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[General Recommendations]
Practical Guidance

on reforming legal and institutional structure with regard to application of SEA procedure in accordance with the UNECE Protocol on SEA

I. Introduction

1. This practical guidance aims to assist countries in their legislative reforms towards establishing appropriate legal and institutional frameworks to implement provisions of the United Nations Economic Commission for Europe (ECE) Protocol on Strategic Environmental Assessment (SEA Protocol) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). They offer a guide to the implementation of SEA Protocol obligations, illustrate good practice and provide ideas for designing effective legislative solutions.
2. The guidance has been prepared as a tool to facilitate legislative reforms undertaken with the assistance from the EaP GREEN Programme and draw heavily on the hitherto experience in this respect, in particular in addressing the legislative dilemmas facing the law drafters in countries benefiting from the Programme.
3. As many of the countries undertaking currently legislative reforms related to strategic environmental assessment (SEA) are seeking to align their legislative framework with the requirements of the European Union (EU) law, the guidance - while being focused on implementation of the SEA Protocol - provide also a short description of the main differences between the SEA Protocol and EU SEA Directive. Similarly, bearing in mind that legislative reforms related to SEA are quite often combined with the reforms related to

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environmental impact assessment (EIA), the guidance provide also a short description of the main differences between SEA and EIA.

4. The guidance are aiming at providing advice for law-drafters therefore they are focused on issues related to designing the legal framework for SEA and not on its practical implementation. In this context they should be read in conjunction with the *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment* (Resource Manual)[2] and *Good practice recommendations on public participation in strategic environmental assessment*[3].
5. Throughout this guidance, "must" refers to the requirements stemming from the SEA Protocol and other relevant binding international instruments (like for example Aarhus Convention), and "may" or "could" refer to possible alternative ways of addressing given issue in a legal framework or to additional good practice that the drafters may wish to follow.

II. Process of reforming legal and institutional structures for SEA

A. Steps in the reform and timing

6. The experience shows that the reform towards establishing appropriate legal and institutional frameworks for SEA is most effective in practice if it designed to be carried out in the following consecutive stages:
   a. legislative review
   b. law-drafting
   c. capacity-building
7. One of the crucial factors is timing. The process is most effective if for each of the above steps there is sufficient time allowed and the respective time-frames are clearly set in advance yet flexible enough to accommodate unexpected developments. Unrealistically short time-frames may lead either to frustration or to poor results.
8. Focusing only on law-drafting and omitting a proper legislative review may result in adopting a framework which is either difficult to be implemented in practice or is not sufficiently comprehensive.

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[2] Online publication (ECE/MP.EIA/17), available from http://www.unece.org/env/eia/pubs/sea_manual.html.

[3] ECE/ EIA/SEA/2014/2 available from http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE.MP.EIA.SEA.2014.2_e.pdf

9. Lack of well designed and properly carried out capacity building activities may result in poor implementation of even the best legal framework for SEA.

B. Legislative review

10. Legislative review has proven to be an extremely important initial step of the reform. It role is to set the scene for the law-drafting by way of identifying existing legal and institutional framework for strategic decision-making and basic options for legislative intervention. In countries with no (or very little) experience with SEA the review is most useful if - in addition to local experts - it involves foreign experts with extensive experience with drafting SEA legislation (on the role of foreign experts see below).
11. The key function of the legislative review is to make an analysis of the existing situation in given country with a view to properly, clearly and comprehensively identify:
    a. types of strategic decision-making and strategic documents being prepared in practice in given country and potentially subject to SEA
    b. legal basis for their preparation
    c. procedures within which such strategic documents are prepared
    d. main stake-holders (see below)
    e. legislative and regulatory context, including international obligations of the country
    f. major obstacles which may potentially hinder the adoption of proper legal framework for SEA and/or its implementation in practice.
12. On the basis of the above analysis the review is expected to provide clear recommendations regarding the scope of the reform and options for certain solutions regarding terminology, legislative techniques etc. to be employed during the law-drafting.

C. Law-drafting

13. Law-drafting is the most crucial stage of the legislative reform. Worth noting is however, that even if the law-drafting itself is perfectly organised, it may not be successful if it is not preceded by legislative review and not followed by capacity building.
14. The key expertize needed for drafting a successful SEA legislation includes:
    a. in-depths knowledge of the requirements stemming from SEA Protocol and other relevant international instruments
    b. in-depths knowledge of the relevant existing legal and institutional framework in given country

   c. sufficient practice and proven skills in law-drafting

15. Extremely useful for drafting SEA legislation in countries with no (or very little) experience with SEA is also:
    a. experience with drafting SEA legislation in various countries
    b. experience with practical implementation of SEA, ideally in various countries
    c. experience with legal practice in given country, in particular with the practical implementation of environmental law, planning law or generally administrative law
    d. experience with administrative culture/s in given country

16. There are different approaches to organising the law drafting: it can be done by governmental officials or by hired external consultants, by domestic experts or by foreign experts, by a large group of representatives of various interests or by a single person.

17. Bearing in mind the above listed qualifications useful for the purpose of law-drafting, it is extremely rare that one person would meet all the criteria. On the other hand very large drafting group consisting of representatives of all stakeholders is difficult to be managed. The best results are achieved if there is a combination of different approaches.

18. As there is a need to ensure consistency throughout the entire draft the best results are achieved if there is a small core group of drafters jointly meeting the above criteria but the actual draft is written by one person. Relying solely in this respect on foreign experts does not seem to be producing good results - much more productive is to put the burden of the actual drafting on a person familiar with the style of legal documents customarily used in given legal system. It is very useful if the results of the work of the small drafting group are discussed from time to time by a large group of representatives of various interests.

19. Law drafting produces best result if it is organised in consecutive stages:

    a. draft concept with the outline of the scope of proposed legal instrument and a description of proposed legal content of the key options
    b. first draft with concrete drafting proposals (where applicable with alternative versions of certain provisions)
    c. final draft

20. At each of the above stages it is very useful to organize vide external consultations and public participation. These may take different forms - written consultations, meetings or round-tables or even formal public hearings. It is important that all the key stakeholders (se below) are involved.

D. Capacity building

21. Capacity building usually include various activities, the most popular are:
    a. carrying out pilot projects
    b. providing trainings for interested stakeholders,
    c. producing guidance notes.
22. Pilot projects may be initiated before the final adoption of a new legal framework for SEA but they would be most useful if conducted when already some basic concepts and solutions for a proposed SEA scheme are known so that they can be tested in practice.
23. Trainings for interested stakeholders would be most useful if conducted when already the law with a new legal framework for SEA is adopted and awaits entry into force.
24. Guidance notes would be most useful if:
    a. produced when already the new legal framework for SEA is adopted and awaits entry into force
    b. revised following some practice with the implementation of the new legal framework for SEA

E. Identification and involvement of stakeholders

25. Identification and involvement of stakeholders at the very early stage of legislative reform, possible already at the stage of legislative review, is extremely important.
26. The key stakeholders in SEA-related legislative reforms usually include:
    a. environmental and health authorities
    b. public authorities responsible for the strategic documents subject to SEA
    c. EIA/SEA consultants
    d. NGOs , in particular those dealing with environmental and health issues
    e. experts, including foreign, in EIA/SEA
    f. experts in law-drafting
27. As opposed to legislative reforms related to EIA - in case of legislative reform related only to SEA there is no particular need to treat representatives of the developers or private business as key stakeholders for SEA.

