

Questionnaire for the report of Germany on the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context in the period 2016–2018

Information on the focal point for the Convention

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Part one

Current legal and administrative framework for the implementation of the Convention

In this part, please provide the information requested, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should describe the framework for your country's implementation, and not experience in the application of the Convention.

Please do not reproduce the text of the legislation itself but summarize and explicitly refer to the relevant provisions transposing the Convention text (e.g., EIA Law of the Republic of ..., art. 5, para. 3, of Government Resolution No. ..., para. ... item...)

Article 1 Definitions

I.1. Is the definition of impact for the purpose of the Convention the same in your legislation as in article 1?:

- (a) **Yes x**
- (b) Yes, with some differences (please provide details):
- (c) No (please provide the definition):
- (d) There are no definitions of impact in the legislation

Your comments:

I.2. Is the definition of transboundary impact for the purpose of the Convention the same in your legislation as in article 1? Please specify each below.

- (a) **Yes x**
- (b) Yes, with some differences (please provide details):
- (c) No (please provide the definition):
- (d) There are no definitions of transboundary impact in the legislation

Your comments:

I.3. Please specify how major change is defined in your national legislation:

According to German Law a change, including the expansion of a project, has to be considered major, if

- 1. the change itself reaches or exceeds the size or capacity values for an unconditional EIA obligation, or*
- 2. a case by case examination (screening) reveals that the change may cause additional significant adverse environmental effects.*

(see inter alia section 9 para. 1 and 2 of the German Federal EIA Act)

I.4. How do you identify the public concerned? Please specify (more than one option may apply):

- (a) **Based on the geographical location of the proposed project x**

(b) By making the information available to all members of the public and letting them identify themselves as the public concerned

(c) By other means (please specify):

According to section 2 para. 9 of the German Federal EIA Act the “public concerned” refers to any individual whose interests are affected by an approval decision; this also includes associations whose activities as described in their statutes are affected by an approval decision, including associations that promote environmental protection.

Your comments:

Article 2

General provisions

I.5. Provide legislative, regulatory, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2, para. 2):

(a) **Law on EIA: x**

(b) **EIA provisions are transposed into another law(s) (please specify): x**

(c) Regulation (please indicate number/year/name):

(d) Administrative (please indicate number/year/name):

(e) Other (please specify):

Your comments: *In Germany the most important legislative acts on EIA, including transboundary EIA, are as follows:*

- *German Federal EIA Act, implementing inter alia the provisions of the Espoo Convention, including its two amendments as well as the provisions of the EIA-Directive 2011/92/EU. The German Federal EIA Act was last amended by article 2 of the Act of 8 September 2017 (Federal Law Gazette I p. 3370) implementing the provisions of the EIA-Directive 2014/52/EU.*
- *Ratification Act for the Espoo Convention and its first amendment, published on 17 June 2002 (Federal Law Gazette II p. 1406);*
- *Ratification Act for the second amendment of the Espoo Convention, published on 17 March 2006 (Federal Law Gazette II p. 224).*

Environmental impact assessments are integrated into the procedures applied for the approval of projects. Against this background specific or additional provisions on EIA can also be found in the legislation dealing with procedural and substantial licensing requirements for projects such as the Federal Building Code, the Federal Mining Act and various Acts including provisions on the authorisation of industrial installations and infrastructural projects.

As Germany is a federal state, additional provisions on EIA can also be found in the legislation of the 16 German States (Länder).

I.6. Please describe any differences between the list of activities in your national legislation and appendix I to the Convention, if any:

(a) **There is no difference, all activities are transposed in the national legislation as is x**

(b) It differs slightly (please specify):

Your comments:

I.7. Identify the competent authority/authorities responsible for carrying out the EIA procedure in your country (please specify):

- (a) **There are different authorities at national, regional, local levels x**
- (b) They are different for domestic and transboundary procedures
- (c) Please name the responsible authority/authorities:
- (d) There is no single authority responsible for the entire EIA procedure:

Your comments: *In Germany the competent authority for the approval procedure is at the same time responsible for the domestic EIA and for the transboundary EIA procedure.*

Environmental impact assessments represent an integral part of the procedures carried out for the approval of projects. In most cases, particularly as regards industrial installations, authorities of the German States (Länder) are responsible for these procedures. For infrastructural projects there has been a growing tendency over the last years to move the competence from the Länder to federal authorities.

According to the German Federal EIA Act, transboundary EIA procedures are combined with domestic EIAs. The authority responsible for the approval of projects (licensing authority) is thus also responsible for the transboundary EIA including notification. Where transboundary EIA falls within the competence of authorities of the German States (Länder) federal Ministries will usually not be involved. Nevertheless, the national German focal point for the Convention which is situated at the Federal German Ministry for the Environment stands ready to give support also in transboundary EIA procedures carried out by Länder authorities.

According to section 55 para 5 of the German Federal EIA Act Federal Ministries may also participate in consultations (Article 5 of the Convention) irrespective of whether the case falls within the competence of federal or Länder authorities. The reason behind this provision is that consultations in transboundary EIA procedures may also touch issues within the competence of the Federal Government, notably the external relations of Germany to other countries.

If Germany is the affected Party, the authority that would be responsible for a similar project in Germany will be responsible for the transboundary EIA procedure carried out by the other Party, including the decision on whether Germany wishes to participate.

