



## Economic and Social Council

Distr.: General  
26 November 2018  
English  
Original: English and Russian

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### Economic Commission for Europe

#### Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context

##### **Intermediary session**

Geneva, 5–7 February 2019

Items 3 (a) and 8 of the provisional agenda

##### **Outstanding issues: draft decisions**

##### **Adoption of decisions by the Meeting of the Parties to the Convention**

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

#### **Prepared by consultants to the secretariat in consultation with the Central Asian countries**

##### *Summary*

At their seventh and third sessions (Minsk, 13–16 June 2017), respectively, the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment requested the finalization of revised Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries (see ECE/MP.EIA/23/Add.1-ECE/MP.EIA/SEA/7/Add.1, decision VII/3–III/3, annex I, item I.10.). The present document, prepared by consultants in consultation with the Central Asian countries, responds to that request.

The Meeting of the Parties to the Convention is invited to consider agreeing on the Revised Guidelines and endorsing them through decision IS/3.

GE.18-20233(E)



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## About the preparation of the Revised Guidelines

1. The present document is the outcome of the revision of the Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries (2007 Guidelines) (ECE/MP.EIA/WG.1/2007/6), which were drafted in 2007 and noted by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) at its fourth session in 2008 (ECE/MP.EIA/10, decision IV/5, para. 2). The 2007 Guidelines presented recommendations for the practical implementation of the procedures based on the Convention along with an overview of the state of legislation and practice on environmental impact assessment in the five Central Asian countries up to mid-2005. The further development and update of the 2007 Guidelines was undertaken at the request of Kyrgyzstan for further guidance on the transboundary environmental assessment procedure, including regarding notification, consultations based on the environmental impact assessment documentation, public participation and the final decision. Owing to changes in the environmental impact assessment legislation in the Central Asian countries introduced since 2005, the overview of national legislation with regard to the application of the transboundary environmental impact assessment procedure was also to be updated.

2. The work has been carried out by consultants to the Convention secretariat since 2016, in close cooperation with Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, and further to the workplans for the implementation of the Convention and its Protocol on Strategic Environmental Assessment for 2014–2017 (see ECE/MP.EIA/20/Add.3-ECE/MP.EIA/SEA/4/Add.3) and 2017–2020 (see ECE/MP.EIA/23/Add.1-ECE/MP.EIA/SEA/7/Add.1). The activity has been implemented with the administrative and substantive support of the Regional Environmental Centre for Central Asia and with financial support from the Swiss Federal Office for the Environment.

3. The present Revised Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asia Countries (Revised Guidelines) reflect the recommendations and comments provided by representatives of Kyrgyzstan, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan in writing and during three subregional workshops, which took place on 9 February 2017 in Almaty,<sup>1</sup> 5 April 2017 in Bishkek,<sup>2</sup> and on 2 and 3

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<sup>1</sup> At the first subregional workshop the representatives of the beneficiary countries agreed on a concept for revision of the 2007 Guidelines, outlining that the Revised Guidelines should be based on the principles of the Convention, take into account the general principles of environmental assessment systems of the Central Asian countries and address issues of the applicability of the Guidelines in all Central Asian countries. When assessing the scope of the anticipated revisions of the Guidelines, the representatives of the beneficiary countries recommended to focus, first and foremost, on procedural aspects of transboundary environmental impact assessment and on the preparation of the initial overview of the current national environmental legislation in each country. The participants further noted the document, “Procedure for carrying out a transboundary environmental impact assessment in a transboundary context for the Central Asian countries”, prepared by a group of experts in 2009 with financial support from the Government of Norway and the Organization for Security and Cooperation in Europe (2009 Procedure for Environmental Impact Assessment). They further invited the international experts to consider using this document during the preparation of the Revised Guidelines by, for example, shortening it and providing more practical examples of the application of the transboundary environmental impact assessment procedure in States Parties to the Convention. The participants also agreed that the structure of the Revised Guidelines would differ from 2007 Guidelines.

<sup>2</sup> The second subregional workshop provided the participants with an opportunity to learn about the experience in the application of transboundary environmental impact assessment in the European Union, to discuss the first draft Revised Guidelines and to identify further steps to finalize the work

November 2017 in Kyiv,<sup>3</sup> respectively. The Revised Guidelines also take into account the results of an initial overview carried out by the national experts of the current national environmental legislation in each country.

4. As at October 2018, out of the five Central Asian countries, only Kyrgyzstan and Kazakhstan are Parties to the Convention (since 2001). Although currently not Parties to the Convention, Tajikistan, Turkmenistan and Uzbekistan have expressed an increasing interest in undertaking transboundary environmental impact assessments of relevant planned activities, including in the context of the recent and planned economic development of the region, for example under the Belt and Road Initiative.

5. To date, only Kyrgyzstan as a Party to the Convention has transposed the provisions of the Convention into its national legislation. Kazakhstan as a Party to the Convention applied the Convention directly, which without more detailed provisions in the national legislation is considered by the Implementation Committee under the Convention and the Protocol as being insufficient for proper implementation of the Convention (ECE/MP.EIA/10, decision IV/2, annex I, para. 64). Similarly, the non-Parties to the Convention, Tajikistan, Turkmenistan and Uzbekistan, have no national legislative framework for the application of a transboundary environmental impact assessment procedure.

6. Consequently, the participants of the third subregional workshop agreed that the Revised Guidelines should contain only general and specific recommendations on carrying out the transboundary environmental impact assessment procedure in Central Asian countries, definitions and the list of the activities based on the Convention. They also agreed that, to facilitate the practical application in the subregion of transboundary environmental impact assessment procedures in line with the Espoo Convention, the draft guidelines should be complemented subsequently with:

(a) An explanatory note providing further practical details, and where possible existing practice, on implementing specific articles of the Convention, or a detailed model of a bilateral agreement for the implementation of the Espoo Convention;

(b) Specific recommendations on how to align the national legislation of each of the Central Asian countries with the provisions of the Convention, based on relevant reviews of national legislation;

(c) Awareness-raising and capacity-building activities to promote the benefits of transboundary environmental impact assessment as a tool for greening economies and to

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on the Guideline's update, in particular the text presented in this document. The participants of the workshop requested the international consultants to incorporate some structural and contextual comments into the draft and agreed that, owing to frequent changes in the national environmental legislation, the initial overview of the current national environmental legislation in each country should not be included in the main text of the Guidelines, but rather should be annexed to it, if necessary. They also noted that the 2009 Procedure for Environmental Impact Assessment required significant reworking in order to be included into the draft Revised Guidelines (possible as another annex) and that such work might require additional financial and human resources.