28. Usually not all the key stakeholders need to be included in the small drafting group or otherwise involved in a day-to day law-drafting. It is enough if they are involved routinely in the external consultations mentioned above.

F. Role of foreign experts

29. In order to ensure that there is sufficient expertize it is very useful to have foreign experts involved in the legislative reform. They role is usually to provide in-depths knowledge of the requirements stemming from SEA Protocol and other relevant international instruments as well as experience with drafting SEA legislation and practical implementation of SEA in various countries.
30. As foreign experts usually do not have sufficient expertize related to domestic legal framework - relying solely on foreign experts in carrying any legislative reform , including legislative reform related to SEA, normally do not produce best results. Their expertize is best used if it is combined with the expertize of domestic experts. The combination may differ in case of different stages of the reform.
31. In case of legislative review, usually the best results are achieved if it is led by a foreign expert with not only in-depths knowledge of the requirements stemming from SEA Protocol and other relevant international instruments but also with extensive experience with such reviews in various jurisdictions. Domestic experts, or even foreign exerts but only with experience of their own country, are not always able to identify all potential issues that should be taken into account in the legislative reform.
32. In case of law-drafting, the best use of foreign experts is achieved if they are involved in the small drafting group and serve on a regular basis with providing to the group (or to the decision-makers):
    a. advice on the requirements stemming from SEA Protocol and other relevant international instruments
    b. suggestions as to the possible approaches to be applied
    c. experience with various approaches applied in other countries
    d. comments regarding proposed approaches and particular provisions, in particular:
        i. their compatibility with the requirements stemming from SEA Protocol and other relevant international instruments,
        ii. their consistency with other draft provisions
        iii. their likely efficiency in practice
    e. occasionally, providing some draft-elements
33. Not necessarily the foreign experts must be present in person in the country during the entire legislative reform, although the possibility to get personally

acquainted with the specificity of the conditions in given country and local experts seems inevitable. Much of the assistance can be provided however by way of exchanging written submissions, participation in tele-conferences or webinars, etc.

III. Scope of legislative reform and legislative technique

A. EIA and SEA

34. Environmental impact assessment (EIA) and strategic environmental assessment (SEA) are both forms of environmental assessment. They are both procedural instruments of preventive environmental policy and as such have similar goals and a lot of similar features, in particular as far as procedural elements are concerned. They differ however significantly in relation to the type of the activities covered by the assessment and the scope of the assessment.
35. EIA under Espoo Convention and EIA Directive covers specific activities ie concrete individual projects planned to be undertaken by developers (regardless of whether they are private or public) and subject to the decision of competent public authority whether to authorize them. Thus EIA covers activities planned by developers regardless of whether they are individual persons, private companies or public bodies responsible for developing infrastructural projects.
36. SEA under SEA Protocol and SEA Directive covers strategic documents (plans, programs etc.) prepared by public authorities, who - unlike developers under EIA scheme - do not need to seek a a decision from any other authorities to authorize their strategic documents. SEA scheme under SEA Protocol and SEA Directive does not cover strategic documents prepared by private persons or companies.
37. The assessment in EIA is focused on physical impact of the project on the environment while the assessment in SEA, bearing in mind larger scale and less precise data, is focused rather on the impact on the achievement of relevant environmental objectives.
38. The above differences between EIA and SEA are reflected in slightly different requirements regarding the procedure and respective documentation (reports) to be prepared for EIA and for SEA. Also the role of authorities competent for EIA and SEA is different.
39. From the point of drafters of the SEA legislation the key difference between EIA and SEA is the fact that EIA is a quite well established concept and in most countries there is more or less developed legislation as well as practical

experience related to EIA while SEA is a relatively new concept and in many countries there is no (or very little) experience with SEA. Furthermore, as already indicated, due to the difference in activities covered by EIA and SEA - there is no particular need to treat representatives of the developers or private business as key stakeholders for SEA.

40. Following the above differences in most national legislations there are usually separate legal schemes for EIA and SEA. Quite often however both schemes are included in the same legal act (whether it is a general environmental law or special EIA/SEA law - see below) .

B. **UNECE SEA Protocol and EU SEA Directive**

41. The UNECE SEA Protocol is largely based on EU SEA Directive. There are however some differences. The major differences between the Protocol and the Directive from the point of view of drafters relate to the following issues:

a. approach to health issues
b. approach to biodiversity assessment
c. reference to development consents
d. approach to define subject of participation rights

42. As far as the approach to health issues is concerned it is worth noting that the SEA Protocol was a joint undertaking of two international organizations: UNECE and WHO and was drafted with a view to provide a first binding legal instrument of international law to comprehensively include health issues into the environmental assessment. Therefore the Protocol, unlike the SEA Directive, attaches a lot of importance to health issues. Examination of health issues is clearly indicated as a substantive part of the assessment and health authorities are required to be formally involved into the SEA procedure.
43. In the SEA Directive the biodiversity assessment under the Habitat Directive is formally linked to SEA by a reference to impact on Natura 2000 sites as one of factors triggering the need for SEA. In SEA Protocol there is no specific reference to biodiversity assessment (see below).
44. In the SEA Directive there is a reference to setting the framework for future development consent of projects listed in Annexes I and II to EIA Directive while in the SEA Protocol there is a similar reference to setting the framework for future development consent of projects “listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation”. While the list of projects in respective annexes to both instruments is almost identical, the difference is that under the SEA

Directive the reference to projects covers all projects listed in annexes to EIA Directive while under SEA Protocol the reference is much less clear as it refers to"any other project listed in Annex II that requires an environmental impact assessment under national legislation". This reference may pose some problems for drafters of the national SEA scheme as it gives less precise standard than in the SEA Directive and refers to national EIA scheme (see Field of application) .Worth noting however is that regardless of whether all projects listed in Annex II require EIA under given national legislation, strategic documents "setting the framework for future development consent" of projects listed in Annex II may, under article 4.3 of SEA Protocol, require SEA to be conducted (see Field of application).

45. Finally, worth noting is the fact that while both the SEA Protocol and SEA Directive clearly invoke the Aarhus Convention, the SEA Protocol is rather unclear as to the subject of participation rights in SEA (as it refers both to „the public" and to „the public concerned" while the SEA Directive is much more in line with the approach in article 7 of Aarhus Convention as it refers to „the public" which should be identified for the purpose of participating in SEA.

C. Biodiversity assessment

46. Article 14 of the Convention on Biological Diversity (CBD) identifies impact assessment at both project- and strategic-level as a key instrument for achieving the conservation, sustainable use and equitable sharing objectives of the Convention. At its sixth meeting (The Hague 2002), the COP endorsed draft guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or processes and in strategic environmental assessment (Decision VI/7-A). Following these guidelines and the guidelines adopted by the Ramsar Convention on Wetlands (Resolution VIII.9) and the Convention on Migratory Species (Resolution 7.2) voluntary guidelines on biodiversity-inclusive impact assessment were endorsed by the eighth meeting of the Conference of the Parties to the CBD in Curitiba, Brazil (20-31 March 2006). They provide detailed guidance on whether, when, and how to consider biodiversity in both project- and strategic-level impact assessments.
47. In the EU a special legal scheme for biodiversity assessment is regulated under the Habitat Directive. At the project level the scheme is separated from the EIA scheme (although the recent 2014 Amendment to EIA Directive requires both schemes to be coordinated) while at the strategic level it is formally linked with SEA scheme by already mentioned reference in the SEA Directive to impact on Natura 2000 sites as one of factors triggering the need for SEA. In

2013 European Commission issued Guidance on climate change and biodiversity in SEA[4].

48. While, as already mentioned, in the UNECE SEA Protocol there is no specific reference to biodiversity assessment, there is also nothing in the Protocol that would prevent Parties from including biodiversity assessment into their national SEA framework.

D. Legislative technique

49. There is a number of possible formal legal ways of introducing SEA into the national legal framework. In most continental EU countries the issues of significant legal importance require to be regulated at the legislative level while issues of technical or purely implementing nature may be regulated by executive regulations. Since in vast majority of EU countries SEA has been considered of significant legal importance and not only of technical nature has it been introduced to a national system by way of adopting a legislative act. Only in some countries, most notably by the UK (due to the specific general arrangements regarding transposition of EU law) - SEA has been introduced by adopting respective executive regulations.
50. The most commonly used way of introducing SEA into the national legal framework at the legislative level is by introducing it into the pre-existing legislations, most often to the general environmental protection laws (the Environmental Protection Act or the Environmental Protection Code) or to specific laws on EIA (The Environmental Impact Assessment Act). In some countries (like for example in Poland) it was found useful to integrate so called “horizontal legislation” into one act which provides legal schemes for EIA, SEA, public participation and access to environmental information. There are also countries (like Cyprus, Denmark, Finland and Luxembourg) that have chosen to introduce SEA by way of creating an independent SEA Act.
51. In most EU countries, regardless of which of the above approaches was selected, the main legal instrument regulating SEA is complemented with a set of other legislative and/or regulatory measures introducing SEA-related provisions into a general legal frameworks for land-use planning and for building (for example Austria, Czech republic, Finland, Germany, France, Poland) and into sector specific legislations (like waste management, water management, forest management, transport).

[4] Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment, European Commission 2013

52. The report on the application and effectiveness of the SEA Directive prepared in 2009 for the European Commission by Covi (Covi Study 2009)[5] shows how SEA Directive was transposed into the national legal framework and how it was implemented in practice 5 years after the transposition deadline. Worth noting in this report is the fact that countries which reported the smallest number of SEA procedures conducted annually (Malta, Cyprus and Luxembourg) are those that relied on only one legal instrument to introduce SEA into national legal framework. On the other hand the countries reporting the biggest number of SEA procedures (or screening procedures) are those who complemented the main SEA legal instrument with a a set of other legislative and/or regulatory measures introducing SEA-related provisions into a general legal frameworks for land-use planning and for building legislation as well as into sector specific legislations (Austria, Finland, France).

BOX 1
Drafting suggestions regarding scope of legislative reform and legislative technique

1. Efforts towards establishing a modern SEA scheme would be more successful if there is an effective modern EIA scheme in the country. In countries without such effective modern EIA scheme - it seems reasonable that the legislative reform attempts to cover both EIA and SEA in the same process.
2. For countries with the traditional OVOS/expertiza systems[6], introduction of new modern EIA and SEA schemes does not necessarily involve abolishment of the system of ekspertiza as means to provide environmental control over development processes. Conceptually and technically it is perfectly possible to combine new modern EIA and SEA schemes with the slightly revised legal scheme for expertiza.
3. Countries that would like (or are under legal obligation) to follow the EU system of biodiversity protection of Natura 2000 sites but do not have yet ready the entire legal and institutional framework for creation of such a system -may nevertheless consider introducing into their SEA scheme a biodiversity assessment modeled after art.6 of the Habitat Directive. Until the system of Natura 2000 sites is created the biodiversity assessment may refer to protected areas of biodiversity existing under any of the nature protection law already in force in given country.
4. As the practice in the EU countries suggests, regardless of whether the main SEA

[5] Study concerning the report on the application and effectiveness of the SEA Directive (2001/42/EC) Final report April 2009

[6] for the description of the traditional OVOS/expertiza systems see *General guidance on enhancing consistency between the Convention and environmental impact assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia*

legal scheme is incorporated into a general environmental law or a specific SEA law or otherwise - it will be much more effective if such a general SEA scheme would be supplemented with respective references to SEA introduced to the existing legal instruments under which strategic documents subject to SEA are being prepared. Therefore it is recommended that the draft law includes not only the general legal scheme for SEA but also draft amendments to all such legal instruments identified during the legislative review. In particular the respective amendments seems to be inevitable in the general legal frameworks for land-use planning and for building and into sector specific legislations (like waste management, water management, forest management, transport).

5. The amendments to other legal acts would be misleading if they were referring only to the need for SEA. Bearing in mind the definition of SEA (see below) this would not cover situations where screening is needed. Therefore much more appropriate would be a more general reference to the respective provisions of the SEA scheme.
6. In cases where the legislative reform include both EIA and SEA in one law it might be useful to design in a similar way the terms and institutions which are common to both legal schemes of EIA and SEA (like for example: environmental impact or scoping) and together with some general principles (like transparency, prevention and precaution) place them into a separate part of the draft (which might be called General Provisions) . Also key legal issues related to public participation (like for example: methods of notifying the public, organization of public hearing, submission of comments etc.) might be useful to be included in a separate part of the draft law, with respective references in the parts of the draft law related to EIA and SEA. Similar approach might be employed with the transboundary procedure.
7. If a country has a legal act regulating generally the procedure for the preparation of all (or majority of) strategic documents potentially subject to SEA it is very important to amend such an act with proper references to the need for applying respective provisions of the SEA scheme (screening, scoping, taking due account of SEA results etc) at the appropriate stages of the general procedure.

