



**Economic and Social
Council**

Distr.
GENERAL

ECE/MP.EIA/WG.1/2007/6
12 March 2007

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

**MEETING OF THE PARTIES TO THE CONVENTION
ON ENVIRONMENTAL IMPACT ASSESSMENT
IN A TRANSBOUNDARY CONTEXT**

Working Group on Environmental Impact Assessment

Tenth meeting
Geneva, 21–23 May 2007
Item 4(d) of the provisional agenda

**ACTIVITIES RELATING TO THE CONVENTION LISTED IN THE WORKPLAN
(DECISION III/9)**

Capacity-building in Eastern Europe, Caucasus and Central Asia (EECCA)

**Guidelines on Environmental Impact Assessment in a Transboundary Context for Central
Asian Countries**

Prepared by Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan

Summary

These Guidelines aim to provide practical step-by-step procedures for the implementation of Environmental Impact Assessment in a transboundary context (or 'transboundary EIA') in the Central Asia subregion, based on the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991), and further to the workplan adopted in decision III/9.

I. INTRODUCTION

1. The Convention, which came into force in 1997, requires its Parties to conduct Environmental Impact Assessment (EIA) across the borders between them when a proposed activity may cause significant adverse transboundary impact. Of the Central Asia (CA) countries, Kazakhstan, Kyrgyzstan and Tajikistan have passed legislation ratifying the Convention. Due to various reasons, the CA countries, both Parties and non-Parties, face difficulties in the practical implementation of the Convention, particularly as transboundary EIA envisages the coordination of domestic procedures and implementation among all stakeholders.

2. The Convention's practical application is a significant element in regional cooperation on environmental protection and sustainable development. Transboundary EIA can help to prevent or minimize negative impacts and can contribute to the development of dialogue between the CA countries. Thus, the Guidelines can serve as a tool for the CA countries in carrying out concrete EIA procedures, with due regard to subregional and national characteristics and the requirements of national legislation.

3. Representatives of the five CA countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) developed the Guidelines further to an initiative of Kyrgyzstan, to strengthen subregional cooperation, and to implement the Convention's workplan. The work was done in cooperation with the Regional Environmental Centre for CA (CAREC) and the secretariat of the Convention.

4. Within the framework of the preparatory process for the World Summit on Sustainable Development (Johannesburg, 2002), the CA countries initiated a subregional initiative on sustainable development, which was included in the Summit's final documents and which has been continued and developed in the decisions of the Fifth 'Environment for Europe' Ministerial Conference (Kiev, 2003). The Guidelines further implementation of this subregional initiative.

A. Development of the Guidelines

5. Draft guidelines were discussed and approved at a subregional workshop, held on 5-7 October 2004 by Lake Issyk-Kul (Kyrgyzstan), with participation by representatives of CA governments, non-governmental organizations (NGOs), international organizations and donor countries. The workshop took place with support from the Swiss Federal Office for the Environment (FOEN) and the Bishkek Centre of the Organization for Security and Cooperation in Europe. The draft guidelines were discussed at national workshops in CA and finalized based on comments and proposals provided. The national workshops involved ministries, NGOs and project developers or initiators. Comments were also provided by the secretariat. The Guidelines were then submitted to the countries, approved and recommended for practical use.

B. Acknowledgements

6. On behalf of all involved in the preparation and implementation of the project, the project manager (Manager of the Environmental Policy Programme at CAREC) would like to thank especially the Vice-Minister of Ecology and Emergency Situations (Kyrgyzstan), FOEN and the secretariat, and to extend this gratitude to all who supported the preparation of the Guidelines and participated in the development process during the subregional and national workshops.

II. OBJECTIVE, AIMS AND STRUCTURE

7. The objective of the Guidelines is to create procedural mechanisms for the practical application of the Convention in CA. The Guidelines, which are recommendatory in nature, contain detailed step-by-step procedures in accordance with the Convention.

8. The Guidelines are intended for decision-makers, for initiators of economic and other activities who are responsible for EIA, for contractors undertaking EIA, for the Competent Authorities in the field of transboundary EIA and for public organizations participating in EIA.

9. The legal basis for the Guidelines is national environmental protection legislation and international agreements, where the CA countries are parties to such agreements. It consists of five independent but interrelated parts:

- (a) Review of national EIA legislation and practice;
- (b) Recommendations for the country or Party of origin (PO);
- (c) Recommendations for the affected country or Party (AP);
- (d) Recommendations for the project proponent;
- (e) Other matters.

III. TERMS AND DEFINITIONS

10. These Guidelines use the following terms and definitions:

- (a) “Party of origin” (PO) means the Contracting Party or Parties to the Convention under whose jurisdiction a proposed activity is envisaged to take place;
- (b) “Affected Party” (AP) means the Contracting Party or Parties to the Convention likely to be affected by the transboundary impact of a proposed activity;
- (c) “Impact” means any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors;
- (d) “Environmental impact assessment” (EIA) means a national procedure for evaluating the likely impact of a proposed activity on the environment;
- (e) “Transboundary impact” means any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party;
- (f) “Project Proponent” means natural or legal persons, responsible for preparing documentation on proposed activities in accordance with national legislation;
- (g) “Competent Authority” means the national authority or authorities designated by a Party as responsible for performing the tasks covered by the Convention and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity;
- (h) “The public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups;
- (i) “Public participation” means complete measures, conducted within the framework of an EIA, directed at informing the public about a proposed activity and determining all aspects of the activity’s possible environmental impact, to obtain full information and its taking into account in the EIA.

