

# **Questionnaire for the report of AUSTRIA on the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context in the period 2016–2018**

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

1. Name and contact information:

Dr. Waltraud Petek, Dr. Ursula Platzer-Schneider

Ministry of Sustainability and Tourism

Stubenbastei 5, 1010 Vienna, Austria

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

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

Mag. Johannes Kresbach, same institution as above

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

3. Country: Austria

4. Surname: Kresbach

5. Forename: Johannes

6. Institution: Federal Ministry of Sustainability

7. Postal address: A-1010 Vienna, Stubenbastei 5

8. Email address: johannes.kresbach@bmnt.gv.at

9. Telephone number: ++43 1 71100 611218

10. Fax number: ++43 71100 617122

11. Date on which report was completed: 30.03.2019

## **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, but see for more clarity under (d) and the comments
- (b) Yes, with some differences (please provide details):
- (c) No (please provide the definition):
- (d) There are no definitions of impact in the legislation x

Your comments: There is no specific definition of “impact” in the Austrian EIA act, rather, the provisions in § 1 (1) Z 1 a – d) describe the content of what is meant by “impact”. On the whole, it is the same meaning as the definition in the Convention.

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, but see for more clarity under (d) and the comments
- (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 x

Your comments: The same answer applies also here. Although there is no explicit definition, the description of what “transboundary impact” means corresponds in fact to the Convention's definition of it.

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

Major changes or modifications of projects are ruled in § 3a EIA Act: According to § 3a (1) leg. cit., an EIA shall be conducted if the modification amounts to a capacity increase of at least 100% of the threshold value indicated in Column 1 or 2 of Annex 1 of the EIA act, if such a threshold value is specified (no. 1); moreover, those projects are subject to an EIA, for which a modification criterion is defined in Annex 1 provided that this criterion is met and the authority determines on a case-by-case basis that significant harmful, disturbing or adverse effects on the environment are to be expected due to the modification (no. 2).

According to § 3a (2) EIA act, an EIA shall be conducted for modifications of other projects listed in Column 1 of Annex 1 of the EIA act, if the threshold value of Column 1 is already reached by the existing installation or will be reached upon implementation of the modification, and if the modification results in a capacity increase amounting to at least 50% of this threshold value (case no. 1), or, if the capacity shall be increased by at least 50% of the previously approved capacity of the project in case that no threshold value is indicated in Column 1 of Annex 1, and if the authority determines for the case in question that significant harmful, disturbing or adverse effects on the environment are to be expected due to the modification (case no. 2).

Moreover, § 3a (3) leg. cit. stipulates similar rules for modifications of other projects listed in Column 2 or 3 of Annex 1 of the EIA act. Finally, § 3a (5) determines that, unless Annex 1 provides otherwise, the applicability of an EIA to modifications according to § 3 (1) no. 2 as well as § 3 (2) and (3) shall be assessed on the basis of the total sum of the capacities already approved in the past five years, including the capacity increase applied for now, provided that this increase amounts to at least 25% of the threshold value or, if no threshold value is specified, of the previously approved capacity.

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 x
- (c) By other means (please specify): § 19 EIA act defines the parties to an EIA procedure enjoying *locus standi*; besides neighbours and concerned communities / municipalities also parties stipulated by the applicable administrative provisions, the ombudsman for the environment, water management planning body, citizens' groups

fulfilling certain criteria and environmental organisations officially recognised and fulfilling certain criteria are included.

Your comments: While neighbours have the right to assert so-called subjective public rights such as the protection of life, health and property, the other parties are also entitled to assert so-called objective public rights stipulated in order to protect the environment (including flora, fauna, bird, air and other issues).

## **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 Austrian EIA Act 2000 (Federal Law Gazette I No. 697/1993 as amended, last amendment by Federal Law Gazette I No. 80/2018), in particular sections 10 and 17. These legal provisions are further explained in a circular to the competent authorities.

(b) EIA provisions are transposed into another law(s) (please specify): n.a.

(c) Regulation (please indicate number/year/name): Ordinance of the Federal Minister of Agriculture and Forestry, Environment and Water Management on the those areas (Category D of Annex 2 EIA act) where the exposure limits specified by the Ambient Air Quality Act, Federal Law Gazette I No. 115/1997, as amended, latest with Federal Law Gazette I Nr. 73/2018, are exceeded repeatedly or for a prolonged period of time, Federal Law Gazette II No. 166/2015.

