



Swedish Ministry of the Environment

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## **Cooperation on the EIA Convention in the Baltic Sea subregion**

### **Report of a Seminar in Vilnius 22-23 October 2009**

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#### **The Seminar**

Subregional cooperation to strengthen contacts between the Parties has been an activity in the last two work plans for the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (EIA Convention). The overall objective of the activity is improved and developed application of the Convention in the subregions. Under the work plan for the period 2004 to 2008, Sweden on behalf of the other lead countries for that period, Denmark, Estonia and Finland, arranged two Seminars for the activity Subregional cooperation for the Baltic Sea subregion in Stockholm 2005 and in Copenhagen 2006.

The work plan for the implementation of the Convention for the period 2008-2011 up to the fifth meeting of the Parties was adopted at the Fourth Meeting of the Parties 2008. Finland, Germany, Lithuania and Sweden made a commitment to continue the activity for the Baltic Sea subregion and to hold two meetings in 2009 and 2010. A first meeting, arranged by Lithuania and Sweden, was held 22-23 October 2009 in Vilnius. The seventeen participants at the meeting represented seven of the nine states around the Baltic Sea (Denmark, Finland, Germany, Latvia, Lithuania, Poland and Sweden), Norway, the European Commission and the Secretariat of the EIA Convention. A list of the participants is found at the end of this report.

The seminar consisted of presentations of Espoo activities in the subregion and discussions on a number of issues that were considered of interest for the cooperation in the Baltic Sea subregion. The agenda for the seminar is found at the end of this report.

## **Introduction**

The seminar was opened by Mr. Sten Jerdenius from the Swedish Ministry of the Environment, who welcomed the participants to this third meeting on the EIA Convention for the states around the Baltic Sea. Since the second meeting the Parties have met several times for discussions on the Espoo procedure for the Nord Stream Gas Pipeline project but this meeting will provide an opportunity for the Parties to have a full discussion on all relevant issues concerning the implementation and application of the Convention. He thanked Lithuania for kindly hosting the meeting. The agenda for the meeting was approved.

## **EIA Convention**

The representative for the Secretariat of the EIA Convention Mr. Nicholas Bonvoisin informed about recent developments of the Convention. His presentation can be found in Annex I.

He informed of the status of ratification of the two amendments to the Convention and of the SEA Protocol. Two Parties, Germany and Sweden, have made all three ratifications and Finland and Norway have ratified the Protocol. Denmark informed that they will try to start work on the ratifications, Latvia will ratify the Protocol either next year or the year after that and Lithuania will probably ratify in the second half of 2010. Norway informed that the amendments are likely to be ratified by the beginning of 2010. Poland implemented comprehensive new EIA legislation in November 2008 and work on ratification of the Protocol is ongoing.

He informed of possible Meeting of the Signatories to the Protocol in 2010 and likely Meeting of the Parties to both treaties in 2011, bilateral and multilateral agreements in the region and on the progress of the work plan. That included information on the work of the Implementation Committee, on subregional cooperation activities, on exchange of good practices and on promoting ratification and application of the SEA Protocol. He also informed about preparations for the Environment for Europe meeting in 2011.

## **Update on Espoo projects**

At the first subregional meeting in Stockholm 2005 a thorough presentation of Espoo cases in the subregion was made. At the second meeting in Copenhagen a year later the countries informed of cases that had emerged since the first meeting. In Vilnius there was a corresponding update of information on cases for the period 2006 – 2009.

**Sweden** presented a list of 36 Espoo cases where Sweden was either Party of Origin or Affected Party for the years 2006 to 2009 (see annex II). The cases included wind farms, nuclear power plants and some land use plans. In several cases there was no participation but only notifications. Sweden's involvement was as Party of Origin in 10 cases and potential Affected Party in 28 cases. For two gas pipeline projects with more than one Party of Origin, the Nord Stream project and the Skanled project, Sweden was both Party of Origin and Affected Party. The cases concerning Encapsulation and final repository for spent nuclear fuel and Petroleum exploration in the Baltic Sea were highlighted. So was also the Tapuli mine in northern Sweden very near Finland which could possibly result in three Espoo cases in Sweden and several in Finland for the one and same company. Norway pointed to the benefits of informal contacts and remarked that although wind farms are not listed in annex I of the Convention they are so in the EIA Directive and thus are being considered as projects that merit for transboundary consultations.

**Finland** informed of a number of recent or ongoing cases where Finland was Party of Origin. Three of these cases concerned nuclear power plants, one concerned an extension of a planned facility for final disposal of nuclear fuel and three concerned wind farms. Several states around the Baltic Sea, Norway and Austria participated in EIA procedures for the nuclear power plants. Sweden, Norway, Estonia and Germany took part in the EIA procedure for the final disposal of nuclear fuel. For the ongoing wind farm projects Sweden is an Affected Party. Finland has been both Party of Origin and Affected Party for the Nord Stream project.

**Poland** informed that it has not been Party of Origin for any cases in the Baltic Sea region but in southern Poland concerning coal fuelled power station and a installation for production of bioethanol. A new case would be the Baltic Pipe gas pipeline project although no notification process has yet started. In the end of 2010 a planned nuclear power station might be a new Polish case. Poland has been Affected Party in some cases and Germany was Party of Origin for some of them and Belarus in one case. Poland has asked Russia about the planned nuclear power station in Kaliningrad but has so far not received an answer.

**Norway** has notified Russia concerning a wind farm near the Russian border but has not yet received an answer.

**Latvia** has not been Party of Origin for this period but Affected Party in cases concerning planned nuclear power plant (Visaginas) and four projects regarding Ingalina nuclear power plant in Lithuania. Lithuania took part in the Nord Stream project as an Affected Party. Latvia has been Affected Party in a case with a new nuclear power plant in Belarus. Latvia has been informed by Russia of a planned nuclear power plant in Kaliningrad.

**Germany** has nine neighbouring countries and a federal structure so the Federal ministry is only directly involved when problems occur or if a procedure seems to be of political relevance. There have been several cases with Germany as Party of Origin and as Affected Party in the time period. Germany was both

Party of Origin and Affected Party for the Nord Stream project. Germany has been Party of Origin in a case with a coal fuelled power plant near Lubmin where Poland has asked for information and Germany as Party of Origin has also sent out information on its plans for the EEZ in the North Sea and the Baltic Sea. Germany and Denmark will shortly be Parties of Origin for the planned Fehmarnbelt Link (see details below). As Affected Party Germany has asked Poland for information on a planned LNG terminal and is currently considering participation in the EIA process. Other procedures in the subregion where Germany was acting as Affected Party have taken place with Finland, Sweden and Denmark.

**Denmark** was Party of Origin in both the Skanled and Nord Stream pipeline projects. Plans for oil and gas exploration at sea can be sent to those Parties that are interested. Denmark might be interested in plans that are underway for installations for CO<sub>2</sub> storage in northern Germany near the border.

**Lithuania** has been Party of Origin concerning the Ignalina nuclear power plant which second reactor will be closed down in the end of 2009. The nuclear power plant decommissioning projects have been subject to an Espoo procedure.

Lithuania has been Affected Party in a case with a new nuclear power plant in Belarus 20 km from the border and 50 km from Vilnius and a hydropower installation in Belarus near the border in the river Nemunas that runs into Lithuania. The final comments regarding the hydropower installation will be sent in a few weeks. Russia has sent information on a nuclear power plant near the Baltic Sea in the Kaliningrad region. The plant is planned to be built close to the Nemunas river which runs out in a sea basin in Lithuania. Lithuania has asked to be notified.

#### ***The Visaginas nuclear power plant***

Lithuania made a presentation on environmental impact assessment for the Visagina nuclear power plant in Lithuania (see annex III). The EIA process lasted two years from 2007 to 2009 with notification to seven neighbouring countries, Austrian participation on their own initiative and EIA information in 2008 with additional consultations. An appeal against the decision on the EIA of the Lithuanian Ministry of the Environment was rejected but might be brought to higher court.

#### ***The Fixed Link across Fehmarnbelt***

Denmark and Germany made presentations on the Fehmarnbelt link project (see annexes IV and V). The link is a planned 20 km connection between Denmark and Germany at the islands Lolland and Fehmarn scheduled to open in 2018. The Danish state is developer, will finance the project and is responsible for producing the EIA. The decision for the German part of the link is to be taken by the Landesbetrieb Strassenbau und Verkehr in Kiel. A scoping report is to be made in German, Danish and English and a short summary will be provided in all languages of the Baltic Sea countries. Joint notification by the two countries to all Baltic Sea States and Norway will probably take place in the first half of 2010 with an eight week consultation time. There will be an

invitation to a public meeting (possibly in April or later) in Denmark. A decision on the scope of the EIA will be taken (possibly in April/May 2010 or later) and the hearing will take place in 2011/2012. Finland remarked that they would like to have the documentation in Finnish.

### **Espoo aspects on the Nord Stream project**

The consultation process was concluded at the time of the meeting and Denmark, Finland and Sweden had given consent to the applications for the project although one Finnish permit still remained to be given. In Germany three different permit will be necessary, one by the German Maritime Agency (BSH) and two by the Mining Agency (Bergamt) in Stralsund. The agencies plan to take these decisions at the same time. The Danish decision has been appealed. Poland remarked that they had sent comments to the Parties of Origin and were in fact still expecting answers. The forming of a coordination group by the Parties was generally felt as being a vital factor for the success of the EIA procedure although the developer did not seem to have entirely responded properly to the comments and wishes of the group.

There was an opinion that the idea of an ecosystem based sectioning of the pipeline route had been confusing and too difficult to realise and that a return to sectioning based on the borders between the countries had been beneficial. Some believed though that the ecosystem based approach was appropriate because of the different status of the different sea basins concerned and that it should have been better developed. It was remarked that transparency in the EIA process would have increased if the Affected Parties had been allowed to take part in all meetings by the Parties of Origin. These felt though that it sometimes had been necessary for them to discuss their role as Parties of Origin separately. It was also remarked that the idea of a completely harmonised relation between the different national EIAs and the “Espoo” EIA that comprised the whole project was never realised. That resulted in difficulties to find relevant summarised information from the national sections in the overall EIA as well as a certain lack of an overall perspective in the national EIAs. The fact that there were five different Parties of Origin was the main factor that had made the EIA process very complicated. It was generally recognised that it had been possible to keep the process unpoliticised in spite of the fact that the project by many was seemed to be of a controversial nature.

### **Projects with more than one Party of Origin – Taskforce on Complex Activities**

The working group on EIA in its meeting in May 2009 decided to establish a Task force on Complex Activities which would examine the need for detailed

recommendations on the application of the Convention to complex activities and draft such recommendation if those were found to be necessary. The recommendations will be reported to the working group and later to the Meeting of the Parties. Georgia, Romania, Ukraine, the European Community and the Russian Federation had announced that they would be members of the Task Force. The working group agreed that NGOs would be invited by the Task Force on a case-by-case basis. The Russian Federation had indicated at the working group meeting that it, with the support of the European Commission, will hold a workshop to review experiences in the application of the Convention to the Nord Stream project. Rumania had indicated that it would plan to hold a workshop on EIA of large scale energy projects in the Black Sea subregion. The Commission informed that the Russian meeting probably would take place in spring 2010. Some expect that guidance on the subject would be valuable while others thought it might be difficult to produce any such relevant guidance. The Commission will make a desk study on complex activities and will possibly invite Member States to meetings on it, perhaps back to back with a meeting with the Task Force. There was a discussion among the participants on the possibilities to take part in such a work but for the time being no country could make any firm commitments. Nevertheless some participants indicated that presentations at a workshop and comments on submitted drafts of the task force might be possible.

## **Cumulative impacts and Post project analysis**

Norway informed that the Norwegian Ministry of the Environment and the Energy Agency will make a study on EIA and cumulative effects concerning both off shore and land based wind farms where they will take a regional approach and study effects on landscape and biodiversity. The study will be concluded within a year and it is possible that some parts of it or a summary will be in English. There was a remark that spatial planning and areas set aside for wind power could be an effective way to treat cumulative impacts. Germany informed they had such an approach with designated areas for wind power. Screening is a phase where it is important to identify cumulative effects as well.

Concerning post project analysis there was the view that it often was confused with monitoring. Denmark informed that they had made an post project analysis of wind farms where they have quite an experience in the Baltic Sea.

## **Biodiversity**

Germany made a presentation on EIA/SEA and Biodiversity (see annex VI) where Article 14 in the Convention on Biological Diversity (CBD) was highlighted and some doubts were expressed whether the guidance provided by the CBD actually was suitable for those who apply the EIA Convention and the EIA and SEA Directives. It was remarked that the question of Biodiversity very

often is split up and treated as separate issues such as Natura 2000 areas etc. It is not an easy task to provide guidance on such a diverse question. Norway informed about special legislation on the issue and that all municipalities are required to make an inventory of biological diversity and they are now half way through that exercise. Germany reminded of the Liability Directive in relation to biodiversity but informed that there are practically no cases in that respect.

## **Climate Change**

Germany made a presentation on EIA/SEA and Climate Change (see annex VII) where the relevant articles in the Convention, the Directives and the Protocol were highlighted and the different types of activities related to climate issues were discussed. The EU Commission remarked that there is a need to direct more efforts to the climate change issue even before any amendments of the EIA Directive are made. It will take at least two years to produce guidance on this. Norway informed that they recently have amended their EIA legislation where a new screening criteria concerning possible contribution to the increase of greenhouse gases has been introduced. The requirements on the contents of the EIA report have also been amended correspondingly. It was mentioned that the flooding Directive put obligations on the Member States concerning the effects of climate change but also that climate change often was not dealt with in a serious way in many EIAs. Some thought it was difficult to treat climate change issues when dealing with EIAs for industrial projects and that it was more relevant to do it on the SEA level. There was a remark the several projects had positive effects on climate change such as wind power installations.

## **The SEA Protocol**

There was a tour de table concerning the implementation of procedures for the application of the SEA Protocol:

The SEA Directive has for several years given similar obligations for the EU Member States as the SEA Protocol. Sweden informed that by legislation the Swedish Environmental Protection Agency (SEPA) is the competent authority and Point of Contact. The municipalities are responsible for spatial planning and at local level there are direct transboundary cooperation and consultation with municipalities or regional bodies in Denmark, Norway and Finland – although without application of the Protocol or the Directive. It has proven difficult for SEPA to find time to consult with the local and regional level within the time limits set up for instance the Finnish SEA procedure. The possibility to delegate their role as competent authority to the regional state level is therefore discussed. For Finland the Ministry of the Environment is the responsible authority and the procedure is similar to that established for projects. Norway was Affected Party concerning a Finnish plan in Lapland. In Norway the Ministry of the Environment is the competent authority and the procedure is the same as for EIA. The municipalities and the regional authorities, the Fylke, are responsible for spatial planning.

Latvia has not ratified the SEA Protocol. The Ministry of the Environment in Latvia is not responsible for spatial planning and is only partially involved in the process. Coordination of spatial planning is in the competency of the Ministry of Regional Development and Local Government. In Latvia the SEA process is integrated in the planning procedure. The Environmental State Bureau is competent authority for SEA and after receiving the draft environmental account(SEA) it shall assess if the implementation of the plan is likely to have transboundary significant environmental effects.

In Germany the SEA process is integrated in the planning procedure with the consequence that the each planning authority is also responsible for the transboundary procedure. Therefore any of these authorities could have the obligation to send notifications to possible Affected Parties. In the case where Germany would be the Affected Party, the Party of Origin should send its notification to the competent German authority when known and in cases where this is not known it shall be sent to the national Point of Contact for the Convention and the Protocol. The most important plans that have been sent out for consultation are plans for the German Exclusive Economic Zones in the North Sea and the Baltic Sea. Discussions concerning agreements have started and the aim is to establish different tools for different borders. With Poland there will probably be an agreement on the national level.

Denmark has not ratified the Protocol yet but is applying the SEA Directive. There has been one application concerning a national plan for gas supply. Denmark is not so keen to make agreements with neighbouring countries because the provisions of the EIA Convention (and the Protocol) until now have proven to be sufficient for bilateral and multilateral cooperation. The Ministry of the Environment is the competent authority and some sections of it in Odense are responsible for consultations with Germany. Lithuania has not ratified the Protocol and has not yet established an organisation for transboundary SEA but the Point of Contact will probably be someone in the Ministry of the Environment. There has been some plans at the Polish border concerning the reestablishment of infrastructure links. Lithuania found it difficult to handle plans sent from Finland. Germany makes SEA for the water management plans and the Flood Directive plans and informed that France has notified their respective plans while Denmark informed that they did not notify those plans.

### **A.O.B.**

Germany referred to a recent ECJ decision (C-263/08) concerning the access to justice of NGOs in an EIA case, where the question inter alia concerned the need to have commented during the participation phase as a condition for having the right to appeal the decision and the court decision to ruled out such need.





## Seminar on Cooperation on the EIA Convention in the Baltic Sea subregion

**Vilnius 22-23 October 2009**  
Ministry of the Environment of Lithuania,  
Jaksto St. 4/9, Hall 506 (5<sup>th</sup> floor)

### *Agenda*

#### Thursday 22 October

- 13:00-13.15 Welcome and practicalities
- 13:15-13.45 Work on the EIA Convention  
*Nicholas Bonvoisin – Secretariat EIA Convention*  
Comments
- 13.45-16.00 Update on status of ratification – tour de table
- Espoo cases – tour de table  
(Ongoing and new cases.
- Presentations of cases and discussions on issues such as Screening – Appendix II, Notification, Consultation, Timing, Translation, Final decision, Bi- and multilateral agreements, Special projects etc)
- 16.00-16.20 Break
- 16.20-18.00 Espoo aspects of Nord Stream project
- Project with more than one Party of Origin. Problems, solutions.
- Task Force on Complex Activities
- 19.00-22.00 Dinner.

#### Friday 23 October

- 09.00-10.20 Cumulative impacts
- Post project analysis
- 10.20-10.40 Break
- 10.40-12.00 Biodiversity  
(treatment in EIA, Convention on Biodiversity)
- Climate Change  
(adaptation – prevention, possible cases, treatment in EIA etc.)
- 12.00-13.00 Lunch
- 13.00-15.00 The SEA Protocol  
(application, points of contact, ways to cooperate)
- Plans/programs with more than one Party of Origin
- Conclusions and further work
- 15.00 Close
- Sightseeing tour of Vilnius old town

## ***Seminar on Cooperation on the EIA Convention in the Baltic Sea subregion Vilnius 22-23 October 2009***

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## **Annexes**

- I. Presentation by the Secretariat
- II. Swedish Espoo cases 2006 – 2009
- III. Presentation of Visaginas Nuclear Power Plant
- IV. Danish presentation of Femernbelt
- V. German presentation on Fixed Link across Fehmarnbelt
- VI. German presentation on EIA/SEA and Biodiversity
- VII. German presentation on EIA/SEA and Climate Change