Remark: According to the German constitution ('Basic Law') Germany is a federal state. Tasks and competences are distributed between the Federal level and the German States (Länder). As a general rule the German States and their authorities on the local, regional and superior level are inter alia competent for the practical application and enforcement of federal legislation. Only in some sectors federal law will be executed by federal authorities. Following this system, approval procedures for projects and activities including an integrated EIA are predominantly carried out by authorities of the German States on the local, regional and superior level. The Federal Ministry on the Environment is informed about the way the legislation on EIA, including transboundary EIA, is applied in general, but it is usually not involved in the individual procedures carried out by Länder authorities.

I.8. Is there an authority in your country that collects information on all the transboundary EIA cases? If so, please name it:

- (a) **No**
- (b) Yes (please specify):

Your comments:

I.9. How does your country, as a Party of origin and as an affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to the Party of origin's public, as required in article 2, paragraph 6 (please explain):

It is one of the basic underlying principles of the German provisions on transboundary EIA that the public of the affected Party must have the same opportunities to participate as the public of the Party of origin. This principle is laid down in several provisions of the German Federal EIA Act as well as in bilateral agreements with Poland and the Netherlands. In detail, it is enacted through the following provisions and practices:

- *Section 56 para. 1 of the German Federal EIA Act generally states that the public of the affected State may participate in the transboundary EIA procedure following the same provisions that apply for the domestic public. According to section 56 para 2 of the German Federal EIA Act, the competent German authority has to use its best efforts to ensure that the project is announced in the affected State in a suitable manner and that the public in the affected State is informed of all aspects of the procedure relevant to provide for an effective participation.*
- *Similar provisions can be found in the bilateral agreements mentioned above. Article 5 para 1 of the bilateral German-Polish Agreement¹, for instance, stipulates that the public of the affected Party may submit its comments within the same period of time which applies for the public of the Party of origin. Furthermore this provision refers to the documents and information which have to be published by the affected State in order to enable an effective participation of its public. In order to ensure that the public of the affected State will be informed sufficiently, the competent authority of the affected Party has to inform the Party of origin when the documents in question have been displayed. Article 5 para 3 of the Agreement clarifies that the public of the affected Party is entitled to participate in public hearings carried out by the Party of origin for the project in question and that the affected Party has the obligation to inform its public on the date and venue of such hearings.*
- *In accordance with the German-Dutch Declaration, the competent authorities of both countries have to agree on the details of the participation procedure taking into account the domestic legal provisions of the State of origin as to how the participation procedure has to be carried out. This may also include the question of how the project will be announced in the affected State.*
- *According to section 55 para 2 of the German Federal EIA Act as well as the bilateral agreements mentioned above the notification, at least the summary of the EIA documentation and other information relevant to the transboundary EIA have to be translated into the language of the affected Party. This also includes any information required by the affected Party to assess whether significant adverse transboundary environmental impacts may occur and to submit comments effectively. In cases in which Germany is State of origin the competent*

¹ Where provisions of the German-Polish Agreement are mentioned in our answers the text already refers to the new Agreement signed 2018 (see the answer to question I.30)

German authority may require the developer to provide translation of the documents.

- *The public concerned of the affected Party may submit its comments in its own language (section 56 para. 4 of the German Federal EIA Act, also included in bilateral agreements). It has to be ensured that objecting parties of the affected State can make themselves understood in their own language at hearings (for instance by interpreters provided by the Party of origin)*
- *According to section 57 of the Federal German EIA Act and similar provisions in the aforementioned bilateral agreements Germany as Party of origin has to submit the final decision to the affected Party not only in German language. Translation into the language of the affected Party is necessary at least for those parts of the final decision which are required by the affected Party to explore in which way significant adverse transboundary effects likely to occur have been taken into account and how comments and opinions submitted by authorities and the public of the affected States have been considered. Furthermore translation must include an advice on applicable legal remedies.*

Article 3 Notification

I.10. As a Party of origin, when do you notify the affected Party (art. 3, para. 1)? Please specify:

- (a) **During scoping (if possible before scoping) x**
- (b) When the EIA report has been prepared and the domestic procedure started
- (c) After finishing the domestic procedure
- (d) At other times (please specify):

Your comments: *In accordance with section 54, para 1, of the German Federal EIA Act, the State which might be affected is to be informed of the project "at an early stage". The authorities of the affected State shall be given an opportunity to make a statement at the same time and to the same extent as the German authorities (section 55 para. 4 of the German Federal EIA Act).*

Authorities in Germany try to notify affected Parties as early as possible in order to enable their involvement already in the scoping phase. Germany considers this as good practice.

I.11. Please define the format of notification:

- (a) It is the format as decided by the first meeting of the Parties in its decision I/4 (ECE/MP.EIA/2, annex IV, appendix)
- (b) The country has its own format (please attach a copy)
- (c) **No official format used x**

Your comments:

The competent authority in Germany may use any notification format that fulfils the requirements of the Convention, taking into account the proposed guidelines in the report of the first meeting of the Parties. However, in relation to Poland and the Netherlands bilateral agreements recommend to use specific formats for notification.

I.12. As a Party of origin, what information do you include in the notification (art. 3, para. 2)? Please specify (more than one options may apply):

- (a) **The information required by article 3, paragraph 2 x**
- (b) **The information required by article 3, paragraph 5 x (in some cases, not obligatory)**
- (c) Additional information (please specify):

Your comments: *In accordance with section 54 para. 1 of the German Federal EIA Act, the state possibly affected is to be informed by using suitable documentation. As a minimum this includes the information specified in art. 3 para. 2 of the Convention. The documents may derive from the information submitted by the applicant for the scoping or from the project approval application..*

According to Article 3 para. 1 of the German-Polish Agreement, information is to be provided in accordance with Art. 3 para. 2 of the Espoo Convention. According to Article 3 para. 6 of the German-Polish Agreement notification may also include the

information required by Article 3 para. 5 of the Espoo Convention as well as a list of those authorities of the State of origin which will participate in the EIA procedure.

I.13. As a Party of origin, does your national legislation contain any provision on receiving a response to the notification from the affected Party in a reasonable time frame (art. 3, para. 3, “within the time specified in the notification”)? Please specify:

(a) National legislation does not cover the time frame

(b) **Yes, it is indicated in the national legislation x** (please indicate the time frame): *Section 54 para 4 of the German Federal EIA Act requires the competent authority to set an “appropriate time frame” but it does not determine a specific number of days or weeks as being appropriate. The time frame may be specified in bilateral or multilateral agreements. E.g. Article 3 para 4 of the German-Polish Agreement indicates a time frame of 30 days.*

(c) **It is determined and agreed with each affected Party case by case in the beginning of the transboundary consultations** (please indicate the average length in weeks):

Your comments: *The time frame of 30 days established in the German-Polish Agreement is often used also in other transboundary EIA procedures as a guideline to determine a reasonable time frame.*

Please specify the consequence if a notified affected Party does not comply with the time frame, and the possibility of extending a deadline:

If an affected Party does not comply with the time frame, the competent German authority, despite of Article 3 para. 4 of the Convention, has to decide whether the deadline will be extended in order to allow a transboundary EIA procedure to be carried out. Germany regards it as good practice to grant an extension of the time frame at least in cases in which no significant delay of the approval procedure will have to be expected.

I.14. How do you inform the public and authorities of the affected Party (art. 3, para. 8)? Please specify:

(a) **By informing the point of contact to the Convention listed on the Convention website² x**

(b) **Other (please specify): x**

Your comments: *Both the Party of origin as well as the affected Party have to ensure in close cooperation that the authorities and the public of the affected Party will be informed of the project in question so as to give them the opportunity to express comments or objections effectively.*

According to section 55 para 1 of the German Federal EIA Act the competent German authority has to submit the required information to the authorities concerned of the affected State. For this purpose it is necessary for the competent authority of the affected State to clarify and inform the competent German authority which authorities of the affected State should be involved in the procedure and receive the documents. If these authorities are not known to the competent German authority the documents will have to be sent to the point of contact of the affected State.

According to Section 56 para. 2 of the German Federal EIA Act the competent German authority has to use its best efforts to ensure that the project will be announced to the public of the affected State in a suitable manner so that the public of the affected State will have access to all the information required for effective participation. The German authority has to verify whether the project has been announced properly and sufficient information and access to the relevant documents have been provided for the public of the affected state. Usually the competent German authority will put this obligation to practice by sending the information and the documents to the competent authority of the affected State. The competent authority of the affected State will then in cooperation with the competent German authority inform its public and ensure that the documents will be displayed for inspection or published at least on the internet.

I.15. On what basis is the decision made to participate (or not) in the transboundary EIA procedure as an affected Party (art. 3, para. 3)? Please specify:

(a) Notified ministry/authority of the affected Party responsible for EIA decides on its own based on the documentation provided by the Party of origin

(b) **Based on the opinions of the competent authorities of the affected Party x**

(c) Based on the opinions of the competent authorities and that of the public of the affected Party

(d) Other (please specify):

Your comments: *The competent German authority has to decide whether Germany as a potentially affected Party will participate in a transboundary EIA procedure or not. The decision to participate must be based on the conclusion that the proposed activity may have significant adverse transboundary impacts on the environment in Germany.*

According to section 58 para. 5 of the German Federal EIA Act the competent authority in Germany is the authority that would be responsible for a similar project in Germany. Before taking its decision the competent authority will "screen" the submitted information taking into account the same criteria that would apply if the

² List available from http://www.unece.org/env/eia/points_of_contact.htm.

proposed activity would be realised under German legislation. "Screening" will usually be done by using the competent authority's own expertise. In complex or complicated cases other authorities or experts will be consulted.

I.16. If the affected Party has indicated that it intends to participate in the EIA procedure, how are the details for such participation agreed, including the time frame for consultations and the deadline for commenting (art. 5)? Please specify:

- (a) **Following the rules and procedures of the Party of origin**
- (b) Following the rules and procedures of the affected Party
- (c) **Other (please specify): Art. 7 of the German-Polish Agreement**

Your comments:

Section 55 para 4 and section 56 para 1 of the German Federal EIA Act stipulate that the provisions on participation of authorities and participation of the public which apply in domestic EIA procedures also apply in transboundary EIA procedures. As a consequence the authorities concerned and the public of the affected State have the same timeframes for submitting comments as German authorities and the German public. As regards consultations (article 5 of the Convention), according to section 55 para 5 of the German Federal EIA Act an appropriate time frame has to be agreed between the competent German authority and the affected state (see also our answer to question I.23 below).

Different from the German Federal EIA Act the bilateral German-Polish Agreement includes some specific provisions on time frames offering more flexibility by a case by case approach.

