

Questionnaire for the

**REPORT OF GERMANY ON THE IMPLEMENTATION
OF THE CONVENTION ON ENVIRONMENTAL
IMPACT ASSESSMENT IN A TRANSBOUNDARY
CONTEXT**

in the period 2006–2009

Information on the focal point for the Convention

Name and contact information:

Mr. Matthias Sauer

Assistant Head of Division

Federal Ministry for the Environment, Nature Conservation and Nuclear Safety -Division ZG III 4-
Alexanderstrasse 3

D-10178 Berlin

Telephone: +49 30 18 305.2253

Fax: +49 30 18 305.3331

E-mail: matthias.sauer@bmu.bund.de

Information on the point of contact for the Convention

Name and contact information (if different from above):

Information on the person preparing the report

- | | | |
|-------|------------------|---|
| i. | Country | Germany |
| ii. | Surname | Sauer |
| iii. | Forename | Matthias |
| iv. | Institution | Federal Ministry for the Environment, Nature Conservation and Nuclear Safety |
| v. | Postal address | Alexanderstrasse 3, D-10178 Berlin |
| vi. | E-mail address | matthias.sauer@bmu.bund.de |
| vii. | Telephone number | +49 30 18 305.2253 |
| viii. | Fax number | +49 30 18 305.3331 |

Date on which report was completed: 30.06.2010

PART ONE – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

In this part, please provide the information requested, 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 describe the framework for your country's implementation, and not experience in the application of the Convention.

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 24 February 2010 (Federal Law Gazette I p. 94) 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 are included in the legislation of the 16 German States (Länder).

2. *Indicate any further measures to implement the provisions of the Convention that are planned for the near future.*

Currently Germany is reviewing some of its existing arrangements on transboundary EIA with neighbouring Parties. Negotiations on a further bilateral agreement shall start soon.

See the answer to question 41.

TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE

3. *Describe your country's national and transboundary environmental impact assessment (EIA) procedures and authorities (art. 2.2):*
 - a. *Describe the EIA procedure in your country and indicate which steps of the EIA procedure include public participation;*

With regard to the relevant provisions of the Federal EIA Act in the German EIA procedure 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 on a case-by-case-examination - 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) - other authorities have to be consulted, 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 has to 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 set out in the Convention fit into your country's 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 (notification, consultation between Parties, public participation, etc.). 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? If so, name it. If not, does your country intend to establish such an authority?

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

4. Does your country have special provisions for joint cross-border projects (e.g. roads, pipelines)?

No, there are no specific provisions. In practice there are two options:

(a) The standard approach would be that 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.

(b) The alternative is more recommended: The competent authorities of both countries agree to carry out a common EIA for the project as a whole. Later on each of the two Parties will take due account of the outcome of this common EIA procedure in the final decision-making that is required for the licensing of that part of the project on its own side of the border.

One example for option (b) is the Nord Stream Gas Pipeline project, that shall connect Russia and Germany crossing the Baltic Sea - through russian territorial waters, russian, finnish, swedish, danish and german exclusive economic zones (EEZ) and as well danish and german territorial waters -. Another example for option (b) will be the danish-german project of a fixed link across the Fehmarnbelt in the Baltic Sea.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE CONVENTION

5. Is appendix I to the Convention transposed into your country's national legislation? Does your country's legislation already cover the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7), and if so, how? Please describe any differences between the national list and appendix I to the Convention. Please explain how your country interprets terms such as "large" and "major" used in appendix I (including in items 4, 8, 11, 14, 16, 17 and, as appropriate, 22).

subquestion 1: yes.

subquestion 2: yes.

subquestion 3:

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.

subquestion 4:

The terms "large" and "major" are implemented into domestic legislation by a system of thresholds. As described above, this domestic legislation at the same time implements the EIA Directive of the EU, that already includes binding interpretations of the terms "large" and "major" for some activities of the Appendix I of the Convention by setting concrete thresholds. For activities that are smaller as those thresholds for a mandatory EIA the German legislation requires in principle a screening, and part of the screening criteria is inter alia the likeliness of significant adverse transboundary impacts.

As requested by the instructions for completion of the questionnaire the relevant text of Annex I of the Federal EIA Act is here not copied in full. Nevertheless the following interpretation of the terms "large" and "major" shall be given:

Item 4 of the revised appendix I of the Convention:

"Major installations" of this kind is implemented into the German legislation, and in accordance with Annex I, No. 4 of the EIA Directive of the EU, as always requiring mandatory EIA.

Item 8 of the revised appendix I of the Convention:

Large-diameter pipelines are in accordance with Annex I, No. 16, 1st Tirée of the EIA Directive of the EU at least pipelines with a diameter of more than 800 mm and a length of 40 km. These are also the German thresholds for a mandatory EIA. Below these thresholds in principle a screening is required, but for this a pipeline needs to have at a minimum a diameter of more than 300 mm (without any threshold regarding its length).

Item 11 of the revised appendix I of the Convention:

Large dams and reservoirs are implemented into the German legislation, and in accordance with Annex I, No. 15 of the EIA Directive of the EU, as the construction of a dam or other installation for retaining or permanently storing water, by means of which 10 million m³ or more of water is retained or stored. This is the threshold for a mandatory EIA. Below this threshold always a screening is required.

Item 14 of the revised appendix I of the Convention:

"Major quarries" is implemented into the German legislation, and in accordance with Annex I, No. 19 of the EIA Directive of the EU, as construction and operation of a quarry with a working area of 25 ha or more for requiring mandatory EIA. Below this threshold in principle a screening is required.

Item 16 of the revised appendix I of the Convention:

"Major storage facilities" is implemented into the German legislation, and in accordance with Annex I, No. 21 of the EIA Directive of the EU, as installations for storage with a capacity of 200 000 tonnes or more. This is the threshold for a mandatory EIA. Below this threshold in principle a screening is required.

Item 17 of the revised appendix I of the Convention:

"Deforestation of large areas" is implemented into the German legislation, and in accordance with Annex II, No. 1 (d) of the EIA Directive of the EU, as clearance of forest within the meaning of the Federal Forests Act [Bundeswaldgesetz] for the purpose of conversion to a different type of use, with 10 ha or more of forest for requiring a mandatory EIA. With 5 ha to less than 10 ha of forest a screening is required and with 1 ha to less than 5 ha of forest a screening is required if sensitive areas can be affected.

Item 22 of the revised appendix I of the Convention:

"Major installations" is implemented into the German legislation, and in accordance with Annex II, No. 3 (i) of the EIA Directive of the EU, as construction and operation of a wind farm with turbines having an overall height of more than 50 metres each, comprising 20 or more wind power turbines for mandatory EIA. 6 to 19 wind power turbines require a screening and 3 to 5 wind power turbines require a screening if sensitive areas can be affected.

6. *Please describe:*

- a. *The legislation and, where appropriate, the procedures your country 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 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 your country conducts transboundary EIA cooperation (through points of contact, through joint bodies or within bilateral or multilateral agreements);*

There is not one answer to this question. Germany has nine neighbouring countries onshore. The system of EIA cooperation is therefore established by different means with regard to all these countries and it depends on the specific neighbouring country in question. Most of the neighbouring countries are Member States of the European Union and a close EIA cooperation is already taking place on this level. With some of these neighbouring we do have as well joint bodies regarding cooperation on environmental issues (for example with Poland and the Czech Republic). With some of the neighbouring countries we do have bilateral agreements or other kind of bilateral arrangements on transboundary EIA (please see the answer to question 41). And last but not least there is cooperation between the points of contact.

- c. *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.

- d. *How such an activity, or such a change to an activity, is considered “likely” to have a “significant” adverse transboundary impact (art. 2.3 and 2.5, and the Guidelines in appendix III).*

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.

PUBLIC PARTICIPATION

7. *Does your country have its own definition of “the public” in national legislation, compared to article 1(x)? How does your country, 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 country’s 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

8. *Describe how your country determines 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 does your country 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.

9. *Does your country provide any information to supplement that required by article 3, paragraph 2?*

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.

10. *Does your country use the format for notification (as decided by the first meeting of the Parties, decision I/4, in document ECE /MP.EIA/2)? If not, in what format does your country normally present the notification?*

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.

11. *Describe the criteria your country uses 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 does your country 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.

12. *Describe when your country provides 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.

13. *How does your country determine whether it should request information from the affected Party (art. 3.6)? When does your country normally request information from the affected Party? What kind of information does your country normally request? How does your country 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".

