

**THE CONCEPT OF THE AMENDMENTS TO THE LEGISLATION OF THE  
REPUBLIC OF ARMENIA BASED ON THE FINDINGS AND RECOMMENDATION  
OF THE REPORT “ON THE ASSESSMENT OF THE DRAFT LAW ON  
ENVIRONMENTAL IMPACT ASSESSMENT AND EXPERTISE”  
AND “OVERVIEW OF THE LEGISLATION OF THE REPUBLIC OF ARMENIA TO  
IMPLEMENT UNECE PROTOOL OF STRATEGIC ENVIRONMENTAL  
ASSESSMENT”**

**2015**

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## Part I

### I. Introduction to the Document

1. The current conceptual approaches to the amendments of legislation of the Republic of Armenia (hence Concept) has been prepared based on the findings and recommendation of the report “On the assessment of the draft law on environmental impact assessment and expertise” and on the “Overview of the legislation of the Republic of Armenia to implement UNECE Protocol on Strategic Environmental Assessment” (hence Overview)<sup>1</sup>.
2. The Concept has been prepared by the consultant Elena Laeyvskaya (hence Expert) with assistance of Gor Movsisyan. For the purpose of preparation of the concept the legislation as of February 2015 in the field of environmental impact assessment (hence EIA), including legislation on transboundary impact assessment and strategic environmental assessment, of the Republic of Armenia (further also RA) has served as the main object for analysis. The core document scrutinized in the following paragraph is the Law of the Republic of Armenia “On environmental impact assessment and expertise”, which came into force on August 11<sup>th</sup>, 2014 (further EIA Law).
3. It has been suggested in the paragraph 77 of the Overview and in the paragraphs 35-36 of the Assessment to adopt differentiated approaches towards regulation of EIA of the specific types of activities and the regulation of EIA of documents of strategic nature (plans, programs etc.). In the context of improvements of strategic environmental assessment (further SEA) legislation in Armenian two alternatives have been put on the table to advance with the suggested improvements:  
A – amendments to the RA Law on EIA and simultaneous amendments to different branches of legislation,  
B - drafting new SEA Law.

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<sup>1</sup>The sources of Overview: <http://www.unece.org/environmental-policy/conventions/environmental-assessment/about-us/protocol-on-sea/enveiaaboutep-green/enveiaaboutep-greenprotocol-on-seaenvseaeapgreenlegal.html>

During the round-table discussion held in Yerevan, in September 2014, the representatives of the Ministry of nature protection of RA spoke in favor of option B, that is drafting new law on SEA. However, later on it has been suggested to move forward with the option A. Based on the last preferred approach the current Concept has been elaborated to suggest amendments to RA Law on EIA.<sup>2</sup>

4. Having in regard the paragraph 3 of the current Concept, the experts formulated specific suggestions on the improvement of the provisions of RA Law on EIA. Additionally, the Concept puts forward list of legal acts and/or fields of legislations that might be deemed necessary to amend or to look into to comprehensively improve the system of EIA legislation on EIA.
5. The legal framework upon which the Concept has been developed consists of mainly from the following legal acts; RA Constitution, international treaties of Armenia (particularly, UNECE Convention on the Environmental Impact Assessment in Transboundary Context (further ESPO Convention), Protocol on Strategic Environmental Assessment (further SEA Protocol), UNECE Convention on Access to information, public participation and access to justice in environmental matters) (further Aarhus Convention), UN Convention on Biological Diversity (further CBD)). The experts took note as well the 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, DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification). The experts considered also the provisions of relevant laws of Poland, Czech Republic and Estonia. Furthermore, the following guidance, materials have been also taken into consideration;
  - General guidance on the improvement of the compliance between ESPO Convention and environmental assessment within state environmental expertise in the EECCA countries (ECE/MP.EIA/2014/2)<sup>3</sup>;
  - Aarhus Convention: Implementation guide, second edition, 2013.

