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OVERVIEW OF LEGISLATIVE AND ADMINISTRATIVE REFORMS FOR IMPLEMENTING STRATEGIC ENVIRONMENTAL ASSESSMENT IN EASTERN EUROPE AND THE CAUCASUS

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SEA

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Note by the UNECE secretariat
The draft overview is presented for consideration and comments by participants at the Sub-regional conference Developing legislative framework for the strategic environmental assessment in line with the Protocol on SEA (Kakheti, Georgia, 2 November, 2015).

Due to the late delivery of the present draft by the consultants it was not feasible for the secretariat to review it. Therefore, it reflects the views of the consultants only.

Please send your written comments to the document, in particular in relation to the structure of the document and sections on progress of the legislative reform in your own country by 31 October 2015 to (elena.santer@unece.org) with a copy to the authors (jerzy.jendroska@jjb.com.pl) and (DSkrylnikov@mail.lviv.ua).

Inputs from the Governments and from the secretariat will be incorporated into the next draft document.

Disclaimer

This Draft Overview has been prepared by the consultants based on the request of the UNECE Secretariat to the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in the Transboundary Context with the financial assistance of the European Union in the framework of the Programme 'Greening the Economies in the Eastern Neighbourhood'(EaP GREEN). The EaP GREEN programme is coordinated by the OECD and implemented by OECD, UNECE, UNEP, and UNIDO. The views expressed herein can in no way be taken to reflect the official opinion of the European Union, the implementing organisations.

Greening Economies in the Eastern Neighbourhood (EaP GREEN) programme is a large regional programme implemented in 2013-2016 by the United Nations Economic Commission for Europe (ECE), OECD, UNEP, and UNIDO to assist the six European Union's Eastern Partnership (EaP) countries: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine, in their transition to green economy. The programme is financed by the European Commission, the four implementing organisations and other donors.

The programme's overall objective is to assist the EaP countries to decouple economic growth from environmental degradation and resource depletion. The programme component that ECE is in charge of implementing, aims to promote the use of strategic environmental assessment (SEA) and environmental impact assessment (EIA) as essential planning tools for an environmentally sustainable economic development.

UNECE supports the participating countries in developing and applying SEA legislation and systems in accordance with the provisions of the Protocol on SEA to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (and the EU SEA Directive). The related activities are linked to the workplans under the Convention and the Protocol; and they contribute to promoting the ratification and implementation of the Protocol on SEA. As appropriate, assistance is being provided for improving the current practices and legal and institutional frameworks on EIA in compliance with the Espoo Convention (and with the EU EIA Directive).

The UNECE assistance within EaP GREEN Programme focuses on three main directions:

1. **Revision of the existing national regulatory and legislative framework, including** legislative review of SEA and, as appropriate, of EIA, legal drafting for SEA legislation and sub-regional overview;

2. **Capacity building on SEA/EIA procedures**, including national and sub-national level training on SEA; development of national guidance documents; coordination and experience-sharing events; pilot SEAs;

3. **Strengthening of administrative capacities through above mentioned** legislative reviews, training workshops, pilot project and facilictation of a policy dialogue.

The related activities are linked to the workplan under the Espoo Convention and the Protocol on SEA and contribute to promoting the ratification and implementation of the Protocol on SEA.

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I. Introduction

A. Background/Context

The United Nations Economic Commission for Europe (UNECE) Protocol on Strategic Environmental Assessment (Protocol on SEA) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention[1]) was adopted in 2003 and entered into force in 2010. The Protocol on SEA establishes the obligations of its Parties with regards to the evaluation of the likely environmental impacts, including on health, of certain plans and programmes, as well as, to the extent possible, policies and legislation at the early stage of drafting. Also, the Article 10 of the Protocol requires the Parties to notify and enter into consultations with each other on considered plans and programmes that are likely to have a significant transboundary environmental impact. The Protocol further envisages for a wide public participation in making governmental decisions, as well as early, timely and effective consulting with the environmental and health authorities.

Many activities have been carried out under the Protocol with the aim to widen its membership and to promote the implementation of its provisions throughout the UNECE region[2]. The present overview describes the efforts undertaken since 2013 until to date and the state of play in this respect in the countries in Eastern Europe and the Caucasus: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine[3].

The draft overview is prepared by the consultants to the UNECE to summarise the efforts of the countries of Eastern Europe and Caucasus in carrying out legislative reforms for implementing strategic environmental assessment in line with the provisions of the UNECE Protocol on SEA, the Espoo Convention and relevant EU Directives. It builds on the findings and recommendations of the reviews of national legislative and institutions framework on Environmental Impact Assessment (EIA) and/or Strategic Environmental Assessment (SEA)

[1] The Espoo (EIA) Convention sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries (see some examples). The Convention was adopted in 1991 and entered into force on 10 September 1997. As of end October 2015 the Convention has 45 Parties. Read more about the history of the Convention following the link: http://www.unece.org/env/eia/eia.html

[2] The UNECE region covers more than 47 million square kilometres. Its member States include the countries of Europe, but also countries in North America (Canada and United States), Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) and Western Asia (Israel).

[3] According to the workplan of the Espoo Convention (Decision VI/3–II/3), technical advice and support to the Kyrgyz Republic in bringing the framework legislation on EIA and SEA in compliance with the provisions of the Espoo Convention and the Protocol on SEA were provided to Kyrgyzstan in 2014-2015. The project was financed by Switzerland. In addition, in 2015 technical advice also has been provided to the Russian Federation on improving implementation of the Convention and the Protocol. The project, financed by Sweden, aimed to assist the country in its efforts to develop a national system to apply impact assessment, in particular SEA procedures, according to the provisions of the Protocol.

and experience gained during the legal drafting on SEA and EIA carried out by the countries with the support of the UNECE in the framework of the EU Programme 'Greening Economies in the Eastern Neighbourhood' (EaP GREEN)[4].

Purpose of the Overview

The aims of the present document are:

- to briefly summarize the differences/gaps between environmental assessment of plans and programmes (policies and legislation) under the OVOS/ecological expertise system in the countries of Eastern Europe, the Caucasus and under systems in the countries of the UNECE region that are compliant with the Protocol on SEA (Chapter II)
- to describe and to take stock of the legislative and institutional reforms carried out by Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine with support from UNECE to implement and ratify the Protocol on SEA , and, where relevant, the Espoo Convention and the EU Directives on SEA and EIA (including presenting approaches selected by the countries in transposing the Protocol on SEA into their national legislation and the envisaged approaches for reforming/establishing administrative structures for implementing the Protocol on SEA (Chapter III)
- to outline lessons learned from the UNECE legal assistance to the beneficiary countries (Chapter IV)
- to provide recommendations, where relevant, for further aligning the reformed legislative, regulatory and administrative/institutional frameworks in the target countries with the provisions of the Protocol on SEA drawing on experience from selected UNECE countries that are Parties to the Protocol on SEA (Chapter V)
- to contribute to the formulation of generic recommendations of issues to be considered when amending existing legislative and administrative /implementation frameworks of environmental impact assessment against the provisions of the Protocol on SEA (to be provided in a separate documents).

[4] The legislative reform of the environmental assessment system in Ukraine was supported by the EU funded project 'Complementary Support to the Ministry of Ecology and Natural Resources of Ukraine for the Sector Budget Support Implementation'. This review is based on the results of the above mention programme. UNECE in the framework of the EaP GREEN Programme compliments this process by: (a) raising awareness among national, local and sectoral authorities about SEA process and its benefits; (b) building national and local capacities on practical application of SEA; (c) assisting the country in defining roles and responsibilities of various authorities in the SEA process.

