

BULGARIAN APPROACH IN DEVELOPING AND IMPLEMENTING THE REQUIREMENTS FOR POST-PROJECT ANALYSIS WITHIN TRANSBOUNDARY EIA

Workshop on the exchange of good practices in post-project analysis within transboundary EIA

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Introduction

Post-project analysis (PPA) determines systematic collection, processing and transmission of data on current status of environment and trends of change of its status under anthropogenic impact including proposed activity.

Article 7 of the Espoo Convention stipulates that the concerned Parties, at the request of any such Party, shall determine whether, and if so to what extent, a PPA shall be carried out, taking into account the likely significant adverse transboundary impact of the activity for which an EIA has been undertaken pursuant to the Convention.

Appendix V of the Convention sets the objectives of the PPA which include:

- a) Monitoring compliance with the conditions as set out in the authorization or approval of the activity and the effectiveness of mitigation measures;
- b) Review of an impact for proper management and in order to cope with uncertainties;
- c) Verification of past predictions in order to transfer experience to future activities of the same type.

Current situation linked to development and implementation of PPA

The characteristic features and the possible application of the PPA are described in the Guidance on the Practical Application of the Espoo Convention 2003 (3.5 PPA), as follows:

PPA is not a mandatory activity that would be included in all transboundary EIAs. In practice both concerned Parties may have different views whether such an analysis is necessary. As a result of consultations on such an issue a PPA may or may not be carried out. If a PPA is carried out as an application of the Convention, it has to analyse, as a minimum both the activity as well as its potential adverse transboundary impacts. If the PPA provides unexpected results the Party of origin has to inform the affected Party and carry out consultations concerning necessary measures.

A PPA can be included in the final decision as a requirement related to the monitoring of the activity. Alternatively, it could be made a part of the overall plan for the transboundary assessments from the start of the procedure. A PPA is typically based on the monitoring of the activity and its impacts. Monitoring can also be carried out jointly by the Parties and within the territory of all Parties concerned. The Parties should exchange any results gained by the monitoring. Requirements concerning PPA can be included in the agreements on transboundary EIA.

A short description of PPA is given also in the Guidance on subregional cooperation 2003(11(h) PPA):

In some national EIA systems post-project analysis is not a mandatory activity and the Parties concerned may have different views on the need for such an activity. Arrangements for a PPA may be a part of an overall plan for a transboundary procedure or may be decided only at the very end.

According to the Review of Implementation (MP.EIA/2004/2/Add.2/p.42-43): “Those respondents that indicated why PPA were undertaken whether or not generally indicated that they were done to:

- monitor compliance with the conditions in the licences;
- review predicted environmental impacts for proper management of risks and uncertainties;
- modify the activity or develop mitigation measures in case of harmful effects on the environment; and
- provide the necessary feedback in the project implementation phase.

Only a few respondents indicated that PPA were undertaken so as to learn from the experience. There was no reported experience of informing another Party or being informed by another Party, of a significant adverse transboundary impact, identified as a result of PPA.”

Based on the above mentioned it could be stated that the requirements of the national legislation on PPA vary considerably in the Parties to the Convention. In a limited number of countries it is mandatory to undertake a PPA as part of the EIA and the decision making process.

Bulgarian approach in development and implementation of the requirements of PPA

Legal framework

The new Environmental Protection Act, in force since September 2002, stipulates in Art.100 the requirements for PPA, as an obligation of the competent authorities (the

Minister of Environment and Water and/or the Director of the Regional Inspectorate of Environment and Water) to oversee the implementation of the remediation measures described in the EIA report and the compliance with the conditions specified in the EIA decision.

The provisions of the Law are further elaborated in Art.22 of the EIA Ordinance which is in force since March 2003. The requirement for carrying out a PPA in case of a transboundary EIA is set in Art.25 of the Ordinance. It stipulates the order of the steps which Bulgaria should follow if it is a Party of origin. Point 12 specifies the control over implementation of the EIA decision: “where explicit preliminary agreement exists, the competent authority of the Party of origin shall notify the affected party about the implemented measures for control and the conclusions made.”

