assessment**

On **Strategic Environmental Assessment**, the Espoo Convention provides in Article 2.7:

7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.

Furthermore, the *Ad hoc Working Group on the Protocol on Strategic Environmental Assessment* has prepared a document containing **Substantive provisions of a Protocol on Strategic Environmental Assessment (SEA)**. Most relevant to the CBD, the draft Protocol refers explicitly to the protection of biological diversity in strategic decision-making, thus contributing to sustainable development. According to the 'Further updated version of the substantive provisions of a Protocol on Strategic Environmental Assessment (18 July 2002)':

Article 2 (Definitions) of the Protocol, paragraph 11, states that

[“Implication”][“Impact”][“Effect”] means the likely significant changes in the environment directly or indirectly resulting from the proposed strategic decision, including changes in, inter alia:

(a) [The state of] elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, **biological diversity** and its components, [including genetically modified organisms,] and the interaction among these elements;

(b) Human health;

(c) Conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the changes in the environment.”

## *Annex I*

Excerpts from the Report of the **Second Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context**, Sofia, Bulgaria (26 – 27 February 2001).

### **DECISION II/2 PRACTICAL APPLICATION OF THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT**

#### The Meeting.

Emphasizing that it is imperative for Parties to ensure full practical and effective application of the Convention,

Noting in this regard the potential for further improving the application of the Convention,

Having considered the outcome of the workshop on the practical application of the Convention,

1. **Recommends that more attention should be paid to the exchange of information in all stages of the procedure.** In addition to the official contacts between the focal points and the points of contact, **informal communication should be encouraged between authorities at different levels within a Party and between Parties, as well as between other stakeholders such as international financing institutions and NGOs.** This could be achieved by building communication networks and by organizing training for the focal points and the points of contact;

2. Calls on Parties that are in the position of country of origin to be more proactive when notifying the affected country according to Article 3 of the Convention. In this regard they should pay particular attention to the requirements concerning timing and content of the notification so that the procedure may be started in a satisfactory way, enabling it to be implemented within the prescribed time frames and in line with other obligations;

3. Recommends the Parties to continue the exchange of information on the practical application of the Convention and to prepare guidelines on good practice;

4. **Invites the Parties to provide cases to the database on environment impact assessment (ENIMPAS);**

5. Adopts the document on the practical application as appended to this decision;

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

7. Decides to take into account in the work-plan for the 2001-2003 period the outcome of the work on the practical application of the Convention and the document prepared in connection with the workshop on bilateral and multilateral cooperation (MP.EIA/2001/1).

## **Appendix I**

### *I. ANALYSIS OF THE CASE STUDIES AND THE OUTCOME OF THE WORKSHOP*

#### **Introduction**

1. As part of the work-plan agreed upon at the first meeting of the Parties, it was decided to carry out a study and hold a workshop on the practical application of the Convention. Terms of reference for submitting cases for a study on transboundary EIAs were sent to those who had indicated an interest as well as to all the points of contact of the Convention. The terms of reference appeared as a questionnaire structured around 13 different issues related to the practical application of the Convention. Countries were encouraged to cooperate in describing the cases with the other countries involved. The workshop was held in Helsinki, on 31 May and 1 June 1999. There were 44 participants from 27 different countries.

2. This document consists of a general analysis of the study of the cases submitted by the participants of the workshop itself. Specific articles of the Espoo Convention are also dealt with. The study of the cases is appended to the report. The findings indicate that the practical implementation of the Espoo Convention still needs improving. The report identifies problems and seeks solutions by analysing practical experience in ECE countries. **It can be concluded that further guidance on good practice is needed.**

#### **A. Ad hoc application vs organized system**

3. The practical application has many steps and involves a wide array of authorities. Documents and issues easily get lost in the system, unless it is clearly organized with clearly specified responsibilities. Some cases also show that there are several ways of streamlining procedures. One of the more successful ways appears to be informal meetings between points of contact, where the Parties plan the coming procedure in detail. The meetings could be broadened to include other stakeholders, such as local and regional authorities, and in some cases NGOs and international financing institutions (IFIs). Participation in setting the rules strengthens commitment to the procedure. **The meeting documentation can serve as guidelines for the implementation of the Convention.**

4. A generalization of the available information and experiences does not suggest that the Convention as such is difficult to apply in practice, **but many examples show that difficulties arise unless clear routines or practices or rules are prepared for its application.** The reason is simply that the application of the Convention can confront developers, authorities on both sides of the border and the public with a completely new situation and a new set of questions to which there are no standard answers. Finding answers ad hoc both to procedural and to substance matters takes time and easily creates confusion. If the procedural side of the practical application is clearly specified, the substance matter can also proceed more smoothly.

