



Council of the
European Union

Brussels, 1 December 2016
(OR. en)

14968/16

ENV 743
ONU 133

INFORMATION NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Convention on Environmental Impact Assessment in a Transboundary
Context: 6th Meeting of the Working Group on Environmental Impact
Assessment (EIA) and Strategic Environmental Assessment (SEA)
(Geneva, 7-10 November 2016)
- Statements

Delegations will find in [Annex](#), for information, a compilation of statements delivered by the Presidency and the Commission, on behalf of the EU and its Member States, at the 6th Meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 7-10 November 2016), as transmitted by the Presidency.

**6th meeting of the Working Group on Environmental Impact Assessment
and Strategic Environmental Assessment
(Geneva, 7-10 November 2016)**

- Statements -

Agenda Item 1: Adoption of the agenda

The EU and its Member States would like to thank the Secretariat and the Bureau for the preparation of the agenda and the documentation and adopt the agenda of the meeting.

Agenda Item 2: Inputs to related international processes

The EU and its Member States take note of the information presented by the Secretariat and will take it into account when discussing the documentation for the next Meeting of the Parties including the workplan and the Minsk Declaration.

Agenda Item 3: Compliance and Implementation

Item 3, para. 3:

Report of the Chair of the Implementation Committee on the Committee's 36th session and other documents

The EU and its Member States would like to thank the Implementation Committee for its work and its Chair for the presentation of the outcomes of the Committee's 36th session. We take note of the report of the Implementation Committee's on its 36th session.

Item 3, para. 4:

Draft fifth review of implementation of the Convention and draft decision VII/1 on reporting and review of implementation of the Convention (ECE/MP.EIA/WG.2/2016/8 and ECE/MP.EIA/WG.2/2016/5)

Draft second review of implementation of the Protocol and draft decision III/1 on reporting and review of implementation of the Protocol (ECE/MP.EIA/WG.2/2016/9 and ECE/MP.EIA/WG.2/2016/7)

1. The European Union and its Member States express their gratitude to the Secretariat for the preparation of the draft fifth review of implementation of the Convention, the draft decision VII/1 on reporting and review of implementation of the Convention, as well as draft second review of implementation of the Protocol and draft decision III/1 on reporting and review of implementation of the Protocol;

2. However, we would like to make some general remarks as well as to propose number of specific changes and corrections;
3. To begin with, we would like to point out to risks linked with naming of States in the respective reports. This may create impression that States, which are not explicitly referred to in the reports either do not have the provision in question or that the issue in question is not relevant to them or that they did not respond to a particular question at all. To clarify this issue, we propose the inclusion of the following paragraph into the draft fifth review of implementation of the Convention and the draft second review of implementation of the Protocol:

“The inclusion of specific States in this report is to provide relevant examples and is not intended in any way to prejudice other States that may have also acted in the manner described in the report.”

4. Moreover, we would like to propose following changes and corrections in the draft fifth review of implementation of the Convention:
5. Paragraph 22: due to the fact that information concerning the Netherlands in the last sentence of paragraph 22 is too general, we propose the deletion of the words “and the Netherlands” in the last sentence of paragraph 22 and adding a new last sentence, so that these sentences read as follows:

“In Kazakhstan and Switzerland the Convention is self-executing, and in Hungary the Convention is implemented by legislation that has a general environmental scope. In the Netherlands the Convention is implemented in Chapter 7 ‘Environmental Impact Assessment’ of the Environmental Management Act, which also covers wider environmental issues.”

6. Paragraph 26: due to the fact that information contained in paragraph 26 is not correct with respect to Poland, we propose replacement of the words “senior official” by the words “central governmental body responsible for EIA/SEA.”, so paragraph 26 reads as follows:

“A large majority of Parties reported that an authority collected information on transboundary EIA cases, in most of those Parties that authority was the environment ministry and in some of them it was an environment agency (Austria and Sweden) or a central governmental body responsible for EIA/SEA (e.g., Poland)”

7. Paragraph 27: we propose rewriting of the fifth sentence of this paragraph, so that entire sentence reads as follows:

“Under the 2008 bilateral agreement between Portugal and Spain the affected Party shall promote public consultation according to its domestic EIA legal framework”.

8. Paragraph 32: Portugal does not have an *ad hoc* approach for establishing time frames. As mentioned in answer to question I.13 the time frame for receiving a response from the affected Party to the notification is legally established. Therefore, we propose the deletion of the words “or arranged informally on an *ad hoc* basis (Portugal)” in the first sentence of this paragraph, so that the entire sentence reads as follows:

“About a third of Parties determined and agreed time frames with each affected Party. Such agreement may be provided for in bilateral agreements (the Netherlands) ~~or arranged informally on an *ad hoc* basis (Portugal)~~ or requested when an affected Party is notified (Malta).”