<sup>3</sup> At the third subregional workshop the participants, among others, considered the consistency between the Convention and environmental impact assessment procedures within State ecological expertise in Central Asian countries. The participants also identified existing challenges related to the application of the transboundary environmental impact assessment procedure at the national and subregional level, including the absence of the relevant legislative frameworks in most of the counties of the subregion. In addition, they considered actions needed to address these challenges, including legislative reforms and broad awareness-raising campaigns to promote the benefits of transboundary environmental impact assessment at the national and subregional levels. Finally, they agreed on the way forward as presented in paragraphs 1 to 5 of the present document.

share practical examples of the efficient implementation of the Convention with the decision makers in all Central Asian countries, in particular in the context of the Belt and Road Initiative.

7. The draft Revised Guidelines were considered by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its seventh meeting (Geneva, 28–30 May 2018). As requested by the Working Group, the secretariat finalized the text of the Revised Guidelines based on the comments during and after the meeting and submitted the document to the Meeting of the Parties to the Convention for endorsement through decision IS/3, at its intermediary session.

8. Throughout these guidelines, “should” or “must” refer to the requirements of the Espoo Convention, and “may”, “could”, “it is recommended”, “as a matter of good practice”, refer to recommended additional good practice and more detailed guidance intended to facilitate the implementation of transboundary environmental impact assessment, including, in the specific context of the Central Asian countries.

9. The information and considerations set out in these Revised Guidelines are not legally binding: they are without prejudice to existing obligations set out in the Espoo Convention.

## **I. Introduction**

### **A. International legal framework for environmental impact assessment in a transboundary context**

10. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.<sup>4</sup>

11. Since the late 1960s environmental impact assessment has been considered to be an effective tool to prevent and mitigate the negative impacts and enhance the positive impacts of planned economic activities. In accordance with Principle 17 of the Rio Declaration on Environment and Development, environmental impact assessment, as a national instrument, should be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

12. In accordance with article 2 of the Espoo Convention, the Parties to the Convention must carry out environmental impact assessment for a proposed activity that is likely to have a significant adverse transboundary impact. The Convention was negotiated under the auspices of ECE in 1991 and it has been in force since 1997. It was amended twice — in 2001 and 2004 — and both amendments are in force (see ECE/MP.EIA/4, decision II/14 and ECE/MP.EIA/6, decision III/7). The Convention is in the process of becoming a global instrument. In general terms, the Convention provides a legal and procedural framework for transboundary procedures while allowing for differences between national environmental impact assessment systems and procedures. In 2003, the Convention was supplemented by a Protocol on Strategic Environmental Assessment, which applies to plans and programmes of public authorities and, to the extent possible, also to policies and legislation.

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<sup>4</sup> Declaration of the United Nations Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972 (A/CONF.48/14/Rev.1)*, part one, chap. I, Principle 21.

13. Although all five Central Asian countries are member States of the United Nations Economic Commission for Europe (ECE), to date only two of them, Kazakhstan and Kyrgyzstan, are Parties to the Convention (since 2001) and, therefore, have specific mutual obligations to carry out a transboundary impact assessment procedure for a proposed activity that is likely to have significant adverse transboundary impacts. At the same time, practical implementation of the environmental impact assessment procedure in a transboundary context has for decades been an important element of international cooperation for environmental protection and sustainable development in the subregion and acknowledged to be a principle of general international law.<sup>5</sup> That international practice has above all been built under the Espoo Convention.<sup>6</sup>

14. Transboundary environmental impact assessment is a useful instrument that can facilitate a constructive dialogue among the Central Asian countries to contribute to preventing negative environmental impacts. It also makes it possible to assess the cumulative impacts from a series of economic activities, including on a shared natural resource, and to develop efficient mitigation measures to reduce anticipated negative environmental impact. In addition, the transboundary environmental impact assessment procedure based on the Espoo Convention and the strategic environmental assessment procedure based on the Protocol on Strategic Environmental Assessment are considered to be important instruments for helping countries to ensure the alignment of their economic development with the achievement of the Sustainable Development Goals.<sup>7</sup> Transboundary environmental impact assessment provides a framework for the comprehensive integration of environmental and health concerns into a wide range of development activities in all economic sectors. It is worth noting that, in this respect, the strategic environmental assessment that applies at the earliest stages of government planning and decision-making on economic and regional development is recognized to be a particularly useful tool.

## **B. Background and goals of the Revised Guidelines**

15. The Central Asian countries recognize that environmental threats do not respect national borders and that it is important to prevent and mitigate environmental damage at the subregional level, including through the application of transboundary environmental impact assessment. At the same time, all the countries of the subregion, whether they are Parties to the Convention or not, face difficulties in carrying out transboundary environmental impact

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<sup>5</sup> The International Court of Justice has recognized the conduct of an environmental impact assessment, where there is a risk that a proposed activity may have a significant impact in a transboundary context, as a practice that has become an obligation of general international law (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14).

<sup>6</sup> At the European Union level, article 7 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (Environmental Impact Assessment Directive) also includes specific provisions for cases in which a project implemented in one member State is likely to have significant effects on the environment of another member State. These provisions are aligned with the Convention. On 20 July 2018, in Moscow, after some 15 years of negotiation, the Parties to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), including Kazakhstan and Turkmenistan, adopted a protocol on transboundary environmental impact assessment to that Convention. Finally, it is important to note that Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan are Parties to the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice (Aarhus Convention) and are bound by its provisions.