## **B. Differences in EIA procedures**

5. The case studies clearly indicate that the differences in environmental impact assessment (EIA) procedures between neighbouring countries, or even between States and federal systems in federal countries, are sufficiently large to create difficulties for the application of the Convention. **The Convention implicitly assumes that the EIA systems are similar in both the country of origin and the affected country and does not really give any guidance on how to deal with differences.** These differences may relate to:

- (a) Criteria for screening (which is often related to the whole EIA philosophy, see below);
- (b) Criteria on significance;
- (c) Philosophy of EIA with major differences arising, for instance, in connection with permit procedures. In some countries EIA is mainly connected with planning and only loosely attached to the permit procedure, in others the main connection is with the permit procedure. This leads to significantly different views on the appropriate timing of the EIA, the amount of work expected and the level of detail in EIAs. In some countries EIA is used very broadly on a wide range of activities, big and small, whereas other countries have reserved EIA procedures for large-scale activities only. This means that a demand for an EIA can have a very different meaning in two neighbouring countries;
- (d) Type and tradition of public consultation and public participation;
- (e) The role of the developer and different authorities. In some countries the developer submits material, but the EIA is largely carried out by the authorities, e.g. as part of land-use planning. In other countries the developer submits a full EIA to the authorities for evaluation. The competent authorities can be general environmental authorities or specific sectoral authorities. Further differences may arise in federal States in which EIA responsibilities can be divided differently between federal and State authorities depending on the type of activity.

6. Contacts and careful planning in advance between countries are necessary to make the practical application of the Convention work smoothly without delays, especially when significant differences exist between the EIA legislation and procedures. Some of the problems can be solved through bilateral agreements that specify in sufficient detail the transboundary procedures, but the cases suggest that internal “issue management” documentation is also necessary. This is so because many countries and authorities may go through transboundary assessments infrequently and thus routines do not develop on their own.

## **C. Informal vs formal contacts and procedures**

7. The Convention applies whenever “significant” impacts are expected. This means that the application has many discretionary elements, which call for negotiations between countries. **The Convention specifies the formal negotiations and points of contact, but does not mention the informal contacts and negotiations that are common and useful in many border areas between authorities at different levels.** The



administrative structures and traditions create differences with respect to negotiation mandates. **The data seem to suggest that informal negotiations between local EIA authorities in border regions as well as with IFIs and NGOs should be encouraged throughout the process and especially in the starting phase, because they make it possible to exclude minor activities from the rather heavy, formal application of the Convention. In addition, contacts play a major role in building trust and goodwill along the implementation of the Convention.** At the same time the links to the application should be sufficiently clear so that application can proceed as smoothly as possible, when the likely impacts are considered significant in the sense of the Convention. This creates a demand for formal contacts between the points of contact, but also informal contacts between local/regional authorities and the point of contact on a national and cross-border level. This balancing act between formal and informal treatment of activities is virtually impossible to regulate. It can be facilitated through education and meetings, but in the end regional and local environmental authorities will carry a significant part of the responsibility.

## **II. COMMENTS ON SPECIFIC ARTICLES ACCORDING TO THE OUTCOME OF THE CASE STUDIES AND THE WORKSHOP**

8. This chapter contains the **analysis of the comments on the specific articles of the Convention as they were collected during the preparation and analysis of the case studies and during the discussion held at the workshop.** [Again, for the full text of the Espoo Convention, refer to <http://www.unece.org/env/eia/eia.htm>.]

### **A. Article 1: Definitions**

9. International financing institutions (IFIs) are likely to be major actors in activities requiring EIAs, especially in countries in transition. The IFIs have their own routines and demand specific assessments (e.g. Environmental Procedure, EBRD, 1992). The IFIs are important actors in many transboundary activities but do not quite fit into the framework provided by the Convention. Special negotiations are needed to ensure agreement on how to use the Convention. The role of the IFI in the process that takes place between the countries should be clearly defined. The IFIs could serve as bodies that build contacts between the different stakeholders and promote the application of the Convention.

### **B. Article 2: General provisions**

10. **Differences in legislation between countries cause problems for determining the significance of likely impacts. General guidelines for determining significance are needed, but are difficult to develop. Regional and national environmental programmes could be used as a basis for finding thresholds and criteria.** Also, the list of activities in Appendix I to the Convention could be extended. The material from the study and the workshop did not include experience of implementing the Convention at the level of policies, plans and programmes. Implementation of the Convention at that level could solve some issues. A formal inclusion of policies, plans and programmes in the Convention is, however, not easy to achieve as has been demonstrated by the difficult task of developing an EU directive on the assessment of plans and programmes. Other issues raised under this Article are dealt with in detail under the respective procedural Articles.