(d) Administrative (please indicate number/year/name): n.a.

(e) Other (please specify): n.a.

Your comments: ---

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. Moreover, Annex 1 of the Austrian EIA act not only encompasses all projects of appendix 1 of the Convention, but its list of projects exceeds by far appendix 1 of the Convention and enumerates 89 types of different projects.

(b) It differs slightly  (please specify):

Your comments: see above; the list of projects of the Austrian EIA Act, Annex 1, differs in the way as mentioned above.

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 x

(b) They are different for domestic and transboundary procedures

(c) Please name the responsible authority/authorities: For all the projects listed in Annex 1 of the EIA act the responsible and competent authorities to carry out the EIA are the nine regional governments of Austria, according to the location in which the project is situated. For highways and high-speed railroads the competent authority to carry out an EIA is the Federal Ministry for Transport, Innovation and Technology.

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

Your comments: The nine regional governments of the Austrian “Länder” are also responsible to carry out the transboundary EIA procedures, according to the location of the foreign project and its relevant impacts on an Austrian region.

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 x (please specify): The Federal Ministry of Sustainability and Tourism, acting as contact point under the Espoo Convention, is the first address for notifications of projects likely to cause significant adverse impacts on Austria’s environment by Parties of origin and it undertakes the collection of all information concerning transboundary EIA procedures.

Your comments: The Austrian Environment Agency (Umweltbundesamt), assigned by the Federal Ministry of Sustainability and Tourism, collects and provides information and data on some of the transboundary EIA procedures, in particular of those concerning nuclear related activities of parties of origin.

I.9. How does your country, as a Party of origin and as an 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):

Being the Party of origin, Austria provides the notification and relevant documentation of a project to the affected Party at a reasonable time before public participation in Austria starts and provides all necessary detailed information on the public participation process in Austria according to the provisions of the EIA Act; if needed and so required by the affected Party, it enters into consultations with it.

Being the affected Party, the Austrian contact point under the Espoo Convention, the Federal Ministry of Sustainability and Tourism, – after having received the respective notification – informs the affected “Länder” / regions and their regional governments of the project of a Party of origin, provides their authorities with all the relevant documentation on the project and ensures that all the information on the project and the respective EIA documentation, including the ENV report, are being made available to the public via public announcement, so that the public concerned is enabled to receive the relevant information and to participate in the respective transboundary EIA procedure via providing and submitting comments.

### **Article 3 Notification**

I.10. As a 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 x
- (c) After finishing the domestic procedure
- (d) At other times (please specify):

Your comments: The Austrian EIA Act requires notifications to the affected Parties as early as possible and, if appropriate for the consideration of transboundary effects, already during the preliminary procedure, but no later than when informing the Austrian public.

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: Usually, Austria does not use any official format for notification, but still, it provides all the information required by the Convention with an official cover letter, such as a short description of the project, an indication on public participation procedure and public announcement of the project as well as advices on deadlines.

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 x
- (b) The information required by article 3, paragraph 5 x

(c) Additional information (please specify): Depending on the specific project.

Your comments: ---

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 x (please indicate the time frame): Austria, its contact point under the Convention, notifies the affected Party of a project as early as possible and – according to § 10 (1) Z 2 EIA act - sets an appropriate and reasonable deadline for communicating whether the affected Party wishes to participate in the EIA procedure or not.

(c) It is determined and agreed with each affected Party case by case in the beginning of the transboundary consultations x (please indicate the average length in weeks): Partly applies, see above; time frame is provided individually, on a case by case base.

Your comments: ---

Please specify the consequence if a notified affected Party does not comply with the time frame, and the possibility of extending a deadline: So far, in most of the cases, the affected Party did response within the time frame whether or not it intends its participation in a transboundary EIA procedure. Moreover, if an affected Party would be in delay in doing so and requests for an extension of it, in most of the cases, there would be room for extending such a time frame.

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): ---

Your comments: According to § 10 EIA act, the affected Party gets notified and informed about the respective project as soon as possible including the provision of all relevant information and the description of the project and its possible impacts.

---

<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).

I.15. On what basis is the decision made to participate (or not) in the transboundary EIA procedure as an 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 the Party of origin x

(b) Based on the opinions of the competent authorities of the affected Party x

(c) Based on the opinions of the competent authorities and that of the public of the affected Party

(d) Other (please specify): ---

Your comments: Depending both on the nature and the location of the project in the Party of origin, Austria, the contact point under the Espoo Convention, the Federal Ministry of Sustainability and Tourism, and, where appropriate, the possibly affected regions (the competent EIA authority of the region), decide on a participation in a transboundary procedure based on the information submitted and received.

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): ---

Your comments: Although, the rules applicable for the transboundary EIA procedure mainly follow the national (EIA) legislation of the Party of origin in terms of setting the deadline for comments or arranging for bilateral consultations, there is always room for flexible solutions taking into consideration possible time constraints in the affected Party. In particular, it is often not possible to conduct a synchronised public participation procedure in both countries due to language issues and / or other reasons of delay; these circumstances are often to be taken into account.

## **Articles 3.8 and 4.2**

### **Public participation**

I.17. How can the public express its opinion on the EIA documentation of the proposed project (art. 5)? Please specify (more than one option may apply):



*As a 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 an affected Party*

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

Your comments: The two main instruments for public participation of the public in a (transboundary) EIA procedure is open both for the public of the party of origin and the public of the affected party. The legal status of participation, although, might differ, when it comes to the question of having a locus standi or not in an EIA procedure.

I.18. 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 organization of a public hearing for the public in the territory of the affected party mostly follows a case-by-case-agreement between the two parties.

I.19. 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 x

Your comments: The same applies as said above.

#### **Article 4**

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

I.20. How do you ensure sufficient quality of the EIA documentation as a 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: While it is the main responsibility of the project operator to provide sufficient and informative documentation on the project and the respective EIA, the regionally competent EIA authority has got the duty to check and verify the completeness of the respective documentation and its compliance with all legal requirements.

I.21. 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

(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): The content of the requirements as given by Appendix II of the Convention is pretty much reflected in the provisions of the Austrian EIA act, in particular in § 6 EIA act, stipulating the necessary information and data to be provided within the ENV report and the EIA documentation.

Your comments: ---

I.22. 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): see comment below.

(c) Other (please specify):

Your comments: The relevant ruling is given by § 1 (1) Z 3 as well as § 6 (1) Z 2 EIA act, but these provisions do not offer strict definitions, rather they require from the operator to present the reasoning for his choice as well as the outcome of a respective examination of alternatives to the proposed project.

## **Article 5**

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

I.23. Does your national EIA legislation have any provision on the organization of transboundary consultations 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 x (please specify): § 10 (3) EIA act provides for the organisation of bilateral consultations which have to take place once the affected Party wishes so.

Your comments:

## **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): See under § 17 (4) EIA act (i.a., the outcome of the EIA expertise and respective comments by the public concerned, the public concerned and the authorities of the affected country and arising from public hearings).

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

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: According to the Austrian legal system the legal possibility to revise a valid decision is strictly defined and limited to specific legal and natural persons enjoying locus standi. Nevertheless, there is always the political possibility to reopen consultations on request of the affected Party in order to find solutions.

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: The "final decision" (permit; license; "Entscheidung", "Genehmigungsbescheid") is the decision in the consolidated permit procedure in which the EIA is a central part of. For federal roads and high speed railroads there is no completely consolidated procedure, but rather a procedure including the EIA conducted by the Federal Minister of Transport, Innovation and Technology, and several administrative licensing procedures conducted by the regional government, and, therefore, there are more than just one decision which all have to take into account the outcome of the EIA. All projects listed in Appendix I require such decision(s).

Your comments: ---

## 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): The Austrian EIA act provides for a post-project analysis in § 22 which has to be carried out by the responsible administrative authorities jointly and on the initiative of the EIA authority, between three and five years after notification of the completion of the project. The inspection mainly concentrates on the compliance of the project with the provisions of the final decision (development consent) and also verifies the accuracy of the assumptions and forecasts of the EIA in relation to the actual effects of the project on the environment. The results of the analysis are communicated to the EIA authorities as well as to the Federal Ministry of Environment. In case of inconsistencies found out, the competent authority shall call for the remedy of deficiencies and divergences.

Your comments: Although the above mentioned provision on post-project analysis mainly rules – on national level - the obligation of and communication and cooperation between the involved authorities, the information of an affected Party is not excluded and could be done

## **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: There is a bilateral agreement between Austria and the Slovak Republic and there are informal trilateral guidelines elaborated with Switzerland and Liechtenstein.