<sup>7</sup> For more information see the unofficial document “Mapping of the Convention and the Protocol activities that support countries in achieving the Sustainable Development Goals” (ECE/MP.EIA/WG.2/2016/5/INF.16) submitted to the fifth meeting of the Working Group. Available from [www.unece.org/index.php?id=40431](http://www.unece.org/index.php?id=40431) (Unofficial Documents tab).

assessment procedures for their proposed activities that are likely to cause a significant adverse transboundary impact. Many of these difficulties are related to systemic inconsistencies between the national environmental assessment systems in the Central Asian countries and the international provisions for environmental impact assessment set out in the Espoo Convention. In particular, a number of obstacles arise when steps and outputs of national environmental impact assessment and permitting procedures on a proposed activity should be coordinated with steps to be undertaken within a transboundary environmental impact assessment procedure for the purpose of carrying out consultations between the concerned countries regarding the proposed activity.

16. The objective of the Revised Guidelines is to serve as a tool for the Central Asian countries for the practical implementation of transboundary environmental impact assessment procedures in accordance with the Convention, while also taking account of their subregional and national contexts and national legislation. They may serve as a useful reference for the Central Asian countries for the development of national legislation in accordance with the Convention. Aside from referring to the provisions of the Convention, the Revised Guidelines are complemented with practical recommendations for overcoming current difficulties, including in the coordination of national and transboundary environmental impact assessment procedures, and take into account the specificities of the existing national environmental impact assessment and permitting procedures in Central Asia, for example, for issuing development consents.

17. Moreover, the preparatory process for the revised Guidelines has served to bring the countries together, facilitating common understanding and dialogue at the subregional level concerning the procedures for carrying out an environmental impact assessment in a transboundary context.

### **C. Target audience**

18. The Revised Guidelines have been developed for Central Asian public authorities and officials that take decisions regarding proposed activities; competent authorities responsible for carrying out environmental impact assessment procedures in a transboundary context in the Central Asian countries and neighbouring countries; project proponents at the national level; and environmental impact assessment consultants and non-governmental organizations that participate in the environmental impact assessment procedures both at the national and transboundary levels in the Central Asian subregion.

### **D. Legal sources for the Revised Guidelines**

19. The Revised Guidelines consider and base themselves on existing national environmental legislation in the countries of the subregion and international agreements to which some of the Central Asian countries are already Parties – mainly the Espoo Convention but also the relevant provisions of the Aarhus Convention to which Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan are Parties. They reflect general distinctive features of the environmental impact assessment systems of the Central Asian countries that consist of the

“OVOS”<sup>8</sup> environmental assessment system and a State environmental expertise system.<sup>9</sup> The Revised Guidelines also address trends and needs to enhance the existing national legal and institutional frameworks for carrying out environmental impact assessment procedures. Enhancing legislative frameworks in all the Central Asian countries in line with the international standards is one of the main prerequisites for an efficient application of a transboundary environmental impact assessment procedures in the region.

## **E. Structure and the content of the Revised Guidelines**

20. The Revised Guidelines differ both structurally and substantively from the 2007 Guidelines. They provide general (chapter I) and specific (chapter II) guidance on carrying out a transboundary impact assessment procedure in the Central Asian countries and are supplemented with two annexes containing a suggested list of activities to be subject to transboundary environmental impact assessment (annex I) and definitions and terms (annex II). The Revised Guidelines are structured along the stages of a transboundary environmental impact assessment procedure that reflects the requirements of the Espoo Convention (see diagram below) and contain good practice recommendations for the application of the Convention in the Central Asian subregional context.

21. As requested by the Central Asian countries at the third subregional workshop, and subject to the availability of resources, the Revised Guidelines will subsequently be supplemented with:

(a) Country-specific recommendations on how to align national legislation with the Convention, which will be based on legislative reviews to be carried out in the Central Asian countries with support from the secretariat and donor funding;

(b) An explanatory note providing further practical details, and where possible existing practice, on implementing specific articles of the Convention and/or a detailed model of a bilateral agreement for the implementation of the Espoo Convention.

22. To facilitate the practical application of the transboundary environmental impact assessment procedures in the subregion, in particular in the context of the Belt and Road Initiative, there is a need to promote the benefits of transboundary environmental impact assessment as a tool for greening economies and ensuring environmentally friendly and sustainable investments among the decision makers in all Central Asian countries. This may be implemented through, among others, awareness-raising and capacity-building activities along with sharing practical examples of efficient implementation of the Convention in other parts of the ECE region.

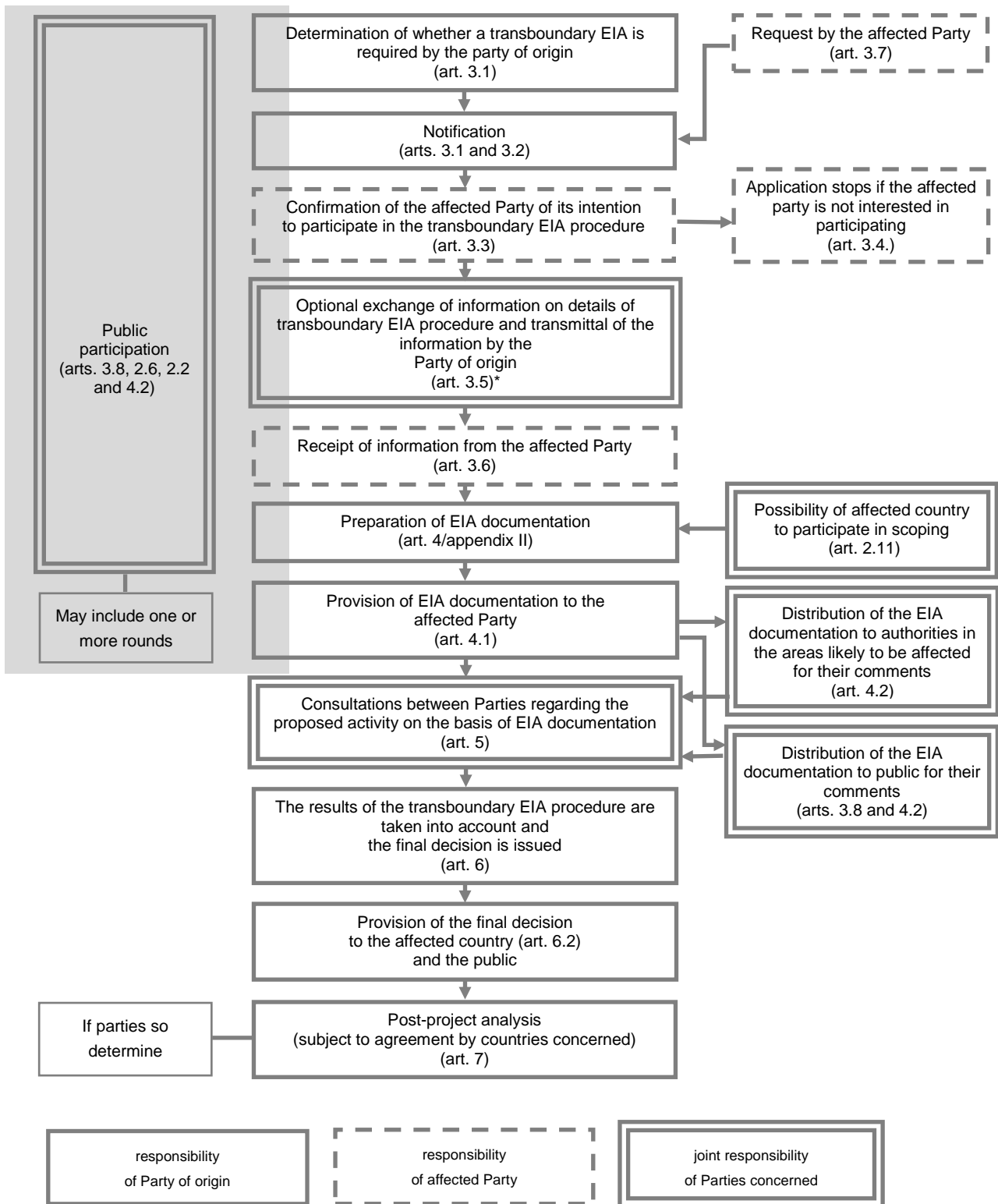
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<sup>8</sup> OVOS is an abbreviation that stands for an environmental impact assessment system that has been common in the countries of Central Asia as well as in some countries of Eastern Europe and the Caucasus. The OVOS system is conceptually and procedurally different from the environmental impact assessment system under the Espoo Convention and its Protocol. For more details see “General guidance on enhancing consistency between the Convention and environmental impact assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia” (ECE/MP.EIA/2014/2).

<sup>9</sup> The regulatory framework for development control systems in most of the countries in Central Asia as well as in Eastern Europe and the Caucasus is based on the system of “expertise” whereby the decision-making process involves the review of planned activities (mostly concrete development projects but also plans, programmes, etc.) by special expert committees or individual experts. The expert committees or experts are affiliated to various governmental bodies, including environmental authorities.



### General scheme for a transboundary environmental impact assessment procedure



Abbreviation: EIA = environmental impact assessment.

\* Although art. 3.5 of the Convention does not require Parties to exchange information on the details of the environmental impact assessment procedure, such an exchange has proven useful for the practical implementation of the transboundary procedure.

## **F. Other information on the practical application of transboundary environmental impact assessment on the basis of the Convention**

23. When developing national legislative frameworks and applying measures to implement transboundary environmental impact assessment procedures, Central Asian countries may also take into account other guidance documents developed under the Convention. In particular, they may refer to the Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8), the general guidance on enhancing consistency between the Convention and environmental impact assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia (ECE/MP.EIA/2014/2), the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7) and the guidance on notification according to the Espoo Convention (ECE/MP.EIA/12). In addition, the opinions of the Implementation Committee<sup>10</sup> and the reviews of implementation of the Convention<sup>11</sup> could also constitute useful references for the countries on the practical application of the Convention by its current Parties.

## **II. General guidelines on environmental impact assessment in a transboundary context for Central Asian countries**

24. A transboundary environmental impact assessment is carried out on the basis of the relevant principles and norms of international law, as set out in the Espoo Convention and in other relevant regional and bilateral agreements, such as the Protocol on Environmental Impact Assessment under the Tehran Convention,<sup>12</sup> and agreements for carrying out environmental impact assessment for individual projects, in particular within the Belt and Road Initiative. The Revised Guidelines have been developed also taking into account the national circumstances of all the Central Asian countries, independently of whether they have already joined the Convention or not. Thus, they are applicable for all countries of the subregion.

25. For carrying out a transboundary environmental impact assessment procedure, the Central Asian countries should:

(a) Adopt and develop the necessary legal and administrative measures at the national level to carry out the procedure for assessing likely significant adverse impacts on the environment from proposed activities, ensuring the proper role of the public authorities and public participation in it. Considering that all the Central Asian countries have integrated environmental assessment (OVOS/ecological expertise) into their national permitting systems, it is recommended that transboundary environmental impact assessment procedure also be integrated into these systems;

(b) Take all relevant and effective measures to prevent, reduce and control significant adverse transboundary impacts from a proposed activity.

It is also recommended that the countries endeavour to develop common approaches to transboundary environmental impact assessment, based on relevant national and international

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<sup>10</sup> See “Opinions of the Implementation Committee (2001–2017)”, an informal document prepared for the seventh session of the Meeting of the Parties to the Convention (Geneva, 2–5 June 2014), available from <http://www.unece.org/index.php?id=45098#/>.

<sup>11</sup> Reviews of implementation are available from the Conventions website: [http://www.unece.org/env/eia/implementation/review\\_implementation.html](http://www.unece.org/env/eia/implementation/review_implementation.html).