14. *Please describe:*

- a. *How your country cooperates with the authorities of the affected Party on public participation (art. 3.8), taking into account that the Party of origin and affected Party are both responsible;*

This is an obligation of both Parties: the Party of origin and the affected Party. Therefore, both Parties have to work together, for example in order to identify the public in the affected area. Due to the fact that the Party of origin does not have any administrative powers on the territory of the affected Party, some steps of the procedure (e.g. formal announcements, hearings on the territory of the affected Party) have to be carried out by the competent authority of the affected Party, but always with the best possible support by the competent authority of the Party of origin.

- b. *How your country identifies, in cooperation with the affected Party, 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).

- c. *How the public in the affected Party is notified (what kinds of media, etc are usually used). What is normally the content of the public notification?;*

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.

- d. *Whether the notification to the public of the affected Party has the same content as the notification to your country’s public. If not, describe why not. At what stage in the EIA procedure does your country normally notify the public of the affected Party?*

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.

15. *Does your country 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 as listed on the Convention website (http://www.unece.org/env/eia/points_of_contact.htm)?*

Yes, these contact points are useful, if there is no other authority in a neighbouring country for purposes of notification named and/or fixed by a bilateral arrangement.

QUESTIONS TO AFFECTED PARTY

16. *Describe the process of how your country decides whether or not to participate in the EIA procedure (art. 3.3)? Who participates in the decision-making, e.g. central authorities, local competent authorities, the public, environmental authorities? Describe the criteria or reasons your country uses 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.

17. *When the Party of origin requests your country to provide information relating to the potentially affected environment, how does your country determine what is “reasonably obtainable” information to include in its response? Describe the procedures and, where appropriate, the legislation your country that would apply in determining 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 13.

18. *Please describe:*

a. *How your country cooperates with the authorities of the Party of origin on public participation (art. 3.8), taking into account that the Party of origin and affected Party are both responsible;*

See the answers to questions 14 (a) and 16.

In accordance with Article 9b para. 2 of the Federal EIA Act the competent authority in Germany as an affected Party will have to carry out the public participation phase for the German public based on documents supplied by the Party of origin.

b. *How your country identifies the “public” in the affected area;*

See the answer to question 14 (b).

There is no difference between the situation as Party of origin and the situation as affected Party.

- c. *How the public is notified (e.g. what kinds of media, etc., are usually used). What is normally the content of the public notification?;*

See the answer to question 14 (c).

There is no difference between the situation as Party of origin and the situation as affected Party.

The content of the public notification will depend primarily on information submitted by the Party of origin. Inter alia it will include details of the public participation procedure, like the possibilities for inspection of the documents, the methods of submitting comments, the contact data of the authorities for the submission of comments, the deadline for comments etc. - there shall be no difference to a public notification in a domestic EIA, apart from the fact that some special requirements due to the legislation of the Party of origin might be required.

- d. *At what stage in the EIA procedure does your country normally notify its public?*

See the answer to question 14 (d).

The timing depends primarily on the legislation and wishes of the Party of origin.

But if possible the consultation of the public in Germany as an 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 same EIA documentation and the same additional documents.

Article 4

Preparation of the environmental impact assessment documentation

QUESTIONS TO PARTY OF ORIGIN

19. *What is the legal requirement for the minimum content of the EIA documentation (art. 4.1, appendix II)?*

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.

20. *Describe your country's procedures, if any, for determining the content of the EIA documentation on a case-by-case basis (scoping procedure) (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 19). 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. In the scoping-phase other authorities, likely to be concerned by the project by reason of their specific environmental responsibilities, have to be consulted in accordance with Article 5 of the Federal EIA Act. Furthermore Article 5 of the Federal EIA Act envisages that independent experts and other third parties may be consulted by decision of the competent authority on a case-by-case basis. In a case with likely transboundary impacts of the project it is recommended to involve an affected Party as such a third party already in the scoping-phase.

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.

21. *How does your country identify "reasonable alternatives" in accordance with appendix II, paragraph (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.

22. *How does your country identify “the environment that is likely to be affected by the proposed activity and its alternatives” in accordance to appendix II, paragraph (c), and how does it define “impact” in accordance with 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.

23. *Does your country give the affected Party all of the EIA documentation (art. 4.2)? If not, which parts of the documentation does your country provide?*

Yes, the whole EIA documentation needs to be submitted to the affected Party.

