

## **8<sup>th</sup> Seminar on Cooperation on the Espoo (EIA) Convention in the Baltic Sea Region**

**28-29 September 2015, Vilnius**

### **Report**

#### **Introduction**

Subregional cooperation to strengthen contacts between the Parties and other bodies concerned is an important element of the work plan for the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on SEA.

The work plan for the implementation of the Espoo Convention and its Protocol on SEA for 2014-2017 was adopted at the Sixth Meeting of the Parties on June 2014. Germany, Lithuania and Latvia committed to continue the activity for the Baltic Sea subregion during the current work plan and hold three meetings in turn in 2014 (Berlin), 2015 (Vilnius) and 2016 (Riga).

The second meeting in this period was held on 28 and 29 September 2015 in Vilnius (Lithuania). The main objectives of the meeting were particularly related to address possible synergies of the Espoo Convention and its Protocol on SEA with other international instruments. Therefore, the two main topics chosen for the meeting was 1) assessment and reduction of transboundary impacts on transboundary watercourses and international lakes in the context of the Espoo Convention, the Protocol on SEA and the Helsinki Convention; and 2) effective public participation in SEA/EIA in the context of the Espoo Convention, the Protocol on SEA and the Aarhus Convention.

The seminar, dedicated mainly to the Focal Points and Points of Contact to the Espoo Convention from the States bordering the Baltic Sea was organized by the Ministry of Environment of the Republic of Lithuania with expert contribution of Aarhus, Espoo and Helsinki Convention Secretariats and DG Environment of European Commission.

During this meeting experts from eight States around the Baltic Sea (Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland and Sweden) were present as well as representative of the Espoo Convention and the European Commission, DG Environment, and the guest speakers. A list of participants is found at the end of this report (appendix 1).

#### **2. Welcome and Practicalities**

The seminar was opened by Mr. Vitalijus Auglys Director of Pollution Prevention department of the Ministry of Environment of Lithuania, who welcomed the participants and introduced the agenda of meeting. The agenda of the meeting was approved.

#### **3. Work on EIA Convention and SEA-Protocol**

##### ***Introduction, information and updates on the work by the Secretariat of the Espoo Convention and the Protocol on SEA (Tea Aulavuo, Secretary to the Espoo Convention)***

The Espoo Secretariat provided information on activities under the Espoo Convention and the Protocol on SEA:

a) Recent and upcoming meetings of the Working Group on EIA and SEA, Implementation Committee, the Bureau; Informal network of UNECE MEAs; b) Implementation of Workplan for 2014-2017 (Compliance

with and implementation of the Convention; Subregional cooperation and capacity-building; Exchange of good practices (workshops during Working Group on EIA and SEA sessions; Joint guidance document on safety and land-use planning; Good practice recommendations on application of the Convention to nuclear energy-related activities; Promoting ratification and application of the Protocol on SEA); c) External evaluation of Secretariat activities (carried for all UNECE activities) the results of which will be used to ensure relevance of policy and workplan activities for 2017–2020, and more effective procedures for the delivery of future activities.

The Espoo Secretariat provided the following information about the present state of ratifications (28 September 2015): the Espoo Convention has 45 Parties (Russia is signatory), the Protocol has 26 Parties (Latvia is signatory). The first amendment of the Convention entered into force on 26 August 2014 and has 26 Parties, However, 15 states had still to ratify the amendment for it has effect (including inter alia Denmark and Latvia). Second amendment has 25 Parties (not yet into force).

Reminded the existing bilateral agreements in the Baltic sea region and requested to share information regarding the development of the new ones. Poland and Germany informed that they finalized the bilateral agreement, however Germany informed that the signing procedure may be delayed. Poland informed that they are quite advanced with the preparation of bilateral agreement with Belarus, noted that it would be the first agreement of EU non EU country and therefore it differs from other agreements and there are still issues to be solved. Poland expressed willingness to update the agreement with Lithuania to address SEA matters. Lithuania informed that the preparation of bilateral agreement with Belarus is ongoing.

#### ***Planned ratifications – relevant countries***

Denmark and Latvia informed that they expect the First amendment to the Espoo Convention to be ratified by the end of 2015.