### C. Article 3: Notification

11. The workshop material and the discussions suggest some **uncertainty with respect to what constitutes an informal contact and what is considered a formal notification**. Standardized formats have not always been used and thus potentially affected Parties have been uncertain as to how to react. There are also some differences in the timing of the notification regarding the EIA procedure. The results show further that affected countries use several channels of information on environmental impacts and that not all information has been supplied by the country of origin. Situations in which key information is provided by an NGO suggest deficiencies in the information provided.

12. The results indicate that the official points of contact could be more proactive in informing potentially affected Parties and that there is potential for reducing confusion by using standardized formats and procedures for official notification, for example following the format adopted at the first meeting of the Parties (decision I/4), to distinguish it from unofficial contacts and to clarify the procedure. It is recommended that the official notification should be preceded by unofficial contacts, made firstly by the regional authorities to the point of contact in the country of origin and secondly by the country of origin to the affected country. **The differences in EIA procedures between countries of origin and affected countries call for very explicit descriptions of the procedure to avoid misunderstandings and to focus requests for additional information on appropriate issues and appropriate levels of detail. Starting with a notification that is presented promptly in the right context gives the procedure an opportunity to succeed.**

### D. Articles 3 and 4: Public participation

13. The workshop material and discussions illustrate many different ways of organizing public participation. The practical arrangements of the public participation vary. In some cases the country of origin is actively involved; in others the authorities of the affected country take nearly full responsibility for arranging public participation. It is remarkable that there are cases in which public participation is better organized in transboundary EIAs than in national EIAs.

14. Two recurring issues are the amount of material to be translated and the language of translation. The cases show variation in both. There is also variation in who commissions the translations.

15. The material shows different approaches to the treatment of the results of public consultations. In one case the material was sent directly to the developer; in another the comments were sent to the official point of contact. The affected country did not make a summary of the comments from the public and did not provide a systematic examination of the input from the public. In one case the affected country appeared to agree with some of the public concerns by officially taking a stand against the activity.

16. The variation in the practical arrangements, issues concerning translation and the treatment of public input suggests that the practical application of the Convention can be greatly assisted by negotiations and agreements in advance on burden sharing between the country of origin and the affected country concerning public participation. This could be an element of a formal bilateral or multilateral EIA agreement based on the Convention, or a separate practical agreement based for instance on minutes of meetings by points of contact or a joint body. Unofficial communication before notifying could assist in

providing time to prepare for organizing public participation. A recommendable way of sharing responsibilities is that the affected country organizes the participation but the country of origin bears the cost. Similarly, it would probably be beneficial for countries to agree on the general principles for the treatment of the public input: should the authorities of the affected country summarize the information, raise key points or take a stand with respect to all issues before submitting the information to the country of origin or the developer.

17. In transboundary participation it is important to pay attention to the target group. This rules what needs to be translated, into which language and to what extent, and what the requirements are for timing.

#### **E. Article 4: Environmental impact documentation**

18. For this article, material received was limited to five cases. It showed, however, that **although the documentation met most requirements of the Convention, the issue of alternatives was in most cases neglected. Consulting officially and unofficially with the affected Party at an early stage could assist in setting alternatives.**

#### **F. Article 5: Consultations**

19. The material from the study and the workshop shows that consultations have generally been held and that several different means and media have been used. In some cases there have been some uncertainties over which authorities and/or bodies can or should participate in consultations. However, information on how comments and considerations have been taken into account in the activity itself has been transmitted to a varying degree. There are also examples of complete lack of information to the affected country on how comments have been considered.

20. The results suggest that the **practical application of the Convention could be improved by developing a common understanding between countries not only on how consultations are to be held but also on how the results of comments and consultations are distributed across the border and which authority carries this responsibility. Attention should be paid to capacity-building of decision makers for the use of transboundary EIA material.**

#### **G. Article 6: Final decision**

21. The final decision has in all case studies but one been sent to the affected country, but to different receiving authorities. The contents of the final decision vary depending on the decision procedure in the country of origin.

22. The workshop material and the discussions indicate that there is a potential source of confusion in the identification of the addressees of the final decision. In practice this risk is, however, fairly small if the other steps of the transboundary assessment have worked and created necessary contacts and routines. Countries may, however, wish to raise the issue in bilateral or multilateral negotiations to clarify this part of the process. This may be particularly useful in federal States or in countries whose final decision-making bodies are clearly separate from those supervising the EIA process.