24. *How does your country cooperate with the authorities of the affected Party on distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party are both responsible? How does the competent authority in your country (as the Party of origin) deal with the comments (art. 4.2)?*

See the answers to the questions 14 (a) and 18 (a).

The competent authorities of both Parties have to cooperate closely. The Party of origin is responsible for the submission of the EIA documentation, if requested in an electronic format and as well in a paper version, to the affected Party. Both Parties have to agree how the distribution shall be carried out. Preferably it should be organized by the competent authority of the affected Party as it would be the standard in case of Germany as affected Party (see the answer to question 18 (a)).

The comments of the authorities and of the public 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 will have no influence on the final decision, the decision will contain reasons explaining why.

25. *Describe the procedures and, where appropriate, the legislation that define the time frame for comments provided “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 does your country 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.

26. *What material does your country 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.

27. *Does your country 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 will only be possible, if both Parties cooperate very closely and the competent authority of the affected Party takes care of the organization.

On the federal level one exceptional case between Germany and Austria in the last reporting period is known, that has included a special hearing for the public of the affected Party in the territory of the affected Party.

QUESTIONS TO AFFECTED PARTY

28. *Describe the procedures and, where appropriate, the legislation your country 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.

29. *How does your country cooperate with the authorities of the Party of origin on the distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party are both responsible?*

See the answers to the questions 24, 18 (a) and 14 (a).

Close cooperation of the competent authorities of both Parties is needed. There shall be in principle no difference between a public participation in a domestic EIA and in a transboundary EIA, apart from the fact that some special requirements due to the legislation of the Party of origin might be required.

30. *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, with the legislation of the Party of origin, 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 an 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

31. *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 your country would apply to determine the meaning of “undue delay”, with regard to the timing of the entry into consultation? Does your country normally set the duration for consultations beforehand? If there seems to be no need for consultation, how does your country determine not to carry out consultations?*

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 and the Party of origin has had enough time to assess these comments. The Parties have to agree on a reasonable time-frame for the duration of consultations taking into account legal requirements regarding decision-making. Nevertheless usually any timing depends on the nature of the significant transboundary impacts in question and on the comments submitted by the affected Party in a specific case. Under the Espoo Convention the Party of origin has to offer consultations in any case. Consultations are not needed, if the affected Party confirms this or does not react to such an offer. Even after a consultation is initiated, the Parties together can later on agree that consultations are not needed anymore, because the issues at stake are settled in the interim. Furthermore it seems to be possible that the affected Party in its comments on the EIA documentation already indicates that consultations will not be needed - in such a scenario even the offer of consultations by the Party of origin would not be required.

32. *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

33. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means does your country usually communicate in consultations, for example by meeting or by the exchange of written communications? How does your country 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

34. *For each type of activity listed in appendix I, identify what is regarded as the “final decision” to authorize or undertake a proposed activity (art. 6 in conjunction with art. 2.3); also provide the term used in the national legislation in the original language. Do all projects listed in appendix I require such a decision?*

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. All projects listed in Appendix I require such a decision.

In brief: usually private projects like industrial installations do need a permit / license ("Genehmigung") and public projects like infrastructure projects require a planning appraisal / plan approval ("Planfeststellungsbeschluss").

In comparison with Appendix I of the Convention as amended by the second amendment the following terms are used in the national German legislation in the original language:

Item 1 of Appendix I of the Convention: Genehmigung

Item 2 (a) of Appendix I of the Convention: Genehmigung

Item 2 (b) of Appendix I of the Convention: Genehmigung

Item 3 (a) of Appendix I of the Convention: Genehmigung

Item 3 (b) of Appendix I of the Convention:

1st Tirée: Genehmigung

2nd Tirée: Genehmigung

3rd Tirée: Planfeststellungsbeschluss

4th Tirée: Planfeststellungsbeschluss

5th Tirée: Genehmigung

Item 4 of Appendix I of the Convention: Genehmigung

Item 5 of Appendix I of the Convention: Genehmigung

Item 6 of Appendix I of the Convention: Genehmigung

Item 7 (a) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 7 (b) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 8 of Appendix I of the Convention: Planfeststellungsbeschluss

