

Questionnaire for the

REPORT OF ON THE IMPLEMENTATION OF THE PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT TO THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

in the period 2010-2012

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PART ONE – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE PROTOCOL

In this part, please describe the legal, administrative and other measures taken in your country to implement the provisions of the Protocol. This part should describe the framework for your country's implementation, and not experience in the application of the Protocol.

Article 2 - Definitions:

1. Is the definition of plans and programmes for the purpose of the Protocol the same in your legislation as in article 2, paragraph 5? Please specify.

- a) Yes ☒
- b) Yes, with some differences:
- c) No (please provide the definition):
- d) There are no definitions of plans and programmes in the legislation ☐

Your comments:

2. Is the definition of “environmental, including health effect” in your legislation the same as in article 2, paragraph 7? Please specify.

- a) Yes ☒
- b) Yes, with some differences:
- c) No (please provide the definition):
- d) There is no definition of “environmental, including health effect” in the legislation ☐

Your comments:

3. Is the definition of “the public” according to article 2, paragraph 8, in your legislation the same as in the Protocol? Please specify.

- a) Yes ☐
- b) Yes, with some differences: „individual or several natural or legal persons or associations of these persons“ (see article 2 paragraph 6 of the German Federal EIA Act)
- c) No (please provide the definition):
- d) There is no definition of the public in the legislation ☐

Your comments:

4. Are there any conditions for non-governmental organizations to be able to take part in the assessment procedure? Please specify.

- a) Yes (please provide the conditions):
- b) No ☒

Your comments: According to article 14i paragraph 3 and article 2 paragraph 6 of the German Federal EIA Act the public concerned including associations whose activities as described in their statutes are affected has the opportunity to express its opinion on the draft plan or programme and on the environmental report.

Article 3 – General provisions:

5. Provide legislative, regulatory and other measures you have adopted in your country to implement the Protocol (art. 3, para. 1) (you can choose more than one option).
- Law on SEA (please indicate number/year/name):
 - Law on the Introduction of a Strategic Environmental Assessment and on the Implementation of Directive 2001/42/EC, published on 25 June 2005 (Federal Law Gazette I p. 1746);
 - Ratification Act for the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, published on 3 June 2006 (Federal Law Gazette II p. 497)
 - SEA provisions are transposed into another law(s) (please specify): Law on the Adaptation of the Building Code to EU Directives, published on 24 June 2004 (Federal Law Gazette I p. 1359)
 - Regulation (please indicate number/year/name):
 - Administrative (please indicate number/year/name):
 - Other (please specify):

Your comments: SEA provisions of the Protocol have been implemented by several laws and regulations. The laws mentioned above are the most important ones.

6. Indicate the specific legislation in your country, if any, that assures that the requirements of article 3, paragraphs 6 and 7, are met, and that these rights of the public are observed (you can choose more than one option).
- Constitution ☐
 - Law on public participation (please indicate number/year/name):
 - Law on SEA X
 - Legislation which transposes the Protocol on SEA (please indicate number/year/name):
 - Legislation which transposes the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (please indicate number/year/name):
 - Other (please, specify):

Your comments: The legislation on SEA, including the requirements of article 3, paragraphs 6 and 7 of the Protocol, have been included into the German Federal EIA Act by the Law on the Introduction of a Strategic Environmental Assessment and on the Implementation of Directive 2001/42/EC mentioned above (question 5.a.).

Article 4 – Field of application

7. List the types of plans and programmes that require SEA in your legislation (art. 4, para. 2).

No.	Plan or programme
1.	Compulsory strategic environmental assessment pursuant to article 14b paragraph 1 Number 1 of the Federal German EIA Act [Gesetz über die Umweltverträglichkeitsprüfung]

1.1	Traffic infrastructure plans at Federal level, including requirement plans under a Federal Government traffic infrastructure expansion act
1.2	Expansion plans pursuant to article 12 paragraph (1) of the Air Traffic Act [Luftverkehrsgesetz], if the formulation or amendment of such plans significantly exceeds the scope of decisions pursuant to article 8 paragraphs (1) and (2) of the Air Traffic Act
1.3	Risk management plans pursuant to article 75 of the Federal Water Act [Wasserhaushaltsgesetz] and updating of such plans pursuant to article 75 paragraph 6 of the Federal Water Act
1.4	Programmes of measures pursuant to article 82 of the Federal Water Act
1.5	Regional planning pursuant to article 8 of the Regional Planning Act [Raumordnungsgesetz]
1.6	Regional planning by the Federal Government pursuant to article 17 paragraphs 2 and 3 of the Regional Planning Act
1.8	Urban development planning pursuant to articles 6 and 10 of the Federal Building Code [Baugesetzbuch]
1.9	Programmes of measures pursuant to article 45h of the Federal Water Act
1.10	Federal requirement plans pursuant to article 12e of the Federal Energy Act [Energiewirtschaftsgesetz]
1.11	Federal specialist planning pursuant to article 4 and article 5 of the Grid Expansion Acceleration Act [Netzausbaubeschleunigungsgesetz Übertragungsnetz]
1.12	National Action Programmes pursuant to article 5 paragraph 1 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, as amended by Regulation Nr. 1137/2008
1.14	Federal specialist planning pursuant to article 17a of the Federal Energy Act
2.	Strategic environmental assessment when setting a framework pursuant to article 14b paragraph 1 Number 2 of the Federal German EIA Act
2.1	Noise action plans pursuant to article 47d of the Federal Immission Control Act [Bundes-Immissionsschutzgesetz]
2.2	Clean air plans pursuant to article 47 paragraph (1) of the Federal Immission Control Act
2.3	Waste management concepts pursuant to article 21 of the Closed Substance Cycle Act [Kreislaufwirtschaftsgesetz]

2.4	Updating of waste management concepts pursuant to article 16 paragraph 3 sentence 4, alternative 2 of the Closed Substance Cycle Act
2.5	Waste management plans pursuant to article 30 of the Closed Substance Cycle Act, including special chapters or separate sub-plans regarding the disposal of hazardous wastes, end-of-life batteries and accumulators, or packaging and packaging waste
2.6	Waste prevention programmes pursuant to article 33 of the Closed Substance Cycle Act

This list contains only the plans and programmes that require SEA according to German federal law. It does not include plans and programmes requiring SEA according to Länder law. Being a Federal State Germany consists of 16 States (Länder) all of which have their own SEA legislation. It is not possible to give an overall view of all the plans and programmes for which an SEA has to be carried out in Germany.

8. Explain how you define whether a plan or programme “set the framework for future development consent” (art. 4, para. 2).

See article 14b paragraph 3 of the Federal German EIA Act: “Plans and programmes shall be considered to provide the framework for decisions regarding the approval of projects if they contain assertions of relevance to subsequent approval decisions, particularly regarding the necessity, size, location, nature or operating conditions of projects or the utilisation of resources.”

9. Explain how the terms “plans and programmes . . . which determine the use of small areas at local level” (art. 4, para. 4) are interpreted in your legislation.

There is no definition on “plans and programmes . . . which determine the use of small areas at local level”. However, for plans or programmes likely to fall under this provision a screening has to be carried out. If according to the results of this screening the plan or programme is likely to have significant environmental effects a SEA will be required (see Article 14d of the Federal German EIA Act).

10. Explain how you identify in your legislation a “minor modification” to a plan or programme (art. 4, para. 4).

See the answer to question 9.

Article 5 – Screening

11. How do you determine which other plans and programmes should be subject to a SEA according to article 4, paragraphs 3 and 4 (art. 5, para. 1)? Please specify.

- a) On a case-by-case basis ☒
- b) By specifying types of plans and programmes ☐
- c) By using a combination of (a) and (b) ☐
- d) Other (please specify):

Your comments: see article 14b paragraph 2 of the Federal German EIA Act

12. Describe the procedures required in your legislation for consulting the environmental and health authorities (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 1). If different in screening, scoping and on the draft plans and programmes and the environmental report, please specify.

- **Screening** of plans or programmes: according to article 14b, paragraph 4 of the Federal German EIA Act those authorities whose environmental and health-related duties are affected by the plan or programme shall be consulted. For this no specific procedural requirements have been laid down. In practice the authorities to be consulted will be asked to give their opinion.
- **Scoping**: According to article 14f paragraph 4 of Federal German EIA Act those authorities whose environmental and health-related duties are affected by the plan or programme shall be consulted when determining the framework of the SEA and the level of detail of the information to be included in the environmental report. On the basis of suitable information, the competent authority shall give the other authorities to be consulted the opportunity to discuss their opinion on the framework to be determined in a meeting or to deliver a written statement.
- **Consultation with Environment and Health Authorities during SEA**: According to article 14h of the Federal German EIA Act the competent authority shall forward a copy of the draft plan or programme and the environmental report to those authorities whose environmental and health-related duties are affected by the plan or programme, and shall obtain the opinions of these authorities. The competent authority shall set an adequate deadline of at least one month in order to obtain these opinions.

13. Do you provide opportunities for the public concerned to participate in screening and/or scoping of plans and programmes in your legislation (art. 5, para. 3, and art. 6, para. 3)? If yes, please specify (you can choose more than one option).

- a) By sending written comments to the competent authority ☐
- b) By sending written comments to the local municipality ☐
- c) By providing answers to a questionnaire ☐
- d) By taking part in a public hearing ☐
- e) There are no opportunities for public participation in screening and/or scoping ☐
- f) Other (please specify): According to the Federal German EIA Act there are no opportunities for public participation in **screening**. As regards **scoping**, according to article 14f paragraph 4 of Federal German EIA Act third parties including members of the public, NGOs and municipalities concerned may be consulted. In certain electricity grid planning procedures a public scoping conference will be carried out.

Your comments:

14. At what stage of the procedure for a plan or programme does your legislation require you to make the screening decision publicly available? What information do you provide in the screening decision (art. 5, para. 4)?

According to article 14a paragraph 1 of the Federal German EIA Act the screening decision has to be taken at an early stage of the planning procedure. After having taken this decision it has to be made available to the public. If the decision is made not to carry out a SEA, this shall be disclosed to the public, including the principal reasons behind the decision. If the decision is made to carry out a SEA this shall be made accessible to the public in accordance with Federal and *Länder* provisions on access to environmental information.

At the beginning of the public participation procedure, according to article 14i paragraph 1 and article 9 paragraph 1a of the Federal German EIA Act, it will again be announced to the public that a SEA will be carried out for a certain plan or programme.

Article 6 – Scoping

15. How do you determine what is relevant information to be included in the environmental report in accordance with article 7, paragraph 2 (art. 6, para. 1)? Please specify (you can choose more than one option).

- a) By using annex IV ☒ X
- b) By using the comments from the concerned authorities ☒ X
- c) By using the comments from the public concerned, if it has been consulted ☒ X
- d) As determined by the competent authority based on its own expertise ☒ X
- e) By using other means (please specify):

Your comments: Annex IV of the Protocol has been transposed into German law, see article 14g, paragraph 2 of the Federal German EIA Act.

Article 7 – Environmental report

16. How do you determine “reasonable alternatives” in the context of the environmental report (art. 7, para. 2)? Please specify.

- a) On a case-by-case basis ☒ X
- b) As defined in the national legislation (please specify):

Your comments:

17. How do you ensure sufficient quality of the reports? Please specify.

- a) The competent authority checks the information provided and ensures it includes all information required under annex IV as a minimum before making it available for comments ☒ X
- b) By using quality check lists ☐
- c) There are no specific procedures or mechanisms ☐
- d) Other (please specify):

Your comments:

Article 8 – Public participation

18. How do you ensure the “timely public availability” of draft plans and programmes and the environmental report (art. 8, para. 2)? Please specify (you can choose more than one option).

- a) Through public notices ☒ X
- b) Through electronic media ☒ X
- c) Through other means (please specify):

Your comments: According to article 14i, paragraph 1 and article 9, paragraph 1a of the Federal German EIA Act, the public will be informed that a SEA will be carried out for a certain plan or programme and that the public will be given the opportunity to participate. It will also be informed when and where the draft plan or programme, the environmental report and other documents will be made publicly available. This information will be given through public notices as well as through electronic media.

According to article 14i, paragraph 2 of the Federal German EIA Act, the draft plan or programme, the environmental report and other documents which the competent authority feels it expedient to include shall be displayed for public inspection at an early stage for an adequate period of at least one month. With due regard to the nature and content of the plan or programme, the display locations shall be determined by the

competent authority in such a way as to ensure the effective participation of affected members of the general public. Furthermore, the documents shall also be displayed on the internet.

19. How do you identify the public concerned (art. 8, para. 3)? Please specify (you can choose more than one option).

- a) Based on the geographical location of the plans and programmes X
- b) By making the information available to all public and letting them identify themselves as public concerned ☐
- c) By other means (please specify): According to article 2, paragraph 6 of the Federal German EIA Act the “affected public” shall refer to any individual whose interests are affected by the plan or a programme in question; this shall also include associations whose activities as described in their statutes are affected by the plan or a programme, including associations which promote environmental protection.
- d) Your comments:

20. How can the public concerned express its opinion on the draft plans and programmes and the environmental report (art. 8, para. 4)? Please specify (you can choose more than one option).

- a) By sending comments to the relevant authority/focal point X
- b) By providing answers to a questionnaire ☐
- c) Orally X
- d) By taking part in a public hearing X
- e) Other (please specify):

Your comments: Public hearings will be carried out where foreseen in Federal law. This is the case for example in certain electricity grid planning procedures.

21. Do you have a definition in your legislation of the term “within a reasonable time frame” (art. 8, para. 4)? Please specify.

- a) Yes (please provide the definition): see under d)
- b) No, the time frame is given by a number of days for each commenting period ☐
- c) No, it is defined case by case X
- d) Other (please, specify): According to article 14i, paragraph 2 and 3 of the Federal German EIA Act the draft plan or programme, the environmental report and other documents shall be displayed for public inspection for an adequate period of at least one month. The competent authority shall set an adequate deadline of at least one month in order to allow members of the public to voice their opinions.

Your comments:

Article 10 – Transboundary consultations

22. As a Party of origin, when do you notify the affected Party (art. 10, para. 1)? Please specify.

- a) During scoping X
- b) When the draft plan or programme and the environmental report have been prepared X
- c) At other times (please specify):

Your comments: According to article 14f, paragraph 4 of the Federal German EIA Act authorities of the affected Party may be invited to participate in the scoping. In this case notification will take place before the scoping will be carried out. In other cases the affected

Party will be notified when the draft plan or programme and the environmental report have been prepared.

23. As a Party of origin, what information, do you include in the notification (art. 10, para. 2)? Please specify.

- a) The information required by article 10, paragraph 2 X
- b) The information required by article 10, paragraph 2, plus additional information (please specify):

Your comments: In cases in which the affected Party will be invited to participate in the scoping notification will include information on the plan or programme (as far as already available), on the planning and decision making procedure and on the scoping procedure. The draft plan or programme and the environmental report will later be forwarded to the affected Party as soon as these documents have been prepared.

24. As a Party of origin, does your legislation indicate a reasonable time frame for the transmission of comments from the affected Party (art. 10, para. 2)? Please specify.

- a) Yes (please, indicate how long):
- b) No X

Your comments: According to article 14j, paragraph 1 of the Federal German EIA Act the time frame must be "appropriate". It will be specified on a case by case basis.

25. If the affected Party has indicated that it wishes to enter into consultations, how are the detailed arrangements, including the time frame for consultations, agreed (art. 10, paras. 3 and 4)? Please specify.

- a) Following those of the Party of origin X
- b) Following those of the affected Party ☐
- c) Other (please specify):

Your comments: Basically the arrangements will follow those of the Party of origin. However, where appropriate the Parties may agree on certain modifications.

Article 11 – Decision

26. When a plan or programme is adopted, explain how your country ensures that due account is taken of the (art. 11, para. 1).

- a) Conclusions of the environmental report ☐
- b) Mitigation measures ☐
- c) Comments received in accordance with articles 8 to 10 ☐

Your comments: According to article 14k, paragraph 1 of the Federal German EIA Act, once participation of the authorities and the public is complete, the competent authority shall review the accounts and assessments of the environmental report, with due regard to the opinions and statements submitted to it. According to article 14k paragraph 2 of the Federal German EIA Act, the outcome of the review pursuant to paragraph 1 shall be considered in the procedure for preparation or modification of the plan or programme.

27. How and when do you inform your own public and authorities (art. 11, para. 2)?

According to article 14l, paragraph 1 of the Federal German EIA Act, the acceptance of a plan or programme shall be publicly announced. The rejection of a plan or programme may be publicly announced. This will be done by public notices and through the internet. According to article 14l, paragraph 2 of the Federal German EIA Act, upon acceptance of the plan or programme, the information referred to in article 11, paragraph 2 of the Protocol shall be laid out for inspection of the public.

28. How do you inform the public and authorities of the affected Party (art. 11, para. 2)?

Please specify.

- a) By informing the point of contact X
- b) By informing the contact person of the ministry responsible for SEA, who then follows the national procedure and informs his/her own authorities and public X
- c) By informing all the authorities involved in the assessment and letting them inform their own public ☐
- d) Other (please, specify):

Your comments: Both a) and b) are common ways of informing the public and authorities of the affected Party. The procedure to be followed should be discussed and agreed between the Party of origin and the affected Party.

Article 12 – Monitoring

29. Describe the legal requirements for monitoring the significant environmental, including health, effects of the implementation of the plans and programmes adopted under article 11 (art. 12, paras. 1 and 2).

According to article 14m of the Federal German EIA Act the significant environmental impacts resulting from implementation of the plan or programme shall be monitored to ensure in particular that any unforeseen adverse impacts can be identified at an early stage and suitable remedial action taken. The required monitoring measures shall be specified upon acceptance of the plan or programme on the basis of the information provided in the environmental report. Existing monitoring mechanisms, data and information sources may be utilised.

Usually, monitoring shall be the responsibility of the authority responsible for the SEA. Upon request, other authorities shall provide the competent authority with all environmental information required in order to discharge its monitoring duties.

The outcome of monitoring shall be made available to the general public in accordance with the provisions on access to environmental information and to the authorities which have participated in the foregoing SEA procedure. It shall be taken into account in the event of redrafting or amendment of the plan or programme.

Article 13 – Policies and legislation

30. Do you have national legislation on the application of principles and elements of the Protocol as regards policies and legislation (art. 13, paras. 1–3)? Please specify.

- a) Yes (please specify which articles of the Protocol apply):

Article 20a of the Basic Law for the Federal Republic of Germany (German Constitution) determines that the state, mindful of its responsibility toward future generations, shall protect the natural bases of life by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order. According to this provision all governmental and legislative bodies have to ensure that environmental, including health, concerns will thoroughly be taken into account when preparing proposals for policies and legislation.

In addition to that, there are internal governmental rules that ensure the consideration of environmental effects when preparing proposals for legislation. According to Article 45 paragraph 1 in conjunction with Annex 6 Nr. 12 of the Joint Rules of Procedure of the German Federal Ministries draft legislation will be examined by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety before the proposal will be forwarded to the Cabinet for adoption. The Federal Ministry of the Environment will check possible effects of the proposed provision on the environment, give comments and propose amendments in order to strengthen the integration of environmental factors. The same

procedure applies where the government adopts policies or political programmes which do not require an SEA according to article 4 of the Protocol.

b) No ☐

Your comments:

PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2010 -2012

In this part, please report on your country's practical experiences in applying the Protocol (and not your country's procedures, which were described in part one). The focus of this section should be on identifying good practices as well as difficulties encountered in applying the Protocol in practice. The goal is to enable Parties to share solutions. Please therefore provide appropriate examples highlighting application of the Protocol in your country and innovative approaches to improve its application.

31. Does your country object to the information on SEA procedures provided in this section being compiled and made available on the website of the Protocol? Please specify (indicate "yes" if you object).

a) Yes ☐

b) No ☒

DOMESTIC AND TRANSBOUNDARY IMPLEMENTATION IN THE PERIOD 2010–2012

32. Which competent authority/authorities are responsible for carrying out the SEA procedure in your country? Please specify.

a) If they are different for different types of plans and programmes ☒

b) If they are different at different levels (national, regional, local) ☒

c) If they are different for domestic and transboundary procedures ☐

d) Please name the responsible authority/authorities:

As explained in the answer to question 7 Germany is a Federal state consisting of 16 States (Länder), all of which have their own SEA legislation and have different governmental structures. SEA applies for a wide range of different plans and programmes carried out at different levels (national, regional, lokal) under the responsibility of a large number of different authorities.

For the following plans and programmes SEA's are carried out under the responsibility of federal authorities:

- Traffic infrastructure plans at Federal level, including requirement plans under a Federal Government traffic infrastructure expansion act (Federal Ministry of Transport, Building and Urban Development),
- Regional planning by the Federal Government pursuant to article 17 paragraphs 2 and 3 of the Regional Planning Act (Federal Ministry of Transport, Building and Urban Development),

- Federal requirement plans pursuant to article 12e of the Federal Energy Act (Federal Network Agency),
- Federal specialist planning pursuant to article 4 and article 5 of the Grid Expansion Acceleration Act (Federal Network Agency),
- National Action Programmes pursuant to article 5 paragraph 1 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, as amended by Regulation Nr. 1137/2008 (Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and Federal Ministry for Food, Agriculture and Consumer Protection),
- Federal offshore grid plan pursuant to article 17a of the Federal Energy Act (Federal Maritime and Hydrographic Agency)
- Waste prevention programmes pursuant to article 33 of the Closed Substance Cycle Act (Federal Ministry for the Environment, Nature Conservation and Nuclear Safety)

However in Germany most SEAs are carried out by authorities on Länder, regional or local level. For example spatial development plans will usually be drawn up by authorities of the Länder. Rural districts and municipalities are responsible for land use plans as well as country and urban development plans.

33. Does your SEA documentation always include a specific (sub)chapter on information on potential transboundary effects? Please specify.

a) Yes ☐

b) No, only when potential transboundary effects are identified X

According to the provisions of the Federal German EIA Act the SEA documentation must not necessarily contain a specific (sub)chapter on information on potential transboundary effects. However in cases where the plan or programme in question is likely to have these effects, the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety recommends the SEA documentation to include a specific chapter or subchapter on this issue.

CASES DURING THE PERIOD 2010-2012

34. If possible, provide the (approximate) number of domestic and transboundary SEA procedures initiated during the given period and list them by referring to the sectors in article 4, paragraph 2.

The German Federal Government has only limited knowledge about the number and details of SEAs, including transboundary SEAs, carried out during the reporting period. As explained above Germany is a Federal state consisting of 16 States (Länder). In most cases authorities of the Länder serve as competent authorities for plans and programmes, requiring a domestic or transboundary SEA (see the answer to question 32). As far as the Federal level is informed, the main sectors in which SEAs have been carried out have been regional development plans, land use plans as well as country and urban development plans.

Due to the number of competent authorities and to Germany's federal structure it is not possible to give a detailed list of SEA procedures carried out in Germany during the reporting period and to subdivide them by the sectors referred to in article 4, paragraph 2. It has to be noted that in Germany there is no central office to which each SEA procedure has to be notified or by which these procedures have to be registered.

EXPERIENCE WITH THE STRATEGIC IMPACT ASSESSMENT PROCEDURE IN 2010-2012

35. If your country has had practical experience in implementing the Protocol, has this supported the integration of environmental, including health, concerns into the development of plans and programmes? Have the conclusions included in the environmental report influenced the drafting and resulted in altering of a plan or programme? Please, provide examples, if you have this information.

In 2008 the German Federal Environment Agency sponsored a detailed study in which the impacts of the Federal EIA Act were evaluated. However, this study concentrated on EIA only because here a lot of practical experience was already available. In the field of SEA things look different. SEA is still a rather young instrument and the range of practical experience is not very broad yet. Therefore it seems too early to give a specified statement on the benefits of SEA in Germany.

From a general point of view, the first overall estimation is that SEA is a useful tool. The environmental report helps to draw the attention to environmental impacts some of which would probably not have been taken into consideration if the plan or programme would have been drawn up without this instrument. A second important factor is that SEA requires participation of the public and involvement of environmental and health authorities. Both factors will probably influence the drafting and facilitate the integration of environmental requirements in the plan or programme.

36. If your country has experienced substantial difficulties interpreting particular terms (or particular articles) in the Protocol, please indicate them. Does your country work together with other Parties to find solutions? If not, how does your country overcome the(se) problem(s)? Please, provide examples, if available.

Basically, as far as the Federal level is informed, there have been no substantial problems or difficulties interpreting particular terms or articles of the Protocol.

According to the German experience the best way to clear open questions of the Protocol and to find common solutions for the practical implementation of transboundary procedures is to work with bilateral agreements:

- Germany and the Netherlands have agreed on a Common Declaration on transboundary EIA and SEA („Gemeinsamen Erklärung über die Zusammenarbeit bei der Durchführung grenzüberschreitender Umweltverträglichkeitsprüfungen sowie grenzüberschreitender Strategischer Umweltprüfungen im deutsch-niederländischen Grenzbereich zwischen dem Ministerium für Infrastruktur und Umwelt der Niederlande und dem Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit der Bundesrepublik Deutschland”, published under <http://www.unece.org/env/eia/resources/agreements.html>).
- Germany and Poland are planning to extend the scope of their bilateral agreement on EIA ("Agreement between Germany and Poland on transboundary EIA of 11 April 2006") in order to include transboundary SEA. Negotiations are at an advanced stage. Both Parties intend the amended agreement to enter into force in 2014.
- An update of the "Guidelines of the German-French-Swiss Governmental Commission for the Upper Rhine River on transboundary participation of authorities and the public on Activities with Environmental Relevance along the Upper Rhine River" has been finalized 2010, including inter alia guidelines on transboundary SEA.

37. Please share with other Parties your country's experience of applying the Protocol in practice, if such information is available. In response to each of the questions below, either provide one or two practical examples or describe your country's general

experience. You might also include examples of lessons learned in order to help others. Please detail:

a) Your country's experience with domestic procedures:

- i. Has your country carried out monitoring according to article 12 and, if so, for what kinds of plans or programmes?

According to article 14m of the German Federal EIA Act (see the answer to question 29) monitoring measures have to be foreseen for all kinds of plans or programmes where significant environmental impacts cannot be excluded.

Examples showing how the monitoring provision will be practically implemented in Germany are the Maritime Spatial Plans for the German Exclusive Economic Zones in the North Sea and in the Baltic Sea which entered into force in September and December 2009. Both plans are published in English language on the following website:
http://www.bsh.de/en/Marine_uses/Spatial_Planning_in_the_German_EEZ/.

A description of the monitoring measures can be found in Chapter 5.2 of the text section of both plans.

- ii. Please provide examples of good practice cases, whether complete cases or good practice elements (e.g., consultation or public participation) within cases. Would your country like to present a case to be published on the website of the Convention and its Protocol as a "case study fact sheet"?

Due to a lack of time and manpower it has not been possible to find out appropriate cases (see also the answer to question 44). Germany will provide examples in the next report.

b) Your country's experience with transboundary procedures:

- i. Translation is not addressed in the Protocol. How has your country addressed the question of translation? What difficulties has your country experienced in relation to translation and interpretation, and what solutions has your country applied?

Translation has proven to be one of the most difficult topics in transboundary EIA and SEA in practice. It is a permanent source of trouble and discussions. Sometimes authorities of the Party of origin have refused to submit translated documents. In other cases the translation submitted has been inadequate for various reasons and not suitable to be used for public participation or consultation of environmental and health authorities. In these cases a proper translation has to be provided by the affected Party which is costly and time-consuming.

Germany strongly recommends that the question of translation should be clearly regulated in bilateral agreements. Where bilateral provisions on translation exist, things have proven to be much easier (see the answer to question 36).

ii. What does your country usually translate as a Party of origin?

As Party of origin Germany with regard to translation usually follows the principles laid down in the bilateral agreements on transboundary EIA and SEA mentioned in the answer to question 36. According to these agreements the following documents should be translated by the Party of origin into the language of the affected Party:

- the notification according to article 10, para. 1 and 2 of the Protocol,
- the summary of the environmental report as well as those parts of the draft plan or draft programme and the environmental report, which are necessary for the affected Party to assess the likely transboundary environmental impacts and to express comments and opinions,
- with regard to maps that are part of a plan or programme design, at least the legend,
- the planning decision and those parts of the summarizing statement according to article 11, para. 2 of the Protocol which are necessary for the affected Party to understand how transboundary environmental effects and the comments and opinions of the affected Party have been taken into consideration,
- other documents prepared by the Party of origin with importance for the procedure, including invitations to consultation meetings and protocols of these meetings,
- the results of a monitoring carried out according to article 12 of the Protocol.

iii. Has your country carried out transboundary public participation according to article 10, paragraph 4? If so, how? Was your country the Party of origin or the affected Party? What has been your country's experience of the effectiveness of public participation? Has your country experienced difficulties with the participation of its public or the public of another Party? (E.g., have there been complaints from the public about the procedure?)

Germany as Party of origin: The German Federal Maritime and Hydrographic Agency has carried out a SEA for the offshore grid plan for the German Exclusive Economic Sea Zone in the North Sea in 2012 and 2013. The procedure for the corresponding offshore grid plan for the Baltic Sea is still ongoing.

Earlier examples (before the reporting period) have been the spatial plans for the German EEZ in the North Sea and in the Baltic Sea (September 2009 and December 2009). In these procedures the Netherlands, UK, Denmark, Sweden and Poland have been involved. The most important documents are published in English language on the following website: http://www.bsh.de/en/Marine_uses/Spatial_Planning_in_the_German_EEZ/.

Although there has not been a detailed evaluation of the experiences gained in these procedures it can be noted that the response of the public in maritime planning procedures seems to be relatively low compared to onshore plans. As concerns the two spatial plans for the EEZ, there was rather little interest in the environment report. Most comments and opinions expressed by the affected Parties concentrated on the contents of the plan.

Germany as affected Party: In the reporting period Germany participated as an affected Party in some transboundary SEAs. The most prominent example is the SEA for the Polish Nuclear Power Programme. The draft of the Polish Nuclear Energy Programm and an abstract of the environmental report were published on the website of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and on the websites of the competent ministries of several Länder for three months. The documents were also displayed in the library of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and in several Länder Ministries. More than 50.000 German citizens and NGOs as well as several German authorities expressed their opinions on the draft.

- iv. Does your country have examples of organizing transboundary SEA procedures for joint cross-border plans and programmes? If yes, describe such examples, if possible.

As far as the Federal level is informed, in the reporting period Germany has not been involved in transboundary SEA procedures for joint cross-border plans and programmes.

- v. Please provide examples of good practice cases, whether complete cases or good practice elements (e.g., consultation or public participation) within cases. Would your country like to present a case within a “case study fact sheet” to be published on the website of the Convention and its Protocol?

The above mentioned procedure for the offshore grid plan for the German Exclusive Economic Sea Zone in the North Sea (see question 37 b iii) may be regarded as good practice case. The Espoo Focal Points were notified at the same time as the German authorities and invited to participate already in the scoping phase (see the answer to question 22). An overview of the procedure can be found (however in German language only) under the following link:

http://www.bsh.de/de/Meeresnutzung/BFO/Bundesfachplan_Nordsee.jsp

The main documents including the final offshore grid plan can also be downloaded from this website. The final offshore grid plan contains among others a more detailed description of the planning and SEA procedure.

COOPERATION BETWEEN PARTIES IN 2010–2012

38. Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries?

In the view of the Federal German Government bilateral agreements and other arrangements with neighbouring countries are the best way to overcome difficulties arising from different legal systems.

EXPERIENCE REGARDING GUIDANCE IN 2010–2012

39. Are you aware of any use in your country of the Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment available online¹? If yes, please describe any experience with using this guidance document and how it might be improved or supplemented.

Germany regards the SEA Resource Manual as a helpful source of information from an international point of view, especially as concerns expert work. However, for the practical implementation of SEA in Germany the national Guideline mentioned in question 40 may be more important as it is especially designed for the needs of authorities and other actors involved in German SEA procedures.

40. Do you provide any assistance and guidance to the public? If yes, please specify.

The German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the Federal Environment Agency have published a guideline „Carrying Out SEA“ in an extensive and a shorter version. The documents are online available (only in German language) under:

http://www.bmu.de/fileadmin/bmu-import/files/pdfs/allgemein/application/pdf/sup_leitfaden_lang_bf.pdf

http://www.bmu.de/fileadmin/bmu-import/files/pdfs/allgemein/application/pdf/sup_leitfaden_kurz_bf.pdf.

41. Do you support associations, organizations or other groups that promote the Protocol? If yes, please specify which and how.

The German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the Federal Environment Agency have inter alia regularly provided financial support to the biannual congress of the German EIA Assoziation. The congress addresses questions of EIA and SEA and is thus a main promoter to spread new knowledge on legal and methodological issues. The EIA Association comprises about 550 members from consultants, universities and authorities - mainly from Germany and Austria.

42. Has your country had difficulties implementing the procedure defined in the Protocol?

No.

AWARENESS OF THE PROTOCOL

43. Does your country see a need to improve the application of the Protocol in your country and, if so, how does it intend to do so?

Questions of application arising in the ongoing procedures are continuously discussed with the competent authorities and, where transboundary procedures are concerned, with the affected Parties in order to improve the practical implementation of SEA. So far the Federal German Government has not identified any serious shortcomings that may require fundamental action. However, as already pointed out in the answer to question 35, SEA is still a rather young instrument and the range of practical experience is not very broad yet. When more practical experience will be available it should be considered to carry out an evaluation study (like the one we had for EIA in 2008). According to the findings of this study

¹ http://www.unece.org/env/eia/pubs/sea_manual.html

it will then have to be decided if additional measures to improve the application will be required.

SUGGESTED IMPROVEMENTS TO THE REPORT

44. Please provide suggestions for how this report may be improved.

It should be considered to review and shorten Part two (Practical Application) of the questionnaire. SEA applies for a wide range of different plans and programmes carried out at different levels (national, regional, lokal) under the responsibility of a large number of different authorities. Against this background and bearing in mind the federal structure of Germany it would take weeks or months to assemble detailed and specified information on the procedures carried out during the reporting period and to find out appropriate examples to be presented in the report. We have doubts if the benefit the answers to the questions of Part two of the questionnaire may offer is worth the effort.

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