

For our Environment

Subregional Workshop

**TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT:
IMPROVING COOPERATION AMONG CENTRAL ASIAN STATES**
Bischkek, 5 April 2017

The Espoo Convention in Practice

German Experiences

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- 5. Solutions for main practical questions**
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1. Benefits of Espoo Convention and SEA-Protocol – What is it good for?

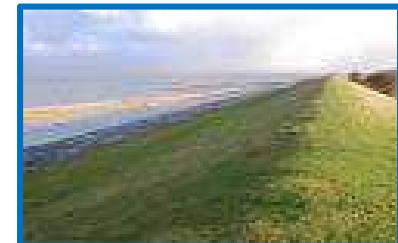
Espoo Convention and SEA-Protocol – Main contents

- **Main contents:** in case of a project which may cause transboundary impacts ► provide **equivalent possibility to participate** in the EIA of the decision making procedure to public of affected state and sound possibility to environmental authorities of that state
- describe a simple and clear **BINDING** procedure
- causes duties for authorities of state of origin and affected state



Espoo Convention and SEA-Protocol - Benefit

- facilitate and speed up private investments and public infrastructure projects in state of origin
- protect environment and public health of affected state
- may avoid conflicts between states



1. Benefits of Espoo Convention – Examples

Geographical situation

- several neighbour states on the continent and connected by waterbodies



Transboundary cases

- projects and plans regulated with all states in German vicinity

Examples

- German Federal Traffic Infrastructure Plan 2015 – 2030
- Polish Programm on Nuclear Energy 2011



1. Benefits – Example „Nord Stream Pipeline“

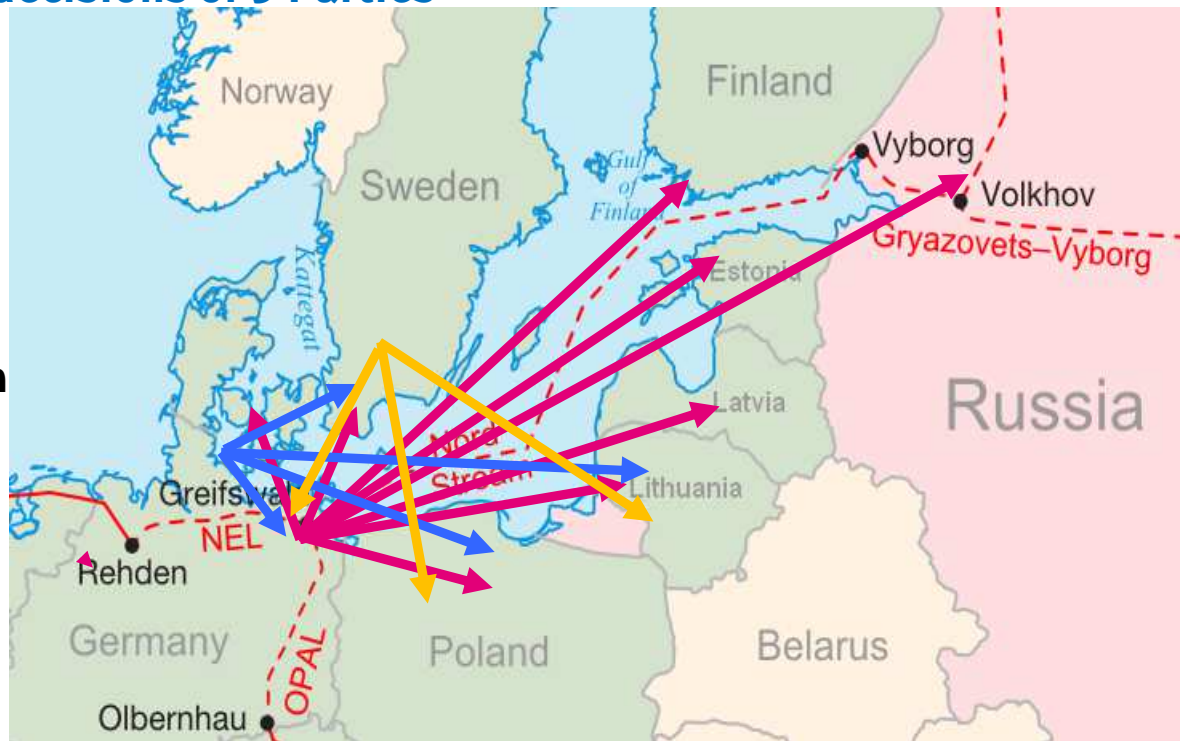
Exemple: Gas pipeline „Nord Stream“

One project – requiring final decisions of 5 Parties

- 5 Parties of Origin
Russia, Finland, Sweden,
Denmark, Germany
- 9 affected Parties
Estonia, Latvia, Lithuania,
Poland + 5 Parties of Origin

Early coordination among
5 points of contact:

- ✓ Joint notification format
(in 9 languages)
- ✓ Full EIA documentation
for whole project in English
- ✓ Separate EIA documentation for decision making procedures in 5 states
(in 5 languages of origin + 4 affected Parties)



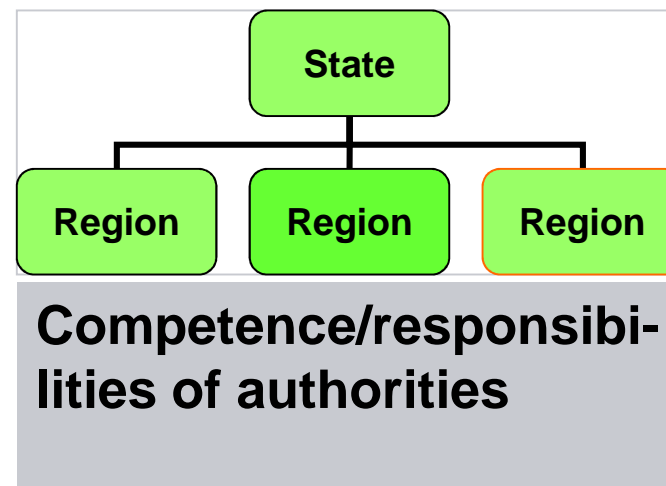
2. Challenges of transboundary EIA

Which frame conditions may have an influence ? Overview

Differences among states:



