

**REPORT OF AUSTRIA FOR 2003-2005  
ON THE IMPLEMENTATION OF THE ESPOO  
CONVENTION ON ENVIRONMENTAL IMPACT  
ASSESSMENT IN A TRANSBOUNDARY CONTEXT**

for the period mid-2003 to end of 2005

**Information on the Focal Point for the Convention**

Name and contact information:

Ms. Waltraud PETEK

Federal Ministry of Agriculture, Forestry, Environment and Water Management

Stubenbastei 5

A-1010 Wien

Telephone: +43 1 51522.2123

Fax: +43 1 51522.7122

E-mail: waltraud.petek@lebensministerium.at

Mr. Christian BAUMGARTNER

Federal Ministry of Agriculture, Forestry, Environment and Water Management

Stubenbastei 5

A-1010 Wien

Telephone: +43 1 51522.2115

Fax: +43 1 51522.7122

E-mail: christian.baumgartner@lebensministerium.at

**Information on the Point of Contact for the Convention**

Name and contact information (if different from above):

**Information on the person preparing the report**

- |      |                |                                                                             |
|------|----------------|-----------------------------------------------------------------------------|
| i.   | Country        | Austria                                                                     |
| ii.  | Surname        | Baumgartner                                                                 |
| iii. | Forename       | Christian                                                                   |
| iv.  | Institution    | Federal Ministry of Agriculture, Forestry, Environment and Water Management |
| v.   | Postal address | Stubenbastei 5, 1010 Wien                                                   |
| vi.  | E-mail address | christian.baumgartner@lebensministerium.at                                  |

vii. Telephone number ++43-1-51522-2116

viii. Fax number ++43-1-51522-7122

Date on which report was completed: 1-06

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

*Please provide the information requested below in Part I, 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 not be used to describe your experience of applying the Convention, i.e. just the framework for its implementation.*

## Article 2

### *General Provisions*

#### DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (Art. 2.2).*

- EIA Act 2000 (Federal Law Gazette I No. 697/1993 as amended), especially sections 10 and 17.

These provisions will be further explained in a circular to the competent authorities, whose amended version is being finalized in the moment due to recent amendments of the EIA Act.

#### TRANSBOUNDARY EIA PROCEDURE

2. *Describe your national and transboundary EIA procedures and authorities (Art. 2.2):*

- a. *Describe your EIA procedure and indicate which steps of the EIA procedure include public participation.*

- Preliminary procedure upon request of the project applicant (on the content of the project and the environmental impact statement) - no public participation mandatory (Art. 4)

- Application for development consent, containing the Environmental Impact Statement (EIS; Art. 5 and 6, 24a)

- Public inspection of the project application and the EIS for at least six weeks; anybody may submit written comments (Art. 9)

- Environmental Impact Expertise (prepared by experts commissioned by the authority) or Summary Assessment of the Environmental Impacts (prepared by the authority); Environmental Impact Expertise open to public inspection (Art. 12 to 13, 24c to 24e)

- Public hearing and/or Hearing of the parties (Art. 16)

- Decision including information of the public (Art. 17, 24h)

- Acceptance inspection (Art. 20)

- Post-project-analysis in certain cases (Art. 21, 24h)

- b. *Describe how the different steps of the transboundary EIA procedure mentioned in the Convention fit into your national EIA procedure.*

Art. 10 of the EIA Act reads as follows:

Transboundary environmental impact

Article 10. (1) If the project might have significant effects on the environment in a foreign state or if a state that could be affected by the project's impact submits a request to that effect, the authority shall:

1. notify this state of the project as early as possible and, if appropriate for the consideration of transboundary effects, already during the preliminary procedure, but no later than the public, and shall attach to this notification a description of the project, any available information on its possible transboundary impact and, where applicable, the draft of the environmental impact statement,
2. inform this state about the course of the EIA procedure and the nature of the decision which may be taken, and set an appropriate deadline for communicating whether it wishes to participate in the EIA procedure or not.