Item 9 of Appendix I of the Convention: Planfeststellungsbeschluss

Item 10 (a) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 10 (b) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 11 of Appendix I of the Convention: Planfeststellungsbeschluss

Item 12 of Appendix I of the Convention: Erlaubnis / Bewilligung / Genehmigung

Item 13 of Appendix I of the Convention: Genehmigung

Item 14 of Appendix I of the Convention: Genehmigung

Item 15 of Appendix I of the Convention: Rahmenbetriebsplan / Planfeststellungsbeschluss

Item 16 of Appendix I of the Convention: Genehmigung

Item 17 of Appendix I of the Convention: Genehmigung

Item 18 (a) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 18 (b) of Appendix I of the Convention: Planfeststellungsbeschluss

Item 19 of Appendix I of the Convention: Genehmigung

Item 20 of Appendix I of the Convention: Genehmigung

Item 21 of Appendix I of the Convention: Planfeststellungsbeschluss

Item 22 of Appendix I of the Convention: Genehmigung

35. *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.

36. *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 the 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.

37. *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. Due to Article 8 para. 3 of the Federal EIA Act or due to a bilateral arrangement furthermore a translation of the final decision may be submitted as well.

Subquestion 2:

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

38. *If additional information becomes available according to article 6, paragraph 3, before the activity commences, how does your country 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

39. *How does your country determine whether it should request a post-project analysis to be carried out (art. 7.1)?*

There was no need to include a special provision on post-project analysis in the transboundary context into the Federal EIA Act. 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.

40. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how does your country 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. But if the question would become relevant the competent German authority for the permit including the transboundary EIA would contact the competent authority of the affected Party was was involved in the transboundary EIA procedure.

Article 8

Bilateral and multilateral agreements

41. *Does your country have any bilateral or multilateral agreements based on the 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 EIA Directive of the EU nor to the Espoo Convention.

- (a) The following agreements or documents make a reference to the provisions of the EIA Directive of the EU 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 in July 2007) [text in Polish, German and English language was submitted to the Espoo-secretariat in 2006/2007];
 - 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:
- Currently negotiations are ongoing regarding an update of the "Common Declaration on Transboundary EIA between Germany and the Netherlands (2005)" - this update shall include minor EIA modifications based on the experience so far and as well an extension regarding transboundary SEA;
 - Currently negotiations are ongoing regarding an amendment of the "Agreement between Germany and Poland on transboundary EIA of 11 April 2006" (2006/2007) - this amendment shall include EIA modifications based on the experience so far and as well an extension regarding transboundary SEA;
 - Currently negotiations are ongoing regarding an update of the "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 (2005)" - this update shall include minor EIA modifications based on the experience so far and as well an extension regarding transboundary SEA;
 - Agreement on transboundary between Germany and the Czech Republic on transboundary EIA (negotiations shall start in 2010);
 - Possible informal agreement between Switzerland, Austria, Liechtenstein, Germany on transboundary EIA (planned);
 - Possible Common Declaration on Transboundary EIA between Denmark and Germany (planned).

42. *Has your country established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

The following exceptions are to mention:

Due to the bilateral agreement of 11 April 2006 with Poland, the Environmental Ministries of the German States in the border region are nominated as additional addressees for notifications in the case of Germany as an affected Party - with a copy to the Federal Ministry for Environment.

A similar approach was taken in the German-Dutch Common Declaration, that includes on the German side as well contact points in the German States (Laender) Northrhine-Westphalia and Lower Saxony.

Article 9

Research programmes

43. *Are you aware of any specific research in relation to the items mentioned in article 9 in your country? If so, describe it briefly.*

In the last report Germany has mentioned an earlier research project that involved Poland and was 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. Furthermore it was reported that an evaluation of the Federal EIA Act took place as the only ongoing research project on EIA. Since then no specific research programme on EIA in the context of Article 9 of the Convention was initiated. For Germany as a member state of the EU future research should primarily take place on the level of the EU.

Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment

44. *If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Germany has ratified the first amendment in 2002.

45. *If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Germany has ratified the second amendment in 2007.

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

Germany has ratified the Protocol in 2007.

PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2006–2009

Please report on your country's practical experiences of applying the Convention (not your country's procedures described in part one), whether as Party of origin or affected Party. The focus here is on identifying good practices as well as difficulties Parties have encountered in applying the Convention in practice; the goal is to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve its application.

47. *Does your country's national administration have information on the transboundary EIA procedures that were under way 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 your country does not have any experience of applying the Convention, why not?*

The Federal level in Germany has only 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 of the EU. In addition see the answer to question 3 (d).

Nevertheless the Federal level is aware that there has been experience on transboundary EIA in the reporting period. The most important case has been the gas pipeline Nord Stream crossing the Baltic Sea. For the section of the routing of this pipeline in the German territorial waters and the German Exclusive Economic Zone (EEZ) Germany was Party of origin. For all the other sections of the routing Germany was one of the affected Parties.

48. *Does your country object to the above list of transboundary EIA procedures being included in a compilation of such procedures to be made available on the website of the Convention? (Indicate "yes" if you object.)*

No. See the answer to question 47.

49. *Are there projects other 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. See the answer to question 47.

50. *Provide information on the average duration 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 the answer to question 47.

51. *If your country has 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 47.

In principle EIA (and transboundary EIA) is an 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.

52. *How has your country interpreted in practice the various terms used in the Convention, and what criteria has your country used to do this? Key terms include the following: “major change” (art. 1 (v)), “a reasonable time” (art. 3.2(c), art. 4.2), “promptly” (art. 3.6) and “a reasonable time frame” (art. 5). (Do not provide references to answers to earlier questions 6 (b), 11, 13, 25 and 31.) If your country experiences substantial difficulties interpreting particular terms, does your country work together with other Parties to find solutions? If not, how does your country overcome the problem?*

No difficulties.

The Federal level has no information on any problems with these terms in the practical application of the Espoo Convention. If any problem would occur, the competent German authority will create tailor-made solutions in the framework of the relevant legislation and in cooperation with the competent authority of the affected Party.

53. *Please share with other Parties your country’s experience of using the Convention in practice. In response to each of the questions below, either provide one or two practical examples or describe your country’s general experience. You might also include examples of “lessons learned” in order to help others.*

- a. *How in practice has your country identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?;*

See the answers to questions 47, 6 (c) and 22. 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 does your country 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 does your country use in impact assessment in the (transboundary) EIA procedure (e.g. impact prediction methods and methods to compare alternatives)?;*

See the answer to question 47.

Primarily it is the task of the developer to prepare the EIA documentation based on the results of the scoping phase as summarized by the competent authority. 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 has your country addressed the question of translation? What does your country usually translate? What difficulties has your country experienced relating to translation and interpretation, and what solutions has your country applied?;*

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 agreement between Poland and Germany contains a detailed provision on translations (see the answer to question 41).

- e. *How has your country organized transboundary public participation in practice? As Party of origin, has your country organized public participation in affected Parties and, if so, how? What has been your country's experience of the effectiveness of public participation? Has your country experienced difficulties with the participation of its public or the public of another Party? (e.g. have there been complaints from the public about the procedure?);*

See the answer to question 47.

The federal level has no information on any difficulties nor on any best practice examples.

- f. *Describe any difficulties that your country has encountered during consultations, for example over timing, language and the need for additional information. As an affected Party, have consultations under article 5 supported the prevention, reduction or control of possible significant transboundary environmental impacts?;*

In the reporting period the Federal level is not aware of severe difficulties regarding the formal consultation phase according to Article 5 of the Convention as Party of origin or as affected Party.

It must be stated that sometimes the term "consultation" is also used regarding the procedure under Article 4 of the Convention (comments of the public and of authorities of the affected Party on the EIA documentation), which might lead to confusion. Therefore it is recommended to use the term "consultation" only in connection with Article 5 of the Convention.

- 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 37.

The affected Party receives the whole decision by standard mail in paper format. Additionally with regard to Article 8, para. 3, of the Federal EIA Act the submission of a translation (parts or the whole decision) is possible. Furthermore a submission in electronic form is possible, if requested by the affected Party.

- h. Has your country carried out post-project analyses and, if so, on what kinds of project?;*

No information on any practical experience is available on the Federal level. See the answer to question 39.

- i. Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your country's experiences describing, for example, means of cooperation (e.g. contact points, joint bodies, bilateral agreements), institutional arrangements, and how practical matters are dealt with (e.g. translation, interpretation, transmission of documents, etc.);*

See the answer to question 4.

