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## **Questionnaire for the report of Republic of Poland 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:  
Katarzyna Twardowska  
General Directorate for Environmental Protection  
ul. Wawelska 52/54  
00-922 Warszawa  
Phone: +48 22 36 92 105  
e-mail: katarzyna.twardowska@gdos.gov.pl

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

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

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

3. Country: Poland
4. Surname: Toryfter-Szumańska
5. Forename: Dorota
6. Institution: General Directorate for Environmental Protection
7. Postal address: ul. Wawelska 52/54, 00-922 Warszawa
8. E-mail address: dorota.szumanska@gdos.gov.pl
9. Telephone number: + 48 22 36 92 158
10. Fax number: +48 22 57 92 126
11. Date on which report was completed: 30.03.2016

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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
- (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
- (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:

Since the term of "likely significant impact" has not been defined in the regulations, nor is it universal with reference to individual components of the environment, this term should be considered in each case in relation to the characteristics of the planned project or activity and characteristics of the environment and other determinants of importance for the area covered by the impact.

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
- (b) By making the information available to all members of the public and letting them identify themselves as the public concerned

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(c) By other means (please specify): Public concerned is identify by the spatial scope of environmental effects (significance, extent, accumulation, etc.) of the proposed activities.

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: The Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment - hereinafter *EIA Act of Law*.

(b) EIA provisions are transposed into another law(s) (please specify): Polish-German Agreement on transboundary EIA, Polish-Lithuanian Agreement on transboundary EIA

(c) Regulation (please indicate number/year/name): The Regulation of the Council of Ministers of 9 November 2010 on types of projects likely to have significant effects on the environment (O.J.2010.213.1397) – hereinafter *EIA Regulation*

(d) Administrative (please indicate number/year/name):

(e) Other (please specify):

Your comments: The elaboration of further bilateral agreements are conducted with Germany (extending and updating of existing agreement), Slovakia and Belarus.

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

(b) It differs slightly  (please specify):

Your comments: Appendix I is fully transposed into national legislation. The reflection of the appendix I was placed in the Regulation of the Council of Ministers on types of projects to have significant effects on the environment. This regulation is also in full compliance with annex I and II of the EU Directive on EIA.

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: The General Director for Environmental Protection, The Regional Director for Environmental Protection, The Director of the Regional Directorate of State Forests, The head of the county administration, The head of the local administration and the mayor of a town/city

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

Your comments: The General Director for Environmental Protection – conducts national EIA and issues a decision on the environmental conditions in the case of projects related to the nuclear energy and the accompanying projects. The Regional Director for Environmental

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Protection – conducts national EIA and issues a decision on the environmental conditions in the case of certain types of projects that may always have a significant impact on the environment such as roads, railway lines, overhead power transmission lines, installations for the transport of crude oil, products, chemical substances or gas, artificial water reservoirs, projects related to the nuclear energy and radioactive wastes disposals. Moreover, he is competent to issue a decision on EIA for projects carried out on closed sites, projects carried out in marine areas, the conversion of a forest which is not the property of the State Treasury into farmland, airports, terminal LNG, regional broadband radio communication, projects consists of change or extension abovementioned projects, flood protection projects, exploration and prospection of mineral deposits, power lines and transformer stations.

The Director of the Regional Directorate of State Forests – conducts EIA and issues a decision on EIA in the case of the conversion of a forest which is the property of the State Treasury into farmland.

The head of the county administration – conducts and issues a decision on EIA in the case of land consolidation, exchange or division.

The head of the local administration and the mayor of a town/city – conducts EIA and issues a decision on EIA for certain types of projects others than those above-mentioned. There is no specified list of such projects.

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

(b) Yes  (please specify): The General Director for Environmental Protection on the basis of article 128 of the *EIA Act of Law* shall manage a database on environmental impact assessments, also in a transboundary context, including data on the documentation prepared within the framework of these procedures.

Your comments:

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): Polish law does not contain any special provisions in this regard. National legislation just only stipulates that in the case if the affected Party wants to participate, then the General Director for Environmental Protection – in cooperation with an authority competent to issue a decision on the environmental conditions – shall agree with this Party on time-frames for the entire procedure. While making such an agreement on time-frames the General Director must take into account the necessity to ensure the public participation in the affected Party.