II. Historical development and main principles of the environmental assessment of planning documents

1. Development of SEA legal framework in the UNECE region

A. International law (historical development and the main principles)

The institution of environmental assessment, as it is known currently, originates from the United States where the U.S National Environmental Policy Act (NEPA) of 1969 introduced the requirement that all major federal actions which may significantly affect the environment are subject to assessment regarding their likely impact. The US scheme covered a broad range of activities, including concrete individual projects and strategic documents (plans, programs, policies, etc.), and included elaborated procedures and requirements for screening activities subject to assessment, determining scope of the assessment, content of the assessment reports, public participation, etc.

The above concept of environmental assessment has proven to be extremely useful as a tool of preventive environmental policy and has been widely followed all over the world. In Europe however originally this concept was introduced only partially. In 1985 the European Community adopted Council Directive 85/337/EEC of 27 June 1985 on the assessment of certain public and private projects on the environment (so called EIA Directive) which set certain standard of environmental assessment widely followed in Europe. The EIA Directive however, as opposed to NEPA, limited the application of environmental assessment to certain individual projects only. Thus, strategic documents like plans, programs, policies and legislative proposals were originally not made subject to assessment in Europe. That was the reason why the scope of application of the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context signed in Espoo in 1991 was also predominantly limited to individual projects only. In late 1990s it became apparent in Europe that the assessment in order to be effective must cover - as it is in the US - also strategic decisions. This led to adoption of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (SEA Directive). This in turn paved the way to initiate negotiations leading to adoption of the Protocol on Strategic Environmental Assessment under the Espoo Convention in Kiev in 2003.

Despite all differences between US model and the model set by the Directives they all reflect certain characteristic features of development control system designed to operate in the democratic country with the market economy. These features are characteristic also for the Espoo Convention and Protocol on SEA.

Neither the Espoo Convention nor Protocol on SEA reflect characteristic features of so called OVOS/ecological expertise system which was developed in late 1980s in the Soviet Union and then it was inherited by many countries of the former Soviet Union.

B. OVOS/ecological expertise systems

The regulatory framework for development control systems in most of the countries in Eastern Europe, the Caucasus and Central Asia 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/individual experts. The expert committees/experts are affiliated to various governmental bodies.

The environmental part of the review is usually called the State ecological expertise (also sometimes referred to as the State environmental review) and is usually subject to separate laws. Planned activities which have a potential impact on the environment are subject to State ecological expertise (SEE) conducted by the competent environmental authorities or by external experts nominated by the competent environmental authorities. The procedure is finalized with the so-called "expertise conclusion". The activity can be implemented only if the conclusion is positive.

Additionally, the activities that are considered to have a potentially significant impact on the environment are subject to OVOS, an acronym whose terms, in direct translation, can be rendered as "assessment of the impact upon the environment". There is usually a list of activities which always require State ecological expertise and/or OVOS. However, in some countries the environmental authorities may, upon review of the proposed activity, decide that an OVOS must be conducted, irrespective of whether the activity is included in the list or not. (See more in 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, ECE/MP.EIA/2014/2)

Often legislation among other subjects to state ecological expertise include certain categories of strategic documents such as plans, programs, urban and regional planning documentation and legislation. However on practice often there is not enough capacity within environmental authorities to conduct the full scale assessment and such practice is rare or limited to the formal approval of the drafts of strategic documents. More detailed assessment usually is provided in urban planning. In some types of the urban planning documentation (e.g. Master plan) it is required to prepare a chapter on environmental protection

and/or use of natural resources with assessment of environmental effects of the planning document, which is to be reviewed during the state ecological expertise.

C. SEA and traditional OVOS/ecological expertise systems: main differences

Subject to state ecological expertise in most countries are various activities which may have significant impact upon environment, and those often include not only various categories of individual projects but also certain categories of strategic documents. Until recently the practice has been focused on the individual projects therefore in most countries in the region there have been developed executive regulations (OVOS regulations) to regulate the details of the assessment, in which the respective obligations were put mostly on the developers. Since in principle similar rules apply to both individual projects and strategic documents, there is a natural tendency to follow the same approach in relation to strategic documents.

As already mentioned, it was already some time ago when it was realized that traditional OVOS/ecological expertise systems have some characteristic features that do not correspond well with the international standards for EIA (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. ECE/MP.EIA/2014/2). Of key importance for the success of the legislative reforms related to SEA is the question whether the same applies to SEA.

Bearing in mind the differences between EIA and SEA (see General Guidance for Developing SEA Framework) it is quite natural that not all the characteristic features of the traditional OVOS/ ecological expertise systems which do not correspond with the international standards for EIA must necessarily also do not correspond with the international standards for SEA. For example, making the developer (i.e. those willing to implement a project) responsible for public participation during EIA procedure is considered to be not in line with the international standards for EIA, but making planning authorities (i.e. those willing to adopt a strategic document) responsible for public participation during SEA procedure seems to be fully in line with the international standards for SEA. The difference stems from the fact that in EIA scheme the developers (regardless whether private or public ones) by definition are interested in promoting only their own project, while the SEA scheme put obligations only on public authorities (not on private persons) which by definition must take care of different public interests, including public interest related to environmental protection.

On the other hand, there are some features (like for example the binding nature of the "expertise conclusion") which are perfectly in line with the international standards for EIA - but not with the international standards for SEA (see below). Finally there are also some features of the traditional OVOS/ ecological expertise systems (like for example the very concept of the assessment and role of EIA/SEA report or approach to the scope of assessment) which are not in line with international standards for both EIA and SEA.

The characteristic features of the traditional OVOS/ ecological expertise systems that do not correspond well with the international standards for SEA and do not seem to be allowing for effective implementation of SEA include:

a) concept of environmental assessment and role of the (EIA/SEA) report
b) scope of assessment
c) lack of individual scoping
d) role of expertise conclusions

Ad a) The traditional OVOS/ ecological expertise system usually assumes that the results of assessment are meant to be included into the final SEA or EIA Report. Such an approach does not correspond with the approach employed by the Espoo Convention, SEA Protocol (See also the differences between the requirements of the Protocol on SEA and the traditional OVOS/SEE system in *Table 1* below) and the respective EU Directives whereby a respective report serves as only one of the elements of the assessment and the results of the assessment are meant to be included into the final decision authorizing the activity subject to assessment (i.e. a decision permitting the project or a decision to adopt a strategic document).

Ad b) The approach to the scope of environmental assessment (whether EIA or SEA) seems to be reflecting the traditional approach employed for state ecological expertise which main task is to 'establish compliance or non-compliance with the legal requirements of environmental protection". In practice it means that EIA or SEA is considered to be focused on compliance with technical environmental standards, while issues not clearly regulated by standards are considered to be outside the scope of assessment. Again, such an approach does not correspond with the approach employed by the Espoo Convention, Protocol on SEA and the respective EU Directives which assume a comprehensive assessment well outside mere compliance with technical standards.

Ad c) Most of the traditional OVOS/ ecological expertise systems do not envisage a scoping process as a specific procedural step. Instead, there are quite detailed requirements as to the content of the documentation in relation to different types of documents. This is not in line with the Protocol on SEA and

SEA Directive which require individual scoping as a mandatory step in the SEA procedure.

