

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

in the period 2010–2012

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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

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2, para. 2).*

The Austrian EIA Act 2000 (Federal Law Gazette I No. 697/1993 as amended, last amendment by Federal Law Gazette I No. 77/2012), in particular sections 10 and 17. These legal provisions are further explained in a circular to the competent authorities.

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

n.a.

3. *List the different authorities that are named responsible for the implementation of the EIA procedure in the transboundary context and domestically.*

The Federal Ministry of Agriculture, Forestry, Environment and Water Management is in charge of the preparation of legislative steps to implement the Convention such as acts and decrees. Acting as the point of contact under the Convention it is the first address for notifications of projects likely to cause significant adverse impacts on Austria's environment by Parties of origin. The Federal Ministry of Transport, Innovation and Technology (for federal roads and high capacity railways) and the regional governments of the "Länder" (for all other types of projects) are the competent authorities for conducting the EIA and other procedural steps according to the Convention.

4. *Is there an authority in your country that collects information on all the transboundary EIA cases? If so, please name it.*

The Ministry of Environment (see above); it uses the homepage of the Austrian Federal Environment Agency (Umweltbundesamt GmbH) for the documentation of both national and some transboundary EIA cases (www.umweltbundesamt.at).

5. *Does your country have special provisions for transboundary EIA procedures for joint cross-border projects (e.g., roads, pipelines)?*

No.

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

6. *Is appendix I to the Convention transposed fully into your country's national legislation? Please describe any differences between the national list and appendix I to the Convention.*

The national list of projects in Annex 1 to the Austrian EIA Act has fully transposed appendix 1 to the Convention and actually goes beyond it, even in its amended version. It covers both Annex I and II of the EU EIA directive and, moreover, also includes such types of activities which are not part of the directive (e.g. particle accelerators and installations for work with biological working substances or installations for work with genetically modified micro-organisms).

7. *Does your country's legislation already cover fully the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7)?*

See above.

PUBLIC PARTICIPATION

8. *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?*

Austria sends the relevant documentation of a project to the affected Party at a reasonable time before public participation in Austria starts and provides detailed information on the public participation process in Austria according to the provisions of the EIA Act; it enters into consultations with the affected Party in order to find out the best ways to provide its public with the project's and the relevant legal information.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

9. *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".*

The Austrian EIA Act requires notifications to the affected Parties as early as possible and, if appropriate for the consideration of transboundary effects, already during the preliminary procedure, but no later than when informing the Austrian public.

10. *Indicate whether and how the following provisions are reflected in your national legislation:*

- a. *The stage in the EIA procedure when your country usually notifies the affected Party (art. 3.1);*

See above under Q. 9.

- b. *The format for notification. Please indicate whether this is the format as decided by the first meeting of the Parties in its decision I/4 (ECE/MP.EIA/2, annex IV, appendix). If not, does your country use a format of its own (in which case, please attach a copy of it)?*

Usually, Austria does not use any official format for notification, but nevertheless it provides all the information required by the Convention in a cover letter, such as a short description of the project, an indication on public participation procedure and public announcement of the project as well as advices on deadlines.

- c. *The time frame for the response to the notification from the affected Party (cf. art. 3, para. 3, "within the time specified in the notification"), the consequence if an*

affected Party does not comply with the time frame, and the possibility of extending a deadline;

The time frame for responding to the notification usually gets determined according to the complexity of the project, mostly between two and four weeks. As a consequence for non-compliance with the given deadline we call and/or send an e-mail or a letter to the point of contact of the affected party in order to remind it on the deadline and to get information on the reasons for the delay. In such cases the application of deadlines is handled quite flexibly and extending it is usually possible.

d. The request for information from the affected Party (art. 3 para. 6), necessary for the preparation of the EIA documentation;

No legal provisions are foreseen for such requests and there is almost no practical experience in respect to this. Usually it is up to the applicant to gather the necessary information before submitting the documentation to the EIA authority.

e. How your country cooperates with the authorities of the affected Party on public participation (art. 3, para. 8);

The Espoo contact point of the affected Party gets informed in detail about all the rights and possible measures of public participation of our own public for participating in the EIA procedure. Moreover, Austria usually submits as much as possible and feasible of the documentation in electronic form in order to facilitate the reproduction of the information. Also see above under Q. 10 b.

f. When and 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?

