
Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Kiev, 2003)

CASE STUDY FACT SHEET

Spatial Development Planning at the regional (voivodeship) level, Lubuskie Voivodeship, Poland, bordering with Germany (Brandenburg and Saxony)



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Extended version

1. BACKGROUND

Most planning and policy-making activities in Poland are performed at the regional and local levels by self-governmental institutions. The regional government has full responsibility for strategic and spatial planning at the level of regional administration of the country. Such plans are not a local law instrument and do not constitute the legal basis for issuing administrative decisions. Contrary, the local spatial development plans are local law and provide the basis for construction of individual projects.

According to the law on strategic environmental assessment (SEA), a draft Spatial Development Plan for a voivodeship and its modification(s), is subject to an SEA, also in a transboundary context if necessary.

In principle, a Spatial Development Plan for a voivodeship includes, inter alia:

- conditions of spatial development,
- objectives for the regional development,
- principles of organization of the spatial structure,
- ecological structure, requirements and principles of natural resources management and valuable features of the natural and cultural environment,
- structure of the main elements of settlement network and linkages between them,
- principles of shaping and distributing elements of social infrastructure system (e.g. transport, power supply, water management, disposal of wastes),
- problematic and functional areas and principles or requirements for their management.

2. SEA PROCEDURE IN POLAND

SEA in Poland is carried out for draft:

- plans and programmes for spatial development at the national, regional and local level,

- plans and programmes in the fields of industry, energy, transport, telecommunications, water management, waste management, forestry, agriculture, tourism and land use or setting out a framework for the subsequent implementation of projects likely to have a significant impact on the environment,
- documents other than those above-mentioned, the implementation of which is likely to have a significant impact on Natura 2000 sites, where they are not directly related to the protection of the Natura 2000 site or do not result from such protection,
- documents other than those mentioned earlier and which set out a framework for the future implementation of projects likely to have a significant impact on the environment and that the implementation of the provisions of these documents may cause a significant impact on the environment.

The conduct of SEA could also be required when an already adopted and binding/in force document from the above -mentioned, is modified.

SEA is carried out by the competent authority, the authority that prepares the draft plan or programme. Within the SEA procedure, the competent authority has to seek the views and approval of relevant authorities (including environmental protection and sanitary inspectorate authorities) and conduct public participation.

3. STUDY CASE

Lubuskie Voivodeship is located in the west part of Poland and borders with Germany (Brandenburg and Saxony). The region has high nature and landscape value and potential, favourable transport connections with Germany and other parts of Poland, and hosts Oder River waterway, a European ecological corridor. The region benefits from deposits of natural resources (especially energy) and large forest and agricultural production areas.

The Spatial Development Plan for Lubuskie Voivodeship was originally adopted in 2002. Due to a number of changes in the socio-economic and legal situation in Poland, the existing Plan needed to be amended accordingly. In 2007, the regional government decided to start preparing for the modification of the existing Plan. The core aim of the Draft Modification to the Spatial Plan of Lubuskie Voivodeship (Draft Modified Plan) was necessary so as to update and supplement the existing Plan with respect to the following elements: strategic goals and directions of regional development, spatial planning and future land use and recommendations, priorities of spatial policy for the region, links with other national and regional strategic documents and recommendations for the Concept of National Spatial Planning Policy.

The competent regional government of Lubuskie Voivodeship was the authority in charge of preparing the Draft Modified Plan and conducting the SEA.

During the updating process, special attention was paid to the following: cultural heritage, tourism, industry and services, natural resources, communication and transport, problematic and functional areas.

In accordance with the Protocol on SEA, the following steps were performed:

- **Field of application (article 4)**
The SEA procedure had to be carried out because the Draft Modified Plan was prepared for regional planning and land use and could possibly cause significant environmental, including health, effects.
- **Screening (article 5)**
At the screening stage it was found that the content of the modification was of wide range determining the use of a large area and thus an SEA should be carried out. Moreover,

the competent environmental protection authority was of the opinion that it was necessary to carry out the SEA procedure.

- **Scoping (article 6)**

Having found that SEA was necessary, the authority in charge sought approval from the authorities responsible for environmental protection and sanitary inspection to determine the scope and details of the information required for the environmental report. The requirements for scope and content were based on the requirements set by law.

- **Environmental report (article 7)**

The environmental report was then prepared in accordance with the determined scope. The environmental report identified, described and evaluated the likely significant environmental, including health, effects of implementing the Draft Modified Plan and its reasonable alternatives. It included, inter alia, the following information:

- aim and scope of the report,
- methods of assessment,
- content and main goals of the draft plan,
- links with other plans and programmes,
- assessment of compliance with environmental principles,
- description of current state of the environment and existing environmental problems which were relevant to the plan,
- expected changes in the environment in case of no implementation,
- expected significant impacts on the environment as a result of implementation of the draft plan,
- possible transboundary impacts,
- proposals of measures to prevent, reduce or mitigate significant adverse effects on the environment, including health, which may result from implementation of the plan,
- proposals of alternative solutions,
- measures envisaged for monitoring environmental effects,
- final findings and recommendations for measures that need to be applied in order to prevent, reduce or mitigate environmental impacts resulted from implementation.

- **Public participation (article 8)**

The public had a right to submit comments prior to the adoption of the Draft Modified Plan. Therefore, the authority in charge informed the public in a timely manner about the launch of the preparation of the Draft Modified Plan and its content. Further, the public had the opportunity to familiarize itself with the Draft Modified Plan and the environmental report, both available for review at the seat of the authority in charge and on the website of the Public Information Bulletin. The public notification took place through the following means: website of the Public Information Bulletin, public notice in a customary manner at the seat of the competent regional government and of each municipality which might be concerned, regional and local press, data placed in publicly accessible registers. The public could submit comments and suggestions within a 21-day period, when relevant documents were available for review (time for public access and submitting comments). Comments could be submitted in written form or orally by way of recording in the minutes, through the means of electronic communications and without a requirement for digital signature. As a result of the public participation procedure, the authority in charge received 10 comments and suggestions, all of which were considered and taken into account. The manner in which the comments and suggestions submitted in relation to public participation were considered and the extent to which they were used was described in the reasons and considerations included in the adopted plan.

- **Consultation with environmental and health authorities (article 9)**

The Draft Modified Plan and the environmental report were subjected to consultations with the authorities responsible for environmental protection and sanitary inspection. In addition, on the basis of spatial planning law, spatial planning and other authorities were involved in the consultations. At that stage 140 letters including comments and suggestions from authorities were delivered to the authority in charge which considered them and took into account. The manner in which comments and suggestions from authorities were considered was made publicly available in the publicly accessible registers.

- **Transboundary consultations (article 10)**

The authority in charge found that the implementation of the **Draft Modified Plan was likely to have significant transboundary, including health, effects on German territory**. From the transboundary point of view, the most problematic issue seemed to be the provisions regarding the exploitation of brown coal in Gubin bordering with Germany –there are a lot of brown coal mines on the German side, so in case of exploitation in Poland, there may be cumulative impacts. The Draft Modified Plan only addressed protection of brown coal reserves against land development. The decision on possible exploitation would be taken afterwards at the level of plans but not in this programming period what resulted from Polish Energy Policy. What is more, before taking the final decision on exploitation, the Polish Energy Policy would need to be changed and subsequently the Spatial Development Plan for Lubuskie Voivodeship also amended.

It is worth noting that, Poland and Germany have a long-lasting bilateral cooperation on transboundary EIA and SEA. The Polish-German Agreement on EIA entered into force in 2007. It provides the legal basis for carrying out an EIA procedure between Poland and Germany and regulates in detail: the field of application, the content and way of notification, relevant authorities, time frames for each stage, preparation and submission of the EIA documentation, public participation, comments and statements of the relevant authorities, exchanging information, consultations before issuing a final decision, final decision, post-project analysis, meeting deadlines, translations, settlement of disputes and other issues.

Poland and Germany have successfully been applying the existing bilateral agreement since 2007 and have gained a lot of practical experience in the field. Therefore, they decided to apply the agreement on EIA also to the extent appropriate to SEA, since its application so far had proved to be effective so far. This approach has definitely facilitated the entire transboundary SEA for the Draft Modified Plan.

The following aspects of the Polish-German Agreement on EIA were applied to the transboundary SEA for the draft plan:

- The **Notification** contained information on the legal status of the Draft Modified Plan, its text and the environmental report in Polish and German. According to the bilateral agreement the notification was sent to the relevant German authorities, namely Ministries responsible for environmental issues in two states of Germany (*Länder*), Brandenburg and Saxony, considered as likely to be significantly affected by the implementation of the draft plan with a copy to the point of contact regarding notification under the Espoo Convention in Berlin. The notified German authorities forwarded the notification to competent specialized authorities in this case (*Landesdirektion Dresden in Saxony and Gemeinsame Landesplanungsabteilung Land Brandenburg und Berlin*).

- The **Deadline for the response** by Germany on whether it would like to participate or not in the procedure was set to 30 days from the date of receiving the notification. At the same time Germany could submit its comments and suggestions regarding the Draft Modification and the environmental report.
- Due to the number of German authorities involved and the need to announce the procedure to the public in the Brandenburg Official Journal, the German side (Brandenburg) **asked for an extension** of the given time frame for response and comments by another 30 days, which was granted. Saxony provided their comments and recommendations regarding the environmental report within the original deadline. The comments would be included in the document and according to Saxony further participation in the transboundary SEA was not necessary.
- The **Public participation procedure in Germany** (Brandenburg) was organized in the same way as in Poland. Such approach was important in order to ensure that the rights and opportunities provided to the public of the affected Party were equivalent to those provided to the public of the Party of origin. Taking into account Polish SEA legislation and the provisions of the Polish-German Agreement on EIA:
 - The relevant German authorities informed the German public about the Draft Modified Plan and the transboundary SEA through public notice and public display in the Official Journal,
 - The German public was invited to submit comments and suggestions within a 21-day period, according to the Polish SEA law. This meant that German authorities responsible for the organization of the public participation procedure in Germany, gave the German public the opportunity to be acquainted with the necessary documentation and make comments within a period of 21 days.
 - The German public could send its comments and suggestions directly to the authority in charge in Poland or indirectly through the German relevant authority. At that stage the Polish authority in charge received 1099 comments from German public. Most of them were sent directly to it. Having received so many public comments from Germany, the authority in charge was confronted with practical challenges, such as:
 - » Lack of human resources to deal with all submitted comments,
 - » The translation of the comments was a complicated matter, because the application of Polish procurement legislation effectively limited the selection of suitable candidates and in the end the translation was not satisfactory. What is more Germany emphasized that the translation of documentation caused some misunderstandings because the terminology was not accurate,
 - » The German public could submit comments and suggestions in German or Polish submitted in written form or orally by way of recording in the minutes, through the means of electronic communications and without a requirement for digital signature,
 - » The manner in which the comments and suggestions submitted in relation to public participation were considered and the extent to which they were used was described in the reasons and considerations included in the adopted plan.
- After considering the SEA documentation, **Germany provided two statements**, from Brandenburg and from Saxony, including opinions of the municipalities and other relevant German authorities. At that stage Saxony was fully satisfied with the SEA documentation and had no further questions or concerns. Therefore Poland entered into consultations at the governmental level only with Brandenburg, which had questions to be addressed.

- Both Parties took part in the **meeting at the governmental level** to discuss in detail the transboundary environmental effects of implementing the plan and measures envisaged to prevent, reduce or mitigate environmental effects. The meeting offered the unique opportunity to address any issues of concern. The focus of the Polish-German discussion was on core issues such as planned modernization of the Oder river in order to develop inland waterways, impacts of planned infrastructure projects of linear character, influence on the Special Economic Zone in Kostrzyn and possible exploitation of brown coal deposits in Gubin as well as coal-fired power plant that is strictly associated with exploitation of brown coal.
- The result of the meeting was that **Parties reached consensus**. At Germany's request the environmental report was complemented with further details, such as with measures necessary to minimize negative impacts during the construction, extension or modernization of any type of road networks and linear projects that might have transboundary impacts on the surface and underground waters as well as biodiversity. Parties also agreed on the issue of brown coal deposits in Gubin and its possible exploitation and further to thorough discussions the environmental report was complemented with possible transboundary impacts in case of construction of a brown coal mine and associated power plant in the future.
- The findings of the meeting were recorded in the form of **minutes (protocol)**, and accepted and signed by the Chairs of the two delegations.
- **After the adoption of Draft Modified Plan**, the authority in charge translated in German the document and the executive summary. The original version and the German translation were then sent to Germany to make it publicly available for concerned stakeholders in the affected Party.

- **Decision (article 11)**

Having concluded the public participation procedure, obtained of the required opinions and completed the transboundary consultations the plan was adopted and published. A **written summary** enclosed to the adopted plan contained the reasons for the choice of the adopted document as compared to alternatives considered as well as information on the manner in which the following was taken into account and to what extent it was used:

- The findings of the environmental report,
- The opinions of the competent authorities,
- The submitted comments and suggestions,
- The results of the procedure relating to the transboundary SEA, where conducted,
- Proposals for the methods and frequency of monitoring the effects of the implementation of the provisions of the document.

- **Monitoring (article 12)**

On the basis of Polish law on SEA, the authority in charge is obliged to monitor the effects of the implementation of the adopted document in the scope of its environmental impact. In addition, according to spatial development legislation, voivodeship spatial development plans need to be periodically revised and assessed in terms of the level of accomplished objectives of the plan and the stage of its implementation, at least every four years.