Germany does consider the Espoo procedure regarding the gas pipeline Nord Stream as a quite successful example. As this example was already discussed intensively in the bodies under the Convention - see for example seminar of the Espoo Working Group in May 2009 in Geneva - it seems not necessary to add further information on this procedure in the framework of the report.

We hope that the procedure on the fixed link across the Fehmarnbelt, that has just started in June 2010, will also become a future best practice example.

- j. Name examples of good practice cases, whether complete cases or good practice elements (e.g. notification, consultation or public participation) within cases. Would your country like to introduce a case in the form of a Convention's "case study fact sheet"?*

See the answer to question 47.

- k. Identify the most common means of applying the Convention (e.g. through focal points, joint bodies, multilateral agreements).*

See the answer to question 6 (b).

All mentioned means are used in the cooperation of Germany with its neighbours.

CO-OPERATION BETWEEN PARTIES IN 2006–2009

- 54. Does your country have any successful examples of how it has 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 or other arrangement exists.

During the negotiations of the Polish-German Agreement on Transboundary EIA (2006/2007) many questions based on the different legal systems have been discussed in order to find common solutions. Therefore the elaboration of a bilateral agreement or any other form of bilateral arrangement is the best approach to be prepared, before a concrete procedure on a case may be initiated.

Regarding the above mentioned case on the Nord Stream gas pipeline the question of the different legal systems in nine countries involved (8 Parties plus 1 Signatory to the Convention and at the same time 8 EU Member States plus 1 Non-EU Country) was one of the most important and difficult issues. For example regarding

- time frames for comments or

- the question of public participation during the scoping phase the countries involved agreed
- to follow the national procedure with the longest time-frame and furthermore agreed
- that in all countries for this procedure a public participation during the scoping phase will have to be carried out.

EXPERIENCE IN USING THE GUIDANCE IN 2006–2009

55. *Has your country used in practice the following guidance, adopted by the Meeting of the Parties and available online? Describe your country's experience with using these guidance documents and how they might be improved or supplemented:*

a. *Guidance on public participation in EIA in a transboundary context;*

In the last report it was mentioned that the Guidance was distributed to other Government Ministries and to the Länder Ministries. During the current reporting period no experience was reported back to the Federal level.

b. *Guidance on subregional cooperation;*

The answer to question 55 (a) does also apply here.

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

In the last report it was mentioned that the Guidelines have been translated into German language by Austria, Germany and Switzerland and furthermore were put on the web-site of the Federal Ministry and as well distributed to other Government Ministries, Länder Ministries for Environment, relevant competent authorities, stakeholders and the public. They have still been used during the current reporting period with much positive response by authorities that have had to carry out a transboundary EIA procedure for the first time.

CLARITY OF THE CONVENTION

56. *Has your country 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 one above 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 your country encounters when applying the Convention.*

See the answer to question 47.

The legal implementation of the Espoo Convention still caused no relevant difficulties as the instrument of transboundary EIA was due to Article 7 of the EIA Directive of the EU already known a long time in Germany.

The Federal level has not received any information that during the practical application of the Convention in the reporting period any difficulties or any weaknesses were revealed.

AWARENESS OF THE CONVENTION

57. *Has your country undertaken activities to promote awareness of the Convention among 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.

58. *Does your country see a need to improve the application of the Convention in your country and, if so, how does it intend to do so? What relevant legal or administrative developments are proposed or ongoing?*

subquestion 1:

No need for improvements.

subquestion 2:

An amendment to the the Federal EIA Act will be initiated soon in order to implement the latest amendment of the EIA Directive 85/337/EEC by EU Directive 2009/31/EC regarding projects on CCS. This will lead inter alia to an extension of the project list on EIA - and possibly to transboundary EIA cases on this issue in the future.

SUGGESTED IMPROVEMENTS TO THE REPORT

59. *Please provide suggestions for how this report may be improved.*

There have been no technical difficulties with the format of the questionnaire.

Some overlaps between questions still seem to exist. For example it should be examined if the questions on the same issue with the view as Party of origin and with the view as affected Party could be combined.

Partly optional answers for a simple yes/no could be useful.

If in the future also a report on the Protocol on SEA will be required, it might soften the administrative burden on Parties to both, if the reporting on the Convention and as well on the Protocol could be harmonized as far as possible for example by one single questionnaire.

* * * * *