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### 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
- (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: Notification usually takes place at the scoping stage, because national legislation says that comments given by the affected Party regarding the scope of the EIA documentation shall be taken into account while defining the scope and content of such documentation. Nevertheless, in some cases it may happen that only the EIA documentation stage provides new information about project and its likelihood to have transboundary impact on the territory of another Party and thus need to send notification to the affected Party.

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

Your comments: The only exception are official formats of notifications as an appendixes to bilateral agreement (German and Lithuanian).

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

- (a) The information required by article 3, paragraph 2
- (b) The information required by article 3, paragraph 5
- (c) Additional information (please specify):

Your comments:

The national legislation provides for basic information that need to be included in the notification such as:

- the name of the proposed project that may have a transboundary impact on the environment,
- the decision which is to be issued for this project and the authority competent to issue it,
- information sheet of the project,
- proposal of a date for the affected Party to reply whether it is interested in participating in transboundary EIA.

The information sheet that is attached to the notification is a kind of document which contains the basic information on the proposed project, in particular the data concerning:

- the type, scale and localisation of the project,
- the surface area of the real estate and the built structure occupied and the existing manner of their use as well as the vegetal cover in the real estate,
- the type of technology,
- the possible options of the project,

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- the predicted quantities of the water, raw materials, intermediate materials, fuels and energy to be used,
  - the measures to protect the environment,
  - the types and predicted quantities of the substances or energies released into the environment when using the measures to protect the environment,
  - the possible transboundary impact on the environment,
  - the areas of high nature values that are under protection which are situated within the range of a significant impact of a project.

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):

(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: Polish law says that the General Director for Environmental Protection shall propose in notification a date for the affected Party to reply. There is no specified time frames for reply set out in the national legislation. Nevertheless, having in mind good practice and lessons learned Poland usually gives the affected Party around 30 days for reply. Moreover, in the case where the affected Party does not meet the deadline for reply, firstly we use an electronic correspondence to ask when we can possibly receive any response. If it does not work then we send the official letter with information that we treat the lack of response as no desire from the affected Party to be involved in the procedure.

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

If the affected Party ask for extending a deadline we usually give reasonable additional time for reply.

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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>

(b) Other (please specify):

Your comments: We usually inform point of contact to the Convention listed on the Convention website who is responsible for informing competent authorities due to national law of the affected Party (than competent authorities are responsible for informing public).

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: The General Director for Environmental Protection after having received documents containing information on a project undertaken outside the territory of Poland the implementation which may have an environmental impact in its territory, shall immediately forward such documents to the Regional Director for Environmental Protection – who is competent in respect of the area which may be affected by the possible transboundary impact on the environment. The task of Regional Director is to analyse the documents and, on the basis of such analysis as well as additional opinions of other specialised authorities, decide if launching the transboundary procedure is justified and thus necessary. When deciding to participate in transboundary EIA then need to inform own public on planned project. Further, the Regional Director submits his draft position concerning the necessity to participate in the EIA procedure to the General Director for Environmental Protection. Then, the General Director for Environmental Protection verifies such draft position and on its basis prepares the official Polish position which sends to the Party of origin. The General Director gives response to the notification within time frame specified by the Party of origin.

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

(b) Following the rules and procedures of the affected Party

(c) Other (please specify): the details for affected Party participation are consulted among parties

Your comments: In the case when Poland is the Party of origin, there is an obligation to agree with the affected Party the dates of the stages of the procedure, taking into account the need to enable the competent authorities and the public of the affected Party to participate in the procedure.

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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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## 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

(b) By using quality checklists

(c) There are no specific procedures or mechanisms

(d) Other (please specify):

Your comments: The article 66 paragraph 1 of the *EIA Act of Law* specifies the content of the EIA documentation. This article says in details what kind of issues need to be included in the EIA documentation and is in full compatibility with appendix II of the Espoo Convention. Moreover, the requirements of this article for the content of the EIA documentation are more extended than specified in appendix II – it is in full compliance with the EU Directive on EIA.

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

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

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

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

(e) By using other means (please specify):see point I.17

Your comments: The scoping procedure is set out in article 63 paragraph 4, article 68 and article 69 paragraph 1 of the *EIA Act of Law*.