National
legislation



History,
tradition and
culture



Non-EIA-related
problems



2. Challenges of transboundary EIA

Which frame conditions may have an influence ? History



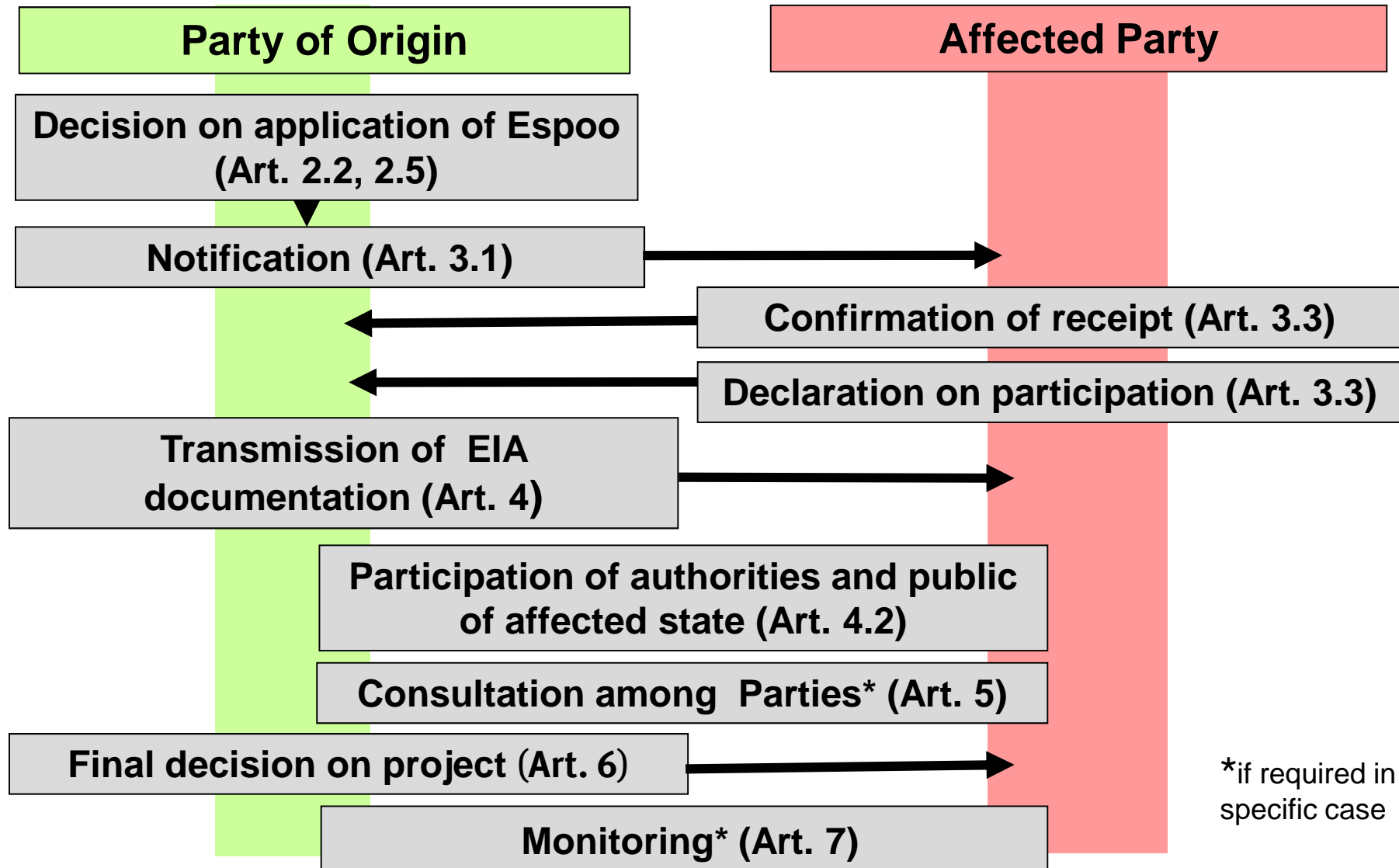
**Situation
after Second
World War
1945**