## **H. Article 7: Post-project analysis**

23. There is virtually no material on this in the case studies, nor was there any experience of it among the participants of the workshop. Post-project analysis is seen as a non-mandatory and demanding process. Instead, in many applications demand for joint monitoring has been included in the final decision as a result of consultations. **The earlier conclusions on the need for and the usefulness of a clarification of responsibilities, ways and procedures for transmitting information and the role of different authorities on both sides of the border appear appropriate under this article as well.**

### **Appendix II**

#### **CASE STUDIES ON THE IMPLEMENTATION OF THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT**

##### **Introduction**

1. **This appendix gives detailed information on the case studies provided.** The Convention has been in force since 1997. The experience of countries in implementing the Convention varies. Some countries have been involved in several procedures, some have experience only of a single transboundary EIA. This is not surprising, since many countries have only recently ratified the Convention (table 1).

Table 1. Status of countries that submitted a case

Country	Involvement as an affected country	Involvement as the country of origin	Date of signing the Espoo Convention	Date of ratifying the Espoo Convention
Italy	2	2 - 3	26 February 1991	19 January 1995
Croatia	2	2	-	8 July 1996
Ukraine	1	2	26 February 1991	19 March 1999
Hungary	0 (1)	0	26 February 1991	11 July 1997
Bulgaria	0	1	26 February 1991	12 May 1995
Sweden	7	2	26 February 1991	24 January 1992
Norway	0	1	26 February 1991	23 June 1993
Finland	0	6	26 February 1991	10 August 1995
Russian Federation	3	0	6 June 1991	-
Netherlands	10	20	26 February 1991	28 February 1995
Belgium	several	several	26 February 1991	2 July 1999

**I. THE ARTICLES OF THE CONVENTION AND THEIR IMPLEMENTATION  
AS SUGGESTED BY THE CASES**

**A. A general description of the cases used in the study**

2. Eleven cases were submitted to this study. In one case three countries were affected, while in the others there was only one affected country.

Table 2. Actors responsible for the submitted cases

Case-setting	Number of cases
Cases submitted by the affected country	4
Cases submitted by the country of origin	2
Cases submitted by the country of origin in cooperation with the affected country(ies)	2
Cases submitted by the country of origin as well as by the affected country	3 (2 cases described the same proposed project)

3. In the cases submitted, the developers were either private national companies (4) or public bodies or enterprises (7). In two cases the proposed project was going to be financed by an international body. The numbers in parentheses refer to the number of cases.

4. The proposed projects concerned:

- |  |                              |
|--|------------------------------|
| - A flood dam;                                       | - Road construction (2);     |
| - Dredging;  | - A nuclear power plant (2); |
| - An integrated installation for building materials; | - Nuclear waste; and         |
| - The exploitation of gas fields (2);                | - Intensive poultry rearing. |

**Table 3. Time schedule of the procedures**

Cases	National EIA started	National EIA closed	National EIA in progress	Transboundary EIA started	Transboundary EIA closed	Transboundary EIA in progress
A	1996	1997		1998		
B	1998	1998		1998		Final decision imminent
C	1992	1993		1992	1993	Held up
D	1996	1998		1997		EIS under preparation
E	1998		EIS under preparation	1999		EIS under preparation
F	1991	1998		1998		EIS under preparation
G	1998		In scoping phase	1998		EIS under preparation
H	1998		EIS under preparation	1998		EIS under preparation
I	1997	1998		1997		Consultations taking place
J	1997	1998		1998		
K	1994	1994		1994	1994	

5. The transboundary EIA process was said to have an effect on the time schedule of the EIA procedure in half the cases (3) where this item was mentioned, while in only one case was the transboundary EIA said to have an effect on the outcome of the EIA procedure.

### **B. The practical application of the Convention**

6. The text from the Convention is in quotation marks and boldfaced, and the numbering follows the Articles of the Convention. Normal text describes the experiences from the cases. The maximum number of cases varies because:

(a) Information was not given in each case for each question (partly due to the fact that the countries cooperated in filling in the questionnaire in only two cases);

(b) One case is analysed in some parts as a single case and in other parts as two cases since the two countries involved are both affected countries as well as countries of origin;

(c) In one case there is one country of origin but three affected countries.

For further details refer to <http://www.unece.org/env/documents/2001/eia/ece.mp.eia.4.e.pdf>