9. Paragraph 45: from Poland’s point of view, interpretation of its answer to question I.23 should have been different. In Polish law, consultations are obligatory when Poland is a party of origin and affected party intends to take part in a transboundary procedure. Only consultations in the form of meetings of experts on governmental level are optional. Therefore, we propose the deletion of the word “Poland” in the last sentence of paragraph 45.
10. Paragraph 45: the wording of the third sentence might be misleading as it does not exactly reflect the provision of Estonia’s national EIA legislation as provided in the answer to the questionnaire. Therefore, we suggest the deletion of the reference to Estonia’s EIA law in this sentence, so that the third sentence of this paragraph reads as follows:

“So, for example, ~~the EIA legislation of Estonia provides that at the request of the affected Party its representative may be permitted to participate in EIA proceedings and consultations,~~ and in Spain such consultations are undertaken under the Convention with Portugal.”

11. Paragraph 55: we propose insertion of a new last sentence at the end of paragraph 55 of the following wording:

“There is a bilateral agreement between Austria and the Slovak Republic.”

12. Paragraph 61: we propose deletion of reference to “Germany” in brackets at the end of the last sentence, since Germany has no specific bilateral agreements concerning the exchange of information regarding nuclear matters.
13. Paragraph 71: we would like to point out that joint cross-border projects and nuclear power plants are quite different issues. There is no link between these two issues and therefore they should not be summarized jointly.
14. Paragraph 76: we propose the deletion of the seventh sentence of paragraph 76: “Poland detailed its practice in a number of areas: with respect to the deadline for the affected Party; for keeping informal contacts with other Parties; in dealing with consultation outcomes before making the final decision; and for providing written translation and interpretation,” since it is a direct repetition of the fifth sentence of the same paragraph.
15. In addition, we would like to propose the following changes and corrections in the draft second review of implementation of the Protocol:

16. Paragraph 13: the wording of the last sentence of this paragraph is not correct with regard to the Netherlands and Finland and therefore we propose to rephrase the last sentence and to add a new last sentence, so that these sentences read as follows:

“Only ~~three States (Denmark, Finland and the Netherlands)~~ reported implementation by administrative rule; in this case that rule supplemented other legislative or regulatory measures. The Netherlands reported implementation of the Protocol by act and by administrative rule.”

17. Paragraph 18: due to the fact that the obligation contained in paragraph 18 is prescribed by the EU SEA Directive and as such it applies to all the Member States, we propose rephrasing of this paragraph, so that it reads as follows:

“The possibility of an effect on a Natura 2000 site was a factor taken into account by all the Member States of the European Union.”

18. Paragraph 31: we propose the replacement of the word “must” in the last sentence of paragraph 31 by the word “should”, so the last sentence reads as follow:

“In Austria, a scoping report ~~must~~ should include as a minimum an outline of the information which will be included in the environmental report, and guidance is available online to help evaluate what should be included.”

19. Paragraph 59: wording of the second sentence of this paragraph is not correct with respect to Finland and therefore we propose replacing the word “before” by the word “when,” so that the sentence reads as follows:

“In Finland, ~~before~~ when a plan or programme is approved a reasoned opinion has to be provided on how the environmental report was taken into account.”

20. Paragraph 69: we would like to propose replacing the word “monitors” by “shall acquire knowledge about” and word “implementation” by “realization” in the second sentence of this paragraph, so the first sentence reads as follows:

“ In Sweden the decision-making authority or municipality ~~monitors~~ shall acquire knowledge about the significant environmental impact caused by the ~~implementation~~ realization of the plan or programme, in order to make authorities or municipalities aware of unexpected impacts so that appropriate remedial measures may be taken.”

21. The EU and its Member States invite the Secretariat to finalize the drafts reflecting the comments and corrections made and forward them to MOP7 and MOP/MOP3.

22. Lastly, the European Union and its Member States support the proposed text of the draft decision VII/1 on reporting and review of implementation of the Convention and draft decision III/1 on reporting and review of implementation of the Protocol.

Item 3, para. 5:

Draft practical guidance on reforming legal and institutional structures with regard to the application of the Protocol (ECE/MP.EIA/WG.2/2016/6/INF.9)

1. The EU and its Member States would like to thank the author for the draft practical guidance on reforming legal and institutional structures with regard to the application of the Protocol, and especially for the inclusion of the disclaimer and our comments presented during April meeting of the WG.
2. In addition, we have three technical remarks on the documents as follows:
3. Paragraph 63: we would like to propose to insert the words “in legislation or on a case-by-case basis” after the word “down” in the first sentence of this paragraph and rephrase of this sentence, so that the entire first sentence reads as follows:

“The SEA Directive clearly requires that appropriate time-frames for public participation and consultation with environmental authorities are laid down in legislation or on a case-by-case basis for public participation and consultation with environmental authorities.”

4. Paragraph 65 (b): we would like to propose to include the word “not” after “is” and delete the words “not attempt to” in the sentence (b) of this paragraph, so that the entire sentence (b) of paragraph 65 reads as follows:

“It is not recommended to ~~not attempt to~~ include any time-frames for transboundary procedure (except possibly for time-frames for initial notification).”

5. Box XI (page 31): we would like to propose to include “ed” at the end of the word “mention” and insert text in brackets “(but not mandatory)” at the end of the word “recommended” in the first sentence of the first paragraph of the box XI (page 31), so that the entire sentence reads as follows:

“As mentioned in the paragraph 65 of the Guidance, it is recommended (but not mandatory) to include the time-frames for public participation in the national legislation.”

Item 3, para. 7:

Aligning the authentic texts of the Protocol and the two amendments to the Convention (ECE/MP.EIA/WG.2/2016/6/INF.7)

The EU and its Member States would like to thank the Secretariat for all the work done in connection with the initiation of the correction procedure. However, we would like to express our concern regarding the proposed linguistic change to the English version of Article 11, para.2 of the SEA Protocol as proposed in informal doc.7 (ECE/MP.EIA/WG.2/2016/6/INF.7) and therefore we would like to urge *ad hoc* task force to look into the matter again prior to the initiation of this procedure.

Agenda Item 5: Status of ratification

Item 5, para. 10:

Report of the EU Commission and the EU Presidency on the actions taken to prompt countries concerned to ratify two amendments to the Convention

The EU and its Member States, acknowledging the importance to enable the effective entry into force of the two amendments to the Convention, have highlighted and urged those Member States, whose ratifications are still missing, to prompt appropriate actions towards the conclusion of the two amendments. We will encourage them to do so.

Agenda Item 7: Promoting ratification and application of the Protocol on SEA

Item 7, para. 16:

Dissemination of the video to promote awareness of the Protocol

1. The EU and its Member States would like to inform the Secretariat that the video has been uploaded on the official websites of some of the EU Member States for example Poland and Estonia and is being uploaded on the European Commission's official website.
2. In this context, we would also like to point out that success of the video in promoting the awareness of the benefits of the Protocol is dependent on the possibility of its translation into national languages and therefore we fully support initiatives of the Secretariat in this regard.

Agenda Item 8: Budget, financial arrangements and financial assistance

Item 8, para. 22:

Financial report of the secretariat

The EU and its Member States would like to thank the Secretariat for the presentation of its financial report. We take note of the presented report.

Item 8, para. 23:

Report on the secretariat's staff resources

The EU and its Member States take note of the information provided by the Secretariat regarding its staff resources.

Item 8, para. 24:

**Draft decision on the budget, financial arrangements and financial assistance
(ECE/MP.EIA/WG.2/2016/6)**

1. The European Union and its Member States express their gratitude to the Bureau for their preparatory work on the text of draft decision VII/4 – III/4 on Budget, financial arrangements and financial assistance;
2. However, we would like to make some general remarks, as well as to propose a number of specific changes to the text of this decision;
3. Operative paragraph 7 (“*Recognize...*”): we propose to delete the entire, paragraph 7 currently in square brackets;
4. Operative paragraph 11 (“*Also agree that contributions...*”): We suggest to remove the square brackets, so that paragraph reads as follows:

“Also agree that contributions shall be allocated to the budgets of the individual items in the budget table contained in the Annex, in the order of priority set for each item unless a contributor specifies that the contribution should be allocated to a particular item in the budget;”

5. We noticed that there is a new item in Annex concerning administrative staff, which has been previously fully the task of the UNECE. Therefore, with the view of highlighting that this inclusion is of an exceptional character, we suggest lowering the priority of this item in Annex from 1 to 2 and inserting a new paragraph 19bis of the following wording:

“19bis. Recognize the current financial constraints of the Executive Secretary of the ECE to finance administrative staff and therefore on an exceptional basis for the next intersessional period is willing to seek temporary support to the secretariat by additionally contributing or by redistributing available funding from the Trust Fund;”

We also suggest inserting a new paragraph 19ter of the following wording:

“19ter. Underline the need of appropriate and stable staffing of the secretariat by giving the highest priority to finance the external experts to the secretariat to provide support for the Implementation Committee of the Convention and the Protocol;”

6. Operative paragraph 23 (“*Decide...*”): we propose to rephrase this paragraph, so that it reads as follows:

“Urge that financial support is provided to participants in formal meetings and that, among participants, priority should be given to representatives of Parties and of non-Parties within the UNECE region, then to the non-governmental organizations and finally to non UNECE countries according to criteria to be set by the Bureau;”

7. In addition, we would also like to stress the need to lower the priority of some activities in the Annex to be consistent with the workplan and suggestions of the brainstorming session and therefore, we propose that items “guidance on SEA and climate change” and “guidance on SEA and urban planning” become priority 3 instead of priority 2.
8. We also suggest changing the priority of some sub-activities in the Annex to the draft decision to make it congruent with the priorities of operative paragraph 23. So, “participation of non-ECE countries” must become priority 4 instead of 2 and “participation of non-governmental organizations” must become priority 3 instead of 2. We would also like to propose that item “promotion of contacts with countries outside the ECE region” becomes priority 4 instead of priority 2.
9. In this context, we also invite the Secretariat to amend paragraph 9 so that it accommodates changes concerning the division of items in budget into four priorities.
10. Lastly, we also suggest to insert a new paragraph 27 after paragraph 26 (“*Decide that the Bureau shall...*”) which reads as follows:

“Decide that as a rule and in accordance with the Rules of Procedures of both the Convention and its Protocol, the Meeting of Parties takes place in Geneva, unless the Parties decide otherwise upon the request of a contracting Party.”

09.11.2016

Mrs. Chair,

Maybe I was not very clear yesterday about the alterations the EU and its Member States were proposing in regard to the budget, especially in relation to the mentioned categories. I apologize for that and thanks for the opportunity to clarify our position.

Let me be very clear, funding for the Secretariat is our first and foremost priority! Second category will be activities in relation to meetings. Financial means are necessary to make sure that there will be possibilities for participants of CIT's to attend formal meetings, to invite speakers, travel costs of the Secretariat in relation to the Workplan and promotional materials. Also the financing of an additional administrative staff member should be categorized as category 2 rather than category 1, as explained yesterday (NB: should be financed by the UN).

Next, our proposal is to create two new categories for all the other activities, namely a Category 3, for funding of the guidances and for the participants of NGO's. Fourth and last category consists of funds for activities related to non-UN ECE countries (category 4). This will not ask for any changes in the activities in the Workplan itself, it just prioritizes the different activities within the budget, to put our priorities to what is most needed, and to make use of the available finances most efficiently. I hope the EU and its Member-States have made it more clear to you what our intentions are, and what's the content of our proposed alterations in the document.

Item 8, para. 25:

Preliminary pledges

The EU and its Member States would like to inform the Secretariat that the Netherlands, Poland, Slovakia, Slovenia, and also other EU Member States are preliminarily prepared to declare their pledges to support the activities and the Secretariat functions in the next inter-sessional period 2017-2020.

Agenda Item 9: Exchange of Good Practices

Item 9(a), para 26:

Draft guidance of land-use planning, the siting of hazardous activities and related safety aspects (ECE/MP.EIA/WG.2/2016/10–ECE/CP.TEIA/2016/8 and ECE/CP.TEA/2016/9) and draft decision VII/5–III/5 guidance on land-use planning, the siting of hazardous activities and related safety aspects (ECE/MP.EIA/WG.2/2016/6)

1. The European Union and its Member States express their gratitude to the consultants, the European Investment Bank and the Secretariats for the preparation of the text of draft guidance on land-use planning, the siting of hazardous activities and related safety aspects, as well as the draft decision VII/5– III/5 on guidance on land-use planning, the siting of hazardous activities and related safety aspects;
2. In addition to this, we would like to make some general remarks, as well as propose a number of specific changes;
3. To begin with, the EU and its Member States support having two parts of the guidance;
4. However, we propose to change the title of the first part of the guidance from “Draft policy and legal guidance on land-use planning, the siting of hazardous activities and related safety aspects” to “Draft general guidance on land-use planning, the siting of hazardous activities and related safety aspects.” The title should reflect that the guidance’s objective is to provide recommendations on the application, but it should not contain legal interpretations. Therefore, we believe the title should not contain the terms “policy and legal.”
5. Let us now present our comments specifically concerning the first part of the guidance. We believe that the text has improved, but it still requires some changes and redrafting. In particular, we are of the opinion that in certain parts it still contains legal interpretations and it does not take the different planning and decision-making systems (in relation to different States, but also within national systems) sufficiently into account.

6. In this context, we propose to include two new paragraphs after the second paragraph of the introductory part of the following wording:

“The information and views set out in this study are those of the authors and do not necessarily reflect the official opinion of the Parties to the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context and the Convention on the Transboundary Effects of Industrial Accidents, nor are binding for the Parties.

With regard to the references to the EU legislation, this general guidance does not create any obligation to the EU Member States, and its recommendations are without prejudice to the obligations set in the respective EU legislation that can apply in relevant cases. Furthermore, the definitive interpretation of the EU law is the sole prerogative of the Court of Justice of the EU.”

7. Moreover, from the same perspective, we propose to replace the word “should” by the word “is/are recommended to” in the last sentence of para. 15, in para. 30, in the first sentence of para. 39, in para. 43, in para. 50, in para. 55, in para. 58, in para. 73, in para. 77, in para. 79, in para. 80, in para. 82, in the first sentence of para. 83 of the first part of the guidance and to replace the word “should” by the word “could” and in the second sentence of para. 40 of the first part of the guidance. We also suggest the following changes in tables 1 and 2 (see document ECE/MP.EIA/WG.2/2016/10–ECE/CP.TEIA/2016/8 attached to Speaking Notes of 2 November 2016);
8. In addition, we would like to point out that the terms “policy/policies” are not covered by the SEA Protocol in the same way as plans and programmes and therefore we propose to delete the words “policy/policies” in in para. 32, in para. 44, in para. 71, in para. 72, in para. 78, in para. 81 of the first part of the guidance and to include the words “where appropriate,” after the word “policy/policies” in the last sentence of para 15 and in the first sentence of para 40 of the first part of the guidance. We also suggest the following changes in tables 1 and 2 (see document ECE/MP.EIA/WG.2/2016/10–ECE/CP.TEIA/2016/8 attached to Speaking Notes of 2 November 2016);
9. Paragraph 8: this paragraph refers to three levels of decision-making, whilst two of them are linked to environmental assessment. However, we point out that plans to site are in some Member States subject to SEA and not to EIA as mentioned in paragraph 8, and in some Member States, permitting is part of the EIA procedure. Therefore, we propose a rephrasing of this paragraph, so that it reads as follows:

“It is recommended to public authorities and practitioners, to take into account the provisions of the above-mentioned instruments when developing or making decisions, including strategic environmental assessment (SEA) and environmental impact assessment (EIA), about:

(a) Land-use plans or programmes;

(b) Plans to site potentially hazardous activities;

(c) Permits that authorize activities (including hazardous industrial activities) or significant modifications of these activities on specific sites (including hazardous industrial activities).”

10. We would like to point out that in the references to decisions on modifications of activities, there should be a correction to “significant modifications” in order to align with the text of article 7 of the TEIA Convention (para. 39, para. 49, para. 69 and para. 82).

11. Paragraph 19: it has to be mentioned that in some EU Member States, the system of general land use planning does not assess concrete activities, but rather determines the type of land use. Therefore, the present wording in relation to SEA does not sufficiently reflect the real situation and needs a rephrasing. We propose the following wording of the last sentence of this paragraph:

“These activities, assessed under EIA and SEA should include as listed under Annex 1 to the SEA Protocol and as assessed under an EIA according the respective provisions and in relation to Annex 1 of the Espoo Convention should also include, where applicable, hazardous activities in the meaning of the Industrial Accidents Convention.”

12. Paragraph 21: the first sentence reads as a general statement to be applied in every case before an environmental assessment is carried out. But screening has to be carried out only for certain types of plans and programmes and not for all types of plans and programmes covered by the SEA Protocol. Therefore, we propose rephrasing of the first sentence of this paragraph, so that it reads as follows:

“Screening of plans and programmes other than those defined in article 4, paragraph 2 of the Protocol on SEA is undertaken at the beginning of an environmental assessment to determine whether a full assessment or procedure is formally required under the relevant regulations.”

13. Paragraph 25: this paragraph states that all three instruments include a screening process to identify activities. However, as correctly mentioned in paragraph 22, the Industrial Accident Convention has no screening procedures, but the identification could be considered as screening under EIA and SEA. Therefore, we propose rephrasing of this paragraph, so that it reads as follows:

“Therefore, all three instruments include ~~a screening process~~ either a formal screening process or a process of a similar kind to identify activities (including those capable of causing transboundary effects) to be addressed in EIA, SEA and industrial safety planning procedures.”

14. Paragraph 27: we would like to underline that the Industrial Accident Convention does not require an environmental report; therefore, we propose to remove the reference to “in the environmental report” in the first sentence of this paragraph.

15. Paragraph 30: this paragraph states that the Industrial Accident Convention does not require an environmental report, while at the same time it also states that data that are generated should be used to address risks in SEA and EIA environmental reports. Therefore, we propose insertion of the abbreviation “e.g.” in the third sentence of this paragraph after the word “decisions”, so that it reads as follows:

“Data on industrial safety [...] siting decisions e.g. in SEA and EIA environmental reports.”

16. Paragraph 31: the reference to the E section should be replaced by a reference to C section;
17. We would also like to propose drafting changes in the box 1, 4 and 6 concerning examples of Finland, Portugal and Estonia, which are including in the track changes text of the document.
18. Box 1: Since from Finland's point of view the wording of the first sentence of its example is not clear we suggest to replace the word "EIA" by "impact", so that it reads as follows:
"In Finland, ~~EIA~~ impact studies and reports addressing socioeconomic, social, cultural and other impacts must support proposed land-use plans."
19. Box 4: we would like to propose a revision of the text (see Annex attached to Speaking Notes of 11 November 2016);
20. Box 6: according to Estonia's Chemicals Act, the Rescue Board must assess whether the operator must submit additional information by the operator (*i.e.* this is not an obligation). Therefore, we suggest to transform penultimate paragraph of this box into sub-section c) and replace the words "also submits" by the words "must submit" in this sub-section as well as to replace the full stop at the end of the sub-section b) by the semicolon, so that the entire text of the box 6 reads as follows:

"(b) The planned accident prevention measures are sufficient-;

(c) The operator of the establishment also submits must submit additional information to the local authority and to the Board before the plan is adopted or the building permit is granted."

~~The operator of the establishment also submits additional information to the local authority and to the Board before the plan is adopted or the building permit is granted.~~

21. Paragraph 54: for linguistic reasons, we propose to replace the word "to" in the last sentence of this paragraph by the word "between," so that the entire last sentence reads as follows:

"This requires [...] and affected Parties and ~~to~~ between authorities and the public."

22. Paragraph 62: we do not oppose the consultation of concerned authorities, but we strongly oppose interpretation of authorities under Art. 17 para. 1 of the Industrial Accident Convention as "the environmental authorities, which have to be consulted during EIA and SEA procedures." In some Member States, the authorities under Art. 17 para. 1 of the Industrial Accident Convention are not involved in the decision-making. Therefore, we propose rewording of this paragraph, so that the entire paragraph reads as follows:

"In the SEA or EIA procedures, when specifying which public authorities (environmental and / or health related) the consultation of authorities dealing with safety issues might be included and considered. Therefore, whenever the nature of a plan or programme subject to a SEA or of an activity subject to an EIA is assessed, the inclusion of safety-related public authorities to be consulted is recommended."

23. Paragraph 70: this paragraph does not seem to be too clear. According to the SEA Protocol, SEA is required for plans and programmes, which set the framework for projects listed in Annex I and any other projects listed in Annex II that require an EIA under national legislation. In those cases, SEA has to be carried out (Art. 4 para. 2). Therefore, it is not clear how the Industrial Accidents Convention can be considered in the determination of whether plans and programmes are covered by the obligatory field of application of the SEA Protocol as suggested by paragraph 70. Therefore, we propose rewording of the first sentence, so that this sentence reads as follows:

“In determining whether a proposed plan or programme sets the framework for future development consent of projects listed in annexes I and II to the Protocol on SEA, the hazardous activities listed in annex I to the Industrial Accidents Convention are recommended to be considered as an inclusive element complementing the aforementioned requirements.

24. Paragraph 74: we would like to propose to include the words “where requested by the developer” after the word “that” and to replace the word “should” by the word “shall” in the second sentence of this paragraph, so that entire sentence reads as follows:

“For example, the European Union EIA Directive [footnote omitted] indicates that, where requested by the developer, the competent authority shall ~~should~~ issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental report.”

25. Now, let us proceed to the presentation of our comments concerning the second part of the guidance. We would like to propose the following changes:
26. Paragraph 16, (c): there should be a correction to “significant modification” in order to align with the text of article 7 of the TEIA Convention;
27. Paragraph 21 and 22: these paragraphs require additional clarification as they may cause misunderstanding regarding the scope of TEIA Convention. The TEIA Convention does not cover transport of hazardous substances, including via pipeline;
28. Paragraph 73: we propose rephrasing of the first sentence of this paragraph, so that it reads as follows:
- "The Toulouse disaster in 2001, which caused 31 fatalities, over 3,000 injuries and damages estimated at €3 billion, has led to a new French land-use planning approach considering the occurrence probability of representative scenarios and need to act on existing installations."
29. Table 3 and 7: we propose corrections of the following wording (see Annex attached to the Speaking Notes of 11 November 2016).
30. Lastly, regarding the draft decision VII/5– III/5 guidance on land-use planning, the siting of hazardous activities and related safety aspects, we propose the following changes:

- operative paragraph 2 (“*Adopt...*”):replace the word “adopt” in this paragraph by the word “endorse” and replace the words “policy and legal” by the word “general”, so that it reads as follows:

~~“*Adopt* *Endorse* the policy and legal part of the general part of guidance on land-use planning, the siting of hazardous activities and related safety aspects.”~~

- In preambular paragraph (“Having also considered.....”) replace the words “policy and legal” by the word “general”, so that it reads as follows:

“Having also considered the two parts of the draft guidance on land use planning, the siting of hazardous activities and related safety aspects – divided into ~~policy and legal~~ general guidance and technical guidance,”

Item 9(c), para. 28:

Draft good practice recommendations on the application of the Convention to nuclear energy-related activities (ECE/MP.EIA/WG.2/2016/6/INF.12) and draft decision VII/7 Application of the Convention to nuclear energy-related activities (ECE/MP.EIA/WG.2/2016/5)

- The European Union and its Member States express their gratitude to the consultants, the editorial group and the Secretariat for their work done in connection with the preparation of draft good practice recommendations on the application of the Convention to nuclear energy-related activities,. We would also like to thank all the Parties that have provided their answers to the questionnaire;
- In addition to this, the EU and its Member States would like to make some general comments as well as to make some specific drafting proposals;
- We appreciate the changes that have been made to the draft and we believe the evolution of the draft is going in a good direction. However, we recall that, in respect of the Terms of Reference, the good practice recommendations should focus on the practical application of the Convention to nuclear energy-related activities, and not on interpretation of the Convention. In this sense, the draft good practice recommendations still require some changes and redrafting.
- In this context, we would like to propose inclusion of the disclaimer in the introductory part of the document as new paragraph 5bis of the following wording:

“5bis.The recommendations and good practice presented in this document do not necessarily reflect the official opinion of any of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context. As such they do not create any obligations and are without prejudice to the obligations set out in the Convention.”
- We consider the draft good practice recommendations to be a document of the Working Group. The maximum length of the document is 10 700 words.

6. We would like to suggest the revision and unification of the terminology as various terms denominating the same documents are used (*e.g.* EIA report/environmental report/EIA documentation etc.). The terminology used in the present document should correspond to the text of the Convention in order to avoid any misunderstandings.
7. To get a good balance in the document we need to ensure that more examples of good practice of more countries are included in the draft good practice recommendations.
8. The EU and its Member States suggest that the Working Group gives the editorial group an additional mandate to finalize the draft compilation of the boxes of the good practice examples. The EU and its Member States would like to propose to the Working Group the following approach. We suggest two subsequent approaches for the finalization of the good practice examples part of the document (the boxes):
 - a) The first approach would be to realize an integrated document. That means a balanced number of examples of good practice in the official document good practice recommendations;
 - b) If this is not possible we opt for second approach to ask the Editorial group to prepare a compilation of the good practices examples as an Informal Document.
9. Moreover, we propose the following specific drafting changes to the text of the draft good practice recommendations.
10. Paragraph 5d: we propose the rephrasing of this paragraph so that the entire paragraph reads as follows:

“Good practice recommendations deriving from the corresponding summary of approaches, good practice examples and experiences of the Parties which also reflects the Decisions of the Meeting of the Parties (MoP) and in some cases results from relevant Opinions of the Implementation Committee (referred to in footnotes).”

11. Paragraph 11: we propose to move this paragraph to part D ‘Good practice recommendations’ of section ‘II Screening’ as a new paragraph and to replace the word “usually” by the words “to be”, so the entire paragraph reads as follows:

“The criteria and considerations for identifying a “major change” to nuclear energy related activities are ~~usually~~ to be determined on a case-by-case basis.”

12. Paragraph 13: we propose to rephrase the subtitle of this paragraph to “ Consideration of the risk of major accidents.” and rephrase the para so that the entire paragraph reads as follows:

“~~Consideration of accidents beyond design base~~ the risk of major accidents. Parties of origin ~~could take accidents beyond the design base into account~~ should consider the risk of major accidents and/or disasters which are relevant to the project when determining the likelihood of significant transboundary effects.”

13. Paragraph 15: we propose to move this paragraph to part B ‘Summarized approaches’ of section ‘II Screening’ as a new paragraph 10bis and to rephrase it , so that the it reads as follows:

“10bis The Parties may want to note that in one specific case the Meeting of the Parties endorsed “the findings of the Implementation Committee that the extension of the lifetime of the nuclear power plant, subject of the proceedings, after the initial licence had expired, should be considered as a proposed activity under Article 1, paragraph (v) of the Convention”.¹”

14. We would like to propose to insert new paragraph 80bis which reads as follows:

“80bis. Not enough information was yet made available concerning the usage of the International Atomic Energy Agency (IAEA) Site and External Events Design (SEED) review service in information gathering and decision making.”

Let us clarify why we consider the inclusion of this new para important. First of all, let us make clear that this para is the statement of fact and as such reflects the situation following the receipt of answers to questionnaire. We would also like to highlight that issue reflects paragraph 24 (f) of the Terms of Reference and was included in the questionnaire as it contained a specific question on the role of the International Atomic Energy Agency (IAEA) Site and External Events Design (SEED) review service in ensuring that the best available option is selected for the nuclear energy development. Moreover, it should be also pointed out that para 80bis follows the exact same structure and has the exact same informative purpose as para 90 on the post project analysis.

15. Paragraph 82: we would like to propose to rephrase the paragraph so that it reads as follows:

“Submitting the final decision. Once issued, the final decision along with the reasons and considerations on which it was based should be sent to the affected Parties in a timely manner to be made publicly available. The final decision should be made available in any lingua franca or in another language if both parties (affected and origin) agreed or in case of a bilateral agreement in the language required by the agreement and be provided in an electronic format.²”

Draft decision VII/7 Application of the Convention to nuclear energy-related activities (ECE/MP.EIA/WG.2/2016/5)

1. Regarding the draft decision VII/7, the European Union and its Member States would like to propose the following specific changes.
2. Operative paragraph 1 (“*Welcomes...*”): We would like to mention that the Netherlands is also a member of the editorial group.

¹ See ECE/MP.EIA/20/Add.1,ECE/MP.EIA/SEA/4/Add.1, decision VI/2, para 68.

² See also ECE/MP.EIA/2011/4, para. 51.

3. We propose to insert a new paragraph 2bis of the following wording:

“2bis. *Recognises* that the Good Practice Recommendations do not seek to offer legal interpretation of, or specify obligations in, the Convention;”

4. Operative paragraph 5 (“*Invites...*”): We suggest deleting the words “and any suggestions for their future development”, so that the paragraph reads as follows:

“*Invites* Parties to provide information to the Working Group on the usefulness of the Good Practice Recommendations ~~and any suggestions for their future development;~~”

5. Operative paragraph 7 (“*Proposes...*”): We suggest inserting the word “could” after the word “Recommendation”, so that the paragraph reads as follows:

“*Proposes* that the Good Practice Recommendations could be used in the capacity- building activities included in the workplan.”

Agenda Item 10: Preparations for the next sessions of the Meetings of the Parties

Item 10, para. 29:

Practical arrangements

The EU and its Member States would like to thank Belarus and the Secretariat for this very useful information.

Item 10, para. 30:

Draft Minsk Declaration (ECE/MP.EIA/WG.2/2016/L.2)

1. The EU and its Member States would like to once again thank the Bureau and the Secretariat for preparing elements for a draft Minsk Declaration;
2. We recognize that the Minsk Declaration is a living document, depending largely on the evolution of discussions on various other issues before the next MOP meeting in 2017, which should also include the outcomes of the brainstorming session;
3. Therefore, we prefer in this stage not to put forward detailed remarks about the exact wording of the Minsk Declaration.

Item 10, para. 31:

**Draft decision on the adoption of the workplan for the period 2017-2020
(ECE/MP.EIA/WG.2/2016/6)**

1. The European Union and its Member States express their gratitude to the Bureau and the Secretariat for their preparatory work on the text of draft decision VII/3 – III/3 on the adoption of the workplan for the period 2017-2020;
2. However, we would like to make a few general remarks and some specific proposals to the text of the draft decision;
3. We support the structure of the workplan, which contains only activities for which funding is ensured, while activities without funding are included in a waiting list;
4. We propose that activity I.5 in Annex II is placed in brackets as it is not clear at the moment if this activity is necessary and if so, who will be a lead country or organization for that activity, as well as the source of its funding;
5. We propose to delete activity II.C.1 in Annex II as it was initially an idea of the Netherlands Commission for Environmental Assessment (NCEA), but it can be confirmed that it will not be carried out by the NCEA.
6. We propose that activity II.D in Annex II is placed in brackets as it is not clear at the moment who will be a lead country or organization for that activity, as well as the source of its funding;
7. We took note of the informal document No. 13 A needs assessment of further capacity building activities and as a result we would like to propose to remove square brackets from the following items in Annex II: I.2, II.C.2, II.C.3, IV.1-IV.7.
8. Regarding paragraph 5 (“*Invite relevant bodies or agencies...*”): We suggest deleting the words “commercial firms, developers, consultants or other commercial entities”, so that the paragraph reads as follows:

“Invite relevant bodies or agencies, whether national or international, governmental or non-governmental and, possibly, researchers, ~~commercial firms, developers, consultants or other commercial entities~~ to participate actively in the activities included in the workplan, where appropriate”;
9. We would like to stress that we value the arctic cooperation, as well as initiative on arctic EIA. Taking into account the rationale presented by Finland, we fully support Finland’s proposals.

Item 10, para. 32:

Outstanding draft decisions to be forwarded to the MOP

The EU and its Member States would like to point out that should there be the actual need for it, the exact wording of the text of the draft decision VII/7-III/6 on development on strategy and an action plan for the future application of the Convention and the Protocol, must reflect the outcomes of the discussions of the Working Group and especially the brainstorming session.

Item 10, para. 33:

Draft programme of the MOP

1. The EU and its Member States would like to thank the Secretariat for the preparation of the draft programme of the Meeting of the Parties.
2. We can suggest Rob Verheem (again), as a facilitator for the workshop on future of the Convention, to give a follow-up to the outcomes of the brainstorming session.
3. Another suggestion for the panellist in the panel on the future of Convention and SDGs is Mr. Hugo von Meijenfeldt of the Netherlands. He is the special envoy of the Netherlands for the SDG's, before that he was special envoy of the Netherlands for Climate Change.
4. Moreover, we propose to ask Piotr Otawski of Poland, Michel Prieur of France and Matthias Sauer of Germany as other possible panellists in this panel.
5. Moreover, we propose panellists from the EIB to take part in both panels and representative of EC (DG Enviro) to take part in the panel on the climate change.
6. Regarding the side events we suggest to have the public participation in the field of sustainable energy, which is a hot issue within the EU (Energy Agenda). There are many countries working on sustainable energy and looking for better ways to involve the public. It could be a way to involve S-E Asea.
7. Another suggestion for side event might be arranged in connection with the preparation of the good practice recommendation to nuclear related activities.

Item 10, para. 34:

Pros and cons of the extension of interval between sessions of the MOP

1. The EU and its Member States would like to thank the Secretariat for the preparation of this thorough and balanced document - an overview of pros and cons.
2. Taking this document into account, the EU and its Member States would like to state that we support a three-year-long interval between the sessions of the MOP for the upcoming inter-sessional period 2017-2020.

3. We would also like to add, that we may possibly reflect on this issue after the end of the intersessional period 2017-2020.

Item 10, para. 35:

Nominations of officers for the next intersessional period

1. With regard to the agenda item – nominations of officers, the EU and its Member States would like to inform about the following:
2. We would like to inform you that Slovenia is interested in the position of Chair of the Espoo EIA/SEA Working Group for the next intersessional period. Our proposal is Mrs. Vesna Kolar Planinsic.
3. We would also like to inform you that Finland is interested in one position in the Implementation Committee as an alternate member on Protocol matters – our proposal is Mr. Lasse Tallskog. Finland is also interested in one position in the Bureau; the proposal in this regard is Mrs. Seija Rantakallio.
4. We would also like to inform you that Portugal is also interested in one position in the Implementation Committee as a full member; our proposal is Mrs. Maria do Carmo Figueira.
5. Next, we would also like to inform you that Estonia would like to continue their membership in the Implementation Committee as a permanent member for the next intersessional period 2017-2020. The proposal in this regard is Mr. Kaupo Heinma.
6. Finally, the EU Commission is interested to continue as a member of the Bureau for the next intersessional period.