For planned projects that need to be a subject of EIA optionally (activities listed in annex II of the EU Directive on EIA) – the scoping is carried out together with screening on the basis of information submitted by the developer together with application for a decision (so called information sheet of a project). When the authority determines that the EIA need to be conducted at the same time defines the scope and content of the EIA documentation. In defining the scope, the authority shall take into account the current knowledge and research methods as well as the existing technical possibilities and availability of data. This authority considering the location, character and magnitude of the environmental impact of the project, may also resign from the certain requirements concerning the content of the EIA documentation set out in the *EIA Act of Law* as well as indicate the types of alternative options which need to be examined, the types of impacts and the elements of the environment which require detailed analysis and the scope and methods for the assessment. For planned projects that need to be a subject of EIA mandatory (activities listed in annex I of the EU Directive on EIA) – there is no obligatory scoping stage. Nevertheless, the developer has a right to ask competent authority for defining the scope and content of the EIA documentation. In such situation, the developer should submit application for a



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decision together with basic information of a project (so called information sheet) instead of EIA documentation. Moreover, in the case when the planned project may have a transboundary impact of environment the scoping stage is mandatory.

According to the article 64 paragraph 3 of the *EIA Act of Law* the screening and scoping decision is issued by competent authority after opinions have been obtained from Regional Director for Environmental Protection and Sanitary Inspection. In the case when planned project is situated in the maritime areas then the opinion of the Director of Maritime Office need to be obtained.

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

- (a) On a case-by-case basis
- (b) As defined in the national legislation (please specify):
- (c) Other (please specify):

Your comments: The obligation to identify the “reasonable alternatives” is stipulated in article 66 paragraph 1 point 5) of the *EIA Act of Law*, which says that the EIA documentation should contain a description of the options analysed, including:

- the option proposed by the proponent and a reasonable alternative
- the option which is the most favourable for the environment, along with reasons for their choice.

Moreover, the relevant authority while defining the scope and content of EIA documentation may indicate in the scoping decision the types of alternative options which need to be examined.

## **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
- (b) By taking part in a public hearing
- (c) Other (please specify):

Article 36 of the *EIA Act of Law* says that the administration authority competent to issue the decision may conduct an administrative hearing open to the public. The rules for organizing such a public hearing are set out in *Administrative Procedure Code*.

*As affected Party*

- (d) By sending comments to the competent authority/focal point
- (e) By taking part in a public hearing
- (f) Other (please specify):

Your comments:

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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

Your comments: National legislation does not regulate this issue. Parties may consult and agreed on organizing public hearing for the public of affected Party

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

(a) Yes

(b) No

Your comments: The legal requirements for public participation in the review of the EIA documentation in the case where Poland is the affected Party is set out in article 119 paragraph 1 of the EIA Act of Law. The authority responsible for this procedure is the Regional Director for Environmental Protection who is competent in respect of the area which may be affected by the possible transboundary impact on the environment. The part III, chapter 2 of the EIA Act of Law is also applied appropriately. Article 36 of the EIA Act of Law stipulates that the administration authority competent to issue the decision may conduct an administrative hearing open to the public. The provision of Article 91 (3) of the Administrative Procedure Code shall apply, respectively.

**(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

(b) No, it does not have any provision on that

(c) It is optional  (please specify):

Your comments: Accordingly to the article 109 paragraph 3 point 1 of the EIA Act of Law the Party of origin should agree with the affected Party the dates of the particular stages of the procedure, amongst others consultations.

In the case when Poland is the Party of origin, the administration authority which carries out the EIA for a planned project shall hold consultations with the affected Party (article 110 paragraph 1 of the EIA Act of Law) via the General Director for Environmental Protection. In this consultation the General Director for Environmental Protection shall also participate.

There is one exception. The article 110 paragraph 2 of the EIA Act of Law says that where the General Director for Environmental Protection deems it purposeful in the light of the importance or intricacy of the case, he may take over the conduct of the consultations. In such consultation the administration authority which carries out the EIA shall participate.

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## 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
- (b) Comments received in accordance with article 3, paragraph 8, and article 4, paragraph 2
- (c) Outcome of the consultations as referred to in article 5
- (d) Outcomes of the transboundary consultations
- (e) Comments received from the affected Party
- (f) Mitigation measures
- (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
- (b) No

Your comments: Generally, the national law requires in article 37 of the *EIA Act of Law* that the authority which conducts the procedure shall consider comments and suggestions and in the justification of the decision shall provide information on public participation in the procedure and the manner in which the comments and suggestions submitted in relation to public participation have been considered and the extent to which they have been used. Moreover, article 80 of the *EIA Act of Law* says that the competent authority shall issue a decision on the environmental conditions taking into account among others:

- the results of the approvals and opinions of the authorities competent in the field of sanitary inspection and environmental protection issues,
- the results of the public participation,
- the results of the procedure for transboundary EIA, where it has been conducted.

Additionally, the article 85 of the *EIA Act of Law* says that the justification of the decision on the environmental conditions shall contains:

- information on the conducted procedure requiring public participation and the manner in which the comments and suggestions submitted in relation to public participation have been considered and the extent to which they have been used,
- information on the manner in which the following has been considered and the extent which it has been used:
  - the findings of the EIA documentation,
  - the approvals by the Regional Director for Environmental Protection and opinion of the Sanitary Inspection,the results of the transboundary EIA.

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
- (b) Yes  (please specify):

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Your comments: According to the article 145 §1 point 5) and 155 of the *Administrative Procedure Code in relation to article 87 EIA Act of Law* the decision might be revised under the following circumstances. In the case where the final decision has been issued the decision might be revised if the new facts or new evidence – existing in the day of issuing the decision but were not known by the authority competent to issue this decision – reveal later.

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

Your comments: Appendix I is fully transposed into national legislation. The reflection of the appendix I was placed in the Regulation of the Council of Ministers on types of projects to have significant effects on the environment. This regulation is also in full compliance with annex I and II of the EU Directive on EIA.

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: The “*final decision*”, in the meaning of the Espoo Convention, is defined in article 71 of the *EIA Act of Law* as a decision on the environmental conditions (decyzja o środowiskowych uwarunkowaniach) which determines the environmental conditions for the implementation of a project. Such decision shall be required for proposed projects which may always or possibly have a significant impact on the environment. Its content is specified in article 82 of the *EIA Act of Law*.

A according to the article 85 paragraph 2 point 1) of the *EIA Act of Law*, in the case where EIA is conducted, the decision on environmental conditions shall has a justification contains:

- information on the conducted procedure requiring public participation and the manner in which the comments and suggestions submitted in relation to public participation have been considered and the extent to which they have been used,
- information on the manner in which the following has been considered and the extent which it has been used:
  - the findings of the EIA documentation,
  - the approvals by the Regional Director for Environmental Protection and opinion of the Sanitary Inspection,
  - the results of the transboundary EIA.

Decision on the environmental conditions is issued after having completed the EIA procedure. This decision is binding for investment decisions and is required to be obtained before applying for example for construction permit.

## **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

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

Your comments: On the basis of article 82 paragraph 1 point 5) of the *EIA Act of Law* the competent authority may in the decision on the environmental conditions impose on the applicant the requirement to perform and present a post-project analysis and set out its scope and the date of its presentation. The definition of a post-project analysis is given by article 83 paragraph 1 of the *EIA Act of Law* which stipulates that this kind of analysis shall compare findings contained in the EIA documentation for a project and in the decision on the environmental conditions, in particular the findings concerning the envisaged nature and scope of the environmental impact of the project and the proposed preventions measures, with the real environmental impact of the project and the measures taken to reduce it. This analysis may indicate the need to designate a restricted use area for the project. On the basis of national law, the applicant has an obligation to present the post-project analysis in the date specified in the decision on the environmental conditions by competent authority. Nevertheless, in the case if transboundary EIA has been conducted then such analysis is forwarded to the affected Party.

## **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  Please specify with which countries: Poland is a Party of two bilateral agreements on transboundary EIA with: Germany and Lithuania. Both agreements are source of generally applicable law and are legally binding for contracting Parties. As a rule they cover issues specified in appendix VI of the Espoo Convention but in some places regulate more practical issues related to the mutual cooperation.

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

(c) Harmonization of the Parties' policies and measures

(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

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(h) Other, please specify:

Your comments: The Polish-German Agreement on transboundary EIA covers the following issues:

- Scope of application (e.g. the requirements for application of the transboundary EIA),
- Notification (e.g. the scope and content of notification, authorities competent to notify and to be notified as well as to be involved in particular stages of EIA, the way of sending and replying, deadline for response, example of acknowledging the receipt the notification and declaration of participation),
- EIA documentation (e.g. the requirements for its content, its submission to the affected Party, deadline for comments),
- Public participation (e.g. the set of rules of organizing public participation in the affected Party and rights given to the public from the affected Party),
- Positions (with comments) of the relevant authorities from the affected Party (e.g. indication of the authorities of the Party of origin competent to receive such positions with comments),
- Exchange of information (e.g. general provision on opportunity to direct exchange of information between authorities from both Parties that are involved in the procedure),
- Consultations on the basis of EIA documentation before issuing the final decision (e.g. the general rules to carry out such consultations, time-frames, topics for discussion),
- Submitting the final decision to the affected Party (e.g. the obligation to make the final decision publicly available in the affected Party),
- Post-project analysis (e.g. general rule of performing and presenting its findings to the affected Party),
- To meet deadlines (the means that might be used in order to meet deadlines)
- Translation of documents (e.g. the scope of translation, the Party of origin is burdened with costs of translation both documents as well as interpreter during a meetings),
- Relevant authorities,
- Settlement of disputes.

The Polish-Lithuanian Agreement on transboundary EIA has similar content as the Polish-German.

**(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:

Notification:

- basic information about the planned project (information sheet)
- information about national EIA procedure
- type of administrative decision
- usually 30-day period for declaration and comments on scoping

Declaration of participation:

- acknowledgment of receipt without undue delay
- at the latest 30 days for declaration since receiving the notification

Scoping:

- comments on the scope and content of the EIA documentation

EIA documentation:

- prepared by the developer in paper version and on CD
- contained a separate chapter on transboundary impacts on the environment

Statements of relevant authorities

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Public participation of affected Party:

- the same rules as applied towards the Polish public
- 21-day period for getting acquainted with the EIA documentation and making comments
- comments considered and taken into account if relevant

Transboundary consultations:

- meeting at governmental level
- topics for discussion: transboundary impacts, mitigation and minimizing measures

Final decision:

- submitted to share with relevant authorities of affected Parties
- made publicly available for public review in affected Parties

(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):

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

Your comments:

I.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
- (b) Yes  (please specify):
- (i) Special provisions:
- (ii) Informal arrangements:

Your comments: Case by case approach is applied. Each cross-border project is consulted among Parties

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

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

Your comments:

## 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:

#### 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:



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: Poland do not have record of transboundary EIA procedures that were under way during the reporting period

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.):

(a) As Party of origin: In the case if Poland is the Party of origin the responsibility for translation is imposed on the Polish Party (it is stated in our national *EIA Act of Law* and it is obligatory, what is more translations issues are always describe in details in bilateral agreements) . So, the relevant documentation, usually scoping documentation and the EIA documentation as well as any additional information requested by the affected Party are translated by the developer. What is more, the notification and the official letters are prepared in the language of the affected Party by the competent authority – the General Director for Environmental Protection.

We have very good experience with applying provisions referring translations contained in the bilateral agreements on the EIA procedure. Even though work on the common draft agreement is a long lasting process, the binding provisions set up clear frame for cooperation and make whole procedure more effective (saving time).

(b) As affected Party: If Poland as the affected Party is provided with the documentation without any translation – it is very common practice with some countries – especially in the cases where no bilateral agreements exist, then we have to make translation on our own (it is really time-consuming and expensive). In such situations the transboundary chapter and non-technical summary are normally translated, but in some cases we need to translate also other chapters to be able to understand the planned project and its potential impacts. The translation issues are hardly difficult especially in the cases where no legal requirements are in force in this regard.

We receive notification and other documents translated into Polish from countries, with which we have signed bilateral agreement on EIA or advanced draft of bilateral agreement exists. In case of project listed in annex 1 of the Espoo Convention we usually receive

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documentation translated into English. In other cases the translation is not provided at all. However according to the national law any documentation made public, should be available in Polish. Having received documents in English the affected party has to carry the cost of the translation anyway.

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: The common difficulties that Poland has encountered during consultations are:

- Different level of stakeholders taking part in consultations from both Parties – for example one Party is represented by governmental administration experts in the environmental issues while another one is represented by local authorities which are not specialised in the environmental issues. In such situation the discussion is not always at high level of substance and technical aspects and thus it is hardly difficult to find common understanding and consensus. Another problem, which we have faced as a party of origin is participation of public representatives, local politicians of affected party in expert consultation conducted in accordance with article 5 of the Espoo convention. Discussions during such meetings are focusing more on political issues/interests than on environmental merits and exchange of professional knowledge.
- Overtiming – it is one of the most popular factor that causes significant extension of the procedure and thus delays the investment process. As a party of origin we have negative experience with affected parties, which do not meet the deadline for submitting their opinion on the scope of the EIA documentation or on the EIA documentation. Furthermore they do not ask for prolongation in advance.
- Differences in understanding the definition and purpose of the consultations – some countries have completely different views on form and purpose of the consultations as well as the topics and issues that should be covered. This causes misunderstandings while one Party is still interested in supplementing and improving the EIA documentation but another one Party is just only interested in having the high level meeting on the basis of the EIA documentation, that takes place just only once. What is more sometimes Parties sent new comments and suggestions after transboundary consultations as an experts meeting so the exact time of ending transboundary consultations is very often discussed.
- Differences in the legal status of consultations outcomes – for some countries the results of the consultations are binding while for other Parties it is just only fulfilling the obligation to carry out the consultations without reflection its results in the final decision.
- In the final decision for the project provided by the party of origin it is very rare you may find results, how the public requests submitted during public consultation, have been considered/commented.

On the other hand, Poland as the affected Party has noticed positive aspects of having consultations as a tool to support the prevention, reduction or control transboundary impacts. For example, several times it was decided during consultations that additional prevention measurements need to be applied in order to protect the environment on the Polish territory e.g. the obligation to carry out the noise and emission monitoring on the Polish side or reduce the amount of originally planned wind turbines.

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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

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:

• As an example of good practice at the notification stage it is worth to note that if the deadline specified in notification (usually 30 days) is not enough and when the affected Party asks for its extension we normally extend such deadline in order to have complete and well prepared answer of the affected Party. Similar situation occurs at the EIA documentation stage – if the affected Party needs more time for submitting its comments on the project then we normally extend the deadline for maximum 30 days.

• Additionally we try to keep informal contacts with other Parties by using electronic communication. Writing e-mails and exchanging necessary information also in this way allows to have more effective cooperation and updated information on the procedure.

• Considering the consultations stage, good practice example might be the approach that the final decision is not issued before the protocol with consultations outcomes is accepted and signed by chairs of both delegations – the affected Party and the Party of origin. Generally both Parties need to agree on the content of such document which outcomes shall be reflected in the final decision.

• Moreover, providing the written translation and interpretation during consultations stage is of the high value for smooth running of the procedure. It minimizes the language risk and misinterpretation or misunderstanding between Parties.

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

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

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

- (a) No
- (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?:

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

No

Yes  (please provide details): We sometimes use this guidance and apply its recommendations. Nevertheless, we found that other Parties are not familiar with this guidance and because of that it is hardly difficult to apply it mutually.

Your experience with using this guidance:

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:

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): It has been used in practice several times but unfortunately not every Party is familiar with this document and keen to apply it as a good practice.

Your experience with using this guidance:

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?:

No

Yes  (please indicate which provisions and how they are unclear): Unclear provisions in the Convention are as follows:

**Article 2 paragraph 1** – what does it mean that “the Parties shall individually or jointly take appropriate and effective measures...”? This article is too general to be the basis for carrying out the joint transboundary EIA. Would that be possible to specify the detailed recommendations on joint transboundary EIA (separate guidance)? Having no framework for such type of procedure causes that no joint activities are taken by the Parties.

**Article 3 paragraph 8** – says that “...comments or objections made by the public of the affected Party might be transmitted to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin. What is the difference between “directly to the competent authority of the Party of origin” and “through the Party of origin”? From our practical experiences comments of the public of the affected Party are usually transmitted directly to the competent authority of the Party of origin by the public on their own. The other option is that the comments of public are collected by the affected Party and then send to the Party of origin.

**Article 5** – there are some confusions in interpretation of this article. Having in mind our practice we have noticed that some Parties treat consultations referred

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to in article 5 as a process made up of consulting and supplementing the EIA documentation and as a final step the high level meeting takes place. Contrary, other Parties treat such consultations as a high level meeting taking place just only once. Such differences in understanding this stage of procedure cause some difficulties. Moreover, what does it mean reasonable time-frames for consultations? The term reasonable is too general and quite vague.

**Article 6** – regards the final decision on the proposed activity. Does it mean that article 6 regards the final decision which completes the EIA procedure or regards the final decision which definitely authorizes the planned project and is treated as development consent? In the legal systems of some Parties the definition of final decision on the purposes of the Convention is not ultimately binding.

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

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