IV. REVIEW OF NATIONAL EIA LEGISLATION AND PRACTICE

11. This review presents the state of legislation and practice up to mid-2005.
12. According to the legislation of the CA countries, international agreements recognized by them have priority over national legislation. Of the five CA countries, three have passed legislation ratifying the Convention: Kazakhstan (2000), Kyrgyzstan (2001) and Tajikistan (2004). In addition, most are party to the Aarhus Convention,¹ in which there are concrete references to the Espoo Convention, as well as to conventions on, *inter alia*, biodiversity and persistent organic pollutants, where certain requirements for EIA are indicated and undertaking EIA is recommended.
13. The environmental legislation of the CA countries includes the main provisions regulating national EIA procedures, including provisions for public participation in the decision-making process. The law on environmental expertise is the basic law regulating the requirements for proposed and current economic and other activities, and the rights and duties of the public in the decision-making process, in all CA countries. In certain countries, for example Turkmenistan, special state standards provide for EIA of proposed activities, these being similar in structure to the principles and procedures of the Convention.
14. The environmental legislation comprises not only this basic law. Laws on environmental protection, protected areas, flora and fauna, air, waste and other matters regulate other environmental fields.
15. Elements of the assessment and prevention of transboundary impact were provided in earlier bilateral and multilateral agreements. For activities having clear transboundary impact, a number of agreements provided for actions satisfying some provisions of the Convention.
16. Thus the legislation allows implementation of aspects of the EIA process. However, in almost all CA countries there is no concrete mechanism for carrying out transboundary EIA, covering all its aspects and satisfying all international requirements, in particular the Convention's requirements. The procedure for submitting information on a proposed activity, not only to the public but also to Government bodies, is not addressed in the legislation.
17. It can be concluded that the existing legislation is insufficient for the resolution of transboundary environmental issues, among which are: cooperation with donors, public participation, the consideration of alternatives, comparisons in support of decision-making, review, assessment of significant environmental impacts, mitigation and monitoring. In addition, not enough attention is given to subregional estimation of environmental conditions, including transboundary EIA, for policies, plans and programmes having transboundary environmental impact.

¹ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

A. Kazakhstan

18. Kazakhstan ratified the Convention domestically on 21 October 2000 and became a Party on 11 April 2001. Domestic EIA implementation procedures are clearly defined in national legislation. However, there are no transboundary EIA implementation procedures that combine international requirements and national specificities.

19. In accordance with the Laws on Environmental Protection and on Environmental Expertise, environmental expertise is present in two forms: state (SEE) and public (PEE). Projects without a positive SEE conclusion should not be approved and project financing is prohibited.

20. These Laws contain provisions for EIA. Article 46 of the Law on Environmental Protection defines the objectives of EIA: it is carried out to identify the environmental and other consequences of the accepted options for administrative and economic decisions, and to develop recommendations for environmental improvement and the prevention of the destruction, degradation, damage or exhaustion of natural environmental systems and resources.

21. The Law on Environmental Expertise established the EIA procedure. It regulates public involvement in environmental expertise so as to prevent negative impacts of administrative, economic and other activities on the environment and on the life and health of the population.

22. Article 16 of this Law indicates that the EIA procedure is undertaken by the proponent of a planned economic activity, or the owner of the enterprise or central or local executive body for current activities. EIA is an obligatory and integral part of the pre-project and project documentation, and is carried out at all stages of design in view of:

- (a) Environmental conditions at the proposed activity location;
- (b) Alternatives for achieving the proposed activity's objectives, including the 'no project' alternative;
- (c) Regional socio-economic development perspectives;
- (d) Other legal requirements for environmental protection.

23. Normative documents on EIA and SEE have been developed and are now in force:

- (a) Rules for EIA of proposed activities within preparation of the state, branch and regional programmes on development of economic sectors and of schemes for the location of industry;
- (b) Instruction on the SEE of pre-project and project documentation;
- (c) Instruction on the EIA of proposed economic and other activities within the development of pre-planned, pre-project and project documentation;
- (d) Rules on the state registration of PEE procedures carried out by local executive bodies, in whose territory a proposed activity is to be implemented;
- (e) Guidelines for the state authorities on *Public participation in decision-making on environmental problems*, prepared on completion of the project *Assistance to Kazakhstan in implementation of the Aarhus Convention, 2002*;
- (f) Temporary instruction on carrying out environmental audit (environmental and health impact assessment) for enterprises;

- (g) Methodical recommendations for assessing the impact of proposed economic activities on bio-resources: soils, flora and fauna;
- (h) Methodical recommendations for EIA of new techniques, technologies, materials and substances;
- (i) Guidelines for the proponent of pre-project and project documentation on organization of the EIA, and registration of public opinions, for proposed economic activities.

24. The figure provides an overview of EIA in Kazakhstan.

Overview of EIA in Kazakhstan

EIA Procedure:

- Scoping the EIA
- Analysis of environmental conditions and socio-economic characteristics of the location of the proposed economic activity
- Evaluation of environmental conditions and socio-economic characteristics as a result of implementation of the proposed activity

Preparation of the EIA documentation

Public participation through discussion of the project materials (including the EIA documentation), and subsequent revisions to the project documentation

Implementation of the procedure for SEE of the EIA documentation

Decision-making on agreed implementation of the activity

If the SEE conclusion is positive: implementation of the proposed activity. The EIA documentation can be used to improve the EIA of future projects.

If the SEE conclusion is negative: the project proposal may be revised and further SEE consideration or rejection of proposed activity is possible.

