

**REPORT OF GERMANY 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

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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).*

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

- * The German Federal EIA Act as published in the announcement of 25 June 2005 (Federal Law Gazette I p. 1757) is implementing the provisions of the Espoo Convention, including its two amendments, and as well the provisions of the EIA-Directive 85/337/EEC as amended by the Directives 97/11/EC and 2003/35/EC;
- * Ratification Act for the Espoo Convention and its first amendment, published on the 17 June 2002 (Federal Law Gazette II p. 1406);
- * Ratification Act for the second amendment of the Espoo Convention, published on the 17 March 2006 (Federal Law Gazette II p. 224).

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

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

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.*

With regard to the relevant provisions of the Federal EIA Act the EIA procedure in Germany the following sequence of steps will take place:

- Request for a development consent or permit by the developer
- Determination of EIA obligation by the competent authority (Article 3a):
 - > EIA obligation due to type, scale and capacity of a project (Article 3b) or
 - > EIA obligation in individual cases - Screening (Article 3c) - if the result of the screening step is that no EIA has to be carried out, this negative result will be made public by public announcement
- Scoping (Article 5) - Independent experts and third parties may be consulted by the

competent authority

- The competent authority receives the developer's documents, including the EIA documentation (Article 6)
- Consultation with other authorities (Article 7)
- Transboundary consultation with authorities of an affected state (Article 8)
- Consultation with the domestic public, including a hearing (Article 9)
- Transboundary consultation of the public in the affected state (Article 9a)
- Summary description of environmental impacts by the competent authority (Article 11)
- The competent authority shall take the results of the consultations into account in the final decision (Article 12)
- Possible access to justice against the decision by members of the public, including NGOs

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

Article 8 and 9a are the specific provisions for transboundary EIA, if Germany is the Party of origin. Article 9b is the relevant provision, if Germany is the affected Party. In brief Article 8 regulates inter alia the notification step, the submission of documents to the affected Party, including the EIA documentation, the consultation step and the submission of the final decision. Article 9a ensures that the public of an affected Party has the equal rights to participate in the EIA procedure.

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.*

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

In Germany, EIA is an integral part of licensing procedures and of other forms of procedures (e.g. siting procedures). Apart from a few exceptions, the authorities of the German States (Länder) are responsible for these procedures. Usually these are authorities on the local, regional or very seldom the Länder level. According to the Federal EIA Act, the transboundary EIA procedure is integrated into the national EIA procedure. The authority that is responsible for the decision on the project (licensing authority) is thus also responsible for the transboundary EIA including the notification. The Federal level or the Ministries of the German States are usually only involved in the transboundary EIA procedure if any problems could not be solved in the spirit of communication and cooperation between the competent German authority and the competent authority of an affected Party. In the case of Germany as affected Party, the authority that would be responsible for a similar project in Germany is responsible for the transboundary EIA procedure on the German side.

Under the German constitution ('Basic Law') Germany is a federal state. Therefore, the tasks and competencies are distributed between the Federal level and the German States (Länder). In principle, the Federal level is inter alia competent for international negotiations and the federal legislation in the framework of the constitution. The German States and their authorities on local, regional and Länder level are inter alia competent for the practical application of the federal legislation. Following this system, the licensing procedures for projects and activities and the integrated EIA procedure are usually carried out by authorities of the German States

on local, regional and Länder level. This is the reason why the Federal level is not fully informed about any practical experience in applying the legislation on EIA, including transboundary EIA.

- 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?*

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

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

No, there are no specific provisions.

Normally each Party will carry out a licensing procedure including a transboundary EIA for the part of the project on its own side of the border. In each of these procedures the other Party will participate as affected Party. If both countries agree to carry out a common EIA for the project as a whole this may be a possible alternative.

The planned project of a North-European Gas Pipeline, that is envisaged to connect Russia and Germany crossing the Baltic Sea - russian territorial waters, russian, finnish, swedish, danish and german exclusive economic zones (EEZ) and finally the german territorial waters -, will lead to a lot of practical experience with a complex joint project for the Parties involved.

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?*

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

- for which it is mandatory to carry out an EIA or
- for which a case-by-case examination (screening) has to be carried out in order to investigate if the project has significant adverse effects on the environment and therefore requires an EIA. This Annex 1 is inter alia implementing at the same time the EIA Directives 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC.

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 Federal EIA Act implements the EIA Directive (85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC) and as well as the provisions of the Espoo Convention and its two amendments into federal law. This German EIA Act includes an Annex 1, which lists all projects or activities

- (a) for which it is mandatory to carry out an EIA; or
- (b) for which a case-by-case examination has to be carried out in order to investigate whether the project has significant adverse effects on the environment and may thus require an EIA. This Annex 1 includes inter alia all activities listed in Appendix I to the Espoo Convention (already as amended by the second amendment to the Convention) According to Article 8 of the Federal EIA Act, a transboundary EIA has

to be carried out for every project or activity for which an EIA will be carried out in Germany, if the project or activity may have significant adverse transboundary environmental impacts. The obligation to carry out a transboundary EIA is thus not restricted to projects or activities listed in Appendix I of the Espoo Convention.

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

The relevant provision is Article 3e of the Federal EIA Act. For specific large changes to projects or activities subject to EIA in Germany, an EIA is mandatory in each case (if the change or extension itself reaches the thresholds set out in Annex 1 to the Federal EIA Act for an obligatory EIA – category ‘X’). Smaller changes will be dealt with on a case-by-case examination (‘Screening’) in order to investigate whether the change to a project or an activity will have significant adverse effects on the environment and thus will require an EIA. The relevant criteria for the screening-procedure (Annex 2 to the Federal EIA Act) include possible transboundary impacts.

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*

For many projects or activities listed in Annex 1 to the Federal EIA Act, including the activities listed in Appendix I to the Espoo Convention, EIA is mandatory. For these projects the competent authority will have to determine only whether any significant adverse environmental impacts could also be transboundary. For other projects or activities listed in Annex 1 to the Federal EIA Act a case-by-case examination (‘Screening’) has to be carried out. For these other projects or activities the competent authority will determine, on the basis of the application and additional documents provided by the proponent, on the basis of information of other authorities and on the basis of the current state of knowledge and expertise of the authority itself on the proposed project and on the proposed site for this project, whether impacts may be significant or likely. Annex 2 to the German EIA Act lists criteria that will have to be taken into account in such a screening procedure.

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

See answer to question 5 c.

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?*

Subquestion 1:

Yes - Article 2 para. 6 of the Federal EIA Act reads as follows:

"(6) For the purposes of this act “the public” shall refer to individuals or legal entities, either singly or in groups, and associations thereof. For the purposes of this Act, with regard to participation in procedures pursuant to paragraph (1), sentence 1 and paragraph (4), the “affected public” shall refer to any individual whose interests are affected by a decision pursuant to paragraph (3) or a plan or a programme within the meaning of paragraph (5); this shall also include associations whose activities as described in their statutes are affected by a decision pursuant to paragraph (3) or a plan or a programme within the meaning of paragraph (5), including associations which promote environmental protection."

Subquestion 2:

According to Article 9a of the Federal EIA Act, the legal provisions that determine the participation of the German public are also to be applied vis-à-vis to the public of an affected Party.

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)*

With regard to Article 8 of the Federal EIA Act the competent authority has to notify an affected Party as early as possible. The competent authority will notify an affected Party, if the proposed project or activity is – in the opinion of the competent authority on the basis of an examination of the documents and information available – likely to cause significant adverse transboundary environmental impacts. The notification always takes place before the public participation procedure begins. If possible, a notification already in the scoping phase is recommended.

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

The competent German authority has to give the affected Party all informations that are available and that are necessary for the affected Party to decide whether it wishes to take part in the EIA procedure or not.

