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## **Questionnaire for the report of Germany on the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context in the period 2013–2015**

### **Information on the focal point for the Convention**

1. Name and contact information:

Julia Paul

Division G I 2, Building and Urban Development Legislation, Environmental Assessment Legislation

Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety

Stresemannstraße 128-130 / D-10117 Berlin

Telephone: +49 30 18 305 6429

Fax: +49 03 18 305 3393

E-mail: Julia.paul@bmub.bund.de

### **Information on the point of contact for the Convention**

2. Name and contact information (if different from above):

### **Information on the person responsible for preparing the report**

3. Country: Germany

4. Surname: Paul

5. Forename: Julia

6. Institution: Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety

7. Postal address: Stresemannstraße 128-130 / D-10117 Berlin

8. E-mail address: Julia.paul@bmub.bund.de

9. Telephone number: +49 03 18 305 6429

10. Fax number: +49 03 18 305 3393

11. Date on which report was completed: 31.03.2016

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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.

Please do not reproduce the text of the legislation itself but summarize and explicitly refer to the relevant provisions transposing the Convention text (e.g., EIA Law of the Republic of ..., art. 5, para. 3, of Government Resolution No. ..., para. ... item...)

#### Article 1

##### Definitions

I.1. Is the definition of impact for the purpose of the Convention the same in your legislation as in article 1?

- (a) **Yes X**
- (b) Yes, with some differences (please provide details):
- (c) No (please provide the definition):
- (d) There are no definitions of impact in the legislation

Your comments:

I.2. Is the definition of transboundary impact for the purpose of the Convention the same in your legislation as in article 1? Please specify each below.

- (a) **Yes X**
- (b) Yes, with some differences (please provide details):
- (c) No (please provide the definition):
- (d) There are no definitions of transboundary impact in the legislation

Your comments:

I.3. Please specify how major change is defined in your national legislation:

*A major change is an alteration or extension of a project if*

- 1. size or capacity values for projects which require an EIA are themselves reached or exceeded by the alteration or extension, or*
- 2. a screening reveals that the alteration or extension is capable of having significant adverse environmental impacts.*

*(See Article 3e paragraph 1 of the Federal German EIA Act)*

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I.4. How do you identify the public concerned? Please specify (more than one option may apply):

- (a) **Based on the geographical location of the proposed project X**
- (b) By making the information available to all members of the public and letting them identify themselves as the public concerned
- (c) **By other means** (please specify):

*According to Article 2, paragraph 6 of the Federal German EIA Act the “affected public” shall refer to any individual whose interests are affected by the plan or a programme in question; this shall also include associations whose activities as described in their statutes are affected by the plan or a programme, including associations which promote environmental protection.*

Your comments:

## **Article 2**

### **General provisions**

I.5. Provide legislative, regulatory, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2, para. 2):

- (a) Law on EIA:
- (b) EIA provisions are transposed into another law(s) (please specify):
- (c) Regulation (please indicate number/year/name):
- (d) Administrative (please indicate number/year/name):
- (e) Other (please specify):

Your comments:

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

- *German Federal EIA Act as published in the announcement of 24 February 2010 (Federal Law Gazette I p. 94) 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).*

*Environmental impact assessments represent an integral part of procedures applied by authorities when deciding upon the approval of projects. The legislation concerning the procedures of these projects sometimes 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).*

I.6. Please describe any differences between the list of activities in your national legislation and appendix I to the Convention, if any:

- (a) **There is no difference; all activities are transposed in the national legislation as is X**

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(b) It differs slightly  (please specify):

Your comments:

I.7. Identify the competent authority/authorities responsible for carrying out the EIA procedure in your country (please specify):

(a) There are different authorities at national, regional, local levels

(b) They are different for domestic and transboundary procedures

(c) Please name the responsible authority/authorities:

(d) There is no single authority responsible for the entire EIA procedure:

Your comments:

*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.*

*Environmental impact assessments represent an integral part of procedures applied by authorities when deciding upon the approval of projects. Apart from a few exceptions, the authorities of the German States (Länder) are responsible for these procedures. Usually these are authorities on the local or regional level. According to the Federal EIA Act, the transboundary EIA procedure is integrated into the national EIA procedure. The responsible authority 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.*

I.8. Is there an authority in your country that collects information on all the transboundary EIA cases? If so, please name it:

(a) **No X**

(b) Yes  (please specify):

Your comments:

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I.9. How does your country, as Party of origin and as affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to the Party of origin's public, as required in article 2, paragraph 6 (please explain):

*The German provisions on transboundary EIA are characterised by the principle that the public of the Party affected must have the same opportunities to comment as does the public in the Party of origin. This principle is explicitly laid down in the bilateral agreements with Poland and the Netherland. In detail, it is enacted through the following provisions and practices:*

- In accordance with section 9a of the Environmental Impact Assessment Act, the competent authority of the State of origin uses its best efforts to ensure that the project is announced in a suitable manner in the affected State, and the public in the affected State is informed of all aspects of the procedure which are important for its participation. More detailed provisions can be found in the bilateral agreements mentioned above. Article 4 of the German-Polish Agreement for instance contains a concrete provision on the documents and information the affected State has to publish in order to enable an effective participation of its public in the transboundary EIA. In order to ensure that the public of the affected State will be informed sufficiently, the competent authority of the affected Party has to inform the Party of origin when the documents in question have been displayed.*
- In accordance with the German-Dutch Declaration, the competent authorities of both countries have to agree on the details taking account of the domestic legal provisions of the State of origin as to how the participation procedure has to be carried out. This may also include the question of how the project will be publicized in the affected State.*
- The bilateral agreements provide that the notification, the EIA documentation, at least its summary, and other information relevant to the transboundary EIA have to be translated into the language of the affected Party. Furthermore all the information required for the affected Party in order to make out if significant adverse transboundary environmental impacts may occur and to submit comments have to be translated. In cases in which Germany is the State of origin, the competent German authority may require the developer to provide the translation of the documents in accordance with section 9a subsection (2) of the Environmental Impact Assessment Act.*
- The public of the affected Party may submit its comments in its own language. It is ensured at hearings (for instance by interpreters) that objecting parties of the affected State can make themselves understood in their own language.*
- The periods within which the affected Party must express its desire to participate in the transboundary EIA are established by the competent authority of the State of origin in individual cases. In accordance with section 8 subsection (1), sentence 1, of the Environmental Impact Assessment Act, the period must be "reasonable". In relations with Poland, the wish to participate in accordance with the German-Polish Agreement must be communicated at the latest 30 days after the notification has been received; this provision is also used by the competent German authorities as an orientation in relations with other states.*

### **Article 3 Notification**

I.10. As Party of origin, when do you notify the affected Party (art. 3, para. 1)? Please specify:

- (a) **During scoping, (if possible before scoping) X**

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- (b) When the EIA report has been prepared and the domestic procedure started
- (c) After finishing the domestic procedure
- (d) At other times (please specify):

Your comments:

*In accordance with the applicable statutory provision (section 8, sentence 1, of the Environmental Impact Assessment Act), the state which might be affected is to be informed of the project "in good time". The authorities of the affected State are to be given an opportunity to make a statement at the same time and to the same extent as the German authorities (section 8 subsection (1), sentence 3, of the Environmental Impact Assessment Act).*

*In practice, where possible the other State is informed in good time in order to be able to take part in the "scoping".*

*Germany considers it as good practice for the affected Party to be informed by the Party of Origin already at the stage of scoping in order to give him the opportunity to participate already in this part of the procedure*

*. In several cases in the past years Germany has been informed at the stage of scoping.*

*In any case he notification takes place before the domestic public participation procedure begins.*

I.11. Please define the format of notification:

- (a) It is the format as decided by the first meeting of the Parties in its decision I/4 (ECE/MP.EIA/2, annex IV, appendix)
- (b) The country has its own format  (please attach a copy)
- (c) **No official format used X**

Your comments:

*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. However, in relation to Poland and the Netherlands the respective bilateral agreements on Transboundary EIA include certain formats which are recommended for notification.*

I.12. As a Party of origin, what information do you include in the notification (art. 3, para. 2)? Please specify (more than one option may apply):

- (a) **The information required by article 3, paragraph 2 X**
- (b) **The information required by article 3, paragraph 5 X, (in some cases, not obligatory)**
- (c) Additional information (please specify):

Your comments:

*In accordance with Article 8 of the Environmental Impact Assessment Act, the State that may be affected is to be informed with the aid of suitable documentation. This may be the information submitted by the applicant for the scoping or documents derived from the project approval application.*

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*According to Article 3 paragraph 1 of the German-Polish Agreement, information is to be provided in accordance with Art. 3 paragraph 2 of the Espoo Convention, including information on the nature, process and state of procedure in which the EIA will be carried out. According to Article 3 paragraph 6 of the German-Polish Agreement notification may also include the information required by Article 3 paragraph 5 of the Espoo Convention as well as which authorities of the State of origin will participate in the EIA procedure. If a scoping is carried out, in accordance with Article 3 paragraph 2 of the Agreement, suitable information is to be provided on the planned project, as well as on procedural aspects.*

I.13. As a Party of origin, does your national legislation contain any provision on receiving a response to the notification from the affected Party in a reasonable time frame (art. 3, para. 3, “within the time specified in the notification”)? Please specify:

- (a) National legislation does not cover the time frame
- (b) **Yes, it is indicated in the national legislation**  (please indicate the time frame): *According to the German-Polish Agreement (Article 2 para. 3) there is a time frame of 30 days indicated.*
- (c) It is determined and agreed with each affected Party case by case in the beginning of the transboundary consultations  (please indicate the average length in weeks):

Your comments:

*It is the obligation of the competent authority to specify a reasonable time frame for a response considering inter alia bilateral practice. The time frame of 30 days stated in the German-Polish Agreement is a guideline which is often used as a reasonable time frame.*

Please specify the consequence if a notified affected Party does not comply with the time frame, and the possibility of extending a deadline:

*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.*

I.14. How do you inform the public and authorities of the affected Party (art. 3, para 8)? Please specify:

- (a) **By informing the point of contact to the Convention listed on the Convention website<sup>1</sup>** X
- (b) **Other (please specify):** X

Your comments:

*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*

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<sup>1</sup> List available from [http://www.unece.org/env/eia/points\\_of\\_contact.htm](http://www.unece.org/env/eia/points_of_contact.htm).

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*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. See also answer to question I.9.*

I.15. On what basis is the decision made to participate (or not) in the transboundary EIA procedure as affected Party (art. 3, para. 3)? Please specify:

- (a) Notified ministry/authority of the affected Party responsible for EIA decides on its own based on the documentation provided by Party of origin
- (b) **Based on the opinions of the competent authorities of the affected Party**
- (c) Based on the opinions of the competent authorities and that of public of the affected Party
- (d) Other (please specify):

Your comments:

*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.*

I.16. If the affected Party has indicated that it intends to participate in the EIA procedure, how are the details for such participation agreed, including the time frame for consultations and the deadline for commenting (art. 5)? Please specify:

- (a) **Following the rules and procedures of the Party of origin X**
- (b) Following the rules and procedures of the affected Party
- (c) **Other (please specify): Art. 7 of the German-Polish Agreement**

Your comments:

*The procedure of consultations in Art. 5 of the Espoo Convention is implemented in German law as follows:*

*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.*

*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*



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*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.*

#### **Article 4**

### **Preparation of the environmental impact assessment documentation**

I.17. How do you ensure sufficient quality of the EIA documentation as Party of origin? Please specify:

(a) **The competent authority checks the information provided and ensures it includes all information required under appendix II as a minimum before making it available for comments X**

(b) By using quality checklists

(c) There are no specific procedures or mechanisms

(d) Other (please specify):

Your comments:

I.18. How do you determine the relevant information to be included in the EIA documentation in accordance with article 4, paragraph 1? Please specify (more than one option may apply):

(a) **By using appendix II X**

(b) **By using the comments received from the authorities concerned during the scoping phase, if applicable X**

(c) **By using the comments from members of the public during the scoping phase, if applicable X**

(d) As determined by the proponent based on its own expertise

(e) By using other means (please specify):

Your comments:

I.19. How do you determine "reasonable alternatives" in accordance with appendix II, paragraph (b)?

(a) **On a case-by-case basis X**

(b) As defined in the national legislation (please specify):

(c) Other (please specify):

Your comments:

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*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.*

## **Article 5**

### **Consultations on the basis of the environmental impact assessment documentation**

#### **(a) Public participation**

I.20. How can the public concerned express its opinion on the EIA documentation of the proposed project (art. 5)? Please specify (more than one option may apply):

*As Party of origin*

- (a) **By sending comments to the competent authority/focal point X**
- (b) **By taking part in a public hearing X**
- (c) Other (please specify):

*As affected Party*

- (d) **By sending comments to the competent authority/focal point X**
- (e) **By taking part in a public hearing**

*Comment: There were two cases in the past, where the German public could take part in public hearings, which were organized by the Party of origin.*

- (f) Other (please specify):

Your comments:

I.21. Please indicate whether your national EIA legislation requires the organization of a public hearing on the territory of the affected Party in cases where your country is the country of origin:

- (a) Yes
- (b) **No X**

Your comments:

*The public of the affected State can participate in the same way as the domestic public (see Question I.9 above).*

I.22. Please indicate whether your national EIA legislation requires the organization of public hearings in cases where your country is the affected Party:

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- (a) Yes  
(b) **No X**

Your comments:

*There is no legal obligation for organizing a public hearing in such cases. In the past there have been public hearings in Germany (where Germany were the affected party), but these were organized by the Party of origin (Hungary and Slovakia).*

**(b) Consultations**

I.23. Does your national EIA legislation have any provision on the organization of transboundary consultations (expert, joint bodies, etc.) between the authorities of the concerned Parties? Please specify:

- (a) **Yes, it is obligatory X**   
(b) No, it does not have any provision on that   
(c) It is optional  (please specify):

Your comments:

*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.*

**Article 6  
Final decision**

I.24. Please indicate all points below that are covered in a final decision related to the implementation of the planned activity (art. 6, para. 1):

- (a) **Conclusions of the EIA documentation X**  
(b) **Comments received in accordance with article 3, paragraph 8, and article 4, paragraph 2 X**  
(c) **Outcome of the consultations as referred to in article 5 X**  
(d) **Outcomes of the transboundary consultations X**  
(e) **Comments received from the affected Party X**  
(f) **Mitigation measures X**  
(g) Other (please specify):

I.25. 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):

- (a) **Yes X**  
(b) No

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Your comments:

I.26. Is there any regulation in the national legislation of your country that ensures the implementation of the provisions of article 6, paragraph 3?

(a) **No X**

(b) Yes  (please specify):

Your comments: *There is no regulation in the lex specialis, but in the common German administrative law is stated, that in cases of new circumstances the competent authority can prove the decision again. If the result then differs from the former decision, the authority is able to withdraw the decision.*

I.27. Do all activities listed in appendix I (items 1-22) require a final decision to authorize or undertake such an activity?

(a) **Yes X**

(b) No  (please specify those that do not):

Your comments:

I.28. For each type of activity listed in appendix I that does require a final decision, please indicate the legal requirements in your country that identify what is regarded as the “final decision” to authorize or undertake such an activity (art. 6 in conjunction with art. 2, para. 3), and the term used in the national legislation to indicate the final decision in the original language:

Your comments:

*A “decision” within the meaning of the German EIA Act can be*

- 1. a concession [Bewilligung], permit [Erlaubnis], licence [Genehmigung], plan approval [Planfeststellungsbeschluss] or other official decision on the approval of projects that is taken by authorities within the framework of an administrative procedure, with the exception of notification procedures,*
- 2. routing determinations [Linienbestimmungen] and decisions in certain preliminary procedures,*
- 3. resolutions pursuant to Article 10 of the Federal Building Code [Baugesetzbuch] on the preparation of, alterations to or additions to zoning plans which are intended to establish the admissibility of certain projects, and resolutions pursuant to Article 10 of the Federal Building Code on zoning plans which replace plan approvals for projects within the meaning of Annex 1.*

## **Article 7**

### **Post-project analysis**

I.29. Is there any provision regarding post-project analysis in your national EIA legislation (art. 7, para. 1)?:

(a) No

(b) **Yes X**  (please specify the main steps to be taken and how the results of it are communicated):

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Your comments:

*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.*

*However, in relations with Poland, Article 9 of the German-Polish Agreement also regulates the analysis subsequent to the implementation of the project. Accordingly, the Parties may determine by agreement whether, and if so to what degree, an analysis is to be implemented after the project has been carried out, if the decision on the planned project or the domestic legal provisions provide for the possibility to carry out an analysis subsequent to implementation.*

## **Article 8**

### **Bilateral and multilateral cooperation**

#### **(a) Agreements**

I.30. Does your country have any bilateral or multilateral agreements based on the Convention (art. 8, appendix VI)?:

(a) No

(b) **Yes X** Please specify with which countries:

*Germany has two bilateral agreements and a trilateral agreement containing additional provisions on transboundary environmental impact assessments:*

*-Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Poland on Environmental Impact Assessments in a Transboundary Context (2006)*

*-Joint Declaration on Cooperation in the Implementation of Transboundary Environmental Impact Assessments as well as Transboundary Strategic Environmental Assessments in the German-Dutch Border Area between the Ministry of Infrastructure and the Environment of the Netherlands and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety of the Federal Republic of Germany (2014)*

*-Handbook of the Franco-German-Swiss Conference of the Upper Rhine on Transboundary Participation in Projects, Plans and Programmes with an Environmental Relevance (2010)*

If publicly available, please also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.

I.31. What issues do these bilateral agreements cover (appendix VI)? (more than one option may apply):

(a) Specific conditions of the subregion concerned

(b) **Institutional, administrative and other arrangements X**

(c) Harmonization of the Parties' policies and measures

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(d) Developing, improving, and/or harmonizing methods for the identification, measurement, prediction and assessment of impacts, and for post-project analysis

(e) Developing and/or improving methods and programmes for the collection, analysis, storage and timely dissemination of comparable data regarding environmental quality in order to provide input into the EIA

(f) Establishment of threshold levels and more specified criteria for defining the significance of transboundary impacts related to the location, nature or size of proposed activities

(g) Undertaking joint EIA, development of joint monitoring programmes, intercalibration of monitoring devices and harmonization of methodologies

(h) **Other, please specify X:**

Your comments:

- *More detailed, practical regulations with regard to the relatively abstract and general regulations at statutory level*

- *translation obligations are conclusively clarified*

- *Determination of the competent authorities makes procedures simpler and faster.*

- *In the negotiations on the content and the structure of the agreement, a greater mutual understanding of the legal provisions, the authority structure and procedural aspects emerges, each of which are important in order to effectively implement the transboundary procedures.*

- *Forms such as those contained in the German-Polish Agreement lead to simpler, more transparent and rapid procedures.*

**(b) Procedural steps required by the national legislation**

I.32. Please describe the steps required in your national legislation for a transboundary EIA procedure:

(a) When EIA in a transboundary context is part of a domestic EIA procedure:

- *If a project is capable of having significant impacts on the protected assets in another state or if such other state so requests, the competent authority in Germany has to inform the competent authority nominated by the other state about the project with the aid of suitable documentation and ask for a reply within a reasonable period as to whether participation is desired.*
- *If participation is considered necessary, the competent German authority shall give the nominated competent authority of the other state and any other authorities of the other state specified by the latter authority an opportunity to make a statement on the basis of the documentation at the same time and to the same extent as the own authorities to be involved.*
- *The public of the affected state may participate in the procedure pursuant to Article 9 paragraphs (1) to (1b) and Article 9 paragraph (3) of the German EIA Act. The competent German authority shall use its best efforts to procure inter alia that*
  1. *the project is announced in a suitable manner in the other state,*
  2. *details are given of the authority to which the affected public may submit comments in the procedure pursuant to Article 9 paragraphs (1) or (3),*

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*The competent authority may demand that the developer provide it with a translation of the summary pursuant to Article 6 paragraph (3) sentence 2 and, where necessary, of further project details of relevance to transboundary public participation, especially about transboundary environmental impacts, insofar as the requirements for the principles of reciprocity and equivalence are satisfied in relation to the other state.*

- *Insofar as is necessary or the other state so requests, the competent highest Federal and Länder authorities shall within an agreed reasonable period of time hold consultations with the other state, in particular about the transboundary environmental impacts of the project and the measures to avoid or reduce them.*
- *The competent authority shall inform the participating authorities in the other state about the decision on the approval or rejection of the project, in each case together with explanatory memorandum and information on legal remedies. The authority may enclose a translation of the approval decision.*

(b) When EIA in a transboundary context is a separate procedure (please provide of how this procedure links to the domestic procedure and whether the steps are different): *see above*.

Alternatively, this question can be answered or supported by providing a schematic flowchart showing these steps.

Your comments:

.33. Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for joint cross-border projects (e.g., roads, pipelines)?

- (a) **No X**
- (b) Yes  (please specify):
- (i) Special provisions:
- (ii) Informal arrangements:

Your comments:

I.34. Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for nuclear power plants (NPPs)?

- (a) **No X**
- (b) Yes (please specify):
- (i) Special provisions: -
- (ii) Informal arrangements:

Your comments: *The German Atomic Energy Act (Atomgesetz - AtG) and the German Nuclear Licensing Procedure Ordinance (Atomrechtliche Verfahrensverordnung - AtVfV) are special provisions for nuclear power activities, but the provisions have the same content as the provisions of the German EIA act.*

## Part two

### Practical application during the period 2013–2015

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. 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.

II.1. Does your country object to the information on transboundary EIA procedures that you provide in this section being compiled and made available on the website of the Convention? Please specify (indicate "yes" if you object):

(a) Yes

(b) No

Your comments:

*No, but see answer to question II.2.*

## 1. Experience in the transboundary environmental impact assessment procedure during the period 2013–2015

### Cases during the period 2013–2015

II.2. If your country's national administration has a record 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 them in the tables II.2 (a) and II.2 (b) below (adding additional rows as needed).

Table II.2 (a)

#### Transboundary EIA procedures: As Party of origin

Name of case	Starting date (date notification sent)	Length of the main steps in months			Final decision (date of issuing, if information is available)
		Submission of the environmental report	Transboundary consultations (expert), if any	Public participation, including public hearing, if any	
1.					
2.					
3.					
4.					
...					

Your comments:



The Federal Government 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.

Table II.2 (a)

**Transboundary EIA procedures: As affected Party**

Name of case	Starting date (date notification sent)	Length of the main steps in months			Final decision (date of issuing, if information is available)
		Submission of the environmental report	Transboundary consultations (expert), if any	Public participation, including public hearing, if any	
1.					
2.					
3.					
4.					
...					

Your comments:

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.

II.3. Translation is not addressed in the Convention. How has your country addressed the question of translation? What difficulties has your country as Party of origin and affected Party experienced relating to translation and interpretation, and what solutions has your country applied? (Please specify, among others, the parts and type of the documentation translated, language, costs, etc.):

*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. Furthermore, translated parts of the final decision will be submitted to the affected Party if the principles of reciprocity and equality are fulfilled.*

*The bilateral agreements between Germany and Poland and Germany and the Netherlands furthermore provide that the notification be translated into the language of the affected Party. Of the EIA documentation, at least its summary and other information relevant to the transboundary EIA are to be translated. All the information is to be translated which the affected Party needs in order to be able to*

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*assess what significant adverse transboundary environmental impacts may occur in the concrete case, and to submit comments on it. In those cases in which Germany is the State of origin, the competent German authority may require the developer to provide the translation of the documents in accordance with section 9a subsection (2) of the Environmental Impact Assessment Act.*

- (a) As Party of origin:
- (b) As affected Party:

II.4. Describe any difficulties that your country has encountered during transboundary public participation (expert consultation, public hearing, etc.), including on issues of timing, language and the need for additional information:

*See the answers to questions II.2.*

*In the reporting period, as far as the Federal Government 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.*

II.5. Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects or that of an NPP?:

- (a) Yes
- (b) **No X**

*Comments: The transboundary part of the Nord Stream II project just started and will be hopefully a successful joint cross-border project in the future.*

II.6. If you answered yes to question II.5, please provide information on your country's experiences describing, for example, means of cooperation (e.g., contact points, joint bodies, bilateral agreements, special and common provisions, etc.), institutional arrangements, and how practical matters are dealt with (e.g., translation, interpretation, transmission of documents, etc.):

- (a) For joint cross-border projects:
- (b) For NPPs:

II.7. Name examples of good practice cases, whether complete cases or good practice elements (e.g., notification, consultation or public participation) within cases:

*See the answer to question II.2.*

II.8. Would your country like to introduce a case in the form of a Convention "case study fact sheet"?

- (a) **No X**
- (b) Yes  (please indicate which cases):

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II.9. Has your country carried out post-project analyses in the period 2013–2015:

(a) **No X**

*See the answer to question II.2.*

(b) Yes  (please indicate which projects, along with the challenges in implementation and any lessons learned):

## 2. Experience in using the guidance in 2013–2015

II.10. Has your country used in practice the following guidance, adopted by the Meeting of the Parties and available online?:

(a) Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7):

No

Yes  (please provide details):

Your experience with using this guidance:

*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.*

Your suggestions for improving or supplementing the guidance:

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

No

Yes  (please provide details):

Your experience with using this guidance:

*The answer to the question II.10 (a) does also apply here.*

Your suggestions for improving or supplementing the guidance:

(c) Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8):

No

Yes  (please provide details):

Your experience with using this guidance:

*The answer to the question II.10 (a) does also apply here.*

Your suggestions for improving or supplementing the guidance:

## 3. Clarity of the Convention

II.11. Has your country had difficulties implementing the procedures defined in the Convention, either as Party of origin or as affected Party, because of a lack of clarity of the provisions?:

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No

Yes  (please indicate which provisions and how they are unclear):

*See the answer to question II.2.*

*The legal implementation of the Espoo Convention caused no relevant difficulties.*

*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 consultation. In consideration of the very difficult subject "translation" which is a point in most of the cases with transboundary context, a (clear) regulation could help a lot in practice.*

#### **4. Suggested improvements to the report**

II.12 Please provide suggestions for how this report may be improved.

*Germany appreciates that the questionnaire 2013-2015 is much more structured than the previous one.*