

Economic Commission for Europe

Meeting of the Parties to the Convention
on Environmental Impact Assessment in
a Transboundary Context

Meeting of the Parties to the Convention
serving as the Meeting of the Parties
to the Protocol on Strategic
Environmental Assessment

Working Group on Environmental Impact Assessment and Strategic Environmental Assessment

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Promoting ratification and application of the Protocol on Strategic Environmental Assessment

Draft case study (“fact sheet”)

On the application of the Protocol on SEA to the Convention on Environmental
Impact Assessment in a Transboundary Context

Spatial Development Planning at regional level (Voivodship level) Poland, Lubuskie Voivodship, bordering with Germany (Brandenburg and Saxony)

This document has been prepared by Poland for consideration by the Working Group, at its third meeting (11-15 November 2013), and for its subsequent publishing on the Convention’s website. It presents a case on the Protocol on SEA’s application to regional spatial planning.

At its first and second meetings, the Working Group had encouraged Parties to submit case studies on the application of the Protocol, but without specifying the format or length of the information to be presented. Poland was the first Party to submit a case. It opted for a more in-depth presentation of the information, as compared to the brief (two-page) “case-study fact sheets” that had been the previously used format for presenting the Espoo Convention cases (available at: <http://www.unece.org/env/eia/pubs/factsheets6.html>)

Based on its consideration of the Polish case, the Working Group is invited to provide general guidance and recommendations on the presentation by Parties of practical experiences on their application of the Protocol that would be the most beneficial for other countries. It may focus in particular on the following elements:

- Form and structure: Should Parties describe the full SEA procedure, (national and transboundary), as provided for in the Protocol/ or only the procedure in a transboundary context?
- Main content;
- Level of detail of the information (General or a more detailed description of the case?)
- Language (the EIA fact sheets were in English only).

1. BACKGROUND

Most of the planning and policy-forming activities in Poland are performed at local and regional level by self-governmental institutions. The regional self-government has full responsibility for strategic and spatial planning at this level of the administrative division of the country. Such plans are not an instrument of local law and do not constitute legal grounds for issuing of administrative decisions. They give to the municipalities a basis for formulation of regional-level conclusions in municipality-level studies on the conditions and directions of spatial development, as well as local spatial development plans. However, these local spatial development plans are local law which is the basis for construction of individual projects.

According to the national law on SEA, a draft Spatial Development Plan for Voivodship, and its modification, is a subject to a strategic environmental assessment, also in a transboundary context if necessary.

In principle, Spatial Development Plan for Voivodship includes i.e.:

- conditions of spatial development,
- objectives for the regional development,
- principles of organization the spatial structure,
- ecological structure, requirements and principles of natural resources management and valuable features of the natural and cultural environment,
- structure of main elements of settlement network and linkages between them,
- principles of shaping and distributing elements of social infrastructure system (e.g. transport, power supply, water management, disposal of wastes),
- problematic and functional areas and principles or requirements of their management.

2. SEA PROCEDURE IN POLAND

Strategic environmental assessment (SEA) in Poland is carried out for draft:

- plans and programmes for spatial development at the national, regional and local level,
- plans and programmes in the fields of industry, energy, transport, telecommunications, water management, waste management, forestry, agriculture, fisheries, tourism and land use or setting out a framework for the subsequent implementation of projects likely to have a significant impact on the environment,
- documents other than those above-mentioned the implementation of which is likely to have a significant impact on Natura 2000 sites, where they are not directly related to the protection of the Natura 2000 site or do not result from such protection,
- documents other than those mentioned earlier and which set out a framework for the future implementation of projects likely to have a significant impact on the environment and that the implementation of the provisions of these documents may cause a significant impact on the environment.

The conduct of SEA could also be required in the case where already adopted document, as regards above-mentioned documents, is modified.

SEA is carried out by competent authority which prepares the draft plan or programme. Within SEA procedure competent authority needs to obtain opinions and approvals of relevant authorities (environmental protection and sanitary inspectorate authorities) and conduct public participation.

3. CASE STUDY

Lubuskie Voivodship is located in the west part of Poland and borders with Germany (Brandenburg and Saxony). This region has natural and landscape potentials of high value, favourable transport connections with Germany and other parts of Poland, Odra river's waterway which is a European ecological corridor. Moreover, deposits of natural resources (especially energy), large areas of forest and agricultural production space are wealth of the region.

Spatial Development Plan for Lubuskie Voivodship was originally adopted in 2002. Further, due to a number of changes in socio-economic and legal situation in Poland, existing Plan needed to be amended accordingly. Therefore, in 2007 regional self-government decided to start preparations to modify the existing Plan. The core aim of Draft Modification to Spatial Plan for Lubuskie Voivodship (Draft Modified Plan) was necessity to update and supplement existing Plan in fields of: strategic goals and directions of regional development, spatial planning and future use land and recommendations in this regard, priorities of spatial policy for the region, connections with other national and regional strategic documents and recommendations for Concept of National Spatial Planning Policy.

The competent regional government of Lubuskie Voivodship was an authority in charge of preparing the Draft Modified Plan and conducting SEA.

While updating existing Plan the special attention was paid to the following issues: cultural heritage, tourism, industry and services, natural resources, communication and transport, problematic and functional areas.

In accordance with the Protocol on SEA, the following steps were performed:

- **Field of application (article 4)**
SEA procedure needed to be applied due to the fact that the Draft Modified Plan was prepared for regional planning and land use and could possibly cause significant environmental effects, including health.
- **Screening (article 5)**
At the screening stage it was found that the content of the modification is of wide range concerning the large area and thus need to be a subject to SEA. Moreover, the competent environmental protection authority was of the opinion that SEA is necessary to be carried out.
- **Scoping (article 6)**
Having found that SEA need to be carried out, the competent regional government had an obligation to obtain approvals of environmental protection and sanitary inspectorate authorities for the scope and details of information required in the environmental report. The requirements for scope and content given by these authorities were mainly based on the requirements laid down in national law.
- **Environmental report (article 7)**
The next step was preparation of the environmental report in accordance with defined scope. The environmental report identified, described and evaluated the likely significant environmental, including health, effects of implementing the Draft Modified Plan and its reasonable alternatives. It included such information as, inter alia:
 - aim and scope of the report,
 - methods of assessment,
 - content and main goals of the draft plan,
 - links with other plans and programmes,
 - assessment of compliance with environmental principles,

- description of current state of the environment and existing environmental problems which are relevant to the plan,
 - expected changes in the environment in case of no implementation,
 - expected significant impacts on the environment as a result of implementation of the draft plan,
 - possible transboundary impacts,
 - proposals of measures to prevent, reduce or mitigate significant adverse effects on the environment, including health, which may result from implementation of the plan,
 - proposals of alternative solutions,
 - measures envisaged for monitoring environmental effects,
 - final findings and recommendations for measures that need to be applied in order to prevent, reduce or mitigate environmental impacts resulted from implementation.
- **Public participation (article 8)**
 All persons had right to submit comments prior to the adoption of Draft Modified Plan. Therefore, the competent regional government, as the authority which drew up the draft plan, provided the public without undue delay with information concerning the launch of the preparation of the Draft Modified Plan and its subject matter. Further, the public was provided with possibilities of becoming acquainted with the Draft Modified Plan and its environmental report which were available for review at the seat of the competent regional government as well as at the website of the Public Information Bulletin. The public notification took place through the following means: website of the Public Information Bulletin, public notice in a customary manner at the seat of the competent regional government and each municipality which might be concerned, regional and local press, data placed in publicly accessible registers. The public could submit comments and suggestions within at least 21-day period when necessary documents were available for review (time for public access and make comments), in written form, verbally to be recorded in the minutes, using the means of electronic communications without the need to secure them with the safe electronic signature. As a result of public participation the competent regional government received 10 comments and suggestions from public which were considered and took into account. The manner in which the comments and suggestions submitted in relation to public participation have been considered and the extent to which they have been used was described in justification enclosed to the adopted plan.
- **Consultation with environmental and health authorities (article 9)**
 The Draft Modified Plan together with its environmental report were consulted with competent environmental protection and sanitary inspectorate authorities. Moreover, the spatial planning and other authorities were involved in consultations on the basis of spatial planning law. At this stage 140 letters including comments and suggestions from authorities were delivered to the competent regional government which considered them and took into account. The manner in which comments and suggestions from authorities have been considered was made publicly available in the public accessible registers.
- **Transboundary consultations (article 10)**
 The competent regional government found that the implementation of **Draft Modified Plan is likely to have significant transboundary, including health, effects on the German territory**. From transboundary point of view, the most problematic issue was provision regarding exploitation of brown coal in Gubin bordering with Germany (on the German territory there are a lot of existing mines of brown coal, so in the case of possible exploitation in Poland there might be cumulative impacts). However, the Draft Modified Plan only covers the idea of protection of brown coal reserve deposits against land

development. The decision on its possible exploitation will be taken afterwards at the level of plans but not in this programming period what results from Polish Energy Policy. What is more, before taking final decision on exploitation the Polish Energy Policy need to be changed and then as a result of such changes Spatial Development Plan for Lubuskie Voivodship also need to be modified respectively.

Worth noting is fact that, Poland and Germany have a long-lasting bilateral cooperation on transboundary EIA and SEA. Both Parties cooperate on the basis of Polish-German Agreement on EIA entered into force in 2007. This agreement creates legal grounds for EIA between Poland and Germany and regulates in details such issues as: field of application, content and way of notification, relevant authorities, time frames for each stage, preparation of and submitting the EIA documentation, public participation, comments and statements of the relevant authorities, exchanging information, consultations before issuing a final decision, final decision, post-project analysis, meeting deadlines, translations, settlement of disputes and other issues.

Due to the fact that the existing bilateral agreement has been applied successfully since 2007 both countries have a lot of practical experiences in this field. Therefore, Poland and Germany decided to apply the agreement on EIA also to the extent appropriate to SEA mainly because the applied solutions for EIA have been proven and effective so far. This approach has definitely facilitated the entire transboundary SEA for Draft Modified Plan.

Solutions applied from Polish-German Agreement on EIA to transboundary SEA for draft plan were as follows:

- **Notification** contained information on the legal status of Draft Modified Plan, text of draft document and its environmental report in Polish and German languages. According to the bilateral agreement the notification was sent to the relevant German authorities, namely Ministries responsible for environmental issues in two Lands considered as might be potentially affected by the implementation of the draft plan (Brandenburg and Saxony) and copy to the Point of Contact to the Espoo Convention in Berlin. Further, these German authorities forwarded the notification to the specialized authorities at the lower level which were in charge of this case (*Landesdirektion Dresden in Saxony and Gemeinsame Landesplanungsabteilung Land Brandenburg and Berlin*).
- **Deadline for declaration** whether or not Germany would like to participate was **30 days** since the date of receiving the notification. At the same time Germany could submit its comments and suggestions regarding Draft Modification and environmental report.
- The German side (Brandenburg) **asked for extending the given time frame for declaration** and comments for another 30 days due to involvement of number of German authorities and the need to announce to the public in Brandenburg Official Journal. At the same time Saxony provided theirs comments and recommendations regarding environmental report that should be included in this document and expressed their view that further participation of Saxony in transboundary SEA is not necessary.
- **Public participation in Germany (Brandenburg)** was organized on the same rules as in Poland. Such approach was important in order to give the equal rights and opportunities to the public of the affected Party as given to the public of the Party of origin. Having in mind Polish national law on SEA and Polish-German Agreement on EIA:

- the German public was informed about Draft Modified Plan and transboundary SEA by relevant German authorities through public notice and public display in Official Journal,
- the time frame for submitting comments and suggestions by German public was at least 21-day period as Polish law stipulates (time for public access and formulate comments). Therefore, the German authorities which were in charge of organizing the German public participation, gave its own public opportunity to be acquainted with necessary documentation and make comments within period of 21 days.
- the German public could send the comments and suggestions directly to the competent regional government or indirectly through the German relevant authority. Within this stage the competent regional government received 1099 comments from German public. Most of them were sent directly to the competent regional government. Having received such significant number of public comments from Germany the competent regional government faced with a lot of practical problems such as:
 - » lack of human resources to deal with all submitted comments,
 - » translation caused difficulties and misunderstandings because of the Procurement Law which limited the opportunities to choose the most suitable translator, so that the quality of translation was not so satisfactory. What is more the German Party emphasized that the translation of documentation caused some misunderstandings because of not so high accuracy of used terminology,
 - » comments and suggestions could be formulated by German public in German language (or Polish) in written form, verbally to be recorded in the minutes and using the means of electronic communication without the need to secure them within safe electronic signature,
 - » the information on the manner in which the comments and suggestions submitted by the German public has been taken into account and to what extent it has been used was included in written summary as an enclosure to the adopted plan.
- As a result of analyzing the SEA documentation **Germany gave two statements**, one from Brandenburg and another one from Saxony, included opinions of the municipalities and other concerned German authorities. At this stage Saxony was fully satisfied with SEA documentation and had no further questions or concerns. Therefore, to the next stage of transboundary consultations before adoption of the plan (meeting at the governmental level), Poland entered just only with Brandenburg.
- Both Parties took part in the **meeting at the governmental level** in order to discuss in details the transboundary environmental effects of implementing the plan and measures envisaged to prevent, reduce or mitigate environmental effects. Such meeting was great opportunity to explain all concerns and issues still remain unclear. Polish-German discussion was mainly focused on the core issues such as planned modernization of the Odra river in order to develop inland waterways, impacts of planned infrastructural projects of linear character, influences of Special Economic Zone in Kostrzyn and possible exploitation of brown coal deposits in Gubin as well as coal-fired power plant that is strictly associated with exploitation of brown coal.
- As a result of this meeting both **Parties reached consensus**. On the German request the environmental report was complemented and detailed with provisions regarding necessary measures to minimize negative impacts while construction, extension or

modernization of any type of road net and linear projects that might have transboundary impacts on the surface and underground waters as well as biodiversity, etc. Finally, the outstanding issue of brown coal reserve deposits in Gubin and its possible exploitation was cleared up and as a result of thorough discussion the environmental report was complemented with possible transboundary impacts in the case of construction of brown coal mine and associated power plant in the future.

- The findings of the meeting were recorded in the form of **minutes (protocol)** and finally accepted and signed by chairs of Polish and German delegations.
- After adoption of Draft Modified Plan the competent regional government translated the adopted document together with written summary into German language. Further, both original version and its translation into German were sent to Germany in order to make it publicly available for concerned stakeholders in the affected Party.

- **Decision (article 11)**

After having finished the public participation, obtained the required opinions and completed the transboundary consultations the plan was adopted and published. A **written summary** enclosed to the adopted plan contained a justification of the choice of the adopted document in relation to the alternatives considered as well as information on the manner in which the following has been taken into account and to what extent it has been used:

- the findings of the environmental report,
- the opinions of the competent authorities,
- the submitted comments and suggestions,
- the results of the procedure relating to the transboundary SEA, where it has been conducted,
- proposals for the methods and frequency of monitoring the effects of the implementation of the provisions of the document.

- **Monitoring (article 12)**

On the basis of Polish law on SEA, the competent regional government has been obliged to monitor the effects of the implementation of the adopted document in the scope of its environmental impact. What is more, pursuant to the spatial development law voivodship spatial development plans need to be periodically revised and assessed in terms of the level of accomplished foundations of the plan and the stage of its implementation, at least every four year.

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