#### **4. Case studies on transboundary EIAs and SEAs**

##### ***Country Reports – Tour de Table***

Finland, Poland and Sweden provided detailed list of transboundary EIA and SEA cases in the Baltic Sea region both as a Party of origin and as affected Party, informing on the status of the projects. Poland also provided an overview of all ongoing cases in the region (in total 21 cases, 5 SEA, 16 EIA, more than half related to windfarms) and Germany provided detailed list on EIA and SEA cases as a Party of origin. Latvia and Lithuania provided presentations on the ongoing EIA and SEA cases both as a Party of Origin and affected Party. Lithuania also informed about upcoming SEA cases where Poland will be notified as affected Party. Estonia and Denmark orally informed about ongoing cases in their respective countries. Lists of cases and presentations are published on the Espoo Convention website as part of the meeting documents.

##### ***The Rail Baltica project in the Baltic States–state of play: Estonia, Latvia, Lithuania***

Lithuania, Latvia and Estonia presented the European Standard gauge public railway line project which will connect the Baltic States with the Western Europe and reported on the status of national and transboundary SEA and/or EIA procedures. All three Baltic States are both Parties of origin and affected Parties. The discussion revealed the main identified challenges in relation to the planning and implementation of the Project: due to transnational nature of the project, planning coherence including determination of border crossing point is of the utmost importance; risk assessment and cooperation of Parties in case of accidents would be more complex; uniform baseline data and assessment methodologies

are important for comparable and thorough results of environmental assessment, proper selection of alternatives and mitigation measures; issue of not in my back yard (NIMBY) and compensation measures are of the main concern at national level; complication of route selection due establishment of new protected areas.

### ***The role of Espoo-consultations in a communicative world – A Marine Spatial Planning example from Sweden and the Baltic Sea Region***

Sweden informed about ongoing Marine Spatial Planning, presented the work carried so far (informal cooperation in a form of meetings and cooperation under different formats in the region) and formal consultation under the SEA Protocol of the Espoo Convention to be initiated in the near future (notification in 2015-2016; consultation in 2017-2018); stressed the usefulness of informal cooperation as it is carried in early stage of marine spatial planning, prior preparation of draft plan and SEA documentation; emphasized the role of formal consultations under Espoo Convention (SEA Protocol) as it broadens the scope of stakeholders (more authorities involved), improves coordination at national level and helps to develop national positions by Parties involved.

### ***EIA of the Balticconnector offshore gas pipeline connecting Finland and Estonia***

Finland gave presentation on the transboundary EIA procedure for the Balticconnector offshore gas pipeline connecting Finland and Estonia (about 80 km length), which will enable gas transmission from Finland to the Baltic gas market and vice versa. The project falls under Finnish-Estonian bilateral EIA Agreement 2002 and it was agreed to carry joint EIA in the context of the Agreement. Specific small ad hoc group was created for elaboration of the procedure for a joint EIA (notification, information exchange, practical matters (such as times frames)) and for communication with the developer. Notification was sent to Russia, Latvia, Lithuania, moreover, Sweden, Denmark, Germany, Poland were informed about the procedure. Russia, Finland and Estonia participate as affected Parties. Transboundary consultations are ongoing with Russia and Estonia. Developer is preparing answers to the given comments. Estonia supplemented the presentation by providing information about the planning procedure on the land in the Estonian Part.

## **5. Assessment and reduction of transboundary impacts on transboundary watercourses and international lakes in the context of the Espoo Convention, the Protocol on SEA and the Helsinki**

### ***The international dimension of the EU water policy. Links between the Espoo Convention and the UN Watercourses Convention***

The Presentation of the European Commission DG Environment expert stressed priority issues in the European Union water policy having international link and outlined the similarities and differences between the Espoo Convention and the Convention on the Law of the Non-Navigational Uses of International Watercourses, signed in New York, 21 May 1997 (UN Watercourse Convention). UN Watercourse Convention entered into force on 17 August 2014, it has 36 Parties (EU is not Party). From the Baltic Sea Region countries Denmark, Finland, Germany and Sweden have ratified the Convention; however countries do not have much practical experience of its application in relation to assessment of impacts. Both Treaties have the common objective of environmental protection, no harm rule and requirement to assess significant impacts, however, the scope and content of the procedures and activities differs. Espoo Convention refers to the activities specified in its Annex I while the UN Watercourse Convention refers to planned measures.

### ***Relationships between Espoo and Helsinki Conventions - Special focus on Finland-Russia boundary***

The Finish expert of the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki Convention) presented the main requirements under the Convention, informed that all Baltic Sea region countries including RF are the Party to the Convention as well as European Union and Belarus. Stressed that Helsinki convention requires licensing of waste-water discharges by the competent national authorities and monitoring of authorized discharges; development and implementation best environmental practice for non-point pollution sources; minimization of the risk of accidental pollution; application of environmental impact assessment; establishment of bilateral and/or multilateral agreements and transboundary cooperation. Presentation in detail explained the existing cooperation mechanism between Finland and Russian Federation focusing on institutional framework and practical implementation. For effective cooperation the Helsinki Convention and the Espoo Convention are seen as complementary instruments where coordination of actions helps to avoid the possible burden due to their overlap.

### ***Transboundary water co-operation between Lithuania and neighbouring countries according to the Helsinki Convention and bilateral agreements***

Lithuania explained the existing cooperation mechanisms and initiatives regarding transboundary waters carried with neighbouring countries (Latvia, Poland, Russian Federation and Belarus) and the challenges encountered regarding the transboundary water pollution of Nemunas and Neris rivers due to existing and planned activities in Russian Federation (Sovetsk city sewage, nuclear power plant) and Belarus (hydropower plants and nuclear power plant).

## **6. Effective public participation in SEA/EIA in the context of the Espoo Convention, The Protocol on SEA and the Aarhus Convention**

### ***Public participation in the context of transboundary EIA/SEA: main concepts and the case law of the Aarhus Convention Compliance Committee***

The expert of the Aarhus Convention member of The Compliance Committee under Convention introduced the concept of Committee's work and provided examples of Compliance Committee's cases relevant to the Espoo Convention and SEA Protocol matters (especially notification of the public in the process of decision-making on specific types of activities; Public Participation concerning plans, programmes and policies). Participants discussed the relationship between the Espoo Convention and the Aarhus Convention and the need for coherent interpretation and application of the two Conventions. The pending compliance case at the Compliance Committee of the Aarhus Convention on the nuclear power project in Hinkley Point, UK is followed by Espoo Convention bodies.

### ***Public participation in the light of Espoo and Aarhus conventions: the practice of Lithuanian courts***

Lithuania informed that national administrative courts apply the Aarhus Convention provisions mostly in disputes regarding spatial planning, constructions, and environmental impact assessment (EIA). Disputes regarding EIA are mainly related to access to justice, procedural and content matters. Courts (especially supreme court) tend to broadly interpret the rights of NGO's to access to justice. Disputes regarding the content of EIA documentation relevant in the context of the Aarhus Convention mainly focus on the selection and assessment of alternatives. The courts stress that national legislation does not specify the exact number of alternatives that should be analysed in certain cases, however, depending on the planned

economic activity several alternatives (location, time, technological, means of mitigating negative effects and etc. so on) should be evaluated. Regarding the reasoning of EIA and screening decisions the courts highlight that it is not enough to mention in the decision that comments from the public were received, the reasons and consideration on which the decision is based including comments received during public participation should be reflected in the decision. Latvia and Estonia echoed that their courts encounter with similar issues.

## **7. AOB**

### ***Transposition of Directive 2014/52/EU***

Lithuania informed about the joint EIA/SEA procedures with assessment under Birds and/or Habitats directive (Directive 92/43/EEC and Directive 2009/147/EC) already implemented at the national level. Provided information on the legal arrangements, measures used to avoid duplication of the assessments, statistical data on the type assessment documents examined by the State Service for Protected Areas. Participants shared the views that joint (integrated) or coordinated assessments (e. g. joint scoping procedures) are carried in their respective states. Participants informed that transposition of Directive 2014/52/EU into national legislation is still ongoing. The Directive will have to be transposed by the Member States until 16 May 2017.

### ***Information about Nord Stream project***

Denmark updated about the current status of the transboundary EIA procedure for Nord Stream 2 project. The notification was submitted in April, 2013. The EIA documentation is planned to be prepared by the end 2016, the public participation phase is scheduled for the beginning of 2017. Sweden reminded that the scoping document was submitted together with the notification.

## **8. Conclusions and Closing**

Minutes of the Seminar will be prepared by Lithuania. The participants agreed that presentations and list of Espoo cases should be uploaded on the UNECE website. The next Meeting is scheduled for the second half of 2016 in Latvia. The seminar would focus on long – distance projects (railways) and maritime spatial plans and strategic environmental impact assessment.