Agreement

between

the Government of the Federal Republic of Germany

and

the Government of the Republic of Poland

on

the Implementation of the Convention on Environmental Impact Assessment
in a Transboundary Context
of 25 February 1991
The Government of the Federal Republic of Germany
and
the Government of the Republic of Poland
(hereinafter referred to as the "Parties"),

Mindful of the importance of transboundary cooperation in the context of preventing, mitigating and monitoring environmental impact in general and more specifically with regard to proposed projects which may cause significant adverse environmental impact in a transboundary context,

Taking into account the Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Poland on Cooperation in the Field of Environmental Protection of 7 April 1994, hereinafter referred to as the "1994 Agreement" and its provisions on the application of the transboundary environmental impact assessment,

Determined to apply the Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991, hereinafter referred to as the "Espoo Convention", between the Federal Republic of Germany and the Republic of Poland for the benefit of both Parties,

Conscious that specific provisions and a transparent procedure facilitate and accelerate the implementation of transboundary environmental impact assessments between the Federal Republic of Germany and the Republic of Poland,

Intending to ensure that transboundary environmental impacts of proposed projects are identified, described and assessed as soon and as comprehensively as possible, with the participation of the authorities and the public in the Federal Republic of Germany and in the Republic of Poland, and that in the licensing of the proposed projects due account is taken of the results of the environmental impact assessment,
In cooperation with the German Federal Länder Brandenburg, Mecklenburg-Western Pomerania and the Free State of Saxony,

Have agreed as follows:

Article 1
Scope

(1) This Agreement shall apply to any proposed project that may cause significant adverse transboundary impact on the environment of the territory of the other Party and for which an environmental impact assessment (EIA) is carried out and EIA documentation prepared in accordance with the national legal provisions of the Party of origin.

(2) The environmental impact assessment pursuant to paragraph 1 shall be governed by both Articles 2 to 7 of the Espoo Convention and the provisions of this Agreement. In particular, the provisions of this Agreement shall not restrict the rights of the Parties pursuant to Article 2 paragraph 8 of the Espoo Convention.

(3) If pursuant to paragraph 1 the proposed project is also subject to an assessment with regard to the impact on water management in the area of boundary waters pursuant to Article 6 paragraph 3 of the Treaty between the Federal Republic of Germany and the Republic of Poland on Cooperation in the Field of Water Management in the Area of Transboundary Waters of 19 May 1992, the part of the assessment relating to environmental impact shall only be subject to an EIA in accordance with the provisions of this Agreement. The Party of origin shall inform the Boundary Waters Commission if it carries out a transboundary EIA for such proposed project.
(4) If the decision about the admissibility of a proposed project pursuant to paragraph 1 is taken in the course of several procedures or a single procedure divided into various phases, this Agreement shall apply to each and every procedure and phase of procedure in which an environmental impact assessment is being carried out and EIA documentation prepared.

Article 2
Notification

(1) The Parties shall notify each other without undue delay on all proposed projects designated in Article 1 paragraph 1 of this Agreement of which they obtain knowledge. The notification shall include all information pursuant to Article 3 paragraph 2 of the Espoo Convention.

(2) The notification pursuant to paragraph 1 shall be transmitted as follows:

1. If the Federal Republic of Germany is the Party of origin, the competent authority for the EIA of the Federal Land in the territory of which the proposed project is to be carried out shall send the notification to the Minister of the Republic of Poland responsible for environmental issues. If the competent authority for the EIA is a federal authority, this authority shall dispatch the notification. In addition, the competent German authority shall concurrently inform the federal Ministry responsible for environmental protection issues and the respective ministry of the Federal Land about the content of the notification.

2. If the Republic of Poland is the Party of origin, the Minister of the Republic of Poland responsible for environmental issues shall send the notification concurrently to the Ministry responsible for environmental protection issues of the Land of the Federal Republic of Germany in the territory of which the proposed project may cause significant adverse transboundary environmental impact, and to the Federal Ministry of the Republic of Germany responsible for environmental protection issues.
(3) The affected Party shall acknowledge receipt of the notification pursuant to paragraph 1 to the Party of origin without undue delay and shall indicate without undue delay, in any event no later than 30 days after receipt of the notification, whether it intends to participate in the environmental impact assessment. If the affected Party intends to participate in the environmental impact assessment it shall at the same time inform the Party of origin, which shall be the competent authority/authorities

1. for the implementation of the environmental impact assessment in the transboundary context, in particular for the receipt of the EIA documentation pursuant to Article 3,

2. for carrying out the consultations pursuant to Article 7 and

3. for the receipt of the decision pursuant to Article 8.

(4) When one of the Parties considers that the environment on its territory would be affected by a significant adverse transboundary impact of a proposed project pursuant to Article 1, and when no notification has taken place pursuant to paragraph 1, the Party of origin, upon request of the affected Party, shall send the information pursuant to paragraph 1. Upon receipt of the information the affected Party shall proceed pursuant to paragraph 3.

(5) If the affected Party has indicated its desire to participate in the environmental impact assessment procedure, the Party of origin shall, if it has not already done so pursuant to paragraph 1, provide to the affected Party information pursuant to Article 3 paragraph 5 of the Espoo Convention. The Party of origin shall inform the affected Party about the authorities involved in the EIA procedure at the time of the notification pursuant to paragraph 1 or no later than the time of the transmittal of the EIA documentation.

(6) A sample notification, a sample acknowledgement of receipt as well as a sample statement of participation can be found in Annexes 1 to 3 of this Agreement, which form an integral part of the Agreement.
Article 3
EIA documentation

(1) Once the affected Party has indicated its desire to participate in the environmental impact assessment, the Party of origin is obliged to furnish the affected Party with the EIA documentation, including its translations pursuant to Article 11 paragraph 2, number 2, upon their completion without undue delay to the affected Party pursuant to Article 4 paragraph 1 of the Espoo Convention.

(2) When sending the EIA documentation the Party of origin will indicate to the affected Party a reasonable time limit for submitting comments or objections by participants in the procedure of the affected Party. In setting the reasonable time limit the Party of origin shall take into account – within the framework of its national legal provisions – the nature of the proposed project, the nature and dimension of the likely environmental impact on the territory of the affected Party and the need to conclude the transboundary EIA as soon as possible. The time limit should not exceed three months unless there are exceptional circumstances.

Article 4
Public participation

(1) The Parties shall ensure public participation in the environmental impact assessment of the proposed project pursuant to Article 1 paragraph 1 in accordance with general principles which are in line with their respective national legal provisions. The public of the affected Party shall be entitled to express their comments and objections within such time-frame that is provided for the public of the Party of origin. The public of the affected Party shall be informed about this procedure by the competent authority of the affected Party through the publication of the information on the opening of such procedure and the public notice of documentation mentioned in Article 3 paragraph 1, together with the announcement of the re-
quirements for making comments and objections and the preconditions for contesting the decision. The competent authority of the Party of origin shall be informed about the date of the notice of the documentation to the public of the affected Party.

(2) The public of the affected Party shall be entitled to express their comments or objections directly to the competent authority of the Party of origin responsible for the decision on the proposed project.

(3) If the party of origin carries out a public hearing concerning the comments and objections brought forward by the public it shall inform the affected Party about the place and date of the hearing in good time. The competent authority of the affected Party shall inform its own public about the place and date of the public hearing carried out by the Party of origin.

Article 5
Comments by Authorities

(1) If the Republic of Poland is the affected Party, the Minister of the Republic of Poland responsible for environmental issues shall send his/her comments on the proposed project concurrently to the Federal Ministry of the Republic of Germany responsible for environmental protection issues, to the Ministry of the respective Land of the Federal Republic of Germany responsible for environmental protection issues and to the authority responsible for the environmental impact assessment for the proposed project which has carried out the notification pursuant to Article 2 paragraph 1.

(2) If the Federal Republic of Germany is the affected Party, the German authorities whose area of responsibility with regard to environmental issues is affected shall send their comments on the proposed project concurrently to the Minister of the Federal Republic of Poland responsible for environmental issues and the competent authority for the decision.
Article 6
Exchange of Information

Within the framework of an ongoing EIA procedure on a proposed project pursuant to Article 1 paragraph 1, the authority responsible for the decision and other authorities involved in the procedure of both Parties shall be entitled to exchange information on the procedure directly.

Article 7
Consultations before the Decision is Adopted

(1) The Party of origin after having transmitted the EIA documentation on the proposed project shall offer without undue delay consultations pursuant to Article 5 of the Espoo Convention, in particular on measures to reduce or eliminate significant adverse transboundary environmental impact and shall at the same time inform the affected Party which authority is responsible for undertaking the consultations. In addition, the Party of origin is to inform the affected Party at an appropriate time before conclusion of the consultations on whether, and if so which, measures are to be undertaken to reduce or eliminate the significant adverse transboundary environmental impact on the basis of comments made by the authorities and comments and objections expressed by the public of the affected Party.

(2) No later than by expiry of the time limit specified for the transmittal of comments pursuant to Article 3 paragraph 2, the affected Party shall inform the Party of origin whether it is interested in holding consultations.

(3) If the affected Party indicates interest in consultations, the Parties, once the Party of origin has proposed dates for such consultations, shall determine a reasonable time-frame for the duration of the consultation period, including dates and places for the consultations, paying due attention to the principles laid down in Article 3 paragraph 2. The decision on the proposed project must not be taken before conclusion of the consultations, provided that they do not exceed the time-frame agreed upon.
(4) The Parties may invite other participants of the procedure and experts to participate in the consultations.

Article 8
Transmittal of the Decision

(1) After the decision has been transmitted to the applicant of the proposed project, the Party of origin, without undue delay, shall provide to the affected Party the decision on the proposed project pursuant to Article 6 of the Espoo Convention.

(2) Having received the decision, the affected Party shall ensure that the decision is made available to the authorities concerned and the public within its territory.

Article 9
Post-project analysis

The Parties may determine by mutual agreement whether, and if so to what extent, a post-project analysis pursuant to Article 7 of the Espoo Convention is to be carried out, provided the decision on the proposed project or the national legal provisions allow for such post-project analysis.

Article 10
Compliance with time limits

Compliance with time limits for communications, comments or objections directed to the competent authority of the Party of origin shall be governed by the national legal provisions of the Party of origin. In order to comply with specified time limits the use of electronic me-
dia shall also be allowed. Whether consideration shall be given to communications, comments or objections which did not comply with a time limit shall be at the sole discretion of the competent authority of the Party of origin.

Article 11
Translations

(1) The Party of origin shall transmit to the affected Party the following documents translated into the official language of the affected Party:

1. the notification pursuant to Article 3 paragraph 2 of the Espoo Convention and information pursuant to Article 3 paragraph 5 of the Espoo Convention;

2. the non-technical summary of the EIA documentation pursuant to Article 4 paragraph 1 of the Espoo Convention and such parts of the EIA documentation which allow the affected Party to assess the likely significant adverse transboundary environmental impact and to comment on it;

3. the decision on the proposed project including such parts of the reasons which enable the affected Party to recognize to which extent the decision takes into account

   a) the likely significant adverse transboundary environmental impact described in the EIA documentation,
   b) comments by the authorities of the affected Party which were relevant for the decision,
   c) comments and objections expressed by the public of the affected Party which were relevant for the decision,
   d) the outcome of the consultations between the Party of origin and the affected Party and
e) measures to reduce or eliminate the significant adverse transboundary environmental impact.

4. any other documents prepared by the Party of origin which are indispensable for the procedure to be carried out appropriately, in particular invitations to consultations and minutes of the consultations;

5. the results of a post-project analysis pursuant to Article 7 of the Espoo Convention if such analysis was carried out.

(2) If the affected Party considers such parts of the EIA documentation that have been translated pursuant to paragraph 1 number 2 insufficient for comments to be made on the significant adverse transboundary environmental impact of the proposed project, it shall inform the Party of origin of this without undue delay. Both Parties shall then endeavour to reach a mutually agreed solution both with regard to the transmittal of additionally translated parts of the EIA documentation and an extension of the time limit pursuant to Article 3 paragraph 2.

(3) The affected Party shall transmit to the Party of origin the complete documentation for a transboundary EIA of the proposed project including comments pursuant to Article 5 in its own official language. The public of the affected Party shall transmit their comments and objections pursuant to Article 4 in the official language of the affected Party. Documents, comments and objections may also be transmitted in the official language of the Party of origin.

(4) The Party of origin shall provide for the interpretation into the official language of the affected Party for public hearings and the consultations, unless the Parties agree otherwise.

(5) The Party of origin shall bear the costs for

1. the translation of documents by the Party of origin into the official language of the affected Party,
2. the translation of documents, comments and objections by the affected Party which have been sent to the Party of origin in the official language of the affected Party, into the language of the Party of origin,
3. interpreters for public hearings and consultations, unless the Parties agree otherwise.

Article 12
Competent authority

If no competent authority has been specified in this Agreement, the competent authority shall be specified in accordance with the national legal provisions of the respective Party governing environmental impact assessments in a transboundary context.

Article 13
Settlement of disputes

(1) Open questions concerning the interpretation or application of this Agreement shall be presented for clarification to the working group on the implementation of the Espoo Convention, which was established by the German-Polish Commission for Neighbourly Cooperation in the Field of Environmental Protection and which works on the basis of the 1994 Agreement. If no clarification can be achieved these questions shall be submitted to the said Commission.

(2) Disputes between the Parties concerning the interpretation and application of this Agreement shall be settled pursuant to Article 15 of the Espoo Convention.

Article 14
Other international instruments
This Agreement shall be without prejudice to existing obligations and rights of both Parties deriving from other international instruments.

Article 15
Entry into force and termination of this agreement

(1) The Parties shall notify each other that the necessary national preconditions for the entry into force of this Agreement have been met. This Agreement shall enter into force one month after the day on which the last notification has been received.

(2) This Agreement is of unlimited duration. Each Party may terminate this Agreement by notification with a notice period of six months.

(3) Transboundary EIA procedures initiated pursuant to Article 2 paragraphs 1 or 4 before expiry of this Agreement due to termination shall be concluded in accordance with the provisions of this Agreement.

Done at Neuhardenberg this eleventh day of April of two thousand and six in two originals in the German and Polish Language, both texts being equally authentic.

For the Government of the

Federal Republic of Germany

For the Government of the

Republic of Poland
Annexes
to the
Agreement
between
the Government of the Federal Republic of Germany
and
the Government of the Republic of Poland
on
the Implementation of the Convention on Environmental Impact Assessment
in a Transboundary Context
of 25 February 1991
Annex 1

Sample Notification

Sender:

Recipient:

Place, Date

Notification on a proposed project likely to cause significant adverse transboundary environmental impact

File reference . . .

Pursuant to Article 2 paragraph 1 of the Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Poland on the Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991, signed on 11 April 2006 in Neuhardenberg, Germany, we would like to inform you that

...................................................................................................................................................

(Name and address of project management agency/organisation)

intends to carry out the following project

.......................................................................................................................................................

(Full designation of the proposed project)

The procedure on the intended project includes a decision on

.......................................................................................................................................................

(Nature and subject of the decision)
to be taken in accordance with
.............................................................................................................. .

(Legal provision to be applied)

This procedure comprises an environmental impact assessment.

We thus provide you with

- the information pursuant to Article 3 of the Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991 (Enclosure 1)
- a list of authorities involved in the EIA procedure on our side (Enclosure 2).*

We would like to ask you to acknowledge receipt of this notification without undue delay and to indicate without undue delay, in any event no later than 30 days after receipt of this notification, whether the Republic of Poland / the Federal Republic of Germany** intends to participate in the environmental impact assessment.

...........................
(Signature)

* Delete if inapplicable.
**Delete accordingly.
Sample Acknowledgement of Receipt of Notification

Sender:

Recipient:

Place, date

Acknowledgement of Receipt

File reference:


.......................................................................................................................................................

(Full designation of the proposed project),

for which an environmental impact assessment is to be carried out on

........................................................................

(Date of receipt)

...........................................................................................

(Signature)
Sample Statement of Participation

Sender:

Recipient:

Place, Date

Statement of Participation

File reference . . .

Pursuant to Article 2 paragraph 3 of the Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Poland on the Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991, signed on 11 April 2006 in Neuhardenberg, Germany, we refer to your notification dated …………………… with regard to the proposed project .................................................................................................................................................,

(Full designation of the proposed project)

for which an environmental impact assessment is to be carried out, and declare that we intend to participate in the EIA / that we do not intend to participate in the EIA.*

We should also like to inform you that

1. ...............................................................................................
   (Name and address of the competent authority)
   shall be the competent authority for the implementation of the EIA in a transboundary context, in particular for receiving the EIA documentation pursuant to Article 3;

2. ...............................................................................................
   (Name and address of the competent authority)
   shall be the competent authority for consultations pursuant to Article 7;

3. ...............................................................................................  .
   (Name and address of the competent authority/authorities)
   shall be the recipient for the decision pursuant to Article 8.**

. . . . . . . . . . . . . .
(Signature)

* Delete accordingly.
**Delete if inapplicable.