Implementation

According to the legal provisions PPA is generally undertaken in the national EIA procedure to monitor compliance with the conditions in the EIA decision in the process of: approval and design of investment projects; construction and operation of the facilities.

The proponent of the planned activity, subject to EIA, is responsible for the preparation of an implementation plan containing measures to avoid, reduce or remedy significant adverse effects on the environment. The plan is attached to the EIA decision and adopted as its annex enabling the competent authority to exercise control on it, too.

The control over the conditions in the EIA decisions issued by the Minister of Environment and Water is assigned to the Regional Inspectorates of Environment and Water (RIEW), Water Basin Directorates and National Park Directorates.

The control includes verification, by documents and by on-site visits, of the results from the implementation of the plan containing measures to avoid, reduce or remedy significant adverse effects on the environment and assessment of their efficiency in accordance with the requirements of the Environmental Protection Act. Special attention is paid to check the compliance of forecasting environmental changes prescribed in the EIA report and accepted in the EIA procedure to actual changes of proposed activity on environmental protection and rational management of natural resources.

The controlling authorities mentioned above, the RIEW, report the results of the control to the Ministry of Environment and Water periodically, in 6-months period. In case of non-compliance a protocol with the identified gaps is signed and sent to the proponent of the planned activity. Depending on the level of non-compliance sanctions have to be paid or corrective measures should be undertaken by the proponent within prescribed period of time. The periodical reports are summarized in the annual report prepared by the RIEW's. The information could be submitted to interested and concerned parties by written request, under the procedure of the Law on access to public information.

The results of the control and of the PPA are subject to discussion at the periodical workshops (twice a year) organized by the EIA and SEA Department at the Ministry of Environment and Water for the EIA/SEA specialists at the regional level.

Case studies

Case 1: EIA in a transboundary context for the Finalizing and Commissioning of Unit 2 of NPP Cernavoda

Bulgaria was notified as affected Party about the project developed by the National Company “Nuclearelectrica” SA. Summarizing the opinions gathered during the public access to information the country requested PPA to be carried out by the Party of origin.

In the Environmental Agreement issued in 2003 Romania, as Party of origin, included under item 31 the following condition:

“31. In fulfilling the Bulgarian party requests, following the commissioning of the objective, a post-project analysis shall be conducted, the terms of which will be agreed between the two parties.”

There is no further development of this requirement in the Agreement. No document has been prepared with the terms of PPA as prescribed in the condition 31.

Case 2: EIA in a transboundary project for Construction of NPP at the site of “Belene”

Bulgaria, as Party of origin notified Romania as affected Party. The EIA procedure included public access to the EIA report and public hearings at the concerned municipalities in both countries.

Summarizing the comments received from the Romanian side the EIA Decision No 18-8/2004, issued by the Bulgarian Minister of Environment and Water, contains the following conditions (item 49 and item 50):

“49. Performance of an analysis on the execution of the project, according to the requirements of the EIA Convention in a transboundary context, as the conditions of its execution shall be précised additionally together with R.Romania. The information about the results of analysis made shall be submitted periodically at the MoEW.

50. Securing of the participation and cooperation of R.Bulgaria and R.Romania under the form of mutual committees for conclusion of effective working agreements to prepare for action upon emergency situations, regarding each reactor selected for commissioning at the Belene site, as well as for other nuclear power activities, performed at the Belene site.”

The execution of the project has not started yet. Currently a tender for the design and construction of the NPP Belene is carried out.

Conclusions

The necessary legal requirements for PPA, including in a transboundary context, are in force in Bulgaria. Practical application of PPA is still only at a national level. Provisions for PPA in a transboundary context are set in the relevant documents (EIA decisions).

Further to this it is expected that both countries, Party of origin and affected Party, will agree on the next steps in the implementation of the PPA.