<sup>12</sup> Signed by Azerbaijan, Iran, Kazakhstan, the Russian Federation and Turkmenistan on 30 July 2018.

law and practice. Reviews of current national legislation in the field of environmental impact assessment in the Central Asian countries referred to in paragraph 21 (a) above may prove useful in developing such common approaches and concrete, mutually beneficial solutions for the effective application of transboundary environmental impact assessment. For the purpose of transboundary assessment, existing national procedures on State environmental expertise that include requirements regarding environmental impact assessment documentation and end with the conclusion of the State environmental expertise should be considered as a decision-making process on a proposed activity.

### **III. Specific guidelines on environmental impact assessment in a transboundary context for Central Asia countries**

26. The transboundary environmental impact assessment procedure is carried out by competent authorities in accordance with national legislation and practice. The procedure includes: determining whether a proposed activity listed in appendix I to the Convention is likely to cause a significant adverse transboundary impact (this is generally called “screening”); informing affected countries about the activity and its likely impacts; conducting inter-State consultations on the basis of environmental impact assessment documentation; ensuring public participation; and taking a final decision.

27. In Central Asian countries, environmental authorities are usually appointed as the competent authorities responsible for carrying out a transboundary environmental impact assessment. They implement these functions under the oversight of the ministry of foreign affairs in accordance with national legislation and practice. Each country should independently determine the functions of its public authorities in the transboundary procedure, and inform the countries concerned thereof.<sup>13</sup>

#### **A. Determination of whether a transboundary environmental impact assessment is required**

28. Considering the existing decision-making mechanisms in the Central Asian countries, it is recommended that the identification of whether a proposed activity is likely to have a significant adverse transboundary impact on the environment is carried out by a competent authority and or an authority responsible for decision-making regarding the proposed activity in the country of origin, with the assistance of the proponent of that activity, at an early stage of planning for the activity. In the Central Asian countries authorities responsible for decision-making regarding the proposed activity include authorities that are responsible for environmental impact assessment (the State Ecological Expertise).

29. During the subregional meetings, the Central Asian countries reviewed thoroughly the list of activities in the appendix I to the Convention and suggested minor adjustments to it to fit their subregional context. The list of appendix I activities is annexed to the present Guidelines (annex I), together with the suggested adjustments from the Central Asian countries. When planning for a proposed activity that is listed in annex I to these Guidelines,

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<sup>13</sup> By decision I/3 the Meeting of the Parties to the Espoo Convention agreed that notifications of proposed activities likely to cause significant adverse transboundary impact were to be transmitted to the relevant points of contact (ECE/MP.EIA/2, decision I/3, para. 1). The list of national points of contact for notification and national focal points for administrative matters established by that decision is available on the Convention’s website ([www.unece.org/env/eia/contacts.html](http://www.unece.org/env/eia/contacts.html)) and is kept up to date by the secretariat based on the information provided by countries.

the countries should ensure that an analysis is undertaken to determine whether the activity may cause a significant transboundary impact.

30. As a matter of good practice and to enhance the efficiency and effectiveness of the transboundary procedure, it is recommended that at an early stage the proponent of a “listed” activity always carry out an analysis of the likelihood of a significant adverse transboundary impact and submit the results of the analysis to the authority responsible for decision-making regarding the proposed activity. Such an analysis may involve, among others, pre-project feasibility studies, pre-environmental impact assessment, a statement (declaration) of intent and a concept development stage. This is not specified in the Convention but depends on national legislation and practice.

31. When identifying the likelihood of a significant adverse transboundary impact, the countries may choose to use the following criteria:

- (a) The significance of the impact is assessed on the basis of:
  - (i) Its intensity as established by international or national standards and thresholds, whichever is stricter, and goals of environmental and sanitary-hygienic safety;
  - (ii) The reversibility of the consequences in affected areas of other countries,<sup>14</sup> for example, through additional loading which cannot be sustained by the carrying capacity of the environment;
  - (iii) The likely adverse impacts for protected areas and objects in affected countries;
- (b) The transboundary nature of the impact can be expected at the very least when:
  - (i) The location of the proposed activity is close to a country border. However, it should be remembered that the Convention applies not only to transboundary impacts between neighbouring countries but also to long-range impacts;
  - (ii) There is a likelihood of adverse consequences for shared natural resources, in particular owing to locating the proposed activity on such shared resources or in close proximity to them;
  - (iii) There is a likelihood of accidents with transboundary consequences;
  - (iv) There is a likelihood of a breach of existing international treaties for protection and sustainable use of transboundary natural resources.

32. The countries may develop additional national criteria to assist them in identifying the likelihood of significant adverse transboundary impacts (e.g., size, location and consequences for the environment), also taking into account general criteria referred to in appendix III to the Convention (applicable to activities not listed in its appendix I).

33. As a matter of good practice, in addition to the above criteria, the countries – individually or within the framework of bilateral or multilateral treaties or other agreements – may find it useful to adopt a list of activities, with thresholds where appropriate, that should always require notification.<sup>15</sup>

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<sup>14</sup> The effects could be classified as rapidly reversible (days or weeks), slowly reversible (months or years) or practically irreversible (decades or more). See “specific methodologies and criteria to determine the significance of adverse transboundary impact” (CEP/WG.3/R.6), annex II, available at: <http://www.unece.org/fileadmin/DAM/env/documents/1995/eia/cep.wg.3.r.6.e.pdf>.

<sup>15</sup> See list of activities in appendix I to the Convention.

34. Upon the initiative of any of the countries, the countries may through consultations also determine on the basis of the criteria referred to in paragraph 31 that any activity not listed in annex I to these guidelines is likely to cause significant adverse transboundary impact and agree on the need to carry out a transboundary environmental impact assessment procedure for such an activity individually or within the framework of bilateral, multilateral or other agreements.

35. After having identified the likelihood of a significant adverse transboundary impact the competent authority takes a decision to initiate the notification procedure.

## **B. Notification**

36. Notification of affected countries is an official and obligatory step to initiate the procedure for transboundary environmental impact assessment. The country of origin should notify the affected country or countries as early as possible, and no later than when informing its own public about the proposed activity (ECE/MP.EIA/8, para. 41). In keeping with the precautionary approach, informal pre-notification contacts are highly recommendable.

37. The notification may be passed between the official points of contact to the Convention,<sup>16</sup> by competent authorities determined in advance for the purpose of transboundary environmental impact assessment or by other authorities that are responsible for this step according to national legislation or through bilateral or multilateral agreements (ibid., para. 40).

38. The notification is sent by an official letter, of a non-technical character, usually through diplomatic channels or by post. It is recommended to send the electronic version to the public authority responsible for decision-making regarding the proposed activity in advance so that it is informed about the forthcoming notification.

39. The notification should contain:

(a) Information on the proposed activity, including any available information about its possible transboundary impact;

(b) Information about the nature of the decision to be taken;

(c) An indication of a reasonable time frame within which a response is anticipated;

40. To minimize the risks of delays and misunderstandings, it is recommended that the countries of origin specify an address to which the response needs to be sent.

41. Moreover, to avoid the need to supply additional information in the future, the notification may contain more detailed information on the key characteristics of the proposed activity and its possible significant adverse impact, as well as relevant information on the assessment procedure, including an indication of the time schedule for the transmittal of comments, as set out in article 3, paragraph 5, of the Convention.

42. Taking into account engineering and technical practice in Central Asian countries, it is recommended that the countries involved in the transboundary environmental impact assessment procedure in the subregion use the Russian language for the purpose of notification and the provision of other information, in the absence of other agreements

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<sup>16</sup> The list of points of contact for notification, including those for all Central Asian countries, is available on the Convention's website and should be referred to when notifying affected countries about a proposed activity that is likely to cause a significant adverse transboundary impact (see [www.unece.org/env/eia/points\\_of\\_contact.html](http://www.unece.org/env/eia/points_of_contact.html)).

between them. The notification may also be sent in another language commonly used in diplomatic correspondence between the countries.

43. The affected countries should endeavour to always provide a response to the notification regarding their intention to participate in the transboundary procedure as early as possible within time frames suggested by the country of origin, so as to allow the Party of origin to proceed with the next steps (ECE/MP.EIA/2017/10, para. 32). Absence of a timely response may be understood as a lack of willingness to participate. At the same time, a timely negative response (regarding non-participation in the transboundary assessment) is also important for the country of origin, since it will allow the national environmental impact assessment to continue without delay (ECE/MP.EIA/8, para. 44).

44. Upon receipt of the positive answer from an affected country or countries, the competent authority of the country of origin as a matter of good practice may start preliminary consultations with the countries responding positively for the purpose of planning the next steps. Such steps may include provision of environmental impact assessment documentation; the definition of the time, form and number of consultations; and the identification of the persons responsible and their contact information. Once a common agreement on the next steps is reached, the results of the preliminary consultations should be noted in the form of minutes, which include as a minimum information about the steps referred to above.

45. Upon receipt of the consent from an affected country to participate in a transboundary environmental impact assessment, the competent authority of the country of origin may send a request to the competent authority of the affected country to provide reasonably obtainable information relating to the potentially affected environment, where such information is necessary for the preparation of the environmental impact assessment documentation. The affected country should furnish this information promptly. Moreover, at the request of the country of origin, and as a matter of good practice, the potentially affected country may also provide information on the socioeconomic situation in the territories that may be affected by a significant adverse transboundary impact.

### **C. Absence of notification**

46. In case no notification was made, a country that considers itself likely to be affected by a transboundary impact of a proposed activity, based on the information available to that country, may approach the country of origin to start consultations on the need to carry out a transboundary assessment.

### **D. Documentation on environmental impact assessment**

47. In accordance with appendix II to the Convention, the country of origin should ensure that the environmental impact assessment documentation contains as a minimum the following information:

- (a) A description of the proposed activity and its purpose;
- (b) A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative;
- (c) A description of the environment likely to be significantly affected by the proposed activity and its alternatives;
- (d) A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;

- (e) A description of mitigation measures to keep adverse environmental impact to a minimum;
- (f) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;
- (g) An identification of gaps in knowledge and uncertainties encountered in compiling the required information;
- (h) Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis;
- (i) A non-technical summary including a visual presentation as appropriate (maps, graphs, etc.).

48. Countries that provide the possibility to determine the information to be included in the environmental impact assessment documentation on the proposed activity (“scoping”) in their national legislation should, to the extent appropriate, allow the participation of the affected country in the scoping.

49. The environmental impact assessment documentation is provided by a competent authority of the country of origin to the respective competent authorities of the affected country for examination and comments. Subject to the complexity of the project, the country of origin proposes reasonable time frames for examination of the documentation, public participation and the provision of comments by the affected country.

## **E. Public participation**

50. Countries participating in the transboundary environmental impact assessment jointly ensure through their competent authorities the possibility for effective participation of the relevant authorities and the public in this procedure.

51. For the purpose of public participation procedures, the countries should identify measures to ensure that the public in the areas likely to be affected is informed in a timely, adequate and effective manner, ensuring access to the environmental impact assessment documentation and the possibility to provide, in writing or during public hearings, any comments, without the need for reasoning such comments. Upon mutual agreement between the competent authorities of the countries concerned, comments and proposals received from the public may be provided to the country of origin through a competent authority of the affected country or directly to the competent authority and/or public authority(-ies) responsible for decision-making regarding the proposed activity in the country of origin. For that purpose the countries may wish to take into account the requirements of national legislation and refer to international legal instruments, in particular the relevant provisions of the Aarhus Convention to which four Central Asian countries are Parties.

52. Although the responsibility for ensuring public participation lies with the competent authorities of the concerned countries, to ensure that the procedure is carried out properly, administrative functions to organize such procedures may be delegated to bodies or persons specializing in public participation or mediation that are unbiased and do not represent interests related to the proposed activity subject to decision-making.

53. The country of origin ensures that in the final decision on the proposed activity due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments received thereon from the public and the outcomes of the consultations among the authorities. For additional information on methods to take account of the outcomes of public participation, see the general guidance on enhancing consistency between the Convention and environmental

impact assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia (ECE/MP.EIA/2014/2, para. 70 (c) and annex I) and the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7, paras. 79–87 and boxes 7 and 8.)

## **F. Consultations**

54. After preparation of the environmental impact assessment documentation, the country of origin conducts consultations with affected countries on the basis of the documentation regarding the likely transboundary impact of the proposed activity and measures to mitigate or eliminate the impacts. In particular, the consultations may address possible alternatives to the proposed activity, other forms of mutual cooperation to reduce any significant adverse transboundary impact from a proposed activity and any other appropriate matters related to the proposed activity.

55. Consultations mean negotiations between two or more national States. Countries may also include in the consultations representatives of proponents (developers) of the environmental impact assessment documentation for the proposed activity, including their experts, representatives of the competent authorities and representatives of other authorities.

56. Consultations may be held in various forms for the purpose of the effective exchange of information at different stages of the consultations, taking into account cultural differences in arranging the negotiations. Such forms may include joint bodies, expert meetings, exchange of (electronic) letters and meetings of mid- and high-level officials. The countries should agree at the commencement of the consultations on a reasonable time frame for the duration of the consultation period. In general, to facilitate their conduct, it is recommended that the form and timing of consultations are agreed in advance (see para. 44 above).

57. Outcomes of the consultations, including oral and written comments and agreements reached, should be noted properly for the purpose of taking them into account in the final decision-making by the country of origin, for example by compiling meeting minutes, exchanges of letters and other methods.

## **G. Final decision**

58. The country of origin of the proposed activity must ensure that, in the final decision on that activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments received thereon from the public and the outcomes of the consultations among the authorities. It should provide the affected country with the final decision along with reasons and considerations on which it was based. As a matter of good practice it is recommended that the country of origin do this without delay and that it also provide the affected country with discussion materials if requested and a translation of the final decision into a language used during the notification and/or the consultations.

59. Over the years, the Implementation Committee under the Convention and the Parties to the Convention have addressed the definition of the final decision, considering that while the countries are free to decide which of the multitude of decisions required within their regulatory framework should be considered final for the purpose of the transboundary environmental impact assessment, their discretion in this respect is limited to those decisions that in real terms set the environmental conditions for implementing the activity (ECE/MP.EIA/10, decision IV/2, annex I, para. 61). In the context of the Central Asian countries, unless the country of origin informs the affected country(ies) otherwise, such a decision means the conclusion of the State environmental expertise along with the final



environmental impact assessment report and the relevant construction permit, if the latter is required by the national legislation of the country of origin.

60. As a matter of good practice, it is recommended that the final decision contain a summary of the comments received during consultations and public participation, and how these and the transboundary environmental impact assessment results were either included or otherwise taken into account in the final decision, in the light of the reasonable alternatives considered as described in the environmental impact assessment documentation. The final decision should also indicate, further to the national legislation, procedures to appeal that decision. The final decision may also include provisions for monitoring (post-project analysis) during the operation of the proposed activity.

61. In addition, to finalize the transboundary assessment procedure the proponent of the proposed activity may provide the competent authority and the authority responsible for decision-making regarding the proposed activity with the following documents, in both paper and electronic versions, in the language agreed in advance for the purpose of diplomatic communication:

- (a) The approved environmental impact assessment report;
- (b) The positive conclusion of the State environmental expertise containing, among others, an assessment of the design criteria determined during the environmental impact assessment procedure to ensure the environmental safety of the proposed activity, to be provided within 10 days after the approval of the project documentation;
- (c) Information about the decision taken to permit the construction of the object of the proposed activity together with the reasoning for that decision, to be provided within 10 days after the adoption of the decision.

62. It is recommended that the competent authority or authority responsible for the decision-making regarding the proposed activity send to the affected countries without delay, using diplomatic channels, the documentation received from the proponent referred to in paragraph 61 above. In addition, the public authority responsible for the decision-making regarding the proposed activity may upload these materials to its website and inform the public and the local authorities that took part in the transboundary environmental impact assessment about it through various channels.

63. If new circumstances or additional information about the likelihood of a significant adverse transboundary impact of a proposed activity is identified before works on the proposed activity commence, countries should immediately notify each other. Upon the request of any country concerned, the countries should hold consultations as to whether the final decision needs to be revised.

## **H. Other issues**

64. At the request of a country, the countries concerned should determine whether, and if so to what extent, a post-project analysis should be carried out. Such an analysis should cover at least the activity that was subject to the environmental impact assessment and its significant adverse transboundary impact. When, as a result of post-project analysis, the country of origin or the affected Party has reasonable grounds for concluding that there is a significant adverse transboundary impact or factors have been discovered which may result in such an impact, it should immediately inform the other country. The concerned countries should then consult on necessary measures to reduce or eliminate the impact.

65. The countries should endeavour to apply these principles of transboundary environmental impact assessment to strategies, plans and programmes, and are encouraged to develop national legislation and practice on strategic environmental assessment in

accordance with the Protocol on Strategic Environmental Assessment to the Convention. If the assessment of strategies, plans and programmes is provided for in bilateral or multilateral agreements, it is important to reach agreement regarding which policies, plans and programmes should be subject to transboundary environmental impact assessment.

66. In accordance with the established practice and guidance on the application of the Convention (ECE/MP.EIA/8, para. 33), and in keeping with the polluter pays principle, expenses, necessary for carrying out transboundary environmental impact assessment (including preparation of the relevant documentation) are borne, as a rule, by the proponent of the proposed activity.

## Annex I

### List of activities to be subject to transboundary environmental impact assessment

*List of activities in appendix I to the Convention*

*Minor adjustments suggested by the Central Asian countries to reflect their subregional context*

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 metric tons or more of coal or bituminous shale per day.
2. (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more; and
  - (b) Nuclear power stations<sup>a</sup> and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. (a) Installations for the reprocessing of irradiated nuclear fuel;
  - (b) Installations designed:
    - For the production or enrichment of nuclear fuel;
    - For the processing of irradiated nuclear fuel or high-level radioactive waste;
    - For the final disposal of irradiated nuclear fuel;
    - Solely for the final disposal of radioactive waste; or
    - Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.
4. Major installations for the initial smelting of cast iron and steel and for the production of non-ferrous metals.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 metric tons finished product; for friction material, with an annual production of more than 50 metric tons finished product; and for other asbestos utilization of more than 200 metric tons per year.
6. Integrated chemical installations.
7. Construction of motorways, express roads<sup>b</sup> and lines for long-distance railway traffic and of airports<sup>c</sup> with a basic

Taking into account the current and planned state of the nuclear-related activities, the Central Asian countries considered that the wording of the appendix I to the Convention before the second amendment as presented below would be more suitable in their subregional context: "Installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing of irradiated nuclear fuels or for the storage, disposal and processing of radioactive waste."

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*List of activities in appendix I to the Convention*

*Minor adjustments suggested by the Central Asian countries to reflect their subregional context*

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runway length of 2,100 metres or more; and construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such a new road, or realigned and/or widened section of road, would be 10 kilometres or more in a continuous length.

8. Large-diameter pipelines for the transport of oil, gas or chemicals.

9. Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 metric tons.

10. (a) Waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes; and

(b) Waste-disposal installations for the incineration or chemical treatment of non-hazardous waste with a capacity exceeding 100 metric tons per day.

11. Large dams and reservoirs.

12. Groundwater abstraction activities or artificial groundwater recharge schemes where the annual volume of water to be abstracted or recharged amounts to 10 million cubic metres or more.

13. Pulp, paper and board manufacturing of 200 air-dried metric tons or more per day.

14. Major quarries, mining, on-site extraction and processing of metal ores or coal.

15. Offshore hydrocarbon production. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 metric tons per day in the case of petroleum and 500 000 cubic metres per day in the case of gas.

16. Major storage facilities for petroleum, petrochemical and chemical products.

17. Deforestation of large areas.

18. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year; and

(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water

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*List of activities in appendix I to the Convention*

*Minor adjustments suggested by the Central Asian countries to reflect their subregional context*

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transferred exceeds 5 per cent of this flow. In both cases transfers of piped drinking water are excluded.

19. Wastewater treatment plants with a capacity exceeding 150,000 population equivalent.

20. Installations for the intensive rearing of poultry or pigs with more than:

85,000 places for broilers;

60,000 places for hens;

3,000 places for production pigs (over 30 kilograms); or

900 places for sows.

21. Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.

22. Major installations for the harnessing of wind power for energy production wind farms).

The Central Asian countries considered that it would be useful to establish a threshold for the wind farms, such as 20 installations of over 50 metres in height each.

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*Notes:* This list of activities was prepared based on appendix I to the Convention as amended by the second amendment to the Convention (see ECE/MP.EIA/6, decision III/7), which entered into force on 23 October 2017 (see right column). Kazakhstan and Kyrgyzstan as Parties to the Convention are encouraged to ratify the second amendment and the other Central Asian countries to take into account the list of activities as amended. In addition, the list incorporates some views and suggested adjustments to the appendix I to the Convention from the Central Asian countries to reflect their subregional context (see left column).

<sup>a</sup> For the purposes of the Espoo Convention, nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

<sup>b</sup> For the purposes of the Espoo Convention, “motorway” means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which: (a) is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other by a dividing strip not intended for traffic or, exceptionally, by other means; (b) does not cross at level with any road, railway or tramway track, or footpath; and (c) is specially signposted as a motorway. “Express road” means a road reserved for motor traffic accessible only from interchanges or controlled junctions and on which, in particular, stopping and parking are prohibited on the running carriageway(s).

<sup>c</sup> For the purposes of the Espoo Convention, “airport” means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (annex 14).

## Annex II

### Definitions and terms

#### I. The definitions based on the definitions of the Convention

1. “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 socioeconomic conditions resulting from alterations to those factors.
2. “Transboundary impact” means any impact, not exclusively of a global nature, within an area under the jurisdiction of one country caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another country.
3. “Country of origin” means a country or countries under whose jurisdiction a proposed activity is envisaged to take place.
4. “Affected country” means a country or countries likely to be affected by the transboundary impact of a proposed activity, initiated beyond its jurisdiction, planned on the territory of the country of origin.
5. “Concerned countries” means affected country and country of origin, which participate in the procedure of transboundary environmental impact assessment.
6. “Parties” means, unless the text otherwise indicates, the contracting Parties to the Espoo Convention.
7. “Competent authority” in the context of the Central Asian countries means a national authority or authorities, designated in the country of origin and affected country as responsible for performing the functions covered by the transboundary environmental impact assessment procedure in accordance with the Convention.
8. “Environmental impact assessment” means a national procedure for evaluating the likely impact of the proposed activity on the environment. In the context of the Central Asian countries, this precedes taking a permitting decision regarding a proposed activity.
9. “Public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups.
10. “Proposed activity” means any activity or any major change to an activity subject to a decision of a national authority in accordance with an applicable national procedure. In the context of the Central Asian countries, in practical terms, this means a proposed activity subject to a permitting decision by an authority responsible for decision-making regarding such a proposed activity.

#### II. Additional definitions not included in the Convention.

11. The below definitions aim at clarifying the practical application of a transboundary environmental impact assessment procedure in the context of Central Asian countries.
12. “Post-project analysis” at the stage of operation of an activity means the monitoring of the activity at the stage of construction and operation, control over compliance with the conditions as set out in the authorization and the effectiveness of mitigation measures, comparisons of conclusions made as a result of environmental impact assessment with real

impacts, i.e., comparison of predictive calculations with real effects, and the development, where appropriate, of additional measures for mitigating the impacts.

13. “Proponent of the activity” (contractor, developer, investor, applicant) means the legal or physical person that has an intention to carry out a proposed activity and is responsible for the preparation of documentation on the proposed activity in accordance with normative regulations applicable to such an activity for the purpose of obtaining relevant permits.

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