See also above under Qs. 9 and 10 e. – Moreover, it is up to the affected Party to determine its means of public notification, inspection and announcement according to its legal system.

g. When and how the public in the Party of origin is notified (what kinds of media, etc. are usually used). What is normally the content of the public notification?

According to Art. 9 of the Austrian EIA Act both the EIA authority and the host municipality, after having received the application for the permit together with other relevant documents including the environmental report, have to conduct the respective public announcement and make the relevant documentation available for public inspection for at least six weeks. The public announcement may be made either in two daily newspapers or in the news section of one daily newspaper and in another periodical newspaper circulated in the respective municipality and must contain the following: subject of the application and description of the project; indications of the obligation of an EIA for the project, of the competent authority, of the nature of the possible decision to be taken, and, if applicable, of the likelihood of a transboundary EIA procedure pursuant to Article 10; furthermore the advice of the place and time of the public inspection, an indication of the fact that anybody may submit comments according to para 5 and that citizens' groups have *locus standi* or the right to participate according to Article 19. In addition, the same provision also requires the public announcement of the project on the Internet (online).

h. 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.

Austria provides the authorities of the affected Party with the text of the public announcements in Austria and all documents open for public inspection in Austria.

The forwarding of information and documentation is usually conducted in a way that should allow the affected Party to carry out its public inspection and notification of the public at the same time as the Austrian authorities do it.

11. 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, annex III, decision I/3), and as listed on the Convention website (http://www.unece.org/env/eia/points_of_contact.htm)?

Yes, Austria and its Espoo contact point does notify projects to the affected Parties by using their contact points.

QUESTIONS TO AFFECTED PARTY

12. Indicate whether and how the following provisions are reflected in your national legislation:

a. How your country decides whether or not to participate in the EIA procedure (art. 3, para. 3)?

Austria's participation depends on the significance of possible environmental impacts of a project (there are no further legal provisions). The group of participants depends on the territory likely to be affected: If only local effects are to be expected, the participants will be the Federal Ministry of Environment, the government of the affected *Land* as well as the affected municipality; in case of, e.g., an atomic power plant and its possible negative environmental effects on the whole country, the group of participants will consist of the Federal Ministry of Environment as well as of the governments of the Austrian *Länder*. Through the participation of the governments of the *Länder* and the municipalities, the respective public also participates in a transboundary EIA procedure.

b. The request from the Party of origin for information (art. 3, para. 6), necessary for the preparation of the EIA documentation;

While there are no specific legal provisions on this issue and only little experience is given so far, Austria's contact point has recently provided within a few weeks the contact point of the country of origin with all the requested information, e.g. on environmental issues and other data of the likely affected region, by having compiled it from the various technical departments and directorates of the respective government of the *Land*.

c. How your country cooperates with the authorities of the Party of origin on public participation (art. 3, para. 8);

We try to get as much information as possible from the Party of origin about the way public participation is carried out there in order to give an equivalent opportunity to our public.

d. When and how the public is notified (e.g., what kinds of media, etc., are usually used).

See also above under Q. 10 g. – After having been informed by the Federal contact point, the authority provides the affected Austrian municipality or municipalities situated closest to the project with a copy of the submitted documents which shall be made available for public inspection at the *Land* government and in the municipality.

In cases where more *Länder* or the whole country is affected the documents are open for inspection at the Land governments.

Article 4

Preparation of the environmental impact assessment documentation

QUESTIONS TO PARTY OF ORIGIN

13. *Indicate the legal requirements in your country, if any, related to:*

a. *The content of the EIA documentation (art. 4, para. 1; appendix II);*

Art. 6 EIA of the Act reads as follows:

"(1) The environmental impact statement shall contain the following information:

1. A description of the project comprising information on the site, design and size of the project and in particular:
 - a) a description of the physical characteristics of the whole project, including the land-use requirements during the construction and operational phases;
 - b) a description of the main characteristics of the production or processing procedures, in particular with regard to the nature and quantity of the materials used;
 - c) data, by type and quantity, of residues and emissions to be expected (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the implementation and operation of the project;
 - d) the increase in the concentration of pollutants in the ambient environment resulting from the project;
 - e) climate and energy concept: energy consumption, broken down by plants, machinery and devices as well as by energy sources, available energy indicators, description of energy flows, energy efficiency measures; description of the climate-relevant greenhouse gases arising from the project (Article 3 no. 3 of Emissionszertifikatengesetz (Emission Allowance Trading Act)) and measures to reduce them with a view to climate protection; certificate of an authorised consulting engineer or technical consulting office stating that the measures included in the climate and energy concept comply with the state of the art;
 - f) duration of the project's existence and follow-up measures as well as any measures to secure evidence and ensure concomitant control.
2. An outline of the main alternatives studied by the project applicant and an indication of the main reasons for this choice, taking into account the environmental effects; in case of Article 1 (1) no. 4, the alternative sites or routes examined by the project applicant.
3. A description of the aspects of the environment likely to be significantly affected by the project, including, in particular, human beings, fauna, flora and their habitats, soil, water, air, climate, landscape, material assets, including the cultural heritage, and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed project on the environment resulting from:
 - a) the existence of the project,
 - b) the use of natural resources,
 - c) the emission of pollutants, the creation of nuisances and the nature, quantity and elimination of waste, as well as information on the methods used to forecast the effects on the environment.

5. A description of the measures envisaged to prevent, reduce or, where possible, offset any significant adverse effects of the project on the environment.
6. A non-technical summary of the information mentioned in numbers 1 to 5.
7. An indication of any difficulties (in particular, technical deficiencies or lack of data) encountered by the project applicant in compiling the required information.
8. information on any strategic environmental assessment performed under the terms of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, OJ L 197 of 21 July 2001, p. 30, with relevance to the project.

(2) If individual items of information according to paragraph 1 are irrelevant for the project or if the project applicant cannot reasonably be required to compile this information having regard to current knowledge and methods of assessment, they need not be submitted. This fact shall be indicated and justified in the environmental impact statement. To the extent that information pursuant to paragraph 1 already was the object of a strategic environmental assessment, it can form part of the environmental impact statement. This provision shall be without prejudice to Article 5 (2)."

b. The procedures for determining the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4, para. 1);

Art. 4 EIA of the Act reads as follows:

"(1) A preliminary procedure shall be carried out upon request of the project applicant. The request shall be accompanied by a description of the basic outline of the project and an outline of the environmental impact statement.

(2) After having consulted the co-operating authorities and, where appropriate, any third parties, the authority shall express their opinion to the project applicant on the documents according to paragraph 1 as soon as possible but no later than three months of their receipt. In particular, this opinion shall point out obvious deficiencies in the project or the outline of the environmental impact statement (Article 6) and shall indicate any additional information that probably needs to be included in the environmental impact statement.

(3) The authority may support the project applicants upon their request by providing information that is available to the authority and that is needed by the project applicant for preparing the documents pursuant to Article 5(1). The confidentiality of commercial and business secrets shall be respected. If provided free of charge, the information shall only be used for the implementation of the project. The topics and issues that are likely to be significant in the development consent procedure may be communicated within the framework of these investor services for project preparation."

If the project applicant does not require a formal preliminary procedure according to Art. 4 - which happens very often - he nevertheless usually seeks to be in contact with the authority's experts before submitting the application in order to fulfill their requirements for the EIS. If he does not, he takes the risk to lose much time in the procedure by complementing the EIS.

c. The identification of "reasonable alternatives" in accordance with appendix II, paragraph (b);

The identification happens case by case. For large scale infrastructure projects the requirements for identification of alternative locations or alternative ways of solving a problem are usually higher than for smaller industrial installations or leisure activity projects.

- d. *The procedures and format for providing the EIA documentation domestically;*
See above under Q. 10 g; Art. 9 of the Austrian EIA Act applies.
- e. *The procedures and format for providing the EIA documentation to the affected Party. If there is a difference between the procedures and format domestically and for the affected Party, please explain;*

See above under Q. 10 e. The conveyance of the EIA documentation to the affected Party is conducted by the Ministry of environment acting as the Espoo-Contact point of the Party of Origin.

