

Mihaela Măcelaru

# Legal nature and scope of the bilateral agreement

Training Workshop on the Practical Application of Transboundary Environmental Impact Assessment (EIA):  
Bilateral Agreements on Transboundary EIA  
16-17 March 2021

Action implemented by:

## Binding obligations (international/national law)

### Romanian legislation

- Constitution of Romania (art. 11) – commitment to fulfil as such and in good faith international obligations
- Law on treaties (590/2003) – Government-to-Government treaties
- EIA Law (292/2018) – general provisions for transboundary EIA procedures
- Order for transboundary EIA (864/2002) – specific provisions for transboundary procedures (allows for more stringent measures)

Action implemented by:

## Points of departure

- ✓ Binding obligations – a procedure that must be implemented
- ✓ Detailed provisions – cover every step of the procedure
- ✓ Clear provisions – easy to understand by the authorities (and by the developers)
- ✓ Comprehensive provisions – cover as many cases as possible – without becoming too general

Action implemented by:



Mihaela Măcelaru

## Scope of activities and approach to trigger transboundary procedure

Training Workshop on the Practical Application of Transboundary Environmental Impact Assessment (EIA):  
Bilateral Agreements on Transboundary EIA  
16-17 March 2021

Action implemented by:

- ❖ Cooperation shall concentrate on the proposed activities listed in Appendix I, as amended in 2004, to the Convention.
- ❖ The Parties shall implement the provisions of the Espoo Convention with respect to all proposed activities in the protected areas of the Danube Delta, which, in accordance with national legislation or practice, are subject to environmental impact assessment.

Action implemented by:



- ❖ The central public authority for environmental protection of Romania/Ukraine may initiate discussions if one or more proposed activities, with origin in Romania/Ukraine, unforeseen in Annex no. I to the Espoo Convention, as amended in 2004, is likely to have significant adverse transboundary impact and therefore should be treated as those provided in annex no. I to the Convention.
- ❖ In order to determine whether these activities are likely to have a significant adverse transboundary impact, the competent authorities apply the criteria set out in Annex no. III to the Espoo Convention.
- ❖ In the case of common transboundary projects, a joint environmental impact assessment shall be carried out by both countries.

Action implemented by:



Mihaela Măcelaru

## Public participation

Training Workshop on the Practical Application of Transboundary Environmental Impact Assessment (EIA):  
Bilateral Agreements on Transboundary EIA  
16-17 March 2021

Action implemented by:

## Bilateral agreement

### HEARING, INTERPRETATION, DIVISION OF RESPONSABILITIES

- ❖ All correspondence between Parties concerning environmental impact assessment conducted under this Agreement and the Espoo Convention shall be in English, including comments from the authorities and the public of the affected Party on the environmental impact assessment documentation.
- ❖ All correspondence concerning environmental impact assessment conducted under this Agreement and the Espoo Convention shall take place via email, through the Points of Contact of the Parties regarding notifications, as listed on the website of the Espoo Convention.
- ❖ The Parties shall create on the websites of their respective ministries of environment special sections dedicated to transboundary environmental impact assessment procedures conducted bilaterally under this Agreement or the Espoo Convention.

Action implemented by:





- ❖ The documentation received from the Party of Origin shall be distributed to the authorities and the public in the areas possibly affected, through the care of the competent authority of the Affected Party.
- ❖ All documentation should be accompanied by a non-technical summary translated into the language of the affected Party.
- ❖ The affected Party is responsible with involving and consulting of its own authorities and public in the view of providing the specific comments regarding the EIA documentation.

Action implemented by:



Mihaela Măcelaru

# Time frames and documenting in the final decision how due account was take of the outcome of transboundary procedure

Training Workshop on the Practical Application of Transboundary Environmental Impact Assessment (EIA):  
Bilateral Agreements on Transboundary EIA  
16-17 March 2021

Action implemented by:

## Notification

- ✓ Notification will be done from very beginning of the process, shall be made at the same time as informing its own public about the proposed activity. The notification shall be made within 10 days of receipt of the complete information from the proponent.
- ✓ The affected Party shall indicate, within 10 days from the receipt of the notification from the Party of origin, its intention to participate in the transboundary environmental impact assessment procedure.

Action implemented by:



## Content of the EIA documentation

- ✓ The affected Party shall provide its views on the content of the EIA documentation within 30-31 days (1 month) from the receipt of the EIA documentation.
- ✓ The Party of origin shall answer in writing to all comments from the authorities and the public of the Affected Party, including to comments made during public hearings and bilateral consultations under art. 5 of the Espoo Convention.
- ✓ The affected Party may provide its views on the answers within 30 days from their receipt.

## Final decision

- ✓ The final decision on the proposed activity specifies how the comments by the public and the authorities, as well the outcome of the transboundary consultations of the Affected Party have been taken into account.
- ✓ The Parties shall include in or annex to their final decisions on proposed activities under this Agreement a special section explaining in detail the treatment of comments and views of the affected Party, its authorities or its public.
- ✓ When the final decision become available/is adopted, the Party of Origin shall provide to the Affected Party the final decision on the proposed activity along with the reason and consideration on which as based.

Action implemented by:



Mihaela Măcelaru

# Post-project analysis and other elements potentially to be included into the bilateral agreement

Training Workshop on the Practical Application of Transboundary Environmental Impact Assessment (EIA):  
Bilateral Agreements on Transboundary EIA  
16-17 March 2021

Action implemented by:

## ELEMENTS

- ❖ Post-project analysis is a must
- ❖ Agreed set of harmonized standards for monitoring the changes in the environment
- ❖ Procedures for environmental data exchange
- ❖ Matter of costs regulated in advance (e.g. costs related to specific environmental monitoring)

Action implemented by:



## ELEMENTS

- ❖ Joint commission
- ❖ Quality of the environmental impact assessment documentation
- ❖ Involvement of stakeholders in the discussions
- ❖ Annexes (specific forms to be used)

Action implemented by:



## Mihaela Măcelaru

# Completion of the bilateral agreement

Training Workshop on the Practical Application of Transboundary Environmental Impact Assessment (EIA):  
Bilateral Agreements on Transboundary EIA  
16-17 March 2021

Action implemented by:



## Bilateral agreement

### CONTENTS

- ❖ TECHNICAL agreement – specific instructions for conducting the transboundary EIAs
- ❖ DETAILED provisions
- ❖ NO GENERAL agreement – Espoo Convention
- ❖ Allowing for EFFECTIVE and GOOD FAITH transboundary EIA cooperation

Action implemented by:



## STEPS

- ❖ ROMANIAN proposal (Done)
- ❖ UKRAINAIN counterproposal (Done)
- ❖ WORKSHOP discussions (Current)
- ❖ ROMANIAN/UKRAINIAN proposal to come out of the WORKSHOP (Next)
- ❖ FINAL round of negotiations on the text (online?) – and then internal procedures for signature (2021)
- ❖ SIGNATURE (2021)
- ❖ APPROVAL (2021/2022)
- ❖ ENTRY into force (2021/2022)

Action implemented by:

