

Texte 43/02

Zalecenia dotyczące przeprowadzania transgranicznej oceny oddziaływania na środowisko (OOŚ) między Niemcami a Polską (dla planowanej działalności, której krajem pochodzenia są Niemcy)

– Tłumaczenie z języka niemieckiego –

Recommendations of Germany's Federal Environmental Agency for the performance of transboundary environmental impact assessment (EIA) between Germany and Poland (Germany as state of origin of a planned project)

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Na podstawie projektu badawczo-rozwojowego FKZ 298 13 162 „Test praktyczny w zakresie realizacji Konwencji o ocenach oddziaływania na środowisko w kontekście transgranicznym (Niemcy - Polska)”. Raport końcowy, część 2, projekt z dn. 24 stycznia 2002 r. Opracowanie: inż. dypl. Heiner Lambrecht, Planungsgruppe Ökologie + Umwelt GmbH, Hanower, oraz adwokat Rainer Kühne, Biuro Adwokackie Gaßner, Groth, Siederer & Coll., Berlin.

Summary

Cooperation between **Germany** and **Poland** on projects which may have significant adverse environmental effects in the other country has grown strongly in recent year, gaining a new quality in the process.

This cooperation is based in particular on the **Agreement between the Federal Republic of Germany and the Republic of Poland for cooperation in the field of environmental protection of 7 April 1994** (referred to in the following as “German-Polish Environmental Protection Agreement”), which commits both countries to carrying out a **transboundary environmental impact assessment (EIA)** for planned projects which may have significant environmental effects in the territory of the respective other country. The German-Polish Environmental Protection Agreement entered into force on 31 August 1998.

Current difficulties in implementing the Agreement are due to the fact that the transboundary EIA procedure between Germany and Poland has not yet been regulated in sufficient detail. For example, the provisions of the German **Act on Environmental Impact Assessment (EIA Act)** concerning transboundary

participation cannot go beyond a certain level of detail as they must be suitable for procedures between Germany and all its neighbours. At the same time, negotiations are still ongoing on a **bilateral EIA Agreement** between Germany and Poland, which, in accordance with Article 5 paragraph 4 of the German-Polish Environmental Protection Agreement, is to regulate the details of the transboundary EIA procedure and the scope of application. The EIA Agreement is not likely to enter into force any time soon, as it will take some time to conclude the further negotiations and the subsequent national coordination processes in the two countries. What is more, owing to its expected content (particularly arrangements concerning the translation of documents), in Germany the introduction of the EIA Agreement will in all likelihood require a law.

At the same time, the enquiries the Federal Environmental Agency is receiving show that current implementation practice confronts authorisation authorities with a multitude of questions and problems which need to be solved today.

Against this background, the Federal Environmental Agency decided to draw up **recommendations for the performance of transboundary EIA between Germany and Poland** (Germany as state of origin of a planned project) in order to provide direct and concrete support.

The recommendations propose a detailed procedure capable, according to present knowledge, of contributing to an expeditious conduct of transboundary EIA and to transparent and harmonious cooperation between the parties involved (developers, authorities, the public) in both countries. Amongst other things, they furnish concrete proposals for all those procedural stages for which the EIA Act provides a margin of discretion or which are to be carried out solely under the conditions of reciprocity and equivalence.

The recommendations take into account, in particular:

- the current status of German and Polish laws essentially regulating EIA in the two countries (notably EIA Act, Administrative Procedures Act, the Republic of Poland's Environmental Protection Legislation Act),
- the Espoo Convention, the German-Polish Environmental Protection Agreement and the German-Polish Agreement on Boundary Waters,
- the current status of the negotiations in the German-Polish governmental working group which is in the process of drafting the above-mentioned bilateral EIA agreement,
- the practical experience gained to date with transboundary EIA for planned projects in Germany.

The recommendations seek to assist German authorities responsible for issuing the final decision on the authorisation of planned projects in performing the transboundary EIA and provide other parties involved (developer, other authorities and the public) with a basis for action and information. The recommendations equally target those involved in both Germany and Poland, as a transboundary procedure can be carried out successfully only if both sides cooperate in an appropriate manner.

The recommendations have been formulated in close context with **R+D project no. 298 13 162**, entitled "**Practical trial on the implementation of the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context (Germany-Poland)**", which has received funding under the German Environment

Ministry's Environmental Research Plan (UFOPLAN). In this project, a first proposal for the performance of transboundary EIA was developed and then tested in practice within the framework of the development consent procedures for three German projects (diversion of water from the river Neisse, federal state of Saxony; flooding of the residual pit of the former open-cast mine in Berzdorf, federal state of Saxony; reconstruction of a dike section of the river Oder in the area of the "Neuzeller Niederung", federal state of Brandenburg).

The recommendations for the performance of transboundary EIA between Germany and Poland (Germany as state of origin of a planned project) have been published as volumes 42/02 (German version) and 43/02 (Polish version) of the Federal Environmental Agency's "Texte" series. They can be obtained free of charge through: Umweltbundesamt, Zentraler Antwortdienst, Bismarckplatz 1, 14193 Berlin; fax: +49-30 8903-2912; e-mail: Petra.Berner@uba.de. Both volumes are in addition available as down-load-files on the internet website of the Federal Environmental Agency (www.umweltbundesamt.de).

The final report of R+D project no. 298 13 162, which provides information about the goals, methodology, implementation and results of the practical trial on the implementation of the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context (Germany-Poland), will also be published shortly in the "Texte" series (in German with an English-language summary).