

**THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A
TRANSBOUNDARY CONTEXT**

XA0054299

W. SCHRAGE
Secretary to the Convention
Economic Commission for Europe
Environment and Human Settlements Division

Abstract

The ECE Convention on Environmental Impact Assessment in a Transboundary Context (EIA Convention) is the first multilateral treaty to specify the procedural rights and duties of Parties with regard to transboundary impacts of proposed activities and to provide procedures, in a transboundary context, for the consideration of environmental impacts in decision-making. The EIA Convention, elaborated under the auspices of the United Nations Economic Commission for Europe (ECE), was adopted at Espoo, Finland, in February 1991. Obligations stipulated, and measures and procedures provided for in this Convention are described.

1. INTRODUCTION

The ECE Convention on Environmental Impact Assessment in a Transboundary Context (after this called the EIA Convention) is the first multilateral treaty to specify the procedural rights and duties of Parties with regard to transboundary impacts of proposed activities and to provide procedures, in a transboundary context, for the consideration of environmental impacts in decision-making procedures. The EIA Convention stipulates the obligations of Parties to assess the environmental impacts at an early stage of planning. The EIA Convention prescribes measures and procedures to prevent, control or reduce any significant adverse effect on the environment, particularly any transboundary effect, likely caused by a proposed activity or any major change to an existing activity. The EIA Convention stipulates that an EIA procedure as provided for in this Convention has to be undertaken for a proposed activity planned by one Party, which is likely to have a significant transboundary impact within an area under the jurisdiction of another Party. Activities which could have a significant impact on the environment are covered by the EIA Convention in its Appendix I.

The EIA Convention includes a preamble, twenty articles and seven appendices. The preamble sets out the underlying principles of the EIA Convention, such as the interrelationship between economic activities and their environmental consequences, the need to ensure environmentally sound and sustainable development, the need to give explicit consideration to environmental factors at an early stage in the decision-making process and to use EIA as a necessary tool to improve the quality of the information presented to decision makers. The preamble also stresses the need and importance of developing anticipatory policies and of preventing, mitigating and monitoring significant adverse transboundary impact.

The EIA Convention, elaborated under the auspices of the United Nations Economic Commission for Europe (ECE), was adopted at Espoo (Finland) on 25 February 1991. By January 2000 twenty countries and the European Community had deposited their relevant instrument with the Secretary-General of the United Nations. In accordance with Article 18 of the Convention, it has entered into force on 10 September 1997.

Parties must apply the provisions of the EIA Convention when two requirements are met. According to Article 2, a Party has to take the necessary legal, administrative or other measures to implement the provisions of this Convention, such as the establishment of an EIA procedure that permits public participation and the preparation of the EIA documentation according to Appendix II, for (i) proposed activities listed in Appendix I to the EIA Convention and (ii) which are likely to cause a significant adverse transboundary impact.

1.1. Proposed activities listed in Appendix I

Article 1 contains the definitions. The definition of "proposed activity" comprises not only new or planned activities but also "any major change to an activity". The EIA Convention does not define what a major change is and the decision of whether the EIA Convention should be applied in a specific situation will therefore be partly based on judgement. The basic criteria for that judgement could be that the existing activity subject to a major change is included in Appendix I to the EIA Convention and that the authorization from a competent authority is required for that change. An example of a major change may include the construction of additional disposal capacities in a waste-disposal installation for the incineration, chemical treatment or landfill of toxic and dangerous wastes. Consideration would also have to be given to a change in investments and production (volume and/or type), physical structure or emissions. Although Article 1 (vi) defines "environmental impact assessment" as a national procedure for evaluating the likely impact of a proposed activity on the environment, it can be concluded that the EIA Convention includes international standards, for instance for the content of EIA documentation as well as procedures for public participation. For the purposes of this article, it is important to mention that Appendix I includes activities such as:

Thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load;

Installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing of irradiated nuclear fuels or for the storage, disposal and processing of radioactive waste; and

Waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes.