**Population
along German-
Polish border
completely
exchanged:**

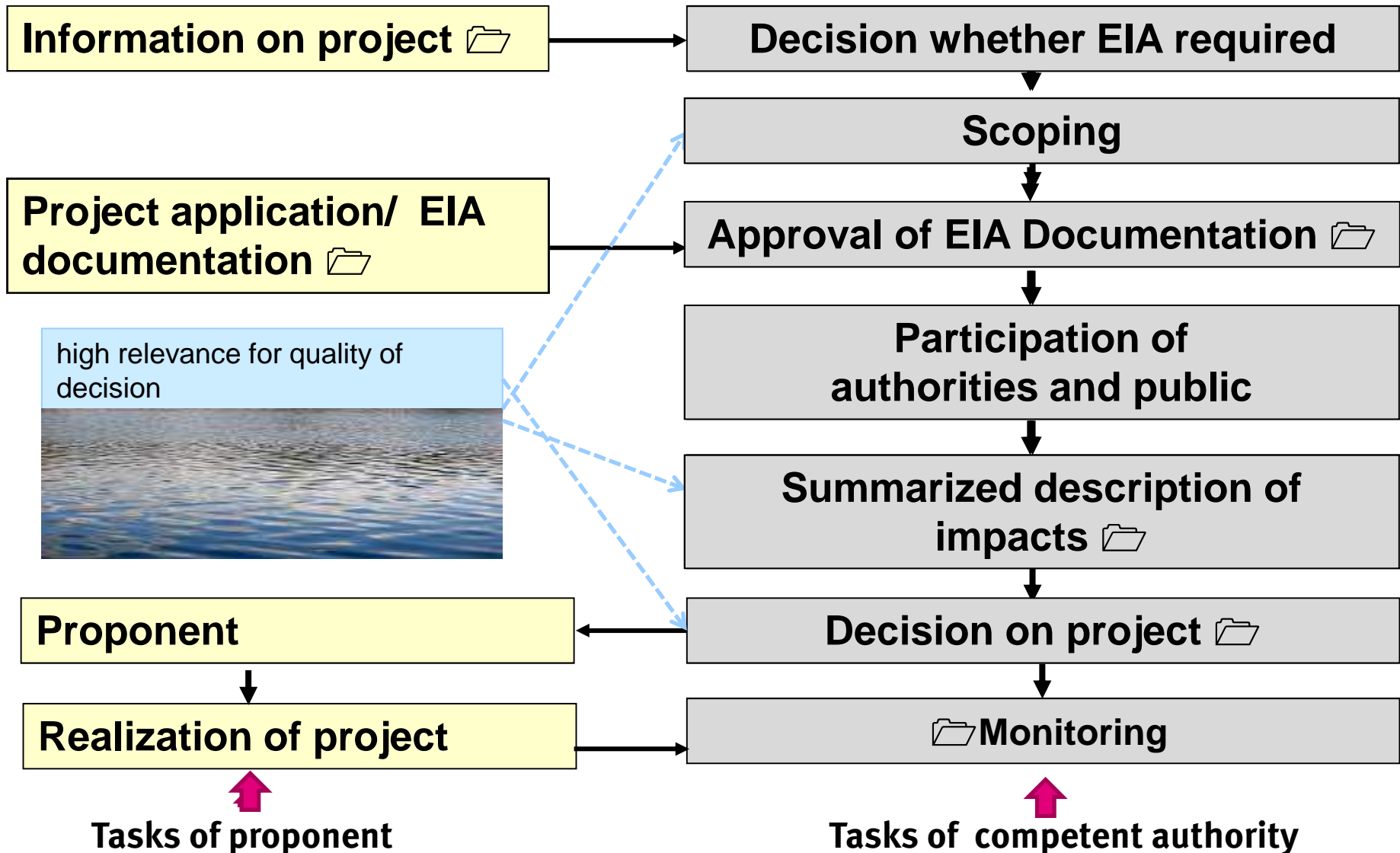
- no relatives
- no grown joint culture
- no joint language
- deep aversion for Germany as result of war

Political frame work: Germany ▶ NATO / Poland ▶ Warsaw Pact

3. The Espoo Procedure – How does it work ? - Main steps of the Espoo Convention

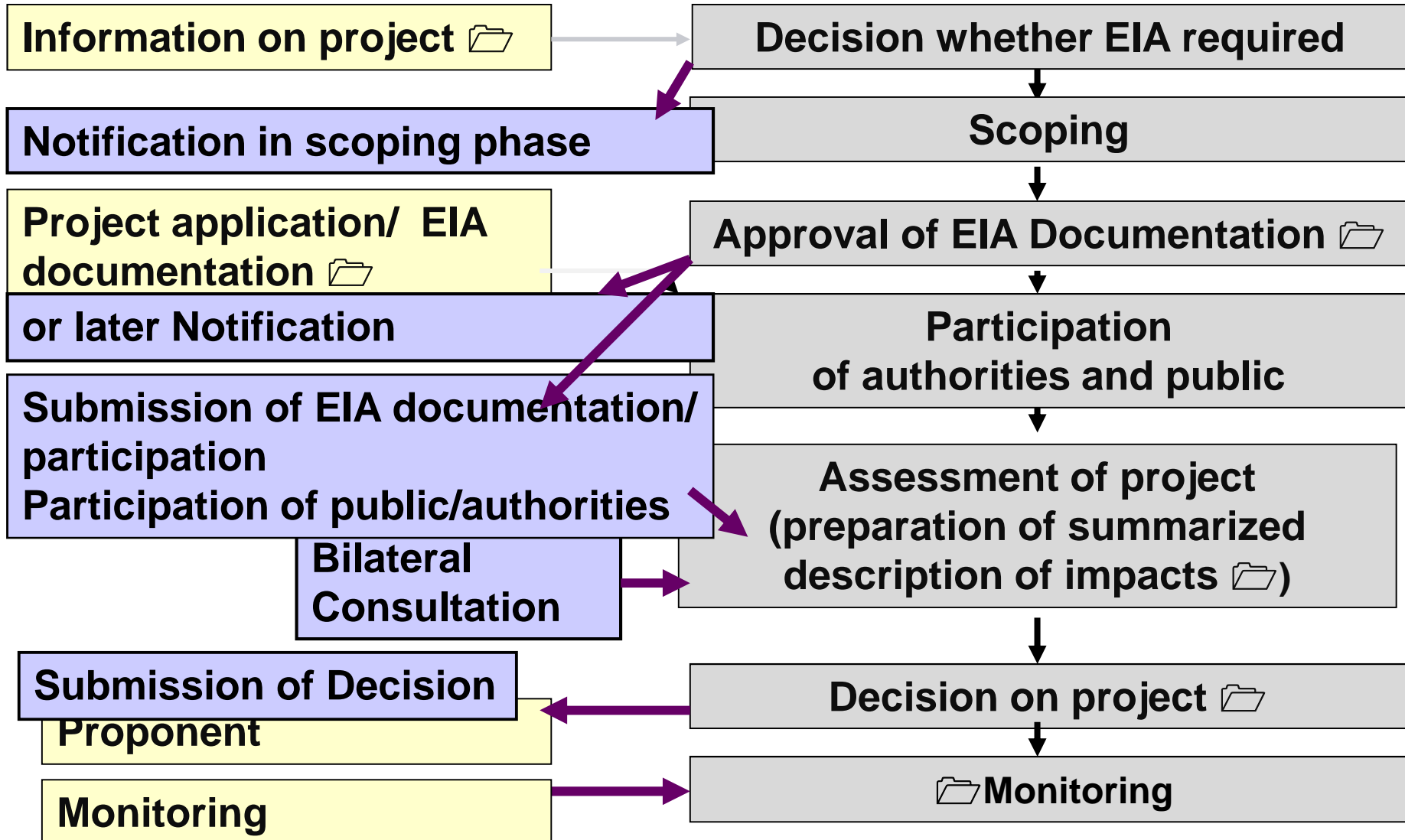


4. German Act on EIA of 2011 - EIA procedure



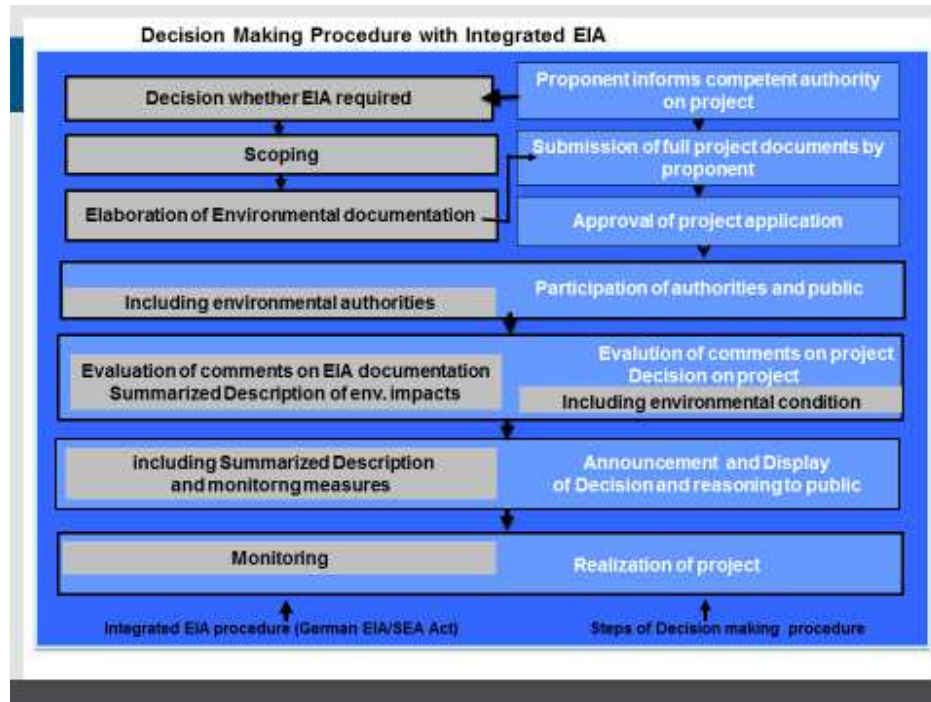
4. German Act on EIA of 2011

- EIA procedure with transboundary participation



4. German Act on EIA

- Integration of EIA into decision making procedure (1)



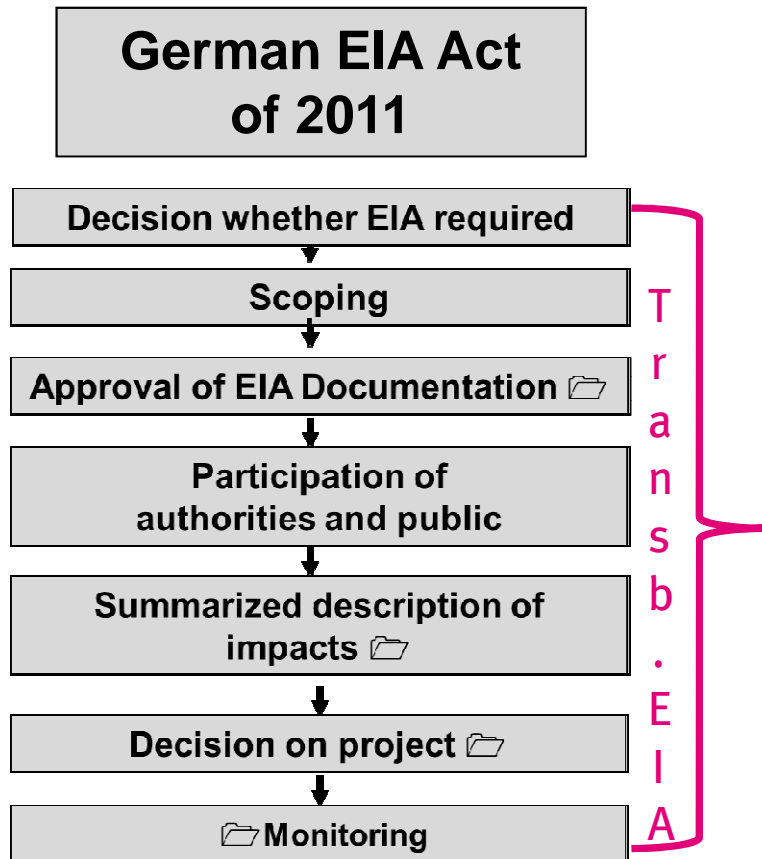
**EIA integrated into
decision making process**

Decision making procedure
one competent authority is
responsible for all steps
(including EIA steps)

**EIA steps according
German EIA Act**

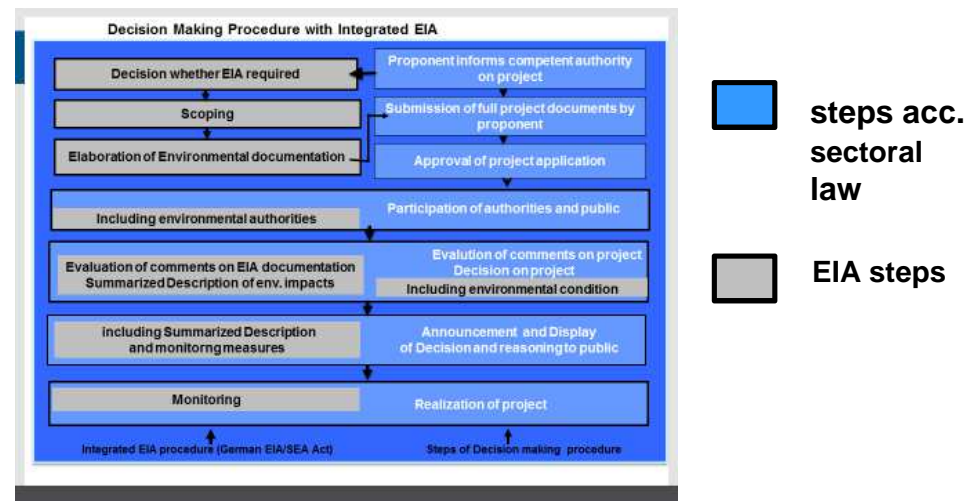
**Steps of decision
making procedure**

4. German Act on EIA - Integration of EIA into decision making procedure (2)



- regulates the EIA procedure
- „minimum standard“ for each EIA
- no own thresholds

Decision making law with integrated EIA



- provisions on decision making process on project
- „own“ detailed provision on EIA procedure or making reference to German EIA Act (to be carried out acc. § of German EIA Act“
- all thresholds needed for assessment

5. Solutions for main questions – Principles of good practice: lessons learned

- **Competent authorities**
- **Field of application**
- **Significance**
- **Starting point of transboundary EIA**
- **Public participation in affected state**
- **Translation**
- **Time Frames**
- **Financial implications**
- **Formats**



- **Competent authorities**
- **Field of application**
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5. Solutions for main questions - Competent authorities (1)


- Competent authorities
- Field of application
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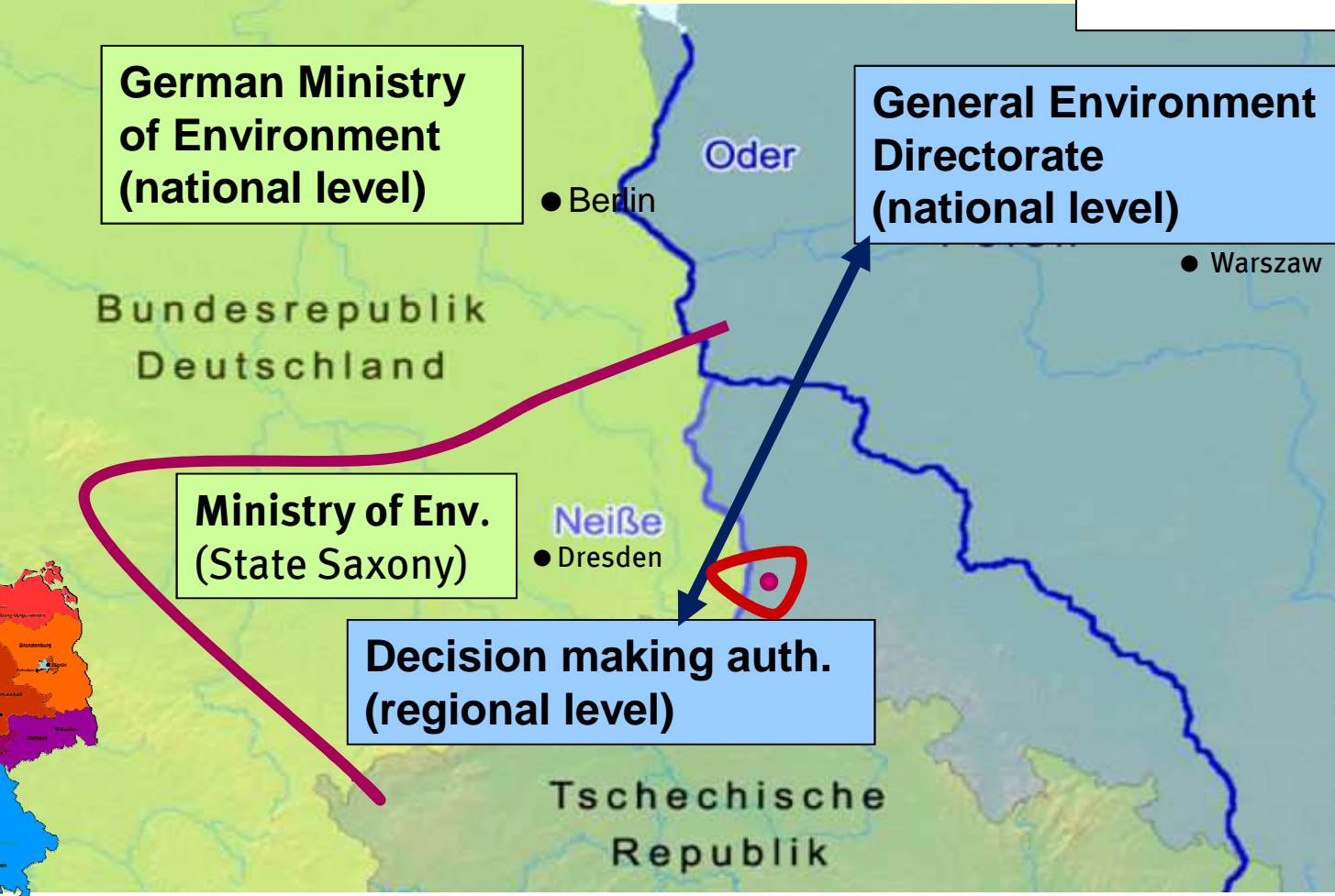
German-Polish Agreement

Challenge:
Responsible authorities on different levels of hierarchy

Legende:
Competent to carry out trans-boundary EIA steps

 **Germany:**
authority on regional level responsible

 **Poland:**
High level national authority responsible

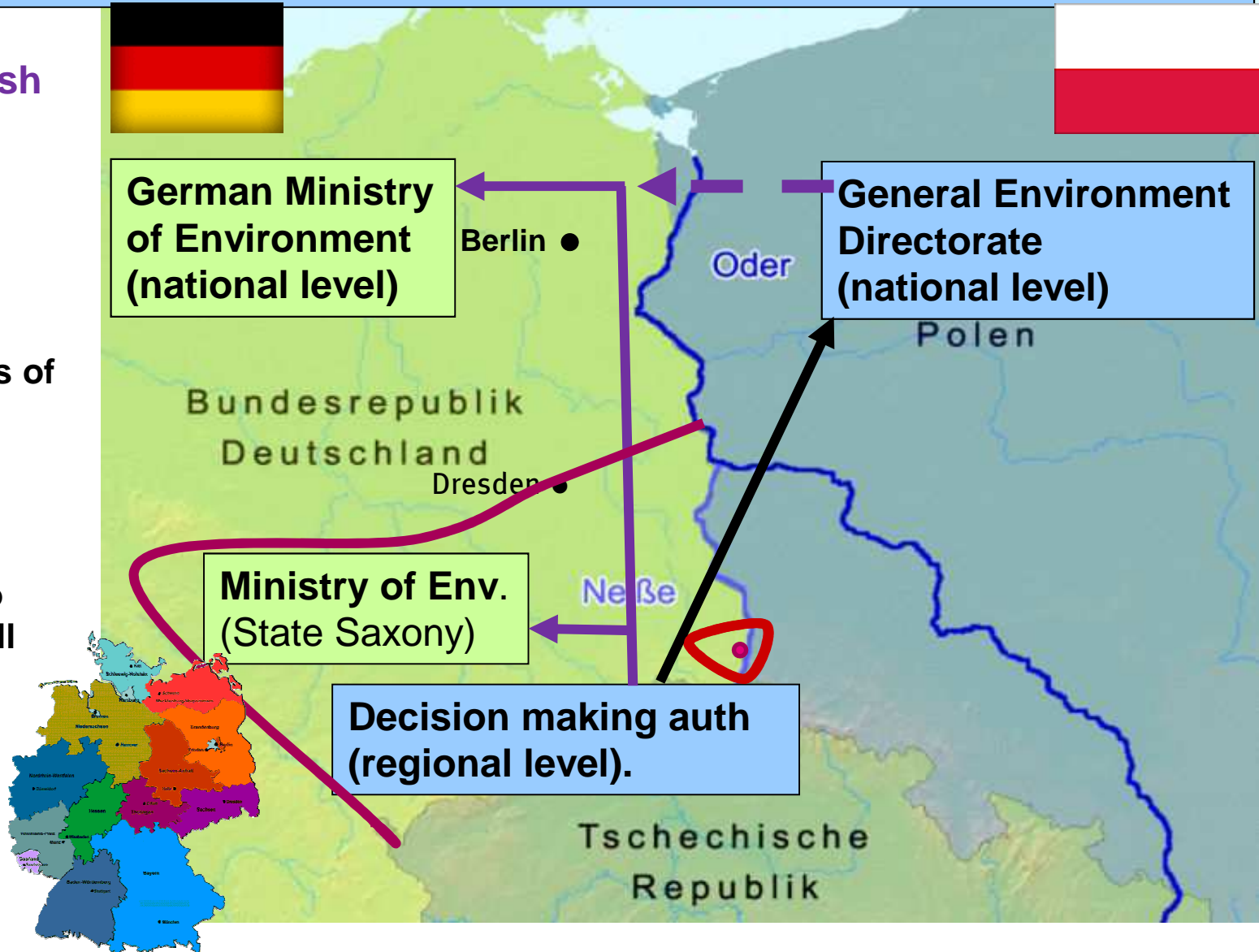


5. Solutions for main questions - Competent authorities (2)

German-Polish Agreement

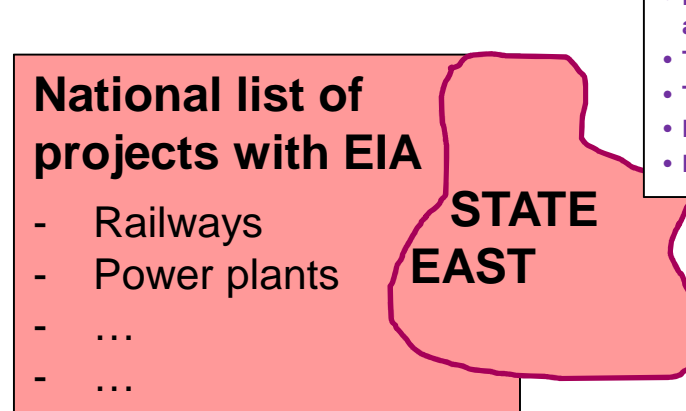
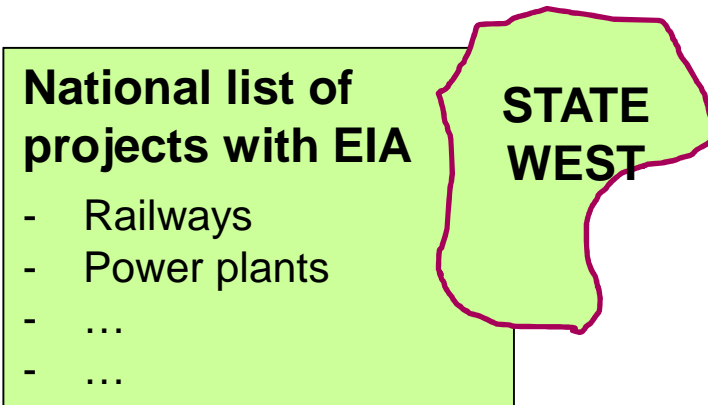
Challenge:
Responsible authorities on different levels of hierarchy

Solution:
Send copies to authorities of all levels



5. Solutions for main questions - Field of application

- Competent authorities
- Field of application
- Significance
- Starting point of transboundary EIA
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Challenge: different list of projects requiring an EIA

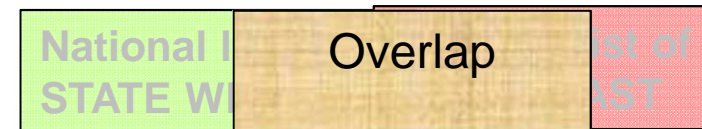
Solution 1:

Minimum standard for Espoo Parties: Espoo Annex 1

**Espoo
Annex 1**

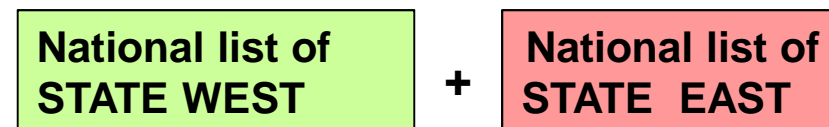
Solution 2:

Joint list of projects for which EIA carried according to law of both states



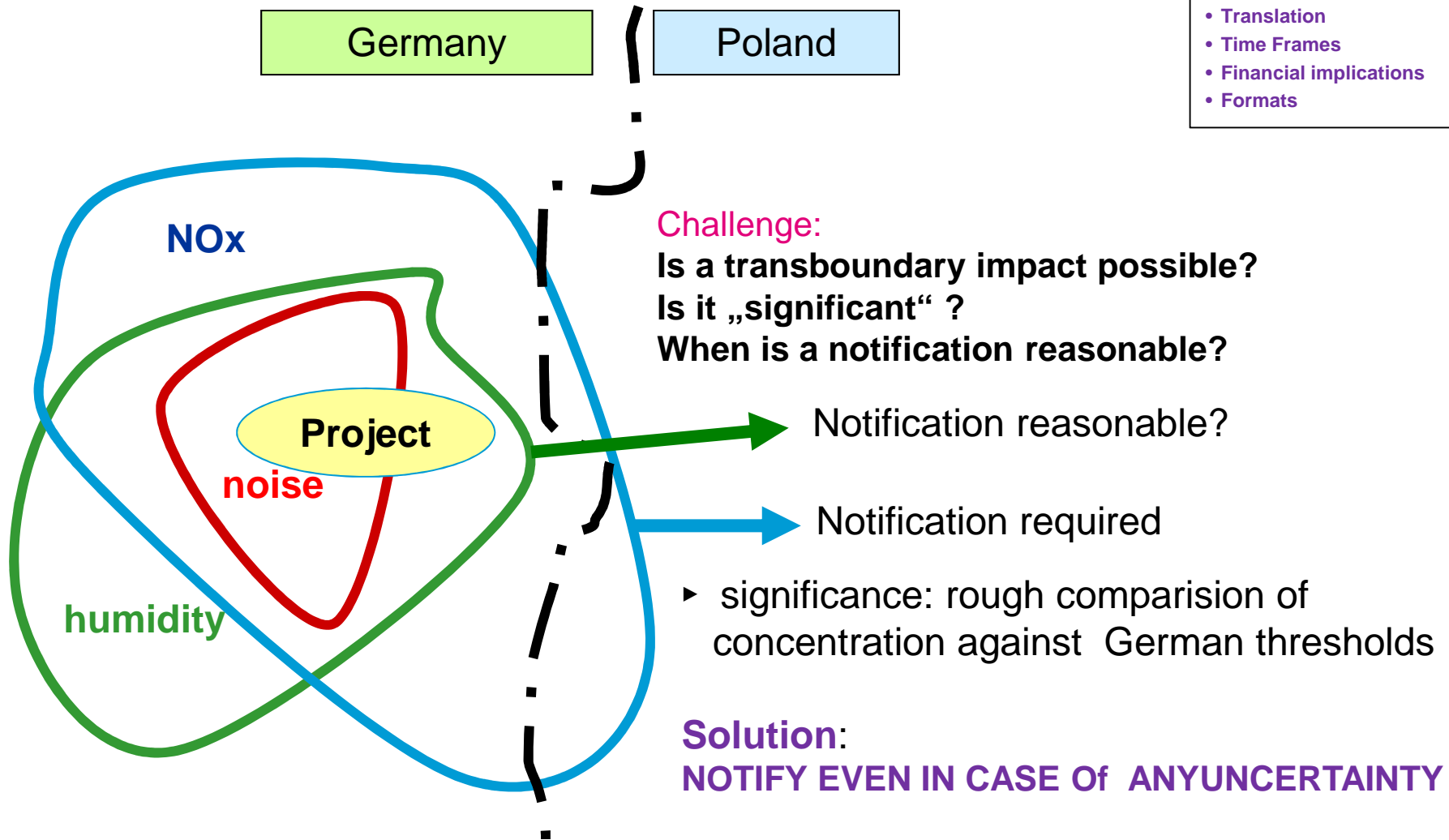
Solution 3 (German-Polish Agreement)

Any project for which a state carries out an EIA



5. Solutions for main questions - Significance of transboundary impact

- Competent authorities
- Field of application
- Significance
- Starting point of transboundary EIA
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5. Solutions for main questions - Starting point of transboundary EIA

- Competent authorities
- Field of application
- Significance
- Starting point of transboundary EIA
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Challenge:

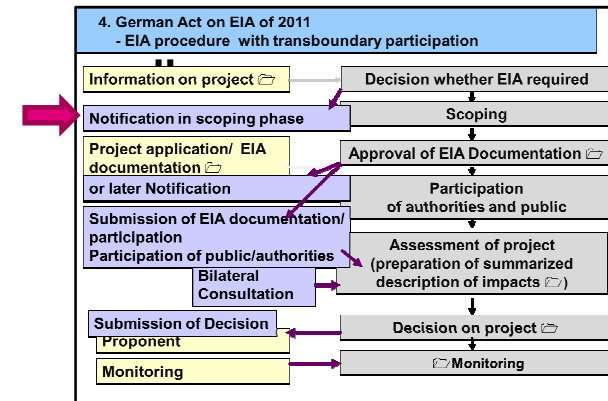
Notification during scoping phase or after completion of EIA documentation ?

Solution (German-Polish Agreement):

Early notification (scoping phase) allows to settle questions which could be relevant:

Authorities of both Parties may talk about

- environmental goods/susceptible areas on affected territory to be investigated
- thresholds to be applied
- alternatives for project features (technical/location/mitigation)
- monitoring of environment before project begins (base for compensation payment if impacts actually occur later)
- documents to translated (e.g which parts of EIA documentation)



5. Solutions for main questions

- Time frames for public participation

Challenge:

National law:
Different time frames for public participation

Solution: German-Polish Agreement

- apply regulation of party of Origin on both sides for procedural relevant items
- accept missing reciprocity and equivalence if helpful for your procedure
- precondition: translated documents



German project:
Time frame acc. German law
6 weeks



Comments within 6 weeks by

- German public
- Polish public



Polish project:
Time frame acc. Polish law:
3 weeks



Comments within 3 weeks by

- Polish public
- German public

- Competent authorities
- Field of application
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5. Solutions for main questions - Translation/Interpretation

Welcome!

Добрый день!

Salamatsyzby!

- Competent authorities
- Field of application
- Significance
- Starting point of transboundary EIA
- Public participation in affected state
- Translation
- Time Frames
- Financial implications
- Formats

Challenge:

- Different national languages
- EIA documentation oftenly voluminous
- Translation implies costs and requires time

Solution: German-Polish Agreement

- Party of Origin covers all costs
 - PoO regularly transmits translated documents
 - affected Party transmits comments etc. in own language
- ➔ „Polluter pays“ principle

- Notification
- Scoping document, scoping meeting
- EIA documentation: all parts with relevance for affected Party
 - ✓ Parts or chapter on transboundary impacts
 - ✓ Non-technical summary
- Consultations, meetings
- Decision and reasoning:
 - ✓ parts which enable the affected Party to assess how their concerns have been taken up
- result of post-project-analysis

➔ **Translated documents allow to apply national times ! Speedy procedure**

5. Solutions for main questions - Financial implications

Challenge:

Transboundary EIA implies various costs for affected Party

- ✓ Translation
- ✓ Advertising in newspapers
- ✓ Charge for rooms for public hearing (if carried out on affected territory)
- ✓ others

Solution: German-Polish Agreement

- Party of Origin covers all costs for steps which are required according to German law (e.g. public hearing)
- Costs are regularly borne by the proponent

- Competent authorities
- Field of application
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5. Solutions for main questions - Formats

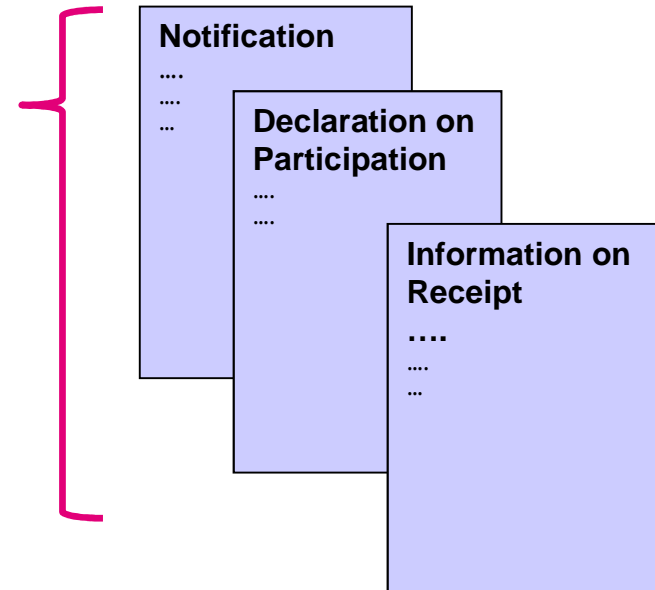
Challenge:

Administrative language (especially in translated manner) may trigger misunderstandings on purpose of document

Solution (German-Polish Agreement):

Formats (e.g. as part of agreements)

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



- Competent authorities
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- ▶ Formats

➔ Formats may avoid misunderstandings contribute to speedy procedure

5. Solutions for main questions

– Principles of good practice: lessons learned – main points

- **Competence:** Authority which is responsible according to national legislation
- **Field of application:** Any decision making procedure with EIA/SEA*
- **Significance:** hardly to define (in practice roughly comparing against thresholds of Party of origin)
- **Starting point of transboundary EIA:** scoping phase (if possible)
- **Public participation in affected state:**
 - according to rules of Party of Origin: time frame, letter or e-mail
 - according to rules of affected Party: announcement, display , collection of comments
- **Translation*:**
 - Party of Origin covers all costs : PoO regularly transmits translated documents
 - affected Party transmits comments etc. in own language
- **Time Frames:** time frames of PoO (under condition of translated documents)
- **Financial implications:** administrative costs, beared by proponent
- **Formats (as part of agreement):** helpful to avoid misunderstandings

* under prerequisite that equivalence and reciprocity is roughly fulfilled

6. Main steps to overcome different views

Challenge: Different views on project and its possible impacts

Mainly helpful are (examples of German-Polish Agreement)

- ➔ **Early participation (scoping)**
- ➔ **Direct contacts between EIA/SEA authority and authorities of other Party**
(e.g. Scoping)

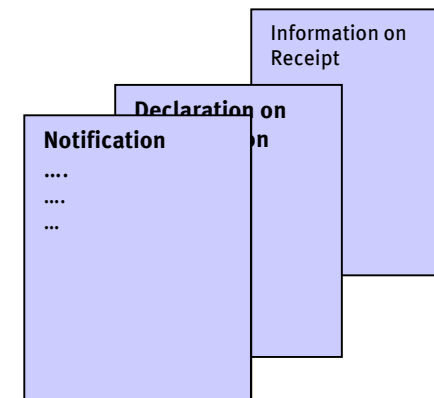
- Consultation
- Information on „probable decision“

- ➔ **Post-project analysis (including pre-project analysis)**

- [Public: right to appeal at a German court (public)]
- Dispute settlement on general questions:

Permanent bilateral Governmental Group „Transboundary EIA and SEA“

*red = most relevant to settle different views on features of plan/project and impacts



5. Bilateral Agreements as helpful tools

Bilateral agreement set permanent base to overcome differences regarding

- different legislation und practice
- different organization of administration
- different language
- different history, culture and values.

Bilateral agreements

- may use terms which are understandable for both parties (e.g. terms of Espoo)

Bilateral agreements constitute permanent rules and avoid repeated discussions at the occasion of each new project.



4. Conclusions

- Germany made good experience with transboundary EIA and SEA.
- We appreciate it as an effective tool to realize projects which may have impacts on other Parties in an atmosphere of good neighbourhood.
- A sound transboundary EIA procedure may avoid conflicts and contribute to a speedy decision making procedure.
- Transboundary EIA protects our environment.



Thank you for your attention

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