

Questionnaire for the

REPORT OF **Denmark** 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

Information on the focal point for the Protocol

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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: x
- c) No (please provide the definition):
- d) There are no definitions of plans and programmes in the legislation ☐

Your comments: The wording is slightly different. The content of the definition is the same

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 ☐x

Your comments: The definition is contained in describing the purpose and frame of the law, which is similar to the content of art. 2, paragraph 5 of the Protocol.

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: x
- 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 ☐X

Your comments: Everybody can take part in the public procedure.

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).

- a) Law on SEA (please indicate number/year/name): number 936 of 24 September 2009
- b) SEA provisions are transposed into another law(s) (please specify):
- c) Regulation (please indicate number/year/name): Regulation on affected authorities and of public participation according to law on SEA number 1102 of 20 November 2009. Regulation on tasks and capacity for the Nature Agency § 29 number 1411 of 8 December 2010.
- d) Administrative (please indicate number/year/name): Guidance on SEA number 9664 of 18 June 2006. Guidance on assessment analysis, 2005 (guidance for assessments of law- and other government proposals)
- e) Other (please specify): Circular from Prime Minister's Office on comments to law proposals and other government proposals and of the making of law- and other proposals, number 159 of 16/09/1998. Collection of examples on SEA, 2007

Your comments:

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).

- a) Constitution ☐
- b) Law on public participation (please indicate number/year/name): Number 572 af 19 December 1985, Law on public participation on Environmental Issues number 660 of 14 June 2006, Law on public administration number 988 of 9 October 2012
- c) Law on SEA x☐
- d) Legislation which transposes the Protocol on SEA (please indicate number/year/name):
- e) 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):
- f) Other (please, specify):

Your comments:

Article 4 – Field of application

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

Same as the protocol

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

When these plans or programs are made or decided by a state , regional or municipal authority or are developed for lawprocedure in the Parliament, or made on administrative authority basis, and set out the framework for future activities that are likely to have a significant impact on the environment. Activities in annex 3 and 4 to the Law on SEA set outs activites as in the Protocols annex that are considered to have a significant impact on the invironment.

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.

When the plans and programmes determine small areas at local level, it has to be determined whether these plans and programmes are likely to have a significant impact on the environment. If this is the case, they shall follow the same assessment procedure as other plans and programs. The criteria for determining the likely significant environmental effects are found in the Law on SEA, annex 2 and follows the principles in annex III of the Protocol. Affected authorities must be consulted before final decision is made.

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

If the modification is likely to have a significant impact on the environment it is not considered minor. If it is decided that there is no SEA this has to be published and explained to the public, also regarding the possibility to redress and how. This has to be done before the final decision is made.

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) X☐
- d) Other (please specify):

Your comments:

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.

The criteria for determining the likely significant environmental effects are found in the Law on SEA, annex 2 and follows the principles in annex III of the Protocol. Affected authorities must be consulted before final decision is made.

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 X☐
- b) By sending written comments to the local municipality X☐
- c) By providing answers to a questionnaire ☐
- d) By taking part in a public hearing X☐
- e) There are no opportunities for public participation in screening and/or scoping ☐
- f) Other (please specify):

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)?

If there is going to be a SEA the public will be notified about the decision. If it is decided that there is no SEA this has to be published and explained to the public, also regarding the possibility to redress and how. This has to be done before the final decision is made.

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): Also using comments from possible affected other states

Your comments:

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:

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 ☒X
- c) By other means (please specify):
- 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:

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): At least 8 weeks
- b) No, the time frame is given by a number of days for each commenting period ☐
- c) No, it is defined case by case ☐
- d) Other (please, specify):

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: The notification will take place at the same time as the national notification.

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:

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): The same time frame as the national time frame: At least 8 weeks. If there is a public holiday or other things, that would cause the affected party to require more time, this can be given, but as a main rule the time frames nationally and for the affected parties are the same.
- b) No ☐

Your comments:

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 ☐
- b) Following those of the affected Party ☐
- c) Other (please specify): The consultations are agreed case by case between the relevant authorities in both the affected party and the party of origin.