Many activities listed in Appendix I to the EIA Convention are fairly well defined. However, the words "major", "integrated" and "large" are also used to set a threshold for several activities in Appendix I to this Convention. This wording suggests that the EIA Convention applies only to a subset of all possible units of activities under consideration. More specific thresholds for "major", "integrated" and "large" could be found by examining the frequency distribution of activities relative to their size (measured in appropriate units). Difficulties in determining thresholds may arise due to the differences in environmental, social and economic conditions in a geographical area under consideration for the purposes of the EIA Convention. Despite many difficulties, specific thresholds would serve as useful initial guidance in the application of the EIA Convention. It must be decided whether an activity is referred to in the list of proposed activities in Appendix I to the EIA Convention, before the significance of the likely transboundary impact can be considered.

1.2. Significant impact

The EIA Convention describes an "impact" 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 socioeconomic conditions resulting from alterations to those

factors. It seems that some countries lack experience with the latter part of this definition, as these types of effects have only recently been introduced in relevant legislation. The definition of "transboundary impact" explicitly excludes impacts of a global nature and therefore concentrates on impacts of a local or subregional character in the ECE region. The reference to "air", "human health and safety" and "water" in the definition of impact and the description of the content of the EIA documentation as included in Appendix II could lead to the conclusion that a so-called risk assessment has to be undertaken for a proposed activity as part of the EIA procedure as laid down by the EIA Convention.

The consideration of the "significance" of an adverse transboundary impact will always be part of the decision to apply the EIA Convention. Criteria on the significance of any impact should be set in a general decision-making framework. In some cases, it may be possible to establish generally acceptable criteria on significance. Mostly, however, the conclusion that an adverse transboundary impact is likely significant would be based on a comprehensive consideration of the characteristics of the activity and its possible impact. An element of judgement would always be present. At the national level, various approaches to determining the significance of an impact has been developed in ECE countries. They are described in the ECE publication "Policies and Systems of Environmental Impact Assessment" [1]. Within a country, detailed criteria can be applied taking into account the national EIA legislation, administrative practices, and environmental conditions. In some countries, particular criteria have been used to draw up lists of activities subject to an EIA at the national level. These so-called positive lists are usually more extensive than the one included in Appendix I to the EIA Convention. The advantage of establishing and applying lists of activities, considered *à priori* to have a significant adverse impact, is that both authorities and proponents know when an EIA has to be carried out.

According to Article 2, paragraph 5, it is also possible to apply the EIA Convention to activities not included in Appendix I. If the concerned Parties agree that one or more activities (not listed in Appendix I) are likely to cause a significant adverse transboundary impact, they should be treated as if they were listed. General guidance for identifying criteria to determine significant adverse impacts is included in Appendix III and, although these criteria are clearly linked to activities not listed in Appendix I, they might be expected to help settle the question of "significance". Article 2, paragraph 7 of the EIA Convention requires Parties to undertake EIA following the provisions of this Convention at the project level and calls upon Parties to endeavour to apply the principles of EIA to policies, plans and programmes. Although the wording of this article clearly indicates that a Party is not obliged to apply EIA to policies, plans and programmes, some countries introduced legislation a number of years ago to arrange for the application of EIA to decisions at the plan level, for instance for energy, waste management, water supply, and land use. Suitable approaches in this respect are documented in the ECE publication "Application of Environmental Impact Assessment Principles to Policies, Plans and Programmes" [2].

2. PROCEDURE

If a planned activity is listed in Appendix I to the EIA Convention and this activity is likely to cause a significant adverse transboundary impact, the EIA procedure as indicated in this Convention must be implemented. This procedure starts with a notification by the Party of origin to any Party that it considers an affected Party as early as possible and no later than when informing its own public about the proposed activity. The purpose of the notification under Article 3, paragraph 1, is to alert the affected Party at the earliest possible stage to the fact that an activity likely to cause a significant adverse transboundary impact is proposed, and to give the affected Party the opportunity of indicating (under Article 3, paragraph 3) whether it wishes to participate in the EIA procedure. The earlier it is given, the more useful the notification will be. The timing of the notification depends also on the time that the authorities in the Party of origin become aware of the proposed project. The application of this provision may therefore vary according to the procedural system in the Party of origin, especially as regards the scoping procedure.