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<sup>2</sup> If the suggested amendments will cover wide range of issues then it is more appropriate to present the Law in the redrafted form (article 70, paragraph 6 of RA Law on Legal Acts).

<sup>3</sup> Available at [http://www.unece.org/fileadmin/DAM/env/eia/documents/mop6/ECE.MP.EIA.2014.2\\_r.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/mop6/ECE.MP.EIA.2014.2_r.pdf)

- The Practice of Aarhus Convention Compliance Committee, 2004-201.
- Results of the ENVSEC project "Environmental impact assessment in transboundary context –pilot project on post-project analysis,implemented jointly by Republic of Belarus and Ukraine"<sup>4</sup>.

## II. Overview of possible structure of redrafted EIA Law

6. The significance of the current Concept is to assist Armenia to define the scope and the structure of the issues that will fall under the regulation of redrafted EIA Law.

The EIA Law in its present outline covers elements of EIA, SEA and environmental expertise (further EE). The latter one is not considered to be a part of Armenia's international obligations, however is applied in the practice of several post-soviet union countries. The current EIA Law tries to adopt a unified approach towards regulation of both EIA of specific activities and SEA of plans and programs, which, obviously, did not allow to fully distinguish in the regulation the specificities of SEA under international treaties. The concerns in this regard have been initially expressed in the Overview and the Assessment. In the Concept it is suggested that methodological and content wise differences of EIA and SEA, the particularities of the international treaty-based requirements on transboundary impact assessment of programs, plans and specific types of activities, the differences in those procedures and the responsibilities of public authorities shall be considered as a sufficient base to distinguish regulatory framework of the two in the form of separate chapters of the EIA Law.

Taking into consideration the chosen conceptual approach (paragraphs 3, 4 of the current document) it is recommended to redraft the EIA Law to include separate chapters on the organization and implementation of EIA and SEA<sup>5</sup>. On this footing to refine the provisions maintaining public participation in the process of EIA and SEA.

7. While sketching the structure of the EIA Law, with keeping the aforementioned logic of separation of SEA and EIA procedures, the following shall also be taken into consideration;

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<sup>4</sup>Available at <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/meetings-and-events/environmental-impact-assessment/workshops-eap-green/2014/subregional-conference-on-pilot-project-an-post-project-analysis/enveiameetingssubregional2014.html>

<sup>5</sup> The main concern with regard to the current EIA Law is the regulation of SEA, therefore the experts in the following parts of the Concept discuss in more details the suggestions on SEA.

7.1. The Chapter 1 of the Law covering the general terms, principals of organization of SEA and EIA can be upheld (in particular the articles from 1 to 7 of the EIA Law with amendments of separate definitions and provisions ). Suggestions on the reformulation of the definitions in the law are presented in the Table of the current paper (Part II.)

7.2. The Chapter 2, which draws the basis for the governance of the EIA and SEA, can also be upheld. However, while redrafting the Chapter it is recommended to avoid repetition of the provisions of the EIA law itself and other legal acts. Additional comments on the Chapter 2. are presented in the Table of the current paper (Part II.)

7.3. EE itself is not incompatible with the provisions of ESPO Convention and other international treaties of Armenia, hence the matter of legal stipulation of the EE is under the discretion of the Party. In case of political will to uphold the EE, the main provisions on the organization and implementation of it can be depicted in the separate Chapter (part) of redrafted EIA Law<sup>6</sup>;

7.4. One of the important characteristics of SEA and EIA procedures is the probability of transboundary impact of the specific activities and the provisions of plans and programs. According to the expert opinion, the redrafted EIA Law shall envisage a separate chapter regulating the transboundary impact assessment and reflecting the specificities of both EIA for specific activities and SEA for plans, programs. The current Chapter 5 of the EIA Law can be upheld, since the provisions of it require slight improvements, additions, which are highlighted in the paragraphs 61-63 of the Review and paragraph 18 of the Assessment.

7.5. The public participation procedures shall have more detailed design in the redrafted EIA Law, since according to the opinion of experts the regulation of public participation by the Governmental decision, based on article 26 of the Law, may not be in compliance with the Constitution of the Republic of Armenia, the article 83.5 of which contains the following wording; “ The issues below shall be set forth exclusively by the laws of the Republic of Armenia: 1) terms and procedures for the exercise and protection of the rights by natural persons and legal entities”. The stated requirement is explained not only by the necessity to maintain rule of law, but to provide stability and predictability in the field of human rights protection.

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<sup>6</sup> So far as the international treaties do not define the legal framework of EE, the experts are not assigned with the task to provide detailed suggestions on the improvement of the procedure, however they partially touch upon the matter in relation EIA and SEA, as well as in relation to the expression of opinion by public authorities concerning EIA and SEA.

It is highly recommended by the experts to stipulate the provisions of public participation following the recommendations in the paragraphs 58-60 of the Review and 20-30 of the Assessment.

In the meantime, the experts reiterate the necessity to proceed with the drafting of the provisions of EIA Law on public participation based on the option that shall be chosen for the drafting. It is recommended to consider the following two options:

**Option 1:** if the object of public participation in the EIA Law will be only the specific types of activities subject to EIA and plans, programs subject to SEA according to the obligations under the international treaties, it is possible to depict the provisions on public participation in the separate chapter of EIA Law or to consider inclusion of those provisions in the relevant chapters for EIA and SEA, thus avoiding the formation of separate Chapter.

**Option 2:** if the object of the public participation in EIA law is not only specific types of activities subject to EIA and plans, programs subject to SEA according to the obligations under the international treaties, but also other plans, programs, application of EIA and SEA procedures to which is not an international obligation of Armenia under ESPO Convention and SEA Protocol, but for which public participation is required under the national legislation (e.g. “plans, programs, policy documents” according to the article 7 of the Aarhus Convention, which are not at the same subject to SEA according to the SEA protocol), then it is essential to build a separated Chapter on public participation. In case of choosing the current, wider approach towards the regulation of public participation it might be recommended to reformulate it in the following manner RA Law “On environmental impact assessment, expertise and public participation in decision-making concerning environment”(it is recommended to discuss the possibility of reformulating the title of the Law in the following way; RA Law “On Environmental impact assessment” (an additional argumentation in this regard is given in the Table of the current Concept (Part II). Moreover, while deciding the structure and the content of EIA Law in its redrafted form, the authors of the draft shall consider the developments with regard to Law “On environmental policy”, the Chapter 5 of which is supposed to be dedicated to the regulation of public participation in decision-making concerning environment. (Overview, paragraph 60). If the draft of the Law “On environmental policy” is in progress and will provide

broader regulatory framework for public participation in decision-making, then it is recommended to go for the **first option of** regulating public participation in EIA Law<sup>7</sup>.

8. While deciding the structure of the EIA Law in the redrafted format, the authors shall also discuss two non-obligatory, in terms of international obligations of Armenia, questions, but essential for the completeness of the draft.

First, it is important to consider inclusion in the draft the procedure of impact assessment on the biodiversity<sup>8</sup>, which is required, e.g. by the COUNCIL DIRECTIVE 92 /43 /EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora<sup>9</sup>. As it follows from the paragraphs 14-16 of the Review, the Republic of Armenia currently bears no legal obligation to approximate its legislation with the EU legislation. Though, considering a possible interest of the Party to harmonize its legislation with the regulatory framework of environmental protection existing on EU level, and also referring to the Convention on Biological diversity, the introduction of impact assessment on biodiversity may be of interest of the Party.

The second question recommended for consideration and which may affect the structure of the redrafted Law is whether Armenia will introduce, as in many European countries, the institute of licensed experts in charge of organization/implementation of EIA and SEA. In case of adopting this institute a separate chapter needs to be drafted dedicated to the licensing procedure and requirements.

9. Having in regard the aforementioned in the paragraphs 6 -8 of the current Concept, it is considered possible to suggest the following structure of redrafted EIA Law:

Chapter 1<sup>10</sup>. General provisions

Chapter 2. State governance in the field of impact assessment and expertise

Chapter 3. Organization and Implementation of EIA

Chapter 4. Organization and Implementation of SEA

[Chapter 5. Public Participation]

[Chapter 6. Environmental Expertise]

Chapter 7. Transboundary consultation under the EIA and SEA procedures

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<sup>7</sup> Experts consider that the subparagraph 7.5 and paragraph 8 require further discussion with the drafters of EIA Law since the content of the provision will mainly depend on the choice of the representatives of the Party.

<sup>8</sup> In the Overview and the Assessment of the Draft this question has not been addressed since it does not fall under the requirements of ESPO Convention.

<sup>9</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora// <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043>

<sup>10</sup> Based on the requirements of legal technique the term “part” can be replaced by the term “chapter” etc.



[Chapter 8. Licensing in the field of EIA and SEA]

Chapter 9. Liability for the breach of legislation. Dispute Settlement

Chapter 10. Concluding and Transitional Provisions

### **III. The Structure and the Content of SEA Part.**

10. The following shall be included in the Chapter dedicated to:

- the field of application of SEA (objects of SEA; list of strategic documents subject to compulsory SEA; criteria applied to those documents not listed, but subject to SEA in case of significant impact on environment and human health (including plans and programs that concern to a limited territory, and are realized on the local level, or concern to insignificant amendments to the strategic documents), documents which do not fall under the SEA procedure);
- The procedure and order of preliminary assessment of strategic documents.;
- Scoping the field of application of SEA;
  - Preparation of environmental report;
  - Principles of public notification at different stages of SEA, consultations with public in the process of conducting SEA;
  - Consultations with public authority vested in the field of SEA (authorities in the field of environmental protection<sup>11</sup> and healthcare, and if necessary other relevant authorities);
  - The order of conducting transboundary consultations impact assessment  
порядок проведения трансграничных консультаций (in case Republic of Armenia is a Party of origin or Affected Party)<sup>12</sup>;

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<sup>11</sup> The consultations with the public authorities of environmental protection shall consider the specificities of national procedures, related for example with the procedure of EE.

<sup>12</sup> Having in regard the paragraph 7.4 of the current Concept the transboundary consultations under the SEA can be stipulated in the Law under a Separate Chapter (together with rules on transboundary consultations under the EIA process), as it is entrenched in the current EIA Law. If the drafters will consider it more appropriate they can keep the rules on the transboundary consultations under the SEA and EIA. If the drafters will consider the alternative more acceptable, then the same approach shall be adopted for the part on EIA.

- Consideration of the results of consultations with public and public authorities (including healthcare authorities) and findings, conclusions of environmental report when issuing decision on adoption of strategies, notification on the adopted decision;

- Monitoring of the implementation of the strategy.

11. Having in regard the paragraphs 46-48 of the Review the experts recommend to reformulate, reconsider the definition of *baseline planning document* stipulated in the articles 4 and 14 of the EIA Law (baseline document) as an object of SEA, in order to include also the cases when the initiator is exempt from conducting SEA. Since the paragraphs 46-50, 79-80 of the Review contain detailed recommendations on how to improve the provisions of the Law, the experts find it appropriate not to repeat them here and only provide further in Example 1 possible amendments to the Law.<sup>13</sup>

#### **Example 1<sup>14</sup>**

**A baseline planning document – a document** (policy, concept, strategy, program, plan, scheme, project), expressed in the form of legal act, as well as amendments to them, which;

a) are adopted on the footing of legislative, normative or administrative acts, and,

b) are subject to drafting and/or adoption by the central/local public authorities or are being drafted by the authorities of state governance to present for the adoption by Parliament or to Government considering the specificities of legislative procedure.

#### **The compulsory SEA /the field of application of SEA**

(1) SEA is carried out for the baseline planning document, which are prepared for agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use<sup>15</sup>, which set the framework for future development consent for

<sup>13</sup> Developers of the EIA Act and expertise in the new edition here and later in the proposed examples can choose a more detailed approach of legal regulation, but in any case they should be guided by the provisions of international agreements related to SEA (Espoo Convention, the SEA Protocol, the Aarhus Convention) and the relevant manuals and other materials, as noted in para. 5 of this document.

<sup>14</sup> Experts do not insist that the information provided in the example, must necessarily be formulated as a single article in the Law. Drafters can break the material into separate articles having in regard the requirements of legal technique used in the Republic of Armenia, as well as the art. 3.4 SEA Protocol.

<sup>15</sup>

projects, and which require environmental impact assessment in accordance with legislation of the Republic of Armenia.

(2) SEA is carried out also for the baseline planning documents not covered by the above mentioned paragraph 1. Indeed, they might trigger essential environmental, including health related consequences, which shall be defined in course of preliminary assessment of baseline planning documents implemented in line with the article ... of the current Law.

(3) baseline planning documents, which establish possible use of limited territories on local level, require SEA only in cases, when according to the article ... of the current Law it is recognize to cause significant environmental consequences.

(4) rules of the paragraph 3 above are applied also to the insignificant amendments to baseline planning documents.

(5) the present Law shall not be applicable to;

a) baseline planning documents, the single goal of which is to serve the interests of national defense and emergency relief in the civil sphere,

b) financial and budget documents of planning.

#### **Authorities in charge of SEA**

(1) SEA is carried out in the process of development of baseline planning document , and before it is being adopted by competent national or local authorities.

(2) Initiator<sup>16</sup>, who develops baseline planning document, by its own initiative or on behalf of [ President, Parliament and Government], shall be held responsible for caring out SEA.

(3) If the baseline planning document falls under the jurisdiction of more than one central/local public authority, the SEA shall be carried out by the authority which has been assigned to the task by the [President, Parliament or Government] or the authority which presides the list of authorities responsible for the SEA procedure.

(4) To prepare environmental report under the SEA procedure initiator is entitled to invite,

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Developers of the EIA Law can even more detail the current rule based on specific title of the plan/program in accordance with the current legislation of the Republic of Armenia (p. 17-28 Review).

<sup>16</sup> Понятие «инициатор», используемое в ст.4 Закона об ОВОС и экспертизе следует уточнить применительно к СЭО. Инициатором для целей СЭО будет являться центральный/местный орган государственного управления, который несет ответственность за разработку основополагающего документа планирования.

on the basis of competitive procedure, experts/specialists, including foreign, who has relevant, proved qualifications and who are selected in accordance with terms of reference and equal criteria of selection<sup>17</sup>.

6) Initiator at all stages of SEA, in accordance with the provisions of legislation, is obliged to provide information to and participation of competent public authority in the field of environmental protection, healthcare and other concerned public authorities, as well as public depending on the characteristics of the planning baseline document.

12. As it has been stated in the paragraph 50 of the Review, the EIA Law does not contain a provision granting an opportunity to carry out preliminary assessment of strategic documents in line with the rules set in the article 5 of the Protocol (screening). If the developers of the draft of amendments to the EIA Law will support the option illustrated in the Example 1 above, then it will be essential to determine in the Law the framework of applying preliminary assessment (screening). In the following Example 2 the experts suggest a legal construct which can be applied for this particular case having in regard the specificities of decision making in the national experience of Armenia.

### **Example 2**

#### **Preliminary Assessment of baseline planning document**

(1) The preliminary assessment of baseline planning document shall be carried out for the drafts of documents stipulated in the paragraphs [.....]<sup>18</sup> of the article [.....] of current Law for the purpose of defining the necessity of carrying out or refusing the application of SEA procedure.

(2) Initiator of baseline planning document, referred in the paragraph 1 above, at the stage of elaboration of the concept carries responsibility to submit it to the competent public authority to carry out preliminary assessment and to make the relevant documents available on its web-page.