Your comments:

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 ☒X
- b) Mitigation measures ☐X
- c) Comments received in accordance with articles 8 to 10 ☒X

Your comments: The competent authority takes a)-c) into account in the final decision

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

The procedure is the same for the national and the transboundary issues also regarding the timeframe. At the same time, the competent authority shall make the final decision available to the public. Nationally through informing in relevant local, regional and national papers or magazines in the possible affected area and on the home page of the public authority. The national competent authority informs the relevant authorities in possible affected states who decides the form of publication in its own state. There will often be a cooperation about this between the authorities.

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 ☐X
- d) Other (please, specify):

Your comments:

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).

It is the same as art 12.

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):

b) No ☐X

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 ☐X

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 ☐X

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

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

d) Please name the responsible authority/authorities: Danish Ministry of Climate, Energy and Building, Danish Ministry of Transport, Danish Ministry of the Environment, Municipalities and other authorities

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

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.

We have a great number of national SEAs in the different sectors listed in art. 4 para 2, but it is not possible for us to have an overview, as different public sectors are competent authorities for different sectors, that is there is no "over all" unit. We do, though, have a list of the SEA cases with transboundary issues.

We estimate that there are about 200 domestic SEAs per year.

Transboundary cases:

Denmark as affected party:

German Offshore Grid Plan in the Baltic Sea

National Water Plan offshore in respect of offshore Wind Energy (The Netherlands)

Plan for offshore Wind Energy in the North Sea (Norway)

Offshore Grid Plan for the German EEZ

Sectoral Marine Plan for Wave and Tidal Energy in Scotland's Renewable Energy Zone

Strategic environmental assessment report for the Polish nuclear power plants

Denmark as Part of origin:

SEA for Geothermal Energy - exploration and extraction of geothermal energy.

SEA for exploration and production of oil and gas and injection of CO₂ in existing oil and gas fields in the North Sea.

SEA for wind farms on shore

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.

Yes, it has supported the integration. Denmark has an example of planning for wind farms (SEA) where it turned out during the SEA-procedure, that one location was excluded because of noise problems.

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.

No substantial difficulties so far.

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?

The monitoring is standard procedure.

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”?

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?

The translation is dealt with case by case. In our neighbour countries Sweden and Norway, there is no need for translation as we all speak Scandinavian languages which are understandable for each other.

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

If there is transboundary issues there will be a summary of the SEA report in English with focus on the transboundary issues. Depending on the case and the dialog with and wishes from the possible affected country there might also be a translation into the affected country's national language.

- 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?)

Yes, if there are transboundary issues there will always be given the possibility to have a consultation according to article 10 para 4. This possibility will typically be included in the notification letter that Denmark send out as Party of origin. If the affected party wants to participate the details about the meeting will be arranged in dialog with the affected party (point of contact and relevant authorities in both countries) The experience with Denmark as Party of origin has been positive so far. In one resent case Denmark has received a great number of comments from the public in the affected Party. It also happens that there is no interest from the affected Party (-ies). Denmark has also participated as Affected Party. This has generally been a positive experience, too. There have in at least one case been some difficulties schedualling the consultation meeting, the process of finding a day lasted about half a year. Denmark has not yet experience complaints about the procedure from the public either as an affected Party nor as a Party of origin.

- 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.

No

- 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?

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?

So far we have only had this experience regarding EIAs

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.

We have no indication of who uses it or which part.

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

Yes we have a Danish guidance on SEA. The responsible authorities also provide learning sessions for other relevant stakeholders. The public and other stakeholders are informed of SEA when they contact the relevant authorities to ask about general or specific SEA .

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

See answer to question 40.

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?

Case by case the practise will improve and this will be reflected in the national procedures. New themes for SEA develop and therefor calls for adopted practise.

SUGGESTED IMPROVEMENTS TO THE REPORT

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

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

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