VI. General issues

A. Terminology and definitions

53. The SEA Protocol, similar to SEA Directive, provides definitions of some key terms and definitions in the national legislation of the Parties must be compatible with these definitions. Not all however of these definitions must necessarily be included into the national legal framework.
54. The key terms determining the scope of application of the SEA Protocol, namely: plans, programmes, policies and legislation, have not been defined in

the Protocol in a sufficiently precise manner to provide clear guidance for drafters of national SEA legal framework. In fact only in case of "plans and programmes" the Protocol (similarly to the SEA Directive) provides some hints as to some of their features, while there is no indication whatsoever regarding the differences between plans, programmes, policies and legislation.

55. Onlyy the term "legislation" seems to be relatively clear and similarly understood in national legal frameworks. In case of plans, programmes and policies however there seems to be quite a diversity of approaches, with these terms being quite often used interchangeably in many countries. Furthermore, strategic documents having identical features as those called plans, programmes or policies are often taking other names, like for example "strategies", "concepts", "guidelines" or "conditions". Therefore the official EU guidance document on SEA directive clearly states that "documents having all the characteristics of a plan or programme as defined in the Directive may be found under a variety of names" and recommends that a name of the document for the purpose of designing the range of documents subject to SEA "will not be a sufficiently reliable guide"[7] .
56. Bearing the above in mind, one of the key challenges for designing an effective SEA national framework is to identify types and names of strategic documents prepared in the country which are potentially subject to SEA and to make sure that the SEA scheme is drafted in such a way that clearly captures all of them.
57. The SEA Protocol, similar to SEA Directive, requires SEA only in relation to strategic documents prepared by authorities and not by private persons. There is no definition of "authorities" but it is clear that the obligations refer to public authorities at national, regional and local level. The official EU guidance document on SEA directive indicates that the concept of "authority' has a large scope and covers also any institutions or bodies, including privatised utility companies, having public functions or providing public services[8].
58. In the light of the above, equally important as capturing clearly by the SEA scheme all the documents potentially subject to SEA is capturing all types of public authorities(at all levels) involved in their preparation. Both may require finding some terminological solutions to be properly reflected in the definitions and consistently used throughout the entire text of the legal instrument regulating the SEA scheme (see Box II Drafting suggestions regarding general issues).

[7] IMPLEMENTATION OF DIRECTIVE 2001/42 ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PLANS AND PROGRAMMES ON THE ENVIRONMENT, European Commision 2003, page 5
[8] IMPLEMENTATION OF DIRECTIVE 2001/42 ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PLANS AND PROGRAMMES ON THE ENVIRONMENT, European Commision 2003, page 8

B.Principles

59. Reference to principles is a standard clause in legal acts in many countries. They are referred to either in the preambular provisions (usually in the international treaties or EU directives) or in the main body of the legal text (usually in national legislation).
60. The principles most often referred in the context of SEA include sustainable development and integration of environmental considerations into the respective strategic decision-making as well as transparency and public participation. These principles are indicated by the SEA Protocol both in the Preamble and in article 1 Objective.
61. In many countries, following the EU SEA Directive, the above principles are supplemented with the principles of prevention and precaution and the principle of high level of protection of the environment.
62. The role of principles is different in different legal systems. Their role range from serving only as guidance for interpretation of the operative provisions to having a superior role over the operative provisions. In most legal systems they may be directly applied at courts.

C.Time-frames

63. The SEA Directive requires clearly that appropriate time-frames are fixed for public participation and consultation with environmental authorities. Similar requirement is in the SEA Protocol in relation to public participation, and in fact also in relation to consultations with environmental and health authorities ("Each Party shall determine detailed arrangements").
64. Both the SEA Protocol and SEA Directive require that reasonable time-frames for transboundary procedure are to be agreed between the States involved in such a procedure.
65. The above requirements mean that national SEA schemes:
    a. must include time-frames for public participation and consultation with environmental and health authorities, and
    b. must not attempt to include any time-frames for transboundary procedure (except perhaps for time-frames for initial notification)

66. There is no commonly accepted international standard as to setting the time-frames for consultations with environmental and health authorities and therefore considerable amount of discretion for national SEA frameworks in this respect. Relation to setting the time-frames for consultations with environmental and health authorities. In practice time frames in different countries vary significantly (for example time-frames for consulting SEA reports most often vary from 10 to 45 working days).

67. As far as time-frames for public participation are concerned there are some standards in this respect set under the Aarhus Convention which limit somehow the amount of discretion for national SEA frameworks in this respect. In practice time frames for consulting SEA Reports in different countries take from at least 1 months (in most countries) up to 6 weeks (Spain, Latvia, Netherlands) or even 60 days (Belgium and Italy).
68. In most countries the time period for consultations with authorities is shorter than the time period for public participation. In some countries the legislation fixes only the minimum time period for public participation and allows longer time period to be fixed in individual cases.

BOX 2

Drafting suggestions regarding general issues

1. The definitions usually cover the key terms that appear often throughout the entire legal instrument. Proper design of definitions may significantly simplify the language of the operative provisions, in particular by avoiding to repeat lengthy phrases. Thus, when designing definitions it must be borne in mind not only the need to make them, where applicable, fully compatible with the respective definitions in the SEA Protocol but also the possibility to facilitate, through the definitions, the implementation of the operative provisions. To this end however of vital importance is a rigorous consistency in using the terms as defined.
2. There are two dominant approaches towards establishing a sequence of definitions:
   a. most often used is simple alphabetical order (this order may be deprived of its value when the legal instrument is translated into other languages)
   b. sometimes used is the substance-related order whereby the terms are defined starting with the basic terms which later serve to define other terms (for example: public authority-planning authority)

3. Whichever of the above approaches to the order of definitions is used - it is important to ensure that it is used consistently.

4. Bearing in mind that in many countries there is no clear typology of strategic documents and those falling within the ambit of "plans and programmes" under SEA Protocol (and SEA Directive) may take different names - instead of "plans and programs" worth consideration is using a generic term to cover such strategic documents and define them converting slightly the definition of "plans and programs" from article 2.5 of the SEA Protocol.. The most practical seems to be using the term „strategic document" – defined as follows:

„Strategic document" – means any plan, program, policy, strategy or any other strategic document regardless of its name, as well as any modifications to them that are:

a) Required by legislative, regulatory or administrative provisions, and

b) Subject to preparation and/or adoption by an authority or prepared by an authority for adoption, through a formal procedure, by a parliament or a government

5. In countries where the term "strategic document" has already a strictly defined legal meaning and this meaning does not cover all types of documents potentially subject to SEA - another generic term would be needed.
6. Bearing in mind the scope of public authorities covered by the obligations related to SEA -it might be practical to define the term "public authority" using the

definition of public authority from the Aarhus Convention or referring to such definition in another national law which already transposed such a definition (for example to a legislation regarding access to environmental information).

7. Quite practical might be also to find a short generic name to all authorities which are responsible for preparation of the strategic documents subject to SEA scheme. Calling them with the same term as in case of EIA scheme ("developers, 'investors", project proponents" or "zakazchik") might be misleading therefore other term might be more appropriate. For example it could be the term "planning authority" defined as follows:

Planning authority – means public authority, which is responsible for preparation of a strategic document;

8. Worth noting is that the definition of SEA in SEA Directive is purely procedural (ie by reference to procedural elements like: scoping, preparation of SEA report etc) while in the SEA Protocol there is exactly the same procedural approach but it is complemented with a reference to the nature of SEA ("means evaluation of the likely environmental, including health, effects"). Such reference in the national definition may be further elaborated provided that the procedural element remains intact.
9. It must be remembered that screening is about determining the need for SEA and therefore conceptually it is not part of SEA! Thus the definition of SEA cannot include screening.
10. There is a tendency to include among principles of environmental assessment also the principle of „scientific basis of assessment". In this context it is worth mentioning that in many international negotiations (for example under Cartagena Protocol) the "science based approach" is used as a principle opposed to the „precautionary principle". Bearing in mind that „precautionary principle" is the constitutive principle of EU environmental policy and of the EU SEA scheme (see 1 recital to the Preamble of SEA Directive) mentioning in a national SEA scheme only „scientific basis" without clearly mentioning „precautionary principle" may be considered as not compatible with EU law.
11. It is important to use in the SEA scheme the terms familiar for given administrative tradition (months or week or days – calendar days or working days) and to use them consistently.
12. Time-frames are needed to be clearly set for involvement of environmental/health authorities and the public, especially for the following stages:
    a. Screening
    b. Scoping
    c. Commenting on SEA Report and the draft strategic document
13. As opposed to EIA where time-frames are often set for the entire EIA procedure - in

case of SEA it might be counter-productive to set time-frames for conducting the entire SEA procedure

14. In case of transboundary procedure
    a. It is impossible to set in the legislation any time-frames for conducting the entire transboundary procedure
    b. Only time-frame for replying for notification may be set unilaterally (either in the legislation or individually)
    c. Time-frames regarding other steps in transboundary procedure must be agreed between the States involved in such a procedure. - so they cannot be set unilaterally in the national legislation.
    d. National legislation must be designed in such a way that domestic time-frames, if needed, are subject to changes resulting from the agreed time-frames regarding transboundary procedure

V. Field of application - art.4

A. Strategic documents under article 4.2 subject to mandatory SEA

69. Subject to mandatory SEA are strategic documents which jointly fulfill the criteria listed in article 4 paragraph 2 of the SEA Protocol, namely
    a. Are prepared for one of the areas listed in article 4 paragraph 2, and
    b. Set the framework for development consent of projects listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation (see below)
70. The above strategic documents, as well as any modifications to them (except for minor modifications and documents which determine the use of small areas at local level - see below) are subject to mandatory assessment. This means that for any strategic document which is prepared in one of the above areas and which set the framework for development consent of projects listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation - there is no screening needed.
71. Similar approach to mandatory SEA is applied in the SEA Directive (art. 3 paragraph 2) with the addition of strategic documents which require assessment under the Habitat Directive (see above - Biodiversity assessment).

B. Setting the framework for development consent of projects

72. The criterion of "setting the framework for development consent of projects" relates to concepts of "project" and "development consent" used in the EIA scheme and well defined under the EU EIA Directive.
73. Under the EU EIA Directive
    a. *"project" means:*
       - the execution of construction works or of other installations or schemes,
       - other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;
    b. *"development consent" means the decision of the competent authority or authorities which entitles the developer to proceed with the project;*

74. The above concept of project is similar to the concept of activity under the Espoo Convention and concept of specific activity under article 6 of the Aarhus Convention.
75. The above concept of "development consent" is similar to the concept of "final decision" under the Espoo Convention and concept of "decision whether to permit proposed activity" under article 6 of the Aarhus Convention. All of these concepts create a lot of confusion in many national legal frameworks because in most countries implementation of projects is subject to multiple decision-making.
76. A strategic document may set the framework for future development consent
    a. directly (see Annex III.2): by providing binding requirements regarding location, nature, seize and operating conditions of projects (for example: waste management plan allowing only waste disposal and not waste incineration or land use plan allowing buildings not higher than 3 storeys) or by allocating resources for projects
    b. indirectly (see Annex III.3) : by providing binding requirements for lower level strategic documents which set requirements directly binding upon development consent for projects
77. As already mentioned, the reference in SEA Protocol to "any other project listed in Annex II that requires an environmental impact assessment under national legislation" may pose some problems for drafters of the national SEA scheme in countries where national EIA scheme envisages individual screening for projects listed in Annex II. In this respect the approach of the SEA Directive (which refers to all projects listed in Annex I and Annex II of EIA Directive) is much more clear and practical.

C. Minor modifications and documents which determine the use of small areas at local level

78. While for the strategic documents described above, as well as for any modifications to them, as a rule SEA is mandatory - in case of minor modifications both SEA Protocol and SEA Directive allow certain discretion whether to require SEA. This is the exception from the general obligation which means that national legal framework may provide such an exception but does not have to provide it.
79. Bearing n mind the fact that in most countries modification of the existing strategic documents is a common practice, the reference to minor modifications is commonly used in order to avoid unnecessary administrative burden with repeating the entire SEA procedure in case of modifications which are not likely to have significant environmental , including health, effect.
80. The concept of "minor modification" refers to likely environmental, including health, effect and not to the mere length of the text to be modified in the existing strategic document (see Box 4)

BOX 4 Minor modifications - examples

1. A modification of the existing waste management plan which assumes replacing the provision "waste incineration is **not** envisaged as a method of waste management" with the provision "waste incineration is envisaged as a method of waste management" cannot be treated as minor modification. While it involves only deletion of one word (the word "not") - its environmental and health consequences might be significant.
2. A modification of the existing waste management plan by adding new provisions or even a chapter regarding reporting is unlikely to have significant environmental and health consequences and - after using the screening criteria from Annex III to the Protocol - may well be considered as minor modification not triggering the need for SEA procedure to be conducted again.

81. The reference to documents which determine the use of small areas at local level may cover different types of strategic document. Most often these include local land use plans of various categories (master plans, detailed plans, zoning etc.) but sometimes also local waste management plans, special strategies for revitalisation of brown fields (abandoned industrial areas) or of urban areas. Implementation of such strategic documents usually involves very significant impact locally. Therefore many countries address such plans with extreme caution and not always fully use their discretion in this respect.

82. As already mentioned in case of minor modifications - also the possibility to exclude strategic documents which determine the use of small areas at local level is the exception from the general obligation which means that national legal framework may provide such an exception but does not have to provide it. In fact indeed it was found useful not to make full use of this exception.

D. Strategic documents under article 4.3

83. Article 4 paragraph 3 of the SEA Protocol requires Parties to cover with their national SEA scheme also strategic documents "other than those subject to article 4 paragraph 2 which set the framework for future development consent of projects". Similar requirement is also envisaged in the EU SEA Directive.
84. The reference to setting the framework for future development consent of projects is not confined only (as it is the case in paragraph 3) to projects subject to national EIA scheme – i.e. it covers strategic documents which set the framework for future development consent of any projects.
85. There are different approaches to address in a national SEA scheme the obligations stemming from article 4 paragraph 3:
    a. requiring mandatory SEA for strategic documents from other areas than those listed in article 4 paragraph 2 (for example for strategic documents prepared for the purpose of nature conservation)
    b. requiring mandatory SEA for strategic documents setting the framework for projects not covered by the EIA scheme (for example for zoning plans setting the framework for individual dwellings)
    c. making strategic documents mentioned above in a) and b) subject to individual screening
    d. introducing a general requirement that all strategic documents which are likely to have significant environmental, including health, effects and which are not subject to mandatory SEA - are subject to individual screening.

E. Exemptions - article 4.5

86. The SEA Protocol does not cover strategic documents
    a. "whose sole purpose is to serve national defence or civil emergencies"
    b. financial or budget plans and programmes
87. It must be remembered that the national SEA scheme may not exclude all strategic documents "relating to" national defence or civil emergencies but only strategic documents "whose sole purpose is to serve national defence or civil emergencies". Thus for example plans for flood prevention are subject to SEA but evacuation plans in case of flood are not subject to SEA.

88. Not all strategic documents that include allocation of financial resources can be treated as "financial or budget plans". In most countries there are special rules regarding financial and budget plans and only those plans which are subject to such special rules are excluded from SEA.

VI. Screening - art.5

A. Strategic documents subject to screening

89. The Protocol envisages screening for strategic documents under article 4 paragraphs 3 and 4. Strategic documents under paragraph 2 are not subject to screening - they are subject to mandatory SEA.
90. As indicated in paragraph 1 of article 5 of the SEA Protocol (the same in SEA Directive) screening may be either through a case-by-case examination or by specifying types of strategic documents or by combining both approaches. The Protocol leaves to the Parties which of the above methods to use. In choosing the method effectiveness in practice of given method is quite important. The situation differs in this respect in case of strategic documents under paragraph 3 and those under paragraph 4.
91. As far as strategic documents under paragraph 3 in article 4 are concerned the practical experience shows that a case-by-case approach to determine whether an assessment is needed is less effective and even troublesome because authorities preparing strategic documents other than those under para 2 never know what to do: thus sometimes they submit for screening to environmental authorities such documents even if it is obvious that they do not need environmental assessment (for example plans related to raising historical education) or – alternatively – they do not submit a document that would probably require such assessment.
92. Thus, in case of strategic documents referred to in paragraph 3 the categorical approach (ie specifying types/categories of strategic documents subject to mandatory assessment) is generally much more effective because assures legal certainty. As there is however almost impossible to identify all strategic documents that require assessment therefore individual screening (case-by – case examination) is also needed. Thus the most commonly used approach is a combination of both whereby the list of strategic documents other than those under para 2 to be assessed is supplemented by a case-by-case approach to determine whether an assessment is needed.
93. The starting point is usually identification of all strategic documents (other than those under paragraph 2) which may require SEA and thereafter determining which of them would always require SEA and which require SEA

only in certain circumstances and therefore should be subject to individual screening (case-by –case examination).

94. Similar approach is often taken in case of strategic documents which determine the use of small areas at local level. It is usually the legislation itself which determines what it means „small areas at local level" and thus which strategic documents are subject to SEA and which are not., or which are subject to individual (case-by-case) screening.
95. The determination is not fully discretionary. Reference to local level means the lowest level of administrative division of the country. For countries having several tiers of administrative division of the country the concept of "local level" is not always obvious. For example Poland originally determined that while all local land use plans, because of their environmental significance, require mandatory SEA - the other strategic documents considered to be relating to „small areas at local level" would include not only local communities (gmina) but also counties (poviat) and would be subject to individual screening. As a result some of strategic documents prepared at this level were originally not subject to mandatory SEA. The European Commission (EC) questioned this determination in relation to counties (poviat)[9] and Poland has had to adjust this determination in order to make subject to mandatory SEA also strategic document prepared at poviat level.
96. In case of minor modifications to existing strategic documents it would be very difficult to apply categorical screening and precisely divide minor modifications from other modifications therefore the most commonly used is only individual screening (case-by –case examination).

B. Positive and negative screening

97. In all the above cases where individual screening (case-by –case examination) is employed (either as the only method or in combination with the categorical screening) it may take the form of positive or negative approach to screening. The difference between them relates to the burden of proof.
98. The positive approach to screening is based on the assumption that certain category of strategic documents (for example: all modifications to existing documents) as a rule do not require SEA unless in each individual case, bearing in mind the criteria set out in annex III, it would be determined otherwise.
99. The negative approach to screening is based on the assumption that certain category of strategic documents (for example: all modifications to existing documents) as a rule do require SEA unless in each individual case, bearing in mind the criteria set out in annex III, it would be determined otherwise.

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[9] Poland has population of 38 milion and is divided into about 380 poviats

100. In case of SEA schemes (as opposed to EIA schemes) the above described negative approach to screening seems to be more popular because it implements better the precautionary principle. Furthermore, despite the fact that SEA Protocol and SEA Directive require environmental/health authorities only to „be consulted" in many countries the determination (sometimes called „screening decision") is either made solely by environmental/health authorities (for example in Bulgaria) or jointly by the planning authority (initiator - proponent agency) and respective environmental/health authorities. In Poland screening for strategic documents which determine the use of small areas at local level and for minor modifications to existing documents is based on negative approach (i.e. they as a rule require SEA but may be „screened out") and the determination in this respect is formally made by the planning authority (initiator -proponent agency) upon approval of the respective environmental/health authorities, which usually means that the latter in practice decide whether in given case SEA is required or not.

BOX 5

Drafting suggestions regarding field of application and screening

1. The drafters should bear in mind that in case of strategic documents subject to article 4 paragraph 2 the national SEA scheme must
   a. cover all the areas listed in paragraph 2,
   b. envisage that all new strategic documents and modifications to existing ones - as a rule are subject to mandatory assessment.
2. The reference to "setting the framework for development consent for projects" in legal framework which do not use this concept may be replaced by a more general reference to "setting the framework for projects".
3. In national legal frameworks in which EIA scheme applies individual screening, the reference in the SEA scheme to "setting the framework for projects that require EIA" would be difficult to apply. Much easier would be to follow the approach of SEA Directive and refer to the list of projects subject to national EIA scheme (i.e. the list of projects subject to mandatory EIA and to the list of projects subject to screening).
4. The Protocol allows envisaging screening for minor modifications to existing documents and for documents determining the use of small areas at local level. This means that formally drafters may or may not envisage such a special approach. Not envisaging such a special approach would not be considered as non-compliance, nevertheless in case of minor modification lack of such a scheme may cause problems in practice.

