

Research Project 298 13 162 “Practical Trial on the Implementation of the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context”

Summary

I. Aims and structure of the research project

The research project “Practical Trial on the Implementation of the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context“ (No 298 13 162) was carried out on behalf of the Federal Environmental Agency by the consultant PLANUNGSGRUPPE ÖKOLOGIE + UMWELT GmbH, Hanover, in cooperation with the law firm GÄßNER, GROTH, SIEDERER & COLL., Berlin, from 01.01.1999 to 31.07.2002. The Federal Environmental Agency initiated the research project in the context of the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context (so called “**Espoo Convention**“) and its implementation. The project was monitored by the Federal Environmental Agency in agreement with the German-Polish Working Group on Transboundary EIA. The main goal of the research project was to develop and test a practicable procedure for transboundary participation (referred to hereinafter as **procedural concept**) as provided for by the Espoo Convention, for **German** projects that may affect **Poland**.

The procedural concept was tested by applying it to **three German authorisation procedures**. The test was scientifically evaluated and the procedural concept optimised on the basis of the knowledge gained during the practical trial.

The research project was carried out in **three steps**:

1. Development of a procedural concept
2. Application of the procedural concept
3. Improvement of the procedural concept.

The **final report** contains two parts:

Part 1: Methodology and results of the practical trial on transboundary EIA.

Part 2: Procedural concept for transboundary EIA for planned projects with Germany as the state of origin (optimised version, draft of 24.01.2002).

II. Phases of the research project

II.1 Authorisation procedures

The practical trial encompassed the authorisation procedures for the following three German projects:

- **“Reconstruction of a dike section of the river Oder in the area of the Neuzeller Niederung”:**
Developer: Environmental Agency of the federal state Brandenburg - Water Protection and Water Management Department; authorisation authority: Environmental Agency of the federal state Brandenburg – higher water authority.
The planning mainly comprises the restoration of an existing dike section of the river Oder.

- **“Diversion of water from the river Neiße”:**
Developer: Lausitzer und Mitteldeutsche Bergbau-Verwaltungsgesellschaft mbH [LMBV] ; authorisation authority: Regional Council Dresden.
The project comprises the withdrawal of approximately 30 million cubic metres of water per annum from the river Neiße over a period of approximately 20 years. The water is needed to accelerate the flooding of residual pits resulting from opencast mining in the Lausatian lignite mining area and for establishing sufficient water quality in the mining lakes.

- **“Flooding of the Residual Pit in Berzdorf”:**
Developer: Lausitzer und Mitteldeutsche Bergbau-Verwaltungsgesellschaft mbH [LMBV]; authorisation authority: Regional Council Dresden.
The project comprises the flooding of the residual pit of the former opencast lignite mine in Berzdorf (south of Görlitz) mainly with water from the river Neiße over an expected period of 5 years.

A plan approval procedure pursuant to Article 31 paragraph 2 of the Federal Water Act has to be carried out for each of the three projects. As an integral part of this procedure an EIA has to be carried out. Furthermore the three projects are affected by the German-Polish Agreement on Boundary Waters.

II.2 Procedural concept

During the research project three versions of a procedural concept were worked out (May 1999, December 2000, January 2002). The concept consists of the following parts:

- Overview of the procedure
- Description of the procedural steps (essential contents of the various procedural steps and instructions as to regulations to be applied)
- Instructions for carrying out particular procedural steps
- Annex (model documents and detailed recommendations on how to perform individual procedural steps).

II.3 Practical testing of the procedural concept

The procedural concept (versions May 1999 and December 2000) was tested by applying it to the authorisation procedures for the three projects selected.

– Progress of the trans-boundary EIA

The progress of the trans-boundary EIA for the three projects was recorded continuously and systematically till the end of 2001 respectively the beginning of 2002. As the starting and completion dates of the authorisation procedures were outside the duration of the project, it was not possible to test the procedural concept over their entire duration.

– Advising the parties involved

During the implementation of the procedural concept the parties involved, particularly the authorisation authorities and the applicants, were given advice where necessary. In addition advice was given to members of the German-Polish Commission on Boundary Waters through consultations and separate documents.

II.4 Scientific analysis

During the scientific evaluation each procedure was evaluated systematically.

– Implementation of the procedural concept in the practical trial

The implementation of the procedural concept was evaluated on the basis of documents produced by the parties involved in the procedures, and the information obtained by attending formal meetings and in talks with the parties involved. The implementation of the elements of the procedural concept and their effectiveness was reviewed for each procedural step. Some steps were evaluated in detail (for instance the EIA documents). Apart from specific difficulties (chap. III.3.) and individual deficits concerning details of the implementation, an extensive and in many aspects full and effective implementation of the concept's contents was achieved. Overall, the developed procedural concept was applied successfully.

– Events

Two meetings were organised to discuss the experience gained with the implementation of the procedural contents with the parties concerned, members of the bilateral commissions and other persons involved. The discussions took place in Potsdam in October 1999 and in Görlitz in November 2001. The results were integrated into the evaluation of the practical examples and taken into account in the implementation of the transboundary EIA and the improvement of the procedural concept.

III. Major results of the research project

III.1 Final optimisation of the procedural concept

Based on the results of the practical trial and the amended German and Polish EIA legislation the procedural concept was improved at the end of the research project (version from December 2002, part 2 of the final report).

III.2 Essential elements of the transboundary EIA

As a result of the practical trial different elements and contents of the procedure were identified as being essential elements of the transboundary EIA:

- Early notification of the Polish side about a proposed project subject to EIA
- Participation of the Polish side in the scoping meeting.
- Preparation of an EIA documentation containing information about the environmental impacts of the proposed project. The aspects with transboundary significance have to be described clearly and with the same level of detail as relevant aspects concerning the German territory. The same applies to further documents to be worked out in the course of the procedure.
- Translation of documents and papers important for the transboundary participation into Polish.
- Transmission of the EIA documentation to the Polish Environment Ministry and implementation by the Polish side of the steps which need to be taken in Poland for involving authorities and the public .
- Carrying out information meetings for the Polish public if necessary
- Consultation of bilateral commissions
- Arrangement of a date for bilingual public discussion integrating the Polish parties concerned and the bilateral commissions involved in the procedure.
- Carrying out consultations at government level if necessary
- Separate consideration of the transboundary environmental impacts and of the results of the transboundary assessment in the final decision on the proposed project, taking into account requirements resulting from bilateral agreements (for instance the German-Polish Agreement on Boundary Waters). The documentation of how transboundary impacts were taken into account has to be understandable and clear.
- If necessary transmission of additional information and carrying out additional consultations prior to execution of the project
- If necessary arrangement of monitoring procedures for transboundary environmental impacts difficult to forecast.

III.3 Difficulties during the implementation of the procedural concept

Difficulties which arose during the practical implementation of the procedural concept resulted essentially from the following:

- The requirements of German and Polish EIA legislation concerning the transboundary participation of authorities and the public in part differ significantly. For example the parties concerned were uncertain about the relation of the formal discussions prescribed by German procedural law and the consultations according to Article 5 of the Espoo Convention. The

- discussions held as part of the authorisation procedures have proved to be an effective possibility for resolving bilateral differences previous to consultations.
- The Polish side submitted its comments to the German side with a considerable delay. This was due not only to the differences between German and Polish procedural law but also to the intensity and complexity of the possible or expected adverse transboundary environmental impacts of the projects concerned.
 - Only little experience has been gained to date with the performance of the transboundary EIA.
 - Furthermore difficulties arose as are known also in EIA not involving adverse transboundary impacts, e.g. regarding scoping and compiling the information pursuant to Article 6 of the German EIA Act).

III.4 German-Polish Commission on Boundary Waters

A particularity of the authorisation procedures and the EIA for the projects „Diversion of water from the river Neiße“ and „Flooding of the residual pit of the former opencast mine in Berzdorf“ was the involvement of the bilateral Commission on Boundary Waters and its working groups. The studies prepared at the request of the commission filled in a number of gaps in the EIA documentations, although this was associated with some duplication of effort.

Also, the commission’s procedures (particularly the fact that it meets only once a year) created conditions that tended to cause delays in the authorisation procedures. However, the results of the negotiations in the commission had a mediating influence (concerning water matters) and eliminated some deficits.

In the practical trial it became clear that both the German-Polish Environmental Protection Agreement (requiring application of the Espoo Convention) and the German-Polish Agreement on Boundary Waters both contain provisions on transboundary procedures without one of them having an obvious priority. This concerns e. g. the consultations pursuant to Article 8 para. 2 of the German EIA Act and Article 5 of the Espoo Convention in relation to the obligation for consultations between the parties concerned pursuant to Article 7 para. 1 of the German-Polish Agreement on Boundary Waters.

III.5 Effectiveness of the transboundary EIA

In the authorisation procedures integrated into the practical trial the Espoo Convention had to be applied only preliminarily but as far as practicable, in accordance with the national law. Applying this standard the contents of the procedural concept were implemented very successfully.

The transboundary EIA provided played an important role for the consideration of environmental impacts in the final decision on the projects. The special contribution of the transboundary EIA was a refined and regulated participation of the Polish side in combination with a targeted elaboration of the necessary documents. Beyond this the transboundary EIA has an important informational function in the context of good cross-border relations.

III.6 Recommendations

The practical trial had effects over and beyond the general pilot application that the project was originally intended to achieve. For example the results of the project had a direct influence on the contemporaneous negotiations on a German-Polish EIA agreement. The final results of the research

project can thus be used as a sound basis for the further negotiations on this agreement or for other projects involving transboundary EIA. The improved procedural concept (part 2 of the research project) also forms an important basis for the “recommendations on transboundary EIA between Germany and Poland (Germany as state of origin of a planned project)“, which are being elaborated by the Federal Environmental Agency.