Section A4.5: SEA of plans & programmes – Transboundary consultations

Resource Manual to Support Application of the UNECE Protocol on Strategic Environmental Assessment
A4.5 Transboundary consultations

- Legal obligations
- Possible practical arrangements
A4.5.1 Legal obligations

- Article 10 – Transboundary Consultations
  1. Where a **Party of origin considers** that the implementation of a P/P is likely to have significant transboundary environmental, including health, effects or where a **Party likely to be significantly affected so requests**, the Party of origin shall as early as possible before the adoption of the P/P notify the affected Party.
  2. This **notification** shall contain, inter alia:
     a) The draft P/P and the environmental report including information on its possible transboundary environmental, including health, effects; and
     b) Information regarding the decision-making procedure, including an indication of a reasonable time schedule for the transmission of comments.
  3. ...

- **inter alia** means ‘among other things’
3. The affected Party shall, within the time specified in the notification, indicate to the Party of origin whether it wishes to enter into consultations before the adoption of the P/P and, if it so indicates, the Parties concerned shall enter into consultations concerning the likely transboundary environmental, including health, effects of implementing the P/P and the measures envisaged to prevent, reduce or mitigate adverse effects.

4. Where such consultations take place, the Parties concerned shall agree on detailed arrangements to ensure that the public concerned and the authorities referred to in article 9, paragraph 1, in the affected Party are informed and given an opportunity to forward their opinion on the draft P/P and the environmental report within a reasonable time frame.
A4.5.1 (cont’d) Legal obligations

- Further provisions in preamble; articles 2.3 & 2.4 (in ‘definitions’) & 11 (‘decision’); annexes III, IV (item 10) & V

- In Directive, see Article 7, plus
  - preamble; Articles 2(b), 8 & 9(1); Annex II (item 2)
A4.5.1 (cont’d) Legal obligations

- Transboundary consultations when proposed P/P in one country (*Party of origin*) likely to have significant environmental effects on territory of another country (*affected Party*)
- Party of origin has to notify affected Party if
  - it considers implementation of proposed P/P likely to have significant transboundary environmental effects,
  - if so requested by another Party likely to be significantly affected
- So first determine whether P/P likely to have significant transboundary environmental effects
- Notification ‘as early as possible before’ P/P adoption – Protocol does not specify exactly when
A4.5.1 (cont’d) Legal obligations

• Notification to include
  – Draft P/P
  – Environmental report, including information on possible transboundary environmental effects
  – Information on decision-making procedure, including information on time schedule for comments
A4.5.1 (cont’d) Legal obligations

• Consultations follow if indicated by affected Party
• Consultations must address
  – likely transboundary environmental effects of implementing P/P
  – measures envisaged to prevent / reduce / mitigate adverse effects
  – detailed arrangements for informing the public concerned & authorities in affected Party, & for giving them opportunity to forward opinion on:
    • draft P/P
    • environmental report
• Public concerned & environmental & health authorities in affected Party
  – Opinions have to be taken into due account
  – Have to be informed of how
A4.5.2 Possible practical arrangements

- At latest, transboundary effects identified during preparation of environmental report
- If identified earlier then notification best begun earlier, during scoping
  - may reduce delays in reaching decision-making
  - early notification necessarily informal, as formal notification has to include environmental report
- Reasonable time frames required for transboundary consultations – need to be enough for
  - contact to be made between Parties concerned
  - identification & consultation with the public concerned & authorities in affected Party
  - consideration of resulting comments by authorities in Party of origin
  - practical matters, e.g. translations
A4.5.2 (cont’d) Possible practical arrangements

• Concerned Parties may agree on detailed arrangements on ad hoc basis, but for EIA in a transboundary context (under Espoo Convention), process can be accelerated & simplified with bilateral / multilateral agreements covering
  – contact points
  – a joint body
  – language considerations including translation arrangements
  – assigning costs
  – criteria of effect significance
  – public participation arrangements
  – dispute settlement procedures

• See Espoo Convention’s Guidelines on good practice & bilateral & multilateral agreements & Guidance on public participation in EIA in a transboundary context

• Might extend existing transboundary EIA agreements