Articles 3.8 and 4.2

Public participation

I.17. How can the public express its opinion on the EIA documentation of the proposed project (art. 5)? Please specify (more than one option may apply):

As a Party of origin

- (a) **By sending comments to the competent authority/focal point**
- (b) **By taking part in a public hearing**
- (c) Other (please specify):

As an affected Party

- (d) **By sending comments to the competent authority/focal point**
- (e) **By taking part in a public hearing**
- (f) Other (please specify):

Your comments:

Where Germany is Party of origin, the legal requirements for participation of the German public equally apply to the public of an affected State (section 56 para. 1 of the German Federal EIA Act).

According to our legal understanding the same principle shall apply where Germany is an affected Party. Consequently the German public must be entitled to participate

according to the rules and conditions laid down in the legislation of the Party of origin for participation of its own public.

I.18. Please indicate whether your national EIA legislation requires the organization of a public hearing on the territory of the affected Party in cases where your country is the country of origin:

(a) Yes

(b) **No x**

Your comments: *The public of the affected State can participate in the same way as the German public (see Question I.17 above). It also has the right to participate in public hearings. These hearings usually take place in Germany. There is no legal obligation for the competent authority to organize specific hearings on the territory of an affected Party.*

According to Article 21 para 5 of German-Polish Agreement the Party of origin has to provide for translation in public hearings to ensure that participants from an affected State will be able to follow the discussion and raise their voice. Although there is no explicit similar provision in the German Federal EIA Act translation in public hearings is general practice in transboundary impact procedures in Germany.

I.19. Please indicate whether your national EIA legislation requires the organization of public hearings in cases where your country is the affected Party:

(a) Yes

(b) **No x**

Your comments: *There is no legal obligation in German law to organize a public hearing in such cases. A public hearing on German territory will therefore only take place if the legislation of the Party of origin requires it to be carried out or if the Party of origin voluntarily offers to do so. In the past there have been public hearings in Germany in cases in which Germany was the affected party, organized by the party of origin (e.g. Hungary and Slovakia).*

Article 4

Preparation of the environmental impact assessment documentation

I.20. How do you ensure sufficient quality of the EIA documentation as a Party of origin? Please specify:

(a) **The competent authority checks the information provided and ensures it includes all information required under appendix II as a minimum before making it available for comments x**

(b) By using quality checklists

(c) **There are no specific procedures or mechanisms X**

(d) Other (please specify):

Your comments: *According to section 16 para 7 of the German Federal EIA Act, the competent authority has to ask the developer for improvements if the EIA documentation does not fulfil the requirements.*

I.21. How do you determine the relevant information to be included in the EIA documentation in accordance with article 4, paragraph 1? Please specify (more than one option may apply):

- (a) **By using appendix II x**
- (b) **By using the comments received from the authorities concerned during the scoping phase, if applicable x**
- (c) **By using the comments from members of the public during the scoping phase, if applicable x**
- (d) As determined by the proponent based on its own expertise
- (e) By using other means (please specify):

Your comments:

I.22. How do you determine “reasonable alternatives” in accordance with appendix II, paragraph (b)?

- (a) **On a case-by-case basis x**
- (b) As defined in the national legislation (please specify):
- (c) Other (please specify):

Your comments: *According to section 16 para. 1 of the German Federal EIA Act the EIA report shall contain information on the reasonable alternatives which are relevant to the project and its specific characteristics and have been considered by the developer. The German Federal EIA Act itself does not establish an obligation for the developer to consider alternatives to the project. In Germany the question of whether and to which extent alternatives have to be taken into account by the proponent is part of the legislation regulating the licensing requirements for projects. The obligation to explore reasonable alternatives thus depends on the type of project in question and on the specific legal requirements for its approval.*

Alternatives to be addressed in the EIA documentation should be discussed with the proponent in the scoping phase.

The term “alternatives” is open to include alternative technical solutions as well as alternative locations. For infrastructural projects (e.g. roads, railways, electric power grid) the range of “reasonable” alternatives studied by the developer will often be broader than in cases of industrial installations. It also has to be considered that some options – especially alternatives with regard to the location of the project – may already have been assessed in previous planning procedures requiring an SEA. In order to avoid duplication of work it may not be reasonable to reassess these alternatives within the framework of the following EIA.

Article 5

Consultations on the basis of the environmental impact assessment documentation

I.23. Does your national EIA legislation have any provision on the organization of transboundary consultations between the authorities of the concerned Parties? Please specify:

- (a) **Yes, it is obligatory x**
- (b) No, it does not have any provision on that
- (c) It is optional (please specify):

Your comments: *According to Section 55 para. 5 of the German Federal EIA Act, the competent highest federal and Land authorities shall, within an agreed reasonable period of time, hold consultations with the other state, in particular about the transboundary environmental effects of the project and the measures to avoid or reduce them. Consultations may also be carried out by an appropriate body comprising representatives of the competent highest federal and Land authorities and representatives of the other state.*

In most cases the development consent authority and other authorities concerned will also participate in the consultations. Third parties including NGOs may on a case by case basis be involved where appropriate.

Article 5 of the Convention requires the Party of origin to enter into consultations with the affected Party without undue delay after completion of the EIA documentation. In practice, however, it has proven to be more effective if consultations will be carried out not until the affected Party asks for them after having submitted its comments on the EIA documentation. The Parties then have to agree on a reasonable time frame, taking into account on a case by case basis, inter alia, the legal framework of the approval procedure in which the EIA is integrated, the nature of the significant transboundary impacts in question and the comments submitted by the affected Party.

Consultations will not be required, if the affected Party indicates - in its comments on the EIA documentation or separately - that there is no need for consultations or if it does not react to an offer by the Party of origin to enter into consultations. Where consultations have already been agreed, the Parties may later on cancel them, if the issues at stake have already been settled by other forms of exchange.

