

Economic Commission for Europe
Meeting of the Parties to the Convention
on Environmental Impact Assessment
in a Transboundary Context
Sixth session

Meeting of the Parties to the Convention
on Environmental Impact Assessment in
a Transboundary Context serving as the
Meeting of the Parties to the Protocol on
Strategic Environmental Assessment
Second session

Geneva, 2–5 June 2014
Item 9 of the provisional agenda

Panel discussion on the application of the Convention and the Protocol to energy-related issues

Informal summary of the panel discussion by the moderator

Moderator

Ms. Stefanie Held, Chief of Section, Sustainable Energy Division, UNECE.

Panellists

- Prof. Thomas Bunge (Germany): Application of the Convention to the Nord Stream gaz pipeline project
- Mr. George Kremlis (DG Environment, European Commission): Application of transboundary EIA procedures to large-scale projects
- Mr. Mihail Făcă (Romania): Application of the Convention to the Cernavodă nuclear power plant
- Mr. Michael Kuske (DG Energy, European Commission): Role of Euratom and European Commission (DG Energy) in the field of nuclear safety
- Mr. Jiri Dusik (Integra Consulting): Application of the Protocol on SEA to energy related plans and programmes, policies
- Prof. Jerzy Jendrośka, (Opole University, Poland): Application of the Convention and the Protocol to energy related issues in Eastern-Europe, the Caucasus and Central Asia
- Mr. Andriy Andrushevych (European EcoForum, Resource & Analysis Center “Society and Environment”): Application of the Convention to nuclear energy related issues; the critical need for SEA in countries in Eastern-Europe, the Caucasus and Central Asia in the energy sector; benefits of public participation and the need to engage the economic sectors into SEA application.

Reference materials

To be completed

Event Description and background

The panel discussion took place during the high-level segment of the sixth session of the Meeting of the Parties to the Convention (MOP) and the second session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (MOP/MOP) as part of UNECE efforts to promote good practice in assessing transboundary environmental impacts and to enhance cooperation between neighbouring countries.

To date, the Espoo Convention is the only international legal instrument that details the scope and content of transboundary EIA procedures. It is in the energy sector that the Convention is applied the most, and considering the numerous plans for energy projects, it will likely be applied more and more frequently. It requires countries to notify and consult each other on potential environmental impacts when planning new energy projects. It provides the public and authorities of a potentially impacted country with the possibility to comment on the planned project and to participate in the environmental impact assessment procedure.

The high-level multistakeholder panel took stock of the progress that the Convention has made so far. The panel discussion on the main achievements, lessons learned and remaining challenges in the application of the Convention and the Protocol to energy-related project followed the deliberations by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its second and third meetings.

Discussion Overview

Stefanie Held opened the discussion by stressing the uniqueness of the Convention and the Protocol as international legal instruments. She mentioned that they are being increasingly applied and recognized with probably more than 1000 cases to date. It seems, she said, that parties are familiar with the process and find it useful. She equally encouraged more interdivisional cooperation in the fields of environment and energy, it was in the energy sector that the Convention was applied the most: power plants, nuclear, hydropower and gas, wind, cross boarder infrastructure, including water related, waste and mining were just a few examples mentioned by her. She also referred to the earlier findings from the seminar about renewable energy projects that already illustrated good practice in the application of the Convention and the Protocol and confirmed increasing interlinkages between the two sectors. She then gave the floor to the seven panelists before leading the panel discussion with the floor.

Prof. Thomas Bunge spoke about the application of the Espoo Convention to the Nord Stream natural gas pipeline project cutting across the Baltic Sea from the Russian Federation to Germany, within the territorial waters and/or the exclusive economic zones of five countries of origin (Russia, Finland, Sweden, Denmark, and Germany). He stressed the planning phase of the project from 1997 and then presented lessons learnt. He focused in particular on the challenges that the Convention poses to large-scale projects with several countries of origin and potentially affecting the environment both of these and of other countries, as they are significantly different from smaller (bilateral) projects. He called for additional procedural requirements supplementing those laid down in the Espoo Convention for large-scale projects. He also proposed a “steering group” that could maintain transparent and clear process under the Convention. He also mentioned harmonised national EIA and permit procedures, overall EIA documents, public participation and permit procedures. Ideal, he said, would be to - in the long term - substitute the national permits by a single permit decision issued jointly by all countries of origin.

Mr. Mihail Făcă spoke about the planned construction of units 3 and 4 at Cernavodă Nuclear Power Plant with a focus on issues encountered during the EIA procedure for the planned construction of the two units. The construction of the power plant began in the 1980's. However, due to insufficient resources and changed environmental circumstances, it is still an ongoing project. Mr. Făcă explained in detail the historic approach and successful application of the Convention to this project, which is today an accepted and still on-going project in Romania. He stressed the importance of open and transparent communication with the different stakeholders.

Mr. George Kremlis presented the EU environmental legislation and guidance documents, applicable for developing and authorizing energy projects, and showed how the existing EU rules related to environment and energy issues could contribute to sustainable growth of the EU economies. In particular, Mr. Kremlis focussed on two Guidance documents: the Guidance document on the Application of the Environmental Impact Assessment Procedure for Large-Scale Transboundary Projects prepared the Commission services, together with EU Member States; and the Guidance for the Projects of Common Interest, energy projects under the TEN-E Regulation (Regulation (EU) No 347/2013), that was co-funded by the Connecting Europe Facility. After outlining some challenges, he presented five recommendations, including early planning, roadmapping and scoping of assessments, early and effective integration of environmental assessments and public participation and consultation. He concluded that international cooperation and coordination was of high importance for large-scale transboundary projects and that streamlining was required with a view to build energy infrastructure.

Mr. Michael Kuske drew parallel lines between the role of Euratom and the European Commission (Directorate General for Energy) and the Convention in the field of nuclear safety. He explained the historic development of Euratom and its current functioning. He then outlined responsibilities of DG-Energy for developing and implementing a European energy policy; which include orienting and coordinating the implementation of action, policies and programmes; and developing a European legal framework for nuclear energy, including stringent safety standards. He referred in particular to health and safety standards, emerging planning and public consultations in the context of Euratom.

Mr. Jiri Dusik focussed his intervention on strategic environmental assessment (SEA). He began by linking the instrument to the current continued increase of energy demand in reference to recent publications from the

International Energy Agency. His intervention concentrated subsequently on how the SEA instrument could cope with an increased need for energy projects, all unique in nature. He proposed several ways in which the instrument could be used as a strategic planning tool and through increased flexibility could assist in an increased coverage of project demands. He continued to ask for an improved process and advocated for more strategic thinking and adaptive management for the Protocol. He mentioned such challenges as time, efficiency, and referred to case studies in Laos and Vietnam, where more flexible environmental assessments have been implemented. His proposed solution was to hold an increased number of targeted and thematic multi-stakeholder discussions and energy planning processes, also calling for the application of flexible environmental assessment tools for energy policies at the national level.

Prof. Jerzy Jendroska spoke about the application of the Convention and the Protocol to energy related issues in Eastern-Europe, the Caucasus and Central Asia, addressing in particular the implementation of a legal framework and the lack of sectoral and physical planning. He mentioned various key challenges including coordination in case of transboundary industrial accidents. Specifically, his presentation focussed on the ability to fulfill obligations under the Convention and the Protocol and domestic schemes and challenges for legislative reforms. Among the challenges, he included special energy-related laws and general EIA/SEA schemes; synergy with obligations under the UNECE Industrial Accidents Convention; the need for early involvement of environmental authorities; key issues for the public participation procedure; and key issues for the transboundary procedure.

Mr. Andriy Andrushevych addressed challenges in the UNECE region with respect to the implementation of the Convention and the Protocol to energy projects with a particular view on the public sector. He started off by outlining experience and challenges in the application of the Convention in the field of nuclear energy, and then proceeded by listing a number of recommendations, and the need to provisionally apply existing outcomes and benefits of involving relevant international actors. He then reflected on the critical need for the application of SEA in all UNECE countries in the energy sector, and the benefits of public participation. He also mentioned the challenge to ensure procedures and the implementation of the Convention and the Protocol in occupied territories.

Panel discussion

Questions to the panel focused on the education of the public and public awareness, the role of the instruments in stopping or delaying projects and an existing contradiction between the term flexibility and law and procedural enforcements and compliance. The panel agreed with the increased need to involve the public early on in the process, and that in all countries affected by the energy project, not just signatories. Panellists had divergent views on the need to have more flexible tools and what it implies to enhance the implementation through a higher number of signatories and better legal frameworks. There was a call for best practice examples for the application of the Convention and the Protocol and better planning processes.

Summary

Ms Held closed the panel with a brief summary of the discussion referring to the confirmed benefits and achievements of these two unique instruments and positive reports of implementation through collaborative impact. She summarized that most of the discussion related to planning processes and additional procedural requirements, harmonized permitting process, improved public consultation processes, continuous and international cooperation, and documentation. She stressed that the examples provided by the panel confirm that the Espoo Convention appears to be a widely applied and well recognized tool, providing legally binding yet flexible elements, and enhancing cooperation yet retaining sovereignty. However, she said, every process and tool benefits from regular reality checks, as this high-level panel demonstrates, and improvements have been suggested in many areas. In closing, she asked the panellists to reflect on the achievements and challenges of the Convention and the Protocol once more, and then share with the audience the one thing that would improve the Convention and the Protocol for energy related plans, projects and policies like no other. Time factor and lack of data were briefly mentioned as well as the question on how much data was enough and how decisions making could be sped up despite increased uncertainty, continuing lack of data and more and more questions from investors. In addition, answers from the panelists covered a wide range of recommendations from end consumers to the legal enforcement of the instruments themselves:

- Increased contact with end-consumers;
- More flexible multi-stakeholder consultation processes;
- Involvement of all neighbouring countries in mitigating conflicts;
- Increased attention to the planning and permitting stage; and
- Increased enforcement of laws finding a good balance between the flexibility needed and compliance with regulatory processes.