25. SEE began under the State Committee on Hydrometeorology in 1984; its modern form was established under the State Committee on Environmental Protection in 1988. The following bodies now participate in the EIA and SEE:

- (a) Representatives of the central executive body responsible for environmental protection (Ministry for Environmental Protection) and its territorial divisions, directly participating in development and acceptance of the normative legal and methodological EIA and SEE documents;

- (b) Officials participating in the decision-making process relating to EIA;
- (c) Proponents of projects and of economic and other kinds of activity requiring EIA and subject to SEE;
- (d) EIA and SEE experts;
- (e) Representatives of NGOs, the public and the local population interested in participating in the EIA process or intending later to take part in the activity of one of these groups (e.g. students).

26. The SEE service carries out its work in cooperation with expert services of other departments: the Ministry for Public Health Services, for Education and Science, and for Energy and Mineral Resources; and committees of the Ministry for Agriculture on, *inter alia*, water, fish and wood resources.

B. Kyrgyzstan

27. Kyrgyzstan became a Party to the Convention in 2001. International norms have priority over national legislation and implementation of ratified international treaties is therefore guaranteed.

28. However, elements of the identification and prevention of transboundary impact were introduced into earlier intergovernmental agreements. For activities having clear transboundary impact, certain of these agreements provide for, *inter alia*:

- (a) The involvement of the parties concerned in a programme of environmental expertise for investment and other projects, implementation of which may affect interests of two or more contracting parties;
- (b) The application of common EIA approaches, criteria, methods and procedures, and mitigation, ensuring comparable data on environmental conditions at the international scale;
- (c) The application of agreed EIA methods for activities;
- (d) The application of common methodological requirements for the SEE procedure.

29. Following ratification, elements of the Convention are gradually being introduced into national legislation. Principal provisions regulating EIA were foreseen in the national environmental legislation, including provisions related to issues of international cooperation and public participation in decision-making.

30. The main legislative act relating to EIA is the Law on Environmental Expertise, adopted in 1999. This Law determined the concept of EIA as a process for the identification, analysis, assessment and consideration in decision-making of potential impacts, and their environmental consequences, arising from a proposed activity. The Law also defines the main requirements for conducting environmental expertise and the documentation that is subject to expertise; it provides for two types of environmental expertise: state and public. Further, it provides for participation in international environmental expertise and addresses transboundary EIA, the participation of international experts, the involvement of the public and their participation in decision-making, and reporting.

31. Environmental legislation is present not only in these principal laws but also in natural resource laws, regulating resource protection and rational environmental management, including: Laws on Water and on Natural Resources; Land and Forest Codes; the Code on Administrative

Responsibility; and Laws on Specially Protected Natural Areas, on Protection of Flora and Fauna, on Air Quality Protection, and on Waste Production and Use.

32. As a means of implementing legal provisions, appropriate instructions determining the procedure for EIA implementation and for carrying out SEE were developed, made law and registered by the Ministry of Justice. These instructions provide procedures for carrying out SEE, for environmental audit, and for public participation in economic decision-making.

33. A new Law on Environmental Protection was developed and approved. This Law regulates directly the main requirements for EIA, SEE, public participation in decision-making, and implementation of international obligations. Provisions relating to environmental expertise were introduced into the principal laws regulating environmental management. SEE is mandatory for activities subject to it.

34. The executing agency for the implementation of the Convention is the Ministry of Ecology and Emergency Situations. Within the Ministry, the Department of Ecology and Environmental Expertise of the Ministry's Central Body, together with provincial Departments on Environmental Protection, carry out SEE. Depending on the scale and character of a proposed activity, SEE is carried out at the national or provincial level. The Minister determined by order the clear division of authority for implementation of SEE between the Central Body and the provincial Departments on Environmental Protection.

35. SEE is carried out by expert staff or by expert commissions, comprising experts who are not permanent staff but are on a register of experts. Specialists from project organizations may carry out EIA if they have the necessary license and certificates, as issued by the State Commission on Architecture and Construction; Ministry specialists are included in the commission that issues certificates.

36. In 1997, the Ministry of Environmental Protection's Board approved by resolution an instruction, registered by the Ministry of Justice, on the SEE procedure for pre-project, project and other documentation. The subjects of environmental expertise are: feasibility studies; construction, reconstruction, cessation, temporary activity suspension and reclamation projects; and other types of pre-project and project documentation, implementation of which may have environmental impact.

37. Experts or an expert commission analyze this documentation. The result of SEE is a conclusion that can be positive or negative, with a positive conclusion being required for permission to implement the proposed activity. It is important that the documentation subject to SEE include EIA documentation prepared by the proponent. The quality, objectivity, completeness and validity of EIA documentation play important roles in the preparation of the SEE conclusion on the project documentation.

38. The proponent is supposed to inform the public, NGOs and any concerned persons and organizations about its project documentation, in a form convenient for the public through, for example, meetings, receptions, round tables and mass media. Proposals and observations by the public on the documentation should be recorded and reviewed; those proven and acceptable are

taken into consideration. EIA public discussion materials are attached to the documentation submitted for SEE.

C. Tajikistan

39. Tajikistan ratified the Convention by Decree number 1287 of the State President on 17 February 2004. However, it has yet to deposit its instrument of ratification with the Convention's Depository, the Secretary-General of the United Nations.

40. The Law on Environmental Protection stipulates environmental expertise. The Law on Environmental Expertise presents environmental expertise in detail. Environmental conditions for the implementation of planned activities are also regulated in other legislation, including: Laws on Air Quality Protection, on Protection and Use of Fauna, on Protection and Use of Flora, and on Waste Products from Manufacture and Consumption; and Forest, Water and Land Codes.