Ad d) The binding nature of the "expertise conclusion" which is perfectly in line with the international standards for EIA - in relation to SEA seems to be a factor which in practice results in limiting heavily the effectiveness of SEA. In case of many strategic documents there are some imperative reasons of *overriding public interest* which may outweigh even very significant adverse environmental effects and the legal scheme which do not allow for it is either impractical or (usually) is subject to abuse. Political pressure results in manipulating with the assessment in order to minimize the risk and allow to go ahead with the goals envisaged in the respective strategic document. This, as well as the fact that giving environmental authorities broad right of veto regarding competences of other authorities might be considered as being against the constitutional principles, is the reason that both Protocol on SEA and SEA Directive do not require to seek the approval of environmental (and health) authorities but merely require that they must be consulted and their opinions taken into account when deciding whether to adopt the strategic document subject to SEA.

Table 1

Differences between the requirements of the Protocol on SEA and the traditional OVOS/SEE system for plans/programs/legislative acts		
Requirements under the Protocol on SEA:	Requirements under OVOS/SEE system *(no/ to some extent/ fully)*	Comment
SEA required for plans and programs which are prepared for:		*Usually there are no specific requirements in the legislation on specific sectors, except for the regional and urban planning. See also comments below
agriculture,	NO*	
forestry,	NO*	
fisheries,	NO*	
energy,	NO*	
industry including mining,	NO*	
transport,	NO*	
regional development,	YES*	
waste management,	NO*	
water management,	NO*	
telecommunications,	NO*	
tourism,	NO*	

town and country planning or land use,	YES*	
Modifications to plans and programs listed above also require SEA	NO*	*Except for the urban planning documentation (regional development, town and country planning)
Screening mechanism to deal with minor modifications	NO	
Undertake SEA in plan- and programme-making processes in accordance with definition of SEA in article 2.6 of the Protocol	NO	SEE or approval by environmental (and health)authorities prior to the adoption
Undertake SEA screening in accordance with articles 4 and 5 (e.g., how to combine mandatory and exclusions lists and when to apply case-by-case examinations, etc.)	NO*	All plans and programs/ legislative acts subject to SEE. (Usually, legislation on SEE contains general requirement that all plans and programs, laws that may have impact on environment as well as urban planning documentation have to pass SEE)
Organize SEA scoping in accordance with article 6 (e.g., when to undertake scoping, how to select suitable methods for consultations with public and authorities, how to write terms of reference for SEA, etc.)	NO*	*Usually there are some standard requirements for scope of the assessment and the structure of chapter on environmental protection in the urban planning documentation
Prepare environmental report: • Elaborate environmental (baseline) studies in SEA (in accordance with annex IV, paras. 2, 3 and and 4) • Identify environmental objectives in SEA (in accordance with annex IV, para. 5) • Analyse the likely significant environmental, including health, effects (in accordance with annex IV, para. 6) • Compare alternatives of the plan or programme (in accordance with annex IV, para. 8) • Prepare post-SEA monitoring plans to meet requirements of article 12 and annex IV, paragraph 9 • Analyse transboundary effects (in accordance with annex IV, para. 10)	NO*	*No environmental report, except for the urban planning documentation. In some types of the urban planning documentation (e.g. Master plan) it is required to have a chapter on environmental protection and/or use of natural resources with assessment of environmental effects of the planning document.
Organize public review of the SEA report in accordance with article 8	To some extent	Public participation in the form of comments and/or public hearings, based on the draft document only (might be held also at the stage of concept).
Organize consultations with environmental and health authorities in accordance with article 9	To some extent	SEE or approval by environmental (and health) authorities based on the draft document only
Undertake transboundary consultations in accordance with article 10	NO	
Take environmental report and comments from authorities and the public into account during the adoption of the plan or programme into account (art. 11)	To some extent	No environmental report, except some urban planning documents
Monitor significant environmental and health effects during implementation of plans and programmes (art. 12)	To some extent	General monitoring of implementation of plans and programmes

2. Practical implementation of SEA

Existing practice of the implementation of SEA i in the EaP GREEN countries as well as in other countries with the OVOS/ecological expertise system is limited. Usually SEA related activities have been implemented within different international projects and SEAs have been conducted only on the pilot basis.

The most recent pilot projects on SEA (2014-2015) were implemented in Moldova, Azerbaijan and Georgia with the support from EaP GREEN. The overall aim of these SEA pilot projects was to build capacities in application of SEA procedures at a national level and to raise awareness of SEA benefits among various national stakeholders. The specific objectives included:

- Testing and demonstrating opportunities of practical application of SEA.
- Providing recommendations for environmental optimisation and modifications of the selected plan/programme/project.
- Developing recommendations for further improvement of national legislative and institutional frameworks on SEA in a country.

In Moldova the Master Plan for Orhei town was selected as a pilot urban plan in order to test and demonstrate opportunities of practical application of the draft law on SEA in the Republic of Moldova, develop recommendations for further improvement of national legislative and institutional frameworks on SEA in a country. Recommendations for environmental optimisation and modifications of the Orhei town Master Plan were also developed to demonstrate SEA benefits in the planning process.

In Azerbaijan the State Strategy on Alternative and Renewable Energy Resources Use in Azerbaijan for 2015-2020 was selected as a pilot in order to test and demonstrate opportunities of practical application of the Draft Law on Environmental Impact Assessment in the Republic of Azerbaijan in the renewable energy sector, develop recommendations for further improvement of national legislative and institutional frameworks on SEA in the country, provide recommendations for environmental optimisation and modifications of the Plan, identify of the content of the SEA for the State Strategy on Alternative and Renewable Energy Resources Use in Azerbaijan for 2015-2020, identify potential environmental and sustainability aspects that could be relevant for the State Strategy on Alternative and Renewable Energy Resources Use and identify stakeholders to be involved in SEA and design of consultation process. Recommendations for environmental optimisation and modifications of the State Strategy on Alternative and Renewable Energy Resources Use in Azerbaijan for

2015-2020 were also developed to demonstrate SEA benefits in the planning process.

The Pilot Project on application of SEA to the process of development of the National Waste Management Strategy and Action Plan in Georgia among other objectives aimed further development legislation on SEA, provision of support in the development of the draft law on environmental assessment, testing and demonstration of opportunities of practical application of the draft law on environmental assessment based on the implementation of a pilot project, provision of recommendations for environmental optimisation and modifications of the selected plan/programme, building the capacities of the staff of the Ministry of Environment, and development of recommendations for further improvement of national legislative and institutional frameworks on SEA in a country.

The Strategic Development Plan, Road Map and Long Term Investment Plan for the Solid Waste Management Sector in Armenia has been identified as the strategic document for pilot application of SEA in Armenia. The pilot will be conducted in cooperation with the Ministry of Territorial Administration and Emergency Situations, responsible for the preparation of the Strategy, and Ministry of Nature Protection which is in charge of implementing the Law on Environmental Impact Assessment and Ecological Expertise. The tentative timeframe of a pilot project extends from 1 August 2015 to 1 September 2016.
A number of pilot projects related to the strategic environmental assessment of plans and programmes previously have been implemented in the Republic of Belarus: "National Tourism Development Programme of the Republic of Belarus for 2006-2010"; "Programme of Development of Inland Waterway and Sea Transport of the Republic of Belarus for 2011-2015"; and "Scheme of integrated spatial planning of Myadzel district".

Currently in most countries with the OVOS/ ecological expertise system relevant state ecological expertise procedures should be applied to plans and programmes. Legislation of countries with OVOS / ecological expertise system usually contains general requirements that all plans and programmes, laws, urban planning documentation are subject to state ecological expertise (e.g. Azerbaijan, Ukraine, Belarus, Kyrgyzstan). Before reform of Licensing and Permitting system of Georgia (in 2005- 2007) the following plans and programs were also subject to environmental assessment and public participation procedures: urbanization and spatial planning programs; industry development programs; transport infrastructure development programs; land use schemes for administrative-territorial units (districts); long-term rehabilitation programs for protected areas; plans on the protection and use of water, forest, land, minerals and other natural resources; national, regional and local construction programs

for the location of engineering facilities of all types designed to avoid negative consequences of possible natural disasters. According to the Law on Environmental Permit (1997), it was obligatory to conduct EIA/OVOS and to make decisions on issuing environmental permits through public participation before such plans and programs were adopted, approved or endorsed by the legislative or executive bodies. As a result of legislative reform such plans and programs are no more subject to the above mentioned procedures.

In some countries state ecological expertise in practice is carried out on a case-by-case basis only. For instance, a few examples only could be found in Ukraine and most of them are related to urban planning documentation (e.g. new master plans). Another example is a regional economic development plan for one of the regions in Azerbaijan was subject to state environmental review but no examples were found in Azerbaijan for application of state ecological expertise procedure to state sectoral programmes or plans.

III. Development of SEA systems in Eastern Europe and Caucasus

1. Description of the steps taken and approaches chosen for legislative reforms by each country

Armenia

Armenia is a Party to the Espoo Convention since 1997 and also is a Party to the Protocol on SEA since 2011, and thus it is one of the first countries in the Eastern European and Caucasian region joining the Protocol on SEA to the UNECE Espoo Convention on EIA. Armenia is a Party to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). Since 2011, Armenia is gradually introducing the SEA elements into the planning and permitting systems.

The first legislative review for EIA was made in 2007 on the Implementation Committee initiative. The Implementation Committee to the Espoo Convention initiative on Armenia was prompted by Armenia's responses to a questionnaire on Parties' implementation of the Convention in the context of the second review of implementation (mid-2003 to end 2005) and by Armenia's request for technical assistance from the Committee to review existing and draft legislation on EIA in more detail.

Since June 2013, the UNECE secretariat to the Espooo Convention continues its collaboration with the Ministry of Environment and Natural Resource Protection of Armenia in the framework of the EaP GREEN to support developing a

national environmental assessment system in line with the Convention and its Protocol on Strategic Environmental Assessment.

The Law on Environmental Assessment and Environmental Expertise was adopted in August 2014 and contains elements of the strategic environmental assessment. The Law reflects the desire of Armenia to improve national EIA legislation on proposed specific activities and SEA in accordance with the principles and requirements of international agreements. The Law attempts to cover EIA and SEA, as well as the state environmental impact expertise which according to the Law is similar to the state ecological expertise - the institutional element common to the countries with OVOS/ecological expertise systems.

The review of legislative and institutional frameworks for the application of SEA procedures in Armenia was made in 2014-2015. The legislative reviews outlined that the new Law on Environmental Assessment and Environmental Expertise contains elements of the strategic environmental assessment. However, to fully comply with the provisions of the Protocol on SEA and the relevant EU legislation, several changes and amendments to the existing legislation are required, including, development of an SEA procedure.

In addition, based on the request of the Espoo Convention Implementation Committee, UNECE experts reviewed national law on Environmental Assessment and Environmental Expertise. This review provided recommendations for changes of existing legal framework in order to fully comply with the requirements of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context.

The UNECE Secretariat and the Ministry of Environment and Natural Resource Protection of Armenia are recently developing an approach on how to incorporate the recommendations of the reviews into the new law, which would include carrying out a pilot porject on SEA in the waste management sector (from November 2015 to September 2016) and deveoping amendements to the existig law on on Environmental Assessment and Environmental Expertise by September based on this expereince and the recomentations of both reviews by September 2016

Azerbaijan

Azerbaijan is currently a Party to the Espoo Convention but it is not a Party to its Protocol on Strategic Environmental Assessment (SEA). It has neither signed nor ratified the SEA Protocol. Azerbaijan is a Party to the Convention on Access

to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

Azerbaijan has neither an elaborated legal framework for EIA nor extensive practical experience in this respect. The legal framework for EIA is based on the OVOS/ecological expertize model with the developer being responsible for the EIA procedure, including for public participation. As there is practically no experience with SEA, as one of the steps to develop a national system a pilot project on SEA was initiated to run in parallel with the legislative reform.

The assistance from the UNECE Secretariat in the legislative reform in Azerbaijan has quite a long history. It was prompted by Azerbaijan's responses to the questionnaire on its implementation of the Convention in the period 2009–2011, indicating that it lacked national legislation on the application of the Convention and by the request from Azerbaijan for technical assistance in that regard. In its decision V/4 (2011), the Meeting of the Parties (MOP), encouraged Azerbaijan to implement the recommendations of its second Environmental Performance Review (ECE.CEP/158) with respect to EIA and SEA and welcomed the technical advice for the review of Azerbaijan's current and draft legislation on EIA, which was carried out by an international consultant to the secretariat. In February 2014 the Espoo Convention Implementation Committee invited the secretariat to explore opportunities to provide further legislative assistance to Azerbaijan in order to ensure its full compliance with the provisions of the Convention and the Protocol, in view of Azerbaijan's accession to it, including a review of its draft framework law on environmental assessment, and other relevant legislation.

Submitted to review was a draft framework law prepared by national experts. It was aiming to regulate three assessment frameworks, i.e. EIA, SEA and State Ecological Expertise (SEE). Upon adoption of the law by the Parliament, it was assumed that the three procedures would be further detailed through implementing regulations, – Instructions of the Cabinet of Ministers, which according to Azerbaijan were of the same legal nature as legislation adopted by Parliament.

The review of the draft law was based on two legislative reviews conducted by two different international consultants from another country of the region. First there was the review regarding EIA conducted in 2013 upon request of the Espoo Convention Implementation Committee and in 2014 there was a separate legislative review focused on SEA. The review of the draft law outlined that to comply with the provisions of the Espoo Convention and the Protocol on SEA and the relevant EU legislation, further law drafting towards more comprehensive legislative reform would be required.

Following the request from the Ministry of Ecology and Natural Resources of Azerbaijan, the assistance in further law-drafting was provided by an expert from outside the region having the experience with implementation of SEA in both the EU and in the region. The actual drafting remained to be the responsibility of the two national experts from the Ministry: the head of the legal department in the Ministry and the expert from expertise department (former member of the Espoo Implementation Committee).

The results of the reviews were discussed during the Roundtable meeting in August 2014 in Baku with the participation of the international consultants and stakeholders. In October 2014 the international consultant held intensive 3-days consultations in Baku with the two national experts from the Ministry following which some draft elements to improve the draft were submitted to the national drafters.
Second Round Table meeting was held in March 2015 during which the revised draft law presented to the stakeholders together with the presentation of the respective requirements stemming from the international and EU law. The meeting was followed by a working meeting the international consultant with the national drafters to discuss the comments of the consultant to the draft law and to clarify the outstanding issues.

The revised draft law prepared further to the meeting was made subject to inter-departmental consultations. Following the consultations the draft was further revised without involvement of the international consultant.

Belarus

Belarus is currently a Party to the Espoo Convention but it is not a Party to its Protocol on Strategic Environmental Assessment (SEA). It has neither signed nor ratified the Protocol on SEA. Belarus is a Party to the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention).

Belarus already has quite elaborated legal framework for EIA and several years of practical experience in this respect. The legal framework for EIA was traditionally based on the OVOS/ ecological expertise model with the developer being responsible for the EIA procedure, including for public participation, but has recently been subject to significant changes making it more compatible with the requirements of the Espoo and Aarhus Conventions. Belarus has also some practical experience with strategic documents subject to certain environmental assessment as part of state ecological expertise but there is practically no experience with SEA as required by the SEA Protocol.

Since 2013 the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus in cooperation with the UNECE Secretariat has undertaken steps to introduce a new SEA scheme into the national legal framework.

The assistance from the UNECE Secretariat in the SEA legislative reform in Moldova assumed co-operation of two international consultants: one expert from another country in the region and one expert from a UE country with the experience with implementation of SEA in both the EU and in the region. The first one was responsible for the legislative review while the other for assisting in law-drafting.

The review and analysis of the current SEA-related legislation was prepared by an international consultant from another country in the region in close collaboration with a national consultant nominated by Belarus. The results of the legislative review were presented and discussed with national stakeholders during a national level round table consultation meeting in September 2013. The review report was prepared based on comments received during and after the meeting. The review report identified 3 alternative legislative techniques to be employed and recommended one of the alternatives (issuing a separate SEA law) as most suitable.

Following however the approach taken in relation to the EIA scheme it was decided to select another of the alternatives - namely introducing a new SEA scheme by way of amending the Law of 2009 on State Ecological Expertise and issuing a respective SEA Regulations.

Due to the very tight time-frames self-imposed by Belarus, the assistance of the international consultant in the law-drafting was rather limited. The international consultant commented on the concept paper with the outline of the draft law and participated in one two-day meeting in April 2015 devoted to presenting the respective requirements stemming from the international and EU law (day one - for larger audience of stakeholders) and discussing the first draft law prepared by national consultants (day two - for small drafting group) Following the meeting a revised draft law was prepared which again was commented by the international consultant. The draft law was subject to further consecutive revisions following inter-departmental consultations. Neither of revised drafts were subjected to further commenting by the international consultant.

Georgia

Georgia is currently not a Party to the Espoo Convention and its Protocol on SEA. It has signed, but not ratified the SEA Protocol. Georgia is a Party to the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention).

Georgia in June 2014 signed the Association Agreement with the European Union and ratified it on July 18, 2014. The Association Agreement, inter alia, obliges Georgia to gradually approximate its legislation to the EU legislation (including main environmental EU directives) and international instruments (listed in the Annexes to the Association Agreement) within the stipulated timeframes.

Following the above political commitments the Ministry of Environment Protection of Georgia in cooperation with the UNECE Secretariat and the Environment Information and Education Centre is undertaking a number of steps to develop a national system to apply EIA and SEA procedures according to the provisions of the Convention and the Protocol, including drafting a new law on EIA and SEA harmonised with the respective EU Directives.

Georgia already has quite elaborated legal framework for EIA and several years of practical experience in this respect. The legal framework for EIA is based on the OVOS/ecological expertize model with the developer being responsible for the EIA procedure, including for public participation. As there is practically no experience with SEA, as one of the steps to develop a national system a pilot project on SEA was initiated to run in parallel with the legislative reform.

The assistance from the UNECE Secretariat in the SEA legislative reform in Georgia involved two international consultants: one expert on SEA from another country in the region and one expert on SEA from an EU country with the experience with implementation of SEA in both the EU and in the region.

The initiation of law-drafting was preceded by a Legislative review prepared by an international consultant from another country in the region in close collaboration with a national consultant nominated by Georgia.

The process of law-drafting was carried out under direct supervision of the Deputy Minister responsible for legislation, and assumed co-operation of 2 international consultants with national consultants working together with a core group of officials from the Environment Ministry, including heads of EIA/expertize unit and of legal unit.

The process of law-drafting included a couple of meetings, held in Tbilisi with the participation of the international and national consultants, officials from the

Ministry of Environment Protection as well as representative of other Ministries and various stake-holders, including NGOs. All meetings were chaired by the Deputy Minister responsible for legislation.

The initial 2-days meeting was devoted to setting the scene with presenting by international consultants the respective requirements stemming from the international and EU law and discussing the existing situation in Georgia, as well as to selecting the main legislative options to follow.

It was decided to aim at drafting a law covering both EIA and SEA together with separate parts devoted to public participation and transboundary procedures. The draft was aimed to provide full compliance with the Espoo and Aarhus Conventions, Protocol on SEA as well as with the SEA and EIA Directive (including 2014 Amendment to EIA Directive).

Technically the draft in the General part and the part related to EIA was meant to be based on one of the pre-existing drafts prepared in Georgia already in 2004 (so called CENN draft). The international consultants were requested to prepare some draft elements, including alternative approaches to some issues. The draft elements were discussed in the second meeting held in Tbilisi and on that basis one of the national consultants together with a core group of officials from the Ministry of Environment Protection, prepared a draft law which was made subject to commenting by international consultants. The draft law, as revised following the comments, was discussed at the third meeting. Following the results of the meeting the draft was revised again with a view to discuss each part of the draft in a number of one-day webinars, held on average by-weekly, with the virtual participation of international consultants. Following this, the final draft was prepared for the final Round-table held in September 2015 in Tbilisi.

Moldova

Moldova is a Party to the Espoo Convention since 1994. It has signed, but not ratified yet the SEA Protocol. Moldova is a Party to the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention).

Moldova in June 2014 signed the Association Agreement with the European Union and ratified it on 2 July 2014. The Association Agreement, inter alia, obliges Moldova to gradually approximate its legislation to the EU legislation (including main environmental EU directives) and international instruments.

Moldova has several years of practical experience with environmental assessment both domestically and internationally (a representative of Moldova was active member of the Espoo Implementation Committee). The respective legal framework was traditionally based on the OVOS/expertise model with the developer being responsible for the EIA procedure, including for public participation. There was also some limited experience with strategic documents subject to certain environmental assessment as part of state ecological expertise.

Following the above political commitments in January 2015 Moldova adopted a separate law on EIA which provides an EIA scheme meant to be fully compatible with the EIA Directive and with the Espoo Convention. Furthermore, the Ministry of Environment in Moldova in cooperation with the UNECE Secretariat is undertaking a number of steps to develop a national system to apply SEA procedures according to the provisions of the Protocol, including drafting a separate law on SEA harmonized with the SEA Directive. (except for reference to Natura 2000).

The assistance from the UNECE Secretariat in the SEA legislative reform in Moldova included involvement of two international consultants: one expert from another country in the region and one expert from an EU country with the experience with implementation of SEA in both the EU and in the region.

The initiation of law-drafting was preceded by a Legislative review prepared by an international consultant from another country in the region in close collaboration with a national consultant nominated by Moldova.

The results of the review were discussed at the round-table meeting in August 2014. Based on the results of the review, the Ministry requested UNECE to provide further assistance for the development of national SEA legislation by way of drafting a separate law on SEA.

The process of law-drafting was carried out by small drafting group and assumed co-operation of 2 international consultant with a national consultant working together with a core group of officials from the Environment Ministry, including heads of EIA/expertize unit and of legal unit. The law drafting was initiated by a set of questions posed to the international consultants regarding certain specific requirements of the Protocol on SEA and respective experience of EU countries in developing their SEA legislation. Based on the answers and recommendations provided by the international consultants the first draft was prepared by the national consultant in co-operation with the international consultant from the region. The draft was subject to assessment of its compliance with the requirements of the Protocol on SEA and SEA Directive by

the other international consultant and following his comments the second draft was prepared.

The second draft was subject to consultations with the public and other stakeholders and presented in a Roundtable organized in March 2014 in Chisinau with the participation of various stakeholders and the international consultant who presented the respective requirements stemming from the international and EU law. The Roundtable was followed next day with the working meeting with the national consultant and the rest of the small drafting group to discuss the results of consultations. Following the meeting a revised third draft law was prepared which again was commented by the international consultant. The final draft law was presented at the final Roundtable in July 2014.

Ukraine

Ukraine is a Party to the Espoo Convention since 1999. Ukraine is a Party to the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention). On the 1 July 2015 the Parliament of Ukraine ratified the Protocol on SEA but the instrument of ratification has not been submitted yet to the UN Treaty Sector in New York, so that this ratification becomes official in the UN System.

After the signature of the Protocol on SEA by Ukraine in 2003 a range of EIA and SEA draft laws and regulations has been developed. There have been several attempts to introduce SEA into the legislation in form of amendments to legislation (e.g. to the Law on Environmental Protection and to the Law on Ecological Expertisa) and also in a form of law on SEA. On 16th December 2013, draft law of Ukraine №V758 on Strategic Environmental Assessment (SEA) was registered in the Verkhovna Rada of Ukraine. However, the profiled Committee of the Verkhovna Rada of Ukraine issued its conclusion on the rejection on 1st April 2014.

The EU-Ukraine Association Agreement was signed on 27th June 2014 and the approximation of Ukraine's environmental legislation to the EU standards within the implementation of the Association Agreement is considered as the main priority in Ukraine.

Taking into account the necessity to introduce SEA with a view to approximating legislation to SEA Directive and developing the relevant legislation Ukraine have decided to establish a brand new legal scheme for SEA fully compatible with the requirements of the SEA Protocol and also compatible (except for reference to Natura 2000) with the SEA Directive. The most recent

draft law on SEA was developed in 2014-2015 with the support of several international projects by the national experts and further elaborated by the Interagency Working Group established by the Ministry of Environment and Natural Resources. The draft law also envisages the amendments to the existing legal instruments under which strategic documents subject to SEA are being prepared. The draft law on SEA was placed for consultations with wide range of stakeholders, including public and governmental agencies. In October 2015 it was registered in the Verkhovna Rada of Ukraine.

In parallel a new draft law on EIA, introducing a new EIA system and abolishing the ecological expertise have been drafted and registered in the Verkhovna Rada of Ukraine.

Both drafts on EIA and SEA still require completion of consent and legislative procedures related to their approval.

2. Comparison and analysis of approaches and techniques for legislative reform

The legislative reforms are at different stages in different countries and as of October 2015 neither of the countries has completed the reform. The analysis is based on the current situation and intentions reflected in the draft laws regardless of their formal status.

A. Approaches

When undertaking their legislative reforms the countries in Eastern Europe and Caucasus have taken different approaches towards their traditional OVOS/ecological expertize systems. While the details vary, in principle the approaches taken may be clustered into 3 groups:

a) New modern legal schemes for SEA and EIA
b) Combination of new modern legal schemes for SEA and EIA with elements of state ecological expertise
c) Addressing requirements of the Protocol on SEA and Espoo Convention within the traditional OVOS/ ecological expertise system.

New modern legal schemes

Two countries (namely: Republic of Moldova and Ukraine) have decided to establish a brand new legal schemes for SEA fully compatible with the requirements of the SEA Protocol and also compatible (except for reference to Natura 2000 - see below) with the SEA Directive. Similar approach they have taken towards EIA were brand new EIA scheme were designed fully compatible

with the requirements of the Espoo Convention and the EIA Directive (in case of Ukraine largely even with the 2014 Amendment to the EIA Directive).
The new legal schemes follow quite strictly the scope of application, the definitions and procedures of the respective UNECE and EU legal instruments. In case of Ukraine introduction of the new EIA/SEA schemes is combined with the abolishment of the state ecological expertise while in case of Moldova the state ecological expertise seems to be maintained in order to perform some tasks outside the EIA and SEA schemes.

The major advantage of introducing modern SEA and EIA schemes is the fact that they provide a good chance for achieving full compatibility with the international standards which in turn will not only allow to meet respective international obligations but also facilitate international co-operation and foreign investment. Furthermore, such modern schemes have been proven to be quite effective in the market economy and useful in promoting rule of law and participatory democracy.

The major disadvantage of introducing modern SEA and EIA schemes is the fact that they differ significantly from the hitherto traditional OVOS/expertise systems and their introduction will meet certain opposition from those well familiar with and benefitting from the old systems. Furthermore, implementation of the new schemes will result in a need to adapt existing structures and practices to new, unknown rules. This will require certain new skills from the authorities and other stakeholders and this in turn will call for comprehensive capacity building efforts.

Combination of new modern legal schemes for SEA and EIA with elements of state ecological expertise

Two countries (namely: Azerbaijan and Georgia) have decided to combine new modern legal schemes for SEA and EIA with elements of state ecological expertise. The approach in the two countries seems to be however very different as far as the proportions within this combination is concerned.

In case of Azerbaijan there seems to be more elements of state ecological expertise and less detailed application of modern SEA and EIA schemes. In case of Georgia the new legal schemes for SEA and EIA follow quite strictly the scope of application, the definitions and procedures of the respective UNECE and EU legal instruments while reference to state ecological expertise is in fact rather marginal one.

The above difference seems to be well justified by differences between the two countries concerning the existing situation regarding the development of the

legal framework for EIA/SEA and respective practical experience and by their international commitments and aspirations.

The major advantage of the combinations is striking the right balance between the above indicated pros and cons of introducing modern SEA/EIA schemes. In case of Azerbaijan, given the level of practical experience and the development of institutional infrastructure, introducing totally new modern SEA/EIA schemes would probably be not effective.

In case of Georgia, it could probably manage to introduce only the new schemes without even a reference to ecological expertise, which according to the draft law is meant to resemble more the expert commissions in some EU countries than the traditional state ecological expertise.

Addressing the requirements of SEA Protocol and Espoo Convention within the traditional OVOS/ecological expertise system

Two countries (namely: Armenia and Belarus) have decided to address the requirements of the Protocol on SEA and Espoo Convention within the traditional OVOS/ ecological expertise system.

The approach in the two countries seems to be however very different as to many important elements. While in both countries some of the details are left to be regulated by the executive regulations, which in both cases are not yet known, the level of detail included into the law itself in Armenia is incomparable with the level of details included into the law in Belarus.
The major difference between the approaches in Armenia and in Belarus is the fact that the law in Armenia provides in principle quite a detailed and modern legal framework which in real terms, despite the name of the law, does not have many features of the traditional OVOS/expertise systems and their flaws. It has its own flaws, which may seriously hinder its implementation, in particular in relation to the SEA scheme, but in many respects, the approach in Armenia is much more similar to the approach of drafters in Georgia, than the approach of the drafters in Belarus. In Armenia the role of state ecological expertise is combined with quite detailed procedural provisions regarding SEA and EIA as well as elaborated provisions regarding transboundary procedures.

The draft law in Belarus leaves practically all the procedural details to the executive regulations, but even without such details some of the main features of the proposed SEA scheme are quite visible.

The drafters in Belarus have decided to maintain the approach to environmental assessment which is typical for the traditional OVOS/ ecological expertise

system. In this approach the results of assessment are meant to be included into the final SEA or EIA Report. Such an approach does not correspond with the approach employed by the Espoo Convention, SEA Protocol and the respective EU Directives whereby a respective report serves as only one of the elements of the assessment and the results of the assessment are meant to be included into the final decision authorizing the activity subject to assessment (i.e. a decision permitting the project or a decision to adopt a strategic document).

The very approach to environmental assessment (whether EIA or SEA) seems to be reflecting the traditional approach employed for ecological expertize which main task is to 'establish compliance or non-compliance with the legal requirements of environmental protection". In practice it means that EIA or SEA is considered to be focused on compliance with technical environmental standards, while issues not clearly regulated by standards are considered to be outside the scope of assessment. Again, such an approach does not correspond with the approach employed by the Espoo Convention, Protocol on SEA and the respective EU Directives which assume a comprehensive assessment well outside mere compliance with technical standards.

Generally, addressing the requirements of the Protocol on SEA and Espoo Convention within the traditional OVOS/ecological expertise system seems to have no other benefits than the convenience of the drafters. Even if the procedural details of the respective schemes were fully following the respective details of the respective UNECE and EU legal instruments maintaining the above fundamental features of the traditional OVOS/expertise systems does not give any prospect for achieving compatibility with the international standards. Furthermore, it may cause a number of problems, in particular in case of transboundary procedure with another countries (as was evident for example in a case between Lithuania and Belarus) because the other countries would be legitimately expecting to have in Belarus the legal framework compatible with the international standards in relation to the role of the reports and scope of the assessment. Yet another situation is in Armenia where the Law of the Republic of Armenia on Environmental Assessment and Expertise of 2014 generally follows the previous law of 1995 which principally was based on the modern approach to EIA (and included also a separate modest scheme for SEA).

B. Legislative techniques

When undertaking their legislative reforms the countries in Eastern Europe and Caucasus must have made a number of decisions regarding issues related to legislative technique, namely:

a) whether to introduce new SEA/EIA schemes by way of amending the existing laws or by adopting new laws

b) how to divide the legal norms between various levels of legal acts
c) how to structure the legal norms.

New law/s or amending old legislation

As far as formal legal ways of introducing new SEA/EIA schemes into the national legal framework is concerned the techniques employed in this respect may be clustered into 3 groups as follows:

i) a new law covering EIA and SEA schemes
ii) separate laws on SEA and EIA
iii) amendments to existing laws

Two countries (namely: Republic of Moldova and Ukraine) have decided to adopt EIA and SEA schemes in two separate EIA and SEA laws. This technique, supported by respective names of the laws (EIA law and SEA law) gives a clear signal of introducing significant change toward modernization of the legal framework and abandoning the old-style legislation. It allows also to easily recognize all the legal norms related to given scheme and facilitate comparison with the requirements of the respective international standards. The disadvantage of this technique is the fact that some principles, definitions and legal institutions (like for example public participation or transboundary procedure) which are common for EIA and SEA must be separately addressed. This may lead to some inconsistencies and lack of co-relation between the two schemes,

Three countries (namely: Armenia, Azerbaijan and Georgia) have decided to adopt EIA and SEA schemes in a new EIA/SEA law and to combine in it new modern legal schemes for SEA and EIA with elements of state ecological expertise. In case of Georgia it is called a Code of environmental assessment which gives the law more prominence.

This technique, if properly employed, gives similar advantages as separate EIA and SEA laws and provides additional advantage by allowing to address jointly the principles, definitions and legal institutions (like for example public participation or transboundary procedure) which are common for EIA and SEA. The major disadvantage, as compared with the separate law for EIA and SEA, is bigger ambit of the new law and slightly different scope of stakeholders that must be involved in the law-drafting and capacity-building.

One country (namely Belarus) has decided to introduce new SEA/EIA schemes into the national legal framework by way of amending the existing legislation (law on ecological expertiza). This technique, gives a clear signal of the

intention to not deviate from the existing tradition and institutions rather than heralding any radical change. The major disadvantage of this technique is that it is extremely demanding bearing in mind that it attempts to introduce the legal schemes of EIA and SEA into the legal framework which was created in different times and for slightly different purposes, and therefore differ both conceptually and in terms of terminology used therein. Thus the challenge itself is to create legal schemes of EIA and SEA that would be conceptually and terminologically consistent and fitting to the terminology and concepts used in the existing law yet assuring compliance with the Espoo Convention and SEA Protocol which are based on yet another terminology and concepts.

Division of legal norms between various levels of legal acts

In most of the countries in Eastern Europe and Caucasus implementation of international obligations have been heavily relied upon Constitutional provisions giving priority to international treaties over domestic legislation. This prompted the tendency to merely referring to apply directly the provisions of the respective international treaties instead of transposing them into the national legal framework by a set of detailed provisions.

Furthermore, traditionally environmental legislation has been of a rather framework nature regulating only certain issues considered to be most important and leaving most of details to the delegated acts in form of executive regulations of various legal nature.

In this context worth noting is the opinion of the Espoo Convention Implementation Committee which considering the submission by Romania regarding Ukraine's compliance with the Convention, concluded that: "The provision in the Constitution to directly apply international agreements … is considered by the Committee as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation. In particular, the national regulatory framework should clearly indicate:
(a) Which of the decisions for approving the activities should be considered the final decision for the purpose of satisfying the requirements of the Convention;
(b) Where in the decision-making process there is a place for a transboundary EIA procedure and who is responsible for carrying it out and by which means." (Decision IV/2, annex I).

On another occasion, the Committee stated that: „details of the EIA procedure, for example regarding public participation, should rather be included in the legislation than left for implementing regulations" (Decision IV/2, annex II, para. 32) and that a „domestic regulatory framework was necessary for

implementation of the Convention, especially with respect to public participation" (ECE/MP.EIA/IC/2010/4, para. 19 (a)).

In line with the above opinions, in most continental EU countries the issues of significant legal importance are 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, it has been introduced to a national system by way of adopting a legislative act.

Structure of the legal norms

In most of the countries in Eastern Europe and Caucasus there is a traditional approach to structuring legal acts whereby legal norms are reflected in the provisions concerning certain principles and rights of obligations of the stakeholders rather than consecutive steps in the respective procedures. This does not correspond with the structure of the Protocol on SEA and SEA Directive (as well as the Espoo Convention and EIA Directive) which are structured following steps in the procedure (field of application and screening, scoping, etc.).

Following the traditional structure when introducing new SEA scheme does not provide a clear picture of the entire legal scheme. Thus even for such purely procedural instrument as SEA it is difficult to identify properly all the details of the respective procedural steps involved.

IV. Lessons learned and major existing challenges

1. Lessons learned

Modern SEA scheme and ecological expertize
Combination of modern SEA scheme with state ecological expertise has proven very difficult. It seems to be successful only in countries that either do not envisage in fact any role for expertise in the SEA scheme (like Moldova) or treat state expertise as advisory expert advise (like Georgia). Maintaining within the proposed SEA scheme all the features of the traditional OVOS/expertise systems seems to be not contributing to compatibility of the SEA scheme with international standards.

New law vs. amendment of the old laws
Definitely the best results in relation to compatibility of the SEA scheme with international standards have been achieved in countries that have decided to introduce a brand new law. It applies regardless of whether this is a separate

SEA law (like in Moldova or Ukraine) or whether the draft law covers both EIA and SEA (like in Georgia). The most difficult is in this respect is the amendment of the old law on expertise because of the conceptual differences between the modern SEA scheme and the traditional OVOS/ ecological ecological expertise systems as well as differences in the structure of the legal act (see above).

Organization of law-drafting

The 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 international experts with extensive experience with drafting SEA legislation.

In relation to law-drafting the best results are achieved if there is a small core group of drafters but the actual draft is written by one person familiar with local legislation. The best use of international consultants seems to have been achieved when they were involved in the small drafting group and served on a regular basis with providing to the group advice and suggestions based on experience from other legislations. The key issue was to ensure that the international consultants assess and comment on each consecutive version of the draft. Much of the assistance can be provided however by way of exchanging written submissions, participation in tele-conferences or webinars, etc.

Pilot projects

It has proven extremely difficult to co-ordinate activities related to pilot projects with the law-drafting in order to allow testing somehow in practice the procedures and approaches envisaged in the draft law.

2. Existing challenges

Division of legal norms between various levels of legal acts

For most countries that have not finalized yet their SEA legislative reform the challenge is to strike a proper balance between the legal norms included in the respective law or laws and legal norms included in the secondary legislation. They cannot contradict each other but be supplementary, with the legal norms in the secondary legislation being fully consistent with the respective legislative provisions.

Legislative process

The draft laws are still subject to legislative procedures either in the Government or in the Parliament. Within these procedures some further revisions are quite likely to happen. The challenge is to not only to monitor all revisions introduced to the drafts from the point of view of their compliance with international standards but also to prevent such revisions which might result in non-compliance.

SEA - related amendments to other laws
In most countries the drafts do not seem to include proposal for introduction of other legislative and/or regulatory measures introducing SEA-related provisions into a general legal frameworks for land-use planning and for building and into sector specific legislations (like waste management, water management, forest management, transport).

Biodiversity assessment
In neither of the countries the issue of biodiversity assessment has been addressed. It remains a challenge not only for countries willing to approximate their legislation with the EU law (including obligations related to creation of Natura 2000 system) but also to all countries being Parties to the Convention on Biological Diversity.

Capacity building
All countries are already at the stage when some basic concepts and solutions for a proposed SEA scheme are well known so that they can be tested in practice. Thus the challenge is to redesign all of the implemented pilot projects accordingly.

Another challenge is to start designing and seeking funding for trainings for interested stakeholders on the application of the new law and producing respective guidance materials.

3. Country specific observations

Armenia

The Law of the Republic of Armenia on Environmental Assessment and Expertise of 2014 is quite elaborated and seems to be providing a number of modern procedural elements of both EIA and SEA. Despite referring to ecological expertise, the Law does not include most of the flaws of the

traditional state expertise systems. The transboundary procedure seems to be in principle sufficiently regulated in the Law.

The law envisages issuance of the executive regulations to address some procedural aspects of public participation - the regulations however still have not been adopted.

The Law does have some features which may raise concerns. It addresses both EIA and SEA in the exactly the same legal scheme. This is rather unusual approach and does not take into account the differences between EIA and SEA (See Annex). Of particular importance in this respect is the approach to the role of the conclusions of the state expertise which is binding for both activities subject to EIA and for strategic documents subject to SEA. This approach, while not being literally in non-compliance, does not seem to contribute to the effectiveness of the SEA scheme (see II.1.C. SEA and traditional OVOS/ecological expertise systems: main differences).

The definitions do not correspond fully with the respective definitions in the Protocol on SEA. The field of application of SEA does not seem to be fully corresponding with the requirements of the Protocol on SEA (no mention of modifications), the same with the requirements regarding SEA Report. There seems to be no reference to the health authorities.

Azerbaijan

The final draft law reported as ready to be submitted to the Parliament is very general but seems to regulate sufficiently most of important steps of SEA procedure as required by the Protocol on SEA (screening, scoping, consultations, and decision). The provisions related to definitions have been revised as compared with the previous draft which results in some of the definitions (for example the very definition of SEA) being incompatible with the Protocol on SEA. There are no references to consultation with health authorities. As far as the field of application of SEA is concerned the exemptions seem wider than allowed under the Protocol on SEA and there is no reference to screening criteria for minor modifications.

Generally the draft seems to be not fully internally consistent. In particular the elements of the modern SEA scheme are not always fully consistent with provisions reflecting some of the features of traditional OVOS/ ecological expertise systems.

There is no mention of any amendments to any laws envisaging preparation of strategic documents with a view to introducing a need to apply the SEA procedure.

Most but not all the comments and recommendations of international consultants regarding compatibility with the international standards seem to be accommodated in the final draft.

Some of the above issues may stem from the English translation of the draft law.

Belarus

The draft law reported as ready to be submitted to the Parliament is very general and does not regulate (or regulates insufficiently) most of important steps of SEA procedure as required by the Protocol on SEA (screening, scoping, consultations, decision). While some of the details might be regulated in the executive regulations on SEA (envisaged by the law to be issued - but no draft submitted) leaving almost all of the important elements of the legal scheme for SEA to the executive regulations rather than including them into the law itself does not contribute to the legal certainty and is not a good practice.

Most of the definitions included in the draft do not correspond with the respective definitions in the Protocol on SEA. The field of application of SEA as defined in the draft law does not correspond fully with the field of application defined in the Protocol on SEA (no mention of telecommunications, forestry, fisheries, exemptions wider than allowed under the Protocol on SEA). There are no references to human health and consultation with health authorities.
The draft conceptually seems to be following all the systemic inconsistencies with the requirements of the Protocol on SEA which are characteristic for the traditional OVOS/ ecological expertise systems (See II. 1. C. SEA and traditional OVOS/ecological expertise systems: main differences).

The drafters seem to have not included most of the comments provided by the international consultant on the previous versions of the draft law. The draft law in the current version is grossly incompatible with the requirements of the Protocol on SEA. Most of the above flaws in the law itself cannot be compensated by introducing proper provisions in the executive regulations.

Adoption of the draft law in the current version would not assure compliance with the Protocol on SEA.

Georgia

The draft law (Code of environmental assessment) as of September 2015 seems to be generally compatible with the requirements of the Protocol on SEA and SEA Directive (except for reference to Natura 2000).

All the comments and recommendations of international consultants regarding compatibility with the international standards seem to be duly accommodated in the final draft.

Some minor corrections to improve internal consistency and facilitate future implementation might be needed as indicated in the comments of the international consultant.

Moldova

The draft law on SEA as submitted as final seems to be generally compatible with the requirements of the Protocol on SEA and SEA Directive (except for reference to Natura 2000).

All the comments and recommendations of international consultants regarding compatibility with the international standards seem to be duly accommodated in the final draft.

Ukraine

The draft law on SEA as of September 2015 seems to be generally compatible with the requirements of the Protocol on SEA and SEA Directive (except for reference to Natura 2000). Some minor corrections to improve internal consistency and facilitate future implementation might be needed as indicated in the comments of the international consultant.

V. Recommendations for further action by countries in Eastern Europe and the Caucasus to fully implement the Protocol on SEA

Monitoring further legislative steps

There seems to be needed further assistance from international consultants in relation to remaining challenges related to:

- further legislative process
- drafting executive regulations
- identifying the list of legal acts to be amended

Of particular and immediate importance seems to be assistance in monitoring all revisions introduced to the drafts during the legislative process from the point of view of their compliance with international standards.

Capacity building

As all countries are already at the stage when some basic concepts and solutions for a proposed SEA scheme are well known so that they can be tested in practice it is recommended that all the current and planned pilot projects are involved in testing the new procedures.

Worth supporting is organization of trainings for interested stakeholders on the application of the new law and producing respective guidance materials.

Organization of training for trainers should be country specific. The trainings should not be focused so much on SEA methodology, including on preparing SEA Reports, but focused on teaching how to understand, interpret and use the proposed new provisions in given country.

Worth supporting is also preparation of guidance materials - again focused not so much on SEA methodology, including on preparing SEA Reports, but focused on teaching how to understand, interpret and use the proposed new provisions in given country.

It is also important to establish institutional and financial capacity to conduct EIA and SEA after the adoption of the national legislation not only on pilot but on a regular basis. This may include the practical arrangements for involvement of the relevant SEA/EIA experts, organizing the public consultations, dissemination of information as well as development of the data base for the relevant registers (i.e. register of experts, register of SEA documentation, etc.).