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 x

(b) Institutional, administrative and other arrangements x

(c) Harmonization of the Parties' policies and measures x

(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:

Your comments: The above mentioned agreement and the guidelines contain provisions according to paragraphs 2 (a), (b) and (c) of Appendix VI; they do not refer to the other paragraphs.

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

I.32. Please describe how the steps required for a transboundary EIA procedure under your national legislation correlate to domestic EIA in the lead-up to the final decision. If there are differences in the procedures for screening/scoping or for preparation of the environmental impact assessment and consultation, please specify.

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

Your comments: This issue is ruled in § 10 EIA act. According to its provisions, if a (domestic) project might have significant effects on the environment in a foreign state (or if a possible affected state has submitted a request to that effect), this affected party has to be notified of the project as early as possible, no later than the (domestic) public gets informed. The description of the project, information on its possible transboundary impact and, where applicable, the draft of the environmental impact statement shall be attached to the notification. Furthermore, the affected party gets informed about the course of the Austrian EIA procedure and of the nature of the decision which may be taken. An appropriate deadline for communicating its possible participation shall be set. In the case of its participation, the affected party shall be provided with the application for development consent, the environmental impact statement and any other documents relevant to decision-making that are available to the authority at the time of the public announcement pursuant to § 9 leg. cit. The affected party and its public – after the EIA documentation has been publicly announced and made available over there - shall be given the opportunity for submitting comments within a reasonable time period. Moreover, the affected party shall be provided with the environmental impact expertise or the summary evaluation. If the affected Party wishes so, consultations shall be held. An appropriate time frame shall be agreed on for the duration of the consultation phase. Finally, the decision on the development consent application and the main reasons for it, information on the public participation process, and a description of the main measures to avoid or reduce or offset major harmful, disturbing or adverse effects on the environment shall be communicated to the state concerned. To the extent required for implementing the transboundary EIA procedure, the project applicant shall submit, upon request, translations of the documents he/she filed in the language of the state concerned.

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: ---

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

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

Your comments: The informal arrangements when it comes to participating in transboundary EIAs with regard to nuclear related projects consist of the fact that all nine Austrian Regions (“Länder”) participate in the procedure, that will say the whole country and its public. It is in particular for those procedures where the Federal Ministry also provides an expert statement, an expertise on the project and its impacts. Bilateral consultations “sur place” with the party of origin are almost the rule, while in other procedures such consultations might be conducted virtually via e-mail exchange.

## Part two

### Practical application during the period 2016–2018

Please report on your country's practical experiences in applying the Convention (not your country's procedures described in part one), whether As a 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: In general all information provided in this questionnaire is accessible for the public anyway and all EIA procedures are made public. Therefore, no problem with the proposal to have it put online, but before doing so, a proof reading of the compiled version should take place, including by the AUT Espoo Contact point.

#### 1. Experience in the transboundary environmental impact assessment procedure during the period 2016–2018

##### Cases during the period 2016–2018

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 a 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 a Party of origin – to be provided in due time**

Project name	Starting date (date notification sent)	Affected Party/ Parties	Timing of the notification (screening, scoping or preparation of the EIA documentation)	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: In some transboundary EIA procedures there is a big time gap between the submission of the notification and the submission of the ENV report on the project, since the project might have been postponed or has been modified in the meantime. This is true for both situations, being a party of origin and being an affected party. For some projects – besides or instead of official bilateral consultations – interregional consultations and information meetings between the authorities involved took place instead.

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. The Convention does not mention the translation of EIA documentation as an important prerequisite for the participation of potentially affected Parties in a transboundary EIA procedure. Please explain:

(a) How has your country addressed the issue of the translation of EIA documentation?

As Party of origin: According to § 10 (6) EIA act, the project applicant shall submit, to the extent required for implementing the transboundary EIA procedure, and upon request, translations of the documents he/she filed in the language of the state concerned. This mainly happens for the

ENV report as well as for a non-technical summary. Moreover, the final decision – at least those parts, which concern transboundary issues – will be translated into the language of the affected Party.

Moreover, with the Slovak Republic, Austria has agreed on a bilateral agreement, which also rules on the language regime; therefore, both countries – as party of origin - provide the most important parts of the documentation in the language of the affected party. Communication letters, such as information on procedural questions or other informative writings are also often conducted in English – as lingua franca, and are accepted by both sides. With other countries, where no bilateral agreement is in place, very often English is used as the lingua franca; otherwise it is up to a case-by-case agreement to provide the most decisive parts of an EIA documentation in the language of the affected party. For many cases in recent time, this agreement-mechanism seemed to work out with many parties: documentation and project description as well as environmental report and the final decision are – sometimes upon request - received in German or at least in English, and, on the other side, documentation and EIA report as well as the final decision are provided in the language of the affected party.

(b) What difficulties has your country experienced with regard to translation and interpretation, both as a Party of origin and as an affected Party, and what solutions has it found?

See the answer just given above. Moreover, additional translation work mainly causes problems with regard to the timing of the ongoing procedure – there are time gaps in, e.g., making publicly available the EIA documentation and, last but not least, the final decision.

As affected Party, Austria indeed faces several times certain challenge: Where there is no bilateral agreement on the implementation of the Espoo Convention, the missing ruling of a language regime indeed causes several and sometimes serious troubles and challenges: In some cases it can take a long time before receiving a translation (at least in English) of the basic documentation on a project. In some cases, Austria itself has to undertake translation work. One of the main problems connected with the unsolved translation issue is given by the delay and late availability of the relevant documents in German translation what leads to a non-synchronic undertaking of the transboundary EIA procedure, in particular what concerns the public participation: Having the relevant documentation on the project, such as the ENV report, much later available in the domestic language, the public announcement and the making publicly available of these documents only can happen much later than in the Party of origin. Therefore, comments on the project by the public of the affected Party to be submitted to the Party of origin might reach the competent authorities of the Party of origin in a quite late state of the procedure. Mutual and fair arrangements of

reasonable deadlines for submitting comments are therefore most urgent.

The whole situation can become most serious, where not only public participation rights of the concerned public of the affected Party via the Espoo Convention are concerned, but rather legal rights in the sense of enjoying locus standi within the EIA and licensing procedure in the Party of origin. A foreign ENV NGO which might enjoy such locus standi rights in a domestic administrative EIA and licensing procedure might face difficulties in filing comments or claims in time, in particular, when the final decision is concerned. Due to the language and the translation problem, the diverging of legal deadlines according to domestic administrative law from deadlines agreed between the Espoo contact points based on the Convention can create unpleasant situations for foreign parties to a procedure.

(c) Which Party covers the cost of translation of EIA documentation?

(i) As a Party of origin: Austria; that is mainly the developer, or, in some cases, the Federal Ministry.

(ii) As an affected Party: Often it is provided by the party of origin; where not, the Federal Ministry of Sustainability and Tourism acting as the Espoo Contact Point provides for the translation.

(iii) Other, please specify:

(d) What parts of the EIA documentation does your country usually translate?

(i) As a Party of origin: Mainly the most important parts on the description of the project, the non-technical part of the ENV report, the environmental impacts and their assessment, the transboundary issues in particular.

(ii) As an affected Party: If translation is not provided, often the whole documentation, since it is difficult to distinguish which parts might be important and which not.

(e) Please indicate whether and how the issue of translation is addressed in bilateral agreements between your country and other Parties.

As mentioned above, the issue of translation is addressed in the bilateral agreement with the Slovak Republic and it works well.

(f) As a Party of origin, in which language do you usually provide EIA documentation to the affected Party?

(i) English

(ii) The affected Party's language x

(iii) Other (please, specify) Both in the original language (German) and the most important parts in the language of the affected party.

(g) As an affected Party, from which language do you usually translate?

(i) English

(ii) Language of the Party of origin x

(iii) Other (please, specify)

(h) Describe any difficulties that your country has encountered during public participation procedures and consultations under article 5, for example with regard to timing, language and the need for additional information.

(i) As a Party of origin:

Experience with public participation:  
The AUT Espoo Contact point usually submits the requested documentation in translation to the affected party and provides, mostly in English, in a cover letter to the Espoo Contact point of the affected party, the necessary information on the administrative, legal and procedural aspects of the AUT EIA procedure. No specific problems occurred in past.  
Experience with consultations under article 5 All bilateral consultations which took place so far could be conducted in a satisfying and successful way; translation was provided, communication was easy possible.

(ii) As an affected Party:

Experience with public participation:  
Generally, two main challenges have to be tackled: First, that the translation of the EIA documentation including the description of the project, is available in due time in order to be made publicly available and announced. Second, that the publication participation does not take place too long after it has been conducted in the party of origin.

Experience with consultations under article 5:  
Most of the bilateral consultations, which took place so far, were very well organized and conducted in a satisfying way. Translation, where needed, was always provided, enough time was foreseen to discuss all open questions.

- (i) Please describe how the costs of interpretation during the hearings are covered:
- (ii) By the Party of origin: Yes, if the hearing takes place in the country of origin, then party of origin provides for it.
- (iii) By the affected Party: Only, if the public hearing takes place in Austria.
- (iv) Shared by both Parties concerned:---
- (v) Developer: ---
- (vi) Other, please specify ---

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:

In most of the cases, Austria, so far, had quite positive experiences with public hearings and expert consultations both as Party of origin and affected Party. Although language issues can cause certain challenges and troubles for the process of such events, it was always possible so somehow find a solution (either via consecutive or simultaneous translation systems). Our positive experience regarding public hearings and expert consultations in particular refers to a couple of events which took place concerning cases with Slovenia, the Slovak Republic, the Czech Republic and Germany. When it turned out that flexibility is needed for the arrangement of a public hearing or a consultation meeting, our Espoo partners always showed great spirit of cooperation and flexibility.

The language issue is not really a problem in relation to public hearings or expert consultations, rather is a big challenge for the “written” procedure within a transboundary EIA procedure, in particular concerning documents on the project, other written information, the EIA expertise or the final decision.

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 , being the affected party, Austria has several times organized a public hearing in Austria on a NPP-project of the party of origin and the co-operation of the later one always has been given and positive (e.g., with SK Republic, CZ Republic, with Hungary).

(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: Although Austria has got no industrial NPP on its territory, it continuously participates in transboundary EIA procedures dealing with such NPPs or nuclear related projects. At these occasions, sometimes, public hearings or expert consultation meetings are also held in Austria in order to inform the Austrian public and let it participate actively “sur place”, “in situ”. Therefore, Austria has got some valuable experience in organizing such public hearings including taking care of all technical equipments, language issues, such as translation, interpretation, security issues, etc. Such organization work is mostly conducted in cooperation of the Austrian Espoo Contact point at the Federal Ministry of Sustainability and Tourism with some of the Regional Governments of Austria and, certainly, with the Espoo Contact point of the Party of origin. In these cases it turned out to be very important to have a good and sound preparatory work done regarding translation and interpretation, to provide enough time and room at the venue of such hearings. If no translation is, for what ever reason, possible to be provided, English is used as the *liugua franca*.

II.7. Please provide examples from your experience during the reporting period (either complete cases or elements such as notification, consultation and public participation) that, in your view, constitute good practice:

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

(a) No x – But probably at a later stage, ...

(b) Yes  (please indicate which cases):

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

(a) No x

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

## 2. Experience in using the guidance in 2016–2018

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 x (please provide details): Austria always gets valuable information out of these reports and guidance documents.

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 x

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 x (please provide details):

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 a Party of origin or as an affected Party, because of a lack of clarity of the provisions?

No x

Yes x (please indicate which provisions and how they are unclear): In certain cases it might be put into question what decision issued by the party of origin does correspond to the “final decision” as stipulated in the Convention; this is mainly due to the fact that various parties use various permitting and licensing systems, some of these being conducted only within only one administrative procedure (like in Austria, “one-stop-shop”), while others conducted within various administrative procedures with several decisions being issued.

Moreover, sometimes, it was not fully clear, whether or not a project, in particular a modification or a (major) change, fell under the provisions of the Convention; this is mainly due to the fact that “major changes” and “modifications” are not clearly defined in the Convention. For Austria, it is – against some opinions – rather evident, that, e.g., life time extensions to existing nuclear power

plants are “major changes” to a project and, therefore, are subject to the provisions of the Convention.

Another issue, which contributes to some difficulties in applying the Convention is given by the fact that the Convention does not provide for a clear language regime. Necessary translations of partly voluminous documentation on a foreign project often leads to serious delays when making this documentation publicly available and thus to a lack of the synchrony of the public participation in the Party of origin and the affected Party.

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

II.12 Please provide further suggestions (preferably specific drafting proposals) for how this report could be improved. No specific proposals this time, but also see last questionnaire for the period 2013-2016; some of the issues are still “on the table”.