- f. *The procedures for the examination of, and the deadlines for comments on, the EIA documentation domestically, and how the comments submitted domestically are addressed;*

According to Art 5 EIA Act, after having received the project applicant's application for a development consent including the EIA statement, it is up to the authority to possibly demand additional information regarding the EIA documentation. Further on, the application, the relevant project documentation and the EIA statement have to be submitted to the co-operating authorities for possible comments. The ombudsman for the environment, the host municipality as well as the Federal Minister of Agriculture and Forestry, Environment and Water Management shall also be sent a copy of the environmental impact statement for possible commenting. According to Art 7 EIA Act, the authority shall prepare a time schedule for the further procedure including setting deadlines for various procedural steps. Concerning possible comments by the public and the respective deadline it is Art. 9 EIA Act that applies (see also above under Q. 10 g): Within the public inspection period of six weeks, anybody has the right to submit written comments on the project and on the environmental impact statement to the authority. These comments have to be taken into account and addressed within the final decision on the development consent.

- g. *The procedures for the examination of, and the deadlines for comments on, the EIA documentation from the affected Party, and how the comments submitted by the affected Party are addressed;*

After having submitted the notification on a project to the Espoo Contact point of the affected Party after and having received the respective demand for participating in a transboundary procedure, the Austrian Fed. Ministry of Env., acting as the Espoo Contact Point, submits the application, the project description as well as the EIA documentation and gives the opportunity for re-submitting comments within a reasonable period of time, taking into account that the affected Party will be able to make the whole documentation accessible to its public and give them the opportunity to submit comments; see Art 10 of the EIA Act. All comments received from the public of the affected Party have to be addressed within the final decision on the development consent.

- h. *The procedures for public hearings domestically;*

According to Art 16 of the EIA Act a public hearing has to be carried out, including the co-operating authorities and of other legal or formal parties; the event has to be publicly announced. Subject to certain conditions, the public hearing also may not be carried out (e.g., no comments received, no concerns transmitted by the public within the given deadline; sufficiently cleared facts).

- i. *The procedures for public hearings held on the territory of the affected Party.*

Acting as Party of origin, there has been no experience so far on carrying out a public hearing on the territory of the affected Party.

QUESTIONS TO AFFECTED PARTY

14. *Indicate the legal requirements in your country, if any, related to:*

- a. *The procedures and deadlines for comments on the EIA documentation to be submitted to the Party of origin;*

Art. 10 para 7 of the EIA Act rules that, concerning the received documentation on the project and the EIA, the EIA authority of the affected regional *Land* government shall proceed according to Art. 9 leg. cit. (see also above under Q. 10 g), while the duration of the respective public inspection as well as the deadline for submitting comments by the public of the affected Party shall be governed by the provisions of the Party of origin where the project is to be implemented. Other authorities of the affected Party with relevant environmental tasks shall also be given the opportunity for submitting comments. The *Land* government shall forward comments received by the public and, upon request of the foreign state (= Party of origin), also provide information on the environment potentially affected to the state where the project is to be implemented. Eventually, all the received comments from the public will be submitted to the Party of origin resp. to its Espoo Contact point by the Espoo Contact point of the affected party.

- b. *The procedures for public participation in the review of the EIA documentation domestically, and the authority responsible for the execution of the aforementioned procedures;*

See above under Q. 14 a.: Answer is covered by aforementioned comments.

- c. *The procedures for the examination of the EIA documentation domestically.*

In addition to the procedure described under the answer to Q. 14 a. any affected *Land* government as well as the Federal Ministry of Environment might carry out an examination and a study on the EIA documentation and forward it to the Party of origin.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

15. *Indicate the legal requirements in your country, if any, related to the following provisions:*

- a. *The procedures for cooperation with the affected Party related to consultations;*

Art. 10 para 3 EIA Act reads as follows:

"(3) On the basis of the documents provided and the results of the environmental impact expertise or the summary evaluation, consultations shall be held, if necessary, on potential transboundary effects and any measures necessary to avoid or reduce adverse transboundary effects on the environment. These consultations shall, if possible, take place via bodies already established by bilateral agreements within the

framework of their competence, in particular the transboundary waters commissions. An appropriate time frame shall be agreed on for the duration of the consultation phase."

b. The stages, procedures and deadlines for consultations with the affected Party;

If the affected Party wishes to hold consultations we arrange appropriate dates for the consultation meeting(s) in close cooperation with that Party. The consultations can take place in any phase of the EIA procedure, usually after the consultation of the public, when all the written statements and objections are at the disposal of the EIA authority.

The question whether there is a need for consultations or not has to be settled by the Parties individually in each single case. Usually it is up to the affected Party to ask for consultations. When it has done so, Austria never has refused this request.

c. The stages, procedures and deadlines for consultations domestically, and who participates in the consultations.

See answers above under Q. 10 a. and b. Moreover, the "domestic" team for consultations with the affected party usually is composed of representatives from the regional government of that *Land*, where the project is to be implemented, of representatives of the Austrian Espoo Contact point as well as of representatives of the project, e.g. the licensee or developer and technical experts.

QUESTIONS TO AFFECTED PARTY

16. Indicate the legal requirements in your country, if any, related to the following provisions:

a. The procedures for interaction with the Party of origin related to consultations;

Usually, the Austrian point of contact (the Federal Ministry of Environment) communicates to the Espoo Contact point of the Party of origin and requests for holding consultations. After having agreed on holding such consultations and on the respective date, the meeting gets organized by the Party of origin (mostly in cooperation with our contact point). Communication and interaction with the Party of origin is mostly carried out by e-mail and during the respective meetings.

b. The stages, procedures and deadlines for consultations domestically, and who participates in the consultations.

See also above under answer to Q. 16 a. - Such consultations could take place at any time of the ongoing transboundary EIA procedure. Usually, the Party of origin offers consultations to the Austrian Espoo Contact point when submitting the EIA documentation. Once agreed and internally arranged with all presumptive participants, the Austrian team for such consultations with the Party of origin is mostly composed of representatives of the government of the affected *Länder* (provinces), of the Espoo Contact point and – if necessary and advisable – of technical experts on the various issues.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

17. Indicate the legal requirements in your country, if any, related to the following provisions:

- a. *The definition of "final decision" related to the implementation of the planned activity; the content of decisions; and procedures for their adoption;*

According to Art 17 para 7 of the EIA Act the administrative order representing the final decision in the consolidated permit procedure including the EIA contains the reasons for the decision as well as information on public participation and a description of the main measures to avoid, reduce and, if possible, offset major adverse effects. Art 17 para 1 leg. cit. also provides that the authority, when taking its decision, shall apply the development consent requirements contained in the relevant administrative provisions as well as those special ones stipulated in para 2 to 6. According to para 4 the decision shall take account of the results of the EIA (in particular, EIS, environmental impact expertise or summary assessment, comments, including the comments and the results of the consultations according to Art 10 and, if applicable, the results of a public hearing). After all, the decision will be taken by the authority when all legal and factual matters on the application for the development consent and on the project (including the assessment of the environmental impacts) are sufficiently cleared.

- b. *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, para. 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 "final decision" ("Entscheidung", "Genehmigungsbescheid") is the decision in the consolidated permit procedure in which the EIA is a part of. For federal roads and high speed railroads there exists no completely consolidated procedure and therefore there is a couple of decisions that have to take the outcome of the EIA into account. All projects listed in Appendix I require such decision(s).

- c. *The procedures for informing of the "final decision" domestically and for the affected Party;*

Domestically, the final decision gets served to the parties of the licencing (and the included EIA) procedure by a qualified form of mail. Moreover, according to Art 17 para 7 of the EIA Act, the decision resp. the development consent order will be made available for public inspection at the authority and the host municipality for a minimum of eight weeks at any rate. The possibility of public inspection gets announced in a suitable way and, at any rate, also on the Internet. The affected party gets served with the final decision by mail and/or e-mail (by interaction between the two Espoo Contact points).

- d. *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, para. 1)?*

Yes.

- e. *The opportunity to review the decision if, before the activity is implemented, additional information becomes available according to article 6, paragraph 3.*

According to the Austrian legal system the possibilities to revise a valid decision are strictly limited. Nevertheless there is always the political possibility to reopen the consultations on request of the affected Party in order to find additional solutions.

Article 7

Post-Project Analysis

18. *Indicate the legal requirements in your country, if any, related to:*

a. *Post-project analysis (art. 7, para. 1);*

Art. 22 EIA Act reads as follows:

"Article 22. (1) Three years at the earliest and five years at the latest after notification of completion in accordance with Article 20 (1) or at a date specified in the development consent order in accordance with Article 20 (6), the authorities in accordance with Article 21 shall jointly inspect, on the initiative of the authority pursuant to Article 39, projects listed in Column 1 of Annex 1 for compliance with the development consent order and to verify whether the assumptions and forecasts of the environmental impact assessment correspond to the actual effects of the project on the environment. The authority according to Article 39 and the co-operating authorities shall be involved therein at any rate. Post-project analysis shall be carried out by the date indicated in the administrative acceptance order in accordance with Article 20 (5).

(2) The authorities shall communicate the results of post-project analysis to the authority according to Article 39 and to the Federal Minister of Agriculture and Forestry, Environment and Water Management.

(3) The competent authorities shall call for the remedy of deficiencies and divergences observed within the framework of post-project analysis."

As an affected Party we ask for such an analysis if we deem it necessary in terms of protecting the Austrian territory.

b. *Procedures for informing of the results of post-project analysis.*

No experience so far.

Article 8

Bilateral and multilateral agreements

19. *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 is one bilateral agreement between Austria and the Slovak Republic and one informal trilateral guideline with Switzerland and Liechtenstein;

These agreements contain provisions according to paragraphs (a), (b) and (c) of Appendix VI; they do not refer to the other paragraphs.

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

No, no supplementary point of contact has been established.

Article 9

Research programmes

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

There are several studies commissioned by the Federal Ministry of Agriculture, Forestry, Environment and Water Management on practical results of EIA procedures in Austria, but these do not specifically deal with transboundary EIA.

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

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

n.a.

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

n.a.

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

n.a.

PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2010–2012

Please report on your country's practical experiences in 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; and 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.

CASES DURING THE PERIOD 2010–2012

25. *If your country's national administration has a list of transboundary EIA procedures that were under way during the reporting period, in which your country was Party of origin or affected Party, please list it.*

Austria as a Party of origin:

- Gas- and steam power plant, Riedersbach, St. Pantaleon, Upper Austria; with Germany (2010-2012)
- New construction of a railway bridge across the river Saalach (connecting Salzburg and Freilassing); with Germany (ongoing)
- A street tunnel project in Feldkrich, Vorarlberg; with Liechtenstein (ongoing)
- General Danube river engineering project; with Slovakia (ongoing since 2006)
- Motorway A5, part Poysbrunn-Drasenhofen; with Czech Republic (ongoing since 2006)

- BEGAS waste incineration installation in the business park Heiligenkreuz, Burgenland; with Hungary (2007-2010)
- Wind park Andau-Halbtorn, Burgenland; with Hungary (2010)
- Wind park Nickelsdorf 1, Burgenland; with Hungary (2011-2012)

Austria as affected Party:

- NPP Kozloduy block 6, Bulgaria (request for notification in March 2013)
- Fish facility project at the river Danube, Passau, Germany (ongoing since 2012)
- Pumped storage hydro power station Riedl, Untergriesbach, Passau, Germany (ongoing since 2012)
- Electrification of the railway section Munich-Memmingen-Lindau, Germany (ongoing since 2012)
- NPP Olkiluoto, NPP Loviisa, NPP Fennovoima Oy, all Finland (2007-2011)
- NPP Penly 3, France (ongoing since 2009)
- Wind parks Sandjoch and Sattelberg at the mountains Brenner, South Tyrol, Italy (2010-2012)
- Development of the railway line Feldkirch-Buchs, Liechtenstein (ongoing since 2010)
- Development of the motorway D4, Slovakia (ongoing since 2007)
- NPP Mochovce, new blocks 3 and 4, Slovakia (until 2010)
- Enlargement of a deposit for little radioactive waste in Mochovce, Slovakia (2011-2012)
- Integral deposit for little radioactive waste, Bohunice, Slovakia (2011-2012)
- NPP Temelin, new blocks 3 and 4, Czech Republic (2008-2013)
- Theme park Hatě, Czech Republic (since 2010; preliminary proceedings finished)
- Regulation plan for the ski-region "Hochficht II", connection of Klápa-Hraničnik, Czech Republic (ongoing since 2012)
- NPP Paks II new blocks 5 and 6, Hungary (ongoing since 2011)
- Coal-fired power plant Sostanj, Slovenia (2009-2011)
- NPP Cernavoda, Romania (ongoing since 2006)
- NPP Belarus, Belarus (2008-2012)
- NPP Chmelnitzky (ongoing since 2011)
- NPP Hinkley Point C, UK (ongoing since 2012)

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

No.

27. *Provide information and explanations on the average duration of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

Public inspection of the EIA report (Environmental Impact Documentation), collection of comments, production of translated documents (if applicable), elaborating and writing an official Austrian statement (if applicable): 2-3 month. Preparation of the consultations: 1-2 months. If applicable: Public inspection of the scoping documents, collection of comments, production of translated documents, elaboration of an official statement: 2-3 months.

28. *If your country has had practical experience in the transboundary EIA procedure during the reporting period, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

1. What concerns the various NPP projects and the related transboundary EIA procedures, in which Austria has participated, there can't be any doubt about the fact that having had the chance to participate in these procedures has helped a lot to submit a couple of fundamental concerns as well as to raise the awareness of different possible serious and significant environmental impacts. The Espoo procedure proved to be a very useful tool in this regard, in particular since it led to a higher level of mutual information and understanding and - moreover - sometimes eventually also to a higher level of nuclear safety, although it is often a challenge to fully find out whether additional measures are applied on the basis of the Austrian interventions.

2. In relation to other projects: As an affected Party by two projected wind parks at the border between Italy and Austria, in South Tyrol, right on top of the alpine "Brenner", we could achieve, for instance, the acknowledgement and finally the adoption of some critical points of Austrian participants in the transboundary EIA procedure by the competent regional authority - a team of environmental experts within the government of South Tyrol - responsible for working out the EIA expertise. Finally, the negative EIA expertise on these two projects helped to abolish the already decided permit (decision by the governor of South Tyrol) within the legal review procedure carried out at the court of administration of South Tyrol: The project has not yet been permitted since ever then.

3. Generally speaking, the performance of transboundary EIA procedures under the Espoo Convention - regardless if acting as affected Party or as the Party of origin - always contributes to a better communication on various issues related with the relevant project and also leads to a helpful transparency in favour of everybody concerned.

29. *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. *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?*

Usually the EIA documentation of an Austrian project presumably having possible significant impacts on the environment of a neighbour state provides a separate chapter describing such possible impacts on all environmental factors such as air, soil, water, fauna, flora, human health, etc.

b. *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?*

As a Party of origin we provide translations of the description of the project including all relevant information on possible transboundary impacts. Furthermore, the extent of information to be translated also depends on mutual agreements case by case or on particular requests by the affected Party.

As an affected Party we have sometimes experienced a lack of translation, while sometimes we had to face a quite bad quality of translation. In these cases we therefore have to provide for our own translation financed by the Austrian government. Concerning the Austrian-Slovakian cooperation at the occasion of transboundary EIA procedure, a mutual agreement, established in 2004, provides for the question of translation issues.

- c. *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? 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)?*

As Party of origin it is legally not up to us to organize the public participation in other countries, but certainly we can support the adequate foreign organization by providing the right material in the right time according to the requirements of the Convention. Moreover, it is legally possible for likely affected persons (acting as neighbours) as well as foreign NGOs to participate in the Austrian EIA procedure. Usually we provide the affected Party with the relevant documents and detailed information about the rights of the public to participate; the affected Party than is supposed to distribute these documents according to its own legislation.

As affected Party we actually do often face challenges and problems resulting from the differences of the various national EIA legislations. For instance, for the Austrian public it is often hard and complicated to follow the various steps of the foreign procedure and to fully understand purpose and possible results of not familiar single steps of public participation, and moreover, it is sometimes tough to recognize the different way in which outcomes of the public participation are taken into account.

- d. *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?*

Mainly a positive echo: In our view, consultations as foreseen in Art 5 of the Convention represent a sort of a core element of any bilateral cooperation under the Convention. They provide the adequate forum to discuss the various information and arguments, to exchange the different views and to arrange further steps to be undertaken. Consultations help to find concrete and mutually acceptable solutions for open questions. Sometimes, it might be necessary to having organized several meetings for consultations.

- e. *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 above under answers to Q. 17 a., b. and c. – Moreover, a final decision according to the Austrian Administrative Procedure Act contains a normative part including a detailed description of the planned activity, the decision, whether the applied activity is permitted or dismissed, and, if applicable, a number of additional measures imposed; a second part of the final decision contains the detailed reasons, based on the legal provisions applied. We usually translate the normative part and those parts of the reasons which deal with the transboundary impacts, and, as affected Party, we do demand the same from the Party of origin.

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

Yes, we carried out post-project analysis, but not yet concerning an Espoo project so far.

- g. *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.);*

Apart from two examples already mentioned within the last questionnaire on the period 2006-2009 (Brenner tunnel and various motorway cases with the Czech Republic) there were no other significant cross-border projects including a transboundary EIA procedure within the recent period from 2010-2012.

- h. *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"?*

Like in the last period, there were again a number of cases of which the conducted transboundary EIA procedure and its various steps and elements could be seen as good practice example. For the time being, we do not intend to introduce a particular case in a case study fact sheet, but we will be ready to share our experience on several issues, if requested.

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

Usually, it is the national Focal or Contact point and the locally competent region government of a Land which apply the Convention's provisions.

CO-OPERATION BETWEEN PARTIES IN 2010–2012

30. *Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries? If so please specify.*

In past it has shown that bilateral or trilateral agreements seem to be a very good way to overcome possible difficulties of this sort. Certainly, this includes a huge amount of preparation work. Otherwise, close and detailed communication and cooperation also conducted on a general basis could provide to increase the mutual understanding of the foreign legal systems (e.g. by regular annual or biennial meetings).

EXPERIENCE IN USING THE GUIDANCE IN 2010–2012

31. *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 (ECE/MP.EIA/7);*

There was no particular use of these guidelines, since their content and the related methodology are well known within the different levels of Austrian administration and therefore they have been applied entirely satisfying.

- b. *Guidance on subregional cooperation (ECE/MP.EIA/6, annex V, appendix);*

No.

- c. *Guidelines on good practice and on bilateral and multilateral agreements (ECE/MP.EIA/6, annex IV, appendix).*

Again, the content of these guidelines is also well known among the interested and responsible subjects and institutions and we regularly come back to their text, e.g. concerning necessary translations of documents.

CLARITY OF THE CONVENTION

32. *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?*

No difficulties have occurred so far acting as Party of origin. As affected Party we often face the challenge of the lack of a clear Convention's provision on the issue of the translation of documents. This situation certainly leads to an additional burden for the affected Party, since it has to provide the adequate translation in time in order to make sure that its own public is in the position to effectively participate in an equivalent way. In this regard, we remind of the opinion of the Implementation Committee as expressed in the respective report at its 18. session, where it has been stated that the provisions in Art 2 para 6, Art 3 para 8 and Art 4 para 2 of the Convention could or should be used as an obligation for providing at least partial translations of the documentation. In fact, Parties of origin still neglect this approach.

AWARENESS OF THE CONVENTION

33. *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 Espoo Convention is quite well known in Austria, in some of the transboundary EIA procedures several hundred thousands of people have participated. Nevertheless, the Federal Ministry of Environment and some of the Austrian *Länder* have developed and supported financially bi- and trilateral awareness raising programmes including workshops and public meetings on general issues of the Conventions. Moreover, we support financially NGOs in order to allow them to participate in EIA and Espoo procedures. Within an co-funded programme by the EU, Austria, represented by the Fed. Ministry of Environment, the Fed. Ministry of Transport, Innovation and Technology and the Land Lower Austria, cooperates with Slovakia on transboundary issues within the Espoo context by, e.g., organizing and holding bilateral meetings and workshops as well as elaborating a common online performance on relevant bilateral transboundary EIA procedures (e-Mat project).

34. *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?*

Austria does not see any need for improving the application of the Convention, except improving the translation issue (see above under Q. 32).

SUGGESTED IMPROVEMENTS TO THE REPORT

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

In our view the questions cover quite well the Convention's provisions and related issues and possible challenges. Although, some of the questions seem a bit repetitively, some probably go too much in detail. The splitting of the questionnaire in two parts, one covering general provisions and the related national legislation and implementation, the other one dealing with practical experiences seems to be still a good way to gather sufficient

information and, after all, a quite full picture of a country's policy on the implementation of the Convention. A possible improvement could be done by limiting the questions of the first part only to changings of national policies and legislation in terms of implementing the Convention which took place within the relevant period, whereas for unchanged issues only a reference to the previous questionnaire should be noted. Additionally a chart could be provided by every country, showing and describing systematically the national implementation of the Espoo Convention including the very national performance of a transboundary procedure, thus replacing the periodical questions on "standing items". Future questionnaires, consequently, only would cover relevant changings and practical experience of implementing the Convention. A possible benefit of such an approach could be given by an improved and easier comparability of the various national implementation systems.

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