5. It would be highly impracticable to require SEA in case of even minor modifications to existing documents. Therefore it is recommended to envisage in the national SEA scheme a special provision related to minor modifications to existing strategic documents.
6. Such scheme should apply however only to modifications in the existing documents which have been subject to SEA in accordance with the SEA scheme. Modifications (even minor ones) to the existing strategic documents which have not been subject to SEA would provide an opportunity to conduct SEA for such documents and thus contribute to improving their environmental soundness.
7. As for documents determining the use of small areas at local level it is recommended to identify those of them (for example all local land use plans, zoning plans, waste management etc) which may have significant locally environmental or health effects and to make them (at least at the initial stage of implementing SEA scheme) subject to mandatory SEA.
8. Any national SEA scheme which envisages individual screening must include, in the main body of the legislative act or in an annex to it, the screening criteria from Annex III to the Protocol.
9. Whenever the draft envisages individual screening
    a. there must be a reference to applying screening criteria
    b. it is recommended to envisage
        i. negative screening (see Part VI subchapter B)
        ii. determination regarding screening to be made not by planning authorities themselves but by (or upon approval of) environmental/health authorities
10. The drafters should bear in mind the need to address strategic documents under article 4 paragraph 3. This may take the various forms (see Part V subchapter D). Extending list of strategic documents subject to SEA to new areas may be done by amending respective horizontal or sectoral legislation with the indication in the respective legal act which envisages given strategic document to be adopted (for example: nature conservation law which requires nature conservation management plans to be prepared) – that before adoption such a document it is required to have SEA (or at least individual screening).
11. The drafters must pay attention to properly address exemptions allowed under article 4.5 in order not to extend the scope of exemptions by excluding for example from SEA all documents which "relate to" national defence or civil emergencies (see Part V. subchapter E)

I. VII. Scoping - art.6

101. Scoping is a mandatory part of SEA. Neither the SEA Protocol nor the SEA Directive provide clear instruction as to the procedural aspects or legal nature of scoping except for the requirement that environmental and health authorities must be consulted and recommendation to involve the public.

102. In most countries scoping is conducted in form of meeting with the participation of the planning authorities, environmental and health authorities, the public and the consultants responsible for the preparation of the SEA report. There are no clear rules or commonly followed international standards as to who organizes such scoping meetings, who chairs them etc. Sometimes they are organised by the planning authorities, sometimes by environmental and health authorities, the same is with chairing such meetings.

103. The scoping meeting is always based on the basic information regarding the proposed strategic document in form either of the outline or concept for such document or its initial draft . Sometimes it is required that planning authority provides also some other information to facilitate scoping.

104. The determination regarding scoping has different names and takes various legal forms in different countries. Sometimes it is taken by the planning authority, sometimes by environmental authorities and sometimes jointly. Always health authorities must be consulted.

105. Scoping is meant to streamline the information to be included into the SEA Report under each of the headings (categories) indicated in Annex IV and is not meant to allow omitting the entire categories (headings) envisaged there. For example scoping determination may indicate which alternatives should be discussed in the SEA Report but can not allow for omitting discussion regarding alternatives altogether.

VIII. SEA Report and quality control- art.7

106. The SEA Protocol provides requirements regarding SEA Report in article 7 and in Annex IV.

107. All the specific requirements in Annex IV are mandatory and must be clearly and precisely reflected in the national SEA legislation. The national legislation may however add some additional requirements to be included in SEA Report.

108. One of the key requirements for SEA report is the requirement in point 5 of Annex IV regarding environmental, including health, objectives which are relevant to the strategic document. This requirement is specific for SEA Report and differentiates it from EIA Report.

109. Article 7 paragraph 3 of the SEA Protocol requires Parties to ensure sufficient control of SEA Reports. Neither however SEA Protocol nor SEA Directive include any provisions to regulate directly the system of quality control. Certain more specific obligations in this respect are included only in the EIA Directive as amended in 2014. In case of SEA there is however considerable discretion as to the means to achieve this. Worth noting is that usually countries apply similar means to ensure quality control for both EIA and SEA.

110. The most popular means to provide quality control currently include:

   a. wide public availibility of EIA/SEA documentation together with possibilities for the public to comment upon their quality and ultimately challenge it at independent courts
   b. review performed by specialised environmental agencies (for example some countries follow the approach invented in the US where the US EPA grades the environmental reports with marks: from 1 (report adequate) through 2 (gaps) till 3 (inadequate) and these marks are publicly available.
   c. review performed by specialised independent experts
      i. individually (for example in Belgium)
      ii. in panels (for example in Canada)
      iii. in special EIA/SEA Commissions (for example in the Netherlands or in Poland)

111. In some countries additionally there are also voluntary (private) institutions which assembly EIA/SEA experts involved in preparation of EIA/SEA documentation. They have a system of their own accreditation. Best examples are the two institutions in the UK: *Institute of Environmental Assessment* (IEA) and *Association of Environmental Consultancies* (AEC).

112. In some EU countries the applicable legislation envisages that the assessment documentation is prepared – or reviewed - by accredited experts. These mechanisms were originally developed for EIA documentation but in most cases they apply also for SEA documentation.

113. A requirement that EIA/SEA documentation may be prepared only by accredited experts still exists in few EU countries but the system of quality control based on accreditation of EIA/SEA consultants has a lot of disadvantages therefore most countries do not regulate who prepares EIA/SEA documentation but rather envisage independent review of the quality of such documentation.

114. Another approach is to introduce into the law binding requirements as to the education and experience of consultants involved in preparation of

EIA/SEA reports combined with the requirement to certify with a signature the accurateness of the information and findings included in the respective reports.

