

**REPORT OF GERMANY ON THE IMPLEMENTATION
OF THE CONVENTION ON ENVIRONMENTAL
IMPACT ASSESSMENT IN A TRANSBOUNDARY
CONTEXT**

in the period 2010–2012

Information on the focal point for the Convention

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PART ONE – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

In this part, please provide the information requested, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should describe the framework for your country's implementation, and not experience in the application of the Convention.

Article 2

General Provisions

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2, para. 2).*

The most important legislation on EIA, including transboundary EIA, in Germany is the following:

- The German Federal EIA Act as published in the announcement of 24 February 2010 (Federal Law Gazette I p. 94) is implementing the provisions of the Espoo Convention, including its two amendments, and as well the provisions of the EIA-Directive 2011/92/EU; Ratification Act for the Espoo Convention and its first amendment, published on 17 June 2002 (Federal Law Gazette II p. 1406);
- Ratification Act for the second amendment of the Espoo Convention, published on 17 March 2006 (Federal Law Gazette II p. 224).

In Germany, EIA is an integral part of development consent procedures and other forms of procedures (e.g. siting procedures). The legislation concerning these procedures can include additional provisions on EIA.

Furthermore Germany is a Federal State. Additional provisions on EIA are included in the legislation of the 16 German States (Länder).

2. *Indicate any further measures to implement the provisions of the Convention that are planned for the near future.*

Currently Germany is reviewing some of its existing arrangements on transboundary EIA with neighbouring Parties.

See the answer to question 19.

3. *List the different authorities that are named responsible for the implementation of the EIA procedure in the transboundary context and domestically.*

In Germany the competent authority for the development consent procedure is at the same time competent for the domestic EIA and for the transboundary EIA procedure.

In Germany, EIA is an integral part of development consent procedures and other forms of procedures (e.g. siting procedures). Apart from a few exceptions, the authorities of the German States (Länder) are responsible for these procedures. Usually these are authorities on the local, regional or very seldom on Länder level. According to the Federal EIA Act, the transboundary EIA procedure is integrated into the national EIA procedure. The authority

that is responsible for the decision on the project (licensing authority) is thus also responsible for the transboundary EIA including the notification. The Federal level or the Ministries of the German States are usually only involved in the transboundary EIA procedure if certain problems cannot be solved in the spirit of communication and cooperation between the competent German authority and the competent authority of an affected Party.

In the case of Germany as affected Party, the authority that would be responsible for a similar project in Germany is responsible for the transboundary EIA procedure on the German side.

Remark: Under the German constitution ('Basic Law') Germany is a federal state. Therefore, the tasks and competencies are distributed between the Federal level and the German States (Länder). In principle, the Federal level is inter alia competent for international negotiations and the federal legislation in the framework of the constitution. The German States and their authorities on local, regional and Länder level are inter alia competent for the practical application of the federal legislation. Following this system, development consent procedures for projects and activities and the integrated EIA procedure are usually carried out by authorities of the German States on local, regional and Länder level. The Federal level is informed about the way the legislation on EIA, including transboundary EIA, is applied in general, but it does not have detailed information on the practical experiences.

4. *Is there an authority in your country that collects information on all the transboundary EIA cases? If so, please name it.*

No, there is no such an authority and it is not envisaged to establish such an authority.

5. *Does your country have special provisions for transboundary EIA procedures for joint cross-border projects (e.g., roads, pipelines)?*

No, there are no specific provisions. In practice there are two options:

(a) The standard approach would be that each Party will carry out a development consent procedure including a transboundary EIA for the part of the project on its own side of the border. In each of these procedures the other Party will participate as affected Party. This case implies that both Parties exchange information on transboundary impacts of their domestic parts of the project before finalizing the EIA documentation. Each of the final EIA documentations should then include i) the impacts of the domestic part of the project on the domestic territory – enlarged by the transboundary impacts of the part of the project of the other Party and ii) the impacts on the territory of the affected party.

(b) The alternative is more recommended: The competent authorities of both countries agree to elaborate a single EIA documentation covering the project as a whole and – if appropriate – carry out other procedural steps jointly (common EIA). Especially a joint scoping is recommended. Later on each of the two Parties will take due account of the outcome of this common EIA procedure in the final decision of the development consent procedure required for the part of the project on its own side of the border.

One example for option (b) is the Nord Stream Gas Pipeline project (operating since 2012), that connects Russia and Germany crossing the Baltic Sea - through Russian territorial waters, Russian, Finnish, Swedish, Danish and German exclusive economic zones (EEZ)

and as well Danish and German territorial waters -. Another example for option (b) is the Danish-German project of a fixed link across the Fehmarnbelt in the Baltic Sea (on-going procedure). In autumn 2012 in the frame of the Sixth Seminar on Cooperation on the Espoo Convention in the Baltic Sea (September 2012, Tallinn, Estonia) discussions began on the inter-state coordination of a planned second Nord Stream Gas pipeline. This project will also follow option b.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE CONVENTION

6. *Is appendix I to the Convention transposed fully into your country's national legislation? Please describe any differences between the national list and appendix I to the Convention.*

Yes. Annex I of the Federal EIA Act goes beyond Appendix I to the Convention, including its first and second amendment. It lists all projects or activities

- for which it is mandatory to carry out an EIA or
- for which a case-by-case examination (screening) has to be carried out in order to investigate if the project has significant adverse effects on the environment and therefore requires an EIA. Annex 1 of the Federal EIA Act is inter alia implementing at the same time EIA Directive 2011/92/EU.

7. *Does your country's legislation already cover fully the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7)?*

Yes, see the answer to question 6.

PUBLIC PARTICIPATION

8. *How does your country, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your country's public as required in article 2, paragraph 6?*

According to Article 9a of the Federal EIA Act, the legal provisions that determine the participation of the German public are also to be applied vis-à-vis to the public of an affected Party. For this purpose Germany as Party of origin has to use its best efforts to ensure that the public of the affected Party will be given equivalent opportunities to participate. For more details see also the answers to questions 10 e – g and 13 e.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

9. *Describe how your country determines when to send the notification to the affected Party, which is to occur "as early as possible as and no later than when informing its own public".*

With regard to Article 8 of the Federal EIA Act the competent German authority has to notify an affected Party as early as possible. The competent German authority will notify an affected Party, if the proposed project or activity is – in the opinion of the competent German authority on the basis of an examination of the documents and information available – likely to cause significant adverse transboundary environmental impacts. The notification

always takes place before the domestic public participation procedure begins. If possible, a notification already in the scoping phase is recommended.

10. *Indicate whether and how the following provisions are reflected in your national legislation:*

- a. *The stage in the EIA procedure when your country usually notifies the affected Party (art. 3.1);*

See the answer to question 9.

- b. *The format for notification. Please indicate whether this is the format as decided by the first meeting of the Parties in its decision I/4 (ECE /MP.EIA/2, annex IV, appendix). If not, does your country use a format of its own (in which case, please attach a copy of it)?*

The competent authority in Germany may use any notification format that fulfils the requirements of the Convention, taking into account the proposed guidelines in the report of the first meeting of the Parties. In relation to Poland the German-Polish Agreement on Transboundary EIA (see the answer to question 19) includes a format that is recommended for notifications between both countries.

- c. *The time frame for the response to the notification from the affected Party (cf. art. 3, para. 3, “within the time specified in the notification”), the consequence if an affected Party does not comply with the time frame, and the possibility of extending a deadline;*

It is the obligation of the competent authority to specify a reasonable time frame for a response considering inter alia bilateral practice. Usually a period of thirty days will be appropriate.

If an affected Party does not comply with the time frame, the competent German authority, with regard to Article 3, paragraph 4, of the Convention, has to decide whether the deadline will be extended and a transboundary EIA procedure will be carried out. With regard to best practice in transboundary cooperation, an extension may inter alia be granted if it will not cause any delay in the development consent procedure.

- d. *The request for information from the affected Party (art. 3 para. 6), necessary for the preparation of the EIA documentation;*

The competent authority may request any information that could be useful for the transboundary EIA. The federal level has no specific information on the practical application of Article 3, paragraph 6 of the Convention. If the affected Party participates in the scoping phase it is recommended to clarify already at this stage whether and to what extent the affected Party may contribute to the data required.

- e. *How your country cooperates with the authorities of the affected Party on public participation (art. 3, para. 8);*

Cooperation according to Article 3 paragraph 8 of the Convention is an obligation of both Parties. Therefore, the Party of origin as well as the affected Party, have to work closely together, for example in order to identify the public in the affected area. Due to the fact that the Party of origin does not have any administrative powers on the territory of the affected Party, certain steps of the procedure (e.g. formal

announcements and distribution of documents, public hearings on the territory of the affected Party) have to be carried out by the competent authority of the affected Party, but always with the best possible support by the competent authority of the Party of origin.

- f. *When and how the public in the affected Party is notified (what kinds of media, etc., are usually used). What is normally the content of the public notification?*

The public of the affected Party should be notified as soon as possible in accordance with the legislation of the affected Party. Preferably consultation of the public of the affected Party should take place at the same time as consultation of the public of the Party of origin based on the EIA documentation and additional documents.

According to Article 9a, paragraph 1 of the Federal EIA Act, the competent German authority shall contact the affected Party and use its best efforts to ensure that the public of the affected Party will be notified in a suitable manner equivalent to the notification to the German public (see the answer to question 10 g).

- g. *When and how the public in the Party of origin is notified (what kinds of media, etc. are usually used). What is normally the content of the public notification?*

The German public will be informed on the project when the documents required for the development consent procedure (including the EIA documentation) are complete. According to Article 9 of the Federal EIA Act the information required will be made available to the public via appropriate media distributed in the affected area (newspaper, official journals, internet). Due to the new Article 27a of the Federal Administrative Procedure Act, which will come into force soon, the use of the Internet will be mandatory in the future.

The notification shall include the information referred to in Article 6 paragraph 2 of the EIA Directive 2011/92/EU.

- h. *Whether the notification to the public of the affected Party has the same content as the notification to your country's public. If not, describe why not.*

In principle yes, apart from differences that may arise by legal requirements of the affected Party. See also the answer to question 10 f and g.

11. *Does your country make use of contact points for the purposes of notification, as decided at the first meeting of Parties (ECE/MP.EIA/2, annex III, decision I/3), and as listed on the Convention website (http://www.unece.org/env/eia/points_of_contact.htm)?*

Yes. Contact points are useful, if no other authority has been named and/or fixed by a bilateral arrangement for purposes of notification.

QUESTIONS TO AFFECTED PARTY

12. *Indicate whether and how the following provisions are reflected in your national legislation:*

- a *How your country decides whether or not to participate in the EIA procedure (art. 3, para. 3)?*

Participation in an EIA procedure as affected Party will take place, if the competent German authority comes to the conclusion that the proposed project or activity is likely have significant adverse transboundary impacts on the environment in Germany.

According to Article 9b of the Federal EIA Act the competent authority in Germany is the same authority that would be responsible for the project, if it would be carried out on the German side of the border. In most cases this will be an authority of the German states (Länder). The competent authority will assess the submitted information with its own expertise taking into account the same criteria as if the project would be planned on German territory.

- b. *The request from the Party of origin for information (art. 3, para. 6), necessary for the preparation of the EIA documentation;*

The Federal level has no specific information on the practical application of Article 3 para. 6 of the Convention. The competent German authority (see the answer to question 3 and 12 a) is responsible for the transmission of information, necessary for the preparation of the EIA documentation. To this purpose any appropriate data available to the competent authority may be used including available information held by other authorities or institutions or data which are publicly available.

- c. *How your country cooperates with the authorities of the Party of origin on public participation (art. 3, para. 8);*

Close cooperation of the competent authorities of both Parties is needed. In principle there should be no difference between domestic participation limited to the public of the Party of origin and transboundary participation including the public of the affected Party. Both Parties have to ensure that transboundary participation of the public - irrespective of the fact, that it will take place on the territory of the affected Party - will be organised and carried out in accordance with or equivalent to the legal requirements of the Party of origin. This implies for example that time frames may differ from those usually foreseen in German legislation (see the answer to question 14 a).

In accordance with Article 9b para. 2 of the German Federal EIA Act the competent German authority will inform the public on the planned project or activity and on the details of the procedure foreseen for transboundary participation of the German public. The documents supplied by the Party of origin will also be made available to the German public by the competent German authority.

- d. *When and how the public is notified (e.g., what kinds of media, etc., are usually used).*

The timing and media used primarily depend on the legal requirements of the Party of origin. In order to ensure that public participation will be carried out in both countries under equivalent conditions the planned project or activity should be notified to the public of the affected Party at the same time as it will be notified to the public of the Party of origin, using if possible the same kinds of media.

The competent German authority will inform its public as soon as possible after the information required has been submitted by the Party of origin. The content of the public notification will mainly depend on the information submitted by the Party of origin according to its legislation. Preferably notification to the German public should include the information referred to in Article 6 paragraph 2 of the EIA

Directive 2011/92/EU. At least it should include some basic informations on the planned project or activity and details of the public participation procedure, for example time frames for the inspection of documents and for the submission of comments by the public, contact data of the competent authority of the Party of origin as well as other important formal and procedural requirements.

Article 4

Preparation of the environmental impact assessment documentation

QUESTIONS TO PARTY OF ORIGIN

13. *Indicate the legal requirements in your country, if any, related to:*

a. *The content of the EIA documentation (art. 4, para. 1; appendix II);*

Article 6 of the Federal EIA Act ("Documents of the Developer") implements inter alia the requirements of the Espoo Convention and of the EIA Directive 2011/92/EU regarding the content of the EIA documentation, without using this term.

b. *The procedures for determining the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4, para. 1);*

The content of the EIA documentation is in principle regulated by Article 6 of the Federal EIA Act. During the scoping-phase - according to Article 5 of the Federal EIA Act - the competent authority will give advice on how the legal requirements for the EIA documentation can be fulfilled in the best way with regard to the project in question. Other authorities, likely to be concerned by the project by reason of their specific environmental responsibilities, have to be consulted. Furthermore Article 5 of the Federal EIA Act envisages that independent experts and other third parties may be involved on a case-by-case basis. If the proposed project is likely to have significant transboundary impacts on the environment of a neighbouring state authorities, experts and other third parties of the affected Party may also be consulted in the scoping-phase.

When the developer according to Article 6 of the Federal EIA Act has submitted the EIA documentation the competent authority has to assess if the information provided is sufficient with regard to legal requirements and the results of the foregoing scoping.

c. *The identification of "reasonable alternatives" in accordance with appendix II, paragraph (b);*

The identification of reasonable alternatives depends on the type of project in question and on the specific legal requirements for development consent. Alternatives to be addressed in the EIA documentation should be discussed in the scoping phase.

The term "alternatives" may include different technical solutions as well as different locations or routings. For infrastructural projects (e.g. roads) the scope of "reasonable" alternatives studied by the developer when planning the project will often be broader compared to industrial installations. It also has to be considered that some options - especially alternatives with regard to the location of the project - may already have been assessed at in foregoing planning procedures requiring an SEA. In

order to avoid duplication of work it would not be “reasonable” to reassess these alternatives within the framework of EIA.

d. The procedures and format for providing the EIA documentation domestically;

According to Article 7 of the Federal EIA Act the competent authority will submit the information required, including the EIA documentation to the domestic authorities likely to be concerned by reason of their specific environmental responsibilities usually both in paper form via standard mail and in an electronic format by e-mail for examination and comments. According to Article 9 of the Federal EIA Act the same information will be made available to the domestic public. For this purpose the documents will be publicly displayed in municipalities likely to be affected and, according to the new Article 27a of the Federal Administrative Procedure Act (see the answer to question 10 g), published on the internet, in most cases for one month depending on the respective national legislation for the development consent procedure.

e. The procedures and format for providing the EIA documentation to the affected Party. If there is a difference between the procedures and format domestically and for the affected Party, please explain;

As regards providing the EIA documentation there is basically no difference between domestic and transboundary EIA, apart from some specific features due inter alia to practical reasons. The competent German authority will send the information required including the EIA documentation to the competent authority of the affected Party or to another authority or point of contact appointed by the affected Party for further distribution. According to Article 3 paragraph 8 of the Convention distribution of the documents will have to be determined in cooperation of both Parties taking into account the legislation of the affected Party (see answers to questions 10 e – h). If possible and requested by the affected Party the documents will be provided by the competent German authority in an electronic format as well as in a paper version. Usually translated documents will be attached to the domestic documents the translation covering at least the non-technical summary of the EIA documentation and the information required to identify and assess the main transboundary effects on the environment of the affected Party.

f. The procedure for the examination of, and the deadlines for comments on, the EIA documentation domestically, and how the comments submitted domestically are addressed;

According to Article 7 of the Federal EIA Act – which refers to the German Act on Administrative Procedures – time frames for comments of domestic authorities consulted will be determined by the competent authority. A time frame of three months shall usually not be exceeded. Where sectoral law defines different time frames, these are of prior relevance.

Time frames for comments of the domestic public also depend on the national legislation for development consent procedure. They vary between six weeks and two months. Comments have to be transmitted in a written format and may be sent to the competent authority via standard mail and under special preconditions also via e-mail.

Comments are in time if they arrive at the competent authority on the last day of the respective time frame. The competent authority has to decide whether comments received later will be considered. However, due to requirements laid down in the national legislation an extension of the deadline will often not be possible. If in these

cases an affected party has asked for an extension of the time frame it will be informed of the legal situation.

All comments submitted in time as well as the late comments accepted will be examined by the competent authority regard to their relevance. In most cases they will be discussed in a public hearing (see the answer to question 13 h).

- g. *The procedure for the examination of, and the deadlines for comments on, the EIA documentation from the affected Party, and how the comments submitted by the affected Party are addressed;*

Apart from a few specific aspects, in cases of transboundary EIA the procedure for the examination of and the deadlines for comments on the EIA documentation is generally the same as in domestic EIA procedures. Preferably comments of authorities of the affected Party consulted should be submitted directly to the competent German authority. However, German will also accept a single state document combining the comments of various authorities.

Comments of the public of the affected Party will always have to be sent directly to the competent German authority using standard mail or under special preconditions via e-mail.

Comments of authorities and the public of the affected Party may be submitted in the language of the affected Party; a translation into German language will then be provided by the competent German authority. Time frames for comments are equivalent to those in domestic EIA procedures provided that relevant parts of the EIA documentation have been submitted in translated form (see the answer to question 13 e). Accordingly late comments submitted by participants the affected Party will be treated the same as late comments by German participants.

- h. *The procedures for public hearings domestically;*

A public hearing in most cases is an inherent part of the German EIA procedure. According to Article 9a of the Federal EIA Act the public of the affected Party is entitled to participate in these hearings.

- i. *The procedures for public hearings held on the territory of the affected Party.*

A public hearing on the territory of an affected Party for a proposed German project or activity is not foreseen in German legislation. Due to the fact that the Party of origin has no administrative powers on the territory of the affected Party such a hearing could only be realized in exceptional cases on a voluntary basis if both Parties cooperate very closely and the competent authority of the affected Party is willing to take care of organizational and procedural steps which the Party of origin is not able to carry out (see also the answer to question 10 e).

QUESTIONS TO AFFECTED PARTY

14. *Indicate the legal requirements in your country, if any, related to:*

- a. *The procedures and deadlines for comments on the EIA documentation to be submitted to the Party of origin;*

The Espoo Convention provides for an equivalent treatment of the authorities consulted and the public of both Parties. Therefore the procedure and time-frames for comments of Germany as affected Party will basically depend on the legislation of the Party of origin. However, it has to be ensured that the competent German authority will be given additional time for translation if important parts of the EIA documentation and other relevant documents have not been submitted in translated form by the Party of origin.

b. The procedures for public participation in the review of the EIA documentation domestically, and the authority responsible for the execution of the aforementioned procedures;

See the answer to question 14 c.

c. The procedures for the examination of the EIA documentation domestically.

In case of Germany as affected Party, according to Article 9b paragraph 2 and 3 of the Federal EIA Act the competent German authority (see the answer to questions 3 and 12 a) in cooperation with the competent authority of the Party of origin will have to see to it that

- the EIA documentation will be submitted to other. German authorities likely to be concerned by reason of their specific environmental responsibilities for examination and comment. It is up to the competent German authority to decide whether the German authorities consulted shall send their comments directly to the affected Party or whether a single state document combining the comments of various authorities will be provided.
- (1) the German public will be informed on the planned project or activity and on the details of the procedure foreseen for transboundary participation of the German public and (2) the documents supplied by the Party of origin will be made available to the German public for examination and comment (see answer to question 12 c). Comments of the German public shall be sent directly to the competent authority of the affected Party.

Usually the procedure will follow the legal requirements of the Party of origin in order to ensure that the authorities and the public of both Parties will be able to participate in an equivalent way.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

15. Indicate the legal requirements in your country, if any, related to the following provisions:

a. The procedures for cooperation with the affected Party related to consultations;

See the answers to questions 15 b and c.

b. The stages, procedures and deadlines for consultations with the affected Party;

Consultations with the affected Party are possible during the whole transboundary EIA procedure.

Article 5 of the Convention requires that after completion of the EIA documentation the Party of origin shall without undue delay enter into consultations with the affected Party. In practice however, it has proven to be more appropriate to enter into consultations not until the affected Party has given its comments on the EIA documentation and the Party of origin has had enough time to assess these comments. The Parties then have to agree on a reasonable time frame taking into account inter alia legal requirements of the Party of origin for the development consent procedure in which the EIA is integrated. Within this legal framework timing depends on the nature of the significant transboundary impacts in question and on the comments submitted by the affected Party in a specific case.

Consultations are not required, if the affected Party indicates - in its comments on the EIA documentation or separately - that there is no need for consultations or if it does not react to an offer of the Party of origin to enter into consultations. Even after consultations have already been initiated, the Parties later on may agree to cancel them, if in the meantime the issues at stake have already been settled in a different way.

With regard to the form in which consultations with the affected Party will be carried out, usually a meeting will take place preceded and sometimes also followed by an exchange of written communications.

- c. *The stages, procedures and deadlines for consultations domestically, and who participates in the consultations.*

According to Article 8 paragraph 2 of the Federal EIA Act, the Ministries of the affected German States (Länder) and the competent Federal Ministry are responsible to carry out jointly formal consultations with the affected Party within a reasonable time frame concerning, inter alia, the potential transboundary impacts of the proposed project or activity and measures to reduce or eliminate these impacts. In most cases the development consent authority and other authorities concerned will participate as well. Third parties may on a case by case basis also be involved if appropriate.

QUESTIONS TO AFFECTED PARTY

16. *Indicate the legal requirements in your country, if any, related to the following provisions:*

- a. *The procedures for interaction with the Party of origin related to consultations;*

According to Article 9b paragraph 3 of the Federal EIA Act the procedure should be equivalent to the procedure in cases in which Germany acts as Party of origin.

- b. *The stages, procedures and deadlines for consultations domestically, and who participates in the consultations.*

See the answers to questions 15 b and c.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

17. *Indicate the legal requirements in your country, if any, related to the following provisions:*

- a. *The definition of "final decision" related to the implementation of the planned activity; the content of decisions; and procedures for their adoption;*

“Decision” according to German law is the development consent or permit granted by the competent authority which entitles the developer to proceed with the project. The types of development consent or permit defined as “decision” are listed in Article 2 paragraph 3 of the Federal EIA Act. All projects listed in Appendix I of the Convention require such a decision.

- b. *For each type of activity listed in appendix I, identify what is regarded as the “final decision” to authorize or undertake a proposed activity (art. 6 in conjunction with art. 2, para. 3); also provide the term used in the national legislation in the original language. Do all projects listed in appendix I require such a decision?*

In brief: according to German law private projects like industrial installations usually need a permit / license ("Genehmigung") whereas public projects like infrastructure projects require a planning appraisal / plan approval ("Planfeststellungsbeschluss"). With regard to Appendix I of the Convention as amended by the second amendment the following terms are used in the national German legislation in the original language:

Item 1 of Appendix I of the Convention: Genehmigung

Item 2 (a) of Appendix I of the Convention: Genehmigung

Item 2 (b) of Appendix I of the Convention: Genehmigung

Item 3 (a) of Appendix I of the Convention: Genehmigung

Item 3 (b) of Appendix I of the Convention:

1st Tirée: Genehmigung

2nd Tirée: Genehmigung

3rd Tirée: Planfeststellungsbeschluss

4th Tirée: Planfeststellungsbeschluss

5th Tirée: Genehmigung

Item 4 of Appendix I of the Convention: Genehmigung

Item 5 of Appendix I of the Convention: Genehmigung

Item 6 of Appendix I of the Convention: Genehmigung

Item 7 (a) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 7 (b) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 8 of Appendix I of the Convention: Planfeststellungsbeschluss

Item 9 of Appendix I of the Convention: Planfeststellungsbeschluss

Item 10 (a) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 10 (b) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 11 of Appendix I of the Convention: Planfeststellungsbeschluss

Item 12 of Appendix I of the Convention: Erlaubnis / Bewilligung / Genehmigung

Item 13 of Appendix I of the Convention: Genehmigung

Item 14 of Appendix I of the Convention: Genehmigung

Item 15 of Appendix I of the Convention: Rahmenbetriebsplan /
Planfeststellungsbeschluss

Item 16 of Appendix I of the Convention: Genehmigung

Item 17 of Appendix I of the Convention: Genehmigung

Item 18 (a) of Appendix I of the Convention: Planfeststellungsbeschluss
Item 18 (b) of Appendix I of the Convention: Planfeststellungsbeschluss
Item 19 of Appendix I of the Convention: Genehmigung
Item 20 of Appendix I of the Convention: Genehmigung
Item 21 of Appendix I of the Convention: Planfeststellungsbeschluss
Item 22 of Appendix I of the Convention: Genehmigung

- c. *The procedures for informing of the "final decision" domestically and for the affected Party;*

Domestically, according to Article 9 paragraph 2 of the Federal EIA Act the final decision will be notified to the public. Furthermore, it will be made available to the public for examination including the reasons and considerations on which the decision is based. It also has to contain an instruction on right of appeal.

In cases where a transboundary EIA procedure has been carried out the affected Party will receive the same informations. According to Article 8 para. 3 of the Federal EIA Act the competent German authority has to submit the final decision as a whole in German language. Usually, as far as the principles of reciprocity and equivalence are fulfilled or due to a bilateral arrangement a translation of the final decision (as a whole or parts of it) will be submitted as well. The final decision needs to contain the reasons and considerations on which the decision is based as well as an instruction on right of appeal. The documents will be sent to the affected Party by standard mail in paper format and also, if possible and requested so by the affected Party, in electronic form.

According to Article 9a of the Federal EIA Act the competent German authority has to use its best efforts to ensure that the final decision will be notified and made available to the public of the affected Party equivalent to the procedure in Germany as far as possible within the legal framework of the affected Party.

- d. *Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and the public in your country (art. 6, para. 1)?*

Yes. Legally and practically in Germany there is no distinction in the way in which comments of the authorities and the public of the Party of origin and comments of the authorities and the public of the affected Party will be dealt with and taken into account.

- e. *The opportunity to review the decision if, before the activity is implemented, additional information becomes available according to article 6, paragraph 3.*

The Federal level has no information if there have been cases in Germany already in which Article 6 para. 3 of the Convention has been practically applied. In principle according to German law, if substantial new information is available the ignorance of which could have materially affected the given development consent or permit, a revision of the decision would be possible. It will be important in these cases that the Party aware of the new information will contact the other Party concerned in order to discuss the need for consultations or other possible consequences.

Article 7

Post-Project Analysis

18. *Indicate the legal requirements in your country, if any, related to:*

a. *Post-project analysis (art. 7, para. 1);*

There is no need to include a special provision on post-project analysis of activities with transboundary effects into the Federal EIA Act. Under German law, it is incumbent upon the supervisory body of a competent authority - determined by the relevant legislation on development consent - to ensure compliance with the conditions laid down in the decision (development consent, permit) for the respective project or activity (see the answer to question 17) and to intervene in cases of non-compliance, especially in situations of danger for human health.

b. *Procedures for informing of the results of post-project analysis.*

As far as known on the Federal level there have been no practical experiences up to now with this provision of the Convention. Whenever the question would become relevant the competent German authority (see the answer to question 3) would contact the competent authority of the affected Party in order to discuss the need for further action.

Article 8

Bilateral and multilateral agreements

19. *Does your country have any bilateral or multilateral agreements based on the Convention (art. 8, appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

There are several arrangements regulating transboundary EIA. However, not all of them are based formally on the Espoo Convention or on the EIA Directive 2011/92/EU. Some arrangements have even been developed solely based on practical needs (e.g. coordination of activities regarding water management) and do thus make neither reference to the EU EIA Directive nor to the Espoo Convention.

(a) The following agreements or documents refer to the provisions of the EU EIA Directive and of the Espoo Convention:

- Common Declaration on Transboundary EIA between Germany and the Netherlands (in force since summer 2005) [text in Dutch and German language was submitted to the Espoo-secretariat in summer 2005];
- Agreement between Germany and Poland on transboundary EIA of 11 April 2006 (entry into force in July 2007) [text in Polish, German and English language was submitted to the Espoo-secretariat in 2006/2007];
- Guidelines of the German-French-Swiss Governmental Commission for the Upper Rhine River on transboundary participation of authorities and the public on Activities with Environmental Relevance along the Upper Rhine River, June 2005, replacing the former Recommendations of the German-French-Swiss Governmental Commission for Cooperation on Activities with Environmental Relevance along the

Upper Rhine River of 13 March 1996 (so-called Tripartite Recommendations) [text in French and German language was submitted to the Espoo-secretariat in summer 2005];

(b) The following agreement meets in part the provisions of the EU EIA Directive and of the Espoo Convention, but without making reference to these documents:

- Recommendations of the German-French-Luxembourg Governmental Commission on the Bilateral Notification of Newly Planned and of Amendments to Existing Activities Which Need a Development Consent of 1 July 1986 (so-called Saar-Lor-Lux-Recommendation). The recommendations provide that the parties will inform each other on activities with likely adverse impacts on the territory of the other party. The procedure includes the occasion for the authorities of an affected party to submit comments.

(c) The following agreements make reference to the Espoo Convention (not to the EU EIA Directive) and determine that Espoo has to be applied between the contracting Parties. However, they do not fix further details on transboundary EIA:

- Agreement between Germany and Poland on the Cooperation in the Field of Environmental Protection of 7 April 1994 (in force since 31 August 1998). See Article 5 of this agreement;
- Agreement between Germany and the Czech Republic on the Cooperation in the Field of Environmental Protection of 24 October 1996 (in force since 2 January 1999). See Article 4 of this agreement.

(d) On-going or planned activities:

- Negotiations regarding an update of the "Common Declaration on Transboundary EIA between Germany and the Netherlands (2005)" have been finalized. The update will enter into force in 2013. It will include minor EIA modifications based on the experience so far and as well an extension regarding transboundary SEA;
- Negotiations regarding an amendment of the "Agreement between Germany and Poland on transboundary EIA of 11 April 2006" (2006/2007) have been finalized. After an additional evaluation of the update from a practical point of view, the update may be signed by the Environmental Ministers of both Parties in 2014 and enter into force also in 2014 through implementation by national law. The amendment includes EIA modifications based on the experiences gained so far as well as an extension regarding transboundary SEA;
- Currently negotiations are ongoing regarding an update of the "Guidelines of the German-French-Swiss Governmental Commission for the Upper Rhine River on transboundary participation of authorities and the public on Activities with Environmental Relevance along the Upper Rhine River (2005)" - this update shall include minor EIA modifications based on the experience so far and as well an extension regarding transboundary SEA;

- Agreement on transboundary between Germany and the Czech Republic on transboundary EIA. The Environmental Ministers of both Parties decided that the negotiations shall start;
- Possible informal agreement between Switzerland, Austria, Liechtenstein, Germany on transboundary EIA (planned);
- Possible Common Declaration on Transboundary EIA between Denmark and Germany (planned).

20. *Has your country established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

The following exceptions are to mention:

Due to the bilateral agreement of 11 April 2006 with Poland, the Environmental Ministries of the German States (Länder) in the border region are nominated as additional addressees for notifications in the case of Germany as an affected Party - with a copy to the Federal Ministry for Environment.

A similar approach was taken in the German-Dutch Common Declaration, that includes on the German side as well contact points in the German States (Länder) Northrhine-Westphalia and Lower Saxony.

Article 9

Research programmes

21. *Are you aware of any specific research in relation to the items mentioned in article 9 in your country? If so, describe it briefly.*

In 2011 Germany started a research project on transboundary EIA between Germany and all its Neighbour States. The goal of the project is to develop a manual for competent German authorities which describes good transboundary EIA procedures for both Germany as Party of origin and Germany as affected Party. The manual will describe the procedure step by step and strives to involve all practical experiences gained up to now. It will include a step-by-step description in relation to each of the German neighbour states. Output of the research project shall be a draft of the manual (2013). The final version shall be developed in further discussions under the coordination of the Federal Environmental Agency. Neighbour states (point of contacts) have been involved in the current work and will further be addressed when elaborating the final version.

Under the auspices of the German-Polish Governmental Group “Transboundary EIA” Poland with the support of Germany will carry out a workshop with German and Polish authorities (April 2013, Slubice, Poland) in order to evaluate the current draft update of the Agreement between Germany and Poland on transboundary EIA. The German-Polish Governmental Group will reflect the outcome of the workshop before proceeding with further steps in order to implement the draft update.

Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment

22. *If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Germany has ratified the first amendment in 2002.

23. *If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Germany has ratified the second amendment in 2007.

24. *If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?*

Germany has ratified the Protocol in 2007.

PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2010–2012

Please report on your country's practical experiences in applying the Convention (not your country's procedures described in part one), whether as Party of origin or affected Party. The focus here is on identifying good practices as well as difficulties Parties have encountered in applying the Convention in practice; and the goal is to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve its application.

CASES DURING THE PERIOD 2010–2012

25. *If your country's national administration has a list of transboundary EIA procedures that were under way during the reporting period, in which your country was Party of origin or affected Party, please list it.*

The Federal level in Germany has only limited knowledge about the number and details of EIAs, including transboundary EIAs, carried out during the reporting period. As explained above Germany is a Federal state consisting of 16 States (Länder). In most cases authorities of the Länder serve as competent authorities for the development consent procedure, including (transboundary) EIA (see the answer to question 3). Due to the number of competent authorities and to Germany's federal structure, there is no legal obligation (neither foreseen by national legislation nor prescribed by the Espoo-Convention or by EIA-Directive 2011/92/ EU) for a central office to which each single EIA procedure, including transboundary EIA has to be notified or by which these procedures have to be registered.

Nevertheless the Federal level has noted that in the reporting period there have been some remarkable experiences on transboundary EIA. The most important case has been the gas pipeline Nord Stream crossing the Baltic Sea. As far as the routing of this pipeline is located in the German territorial waters and the German Exclusive Economic Zone (EEZ) Germany has been Party of origin. For other sections of the routing Germany has been one of the affected Parties.

26. *Does your country object to the inclusion of the above list of transboundary EIA procedures in a compilation of such procedures to be made available on the website of the Convention? (Indicate “yes” if you object.)*

No, but see answer to question 25.

27. *Provide information and explanations on the average duration of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

It is difficult to provide any valid information on the average duration of transboundary EIA procedures. In fact each development consent procedure including a domestic and transboundary EIA is different depending on a lot of factors like for example

- the type and location of the project,
- the specific kinds of impacts the project is likely to have on the environment of the affected Party,
- the duration of the pre-request preparation phase of the project,
- a foregoing transboundary SEA in which certain environmental impacts of the project have already been assessed
- the design and compatibility of the national legislation in both Parties and the existence of a bilateral agreement,
- the capacity and experience of the competent authorities in both Parties with regard to transboundary EIA procedures,
- the procedural stage at which the affected Party will be involved (already during the scoping phase or later),
- the need for extensive consultations,
- the implications of different languages in both Parties etc. .

EXPERIENCE IN THE TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE DURING THE PERIOD 2010 - 2012

28. *If your country has had practical experience in the transboundary EIA procedure during the reporting period, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

For Germany transboundary EIA has proven to be a useful tool. It helps to draw the attention to environmental impacts in areas which for the Party of origin are usually more or less out of scope. As far as the Federal level is informed there have been cases in which as a result of transboundary EIA procedures certain control mechanisms have been established in order to ensure that specific environmental requirements or conditions laid down in the decision for development consent will be fulfilled.

29. *Please share with other Parties your country’s experience of using the Convention in practice. In response to each of the questions below, either provide one or two practical examples or describe your country’s general experience. You might also include examples of lessons learned in order to help others:*

- a. *Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How does your country determine how much information to include in the EIA documentation?*

The Federal Ministry for the Environment recommends that the EIA documentation should preferably include a separate chapter on transboundary issues summarizing the relevant information necessary to identify and assess the transboundary effects of the proposed project or activity. This specific chapter should also be translated into the language of the affected Party (see the answer to question 13 e). Thus the EIA documentation will allow a better understanding of the affected Party on the possible transboundary implications of the project.

In general the EIA documentation must include all the relevant information needed for the identification and assessment of the impacts of the proposed project on the environment domestically and on the territory of the affected Party.

- b. *Translation is not addressed in the Convention. How has your country addressed the question of translation? What does your country usually translate? What difficulties has your country experienced relating to translation and interpretation, and what solutions has your country applied?*

Germany as Party of origin provides according to Article 9a paragraph 2 and Article 8 paragraph 3 of the Federal EIA Act at least a translation of the non-technical summary of the EIA-documentation and of other parts of the EIA documentation required by the affected Party to identify and assess the main transboundary effects on the environment of its territory (see the answer to question 13 e). Furthermore, translated parts of the final decision will be submitted to the affected Party if the principles of reciprocity and equality are fulfilled (see the answer to question 17 c). The agreement between Poland and Germany contains a detailed provision on translations (see the answer to question 19, subpara (a)).

- c. *How has your country organized transboundary public participation in practice? As Party of origin, has your country organized public participation in affected Parties and, if so, how? Has your country experienced difficulties with the participation of its public or the public of another Party (e.g., have there been complaints from the public about the procedure)?*

See the answers to questions 25 and 12 – 14.

In the reporting period, as far as the Federal level is informed, there have been no considerable difficulties in practice with regard to public participation. It has to be noted however, that for the competent authority in certain cases it has proven to be quite a challenge to ensure that documents and comments will have to be translated.

- d. *Describe any difficulties that your country has encountered during consultations, for example over timing, language and the need for additional information. As an affected Party, have consultations under article 5 supported the prevention, reduction or control of possible significant transboundary environmental impacts?*

In the reporting period, as far as the Federal level is informed, for Germany as Party of origin or as affected Party there have been no considerable difficulties regarding the formal consultation phase according to Article 5 of the Convention. In fact, consultations have proven to be a useful instrument to support the prevention, reduction or control of possible significant transboundary environmental impacts (see also the answer to question 28). In some cases consultations under Article 5 of the Convention have helped to overcome misunderstandings and to find reasonable solutions on certain problems acceptable for both Parties.

It must be stated however, that the term "consultation" may raise confusion as it is also used for the procedure under Article 4 of the Convention (comments of the

public and of authorities of the affected Party on the EIA documentation). Therefore it should be considered to use the term "consultation" only in connection with the procedure according to Article 5 of the Convention.

- e. *Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public;*

See the answer to question 17 c.

- f. *Has your country carried out post-project analyses and, if so, on what kinds of project?*

See the answers to questions 18 b and 25.

- g. *Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your country's experiences describing, for example, means of cooperation (e.g., contact points, joint bodies, bilateral agreements), institutional arrangements, and how practical matters are dealt with (e.g., translation, interpretation, transmission of documents, etc.);*

See the answers to questions 5 and 25.

Germany regards the application of the Espoo procedure on the project of the gas pipeline Nord Stream as a quite successful example. The project is in operation since 2011 (first pipe) and 2012 (second pipe). As this example has already been discussed intensively in the bodies under the Convention - see for example seminar of the Espoo Working Group in May 2009 in Geneva - it should not be necessary to add further information in the framework of this report.

In June 2010 the Espoo procedure on the fixed link across the Fehmarnbelt was initiated. After a promising start however things seem to get more difficult in the meantime. Several problems arising inter alia from different legal systems still have to be solved-

- h. *Name examples of good practice cases, whether complete cases or good practice elements (e.g., notification, consultation or public participation) within cases. Would your country like to introduce a case in the form of a Convention's "case study fact sheet"?*

See the answer to question 25.

- i. *Identify the most common means of applying the Convention (e.g., through focal points, joint bodies, multilateral agreements).*

There is not one answer to this question. Germany has nine neighbouring countries onshore. Therefore the system of EIA cooperation has been established by different means depending inter alia on the specific conditions and legal requirements of the neighbouring countries involved.

Like Germany most of the neighbouring countries are Member States of the European Union which implies that a close EIA cooperation is already taking place on this level. With some of these countries (for example Poland and the Czech Republic) joint bodies for cooperation on environmental issues have been established. Furthermore several bilateral agreements or other kinds of bilateral arrangements on transboundary EIA have been settled (see the answer to question

19). Last but not least there are also different kinds of cooperation between points of contact.

CO-OPERATION BETWEEN PARTIES IN 2010–2012

30. *Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries? If so please specify.*

Such difficulties have to be solved on a case-by-case-basis, if no bilateral agreement or other arrangement exists.

During the negotiations of the Polish-German Agreement on Transboundary EIA (2006/2007) and its update (2013) many questions based on the different legal systems have been discussed in order to find common solutions. According to this experience the elaboration of a bilateral agreement or any other form of bilateral arrangement seems to be the best approach to be prepared if in certain cases difficulties should arise which have to be managed.

Regarding the above mentioned project of the Nord Stream gas pipeline the question of different legal systems in nine countries involved (8 Parties plus 1 Signatory to the Convention and at the same time 8 EU Member States plus 1 Non-EU Country) was one of the most important and difficult issues. In this case the countries involved agreed for example

- as regards the question of time frames for comments, to follow the national procedure with the longest time-frame,
- as regards the question of public participation during the scoping phase, that in all countries participation of the public will have to be carried out.

EXPERIENCE IN USING THE GUIDANCE IN 2010–2012

31. *Has your country used in practice the following guidance, adopted by the Meeting of the Parties and available online? Describe your country's experience with using these guidance documents and how they might be improved or supplemented.*

a. *Guidance on public participation in EIA in a transboundary context (ECE/MP.EIA/7);*

The Guidance was distributed to other Federal Ministries and to the competent Ministries of the Länder. During the current reporting period no experience has been reported back to the Federal level.

b. *Guidance on subregional cooperation (ECE/MP.EIA/6, annex V, appendix);*

The answer to the question 31 (a) does also apply here.

c. *Guidelines on good practice and on bilateral and multilateral agreements (ECE/MP.EIA/6, annex IV, appendix).*

In the last report it has already been pointed out that the Guidelines have been translated into German language by Austria, Germany and Switzerland. The Federal German Ministry for the Environment has put the Guidelines on its website and distributed them to other Federal Ministries, Länder Ministries, relevant competent authorities, stakeholders and to the public. As far as the Federal level is informed

they have still been in use during the current reporting period with positive response by authorities that had to carry out transboundary EIA procedures for the first time.

CLARITY OF THE CONVENTION

32. *Has your country had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear?*

See the answer to question 25.

The legal implementation of the Espoo Convention caused no relevant difficulties as due to Article 7 of the EU EIA Directive transboundary EIA had already been a common instrument in Germany for quite a long time.

The Federal level has not received any information that during the practical application of the Convention in the reporting period any difficulties or any weaknesses were revealed. It has to be noted however that the procedure for consultation laid down in Article 5 does not seem very effective. From a practical point of view consultations should only be carried out if the affected Party asks for them. The Party of origin has no reason to offer consultations until the affected Party signals that it wishes to enter into consultations (see also the answer to question 15 b).

AWARENESS OF THE CONVENTION

33. *Has your country undertaken activities to promote awareness of the Convention among stakeholders (e.g., the public, local authorities, consultants and experts, academics, investors)? If so, describe them.*

The EIA experts of the Federal Ministry for Environment and of the Ministries for Environment of the German Länder regularly exchange information on all relevant EIA issues including transboundary EIA. The work under the Convention is always an agenda item in these meetings. The Guidance and Guideline documents have been distributed. On the web-site of the Federal Ministry for Environment various information on EIA and transboundary EIA, including a link to the web-site of the Convention, is available.

The work and the conferences of the private organization "German EIA society" receive support in various ways. Other ways of informing NGOs, academics and consultants are regularly used.

34. *Does your country see a need to improve the application of the Convention in your country and, if so, how does it intend to do so?*

We see no need for general legal improvements. New kinds of projects with possible significant effects on the environment (e.g. CCS) will be integrated into Annex I of the Federal EIA Act as appropriate or required by EU law. Consequently these projects then will also become subject to transboundary EIA (see also answer to question 6).

As regards the practical application of the Convention in Germany a research project (Manual for competent German authorities on transboundary EIA) is currently carried out with a view to promote best practice (see the answer to question 21).

SUGGESTED IMPROVEMENTS TO THE REPORT

Please provide suggestions for how this report may be improved.

- The questionnaire seems to some extent overburden, complicated and hard to handle (too sophisticated, too many details, too many questions and sub-questions). In some parts of the report optional answers for a simple yes/no could be sufficient.
- There are overlaps between various questions. For example questions on public participation are raised in several chapters (e.g. General Provisions, Notification, Preparation of EIA documentation) and could be merged.
- The meaning and the scope of some questions are not clear. For example questions 15 a – c seem to cover more or less the same issue and could be merged.
- It should be considered if questions covering the view as Party of origin and questions on the same issue covering the view as affected Party could be combined.

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