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?*

It is the obligation of the competent authority to specify a reasonable time frame for a response. Normally a period of thirty days seems appropriate. The competent authority will consider inter alia bilateral practice.

With regard to Article 3, paragraph 4, of the Convention, the competent authority has to decide whether a transboundary EIA procedure will be carried out if an affected Party does not comply with the time frame.

The competent authority has to decide on an extension of a deadline. With regard to best practice in transboundary cooperation, an extension may be not a problem if there will be no delay caused in the licensing procedure.

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?*

There is no general rule. The competent authority must decide in each case if it is useful to submit the relevant information according to Article 3, paragraph 5 of the Convention already with the notification or later in the procedure. If documents will be submitted with a translation, this may lead to a separate submission of the informations according to Article 3, paragraph 5.

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)?*

The competent authority may request any information that could be useful for the transboundary EIA. The federal level has no information on the practical application of Article 3, paragraph 6 of the Convention.

In practice, “promptly” should mean “as soon as possible”.

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?*

This is an obligation on both Parties: the Party of origin and the affected Party. Therefore, both Parties have to work together in identifying the public in the affected area. Normally the determination of the public in the affected area will depend on the specific type of activity or project and the geographical extent of the possible environmental impacts of the project or activity (e.g. nuclear power plant, compared to intensive livestock farming). With regard to Article 9a, paragraph 1, of the Federal EIA Act, the competent authority shall contact the affected Party and use its best efforts to assure that the carrying out of a transboundary EIA procedure is announced to the public of the affected Party in a suitable manner. Usually an announcement in a daily newspaper or similar media will be used, as well as the Internet.

With regard to Article 9a, paragraph 1, of the Federal EIA Act, the public notification should contain inter alia information on the proposed project or activity and its likely significant adverse transboundary environmental impacts, and details of the competent authority in the Party of origin to which comments should be submitted, including the time-frame for submitting comments.

The affected Party will receive for the notification of its public the same information as the public of the Party of origin.

If possible the consultation of the public in the affected Party should take place at the same time as the consultation of the public in the Party of origin - on the basis of the EIA documentation and additional documents.

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?*

Yes, these contact points can be useful, if there is no other authority in a neighbouring country for purposes of notification known or fixed by common agreements.

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?*

In practice, the competent authority may add any additional information that appears useful, including the information specified in Article 3, paragraphs 5 (a) and (b), of the Convention.

The competent authority in Germany may use any notification format that fulfils the requirements of the Convention, taking into account the proposed guidelines in the report of the first meeting of Parties.

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?*

Participation in an EIA procedure as an affected Party will only take place if the competent German authority shares the opinion of the competent authority of the Party of origin that significant adverse transboundary impacts of the proposed activity are likely.

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

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)*

The Federal level has no information on the practical application of Article 3 para. 6 of the Convention. In principle "reasonably obtainable" would be any information that is already publicly available and/or is falling into the scope of the Act on access to environmental information. Regarding the meaning of "promptly" see the answer to question 11.

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)?*

Article 6 of the Federal EIA Act ("Developer's documents") is the provision that implements inter alia the requirements of the Espoo Convention and of the EIA Directive regarding the content of the EIA documentation, without using this term.

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

The content of the EIA documentation is in principle regulated by Article 6 of the Federal EIA Act (see answer to question 17). During the Scoping-Phase - according to Article 5 of the Federal EIA Act - the competent authority will give advice how the legal requirements can be fulfilled in the best way with regard to the project for that the development consent is requested. After the developer has submitted the information according to Article 6 of the Federal EIA Act to the competent authority, this authority has to assess the adequacy of the content of this information in comparison to the legal requirements and to the results of the scoping phase.

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

This identification depends on the project in question. Infrastructure projects (e.g. roads) may have more reasonable alternatives as for example an industrial installation. The term "alternatives" can include other technical solutions for the planned project or it can include another location or routing for the planned project. The most important alternatives are those that the developer has studied during the planning of the project and during the preparation of the EIA documentation.

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)?*

This identification has to be done on a case-by-case-basis taking into account inter alia the characteristics of the project, the location of the project and the characteristics of the potential impacts of the project on the environment. The most important tool for this identification are studies by competent consultants.

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?*

Yes, all the EIA documentation is given to the affected Party.

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 comments of the affected Party should be sent to the German authority competent for the EIA procedure.

The comments will be assessed and taken into account in the final decision. If the comments have had no influence on the final decision, the decision will explain why.

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?*

The determination of the time frame depends on the national legislation for the licensing procedure. It varies between six weeks and two months.

The competent authority has to decide whether comments received after the deadline should be considered. If they contain important new information with great relevance for the decision on the development consent and this decision was not already taken, the information will be taken into account.

Due to time frames laid down in the national legislation an extension of the deadline usually will not be possible. The affected Party asking for an extension, will be informed of this legal situation.

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

For the public of the affected Party the same documents will be available as for the public in the Party of origin. This is primarily the request for the development consent or the permit, the EIA documentation, additional studies and usually a translation at least of the non-technical summary and of other parts of the EIA documentation that are of relevance for the transboundary environmental impacts of the project. Later on the final decision will be made available to the public of the affected Party.

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 public hearing is usually an inherent part of the German EIA procedure. According to Article 9a of the Federal EIA Act the public of the affected Party is entitled to participate.

A hearing in the territory of an affected Party organized by the competent authority of the Party of origin could lead to complicated legal questions. Such a hearing seems to be only possible, if both Parties cooperate very close.

On the federal level one exceptional case between Germany and Austria is known, that has included a special hearing for the public of the affected 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 time-frame for comments depends on the legislation of the Party of origin. The Espoo Convention provides for an equal treatment of the public and of authorities, affected in their environmental-related tasks by the project, in both Parties. Therefore the timing of the consultation phase has in principle to follow the legislation of the Party of origin.

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?*

According to Article 9b of the Federal EIA Act the competent authority in case of Germany as affected Party, will be authority that would be responsible, if the project was planned on the German side of the border. Usually the procedure follows mainly the legislation of the Party of origin for maintaining equal rights of participation for the public in both countries (e.g. with regard to the time frame for submitting comments).

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?*

Consultations can take place at each step of the procedure. But it may be useful to have consultations after the affected Party has given its comments on the EIA documentation and the Party of origin has had enough time to assess these comments.

Consultations are possible during the whole transboundary EIA procedure. Article 5 of the Convention indicates that consultations shall take place immediately after the completion of the EIA documentation. The more appropriate time seems to be after the affected Party has given its comments on the EIA documentation.

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?*

According to Article 8, paragraph 2, of the Federal EIA Act, the Ministries of the relevant German State (Land) and of the Federal level are jointly responsible to hold formal consultations.

In addition to the above-mentioned authorities, usually at least the licensing authority and other concerned authorities should participate.

A consultation usually takes place in a meeting preceded by an exchange of written communications.

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?*

With regard to Article 9b, paragraph 3, of the Federal EIA Act the procedure is identical to the case that Germany would be the Party of origin. If there is no need for a consultation the Party of origin should be informed about this.

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?*

subquestion 1: The decision is the development consent or permit of the competent authority which entitles the developer to proceed with the project.

The decision is defined in Article 2, paragraph 3, of the Federal EIA Act.

subquestion 2: yes.

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)*

With regard to Articles 11 and 12 of the Federal EIA Act the competent authority has to take the outcome of the domestic EIA procedure, the comments from the authorities and the public of the affected Party and the results of the consultations into consideration before the final decision. Very important is the possibility of measures to prevent, reduce or mitigate any significant adverse (transboundary) environmental impacts of the proposed project or activity in the final decision.

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)?*

There can be obviously no distinction between the comments of the authorities and the public of the Party of origin and the authorities and the public of the affected Party. The only practical difference may be that the comments of the authorities and the public of the affected Party will be in principle more related to the transboundary impacts and that the

comments of the authorities and the public of the Party of origin will be in principle more related to the impacts on its own territory.

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)*

Subquestion 1:

The affected Party will receive the whole final decision; if possible with a translation.

Subquestion 2:

Yes, the final decision does contain the reasons and considerations on which the decision is based (Article 8, paragraph 3, of the Federal EIA Act).

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)*

Subquestion 1:

The Federal level has no information on the practical application of Article 6 para. 3 of the Convention. In principle the competent authority of the Party of origin, responsible for the granting of the development consent or permit, would contact the competent authority in the affected Party, that was involved in the EIA procedure, inform about the new information and start a consultation process.

Subquestion 2:

Yes, if substantial new information is available that could be of importance for the given development consent or permit and its conditions, a revision would be possible.

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)?*

In the Federal EIA Act, there is no special provision on post-project analysis in the transboundary context. Under German law, it is incumbent on the supervisory body of a competent authority - which is determined by the relevant law on the licensing of a project or activity - to ensure compliance with the conditions of the licensing decision and to intervene in case of non-compliance, especially in situations of danger for human health.

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?*

As far as known on the Federal level there is no practical experience with this provision of the Convention.

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

- (a) The following agreements or documents make a reference to the provisions of the EC EIA Directive and of the Espoo Convention:
- Common Declaration on Transboundary EIA between Germany and the Netherlands (in force since summer 2005) [text in Dutch and German language was submitted to the Espoo-secretariat in summer 2005];
 - Agreement between Germany and Poland on transboundary EIA of 11 April 2006 (entry into force is pending until the ratification by Germany; the ratification act is currently in the legislative procedure; planned entry into force: spring 2007) [text in Polish and German language was submitted to the Espoo-secretariat in April 2006; an English translation is in preparation];
 - Guidelines of the German-French-Swiss Governmental Commission for the Upper Rhine River on transboundary participation of authorities and the public on Activities with Environmental Relevance along the Upper Rhine River, June 2005, replacing the former Recommendations of the German-French-Swiss Governmental Commission for Cooperation on Activities with Environmental Relevance along the Upper Rhine River of 13 March 1996 (so-called Tripartite Recommendations) [text in French and German language was submitted to the Espoo-secretariat in summer 2005];
- (b) The following agreement meets in part the provisions of the EIA Directive and of the Espoo Convention, but without making reference to these documents:
- Recommendations of the German-French-Luxembourg Governmental Commission on the Bilateral Notification of Newly Planned and of Amendments to Existing Activities Which Need a Development Consent of 1 July 1986 (so-called Saar-Lor-Lux-Recommendation). The recommendations provide that the parties will inform each other on activities with likely adverse impacts on the territory of the other party. The procedure includes the occasion for the authorities of an affected party to submit comments.
- (c) The following agreements make reference to the Espoo Convention (not to the EIA Directive) and determine that Espoo has to be applied between the contracting parties. However, they do not fix further details on transboundary EIA:
- Agreement between Germany and Poland on the Cooperation in the Field of Environmental Protection of 7 April 1994 (in force since 31 August 1998). See Article 5 of this agreement;

- Agreement between Germany and the Czech Republic on the Cooperation in the Field of Environmental Protection of 24 October 1996 (in force since 2 January 1999). See Article 4 of this agreement.
- (d) On-going activities:
- Agreement on transboundary between Germany and the Czech Republic on transboundary EIA (in preparation);
 - Possible informal agreement between Switzerland, Austria, Liechtenstein, Germany on transboundary EIA (planned);
 - Possible Common Declaration on Transboundary EIA between Denmark and Germany (planned).

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

No. However, in relation to the Republic of Poland (already included in the agreement of 11 April 2006) and to the Czech Republic it is likely that the Environmental Ministries of the German States in the border regions will be nominated as additional addressees for notifications in the case of Germany as an affected Party - with a copy to the Federal Ministry for Environment.

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.*

Poland participated in a research project organized by the German Environmental Agency some years ago; the aim of this research project was to determine the best way for Poland and Germany to cooperate in the procedure for EIA in a transboundary context. In Germany an evaluation of the Federal EIA Act is the only ongoing research project on EIA; no other research projects regarding EIA and/or transboundary EIA are currently carried out.

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?*

Ratified 8 August 2002.

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?*

The Ratification Act entered into force in March 2006 (Ratification Act for the second amendment of the Espoo Convention, published on the 17 March 2006, Federal Law Gazette II p. 224). The formal ratification letter from the Federal President is expected to be sent to New York soon by the Ministry for Foreign Affairs.

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

The Ratification Act entered into force in June 2006 (Ratification Act for the protocol on SEA, published on the 3 June 2006, Federal Law Gazette II p. 497). The formal ratification letter from the Federal President is expected to be sent to New York soon by the Ministry for Foreign Affairs.

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.*

The Federal level in Germany has only very limited knowledge about the number and details of EIAs, including transboundary EIAs, carried out during the period. As explained above Germany is a Federal state consisting of 16 states (Länder). The authorities of the Länder are in principle the competent authorities for the development consent procedure, including the (transboundary) EIA. Due to the number of possible competent authorities and to the country's federal structure, Germany has no legal obligation to notify or register with a central office each single EIA procedure, including each transboundary EIA procedure. Furthermore the collection of such an information is not prescribed by the Espoo-Convention or by the EIA-Directive.

In addition see the answer to question 2 d.

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

The Federal level has no information that there was any project receiving a development consent without carrying out a necessary transboundary EIA procedure. The competent German authorities have to fulfill every legal requirement.

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

Such an estimation is very difficult, because each development consent procedure including a domestic EIA and a transboundary EIA procedure is different and depends on a lot of specific factors like the type of project, the location of the project and the kind of possible environmental impacts on the affected Party, the duration of the pre-request preparation phase of the project, the chosen moment for the involvement of the affected Party (already during the scoping step or later in the procedure), the experience of the competent authorities in both Parties with the transboundary EIA procedure, the existence of a bilateral

agreement or the compatibility of the national legislation in both Parties, the need for extensive consultations, the possible implications of different languages in both Parties etc. . Furthermore see answer to question 45.

EXPERIENCE OF THE TRANSBOUNDARY EIA PROCEDURE IN 2003-2005

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.*

See the answer to question 45. In principle EIA (and transboundary EIA) is a useful tool to strengthen the consideration of environmental aspects in decision-making. In practice EIA mostly leads to specific conditions to a development consent or a permit, but only very seldom to the rejection of the whole project.

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?*

Please see the answers to questions 11, 16, 9, 23 and 5 b.

The Federal level has no information on problems with these terms in the practical application of the Espoo Convention. If any problem would occur and the legally binding provisions of the national legislation give the competent authority the possibility, this authority will create tailor-made solutions together with the competent authority of the affected Party.

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?*

See the answers to questions 45, 5c and 20. In principle there is no single answer to this question. It depends on the type of the project and its characteristics, on the location of the project and on the characteristics of the potential impacts. The competent authority has to make a prognosis on a case-by-case-basis, if significant adverse transboundary impacts are likely or not. If no clear decision is possible, a positive result is recommended.

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?*

Subquestion 1:

We always recommend to include a separate chapter on transboundary issues in the EIA documentation that summarizes or copies the relevant information of the whole EIA documentation. Such a specific chapter allows a better understanding of the affected Party on the possible transboundary implications of the project and should always be translated.

Subquestion 2:

In general the EIA documentation must include all the relevant information, necessary for the identification, description and assessment of the impacts of the proposed project on the environment at the envisaged location.

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

See the answer to question 45. Primarily it is the task of the developer to prepare the EIA documentation based on the results of the scoping step. This includes the question, which methodology is most suitable, if there would be several to choose from.

- 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?*

With Germany as an affected Party there have been problems with the Czech Republic that didn't provide any translation at all. German authorities therefore needed to provide an own translation. This was cost-effective and caused a later start of the consultation of the German public and of German authorities.

Germany as Party of origin provides according to Article 9a, paragraph 2 and Article 8, paragraph 3, of the Federal EIA Act at least a translation of the non-technical summary of the EIA-documentation and of other parts of the EIA documentation with relevance for the public participation in the affected Party; translated parts of the final decision will be submitted to the affected Party if the principles of reciprocity and equality are fulfilled. The new agreement between Poland and Germany contains a detailed provision on translations (see answer to question 38).

- 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?)*

See the answer to question 45. The federal level has no information on any problems as well as on any best practice examples.

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

In a case that started before Germany was a Party to the Convention - and therefore is not falling into the scope of the Convention - the affected Party refused to agree on a reasonable time-frame, because it wanted to discuss the case only after a period of 5 years when more experience with another transboundary EIA-project concerning the same project-type was expected to be available. The affected Party was invited for consultations and after it refused to discuss the case, a final decision was taken and submitted to the affected Party.

- 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.*

See the answer to question 34. The affected Party receives the whole decision by mail in paper form and additionally with regard to Article 8 of the Federal EIA Act possibly a translation. Furthermore a submission in electronic form is possible.

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

No information on any practical experience is available on the Federal level. See the answer to question 36.

- 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.).*

See the answer to question 3 - the planned pipeline crossing the Baltic Sea from Russia to Germany will be a very interesting example in the future.

- 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?*

See the answer to question 45.

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?*

Such difficulties have to be solved on a case-by-case-basis, if no bilateral agreement exists. Such questions have been dealt with during the negotiations of the Polish-German Agreement on Transboundary EIA.

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;*

The Guidance was distributed to other Government Ministries and to the Länder Ministries. So far no experience was reported back to the Federal level.

- b. Guidance on subregional cooperation; and*

The Guidance was distributed to other Government Ministries and to the Länder Ministries. So far no experience was reported back to the Federal level.

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

The Guidelines have been translated into German language by Austria, Germany and Switzerland. They were put on the web-site of the Federal Ministry and distributed to other Government Ministries, Länder Ministries for Environment, relevant competent authorities, stakeholders and the public. The general response and the experience so far is positive.

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.*

See the answer to question 45. The legal implementation of the Espoo Convention caused no relevant difficulties as the instrument of transboundary EIA was due to Article 7 of the EIA Directive 85/337/EEC already known in Germany. The Federal level has no information that during the practical application of the legal requirements any difficulties or any weaknesses were revealed.

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.*

The EIA experts of the Federal Ministry for Environment and the Ministries for Environment of the German Länder regularly exchange information on all relevant EIA issues. The work under the Convention is always an agenda item in those meetings. The Guidance and Guideline documents have been distributed. On the web-site of the Federal Ministry for Environment various information on EIA and transboundary EIA, including a link to the web-site of the Convention, is available. The work and the conferences of the private organization "German EIA society" receive support in various ways. Other ways of informing NGOs, academics and consultants are regularly used.

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?*

subquestion 1: no

subquestion 2: An amendment to the the Federal EIA Act will enter into force soon that fully implements the EU Directive 2003/35/EC. This will lead inter alia to more detailed provisions on the public participation phase in the EIA procedure and as well on access to justice with regard to the final decision.

SUGGESTED IMPROVEMENTS TO THE REPORT

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

The presentation of the questionnaire as a "Word"-document is an improvement in comparison to the previous questionnaire. But the grey boxes partly cause several inconveniences, they should not be used in the next version of the questionnaire. Especially many "Word" tools can not be used - thi should be possible.

In general the questionnaire is an improvement to the previous one, but it should be shortened further and partly optional answers for a simple yes/no should be included.