115. Quite illustrative in this respect are the changes in the approach to quality control applied in Poland, which currently has one of the most extensive, in terms of the number of procedures and size of documentation prepared, practical experience with EIA/SEA in the European Union (see Box VI)

Box VI Experience with quality control in Poland

1. Originally, in the 1980s, the law in Poland required that the assessment documentation would need to be prepared by an expert designated by the authority competent to take the decision whether to authorise the proposed activity. Under this approach the proponent of such activity would bear the costs of preparing the respective assessment documentation but had no discretion as to chosing who would prepare such documentation. Practical experience showed that the fact that authorities designated who should prepare the documentation did not provide sufficient guarantee for the quality of the documentation and - on the other hand- made the authorities less prone to scrupulously review the documentation.
2. The above arrangements were considered to be both ineffective and corruption-prone and therefore were replaced by a requirement that the expert documentation related to EIA/SEA and also for water manegement and nature conservation procedures should be prepared only by accredited experts. This requirement was accompanied with the scheme for accreditation of such experts, whereby the required respective qualifications were precisely described and a system of verifying these qualifications was established. Separately from this, there was established a National EIA Commission as an advisory body to the Environment Minister, which main role was to review the quality of EIA documentation (and later on also SEA documentation) prepared by accredited experts. The accreditations allowing to prepare documentations were separate for natural persons and for institutions (firms) and was based on the previous experience (authoring or co-authoring certain number of documentations) and supplemented later on for natural persons with an exam before a commision specially established for the purpose. The accreditation was originally related to sectors (water, air, noise, nature) while later on was related to the type of assessment (separately for EIA, for SEA and for water and nature assessments).
3. In years 1990-98 accreditations were awarded by the Environment Ministry, while in 1998 – following a general administrative reform to decentralised the country – the competence to award accreditations was shifted to be a competence of regional governors ((voivods). There were altogether about 1000 natural persons and about 160 institutions (mostly research institutes and private consultancy firms) accredited before 1998 by the Environment Ministry and there is no record of how many experts were accredited by regional governors.
4. Generally the system of accreditation created a lot of administrative burdens and legal problems and was considered to be ineffective (and even counter-productive) as a tool to assure quality control of EIA/SEA documentation. Therefore in the year 2000 when Poland introduced legal schemes for EIA and SEA fully harmonised with the EU law, the

accreditation scheme for EIA/SEA documentation preparation was abandoned altogether. However, as the experience with the EIA Commission was extremely positive, the new legal scheme maintained the National EIA Commission as an advisory body to the Environment Minister and established legal basis for creation of Regional EIA Commissions to advise regional governors (voivods).
5. Recently, following 2014 amendment to EIA Directive, Poland introduced
Into the law binding requirements as to the education and experience of consultants involved in preparation of EIA/SEA reports combined with the requirement to certify with a signature the accurateness of the information and findings included in the respective reports.

Box VII Drafting suggestions regarding quality control

1. Whatever the system of quality controls is established it seems reasonable that it covers both EIA and SEA.
2. System of mandatory accreditation of EIA/SEA experts (ie those who are entitled to prepare EIA/SEA documentation - environmental reports) is difficult to administer and often counter-productive.
3. Much more effective is system of independent reviews: either in form of a special independent commission (more comprehensive and objective approach – but more costly) or in form of review done by individual experts (less costly but also less comprehensive and perhaps less objective).
4. The least costly, yet still quite effective, are the two most popular tools: review by environmental /health authorities and public control system of signature plus mandatory requirements regarding education and experience of the consultants involved in preparation of EIA/SEA reports.
5. As for the review of environmental/health authorities worth consideration is establishing a formalised system of quality control by way of a check-list and system of grading the SEA documentation (environmental reports) similar to the one described above
6. As for the public control worth consideration is a requirement that all the SEA documentation (all environmental reports) are submitted in electronic form and they are publicly available (in their entirety) at the specially designated website of the Environment Ministry immediately after they have been submitted for review. The designated website may take a form of electronic register of SEA procedures whereby the environmental reports are accompanied by other relevant information regarding respective procedures, in particular the scoping decisions, draft and final strategic documents (plans and programs) subject to SEA etc. They all should be kept there publicly available for the record.

End of Box VI

IX Consultations - articles 8, 9 and 10

116. The mandatory element of SEA are various consultations
    a. with environmental and health authorities
    b. with the public (public participation)
    c. transboundary
117. Consultations with environmental and health authorities are required to be held at all stages of SEA: starting from screening, through scoping and discussion on the SEA Report.
118. Either SEA Directive or SEA Protocol require only that environmental/health authorities are consulted and do not require to give them any right to veto in relation to adoption of any strategic document (with some exceptions - see below). The same is with public participation. The only requirement is that the opinions submitted by environmental/health authorities and by the public must be taken into account. In real term it means that authorities preparing any given plan or program must consider the views submitted and must explain in detail how these views were considered (art. 11 para 2 of the SEA Protocol).
119. The Protocol requires merely consulting them but in many countries their role is more prominent. Quite often they have decisive role in screening. In some countries the views of environmental/health authorities are binding (ie when they say that SEA must be conducted the authorities preparing document must follow their view and carry our SEA). Similar situation is often with scoping. However usually they have only consultative competence in relation to final decision whether a strategic document may be adopted.
120. A specific feature of SEA Protocol is significant role assigned to health authorities. The role of health authorities (not necessarily it must be the Ministry!) depends on their competence in given country. Different countries assign different competences to health authorities. Those most closely related to SEA are competences related to occupational safety (including for example standards for exposure of workers) or to epidemiology, or to health standards of buildings etc. In some countries the competence of health authorities includes also ambient air or water quality standards.
121. Public participation is mandatory for SEA and in many countries is required at all stages of SEA: starting from screening, through scoping and discussion on the SEA Report.
122. The SEA Protocol does not provide specific details regarding elements of public participation except of elements to be included in notification (Annex V). Instead it requires that such details to be included in national legislation (article 8 paragraph 5). In order to assure effective public participation the national legal scheme should provide detailed requirements regrading means of

notifying the public, possibilities to submit comments and informing the public about the final decision regarding adoption of the strategic document.

123. Reliance solely on Internet to inform the public may be justified in case of strategic documents at the central level but in case of documents addressing rural population or documents at the regional or local level, for example local waste management plans, may well be not effective

124. The basic procedural elements of transboundary procedure are usually included into the domestic legal framework in most countries. It does not mean that all the details must be in the legislation – some might be regulated in executive regulations.

BOX VIII. Drafting suggestions regarding transboundary porcedure

1. The national framework should clearly indicate where in the decision-making process there is a place for a transboundary SEA procedure and who is responsible for carrying it out and by which means
2. The national framework should provide also other necessary details of the transboundary procedure both in respect of acting as "the Party of origin" and as "affected Party".
3. Environmental report should include a separate chapter on transboundary impact to facilitate translation
4. A legal mechanism should be included that
    a. comments under article 10.4 of the SEA Protocol of foreign authorities and the public regarding information in the SEA documentation taken into account so that transboundary impact is properly addressed (art. 11.1(c) of the SEA Protocol);
    b. results of consultations with foreign authorities under article 10.3 of the SEA Protocol are binding upon authorities adopting final decision as to the plan or program (art. 11.1(c) of the SEA Protocol);
5. There sems to be reasonable to establish a legal and financial mechanism allowing public authorities to undertake their duties related to provide public participation in case of transboundary procedure.
6. When drafting the details of transboundary procedure regarding SEA it might be useful to take into account any existing guidance material regarding transboundary procedure for EIA issued under the espoo Convention, in particular Draft guidance on enhancing consistency between the Espoo Convention and the environmental assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia .