



**Application of the Espoo Convention in Central and Eastern Europe**  
Sub-regional workshop under the Espoo Convention

**Report**

REC HQ, Szentendre, Hungary  
23-24 June 2003

The Deputy Director of the Regional Environmental Center, **Mr. Alexander Juras** opened the workshop. He thanked the Dutch Ministry of Housing and Spatial Planning for the financial support and cooperation efforts of the Ministry of Environment of Poland in organizing it. He stressed the importance of the EIA as a tool that has a growing importance in the policy making in the CEE region. The meeting was facilitated by **Ms. Anna Parol** from the MoE of Poland. List of participants is appended to the report.

**Introduction**

**Overview on Cooperation on the Espoo Convention**

Poland and Croatia are the leading countries in the sub-regional cooperation within the work-plan of the Espoo Convention. The workshop was organized to bring in suggestions for sub-regional cooperation to support the Espoo Convention guidance that will be developed in the autumn 2003. This guidance will be based on the outcomes of the Varna (1999) and Sandanski (2002) workshops and this particular workshop organized to exchange information on the national systems and to share lessons learnt in the process of implementation of the Convention obligations.

**Progress of negotiations of bilateral agreements on the Espoo Convention in CEE**

The Espoo Convention extends further than the neighboring counties targeting the environmental effects that may go far beyond the borders. Some countries may choose to notify all countries beyond its borders, though agreements with neighboring counties are a minimum requirement.

There are a few draft bilateral agreements and a few practical cases in the region (see Table 1). An issue is capacity development of the responsible institutions and retention of staff during the negotiation process that may take years. Workshops are useful tools to enable people to discuss the Convention and to reflect on the progress. Other Conventions have to be remembered, reflected and possibly combined in the negotiation frameworks, e.g. the Convention on Biodiversity.

Finalized official agreements exist between Estonian/Finland and Latvian/Estonian.

The most advanced bilateral agreement from Poland's position is between German and Polish though it is still under negotiations. The preparation of the draft started 10 years ago. This agreement is very detailed.

Poland is negotiating an official agreement with Lithuania. Negotiations with the Czech Republic are in the stage of informal meetings. With Slovakia and Ukraine the first draft is being evaluated that will be later suggested to the parties.

Estonian/Latvian bilateral agreement was drafted in between 3 meetings. It is basic agreement that reduce the time and does not imply changes in the national legislation.

Estonia has ready and signed agreements with Latvia (1997) and Finland (2002). A Joint Estonian/Finnish Commission (JC) was created to meet annually. This year's meeting will be held in Helsinki. Agreement with Finland is of general format. If there is a practical case the JC will decide on the details. No guidelines are initiated. Estonia will keep the same approach (general agreements) with any future negotiations. The JC will start working only when a case will occur, otherwise it will meet once a year regularly. The JC consists of 2 co-chairs (Estonian and Finnish), Deputy Secretary of the MoE, 2 experts from the MoE and 2 people from the counties on the Baltic Sea making it 6 people from one side. No NGOs are invited, but they can address the JC directly. External experts may be invited on case by case bases.

In Latvia bilateral agreements was predetermined by the geographic features of the country and development of the neighboring regions. Latvian/Estonia border areas are less economically developed than the Latvian/Lithuanian. Current cross border activities are Via-Baltica road and oil transportation on the Baltic Sea. Latvia is negotiating an agreement with Lithuania for 5 years already. It might take longer if Lithuania decides to build another nuclear power plant. The process is run by the politicians, and not by experts, which is not the best way to make good agreement. Agreements initiated and negotiated on political level tend to be more general.

Belarus and Russia are not parties to the Convention. CEE counties are not initiating talks with them because of it, though there are urgent transboundary water pollution issues that provoke negotiations and inspire attempts to contact Russia and Belarus, which are quite passive and disinterested. Poland held discussions with Belarus on a political level.

Bulgaria has no bilateral agreements on the Espoo Convention yet, but there is one practical transboundary EIA case between Bulgaria and Romania on a cross border project of a Danube bridge construction.

The national requirements are very different across the region, which complicates the initiations of negotiations. Bulgaria has a discussion with Macedonia. Their experience is to sign a more general agreement and to try to solve cross border issues case by case. If there are substantial differences between the systems, a more general agreement can be recommended.

The Republic Serbia & Montenegro is not yet a party to the Espoo Convention. The Parliament turned down the proposal to ratify the Convention in 1994. Country is preparing to become a party, hopefully still in 2003. In the Federal law there is a reference to an exchange of information in case of the transboundary EIA, by forwarding information to the competent institutions of the other state.

The Czech Republic has 2 acts where the EIA is mentioned in since 1992 and it ratified the Espoo Convention in 2002. Some cases have been initiated under the Espoo Convention on mining with Poland and poultry intensive farming with Austria. The cases have been initiated based on the willingness of people, but not because of the institutions. Consultations took place between the neighbouring regions. The Czech Republic started negotiating bilateral agreements 3 years ago, though nothing is yet ready. Unofficial negotiations took place with Poland, Slovakia, Germany and Austria. Materials under new law and the Espoo Convention are being initiated. Problems arise because of planning systems' and EIA timing differences within the systems. Agreement with Germany is the most advanced and with Slovakia is the least developed.

Germany ratified the Espoo Convention in August 2002. Official negotiations on bilateral agreements take place only with Poland and the Czech Republic out of 9 neighbouring countries. In the



German/Polish negotiations an important discussion item was deadlines within the EIA procedure, since one country has tight and the other loose time frames. Contacts with other countries are more informal. Between Germany, Switzerland, France and Luxemburg recommendatory documents exist on transboundary cooperation that are very useful in practice. There is a common declaration document in preparation with Austria, Liechtenstein, the Netherlands, and Switzerland. It seems there is no need to have agreements, because cooperation started "from the roots".

Slovakia ratified the Espoo Convention in 1999. Currently a bilateral agreement with Poland is in preparation after one meeting of parties (no draft yet). Draft agreements between Slovakia and the Czech Republic as well Slovakia and Hungary are in preparation. The last one might be signed already this year after preceded 6 meetings. No negotiations with Ukraine took place yet, though Slovakia is preparing the first draft document for the first meeting with Ukraine.

Most countries are the parties to the Convention around the Balkans (see Table 2).

Poland and Croatia till now are leading the process on the Espoo Convention in the EIA transboundary context. The needs for further awareness raising and implementation strengthening of the Espoo Convention are recognized. Further efforts to employ new means to strengthen the Convention as well as to overcome the exclusion of the EECCA countries should be taken. The main problems are financial, linguistic and legislative (legislation development in some regions is lagging). Solving language problems with efforts to endure interpretation during the meeting of parties was recommended.

## **EIA in Transboundary context**

### **EIA in Transboundary context in Germany**

Germany is a federal country. There are 16 Länder of different size and importance. There is a federal and a Länder level. In general the Länder are responsible for legislation, unless it is expressly attributed to the federal level by the Constitution. The federal level has very few competences for the execution of law. In general, the Länder are responsible for the execution of law, even when issued by the federal level.

There are several EIA acts in Germany. There is one act on the federal level (UVPG) adopted in 1990 on the basis of the EIA Directive and amended in 2001 on the basis of the amendment of the EIA Directive and also taking into consideration the Espoo Convention. This act is only applicable if there is no special law (e.g. on industrial plants, where the decree on permitting procedures contains special regulations for EIA). With few exceptions permitting procedures are not carried out on the federal level. 16 acts have been created for EIA on the regional level. Most Länder have meanwhile their own EIA acts. Saxony has not yet an act in force, it is in the parliament at the moment, which might adopt it before January 1, 2004. Länder acts are for example necessary for certain roads, cable ways, pipelines, but most of them are just referring to the federal level legislation for the procedure.

EIA is not a special procedure, but a part of the permitting procedure. The most important steps of EIA must yet be recognizable in the permitting procedure. Most EIA projects basically need one permit only. The competent authority is responsible for organizing a hearing in the beginning of the procedure in order to define the scope of EIA. The meeting protocol or a separate statement is sent to the developer with requirements for the EIA documentation (so-called scoping). The developer has to fulfil these requirements; otherwise the competent authority can refuse the permit. The application for the permit has to include the EIA documentation. The application is sent to all affected authorities for



review, it is also made available to the public. One month is the deadline for the authorities and one or two weeks more for comments of the public. The competent authority is organizing a public hearing to discuss the comments made by the public.

Germany has no licensing for EIA experts. If experts are needed to support the competent authority, they are selected by the authority. In these cases the developer is normally asked to agree on the nomination of the expert, since he has to pay the expert. Experts are often used to produce a draft for the summarizing description of the environmental effects and their evaluation according to legislation. The summarizing description and the evaluation are procedural steps of the EIA procedure in the responsibility of the competent authority. The results of the public hearing are also taken into account. Procedures usually last around 9 months (permitting procedure including EIA, starting with the application but not with the scoping). Monitoring pursuant to the Espoo Convention was not yet usual some time ago, since it was not in the EIA law, but now it should be part of the permit.

The competent authorities responsible for EIA in Germany (mostly on Länder level) are also responsible for transboundary EIA in both directions. The ministries on federal and Länder levels are involved only at consultations. Citizens and authorities of other countries have basically the same procedural rights as German citizens and authorities. Anybody, including foreigners, can appeal the decision according to the rules in Germany.

Since in Germany the authority competent for EIA can be on a very low level (e.g. district level), whereas in other countries it is the MoE, complications are possible. However, the MoE's of the Länder are responsible for coordination, if necessary. Usually there are contact lists of authorities to be contacted.

The EIA Directive lists many activities that require a so-called screening. Germany can invite authorities of the affected state already to the screening, as well as to the scoping. Germany has to send information to the neighboring countries, only if transboundary effects are recognized, so at the screening level information exchange is not likely. The step is taken, only if it is considered necessary. The affected states get information on the decision too.

### **EIA in Transboundary context in Poland**

The Espoo Convention regulations were transposed into Polish legal system 2 years ago. Transboundary EIA procedure is a part of permitting procedure and a part of the national EIA procedure. It is conducted by the authority on the regional or local level. In some stages MoE is involved (notification and consultation). EIA procedure varies between the types of projects (Annex I or Annex II projects – as regulated in Regulation of the Council of Ministers, based on 85/337/EEC and 97/11/EC directive).

In case of Annex I projects scoping is optional and is done before application for the project (there is no need for obligatory scoping, because the detailed requirements for EIA report are listed in the Act on Environmental Protection Law and they can be used instead of scoping) and in case of the Annex II projects scoping is done after the application for the project. If developer of the Annex I project asks for scoping, it has to provide basic data on the proposed project before it. Screening is done only for Annex II projects and is done after the application for the project. Major and large projects (for the purposes of Espoo Convention) are defined by thresholds identified in the law.

Generally, the notification of the possible significant adverse transboundary impact of the proposed project, shall be done as soon as possible, preferably before defining the scope of the EIA report (in case where scoping procedure takes place). But in practice, in some cases possible major effects of



transboundary degree can be seen only from the EIA report and notification of Affected Party (AP) can be too late. The issue is not solved in Poland completely. However, if the authority recognizes the transboundary impacts on the bases of the basic data on proposed project (submitted by developer together with the application – for Annex II projects, or with the request for the scoping – for Annex II projects), and the notification is done before the scoping procedure, the Affected Party (-ies) can submit comments, which have to be taken into account in defining the scope of the report.

When the EIA authority finds possible transboundary affects, it has to notify the MoE immediately, who notifies the AP with basic project data and may also forward the report, since it is submitted together with the application for the development.

The public participation procedure is carried out only in cases when EIA report is prepared.

Consultation is obligatory and is carried out by the EIA authority, but can be taken over by the Ministry of the Environment (MoE) in problematic cases. EIA authority issues decision on the proposed project after consultations and it is communicated to the AP by the MoE. You can only appeal the decision if you are a party during the procedure. Foreign citizens do not have right to appeal and hearings are provided only in Polish language.

If Poland is AP, the MoE receives the documentation on the proposed project and forward it to the regional authority (Voivode), relevant in the light of area affected by the potential transboundary impact. The Voivode makes the documentation available for the public review, in Polish language (but only the parts presenting the potential impact of the project on the environment). The public has 21 days for submitting comments and recommendations.

The Voivode prepares draft position on proposed project, which includes comment receiver from the public, and submits it to the MoE. The MoE forwards the final position on proposed project to the Party of Origin.

### **EIA in Transboundary context in Latvia**

In Latvia Transboundary EIA system is established under the EIA law, since the country is a party to the Convention. The Parliament passed the Convention as a law after ratification. Transboundary EIA applies to the projects that are listed in the Annex of the law. The procedure has to be used as in the bilateral agreement (see Table 1). There is one more Annex in the bilateral agreement for the activities with the fresh holds. There is an explanation of each point which is taken from the Espoo Convention.

Joint EIA commission is being established. EIA bureau member is always represented in the commission.

There have been no transboundary EIA cases yet in Latvia.

### **EIA in Transboundary context in Hungary**

In Hungary the Espoo Convention was promulgated with the governmental decree in 1999. The Environmental Act of 1995 has basic rules of the environmental protection and permitting procedure. The detailed rules of the procedure are in the Governmental Decree on EIA.

There are special requirements in the Hungarian legislation concerning the Espoo Convention. In the case Hungary is a Party of Origin (PoO), there is preliminary EIA and detailed assessment. During the preliminary phase regional environmental inspectorate (12 in Hungary/ competent authority) sends the



preliminary study to the MoE with its opinion about the significance of transboundary impacts and a request for information needed to complete the detailed EIS.

MoE prepares the notification and sends it to the Affected Party (AP) and to the inspectorate to forward to the applicant. Communication is done via the MoE. The applicant has to do the translation of the EIS international chapter and the non-technical summary to the language requested by the AP.

Consultations are initiated by the MoE involving inspectorate, special authorities concerned who in their turn organize the public hearing.

The whole process should be carried out in 90 days plus 30 days extension maximum. In Hungary foreigners can not appeal in the Court and if the final decision is not satisfactory, next steps are not defined. It would require the change of the Hungarian Constitution.

In the role of the AP, MoE provides the necessary translations of notification and does other communications with the PoO and the inspectorate, which are the responsible authority and represents the region.

### **EIA in Transboundary context in the Czech Republic**

The Czech Republic (CzR) has Transboundary EIA procedure since 1992. EIA procedure is not done through the civil procedure and the EIA final statement is not binding. It has both advantages and disadvantages.

Documentation is prepared by the developer, but the developer has to hire an expert with special qualifications to do it in compliance with the requirements. EIA specialists have to pass a special exam and get special EIA license. The same system exists for SEA. There are around 500 licensed persons in the CzR. There is a list of experts in the MoE. Developer can choose from the list.

Expert opinion is done as well by an authorized person, but one chosen by the MoE. It has to be different person. Expert opinion is paid by the developer again.

Public hearing is on both: EIA and expert opinion together. In each step of the EIA procedure there is a public participation step. In some cases the information is posted on the notice board, on the Internet, spread leaflets, etc. After the notification public has 30 days for comments. No one can comment on the EIA statement. Public hearing is the last step with public involvement before the public comment on the EIA report and the expert opinion. Public can appeal through submitting the comments to the Notification and the Expert Opinion. It is important to demonstrate that citizens' interest is violated rather than an interest of one species in danger (3 levels).

IPPC is viewed as a more detailed procedure and it is done before the building permit.

There were a few EIA in the CzR, but they did not follow the Espoo Convention. Notification were issued on the roads going to Austria and Germany, a few mining cases have been identified, but they are not according to the law. The draft agreement is used, but it is not efficient.

The type of an agreement is still under discussion: government level (to make it simpler) or parliament (which will take too long). Agreements are developed on the expert level dealing on EIA, communicating with other sectoral ministries and the Ministry of Foreign Affairs. On the expert level there are 3 people participating per country periodically involving other experts, or specialists from sectoral ministries.



## **Cases of application of EIA transboundary context in CEE region**

### **German/Polish case on cooperation in Transboundary EIA**

The object of the first Polish/German cooperation case on transboundary EIA was the diversion of water from the border river Nysa Luzycka to German river Spree and a cast mine in Berzdorf.

The EIA took almost 2 years from the notification to the final decision. The most problematic stage was public participation that took place from December 2000 to June 2001. There was no direct communication between the public of the affected country and the Party of Origin. The Ministry of Environment acted as an intermediary and send the comments in an aggregated form – Minister of Environment's statement which included also statements by the interested authorities. This is recognized as quite inefficient communication path.

Confirmation of participation in the transboundary EIA case took Poland more than a month Poland, compared to the 1 month as required in the initial information send by Germany, however it was the first case.

The second problem that occurred in the EIA in transboundary context procedure was connected with consultation concerning article 5 of Espoo Convention. German side considered that additional negotiations initiated by the German-Polish Transboundary Water Commission were already fulfilling the requirements of the Espoo Convention. Consultations as required under the Espoo Convention were held after the final decision was made, since Poland was not satisfied with it.

EIA in transboundary context took almost 2 years (22 months). Polish authorities and public were hostile to the project. Polish Minister of the Environment asked the Federal Minister for the Environment, Nature Conservation and Nuclear Safety for Negotiations (Art. 15 – Settlement of Disputes). Germany did not take into account complains from the Polish side. Although appeal against the decision in a German court is possible no Polish citizens decided to chose this procedure. In order to take advantage of the appeal procedure it has to be proved that rights of foreign citizens have been violated and appeal has to be made within 1 month from the time the decision has been delivered or made available to the public. Individuals as well as companies expected guarantee of compensation for loss, which however was not put into the final decision.

Both countries were learning by doing and there were a few misunderstandings. The public was not clearly informed about the procedure, including the rights of appeal.. This information was also not available in the decision, which was translated only partially. Procedural delays were caused by incompatibility of the EIA procedure. Final decision was made without consultations. Negotiations later were carried out on the national level.

Problems were caused by the lack of binding German/Polish bilateral agreement. It is important to set procedural relationship between authorities, define their competences, time limitations of the procedural stages.

### **Bulgarian/Romanian case on transboundary EIA**

Romanian and Bulgarian foreign ministries sign agreements to the construct of a bridge on the Danube (between Vidin and Calafat), which had to undergo EIA. In the agreement the Espoo Convention was not mentioned, though both countries are parties to the Convention.



The bridge that will connect two countries is transboundary in itself. The case was initiated without notification via the international agreement between the governments. All the problems were solved in the WG. Developer is Bulgaria, though the bridge will be operated half/half by Romania and Bulgaria. EIA is done jointly as well. EIA project team leader was from Germany.

Bulgaria has one step EIA procedure at the beginning of the permitting, whereas Romania has EIA in the final stage. The transboundary EIA was in two stages: Preliminary EIA was done according to Bulgarian procedure and the final EIA according to the Romanian legislation. This example may be very useful in the future cohesion and structural funds programmes and infrastructure projects.

The subject of EIA was the bridge only since the railways and roads on both sides already exist. The bridge with the road is 5 km. The project has significant importance for the transport infrastructure in both countries, part of the southern branch of the pan-European network. In May 2000 both countries signed the agreement on the technical, financial, legal and organizational issues related to the project. The place of the bridge was decided through the international agreement. It was based on the detailed study on the location of the bridge conducted in 1990's. The preliminary study is something like SEA. The final conclusion was based not only on the environmental assessment but also economic and social.

There was an issue which country is the party of origin. In this case both countries co-owner the initiative and both are affected parties and parties of origin.

The Joint Committee (JC) and working groups (WGs) were established. One group dealt with Environmental matters (WG2). JC was chaired by the Ministers of Transport of both countries. MoE was represented in the Joint Committee.

Two steps of EIA were decided to be done: Preliminary EIA on the feasibility study and the final EIA on the detailed design and only then the permits for the bridge. During the time Bulgaria changed the legislation and now there is only one stage of the EIA in the country. During the Transboundary EIA many meetings have been organized to clarify the procedures in both countries.

Notification stage was skipped. Screening process was not clear, since the project falls under EIA in both countries. The experts had to organize meetings in both countries with concerned public and NGO and after the ToR should have been prepared by the experts. EIA was elaborated by the joint team. The experts had to be licensed. Consultations were to be organized in both countries.

During the PP procedure, nobody objected the bridge. NGOs had nothing against the development as well. Comments on the mitigation matters and how to do it better were received as well.

In Bulgaria the EIA is done after the notification if it falls into the Annex 2. Before the permit is granted, IPPC is applied if it falls into the Annex that requires the procedure; since it is much more detailed (similar procedure is in the Czech Republic).

Now the project is in the stage of the final EIA. The construction should start in 2005. Environmental issues are not so big, but there are other issues.



### **Estonian/Finnish case on Transboundary EIA**

The case was initiated by Ministry of Environment on a project run by the Estonian Energy on the Narva Power Plant reconstruction. The decision maker and supervisor of the case was Ministry of Environment of Estonia from the PoO side. Tallinn Pedagogical University, Institute of Ecology and experts formed an EIA expert team for the project.

Notification on the case was sent to Finland and Russia. Russia did not respond, and further information exchanged was organized between Estonia and Finland only. Public participation in the project was initiated on the draft EIA programme in a form of a public hearing in Estonia. Comments from MoE of Finland have been received and after this, comments have been adopted the MoE of Estonia, which followed the preparation of the EIA report. The final EIA had to undergo approval of the MoE of the PoO. Amended report was sent to Finland.

All communication was done in English with the Finnish side. Together with Notification, Finland received the draft EIA programme. Comments from Finland were received before the public hearing in Estonia. Communication with the AP was greatly improved because of the informal contacts and electronic communication tools used in the process. Amended EIA documentation was sent to AP as well.

The case was difficult since the time table was very tight. There was not enough time (1 month) given to Finland to hold public hearings. Only the summary was translated into English, which was not enough Finland to get information.

### **Lessons learnt from case studies**

- Notification should be sent to AP as soon as possible as well as more time should be given for the AP to comment (2 months suggested);
- It is good to have defined in bilateral agreements what should be translated and than there are no doubts who translates it and who lays for it; ideally all EIA documentation should be translated.
- The thresh-holds can be a subject of negotiations if they differ in two countries that are negotiating the bilateral agreement on EIA. Countries may agree to use each other's thresh-holds.
- There were no cases yet AP requesting data on environment that might be affected by the development in the party of origin. No legislation has such possibility.
- To use draft bilateral agreement between countries in solving transboundary EIA is not efficient.
- It is important to set procedural relationship between authorities, their incompetence, time limitations of the procedural stages.
- Espoo Convention is too general and some terms are understood in a different ways by parties.
- Having bilateral agreement might speed up Transboundary EIA process if the systems are very different in neighbouring countries.
- In case of infrastructure projects it is difficult or nearly impossible to identify the AP and PoO.



## **Bilateral agreements in CEE region**

### **Hungarian/Slovak bilateral agreement on the Espoo Convention**

Negotiations on the Hungarian/Slovak agreement started in 2000. A working group was established based on the cooperation agreement on environmental protection and nature conservation of 1999. There is an EIA WG and other WGs. The WG consists of 2-3 persons from each country dealing with EIA and now it is enlarged with environmental lawyers (MoE and association of lawyers). Information was exchange on the national regulations on Espoo Convention and discussion on the agreement. The discussion was complicated by the differences in the national regulations.

Content of the draft agreement was presented. The reports should be written in the place and the time when the activity happened recording the spoken information. The minutes are written after it happen and it is only the summary of the main issues discussed. Response to the notification has to be sent in 1 month.

The text has to be in 3 languages: Hungarian, Slovak and English. During the scoping process, the Espoo Convention list of Activities is used amended with the limits instead of "major/large". The negotiation on the differences between the limits took place.

### **Czech bilateral agreements on the Espoo Convention**

The Czech Republic has 4 neighbours. The last developed agreement was with Slovakia. There are no transboundary EIA envisioned. Slovakia notified on the construction of the railway, but the Czech Republic rejected to participate in the EIA considering it not significant to the country. Current negotiations are going smoothly though just one meeting happened so far in Prague. The system is very similar, since the roots are the same. The issue of not having a bilateral agreement (for the CzR and Slovakia) has never been considered. It can be discussed further. Memorandum of Understanding can be prepared instead. General agreement to have *ad hoc* EIA commission meetings on the annual bases may be considered.

There is an almost ready agreement with Germany after 2 meetings. The third meeting has to be organized.

The Czech Republic had 2 meetings and almost ready agreement with Austria. In this case the MoFAs are involved.

There is an almost ready agreement with Poland after 3 meetings. Poland is very active and the process is speeded up.

The process started 3 years ago with most of the neighbouring countries. The main problems are differences in the systems, different levels of authorities responsible for communication, post project analysis and consultations, costs of materials, interpreters on public hearings and language. Timing of the consultations was a problem, since some parties wanted to have it in each case, but it was agreed that consultations will be only upon request, since it costs and costs time.

### **German/Polish bilateral agreement on the Espoo Convention**

The agreement is draft and it may still change. The agreement is deemed to be useful to implement the obligations under the Espoo convention, to make obligations more clear, to avoid misunderstandings



caused by different standards and methods of EIA, to solve problems with translations, covering the costs and to save money and time.

The draft agreement between Germany and Poland is more detailed than other agreements negotiated by Poland. The agreement sets up the institutional and administrative procedures, it aims to attain the greatest possible similarity in standards. This comes from a very detailed and specific German law. E.g. German colleagues wanted to put 3 months for preparation of the statement and in case of the special projects that may not be very easy. So the possibility to have extension has been added eventually.

The meetings of the parties started from 1993. Formal negotiations are taking already almost a year and a half. There were 14 meetings between the parties up to now. The process is carried out by German/Polish working group on EIA in transboundary context that consist of national and regional level officials from both sides.

Parties may request involvement even if there is no notification. Confirmation of participation has to be send within one month. The statement of the affected party should be sent within 3 months, though some extensions are possible. Party of origin proposes to enter the consultations and covers the costs of translation and premises. The consultation may not be done if the AP deems it not needed.

In case of transboundary EIA, PoO is responsible for translation of the notification, part of EIA documentation that is relevant, the final decision, letters and other documents into the language of AP.

Difficulties have been encountered during the negotiations between the parties of the time frame of each stage (Polish law is more open about the time frame than German).

## **Lessons learnt and suggestions for negotiations of bilateral agreements**

### **General suggestion how to prepare for negotiations:**

- good to have some prior cases on transboundary EIA to learn a lot from them;
- information from pilots;
- there are different approaches how detailed the bilateral agreement should be;
- clearly defined timing of the stages of the EIA procedure;
- improved communication: parties have to keep in touch with each other before important stages such as public participation, preparation and distribution of EIA documentation and granting the final decision;
- parties are highly recommended to have the bilateral agreement before;
- first public participation should be before the scoping meeting;
- it is important to set up the procedure on the relationship between authorities and their competences in the BA;
- recommendation to set up EIA procedure similar to each party's;
- it is important to have compatible meaning of some definitions, methods and standards.

### **Interpretation of "taking into account" term:**

- In Polish law "taking into account" means that the consensus has to be made on both statements.
- For Germany it does not mean a consensus. In Poland the process can not be closed before the negotiations have been done and in Germany it was done before.
- In Czech Republic it has to be discussed and it does not mean that it has to be accepted. It may not be happen in reality because of the diplomatic rules, but the system is the same with the opinion of public and governmental bodies; the ministry will take into account the opinion of the relevant parties or will explain why it was not included or included partially.



- In courts normally the decision should say clearly why the suggestion is not valid and not taken into account. If it is not explain why, the decision can be appealed.
- In Bulgaria all the comments are sent to the developer, who has to produce the statement on the comments including which part of the opinion will betaken into account and this statement is included into the MoE statement. MoE always keep copies of the comments that are being sent to the developer. The final decision is made by the MoE, though the comments have to be responded directly by the developer.

### **Findings and suggestions on capacity development in SEE and EECCA regions**

There are big differences in the region (CEE and SEE) and there is yet another region (EECCA) with financial constrains as well as different language (EECCA is the Russian speaking region). The CEE region got closer with the EU member states rather then with EECCA in legislation development. Important question is how to make the regions to cooperate? Poland is not a leading country for the EECCA countries. The systems described in the guidance more relate to the EU rather than to the CEE.



**Table 1**

**List of bilateral agreements and their status**

<b>Bilateral agreements between (alphabetically)</b>	<b>Status</b>	<b>Signing date</b>
Estonian/Finland	Signed	2002 Feb.
Estonian/Latvian	Signed	1997
German/Poland	Final prep. stage	
Lithuania/Poland	Negotiations	
Poland/Slovakia	First draft in prep.	
Poland/Ukraine	First draft in prep.	
Czech/Poland	Informal negotiations	
Czech/Slovakia	Negotiations	
Czech/Germany	Informal negotiations	
Czech/Austria	Informal negotiations	
Hungary/Slovakia	Informal negotiations	
Slovakia/Ukraine	First draft in prep.	

**Table 2**

**Status of ratification of the convention in CEE**

<b>Country</b>	<b>Status</b>
Albania	Party since October 4, 1991
Bosnia & Herzegovina	Not a party
Bulgaria	Party since May 12, 1995
Croatia	Party since July 8, 1996
The Czech Republic	Party since February 26, 2001
Estonia	Party since April 25, 2001
Germany	Party since August 8, 2002
Hungary	Party since July 11, 1997
Latvia	Party since August 31, 1998
Lithuania	Party since January 11, 2001
Macedonia	Party since August 31, 1999
Poland	Party since June 12, 1997
Romania	Party since March 29, 2001
Serbia and Montenegro	Not a party
Kosovo (currently under UN administration)	Not a party
Slovakia	Party since November 19, 1999
Slovenia	Party since August 5, 1998



**Application of the Espoo Convention in Central and Eastern Europe**

23-24 June 2003  
REC HQ, Szentendre, Hungary

**AGENDA**

**June 23, 2003**

**08.30-09.00 Registration**

**9.00-9.30 Introduction to the workshop**

- welcome
- introduction of participants
- introduction to the workshop

**09.30-10.30 Overview of recent developments**

- short presentation of each country about the state of the preparation bilateral agreements under the Espoo convention – tour the table
- lesson learned – presentation of the outcome of Sandanski's workshop (April 2002, Bulgaria)

**11.00-12.30 Codifying transboundary EIA in national legal systems**

- presentation of three different examples of treatment of transboundary EIA in national legal systems (Germany, Poland, Latvia)

**14.00-15.30 Simulation of the case study of transboundary EIA**

Hypothetical study will be presented and participants will discuss what would happen if such project was carried in their country.

Possible discussion items:

- **Notification**
  - In which cases beyond Appendix 1 do you notify?
  - How do you define “significance transboundary impact”?
- **Time frame of the EIA procedure.** How do you set up the following issues:
  - confirmation of participation
  - sending comments from public participation
  - consultation
  - closing EIA procedure
- **Translation of the EIA documentation** How do you manage with the following issues:
  - What part of documentation will be translated?
  - Who pays for the translation?
- **Taking into account in the final decision**
  - How do you define “taking into account”?
  - How do you ensure that important comments from the affected party are taken into account?
- **Consultations**
  - Are the consultations obligatory? Why do they so important?
  - How do you define the consultations



16.00 – 17.00 **Case study of transboundary EIA**

- description of practical examples of carrying out the transboundary EIA – why it was decided to carry out a transboundary EIA, what were the key issues of concern, how was notification undertaken, how was the EIA report prepared, who paid, what language was used, how was the public participation organised (Estonia)

**June 24, 2003**

09.00-10.00 **Case study of transboundary EIA ... continued** (Poland, Bulgaria)

10.00-11.00 **Experience from bilateral agreements on transboundary EIA**

- presentation made by three countries (Poland-Germany, Czech Republic - Austria, Hungary-Slovakia)
- what problems were encountered during negotiation and how have these been overcome
- how has the negotiation process been carried out (through technical working group meetings, political debate etc.), how many meetings, what were the most difficult issues, how were decision made...

11.30-13.00 **Simulation of the negotiations**

- hypothetical negotiations will be carried out

14.00-15.30 **Wrap-up**

- Wrap up of the main conclusions and recommendations



**Application of the Espoo Convention in Central and Eastern Europe  
June 23-24, 2003**

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