Consultations will usually be held by discussing the issues at stake in a meeting sometimes also followed by an exchange of written communication.

Article 6

Final decision

I.24. Please indicate all points below that are covered in a final decision related to the implementation of the planned activity (art. 6, para. 1):

- (a) **Conclusions of the EIA documentation x**
- (b) **Comments received in accordance with article 3, paragraph 8, and article 4, paragraph 2 x**
- (c) **Outcome of the consultations as referred to in article 5 x**
- (d) **Outcomes of the transboundary consultations x**
- (e) **Comments received from the affected Party x**
- (f) **Mitigation measures x**
- (g) **Other (please specify):** *a reasoned conclusion by the competent authority on the significant effects of the project to the environment including transboundary effects, taking into account the outcomes of the transboundary consultations.*

I.25. Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and the public in your country (art. 6, para. 1)?:

(a) **Yes x**

(b) No

Your comments:

I.26. Is there any regulation in the national legislation of your country that ensures the implementation of the provisions of article 6, paragraph 3?:

(a) **No x**

(b) Yes (please specify):

Your comments: *There is no specific provision in German EIA legislation implementing article 6, para. 3 of the Convention. However, the German Administrative Procedures Act contains general provisions according to which the competent authority may, under certain conditions, withdraw an approval decision if new or additional information becomes available that could have materially affected that decision.*

I.27. Do all activities listed in appendix I (items 1-22) require a final decision to authorize or undertake such an activity?:

(a) **Yes x**

(b) No (please specify those that do not):

Your comments:

I.28. For each type of activity listed in appendix I that does require a final decision, please indicate the legal requirements in your country that identify what is regarded as the “final decision” to authorize or undertake such an activity (art. 6 in conjunction with art. 2, para. 3), and the term used in the national legislation to indicate the final decision in the original language:

Your comments:

According to section 2 para. 6 of the German Federal EIA Act the term “decision” comprises any official decision on the approval of projects that is made by authorities within the framework of an administrative procedure.

Article 7

Post-project analysis

I.29. Is there any provision regarding post-project analysis in your national EIA legislation (art. 7, para. 1)?:

(a) No

(b) **Yes X** (please specify the main steps to be taken and how the results of it are communicated):

Your comments: *The German Federal EIA Act includes no specific provisions on post project analysis in a transboundary context. However, according to section 28 para 1 of the German Federal EIA Act the competent authority shall take appropriate monitoring measures to review compliance with the environment-related provisions of the approval decision, in particular the characteristics of the project and of the location specified in the approval decision as well as the measures envisaged to avoid,*

reduce or offset significant adverse environmental effects and the substitution measures for interventions in nature and landscape. According to section 28 para 2 of the German Federal EIA Act the competent authority shall also monitor significant adverse environmental effects, if the effects of the project are difficult to predict or the effectiveness of measures envisaged to avoid, reduce or offset significant environmental effects or the effectiveness of substitution measures is uncertain.

These provisions do not focus on certain monitoring measures and they do not establish specific procedural requirements or a fixed time frame for monitoring. The appropriate steps to be taken have to be determined by the competent authority case by case based on the characteristics of the particular project or activity in question. Within this framework the competent authority will also have to consider whether an affected Party has requested to carry out a post project analysis with regard to transboundary effects.

Article 10 of the bilateral German-Polish Agreement contains a specific provision on post-project analysis which explicitly refers to Article 7 of the Convention. According to this provision the Parties may determine by agreement that an analysis subsequent to the implementation of the project will be carried out, provided that the decision on the planned project or domestic legal provisions allow so.

Article 8

Bilateral and multilateral cooperation

(a) Agreements

I.30. Does your country have any bilateral or multilateral agreements based on the Convention (art. 8, appendix VI)?:

(a) No

(b) **Yes x** Please specify with which countries:

Germany has two bilateral agreements and a trilateral agreement containing provisions on transboundary environmental impact assessment:

- Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Poland on Environmental Impact Assessment in a Transboundary Context (2006). In the meantime the German-polish agreement has been re-negotiated successfully. The new agreement, which also covers transboundary SEA was signed in 2018. It has already been ratified by Germany. In Poland ratification is under way and will soon be finalized. The new agreement will come into force 60 days after both Parties have informed each other that the respective domestic requirements are fulfilled. Informally, the new provisions are already taken into account by the competent Polish and German authorities in transboundary procedures as far as possible.

- Joint Declaration on Cooperation in the Implementation of Transboundary Environmental Impact Assessment as well as Transboundary Strategic Environmental Assessment in the German-Dutch Border Area between the Ministry of Infrastructure and the Environment of the Netherlands and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety of the Federal Republic of Germany (2014)

- *Guideline of the Franco-German-Swiss Conference of the Upper Rhine on Transboundary Participation for Projects, Plans and Programmes with an Environmental Relevance (2016)*

If publicly available, please also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.

I.31. What issues do these bilateral agreements cover (appendix VI)? (More than one option may apply):

- (a) Specific conditions of the subregion concerned
- (b) **Institutional, administrative and other arrangements**
- (c) Harmonization of the Parties' policies and measures
- (d) Developing, improving, and/or harmonizing methods for the identification, measurement, prediction and assessment of impacts, and for post-project analysis
- (e) Developing and/or improving methods and programmes for the collection, analysis, storage and timely dissemination of comparable data regarding environmental quality in order to provide input into the EIA
- (f) Establishment of threshold levels and more specified criteria for defining the significance of transboundary impacts related to the location, nature or size of proposed activities
- (g) Undertaking joint EIA, development of joint monitoring programmes, intercalibration of monitoring devices and harmonization of methodologies
- (h) **Other, please specify:**

Your comments:

- *Regulations at statutory level often have a rather abstract, formal or general character. Compared to them the provisions in bilateral and multilateral agreements are more detailed and specifically designed with a view to allow reasonable practical arrangements and solutions in transboundary procedures*

- *An important issue is clarification of obligations to provide for translation of documents and interpreters in public hearings*

- *Determination of the competent authorities*

- *In the negotiations on the content and design of bilateral or multilateral agreements, Parties develop a better mutual understanding of the legal, administrative and procedural structures and provisions in each other's country. This background knowledge is important to find balanced approaches and solutions in transboundary procedures.*

- *Experience has shown that the form of cooperation established by bilateral or multilateral agreement has strongly contributed to improve the quality of transboundary procedures, notably in terms of transparency and effectiveness.*

(b) Procedural steps required by national legislation

I.32. Please describe how the steps required for a transboundary EIA procedure under your national legislation correlate to domestic EIA in the lead-up to the final decision. If there are differences in the procedures for screening/scoping or for preparation of the environmental impact assessment and consultation, please specify.

Alternatively, this question can be answered or supported by providing a schematic flowchart showing these steps.

Your comments: *According to German EIA legislation transboundary EIA is part of the domestic EIA procedure. The authorities as well as the public of the affected state are given the same opportunities to participate as German authorities and the German public. With the exception of Consultations (article 5 of the Convention) the procedural steps carried out for transboundary EIA are fully equivalent to the respective steps of a domestic EIA procedure. In detail:*

- *If a project subject of an EIA may have significant transboundary environmental effects, the competent German authority shall notify the authority designated by the other state by sending appropriate documents about the project translated into the language of the affected State. The competent German authority shall request the designated authority of the other state to inform it within an appropriate time limit whether the affected State wishes to participate. Notification shall take place as early as possible with a view to enable the affected State to be involved already in the scoping phase (s. question I.10).*
- *If the affected Party wishes to participate, the competent German authority shall supply the competent authority of the other state and other authorities specified by that authority with additional documents and information on the project, notably the documents that will have to be displayed for public inspection, including the announcement of the project. The competent German authority has to ensure that the documents and information provided will be translated into the language of the affected Party.*
- *The designated authority of the other state and other authorities specified by that authority shall be given the opportunity to submit a statement (in their own language) at the same time and to at least the same extent as the German authorities involved.*
- *The public of the affected state may participate within the same procedural framework established for the domestic public. To this end the competent German authority actively works towards the project being announced in a suitable manner in the other state and towards ensuring that the announcement will contain all the practical and substantial information required to enable the public of the affected state to participate effectively. Members of the public of the affected Party may submit their comments in their own language (see question I.14).*
- *The competent highest federal and Land authorities shall hold consultations with the other state, in particular about the transboundary environmental effects of the project and the measures to avoid or reduce them. Such consultations shall be held especially if requested by the affected state. Their main objective is to resolve remaining issues which cannot be clarified by other forms of communication within in the procedure (see question I.23).*
- *According to section 57 of the German Federal EIA Act the competent authority shall communicate the approval decision to the authority designated by the other state and to the participating authorities of the other state. The information shall enclose a translated version of those sections of the decision which allow the authorities and public of the other state to recognise how (1) the expected significant transboundary environmental effects of the project and measures envisaged to avoid, reduce or offset such effects and (2) the statements of the authorities and comments of the public of the other state as well as the outcome of the consultation were taken into account in the approval decision. Communication to the affected Party shall also include information on legal remedies. The competent German authority shall work towards the decision*

being announced in a suitable manner in the other state and this decision, including the translated sections, being made available to the public in the other state.

I.33. Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for joint cross-border projects (e.g., roads, pipelines)?

- (a) **No**
- (b) Yes (please specify):
 - (i) Special provisions:
 - (ii) Informal arrangements:

Your comments:

I.34. Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for nuclear power plants (NPPs)?

- (a) **No**
- (b) Yes (please specify):
 - (i) Special provisions:
 - (ii) Informal arrangements:

Your comments: *The German Atomic Energy Act (Atomgesetz - AtG) and the German Nuclear Licensing Procedure Ordinance (Atomrechtliche Verfahrensverordnung - AtVfV) contain some special provisions on EIA for nuclear power activities. However, as regards transboundary EIA the provisions of the Federal German EIA Act apply unreservedly.*

Part two

Practical application during the period 2016–2018

Please report on your country's practical experiences in applying the Convention (not your country's procedures described in part one), whether As a Party of origin or affected Party. The focus here is on identifying good practices as well as difficulties Parties have encountered in applying the Convention in practice. The goal is to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve its application.

II.1. Does your country object to the information on transboundary EIA procedures that you provide in this section being compiled and made available on the website of the Convention? Please specify (indicate "yes" if you object):

- (a) Yes
- (b) **No**

Your comments: *No, but note the answer to the following question.*

1. Experience in the transboundary environmental impact assessment procedure during the period 2016–2018

Cases during the period 2016–2018

II.2. If your country’s national administration has a record of transboundary EIA procedures that were under way during the reporting period, in which your country was a Party of origin or affected Party, please list them in the tables II.2 (a) and II.2 (b) below (adding additional rows as needed).

