

# **Questionnaire for the report of Poland on the implementation of the Protocol on Strategic Environmental Assessment in the period 2016–2018**

## **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 3 General provisions

I.1. Please provide the main legislative, regulatory and other measures you have adopted in your country to implement the Protocol (art. 3, para. 1) (more than one option may apply):

- (a) Law on SEA (please indicate number/year/name):

*The Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (Journal of Laws of 2018, item 2081, hereinafter referred to as the "EIA Act")*

- (b) SEA provisions are transposed into another law(s) (please specify):

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

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

- (e) Other (please specify):

Your comments:

*Polish regulations regarding SEA and transboundary SEA included in the EIA act are transposition of the Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (hereinafter referred to as the "SEA Directive"). Many Polish legal acts contain references to the strategic environmental assessment (e.g. an indication of the necessity to consider it), but in general the SEA is a separate procedure including, when necessary, the transboundary procedure.*

### Article 4 Field of application concerning plans and programmes

I.2. List the types of plans and programmes that require SEA in your legislation:

*The list of types of plans and programmes that are to be assessed is contained in Article 46 and 47 of the EIA Act. They include:*

- 1) *the concept of national spatial development policy, study of conditions and directions of spatial development of communes [according to Article 164 of the Constitution of the Republic of Poland of 2nd*

April, 1997, the commune (gmina) shall be the basic unit of local government. Other units of regional and/or local government shall be specified by statute. The commune shall perform all tasks of local government not reserved to other units of local government. <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>], spatial development plans and regional development strategies [Article 46 (1) of the EIA Act];

2) policies, strategies, plans or programmes in the field of industry, energy, transport, telecommunication, water management, waste management, forestry, fisheries, agriculture, tourism and land use, developed or adopted by administration authorities, setting the framework for future development consent of projects that might have significant environmental effects [Article 46 (2) of the EIA Act];

3) policies, strategies, plans and programmes other than the ones mentioned above if their implementation might have a significant environmental impact on a Natura 2000 site and if they are not directly connected with the protection of Natura 2000 sites or do not result from the said protection [Article 46(1) of the EIA Act];

4) other draft documents if the body developing the draft document decides in co-operation with a competent environmental authority that they set out a framework for future development consent of projects that are likely to have a significant impact on the environment, or that the implementation of the provisions of such documents might have a significant impact on the environment (Article 47 of the EIA Act).

I.3. Explain how you define whether a plan or programme “set the framework for future development consent” (art. 4, para. 2):

*Both in the SEA Directive, in the EIA Act and in the current case-law, there is no clarification of the term "setting the framework for future development consent of projects". In Poland, there is a comment by Bartosz Rakoczy, published on the Polish legal website called LEX, reading as follows: "(...) they must set a framework for subsequent projects that are likely to have a significant impact on the environment. This means that they must apply and be related to projects that are likely to have a significant impact on the environment (...). These policies, programmes, strategies and plans must be specific enough so that they can be considered documents setting the framework for future development consent of such projects (...)". It can be assumed that the concept of "the framework..." means all policy, strategy, programme or policy provisions that make it possible to unambiguously ascertain that under the proposed plan or programme projects can be implemented that are likely to have a significant impact on the environment or the draft plan or programme sets development trends clearly indicating the need to implement projects that may have a significant impact on the environment. Authorities carry out an individual analysis of the issue primarily on the basis of the Ordinance of the Council of Ministers of 9 November 2010 on projects that are likely to have significant impact on the environment (Journal of Laws of 2016, item 71, hereinafter referred to as the EIA Ordinance), which fully transposes the Appendix I to the Convention on Environmental Impact Assessment in a Transboundary Context (hereinafter referred to as the Convention) into national legislation and is also in full compliance with annex I and II of the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (hereinafter referred to as the EIA Directive). To assess the need for SEA it is also helpful to refer to Article 49 of the EIA Act, which defines the scope of analysis. It reads that when resigning from a strategic environmental assessment or when deciding that it is necessary to conduct such an assessment, the following determinants are to be taken into account:*

- 1) *the nature of the measures provided for in draft documents, in particular:*
  - (a) *the extent to which the document defines a framework for future development consent of projects with reference to the location, type and scale of such projects,*
  - (b) *relationships with the measures provided for in other documents,*

- (c) *the usefulness in the integration of environmental aspects, in particular with a view to promoting sustainable development, and in the implementation of Community law in the field of environmental protection,*
- (d) *relationships with environmental protection problems;*
- 2) *the nature and scale of the impact on the environment, in particular:*
  - (a) *the likelihood of occurrence, duration, scope, frequency and reversibility of impacts,*
  - (b) *the likelihood of cumulative impacts or cross-border impacts,*
  - (c) *the likelihood of the risk to human health or environmental hazards;*
- 3) *the nature of the area covered by the impact on the environment, in particular:*
  - (a) *areas with special natural properties or areas of importance for the cultural heritage, sensitive to impact, existing violations of environmental quality standards or intensive use of the land,*
  - (b) *the forms of nature conservation within the meaning of the Act of 16 April 2004 on nature conservation and the areas subject to protection in accordance with the international law.*

*It should be also pointed out that, pursuant to the Polish legal system, entering the planned investment into any strategic document does not mean obtaining the development consent for such an investment. The commencement of works may take place after obtaining the development consent, e.g. a construction permit, whose issue for projects that are likely to have a significant impact on the environment is preceded by a necessity to obtain an environmental permit – in cases where it is justified by the provisions of the Polish law transposing the EIA Directive – after an environmental impact assessment of a given project (EIA).*

I.4. 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:

*Article 48(1a) of the EIA Act stipulates that resignation from the conduct of the SEA in case of documents referred to in Article 46(1) of the this Act (i.e. the concept of national spatial development policy, study of conditions and directions of spatial development of communes, spatial development plans and regional development strategies) may concern solely the draft documents that represent minor modifications to the documents that have already been accepted. On the other hand, Article 48(2) of the EIA Act stipulates that resignation from the conduct of the SEA in case of documents referred to in Article 46(2) of the this Act (i.e. policies, strategies, plans or programmes in the field of industry, energy, transport, telecommunication, water management, waste management, forestry, fisheries, agriculture, tourism and land use, developed or adopted by administration authorities, setting the framework for future development consent of projects that might have significant environmental effects) may concern solely the draft documents that represent minor modifications to the documents that have already been accepted or draft documents concerning the areas within a single commune. Therefore, small area at the local level corresponds to a single commune (the local level administrative unit).*

I.5. Explain how you identify in your legislation a “minor modification” to a plan or programme (art. 4, para. 4):

*The term of "minor modifications" has not been defined in the EIA Act. In this case, the environmental authorities conduct assessments individually, based on the available interpretations of the regulations, primarily on the comment by Krzysztof Gruszecki, which is contained on the LEX legal website and refers to Article 48 of the EIA Act, and on Article 3(3) of the SEA Directive, which stipulates that minor modifications need to be considered in the context of a plan or programme to be modified in the terms of the probability of their significant environmental impact.*

*Therefore, minor modifications may apply to those parts of a plan and programme that do not result in an increased scale and scope of its impact on individual elements of the environment. These can be e.g. changes in the method of financing the measures, changes in the timetable (irrelevant from the point of view of the*

impact on the environment) or a change in terminology. SEA findings for the original version of the document to be changed are also taken into account during the analysis.

In the case of sectoral documents, resignation from the SEA mostly applies to updating of documents that are already in force. The update of such documents is in most cases a continuation of previous assumptions, objectives and tasks, and it does not define any new framework for future development consent of projects that may have a significant impact on the environment.

## Article 5 Screening

I.6. How do you determine which other plans and programmes should be subject to a SEA as set out in article 4, paragraphs 3 and 4, in accordance with article 5, paragraph 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:

*In the case of planning documents mentioned in the first point, generally the assessment is mandatory for all listed draft documents, no matter whether they set the framework for future development consent of projects or not, therefore it can be concluded that their list has been formulated. However, it might be verified individually in specific cases. Pursuant to Article 48 of the EIA Act, the authority that has developed draft planning documents may, after consultation with competent environmental authorities and sanitary inspection, resign from conducting the SEA if the draft document is only a minor modification of an adopted document and its implementation will also not have any significant impact on the environment.*

*The Polish regulations regarding sectoral plans and programmes setting the framework for future development consent of projects subject to SEA list in a general way (on the basis of the main sectors of the economy) various sectoral documents subject to assessment. Therefore, the eligibility or ineligibility of a draft document for SEA in case of sectoral documents is decided upon by a substantive, individual analysis of the content of such a draft, and such an analysis also takes into account the compliance with the "sectoral" condition, but also by the fact whether the draft can be regarded as document setting the framework for future development consent of projects that might have a significant impact on the environment. Besides, also in this case it is possible to derogate from the SEA under Article 48 of the EIA Act if the body that develops the draft document in consultation with competent environmental protection and sanitary inspection authorities decides that the given draft document is a minor modification of an adopted document or it applies to an area within one commune and, at the same time, it will not result in a significant impact on the environment.*

*In the case of the documents referred to in point 3 and 4 of the list of the types of plans and programmes that require SEA in Polish legislation (p. 3 of this questionnaire), it is crucial to conduct an individual analysis of the contents of a draft document or assumptions for such a draft.*

I.7. 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)?

No

Yes  (please specify (more than one option may apply)):

- (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) By sending written comments to the consultants/SEA experts or persons preparing the plans and programmes
- (f) Other (please specify):

Your comments:

*The opportunities for the public concerned to participate in screening and/or scoping of plans and programmes are not provided in Polish legislation, but the public is often involved in the early phase of preparation of plans and programmes due to the legal requirements other than these regarding SEA.*

*In case of resignation from the SEA, the authority that has developed a draft document makes public the information about the fact without undue delay and in a manner specified in the EIA Act, by means of promulgation in the Public Information Bulletin, publication in the customary manner at the seat of authority, announcement in the press with a coverage appropriate for the type of document and also publishes such information in publicly accessible register.*

## **Article 6 Scoping**

I.8. How do you determine what is the relevant information to be included in the environmental report, in accordance with article 7, paragraph 2 (art. 6, para. 1)?

*The scope of the assessment is defined in Article 51(2), Article 52(1) and (2) of the EIA Act.*

*According to the Article 51(2) of the EIA Act:*

*An environmental report shall:*

*1) contain:*

- a) information on the content, the main objectives of the draft document and its linkages with other documents,*
- b) information on the methods applied in making the report,*
- c) proposals for the methods envisaged for the analysis of the effects of the implementation of the draft document and the frequency of its conduct,*
- d) information on the possible transboundary impact on the environment,*
- e) a summary in a non-technical language,*
- f) a declaration of the author or – in case when an environmental report is developed by the team of authors – of the head of the team of authors, confirming the fulfilment of the requirements stipulated in Article 74a(2) of the EIA Act, comprising an annex to the report;*

*2) identify, analyse and assess:*

- a) the existing state of the environment and the possible changes in this state if the provisions of the draft document are not implemented,*

- b) *the state of the environment in areas to be affected by the expected significant impact,*
  - c) *the existing environmental problems which are relevant from the point of view of the implementation of the draft document, in particular those relating to the areas protected pursuant to the Nature Conservation Act,*
  - d) *the objectives of environmental protection established at international, Community and national levels which are relevant for the draft document and the ways in which these objectives and other environmental problems have been taken into account during the preparation of the document,*
  - e) *the envisaged significant impacts, including direct and indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative impacts on the purposes and object of the protection of a Natura 2000 site, the integrity of this site and also on the environment, in particular on:*
    - *biodiversity,*
    - *humans,*
    - *fauna,*
    - *flora,*
    - *water,*
    - *air,*
    - *land surface,*
    - *landscape,*
    - *climate,*
    - *natural resources,*
    - *cultural heritage,*
    - *property,*
    - *taking into account the interactions among these elements of the environment and those among the impacts on these elements;*
- 3) *present:*
- a) *measures to prevent, reduce or offset in terms of nature compensation the adverse impacts on the environment which may result from the implementation of the draft document, in particular, on the purposes and object of the protection of a Natura 2000 site and the integrity of this site,*
  - b) *taking into account the objectives and geographical range of the document as well the purposes and object of the protection of a Natura 2000 site and the integrity of this site – measures alternative to those contained in the draft document, along with a justification for their choice, and a description of the methods applied for the assessment resulting in this choice, or the explanation of the absence of alternative measures, including an indication of difficulties encountered as a result of inadequate techniques or gaps in current knowledge.*

*According to the Article 52(1) and (2) of the EIA Act:*

- 1. The information contained in the environmental report shall be developed in accordance with the state-of-the-art knowledge and assessment methods and matched to the content and level of detail of the draft document and the stage of adoption of this document in the process of preparing draft documents related to this document.*
- 2. The environmental report shall take into account the information contained in the environmental impact prognoses made for other, already adopted documents related to the document which is the object of the procedure.*

*In addition, it is also required to obtain an approval of the scope and level of detail of the information contained in the environmental report by the competent environmental and sanitary inspection authority, and – in some cases – by the territorially competent director of the maritime office. The approval is issued at the request of the body that has developed the draft document. In the request, the body defines the substantive and territorial (spatial) scope of the draft document and the main assumptions that are the*

*subject of the development of the draft, or it submits the draft if it is ready at the time of submission of the above-mentioned request. As part of the above-mentioned approvals, the authorities have an opportunity to specify in detail the information required in the report depending on the type of draft document, environmental conditions and other features of the draft-covered area that are relevant for potential impacts on the environment. Because the regulations do not provide for an opportunity to derogate from certain requirements as to the content of the environmental report, it is assumed that each report should be drawn up completely.*

## **Article 7**

### **Environmental report**

I.9. 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
- (b) As defined in the national legislation (please specify):
- (c) By using a combination of (a) and (b)
- (d) Other (please specify):

Your comments:

*There is no legal definition of "reasonable alternatives" or any requirements for the number of such solutions, there is only an obligation to analyse them. Alternative solutions presented in environmental reports depend, among other things, on: the document type and degree of detail thereof, the planned area development, environmental conditions, the findings for higher-level documents (e.g. for a draft local spatial development plan – a study of conditions and directions of spatial development of commune) and on the findings made in the environmental report. In practice, alternative proposals may concern technical or spatial issues and the timeframe for the implementation of a document. The alternatives in draft local spatial development plans most often concern: the feasibility of a function that differs from the one provided for in the draft; the scale of investments, e.g. the number of wind energy facilities; the location opportunities for projects that may have a significant impact on the environment; land development indicators, e.g. the location of an impassable building line or a minimum share of biologically active surface or the selection of an optimal wastewater treatment system in the absence of connection to the sewerage system.*

*The zero option is usually discussed in a separate section of the report – in the description of the environmental condition in the absence of implementation of a draft document.*

I.10. 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
- (b) By using quality checklists
- (c) There are no specific procedures or mechanisms
- (d) Other (please specify):

Your comments:

*As explained above, the scope of the assessment is defined in Article 51(2), and Article 52(1) and (2) of the EIA Act. In addition, it is also required to agree on the scope and level of detail of the information contained in the environmental report by the competent authorities.*

*The EIA Act lays down some requirements towards the authors of environmental reports. According to the Article 74a of the EIA Act, the author of an environmental report, and in case of a team of authors, the head of the team, should have a bachelor's or a master's degree in one of the fields: chemistry, biology, earth sciences, biotechnology, mining, engineering geology, environmental engineering, agriculture, forestry, veterinary sciences or have a bachelor's or a master's degree and at least five years of working experience in preparing environmental reports in team (SEA or EIA) or took part in the preparation of at least 5 environmental reports. Declaration confirming the fulfilment of the above conditions should comprise an annex to the environmental report and is made under penalty of perjury for making false statements.*

## **Article 8**

### **Public participation**

I.11. How do you ensure the “timely public availability” of draft plans and programmes and the environmental report (art. 8, para. 2)? Please specify (more than one option may apply):

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

Your comments:

#### *(c) The announcement in the press with a coverage appropriate for the type of document*

I.12. How do you identify the public concerned (art. 8, para. 3)? Please specify (more than one option may apply):

- (a) Based on the geographical location of the plans and programmes
- (b) Based on the environmental effects (significance, extent, accumulation, etc.) of the plans and programmes
- (c) By making the information available to all members of the public and letting them identify themselves as the public concerned
- (d) By other means (please specify):

Your comments:

*The coverage of the press chosen for an announcement should be appropriate for the type of document. The public notices are displayed at the seat of authority responsible for SEA. Consultations however are open for all members of the public. The EIA Act contains a very broad concept of “the public”. Pursuant to Article 5 of this Act, everyone has the right to participate in proceedings requiring public participation. Therefore, “the public” is one or more natural or legal persons and their associations, organisations or groups. Besides, the entity requesting information on the environment and its protection is not required to demonstrate its legal or factual interest.*

I.13. How can the public concerned express its opinion on the draft plans and programmes and the environmental report (art. 8, para. 4)? Please specify (more than one option may apply):

- (a) By sending comments to the relevant authority/focal point

- (b) By providing answers to a questionnaire
- (c) Orally
- (d) By taking part in a public hearing
- (e) Other (please specify):

Your comments:

*The methods used in Poland for public consultation are defined in Chapter 1 and 3 of Section III of the EIA Act and Article 3(1)(11) of the EIA Act and Chapter 3 of Section IV of that Act. Furthermore, in case of draft local spatial development plans and studies of conditions and directions of spatial development of communes, the rules for submission of comments and requests and for provision of opinions determine the regulations of the Act on spatial planning and area development.*

*According to the regulations of the EIA Act, the authority that has developed a draft document requiring public participation without undue delay makes public the information about: Commencement of the development of a draft document and its subject; Opportunities to get acquainted with the necessary documentation of the case and the place where it is available for inspection; Opportunity to submit comments and requests; How and where to submit comments and requests, with information indicating at least 21-day deadline for their submission; Body competent to examine the comments and requests; Procedure for the cross-border impact on the environment if it is conducted. The necessary documents of the case include: assumptions or the draft document, the environmental report and the position of other bodies, if available at the time of submission of comments and requests. Comments and requests can be submitted: in writing; orally for the record; by means of electronic means of communication without having to apply electronic signature to them. Comments on draft planning documents developed on a commune scale should be in compliance with the provisions of the Act on spatial planning and area development, and shall be submitted in writing, also with an opportunity to submit them via electronic means.*

*Moreover, the practice shows that in case of some draft documents (e.g. important to a region, voivodeship or association of communes or local interest groups) the bodies developing them organise additional forms of communication with the public that are not provided for by law – meetings, consultations, public debates – with the participation of the public, economic entities, environmental organisations and NGOs which participate in the development of documents.*

I.14. Do you have a definition in your legislation of the term “within a reasonable time frame” (art. 8, para. 4)? Please specify:

- (a) No, the time frame is determined by the number of days fixed for each commenting period
- (b) No, it is defined case by case
- (c) Yes (please provide the definition):
- (d) Other (please specify):

Your comments:

*The at least 21-day deadline for submission of comments and requests within the domestic SEA procedure is determined by the EIA Act. In case of transboundary SEAs, the time frames are agreed with all the Parties involved to ensure equal treatment of all the public.*

## Article 9

### Consultation with environmental and health authorities

I.15. How are the environmental and health authorities identified (art. 9, para. 1):

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

Your comments:

*Environmental authorities involved in the SEA procedure are defined by the EIA Act. These include the bodies referred to in Article 57 and 58 of the Act, i.e.: the General Director for Environmental Protection, regional directors for environmental protection, directors of maritime offices and State Sanitary Inspection bodies.*

**General Director for Environmental Protection** – the competent authority for giving opinion on documents (draft documents and environmental reports) and approving the scope of the environmental report under the SEA in case of draft documents developed and amended by the supreme or central government bodies and in case when the planned implementation of a given document covers an area of more than two voivodeships.

**Regional Director for Environmental Protection** – the competent authority for giving opinion on documents (draft documents and environmental reports) and approving the scope of the environmental report under the SEA in case of draft documents developed at the regional level (maximum 2 voivodeships) and a lower level.

**Sanitary Inspection Authority – depending on the type of draft document – Chief Sanitary Inspector, State Voivodeship Sanitary Inspector or State Poviast Sanitary Inspector** – an authority competent for giving opinion on documents (draft documents and environmental reports) and approving the scope of the environmental report under the SEA as regards the impact of implementing of a draft document on safety and health of humans.

**Director of Maritime Office** – an authority competent for giving opinion on documents (draft documents and environmental reports) and approving the scope of the environmental report under the SEA in case of draft documents relating to marine areas.

I.16. How are the arrangements for informing and consulting the environmental and health authorities determined (art. 9, para. 4):

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

Your comments:

*As described above, according to the EIA Act the scope and level of detail of the information contained in the environmental report has to be approved by the competent environmental and sanitary inspection authority, and – in some cases – by the territorially competent director of the maritime office. The approval is issued at the request of the body that has developed the draft document. In the request, the body defines the substantive and territorial (spatial) scope of the draft document and the main assumptions that are the subject of the development of the draft, or it submits the draft if it is ready at the time of submission of the*

*above-mentioned request. The positions of the bodies involved are developed and subsequently submitted to the authority that has developed the draft document within the 30 days time frame.*

*Formulating opinions of the competent authorities on the draft document along with an environmental report is also preceded by the request of the body that has developed the draft document and the time frame is also 30 days.*

I.17 Does your national legislation call for consultations with environmental and health authorities?

(a) Yes

(b) No

I.18. How can the environmental and health authorities express their opinion (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 3):

(a) By sending comments

(b) By providing answers to a questionnaire

(c) In a meeting

(d) By other means (please specify)

Your comments:

*The relevant health authorities approve the scope and a level of detail of the information contained in the environmental report and formulate their positions in the form of opinion about the draft document along with an environmental report.*

*The health authorities also participate when resignation from SEA is considered. In the case of planning documents the authority that has developed draft planning documents may, after consultation with competent environmental authorities and sanitary inspection, resign from conducting the SEA if the draft document is only a minor modification of an adopted document and its implementation will also not have any significant impact on the environment. In case of sectoral documents it is also possible to derogate from the SEA if the body that develops the draft document in consultation with competent environmental protection and sanitary inspection authorities decides that the given draft document is a minor modification of an adopted document or it applies to an area within one commune and, at the same time, it will not result in a significant impact on the environment.*

## **Article 10**

### **Transboundary consultations**

I.19. As a Party of origin, when do you notify the affected Party (art. 10, para. 1)? Please specify:

(a) During scoping

(b) When the draft plan or programme and the environmental report have been prepared

(c) At other times (please specify):

Your comments:

*According to Article 113 the EIA Act, if the body that develops the draft of document finds that a significant transboundary impact on the environment may arise as a result of the implementation of the document referred it shall immediately inform the General Director for Environmental Protection that the effects of the implementation of this document may have a transboundary impact on the environment and forward the draft document to it, along with the environmental report. The draft document and the environmental report, in the part which will enable the Party affected by the implementation of the project to assess the possible significant transboundary impact on the environment, shall be prepared in the language of the Party. Having acquired information that the draft document implementation may have a transboundary impact on the environment, the General Director for Environmental Protection shall immediately notify the Party affected by the implementation of the draft document, enclosing the draft document with this notification, along with the environmental report. In its notification of the possible transboundary impact on the environment, the General Director for Environmental Protection shall propose a date for the affected Party to reply whether it is interested in participation in the transboundary procedure.*

I.20. 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

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

Your comments:

*As explained above, in the notification the General Director for Environmental Protection includes the draft document along with the environmental report. The draft document and the environmental report, in the part which will enable the affected Party to assess the possible significant transboundary impact on the environment are translated into the language of the affected Party. In the notification, the General Director for Environmental Protection proposes a date for the affected Party to reply whether it is interested in participation in the transboundary procedure.*

I.21. 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) No

(b) Yes (please indicate how long):

Your comments:

*According to Article 114 of the EIA Act, where the Party affected notifies that it is interested in participating in the transboundary procedure, the General Director for Environmental Protection shall, in agreement with the administration authority which conducts the strategic environmental assessment, agree with this Party the timeframes of the procedure, taking into account the need to enable the competent authorities and the public of the affected Party to participate in the procedure.*

I.22. If the affected Party has indicated that it wishes to enter into consultations, how do the Parties agree on detailed arrangements to ensure that the public concerned and the authorities in the affected Party are informed and given an opportunity to forward their

opinion on the draft plan or programme and the environmental report within a reasonable time frame (art. 10, paras. 3 and 4)?

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

Your comments:

*As explained above – the timeframes for consultations are agreed between the Parties involved. The intent is to ensure the equal treatment of the public both in the Party of origin and the affected Party and also to meet all national legal requirements regarding consultation.*

## **Article 11 Decision**

I.23. When a plan or programme is adopted, explain how your country ensures, in accordance with article 11, paragraph 1, that due account is taken of:

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

Your comments: *According to Article 55 of the EIA Act, the conclusions of the environmental report, the proposed mitigation measures and the comments received in accordance with Articles 8 to 10 are taken into account by the body that develops the document when the final version is formulated.*

I.24. How and when do you inform your own public and authorities (art. 11, para. 2)?

*According to Article 55 of the EIA Act, after the adoption of a document, the body that has developed it submits the adopted document together with a written summary of the course of the SEA procedure to the relevant authorities referred to in point 13 of this questionnaire. The written summary contains a justification for the choice of the adopted document with reference to the examined alternative solutions. In the summary, it is also required to provide information on how the following has been taken into account and to what extent it has been addressed:*

- 1) the arrangements included in the environmental report;*
- 2) opinions of competent environmental and sanitary inspection authorities;*
- 3) the examined comments and requests submitted in connection with the participation of the public;*
- 4) the results of the procedure concerning the cross-border environmental impact assessment if such procedure has been conducted;*
- 5) proposals for the methods and frequency of monitoring of the effects of implementing the document's provisions.*

*After the end of the SEA procedure, the body that has developed the draft document publishes information on the adoption of the document in publicly accessible registers of data pursuant to Article 21(2)(6) of the EIA Act. The adopted documents are also published on the websites of the authorities that have developed them, and the adopted studies of conditions and directions of spatial development of communes and local spatial development plans are also published in the Voivodeship Official Journal.*

I.25. How do you inform the public and authorities of the affected Party (art. 11, para.

- (a) By informing the point of contact
- (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
- (c) By informing all the authorities involved in the assessment and letting them inform their own public
- (d) Other (please specify):

Your comments:

*According to Article 117 of the EIA Act the General Director for Environmental Protection shall forward the document, along with the summary referred to in Article 55 of the EIA Act, to the Party which participates in the procedure for the transboundary impact on the environment.*

I.26. How do you ensure that, when a plan or programme is adopted, the public, the authorities and the Parties consulted are informed and that the information mentioned in article 11, paragraph 2, is made available to them?

- (a) Pursuant to national legislation (please refer to specific provisions and provide citations in order to clarify the procedure followed):
- (b) Other (please specify):

Your comments:

*As explained above.*

## **Article 12 Monitoring**

I.27. 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):

*The obligation to monitor the significant environmental impact that is a consequence of implementing plans and programmes stems directly from the legal regulations specified in the EIA Act. In the course of the SEA procedure, already at the stage when the scope and level of detail of the environmental report for a draft document is approved, it is required that the report includes proposals for the anticipated methods of analysis of the effects of implementing a draft document and the frequency of conducting it (Article 51(2)(1)(c) of the EIA Act). The next step is to provide opinions on the draft document together with a report by the competent environmental authorities. The environmental authority analyses and evaluates the monitoring proposals, indicating the detected irregularities and deficiencies. Additionally, the authority that develops the draft document – pursuant to Article 55(3)(5) of the EIA Act – attaches to the adopted document a written summary containing, among other things, information on how "(...) proposals for the methods and frequency of monitoring of the effects of implementing the document's provisions" have been taken into account and to what extent they have been addressed. The legislator has also obligated the authority that develops the draft document (pursuant to Article 55(5) of the EIA Act) to monitor the effects of implementing the provisions of the adopted document in terms of its environmental impact according to the frequency and methods referred to in the above-mentioned written summary.*

## Part two

### Practical application during the period 2016–2018

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.

II.1. 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

Your comments:

#### 1. Consideration of health effects

II.2. Does your SEA documentation always include specific information on health effects? Please specify:

(a) Yes

(b) No, only when potential health effects are identified

#### 2. Domestic and transboundary implementation in the period 2016–2018

II.3. Does your SEA documentation always include specific information on potential transboundary environmental, including health, effects? Please specify:

(a) Yes

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

#### 3. Cases during the period 2016–2018

II.4. Please provide the (approximate) number of transboundary SEA procedures initiated during the period 2016–2018 and list them, grouped by the sectors listed in article 4, paragraph 2:

1. *Updating of the brown coal mining plan in the mine Nochten; Party of origin: Germany; sector: mining*

2. *Site Development Plan for maritime areas regarding development of energy grid and the offshore wind farms; Party of origin: Germany; sector: energy*
3. *Revision of the Danish statutory order on noise from wind turbines; Party of origin: Denmark; sector: energy*
4. *National Nuclear Policy Statement; Party of origin: Great Britain; sector: energy*
5. *Spatial Development Plan for Zachodniopomorskie Voivodship; Party of origin: Poland; sector: town and country planning*

#### **4. Experience with the strategic impact assessment procedure in 2016–2018**

II.5. Has your country experienced substantial difficulties in interpreting particular terms (or particular articles) in the Protocol?

- (a) No
- (b) Yes  (please indicate which ones):

II.6. How does your country overcome the(se) problem(s), if any, for example by working with other Parties to find solutions? Please provide examples:

II.7. With regard your country's experience with domestic procedures, 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) Has your country carried out monitoring according to article 12 and, if so, for what kinds of plans or programmes (cite good practice cases or good practice elements (e.g., consultation or public participation), if available)?

*As described above, the obligation to monitor the significant environmental impact that is a consequence of implementing plans and programmes stems directly from the legal regulations specified in the EIA Act. The existing monitoring systems can be used for monitoring. The authority that develops the draft document indicates in the environmental report for example that the effects of implementing the document will be monitored by the Regional Inspectorate for Environmental Protection in the course of the conducted monitoring or as a result of controls of the projects under implementation.*

(b) 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"?

- (i) No
- (ii) Yes  (please indicate which ones):

II.8. With regard your country's experience with transboundary procedures, 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) What difficulties has your country experienced and what solutions has it found?

*promulgation* (i) Translation and interpretation

(ii) Other issues

*The problems with translations are mostly the insufficient quality of the translation or insufficient extent of the translated documentation. In both cases the Parties involved try to agree on the solution. In case of poor quality of the translation provided by the Party of origin, Poland asks the Party of origin whether conducting the translation on the behalf of the Party of origin is possible. When the Party of origin does not provide the corrected translations, Poland translates the documents. In case of insufficient extent of the translation, Poland asks the Party of origin to supplement the documentation, indicating the scope of information to be translated. When the translations are not provided, Poland translates the missing documents.*

*Other issue is the insufficient quality of some environmental reports. The comments provided by Poland during the scoping phase (as explained above, in Poland consultations at this stage are not obligatory, but Poland sometimes participates in scoping consultations conducted by other countries) may not be taken into account in the environmental report without any explanation. It may also happen that the arguments regarding the possible negative transboundary effects and the relevant compensation measures are missing or insufficient to support the conclusions presented.*

*In a statement summarizing the procedure sometimes there is no sufficient explanation on how the comments received in accordance with the Articles 8 to 10 of the Protocol have been taken into account.*

*Sometimes the adopted document is not made available to the affected Party.*

*Whether some of the above-mentioned situations occur, Poland contacts other Parties to ensure that the problem is solved.*

- (b) What does your country usually translate as a Party of origin?

*As explained above, as a party of origin Poland translates the draft document and the environmental report in the extent which will enable the Affected Party to assess the possible significant transboundary impacts on the environment.*

- (c) As an affected Party, has your country ensured the participation of the public concerned and the authorities pursuant to article 10, paragraph 4?

- (i) No   
(ii) Yes  (please indicate how):

*The principles and the timeframes for consultations are agreed between the Parties involved. The intent is to ensure the equal treatment of the public both in the Party of origin and the affected Party and also to meet all national legal requirements regarding consultation.*

- (d) What has been your country's experience of the effectiveness of public participation?

*The public either of the Party of origin or the affected Party in most cases is not very active. It is different however, when a draft plan or program sets frames for a controversial activity, with a possible strong negative impact on the quality of life or on some particularly precious elements of environment. An example of may be surface mining or activities potentially affecting Natura2000 sites.*

- (e) Does your country have examples of organizing transboundary SEA procedures for joint cross-border plans and programmes?

- (i) No

(ii) Yes  (please describe):

*On a national level Poland has developed in cooperation with the neighbouring countries/states some cross-border documents regarding the EU financial perspective 2014-2020. These are as follows:*

*Cross-border Co-operation Programme Poland-Saxony*

*Cross-border Co-operation Programme Brandenburg-Poland*

*Cross-border Co-operation Programme of the European Neighbourhood and Partnership Instrument Poland-Belarus-Ukraine for 2014-2020*

*Cross-border Co-operation Programme of the European Neighbourhood and Partnership Instrument Poland-Russia for 2014-2020*

*Cross-border Co-operation Programme Czech Republic-the Republic of Poland 2014-2020*

*Cross-border Co-operation Programme the Republic of Poland-Slovak Republic 2014-2020*

*All of the above-mentioned documents were adopted before the period covered by this questionnaire. The documents and the environmental reports were made for the whole area covered by a given document and were developed in cooperation between the countries/states involved. The transboundary issues were included in the environmental report. The procedures and the timeframes for consulting the public and the relevant authorities were agreed between the Parties involved to ensure equal treatment of all the public and also to meet all national legal requirements regarding SEA. For example, as Czech Republic's law requires the public involvement during the scoping phase, this element of the SEA procedure was conducted both in Czech Republic and in Poland in order to ensure equal treatment of the public in both countries. In case of such programs there's always one country playing the coordinating role, and the authority involved in this country was responsible for coordination of the procedure, collecting opinions and elaborating the final version of a document.*

(f) As an affected Party, how do you ensure that the public concerned and the authorities are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame (art. 10, para. 4)?

*The principles and the timeframes for consultations are agreed between the Parties involved. The intent is to ensure the equal treatment of the public both in the Party of origin and the affected Party and also to meet all national legal requirements regarding consultation.*

## 5. Experience regarding guidance in 2016–2018

II.9. Are you aware of any use in your country of the online *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment (ECE/MP.EIA/17)*?<sup>1</sup>:

(a) No:

(b) Part of it (Please specify):

(c) Yes  (please describe your experience):

Your comments on how the Guidance might be improved or supplemented:

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<sup>1</sup> Available from [http://www.unece.org/env/eia/pubs/sea\\_manual.html](http://www.unece.org/env/eia/pubs/sea_manual.html).

*The issues related to translation and public participation are explained very clearly and in these areas the Manual is very helpful. The part regarding monitoring could be more comprehensive.*

## **6. Awareness of the protocol**

II.10. Does your country see a need to improve the application of the Protocol in your country?

(a) No:

(b) Yes  Please describe how your country intends to improve application of the Protocol:

*The requirements regarding monitoring, laid out either in the SEA Directive or in the Convention, the Protocol and the EIA Act are general and – as a consequence – difficult to apply. The environmental reports developed in Poland usually meet the obligations of the EIA Act i.e. the information about the planned monitoring system is provided, but there are no measures for controlling the effectiveness of the proposed solutions. During the transboundary SEAs the sections of the environmental reports covering monitoring are seldom translated and the authorities involved usually do not consider this issue as a key one.*

*It would be helpful if some guidance regarding monitoring was developed together with a set of good practices and examples.*

*The regulations of the Protocol referring to the transboundary procedure itself are very general. It makes difficult referring to the Protocol in particular cases. The interpretations of these regulation by different Parties may vary in a significant way, which sometimes might hinder reaching a compromise. A possible way to overcome this problem is to sign bilateral agreements between neighbouring countries defining more precisely the key issues, for example, the timeframes of the procedure, translations and the institutions involved, but elaborating such agreements is difficult and time-consuming because of formal requirements towards such documents. Poland so far has signed only one such agreement – with Germany. Should the Protocol be more precise, such means could possibly be not necessary.*

## **7. Suggested improvements to the report**

II.11. Please provide suggestions for how this report may be improved: