

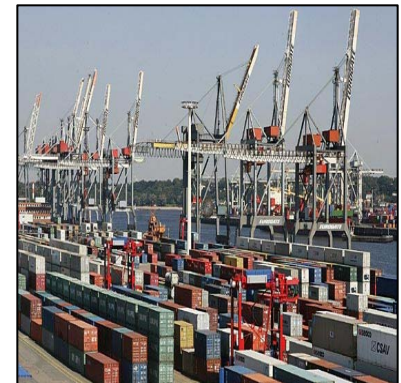
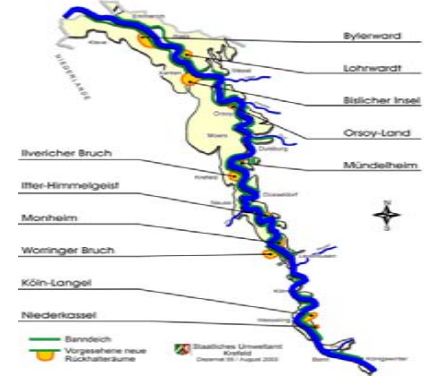
Bilateral Agreement on Transboundary EIA between Germany and Poland - Questions and Solutions -

**Seminar on EIA of Large Energy Projects in the
Black Sea Region**

Szentendere, 30 October – 01 December 2010

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- 2. Main Challenges in transboundary EIA and Solutions of the German-Polish EIA Agreement (DE-PL Agreement)**
 - Significance, time frames, translation, public participation... -
- 3. Recommended other steps and items**
 - joint scoping, consultation, layout of documents, ...
- 4. Transnational projects/joint bodies**
- 5. Conclusion**

1. Introduction - Geographical situation of Germany

**Located in the heart
of Europe**

**Several neighbour states
on the continent**

**Related to more states by
transboundary waters e.g. North
Sea/ Baltic Sea, Danube river**

**Bilateral Agreements on EIA
with France/Switzerland/
The Netherlands/Poland/
Czech Republik (in preparation)**



1. Introduction – History of the German-Polish EIA Agreement

- **Start of Negotiations:** German-Polish Working Group on Transboundary EIA started in 1993
- **Basic situation:** Germany and Poland were signatories to Espoo, Germany member state of EU, Poland not yet
- **Agreement signed in Neuhardenberg (Brandenburg) in April 2006**
- Adoption through German (Act on Transposal of DE-PL Agreement, April 2007) and Polish Parliament was required.



Entry into force on 06.07.2007



- **Bilateral Working Group** remained in place as a **permanent body** in order to consult on open questions regarding the application of the agreement.
- **Amending existing EIA Agreement and enlargement by SEA:** Bilateral Working Group started negotiations in January 2010. Finalizing in 2011

Bodies:

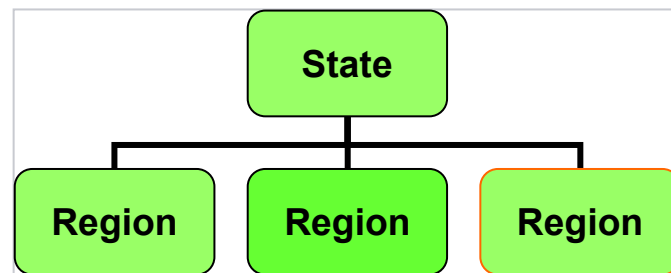
- DE-PL Env. Ministerial Conference
- Neighbourhood-Commission on environmental questions
- **German-Polish Working Group on EIA**

1. Introduction — Lessons learned

Disparities among Germany and its neighbour states:



National legislation



Competence of authorities

Tradition and culture



Non-EIA-related problems



2. Challenges and Solutions

The challenge in general

Solutions are mainly needed

- ▶ for mandatory procedural steps required by Espoo and EIA Directive
- ▶ and for items, unavoidable for practical reasons

Inter alia:

- **Field of application - Large scale projects**
- **Significance of impacts and thresholds**
- **Time frames**
- **Translation (!)**
- **Participation of authorities of affected state**
- **Public participation procedure**
- **Tasks of national authorities**

2. Challenges and Solutions

The challenge in general

Basis:

Each state may or will have legal provisions for the case

- of being a state of origin
- and of being an affected state.

Main challenge:

The challenge in practice is to coordinate the procedure

- according to the legal provisions of the state of origin („action“)
- with the legal provisions of the affected state for being affected („reaction“).

Problem:

- The legal provisions for being a state of origin of one state and the provisions of the other state on being an affected state may not be compatible.
- The ad-hoc development of solutions may be difficult and time-consuming in such situations.

► bilateral agreements are recommended tools

Field of application: When is a project „large“ or „major“ ?

Espoo - Appendix I

1. **Crude oil refineries**
2. **Thermal power stations**
3. --
4. **Major installations for ..**
- ..
11. **Large dams and reservoirs**
12.

Federal German EIA Act – Annex

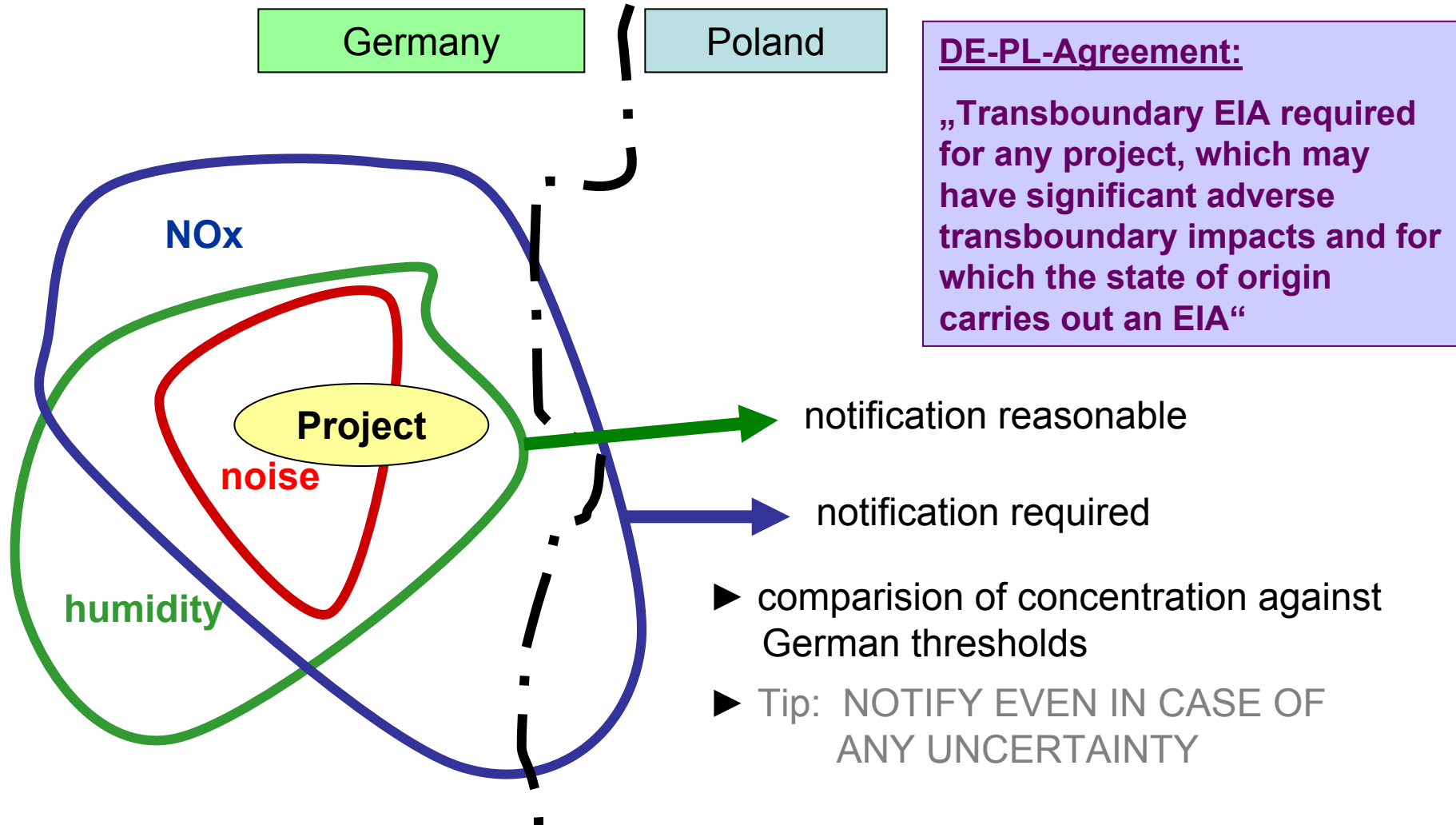
- ▶ lists mandatory EIA projects
- ▶ lists project where case-by-case-decision on EIA is required on base of short appraisal of probable impacts
- ▶ includes all types of projects listed in Espoo Annex I and EIA Directive Annex 1 and 2

▶ **DE- PL EIA Agreement:**
no joint list for purpose of transboundary EIA required due to joint legal base (equivalence and reciprocity assumed)

- ▶ **Problem may occur for EIA between EU-Member states with non-Members**

Field of application:

What impact is „significant „ ?
When is a notification reasonable?



Time Frames: How to cope with different national time frames ?

Commended principle/lessons learned:

- Respect national minimum or maximum time frames – you can't change them.
- Use time frames of state of origin as a base and try to coordinate with time frames of affected state (please see example).

National law - time frame for comments on EIA documentation:

German law: public within 6 weeks authorities: shall not exceed 3 months

Polish law: public within 3 weeks authorities:

German-Polish Agreement:

public of the affected state: shall have opportunity to give their comments in the same time frame as the public of the state of origin

time frame for comments of affected authorities: to be set by the state of origin in line with national legislation, taking into account the type and seriousness of likely transboundary impacts. It shall in usual cases not exceed three months.

Agreement in practice:

Germany as state of origin: Polish public submits comments within 6 weeks

Poland as state of origin: German public submits comments within 3 weeks

Translation: What should be translated and who covers the costs ?

Tip: TRANSLATION IS CRUCIAL !

Commended principle: „Polluter pays“

- state of origin submits main documents in language of affected state
- affected state (authorities, public) submits documents in their own language

Advantage:

- Identical time frames applicable as for national participation
- Avoids delays effectively !

German-Polish Agreement:

All **DOCUMENTS** prepared by the state of origin, which are required for the transboundary procedure will be submitted in translated form (in addition to „original“). Translation to be provided for all **MEETINGS**. **COSTS** to be covered by state of origin. In detail:

- Notification
- Non-technical summary
- Other parts of EIA documentation which enable the affected state to assess the likely transboundary impacts and to be able to give an informed comment
- Invitation and protocols of consultations, others
- decision and specific parts of reasoning
- result of post-project-analysis
- scoping meeting, consultation

Participation of authorities and public of affected state/Tasks of authorities: How to overcome disparities?

Solutions to overcome procedural differences/incompatibilities: Examples of the DE-PL Agreement

Applied tools/principles:

- Send additional copies
- apply legislation of state of origin and affected state in parallel (if possible in practice), even if this leads somehow to a duplication of possibilities to participate
- Accept different procedural details (e.g. time-frames) under the condition that the participants of both sides have equivalent opportunities.
- Accept missing reciprocity and equivalence if helpful for you

Examples from the German-Polish Agreement – National EIA procedures and tasks of authorities



**Federal Republic
of Germany**

**National EIA procedures and
tasks of authorities**

Federal level

- EIA legislation
- point of contact (Espoo)

State level

- Additional legislation
- Carrying out EIA including transboundary steps on base of federal and state legislation



Poland

Centralized State

- EIA legislation
- Environment Ministry responsible for transboundary EIA

Central state authorities

- Located in 16 regions
- Carrying out national EIA steps – also for transboundary cases



DE-PL Agreement

Tasks of
authorities

Competent
Authorities for
transboundary
EIA-steps



DE-PL Agreement

Notification
on a German
project

→ German law

Agreement
Germany/
Poland:

→ German law

→ Additional
steps

Type of solution:
„Send a copy“



DE-PL Agreement

Comments of
Polish authorities/
Polish public

→ German law
→ Polish law

Agreement
Germany/
Poland:

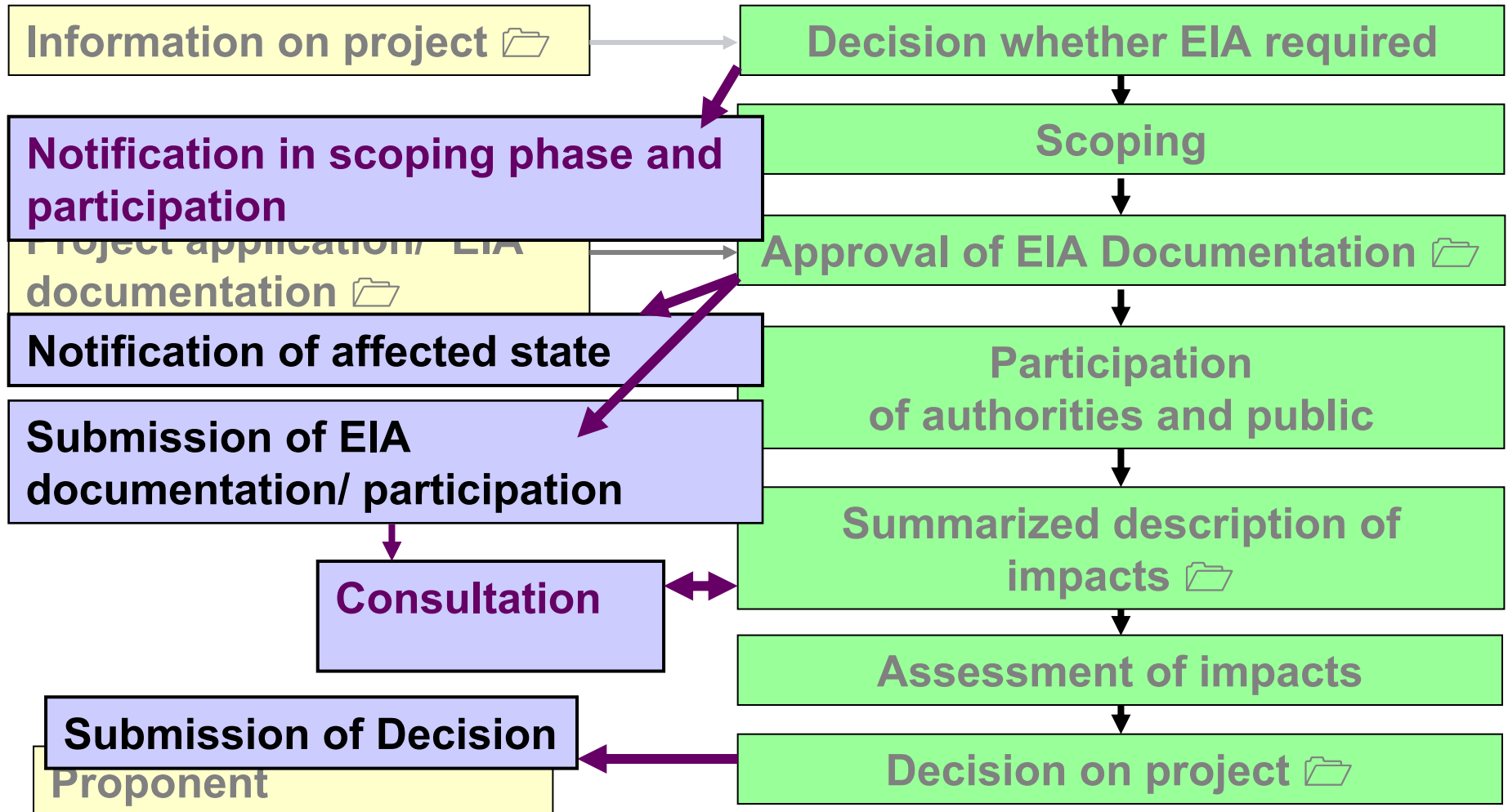
→ German law
→ Polish law
→ Additional
steps

Type of solution:

- apply procedures of both states
- „Send a copy“



Transboundary EIA - Germany as state of origin: What items are left ?



3 . Recommended other steps and items

TIP: JOINT SCOPING IS CRUCIAL !

Participation in scoping phase

- What **impacts** shall be investigated on territory of affected state ? What **method**? What **tresholds** of affected state are relevant? What **alternatives** are to be investigated? **Monitoring** required ?
- What shall be **translated** ? Separate chapter „Transboundary Impacts“ in EIA Documentation ?
- Forum for contact; facilitates further communication
 - ▶ facilitates procedure, saves time and money – speedy procedure
 - ▶ DE-PL Agreement: provision on joint scoping convened (draft amendment of 7/2010)

Effective Consultations: Information on probable decision

- Information on mitigation measures which are envisaged as reaction on the comments of the authorities and the public of the affected state (in force)
 - ▶ consultation will focus on relevant items or even not be required

3 . Recommended other steps and items

Post-Project Analysis (including pre-project analysis)

- ▶ may enhance willingness of affected state - joint base for probable compensation in case of actual impacts

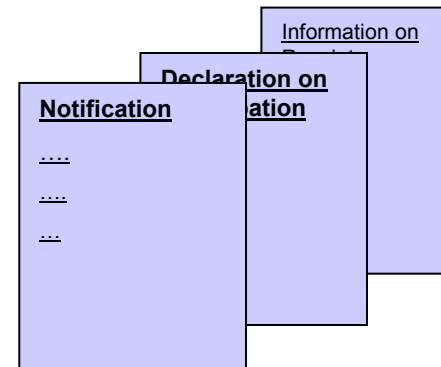
Right to appeal for affected public at court of state of origin

- ▶ supplies affected side with further possibility to influence the final decision

Formats for documents:

Notification, Declaration on participation,...

- ▶ easy to use for state of origin, easy to recognize by affected state



5 . Transnational projects – Joint bodies

DE-PL Agreement:

Provision on transnational projects (draft amendment of 7/2010)

For bilateral projects, the competent authorities (!) of both states shall without delay agree, whether and to what extent the EIA for the entire project shall be carried out by one state or jointly by both states.

Projects:

Bridges, Transnational traffic lines, pipelines, ...

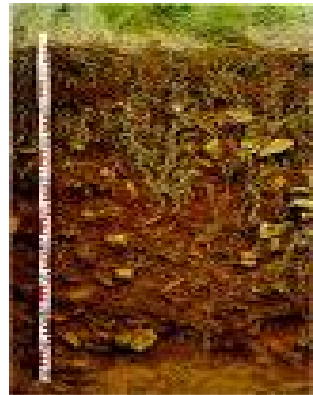
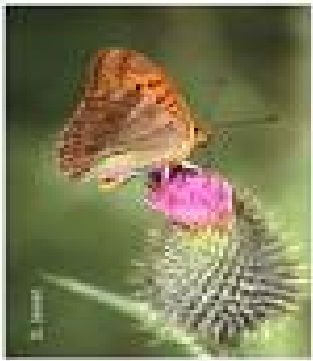


Principles:

- National law of both states must be fulfilled
- Final decision on „national part“ of project to be taken by respective state
- Some steps may be carried out jointly (scoping, joint EIA documentation, public_hearing..)
- All joint steps may be coordinated by a joint group
- The joint group does not need to be installed „officially“ (e.g. by contract)

Conclusion

- ➔ **Transboundary EIA causes an additional need for work, financial resources and time**
- ➔ **A sound EIA procedure may limit additional needs, contribute to a speedy procedure and avoid conflicts.**
- ➔ **„Be a good neighbour“ makes things much easier**



Thank you
for your attention !

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Please note that this presentation expresses the opinion
of the author