41. According to the legislation, 'environmental expertise' means the official determination of the conformity with environmental standards of a planned or current economic or other activity, as well as determination of the admissibility of implementation of the activity, with a view to prevent possible adverse impact on the natural environment and related social, economic and others consequences.

42. The officially authorized body for SEE is the State Committee on Environmental Protection and Forestry (SCEPF). Within the SCEPF, the SEE service, and its regional groups on standards and expertise, are responsible for the organization and carrying out of SEE.

43. The legislation provides for public participation during environmental expertise though, after accession to the Aarhus Convention, the principal environmental laws require amendment.

44. The Laws on Environmental Protection and on Environmental Expertise do not provide a definition of 'transboundary impact' or for the elaboration of regulations addressing such impacts.

45. Tajikistan has signed a number of bilateral and multilateral agreements that provide application of certain provisions of the Espoo Convention. However, there is no practical experience in transboundary EIA compliant with the Convention.

46. The legislation determines the following principles for carrying out SEE:

- (a) The right of all people to an environment favourable to their health and living conditions;
- (b) The requirement to preserve ecological stability, genetic resources and wildlife diversity in the interests of present and future generations;
- (c) A presumption of potential environmental risk arising from those activities subject to SEE;
- (d) Observance of international legal obligations;
- (e) Independence, objectivity, scientific validity, public participation and access to information;
- (f) A complete estimation of environmental impact and its consequences.

47. An expert commission formed by the SCEPF carries out SEE. The commission includes non-staff experts, and may include SCEPF regular employees in cases identified by SCEPF normative documents. An SEE expert cannot be: the customer or the developer of the project, or its representatives; or a representative of a ministry, department or organization having labour or other contractual relations with the customer or the developer of the project concerned.

48. The documentation submitted for SEE should include a justification of the environmental safety of an activity. Projects for development of environmentally-dangerous economic activities should include within the EIA documentation an estimate of environmental risk and an Environmental Impact Statement (EIS, a final report summarizing the EIA), which provide a guarantee that measures to maintain the environmental safety of the activity will be implemented throughout its predicted period of existence, including cessation.

49. The documentation should also include:

- (a) Conditions for using natural resources and sanctions for carrying out the activity, prepared by local state bodies and authorities;
- (b) The conclusions of departmental expertise of the project;
- (c) The results of discussion of the EIA with the public in the area affected by the activity;
- (d) Information on technical decisions on design materials, laboratory facilities and means provided by the project for implementation of monitoring of environmental conditions in the area affected by the activity.

50. At the request of the expert commission, the proponent is obliged to present additional information on a planned activity.

51. The Instruction on EIA (2000), authorized by the Ministry of Environmental Protection (the predecessor to the SCEPF), is the basic regulation for identification of the predicted impact of a planned activity and it establishes procedures for carrying out EIA. The Instruction covers those aspects of EIA insufficiently covered in existing acts. As elsewhere in CA, the Instruction does not fully address the issues identified in paragraph 17 above.

52. According to the Instruction, the EIA documentation should contain:

- (a) Materials in which the expected direct or indirect impact of the activity is established, described and estimated, with respect to:
 - (i) Climate, air, surface and ground waters, soils and geology, landscape (especially protected natural areas), flora and fauna, ecosystem functionality and stability, and population;
 - (ii) Natural resources;
 - (iii) Cultural and historical monuments;
 - (iv) Environmental quality in urban and rural settlements;
 - (v) Socio-economic conditions;
- (b) An evaluation of the alternatives considered and a justification of the selected option;
- (c) Measures proposed to prevent or mitigate predicted negative impact of the planned activity, or measures that would strengthen positive environmental impact;
- (d) An evaluation of the consequences if the planned activity is not implemented.

53. The impact of activities should be evaluated for the period of their development, implementation and operation, as well as during cessation or termination of their operation, and the period after cessation or termination. Estimates of the expected impact of the activity on all possible characteristics of the affected area should address both normal operation and possible failures.

54. On the basis of the EIA documentation the project proponent prepares the EIS, in which all materials arising from studies undertaken during development of the EIA documentation are presented and analyzed.

55. The period for carrying out the expertise is determined by law to be no more than 45 days from the date of submission of the complete documentation. There are three stages in the SEE: preparatory, basic and final. During the preparatory stage, SCEPF experts check the conformity of the structure of the submitted documentation and the expert commission is formed.

56. In the basic stage, individual experts and the expert commission prepare judgements and the draft conclusion on the basis of the terms of reference formulated earlier. If new issues come to light, the experts or the commission can ask the body that requested the SEE for an extension or for additional expertise. If during the SEE potentially significant impacts are identified that have not been addressed in the documentation, the project can be returned without a conclusion.

57. During the final stage, the commission prepares a draft conclusion for discussion with representatives of the project proponent, project designer and the public. The conclusion of the SEE has to be adopted by the whole expert commission and cannot be changed without its consent.

D. Turkmenistan

58. The main legislation for carrying out impact assessment in Turkmenistan comprises legal acts regulating environmental expertise, including:

- (a) Law on SEE (1995, article 7);
- (b) Law on Environmental Protection (articles 13-16);
- (c) Presidential Resolution number 2864: Regulations on Carrying out SEE

(13 November 1996).

59. These documents, and other normative and legal acts adopted for the development of laws and regulations, are directed at the formation and strengthening of the legislation on the protection of the environment and of the health and living standards of the population.

60. General requirements, principles, terms, responsibility for violation of SEE legislation, etc., are given in detail in the Law on SEE.

61. In accordance with article 16 of the Law on Environmental Protection, the design, location, construction, reconstruction and renovation of enterprises and other activities, as well as their initiation, operation, maintenance and cessation, must be carried out in compliance with environmental safety requirements. Every project or planned activity must be accompanied by proper EIA documentation prepared by the proponent or designer. These materials must provide

analysis, general conclusions and information dissemination about the potential environmental impact of a proposed activity on the area around the proposed location, together with necessary environmental protection measures in accordance with requirements of international environmental law.

62. The State Standard on EIA of designed (proposed) economic and other activities (TDS-579-2001) was adopted to provide the legal basis for EIA. The Standard provides:

- (a) A list of norms, legal and subordinated acts;
- (b) Definition of EIA goals and principles, and of the content of the EIA documentation and the SEE conclusions;
- (c) A list of environmentally harmful types of economic activities for which EIA is obligatory;
- (d) Conditions for public participation in EIA in accordance with the Aarhus Convention.

63. The Standard's structure is similar to that of the Convention but the list of activities is more limited, essentially to an internal state level. However, approaches, procedures and stages are similar. The following stages can be identified in the EIA process:

- (a) Submission of an application (notice) for the proposed activity, justification of the selected technology, and the project's solution to minimize negative environmental impact;
- (b) Preparation of EIA documentation including a research programme for a reliable and qualified description of the consequences of implementation of the proposed activity.

Information must include:

- (i) Justification of the need to develop the activity;
 - (ii) Locational and technological alternatives;
 - (iii) All environmental components affected by the activity;
 - (iv) Description of all types of impacts;
 - (v) Estimation of impact magnitudes;
 - (vi) Measures to mitigate negative impact;
 - (vii) Prediction of residual environmental impact;
 - (viii) Review of project and implementation plan innovations, resource-saving technologies and non- or low-waste production;
 - (ix) Characteristics of all treatment plants;
 - (x) Methods and resources for waste treatment or utilization;
 - (xi) Estimation of environmental, social and economic consequences and of accident risk and consequences;
- (c) Public participation in discussion of the EIA. Public hearings concerning the proposed economic activity and its environmental impact are conducted in accordance with requirements of Aarhus Convention and the State Standard on EIA. Access to environmental information on EIA is provided within the framework of national legislation and can be limited or refused in certain circumstances;
- (d) Preparation of review, including SEE conclusion, can be done by bodies of the Ministry of Environmental Protection, with or without the assistance of independent experts. A proposed economic activity is not permitted without a positive SEE conclusion. Article 2.8 of the Convention and national laws, regulations and administrative provisions govern the Ministry's determination of the SEE conclusion.

64. The SEE conclusion by the Ministry can include a number of recommendations for observance of environmental protection requirements, and the determination of the vulnerability of specific natural components to be protected during the activity. The conclusion must specify acceptance or rejection of the proposal.

E. Uzbekistan

65. The legislative base for environmental protection and rational natural resource use in Uzbekistan is developing with regard to the coordination of environmental legislation and legal norms that regulate different types of economic activity. Special attention in environmental legislation development is paid to the development and implementation of the basic principles of EIA.

66. A fundamental legislative act, within this process of development and enhancement of national environmental legislation, is the Law on Environmental Protection, adopted in 1992. The Law regulates the legal, organizational and economic basis for environmental protection. The main priorities of the Law are balanced and harmonious relations between mankind and nature, conservation of ecosystems, and guarantees for citizens' rights to a favourable environment.

67. Subsequently, implementing regulations that develop and make concrete issues identified in the Law on Environmental Protection have been elaborated and adopted: Specially Protected Natural Areas (1993), Air Quality Protection (1996), Plant Life Protection and Use (1997), Water and Water Use (2003), Radiation Security (2000) and Wastes (2002).

68. International practice on EIA has been adopted as a basis for environmental expertise normative and legislative activity. EIA is considered to be a tool for environmental expertise, giving a complete assessment of negative consequences of a proposed activity and determining the effectiveness of environmental protection measures. The preparation of the documents necessary for Uzbekistan to join the Convention has been completed.

69. EIA of projects has been carried out in Uzbekistan since 1993. The EIA procedure was drawn up in normative regulative documents in 1996. In 2000, the Law on Environmental Expertise was adopted and entered into force. In 2001, the Cabinet of Ministers adopted Regulations on SEE. The Laws on Environmental Protection and on Environmental Expertise provide the guiding principles for the development of documents to determine the compliance of an activity with national environmental conditions.

70. The Law on Environmental Expertise was elaborated to define the basis for the regulation of environmental expertise and the harmonization of legal regulations with administrative requirements. This Law defines the concept of 'environmental assessment', establishes interaction with international environmental organizations and foresees the precedence of international norms where there are differences between national legislation and obligations under international agreements to which Uzbekistan is a party.

71. The Law on Environmental Expertise defines:

- (a) Environmental assessment objectives;
- (b) Environmental assessment types (SEE and PEE, and environmental audit);

- (c) Basic principles of environmental expertise;
- (d) The legality, objectivity, proof and necessity for consideration of environmental security;
- (e) The presumption of potential environmental danger of any specified economic or another activity;
- (f) The complete assessment of the impact on the environment and on public health of an economic or other activity.

72. Article 11 of the Law includes a list of activities subject to SEE.

73. According to the Law on Environmental Expertise (article 15), the project proponent presents: EIA documentation, the draft EIS, the application for the environmental permit, and the EIS that is implemented if the draft EIS identifies a need for further research, local investigations and development of environmental protection measures. For an activity already operating, the proponent presents draft environmental norms, and the EIS when it has already been established that the activity has an adverse impact on the environment and on public health.

74. The Law on Environmental Expertise foresees implementation of environmental expertise, and its outcomes are recommendatory in nature. If decided by the owner of an existing economic or another activity, the Law provides for environmental audit: an independent environmental expertise of functioning enterprises and other activities that result in adverse environmental impact.

75. The State Committee on Environmental Protection (SCEP) is a special plenipotentiary structure in the SEE field. In accordance with the SEE Regulations, the following SCEP bodies are the SEE authorities: Central Administrative Board on SEE (*Glavgosexpertiza*); SEE body of the SCEP of the Republic of Karakalpakstan; and SEE bodies of the Committees for Environmental Protection of the regions and Tashkent City. SEE authorities of the SCEP provide a uniform system of SEE and the Central Administrative Board provides methodological guidance. Staff experts carry out SEE.

76. The authors of EIA documentation, which serves as guidance to the environmental expertise, may be specialists of project organizations or companies dealing with the preparation of EIA documentation. There is no requirement for a license or certificate to prepare EIA documentation.

77. The SEE Regulations specify a list of types of activity that are subject to SEE. Within the list, activities are divided into four categories according to the degree of environmental impact: I (high-level impact risk), II (medium-level risk), III (low-level risk) and IV (local impact).

78. According to the Regulations, *Glavgosekoekspertiza* carries out SEE of category I and II activities. SEE bodies of the Republic of Karakalpakstan, the regions and Tashkent City carry out SEE of category III and IV activities.

79. For the SEE, the proponent should submit EIA documentation on the proposed activity according to the following stages:

- (a) The draft EIS, elaborated at the design stage of the proposed or predicted activity, is submitted before the start of activity financing. The draft EIS contains:
- (i) An analysis of environmental conditions before the proposed activity is implemented;
 - (ii) A description of the main and subsidiary technology with respect to environmental impact and natural resources use;
 - (iii) Expected emissions and waste and their environmental impact, as well as waste recycling and disposal;
 - (iv) An analysis of proposed activity alternatives;
 - (v) An analysis of emergency situations (with probability estimation and means of prevention of negative consequences);
 - (vi) A description of the impact type and character;
 - (vii) An analysis of the main components affected;
 - (viii) Impact estimation and forecast of environment change and environmental consequences as a result of activity operation;
 - (ix) Proposals on measures to reduce environmental impact to an acceptable level;
- (b) The EIS is submitted before approval of the activity by the SEE. It contains:
- (i) An estimate of the environmental problems of the area that has been chosen for project construction, according to the results of geological engineering survey and programme research within the framework of the project;
 - (ii) Detailed characteristics of environmental impact;
 - (iii) Analysis of the results of public hearings;
 - (iv) If necessary, correction of the activity's social impact;
 - (v) An estimate of the activity's environmental impact within to the affected area;
- (c) The application for the environmental permit is submitted before acceptance of the activity for operation. It contains:
- (i) Corrections to the project description;
 - (ii) An analysis of measures adopted in response to the result of consideration by the SCEP authorities of the draft EIS and the EIS, as well as proposals submitted at public hearings and environmental standards regulating the activity;
 - (iii) The main conclusions on the possibility of carrying out the activity;
 - (iv) Monitoring and environmental management plans for the period of the activity's operation.

80. For proposed category IV activities, a draft EIS is submitted.

81. Having considered the EIA documentation, the SCEP authorities on SEE issue the SEE conclusion, including necessary information about the activity subjected to expertise, technology used, organization of work, environmental protection measures, possible negative consequences connected with the activity, and conclusions about the admissibility or inadmissibility of implementation of the activity.

82. The conclusion is issued as an official letter, signed by the Deputy Chair of the SCEP or by the Chair of the appropriate Committee for Environmental Protection. In case of non-approval of the EIA, recommendations are made for revision and resubmission of the documents.

83. There is a substantially formed legal and normative base for EIA procedures and, accordingly, well-qualified personnel for carrying out EIA both at the national level and in a transboundary context. Joining the Convention along with other CA States is a priority goal, with the intent to promote environmental protection in CA.

V. RECOMMENDATIONS FOR PARTY OF ORIGIN (PO)

84. These recommendations were developed for countries that are the origin of projects with possible transboundary environmental impact, for which an EIA procedure is required.

85. The Competent Authority for the proposed activity, together with the project proponent, determines whether the proposed activity falls under the Convention. Having identified a transboundary impact, the Competent Authority makes a decision about the notification procedure. The proponent starts the notification procedure.

A. Notification

86. The notification comprises a short letter of a non-technical character, containing:

- (a) Brief information about the proposed activity, including information about possible transboundary impact;
- (b) Brief information about the opportunity for participation in the process in accordance with the Convention's Article 3;
- (c) The deadline by which a response is requested;
- (d) The address to which a response is to be sent.

87. The notification is presented in Russian as this is the common language for CA countries and is an official language of the Convention. (For an example letter, see the *Guidelines on Environmental Impact Assessment in a Transboundary Context in the Caspian Sea Region*, available at <http://www.unece.org/env/eia/publications.html>.)

88. The notification should to be sent to the address of the official point of contact of the affected Party (AP). If the point of contact is not a competent environmental authority, a second copy of the notification with attachments should to be sent to the competent environmental authority of the AP. An official list of points of contact is on the regularly-updated website of the Convention (<http://www.unece.org/env/eia/contacts.htm>).

89. The notification is sent as a hard copy; an electronic copy may be sent to the competent environmental authority in advance, to inform it of the forthcoming notification.

B. Sending of notification

90. The PO should send the notification no later than when informing its own public about the proposed activity. The notification should to be sent by registered mail. This gives the PO the guarantee that the notification is delivered to the AP and indicates the date of receipt.

C. Timing for review of notification (Articles 3.2 and 3.3)

91. The PO should wait for a response from the AP for the period indicated in the notification, which is generally one month. (This period does not determine the timing for the review of the EIA documentation.) The PO assures the adequacy of the information for the AP to make an informed decision on its involvement in the EIA procedure.

D. Timing for review of EIA documentation

92. The PO proposes a reasonable period, depending on the complexity of the project, for review of the EIA documentation, for public participation in the AP and for receiving comments from the AP. The timing of consultations is determined taking into consideration when the draft EIA documentation is submitted to the AP's point of contact and should be no more than one and half months.

E. Transmitting information

93. The proponent should send the EIA documentation to the AP's Competent Authority and/or environmental authority for its consideration and preparation of comments.

F. Final decision (Article 6)

94. The PO informs the AP about the final decision on the impact assessment. The PO summarizes the received comments on transboundary aspects; and informs the AP how those aspects were taken into consideration during preparation of final EIA documentation and in the decision-making.

95. If the AP requests information on project implementation and monitoring, the PO has to make a decision on how information can be presented to the countries concerned, addressing the transboundary context.

VI. RECOMMENDATIONS FOR AFFECTED PARTY (AP)

96. These recommendations have been developed for countries receiving notifications from the PO regarding the development of an activity with possible transboundary impact, requiring EIA.

A. Preparing response to notification (Article 3.3)

97. The AP's Competent Authority is responsible for the sending of a response to the PO's Competent Authority within the period identified in the notification. During this period, the AP should make a decision on whether to take part in the EIA process. The AP should consider and discuss the notification with local authorities for the area covered by the possible transboundary impact of the proposed activity.

98. The preparation of a response to the notification and further organization of work is carried out by the AP's competent environmental authority. The AP can initiate coordination with the PO's Competent Authorities for the clarification of issues and for obtaining additional information.

99. If the AP decides to participate in the EIA process, it sends a reply to the PO. The response is sent by registered mail and includes a summary of the most accessible information about the AP, for example about vulnerable ecosystems that might be affected as a result of the proposed activity.

100. If the AP decides not to participate in the EIA process, it should send an adequate response by registered mail to inform about its rejection of participation in the EIA process. In this case, or if the AP does not reply to the notification, the PO carries out further activities in accordance with the Convention's Article 3.4.

101. It is recommended to exchange information between countries in such a way that the PO can regulate the process of planning the proposed activity.

B. Public participation procedures

102. It is recommended to implement procedures for disseminating EIA documentation to the public, and for public participation, in accordance with the Convention's *Guidance on Public Participation in EIA in a Transboundary Context* (ECE/MP.EIA/7) and with national legislation.

103. EIA documentation or the EIS is considered within a reasonable timeframe (usually, no more than one and half months). If there is a need, the timeframe can be extended based on agreement between the Parties.

C. Transmitting comments

104. The AP's Competent Authority summarizes the comments and sends them to the PO's Competent Authority and the proponent for consideration and decision-making.

D. Final decision

105. On completion of the EIA, the PO's Competent Authority informs the AP about the final decision on the project, and about all comments obtained that were taken into consideration. The AP's Competent Authorities should be assured that comments and registration of comments would be accessible for the public taking part in the EIA process. The AP can also ask for information about project implementation.

VII. RECOMMENDATIONS FOR PROJECT PROPONENT

A. Identification of transboundary impact of proposed activity

106. Identification of a proposed activity with transboundary impact under the Convention is conducted by the project proponent and confirmed by the PO's Competent Authority. For this purpose the proponent determines whether this activity is listed in Appendix I to the Convention. If this activity is not listed in Appendix I, then Appendix III (General criteria to assist in the determination of the environmental significance of activities not listed in Appendix I) or the requirements of national legislation are applied.

107. For the identification of transboundary impact, *Methodological aspects of environmental and socio-economic impact assessment* (Agip KCO, 2004)² may be useful.

108. The proponent has to know the objectives and requirements of the Convention and to assist the PO's Competent Authority in fulfilment of these requirements. It is necessary that the proponent discuss with relevant authorities the requirements of project content, possible transboundary impact of the proposed activity, issues of financing and delivery of documentation, and conducting consultations.

109. Information that might reasonably be presented at an early stage to the PO's Competent Authority includes:

- (a) Short project description;
- (b) Possible project impact in ordinary operation;
- (c) Possible project impact in an emergency situation;
- (d) Type of possible transboundary impact;
- (e) Potentially affected Parties;
- (f) A draft plan for public consultations and information dissemination (see

ECE/MP.EIA/7).

110. The proponent might contract a local consultant in each AP to assist in the organization of consultations.

B. Preparation of draft notification

111. The proponent prepares a draft notification in accordance with the prescribed procedure and sends it to the PO's Competent Authority. Having reviewed this draft notification, the PO's Competent Authority notifies the potential AP about the initial (scoping) phase of the EIA procedure.

C. Consultation and public participation costs

112. The proponent has to foresee the cost of the EIA procedure in the PO and the AP within the estimated costs of project planning. It is recommended to refer to the *Guide on the Practical Application of the Espoo Convention* and the *Guide on Public Participation in EIA in a Transboundary Context* (see ECE/MP.EIA/8 and ECE/MP.EIA/7, respectively)

D. EIA documentation

113. The documentation on EIA should include the following:

- (a) Description of the natural characteristics of the area where a proposed activity is to be located on the basis of existing information about natural and resource potential, and

² Volume 3 of *Regulatory Basis of Environmental Impact Assessment – Current Environmental Status*, prepared by the Kazakh Agency for Applied Ecology for the Agip KCO project *Kashagan Field Experimental Programme Facilities Construction*, and available at http://www.unece.org/env/eia/central_asia.htm.

economic use of the territory, including social, demographic, medical and biological characteristics;

- (b) Assessment of the existing anthropogenic burden on the environment and the capacity of environmental components and renewable natural resources to recover naturally in the area of the proposed location of the activity (taking into consideration approved plans and programmes for the future development of the area);
- (c) Identification and assessment of the expected environmental impact (direct, indirect, short-term, long-term and continuous) of the activity;
- (d) Identification of measures to prevent or minimize environmental impact (description of production and technologies);
- (e) Assessment of residual environmental impact and its consequences;
- (f) Compulsory consideration of the main alternatives of the activity, including options of location, technology, and construction, including refusal of proposed activity, taking into consideration the expected social, economic and environmental consequences;
- (g) Public participation in the EIA procedure;
- (h) Identification of measures for the establishment of an environmental monitoring system;
- (i) A plan for post-project analysis.

114. The final EIA documentation for a proposed activity has to contain justification for the option of the proposed activity chosen by the proponent, guaranteeing favourable environmental conditions at the activity location.

E. EIA documentation

115. The EIA documentation is developed in accordance with the requirements of national EIA legislation, taking into account the Convention's requirements and this Guidance. The contents of the EIA documentation should correspond to the Convention's Appendix II. In each case the focus of the transboundary EIA should be the environmental components that will be affected, based on the preliminary estimation.

F. Environmental Impact Statement (EIS)

116. The basic findings of the EIA of the proposed activity are presented in an EIS, including the following:

- (a) Basic findings and conclusions of the research carried out within the EIA;
- (b) Significant environmental impacts and their consequences for population health and living conditions, including impact on other countries;
- (c) Obligations and guarantees of the project proponent, providing environmental safety for the whole project period.

117. The proponent gives the EIS to all stakeholders, authorities, management and control bodies and the public. The EIS is considered as the proponent's report on the EIA and its contents might be:

- (a) Objective of and need for the planned activity;
- (b) Analysis of alternatives;
- (c) Justification of location and duration of implementation of the activity;
- (d) Resource protection;

- (e) Analysis of technologies;
- (f) Assessment of the existing environmental, including socio-economic, conditions in the area of the activity;
- (g) Key characteristics of the impact of the activity on environmental, including socio-economic, conditions, taking into account transboundary aspects;
- (h) Measures for prevention or mitigation of negative impact;
- (i) Monitoring measures;
- (j) Public participation measures;
- (k) General conditions.

G. Transmitting EIA documentation (Articles 3.8 and 4.2)

118. The proponent sends the EIA documentation to the AP's Competent Authority and/or environmental authority for consideration and comments.

H. Public participation (Articles 4.2 and 5)

119. The proponent can ask the Competent Authorities of the PO and AP for recommendations on selection of the most suitable process of public participation and on identification of affected or interested public groups. The proponent organizes the consultations, or they may be organized by the AP's public having declared its intent to its Competent Authority (see ECE/MP.EIA/7).

I. Preparation of final EIA documentation

120. After completion of the EIA process, the proponent prepares a report including all comments and remarks obtained from the public in the process of consultation. The proponent should indicate how these comments were taken into account in the EIA documentation. The proponent should then present the final EIA documentation to the PO's Competent Authority for decision-making.

VIII. OTHER MATTERS

A. Policies, plans and programmes (Article 2.7)

121. Parties should endeavour to apply the Convention to policies, plans and programmes. If the assessment of policies, plans and programmes is included into bilateral or multilateral agreements, it is important to agree on what types of policy, plan or programme should be assessed in transboundary EIA.

122. The Protocol on Strategic Environmental Assessment to the Convention was adopted in 2003. Once in force it will provide for the environmental assessment of plans, programmes and, to the extent appropriate, policies and legislation. The Convention's workplan foresees preparation of a manual to support application of the Protocol (see http://www.unece.org/env/eia/sea_manual/).

B. Post-project analysis and monitoring (Article 7)

123. At the request of one Party, Parties should decide whether to conduct post-project analysis (PPA). PPA should address, as a minimum, the activity that was subject to EIA and its possible negative transboundary impact. If PPA results are unexpected, the PO should inform the AP and conduct consultation on necessary measures.

124. PPA may be required in the final decision as part of activity monitoring. It can also be included into a general plan from the beginning of the process of carrying out the transboundary EIA. Parties can also jointly conduct monitoring covering the territory of all affected Parties. Parties are recommended to exchange any results obtained during monitoring. PPA requirements can be included in bilateral and multilateral agreements on transboundary EIA.

C. Basic transboundary EIA procedures, if countries are not party to the Convention

125. In this case it is proposed to carry out transboundary EIA consultations on the basis of bilateral agreements using the step-by-step procedures in these Guidelines and in the *Guidance on subregional cooperation* appended to decision III/5.