(2) If this state informs the authority that it wishes to participate in the EIA procedure,

1. it 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 announcement pursuant to Article 9,
2. it shall be given the opportunity for submitting comments within a reasonable period of time that shall be long enough that the state will also be able to make the application documents accessible to the public and give them the opportunity to submit comments, and
3. it shall be provided with the environmental impact expertise or the summary evaluation.

(3) On the basis of the documents provided and the results of the environmental impact expertise or the summary evaluation, consultations shall be held, if necessary, on potential transboundary effects and any measures necessary to avoid or reduce adverse transboundary effects on the environment. These consultations shall, if possible, take place via bodies already established by bilateral agreements within the framework of their competence, in particular the transboundary waters commissions. An appropriate time frame shall be agreed on for the duration of the consultation phase.

(4) 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.

(5) With regard to the provisions of paragraphs 1 to 4, the principle of reciprocity shall apply to states not parties to the Agreement on the European Economic Area.

(6) 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.

(7) If, within the framework of an EIA procedure carried out in a foreign state, documents are received on the environmental impact of a foreign project that might have significant environmental effects in Austria and if the public has to be involved due to commitments under international law, the Land government shall proceed

according to Article 9 with regard to documents corresponding to the documents specified in paragraph 2 no. 1, and the duration of public inspection shall be governed by the provisions of the country where the project is to be implemented. Other authorities with relevant environmental tasks shall be given the opportunity for submitting comments. The Land government shall forward comments received and, upon request of the foreign state, also provide information on the environment potentially affected to the state where the project is to be implemented. If other documents, such as expert opinions and decisions, are supplied during the procedure, these shall be made available to the public in an appropriate manner.

(8) Specific arrangements in the framework of state treaties shall remain unaffected.

- c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure. Also list the authorities responsible for the domestic EIA procedure, if they are different.*

The Federal Ministry of Agriculture, Forestry, Environment and Water Management is in charge of the preparation of legislative steps to implement the Convention such as acts and decrees. It is also the point of contact under the Convention, which means that it is first address for a Party of origin to notify a project likely to cause significant adverse impacts on Austria. The Federal Ministry of Transport, Innovation and Technology (for federal roads and high capacity railways) and the “Land” governments (i.e. provincial governments, for all other types of projects) are competent authorities for the EIA and the procedural steps according to the Convention.

- d. *Is there one authority in your country that collects information on all the transboundary EIA cases under the Convention? If so, name it. If not, do you intend to establish such an authority?*

Yes, the Ministry of Environment, which uses the homepage of the Umweltbundesamt GmbH for documentation of the national and transboundary EIA cases ([www.umweltbundesamt.at](http://www.umweltbundesamt.at)).

3. *Do you have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

No.

#### IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING EIA UNDER THE CONVENTION

4. *Is your country’s list of activities subject to the transboundary EIA procedure equivalent to that in Appendix I to the Convention?*

Our national list goes beyond the Appendix I to the Convention.

5. *Please describe:*

- a. *The procedures and, where appropriate, the legislation you would apply to determine that an “activity”, or a change to an activity, falls within the scope of Appendix I (Art. 2.3), or that an activity not listed should be treated as if it were (Art. 2.5);*

The project list in Appendix I to the Convention is implemented in Annex 1 to the Austrian EIA Act. Every project for which an EIA procedure has to take place in Austria and which is likely to have significant adverse impacts on the territory of another Party has to be notified to that Party. Experts of the authority, or appointed

by the authority, provide expertise on this question in every case so that the authority can decide whether notification is necessary.

Every project for which an EIA procedure has to take place in Austria (a more extensive list than that in Appendix I of the Convention), and which is likely to have significant adverse impacts on the territory of another Party, has to be notified to that Party (see Art. 10 EIA Act). The authority's experts, or experts appointed by the authority, provide advice in every single case to assist the authority in deciding whether to notify the other Party.

*b. How a change to an activity is considered as a "major" change;*

An EIA has to be undertaken if a modification to an activity results in a capacity increase amounting to at least 50% of the threshold given in Annex 1 of the EIA Act, or of the previously approved capacity of the activity, 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. For projects in certain ecologically sensitive areas listed in Column 3 of Annex 1 of the EIA Act, an EIA has to be performed if the threshold is reached and, as a result of a case-by-case examination, significant adverse effects are to be expected for this sensitive area. The relevant sensitive areas are specified in Annex 2 and connected to relevant project types in Column 3 of Annex 1. For those modifications subject to EIA, the same procedure has to be performed as described in the response to the previous question.

*c. How such an activity, or such a change to an activity, is considered likely to have a "significant" adverse transboundary impact (Art. 2.5, Guidelines in Appendix III); and*

The authority shall decide on a case-by-case-basis whether an activity has a "significant" adverse transboundary impact, taking into consideration the following criteria:

- Characteristics of the project (size of the project, accumulation with other projects, use of natural resources, production of waste, environmental pollution and nuisances, risk of accidents);
- Location of the project (environmental sensitivity taking into account existing land use, abundance, quality and regenerative capacity of natural resources in the area, absorption capacity of the natural environment);
- Characteristics of the potential impact of the project on the environment (extent of the impact, transboundary nature of the impact, magnitude and complexity of the impact, probability of the impact, duration, frequency and reversibility of the impact) as well as the change in the environmental impact resulting from the implementation of the project as compared with the situation without the implementation of the project. In case of projects falling under Column 3 of Annex 1 of the EIA Act, the changed impact is assessed with regard to the protected area.

*d. How you would decide whether it is "likely" to have such an impact. (Art. 2.3)*

It is likely if there is a certain possibility of such an impact.

## PUBLIC PARTICIPATION

6. *Do you have your own definition of "the public" in your national legislation, compared to Article 1(x)? How do you, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your own public as required in Article 2, paragraph 6?*

Austria sends the documentation to the affected Party at a reasonable time before public participation in Austria starts; it consults with the affected Party to find out the best ways to provide its public with the information.

## Article 3

### Notification

#### QUESTIONS TO PARTY OF ORIGIN

7. *Describe how you determine when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure do you usually notify the affected Party? (Art. 3.1)*

The Austrian EIA Act requires notification 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.

8. *Describe how you determine the content of the notification? (Art. 3.2)*

The Austrian EIA Act requires to attach to the notification a description of the project, any available information on its possible transboundary impact and, where applicable, the draft of the environmental impact statement

9. *Describe the criteria you use to determine the time frame for the response to the notification from the affected Party (Art 3.3, “within the time specified in the notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

No legal provisions and no practical experience.

10. *Describe when you provide relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in Article 3, paragraph 5. Already with the notification or later in the procedure?*

We inform this state about the course of the EIA procedure and the nature of the decision which may be taken together with the notification. If this state informs the authority that it wishes to participate in the EIA procedure, it 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 announcement to the public pursuant to Article 9.

11. *How do you determine whether you should request information from the affected Party (Art. 3.6)? When do you normally request information from the affected Party? What kind of information do you normally request? How do you determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (Art. 3.6)?*

No legal provisions and no practical experience.

12. *How do you consult with the authorities of the affected Party on public participation (Art. 3.8)? How do you identify, in cooperation with the affected Party, the “public” in the affected area? How is the public in the affected Party notified (what kinds of media, etc are usually used)? What is normally the content of the public notification? Does the notification to the public of the affected Party have the same content as the notification to your own public? If not, describe why not. At what stage in the EIA procedure do you normally notify the public of the affected Party?*

The public in the affected area is identified by experts providing evidence on how far impacts can range. We provide the authorities of the affected party with the text of the

public announcements in Austria and all documents open for public inspection in Austria. We are willing to do this so early that public inspection can be carried out in both states at the same time.

13. *Do you make use of contact points for the purposes of notification as decided at the first meeting of Parties (ECE/MP.EIA/2, decision I/3), and listed on the Convention website at [http://www.unece.org/env/eia/points\\_of\\_contact.htm](http://www.unece.org/env/eia/points_of_contact.htm)?*

Yes, the points of contact are made use of in this way.

14. *Do you provide any information to supplement that required by Article 3, paragraph 2? Do you, furthermore, follow the proposed guidelines in the report of the first meeting of the Parties (ECE /MP/2, decision I/4)? If not, in what format do you normally present the notification?*

Yes, the proposed guidelines are followed.

#### QUESTIONS TO AFFECTED PARTY

15. *Describe the process of how you decide whether or not you want to participate in the EIA procedure (Art. 3.3)? Who participates in the decision-making, for example: central authorities, local competent authorities, the public and environmental authorities? Describe the criteria or reasons you use to decide?*

Austrian participation depends on the significance of the impacts (no further legal provisions). Austria participates in most cases. Of several projects notified, in one case Austria did not participate, in one case it declared its participation subject to further information, in one case it participated in the scoping procedure but there was no subsequent EIA, and in one case (a highly political issue) it had explicitly asked for notification and therefore declared its participation. In the other cases it just declared Austria's participation. Who participates in the decision-making process depends on the territory likely to be affected: In case of an installation for the intensive rearing of animals that can affect only one or two municipalities: The Federal Ministry of Environment, the government of the affected Land and the affected municipality; in case of an atomic power plant where an accident can affect parts of the country or the whole country: the federal ministry (sometimes the whole government) and the possibly affected Länder.

16. *When the Party of origin requests you to provide information relating potentially affected environment: (a) how do you determine what is "reasonably obtainable" information to include in your response; and (b) describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of "promptly" in the context of responding to a request for information? (Art. 3.6)*

No legal provisions. We had only one transboundary EIA case where we were asked to provide this kind of information. Within a few weeks we provided any information we had about the radiological situation in Austria.

## Article 4

### *Preparation of the EIA documentation*

#### QUESTIONS TO PARTY OF ORIGIN

17. *What is the legal requirement for the content of the EIA documentation (Art. 4.1)?*

Art. 6 EIA Act reads as follows:

"Article 6. (1) The environmental impact statement shall contain the following information:



1. A description of the project comprising information on the site, design and size of the project and in particular:
  - a) a description of the physical characteristics of the whole project, including the land-use requirements during the construction and operational phases;
  - b) a description of the main characteristics of the production or processing procedures, in particular with regard to the nature and quantity of the materials used;
  - c) data, by type and quantity, of residues and emissions to be expected (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the implementation and operation of the project;
  - d) the increase in the concentration of pollutants in the ambient environment resulting from the project;
  - e) energy consumption, broken down by energy sources;
  - f) duration of the project's existence and follow-up measures as well as any measures to secure evidence and ensure concomitant control.
2. An outline of the main alternatives studied by the project applicant and an indication of the main reasons for this choice, taking into account the environmental effects; in case of Article 1 (1) no. 4, the alternative sites or routes examined by the project applicant.
3. A description of the aspects of the environment likely to be significantly affected by the project, including, in particular, human beings, fauna, flora and their habitats, soil, water, air, climate, landscape, material assets, including the cultural heritage, and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed project on the environment resulting from:
  - a) the existence of the project,
  - b) the use of natural resources,
  - c) the emission of pollutants, the creation of nuisances and the nature, quantity and elimination of waste,
 as well as information on the methods used to forecast the effects on the environment.
5. A description of the measures envisaged to prevent, reduce or, where possible, offset any significant adverse effects of the project on the environment.
6. A non-technical summary of the information mentioned in numbers 1 to 5.
7. An indication of any difficulties (in particular, technical deficiencies or lack of data) encountered by the project applicant in compiling the required information.

(2) If individual items of information according to paragraph 1 are irrelevant for the project or if the project applicant cannot reasonably be required to compile this information having regard to current knowledge and methods of assessment, they need not be submitted. This fact shall be indicated and justified in the environmental impact statement. This provision shall be without prejudice to Article 5 (2)."

18. *Describe your country's procedures for determining the content of the EIA documentation (Art. 4.1).*

Art. 4 EIA act reads as follows:

"Article 4. (1) A preliminary procedure shall be carried out upon request of the project applicant. The request shall be accompanied by a description of the basic outline of the project and an outline of the environmental impact statement.

(2) After having consulted the co-operating authorities and, where appropriate, any third parties, the authority shall express their opinion to the project applicant on the documents according to paragraph 1 as soon as possible but no later than three months of their receipt. In particular, this opinion shall point out obvious deficiencies in the project or the outline of

the environmental impact statement (Article 6) and shall indicate any additional information that probably needs to be included in the environmental impact statement."

If the project applicant does not require a formal preliminary procedure according to Art. 4 - which happens very often - he nevertheless usually seeks to be in contact with the authority's experts before submitting the application in order to fulfill their requirements for the EIS. If he does not, he takes the risk to lose much time in the procedure by complementing the EIS.

19. *How do you identify "reasonable alternatives" in accordance with Appendix II, alinea (b)?*

We identify it case by case. For large scale infrastructure projects the requirements for identification of alternative locations or alternative ways of solving a problem are usually higher than for smaller industrial installations or leisure activity projects.

20. *How do you identify "the environment that is likely to be affected by the proposed activity and its alternatives" in accordance to Appendix II, alinea (c), and the definition of "impact" in Article 1(vii)?*

See response to question 5(c); it is identified in cooperation with the affected Party by expertise.

21. *Do you give the affected Party all of the EIA documentation (Art. 4.2)? If not, which parts of the documentation do you provide?*

We provide the whole EIS.

22. *How is the transfer and reception of the comments from the affected Party organized? How does the competent authority in your country (as the Party of origin) deal with the comments? (Art. 4.2)*

The authority gets the comments directly by mail or from an authority of the affected party that collects them from the public on the territory of the affected party. The EIA authority has to take those comments into account in the same way as the comments from its own public.

23. *Describe the procedures and, where appropriate the legislation you would apply to determine the time frame for comments provided for in the words "within a reasonable time before the final decision" (Art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

In Austria, the EIS has to be open for public inspection for at least six weeks. In order to give the same opportunity to the public of the affected party and to make sure that the affected party has enough time to organise the public participation, the participation of its own authorities affected and the elaboration of its own comments, we regard a time frame of two months as appropriate.

24. *What material do you provide, together with the affected Party, to the public of the affected Party?*

The EIA documentation, the project application, the Environmental Impact Expertise and the decisions are provided.

25. *Do you initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your*

*country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?*

A hearing in the affected Party may be initiated, depending on the type of project, on the need for translation and on the number of affected persons on the territory of the affected Party. A hearing may be held in the Party of origin; if necessary and in cooperation with the affected Party, Austria enables the public of the affected Party to participate. And a public hearing may be initiated as a joint hearing in either Party.

#### QUESTIONS TO AFFECTED PARTY

26. *Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of the words “within a reasonable time before the final decision”, this being the time frame for comments (Art. 4.2)?*

The Austrian EIA Act refers to the legislation of the Party of origin: the duration of the public inspection as well as the time for comments from the Austrian authorities is governed by the provisions of the country where the project is to be implemented. After the comments have been sent to the Party of origin, there must be enough time for consultations. It depends on the type of project as well as on the complexity of its impacts and the political impacts of the project.

27. *Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, or with the legislation of the Party of origin, or with ad hoc procedures, or with bilateral or multilateral agreements?*

It is organized in accordance with the legislation of the Party of origin.

## Article 5

### Consultations

#### QUESTIONS TO PARTY OF ORIGIN

28. *At which step of the EIA procedure does the consultation in accordance with Article 5 generally take place? Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “undue delay”, with regard to the timing of entry into consultation? Do you normally set the duration for consultations beforehand? If there seems to be no need for consultation, how do you determine not to carry out consultations?*

No experience. Art. 10 section 3 EIA Act reads as follows:

"(3) On the basis of the documents provided and the results of the environmental impact expertise or the summary evaluation, consultations shall be held, if necessary, on potential transboundary effects and any measures necessary to avoid or reduce adverse transboundary effects on the environment. These consultations shall, if possible, take place via bodies already established by bilateral agreements within the framework of their competence, in particular the transboundary waters commissions. An appropriate time frame shall be agreed on for the duration of the consultation phase."

29. *On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?*

No experience.

## QUESTIONS TO AFFECTED PARTY

30. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means do you usually communicate in consultations, for example by meeting or by the exchange of written communications? How do you indicate if there is no need for consultations?*

The point of contact (the Federal Ministry of Environment) and affected Länder (provinces) take part from the Austrian side; from the Party of origin's side it is the competent authority and in some countries also the developer. Communication is usually in a meeting.

## Article 6

### *Final decision*

## QUESTIONS TO PARTY OF ORIGIN

31. *Describe what is regarded as the "final decision" to authorize or undertake a proposed activity (Art. 2.3). Do all projects listed in Appendix I require such a decision?*

The "final decision" is the decision in the consolidated permit procedure which the EIA is part of. For federal roads and high speed railroads there exists no completely consolidated procedure and therefore there is a couple of decisions that have to take the outcome of the EIA into account. All projects listed in Appendix I require a decision.

32. *How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity? (Art. 6.1)*

Art. 17 section 4 EIA Act reads as follows:

"(4) The decision shall take account of the results of the environmental impact assessment (in particular, environmental impact statement, environmental impact expertise or summary assessment, comments, including the comments and the results of the consultations according to Article 10 and, if applicable, the results of a public hearing). The specification of suitable obligations, conditions, deadlines, project modifications, offsetting measures or other requirements (in particular, also with regard to monitoring, measuring and reporting duties and measures to ensure follow-up activities) shall contribute to a high protection level for the environment in its entirety."

33. *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 public in your country (Art. 6.1)?*

Yes.

34. *How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (Art. 6.2)*

Yes, the final decision does contain the reasons and considerations on which the decision is based and it is submitted to the affected party.

35. *If additional information comes available according to paragraph 3 before the activity commences, how do you consult with the affected Party? If need be, can the decision be revised? (Art. 6.3)*

Art. 10 section 4 EIA Act reads as follows:

"(4) 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."

## **Article 7**

### ***Post-Project Analysis***

36. *How do you determine whether you should request a post-project analysis to be carried out (Art. 7.1)?*

Art. 21 EIA Act reads as follows:

"Article 21. (1) Three years at the earliest and five years at the latest after notification of completion in accordance with Article 20 (1) or at a date specified in the development consent order in accordance with Article 20 (6), the authorities in accordance with Article 22 shall jointly inspect projects listed in Column 1 of Annex 1 for compliance with the development consent order and to verify whether the assumptions and forecasts of the environmental impact assessment correspond to the actual effects of the project on the environment. The authority according to Article 39 and the co-operating authorities shall be involved therein at any rate. Post-project analysis shall be carried out by the date indicated in the administrative acceptance order in accordance with Article 20 (5).

(2) The authorities shall communicate the results of post-project analysis to the authority according to Article 39 and to the Federal Minister of Agriculture and Forestry, Environment and Water Management"

37. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how do you inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to Article 7, paragraph 2?*

No experience.

## **Article 8**

### ***Bilateral and multilateral agreements***

38. *Do you have any bilateral or multilateral agreements based on the EIA Convention (Art. 8, Appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on Appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

There are three bi-/multilateral agreements involving Austria:

- Agreement with Slovakia;
- Informal trilateral guideline with Switzerland and Liechtenstein;
- Draft agreement with Czech Republic.

The agreements contain provisions according to paragraphs (a), (b) and (c) of Appendix VI; they do not refer to the other paragraphs.

39. *Have you established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

No, a supplementary point of contact has not been established.

## **Article 9**

### ***Research programmes***

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

There is a study commissioned by the Federal Ministry of Agriculture, Forestry, Environment and Water Management on practical results of EIA procedures in Austria from the year 2000; there is a new study on this topic which is not completed yet.

## **Ratification of the amendments to the Convention and of the Protocol on SEA**

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

Austria has started the ratification process.

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

Austria has started the ratification process.

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

We are planning to ratify the protocol as soon as possible.

## PART II – PRACTICAL APPLICATION DURING THE PERIOD 2003-2005

*Please report on your practical experiences of applying the Convention (not your procedures described in Part I), whether as Party of origin or affected Party. The focus here is on identifying the best practice as well as difficulties Parties encountered in applying the Convention in practice to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve application of the Convention.*

### CASES DURING THE PERIOD 2003-2005

44. *Do you have any practical experience of applying the Convention in this period (yes/no)? If you do not have any such experience, why not?*

Yes.

45. *Does your national administration have information on the transboundary EIA procedures that were underway during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If you have not provided a list of transboundary EIA procedures in connection with previous reporting, also provide a list of those procedures. If possible, also indicate for each procedure why it was considered necessary to apply the Convention.*

- Germany: Transboundary EIA for 6 interim storage facilities for spent nuclear fuel planned in Southern Germany (Austria affected party) - Transboundary impact possible in case of severe accidents in the storage facility or the neighbouring nuclear power plant, danger of terroristic attacks and airplane crash

- Italy: Joint EIA for the cross-border-project Brenner base tunnel (Austria party of origin and affected party)

- Czech Republic: Transboundary EIAs for 4 cross-border motorway projects (no joint EIA because projects in Austria not prepared for application yet) and for 1 interim storage facility for spent nuclear fuel planned in Temelin (Austria affected party) - Transboundary impact of the storage facility possible in case of severe accidents in the storage facility or the neighbouring nuclear power plant, danger of terroristic attacks and airplane crash

- Hungary: Extension of the operation license for the nuclear power plant Paks (Austria affected party) - Transboundary impact possible in case of certain accidents; due to possible weather conditions Austria may be exposed to radioactive emissions).

46. *Are there other projects than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.*

No.

47. *Provide information on the average durations of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

The procedures as a whole take one to three years, depending on need for extended consultations and on project changes submitted by the developer during the procedure.

48. *If you have had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

There have been taken special measures for the drain of spread fuel in case of an airplane crashed on an interim storage for spent nuclear fuel; we also think that the measures required by the permitting authorities for those storage facilities have become more strict than they would have been without Austria's participation.

49. *How have you interpreted in practice the various terms used in the Convention, and what criteria have you used to do this? Key terms include the following: "promptly" (Art. 3.6), "a reasonable time" (Art. 3.2(c), Art. 4.2), "a reasonable time-frame" (Art. 5), and "major change" (Art. 1(v)). If you are experiencing substantial difficulties interpreting particular terms, do you work together with other Parties to find solutions? If not, how do you overcome the problem?*

We usually interpret particular terms used by the Convention in cooperation with the other parties. There have been different opinions with Germany, the Czech Republic and Hungary on the question whether storage facilities or nuclear power plant in a distance between 50 and 250 kilometers from the Austrian border can have relevant transboundary impacts, but finally the parties of origin agreed to perform an transboundary EIA procedure.

50. *Share with other Parties your experience of using the Convention. In response to each of the questions below, either provide one or two practical examples or describe your general experience. You might also include examples of 'lessons learned' in order to help others.*

- a. *How in practice have you identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?*

In cases of projects that could affect a large territory (nuclear power installations) we assigned experts to identify the risk for Austria in case of an accident; these experts drew up an expertise which served as a basis for our demand for notification.

In cases of projects that could affect only a small territory (e.g. intensive rearing of animals) we asked the authorities of the affected Land and the affected municipality if they wish a participation. In case of a realistic danger of impacts (malodour, water pollution) we would have asked for notification.

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

Austria as a party of origin shall provide a separate chapter on transboundary issues in the EIA documentation (no practical experience).

- c. *What methodology do you use in impact assessment in the (transboundary) EIA procedure (for example, impact prediction methods and methods to compare alternatives)?*

No experience as a party of origin.

- d. *Translation is not addressed in the Convention. How have you addressed the question of translation? What do you usually translate? What difficulties have you experienced relating to translation and interpretation, and what solutions have you applied?*



Especially with Czech Republic we had the problem that no translations were provided by the party of origin. We therefore had to provide for a translation of the documents ourselves which took a lot of time and money.

Austria as a party of origin provides a project description and an analysis of possible transboundary impacts in the language of the affected party as a basis for its decision whether to take part in the EIA procedure or not. All parts of the EIS, the Environmental Impact Expertise and the decision, connected with transboundary impacts, shall be translated.

- e. *How have you organized transboundary public participation in practice? As Party of origin, have you organized public participation in affected Parties and, if so, how? What has been your experience of the effectiveness of public participation? Have you experienced difficulties with the participation of your public or the public of another Party? (For example, have there been complaints from the public about the procedure?)*

No experience as a party of origin. As an affected party we opened all documents we got from the party of origin (that we had had to translate before) for public inspection and a lot of comments was submitted. We had complaints from the public about public hearings in the party of origin (no possibility for discussion, no translation) and about the quality of the documentation.

- f. *Describe any difficulties that you have encountered during consultations, for example over timing, language and the need for additional information.*

In one case the party of origin was of the opinion that the consultation could consist only in one meeting, further meetings would go beyond the requirements of the Convention. More meetings were than organised which brought the consultations to a fruitful end, but the party of origin insists that the further two meetings were held beyond the requirements of the Convention. In our opinion it does not depend on the number of meetings but on a reasonable time frame (Art. 5 of the Convention).

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

No experience as a party of origin. There was no translation of the decisions we got as an affected party from the Czech Republic. All decisions we get are opened to the public.

- h. *Have you carried out post-project analyses and, if so, on what kinds of projects?*

No.

- i. *Do you have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your experiences describing, for example, any bilateral agreements, institutional arrangements, and how practical matters are dealt with (contact points, translation, interpretation, transmission of documents, etc.).*

There is a transboundary EIA going on for a very large project, the 55 km long Brenner basic tunnel. Although the EIA procedures between Austria and Italy are very different (EIA in Italy in a much earlier state on grounds of a much smaller project documentation than in Austria), the experts of the developer and the experts of the authorities on both sides collaborate in drawing up the EIS and in assessing it. So there should result a joint expertise about the project, whereas the procedural steps according to national EIA legislation and the Convention are taken separately by each country.

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

The transboundary EIAs for the 6 interim storage facilities in Southern Germany worked very well. There was organised a public hearing for the Austrian public concerning all 6 facilities and there took place an intensive consultation period between Austria and the EIA authority which brought a lot of useful information for the Austrian side and - hopefully - effective measures to prevent possible transboundary impacts. There was one advantage in the procedure: both parties speak the same language.

#### CO-OPERATION BETWEEN PARTIES IN 2003-2005

51. *Do you have any successful examples of how you have overcome difficulties arising from different legal systems in neighbouring countries?*

See answer to question 50 i - but that EIA procedure has not finished yet, so we hope it will work.

#### EXPERIENCE IN USING THE GUIDANCE IN 2003-2005

52. *Have you used in practice the following guidance, recently adopted by the Meeting of the Parties and available on-line? Describe your experience of using these guidance documents and how they might be improved or supplemented.*

- a. *Guidance on public participation in EIA in a transboundary context;*

Not used.

- b. *Guidance on subregional cooperation; and*

Not used.

- c. *Guidelines on good practice and on bilateral and multilateral agreements.*

Used and found very useful.

#### CLARITY OF THE CONVENTION

53. *Have you had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in Part I or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which you encounter when actually applying the Convention.*

In general the Convention is a very useful document whose importance and usefulness was even strengthened by its implementation by EU Directive 85/337. We understand that not every minor issue can be addressed and solved in the text of the Convention. It's up to the applying member states to establish a good bilateral praxis and/or bilateral agreements in order to solve such issues as translation and time frames.

#### AWARENESS OF THE CONVENTION

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

We discuss the implementation of the Convention regularly with the EIA authorities, we distributed the guidelines on good practice, we put information about the Convention on our homepage, we organised the current documentation of transboundary EIA procedures on the homepage of the Umweltbundesamt GmbH, we co-financed and co-organised INTERREG - projects to promote the application of the Convention between Austria und the Czech Republic and Slovakia.

*55. Do you see a need to improve the application of the Convention in your country and, if so, how do you intend to do so? What relevant legal or administrative developments are proposed or on-going?*

#### SUGGESTED IMPROVEMENTS TO THE REPORT

*56. Please provide suggestions for how the report may be improved.*