Table II.2 (a)

Transboundary EIA procedures: As a Party of origin

Project name	Starting date (date notification sent)	Affected Party/ Parties	Timing of the notification (screening, scoping or preparation of the EIA documentation)	Length of the main steps in months			Final decision (date of issuing, if information is available)
				Submission of the environmental report	Transboundary consultations (expert), if any	Public participation, including public hearing, if any	
1.							
2.							
3.							
4.							
...							

Your comments: *The German Federal Government has only limited knowledge about the number and details of EIAs, including transboundary EIAs, carried out during the reporting period. As explained above, Germany is a Federal state consisting of 16 States (Länder). In most cases the authorities of the Länder serve as competent authorities for the approval procedure, including (transboundary) EIA. There is no central office to which each single EIA procedure, including transboundary EIA, has to be notified or by which these procedures including the detailed information required for this questionnaire have to be registered.*

Please share with other Parties your country’s experience of using the Convention in practice. 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.

II.3. The Convention does not mention the translation of EIA documentation as an important prerequisite for the participation of potentially affected Parties in a transboundary EIA procedure. Please explain:

(a) How has your country addressed the issue of the translation of EIA documentation? *Where Germany is Party of origin communication with potentially affected Parties, including notification of the project in question, and all documents required by the affected Party to participate effectively will be translated into an official language of the affected Party. The obligation to submit translated documents include, inter alia, the announcement of the project at the beginning of the participation procedure which will be made available to the public, the non-technical*

summary and other parts of the EIA documentation which enable the participating authorities and public of the affected Party to estimate the expected significant adverse transboundary environmental effects of the project and to submit a statement or comments (section 55 para. 2 of the German Federal EIA Act). Furthermore, translated versions of any other document essential to the transboundary EIA procedure, in particular invitations to hearings, expert meetings and consultations have to be provided (section 55 para. 6 of the German Federal EIA Act).

Similar provisions can be found in the bilateral agreements with Poland and the Netherlands.

(b) What difficulties has your country experienced with regard to translation and interpretation, both as a Party of origin and as an affected Party, and what solutions has it found? *Note the answers to the following questions*

(c) Which Party covers the cost of translation of EIA documentation?

(i) As a Party of origin: *Where German is Party of origin it covers the costs for required translations of documents including the announcement of the project at the beginning of the participation procedure, the non-technical summary and other relevant parts of the EIA documentation. The competent authority may, however, require the developer to provide for translation of these documents. In this case the cost will be covered by the developer.*

(ii) As an affected Party: *Where Germany is affected Party it happens quite often that Parties of origin submit documents in their own or in English language only. In these cases according to section 58 para 1 of the German Federal EIA Act the competent German authority shall request from the competent authority of the affected Party for the documents to be translated into German language. Unfortunately, these efforts have not always been successful. It will then have to be considered by the competent authority whether it should provide for its own translation or whether a third Party would be willing to help out. However, as there is no legal obligation to do so, this pragmatic way of proceeding will only happen in exceptional cases.*

(iii) Other, please specify:

(d) What parts of the EIA documentation does your country usually translate?

(i) As a Party of origin: *the non-technical summary and those sections of the documentation which enable the participating authorities and the public of the other State to estimate the expected significant adverse transboundary environmental effects of the project and to submit a statement or comments (see question II.3 (a)).*

(ii) As an affected Party: *In our view translation must be provided by the Party of origin*

(e) Please indicate whether and how the issue of translation is addressed in bilateral agreements between your country and other Parties.

Provisions on translations are included in the bilateral agreements between Germany and Poland and between Germany and the Netherlands. According to these agreements at least the notification, the summary of the EIA documentation and any other information within the documentation required by the affected party to assess which significant adverse transboundary environmental impacts may occur and to submit comments have to be translated.

(f) As a Party of origin, in which language do you usually provide EIA documentation to the affected Party?

- (i) English
 - (ii) **The affected Party's language**
 - (iii) Other (please, specify)
- (g) As an affected Party, from which language do you usually translate?
- (i) English
 - (ii) Language of the Party of origin
 - (iii) Other (please, specify) *In our view translation must be provided by the Party of origin*
- (h) Describe any difficulties that your country has encountered during public participation procedures and consultations under article 5, for example with regard to timing, language and the need for additional information.

(i) As a Party of origin:

Experience with public participation

In the reporting period, as far as the Federal Government is aware, there have been no considerable difficulties in practice with regard to public participation. It has to be noted however, that sometimes it seems to be quite a challenge for the competent authority to ensure that documents made available to affected Parties and comments received from affected Parties will be translated sufficiently. In some cases there have been discussions with affected Parties that documents would be difficult to understand because of the poor quality of translation or would not cover all the information required for the affected Party to participate effectively.

Experience with consultations under article 5

In some cases it has been difficult to determine the end of the consultation period. Article 5 of the Convention stipulates that Parties shall agree on a reasonable time frame for the duration of the consultation period. However in practice, it may be a problem to finalise consultations when the Parties have not been able to conclude an agreed position on all issues discussed. In these situations the affected Party may ask to prolong the consultation period or to hold additional consultation meetings. Germany does not ignore that consultations should be held in the spirit of good cooperation and with a view to find common solutions. On the other hand they should not turn into a never ending story especially when it is obvious that the different positions of Parties involved cannot be reconciled.

(ii) As an affected Party:

Experience with public participation

As far as the Federal Government is informed, there are sometimes complaints by the German public about missing or insufficient translations. Even if the documents have been translated into English they may be difficult to understand for members of the public concerned who are not used to communicate in English language (for example fishermen wishing to be involved in transboundary procedures for off-shore activities). See also answer to question II 3 (c) (ii).

Experience with consultations under article 5

In the reporting period, as far as the Federal Government is informed, no considerable difficulties with consultations under article 5 have occurred in cases in which Germany was an affected Party.

- (i) Please describe how the costs of interpretation during the hearings are covered:
- (ii) By the Party of origin: yes, as a general rule
- (iii) By the affected Party:
- (iv) Shared by both Parties concerned:
- (v) Developer: *According to the polluter pays principle it may be justified to assume that the costs of interpreting during hearings should be covered by the developer. Some of the German Länder have issued provisions according to which the competent authority is entitled to pass on these costs to the developer.*
- (vi) Other, please specify

II.4. Describe any difficulties that your country has encountered during transboundary public participation (expert consultation, public hearing, etc.), including on issues of timing, language and the need for additional information.)

No fundamental difficulties in transboundary public participation have been reported to the Federal Government. On the whole the procedures seem to work well, including expert consultations and public hearings. Some problems that have occasionally occurred have already been outlined in the answers to questions II 3 (h) (i)(ii).

II.5. Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects or that of an NPP?:

- (a) Yes
- (b) No

II.6. If you answered yes to question II.5, please provide information on your country's experiences describing, for example, means of cooperation (e.g., contact points, joint bodies, bilateral agreements, special and common provisions, etc.), institutional arrangements, and how practical matters are dealt with (e.g., translation, interpretation, transmission of documents, etc.):

- (a) For joint cross-border projects: ***The Nord Stream II project:*** *Actually Nord Stream II is not a joint cross-border project but similar to a joint cross-border project the required transboundary EIA procedures have been organized and carried out in close cooperation of most of the Parties of origin (DK did not wish to be included in that cooperation). Already at an early stage (September 2016) a meeting was held in Berlin in which the Parties of origin discussed from a practical point of view how to best organize, arrange and coordinate the transboundary processes required for the various segments of this project which touches different maritime zones of the Baltic Sea. The meeting helped to develop a common understanding of important practical and procedural questions at stake. It was concluded inter alia that consultation of the public should preferably start at the same time in all Parties of Origin and*

have the same time frames. Other points of consideration were practical arrangements and formal requirements for the transmission and exchange of documents as well as issues of quality assurance (especially how to ensure the quality of the EIA report). The coordinated approach discussed at the Berlin meeting contributed to conducting the following transboundary procedures in a practically reasonable and effective way.

(b) For NPPs:

II.7. Please provide examples from your experience during the reporting period (either complete cases or elements such as notification, consultation and public participation) that, in your view, constitute good practice: *see answer to question I.10 and II. 6*

II.8. Would your country like to introduce a case in the form of a Convention “case study fact sheet”?

(a) No

(b) Yes (please indicate which cases):

II.9. Has your country carried out post-project analyses in the period 2013–2015:

(a) No

(b) Yes (please indicate which projects, along with the challenges in implementation and any lessons learned):

2. Experience in using the guidance in 2016–2018

II.10. Has your country used in practice the following guidance, adopted by the Meeting of the Parties and available online?

(a) Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7):

No

Yes (please provide details):

Your experience with using this guidance:

The Guidance was distributed to other Federal Ministries and to the competent Ministries of the Länder. During the current reporting period no experience has been reported back.

Your suggestions for improving or supplementing the guidance:

(b) Guidance on subregional cooperation (ECE/MP.EIA/6, annex V, appendix):

No

Yes (please provide details):

Your experience with using this guidance: *The answer to the question II.10 (a) also applies here.*

Your suggestions for improving or supplementing the guidance:

(c) Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8):

No

Yes (please provide details):

Your experience with using this guidance: *The answer to the question II.10 (a) also applies here. The German Focal Point for the Convention regards this Guidance as a helpful tool especially when authorities or members of the public ask for clarification of how certain requirements laid down in the Convention should be understood and executed in practice.*

Your suggestions for improving or supplementing the guidance:

3. Clarity of the Convention

II.11. Has your country had difficulties implementing the procedures defined in the Convention, either As a Party of origin or as an affected Party, because of a lack of clarity of the provisions?

No X

Yes (please indicate which provisions and how they are unclear): *As far as the Federal Government is aware, Germany has had no fundamental difficulties implementing the procedures defined in the Convention. However, it has to be noted that some provisions of the Convention seem not very clear. In some cases clarification has been provided by the Implementation Committee e.g. as regards the question of translation. Nevertheless there are always discussion in Germany whether the opinion of the Implementation Committee – even if it has been confirmed by the Meeting of the Parties – has the same quality as the Convention itself. It would therefore be helpful if a clear regulation on translations would be included in the Convention.*

Another source of misunderstandings is the provision on consultation (Article 5). For somebody who is not familiar with the Convention it seems very difficult to understand the differences between consultations (Article 5), participation of authorities (Article 4 para 2) and participation of the public (Article 3 para 8 and Article 4 para 2). Furthermore, the way in which the consultation process has been designed in the Convention does not seem very effective. From a practical point of view consultations should only be carried out if the affected Party asks for them. The Party of origin has no reason to offer consultations until the affected Party expresses its wish to consult (see also the answer to question I.23).

4. Suggested improvements to the report

II.12 Please provide further suggestions (preferably specific drafting proposals) for how this report could be improved.