3. PUBLIC PARTICIPATION

The EIA Convention contains three references to public participation. Article 2, paragraph 6, includes a general reference to this issue and Articles 3 and 4 mention more specific parts in the EIA procedure where the public has the right to participate. Article 3, paragraph 8, of the EIA Convention requires the concerned Parties to ensure that the public of the affected Party in the areas likely to be affected is informed of, and provided with possibilities for making comments on or objections to the proposed activity and for the transmittal of these comments or objections to the competent authority of the Party of origin. Similarly, under Article 4, paragraph 2, the concerned Parties shall arrange for distribution of the EIA documentation to the authorities and the public of the affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin.

4. CONCLUSION

The EIA Convention is understood to be an innovative international legal instrument for achieving sustainable development and for preventing, reducing and controlling transboundary environmental impacts, in particular related radioactive waste disposal sites. The importance of this legal instrument as an efficient tool to promote active, direct and action-oriented international cooperation at the regional level is growing. The EIA Convention will halt the growing potential for transboundary environmental problems, emanating due to the creation of new national frontiers. Now that it is rapidly and efficiently implemented and complied with by many Parties.

References

- [1] ECE, 1991 Environmental Series No. 4: Policies and Systems of Environmental Impact Assessment. ECE/ENVWA/15, New York, 1991.
- [2] ECE, 1992 Environmental Series No. 5: Application of Environmental Impact Assessment Principles to Policies, Plans and Programmes. ECE/ENVWA/27, New York, 1992.

COUNTRY	SIGNATURE	RATIFICATION ¹
Albania	26.02.1991	04.10.1991
Andorra		
Armenia		21.02.1997
Austria	25.02.1991	27.07.1994
Azerbaijan		25.03.1999
Belarus	26.02.1991	
Belgium	26.02.1991	02.07.1999
Bosnia and Herzegovina		
Bulgaria	26.02.1991	12.05.1995
Canada	26.02.1991	13.05.1998
Croatia		08.07.1996
Cyprus		
Czech Republic	30.09.1993 ²	
Denmark	26.02.1991	14.03.1997
Estonia		
Finland	26.02.1991	10.08.1995
France	26.02.1991	
Georgia		
Germany	26.02.1991	
Greece	26.02.1991	24.02.1998
Hungary	26.02.1991	11.07.1997
Iceland	26.02.1991	
Ireland	27.02.1991	
Israel		
Italy	26.02.1991	19.01.1995
Kazakhstan		
Kyrgyzstan		
Latvia		31.08.1998
Liechtenstein		09.07.1998
Lithuania		
Luxembourg	26.02.1991	29.08.1995
Malta		
Monaco		
Netherlands	25.02.1991	28.02.1995
Norway	25.02.1991	23.06.1993
Poland	26.02.1991	12.06.1997
Portugal	26.02.1991	
Republic of Moldova		04.01.1994
Romania	26.02.1991	
Russian Federation	06.06.1991	
San Marino		
Slovak Republic	28.05.1993 ²	
Slovenia		05.08.1998
Spain	26.02.1991	10.09.1992
Sweden	26.02.1991	24.01.1992
Switzerland		16.09.1996
Tajikistan		
The former Yugoslav Republic of Macedonia		31.08.1999
Turkey		
Turkmenistan		
Ukraine	26.02.1991	20.07.1999
United Kingdom	26.02.1991	10.10.1997
United States	26.02.1991	
Uzbekistan		
Yugoslavia		
.		
European Community	26.02.1991	24.06.1997
TOTAL	(29 + 1)	27+1

¹ Ratification, accession, approval, acceptance.² Succession to signature.