(3) The competent public authority based on the criteria set in the article [....], shall

<sup>17</sup>The mentioned paragraph can be changed depending on the solution found for the question identified in paragraph 8.1 of the current Concept. If it is decided to adopt the institute of licensed experts this paragraph may include provision referring to the article (title, chapter), which defines requirements for experts (both individuals and legal entities), including particularities obtaining the licence (a permit).

<sup>18</sup> See the Example 1 above (the scope to which the SEA is applied – paragraph 2-4).

consider the baseline planning document, carries out consultations with the public authorities in the field of healthcare and shall consider as well the opinion of the public, revealed in accordance with the article [...] of the current Law and shall issue conclusion on the preliminary assessment making the relevant information available on its web page within [...] days following the issuance.

(4) The preliminary assessment shall be carried out within [...] calendar days starting from the day of receiving the information on the baseline planning document.

(5) The conclusion of preliminary assessment is issued in the written form and submitted to the initiator of the baseline planning document, who makes the document available on its web page within [...] days following the receipt of the conclusion. .

(6) In case the decision is made to carry out SEA, the initiator shall maintain the implementation of it in accordance with the requirements of current Law.

**Criteria to be considered during the preliminary assessment to define the possible essential environmental, including health-related, impacts of baseline planning documents.**

In order to carry out preliminary assessment to define possible significant environmental, including health impacts of the baseline planning document the following criteria shall be applicable;

a) the relevance of the plan or program to the integration of environmental, including health, considerations in particular with a view to promoting sustainable development.

b) the degree to which the plan or program sets a framework for projects and other activities, either with regard to location, nature, size and operating conditions or by allocating resources.

c) the degree to which the plan or program influences other plans and programs including those in a hierarchy.

d) environmental, including health, problems relevant to the plan or program.

e) the nature of the environmental, including health, effects such as probability, duration, frequency, reversibility, magnitude and extent (such as geographical area or size of population likely to be affected).

f) the risks to the environment, including health.

g) the transboundary nature of effects.

h) the degree to which the plan or program will affect valuable or vulnerable areas including landscapes with a recognized national or international protection status.

13. In the Chapter of the amended Law together with preliminary assessment (paragraph 12 of the current document ) which shall be applicable to all the baseline planning documents, it is recommended to include a set of compulsory SEA procedures, that are: determination of the scope of environmental report to be prepared under the SEA procedure, preparation of environmental report, transboundary consultations. Additionally, the envisaged procedures shall integrate consultations with public, healthcare and other concerned authorities. In the following Example 3 experts propose a legal construct, which can serve as an example to stipulate in the law provisions on determination of the scope of environmental report and the process of its development.

### **Example 3**

#### **Defining the scope of the environmental report**

(1) For the baseline planning document, referred in the article [...], and as well as for those for which a decision is made to pass a SEA, the initiator, considering the scale and the degree of detail, determines the scope of the information, that shall be included in the environmental report having in regard the specificity of the document.

(2) In the process of determination of the scope of environmental report the initiator shall carry out consultations with relevant public authority and the healthcare authority. The outcomes of the consultations shall be formulated in the form of protocol, which is an integral part of the environmental report and shall contain the agreed list of information necessary for the elaboration of the latter one.

(3) Initiator bears the responsibility to provide the public with an opportunity to participate in the process of defining the scope of environmental report in accordance with the article [...] of current Law.

(4) The initiator shall take note of the agreed list of information, to be included in the environmental report, when drafting the terms of reference for the developer of environmental report.

(5) General requirements on the content of environmental report are stipulated in the article [...] of the current Law .

### **General requirements on the content of environmental report**

(1) Environmental report shall contain such information as:

a) The contents and the main objectives of the plan or programme and its link with other plans or programmes.

b) The relevant aspects of the current state of the environment, including health, and the likely evolution thereof should the plan or programme not be implemented.

c) The characteristics of the environment, including health, in areas likely to be significantly affected.

d) The environmental, including health, problems which are relevant to the plan or programme.

e) The environmental, including health, objectives established at international, national and other levels which are relevant to the plan or programme, and the ways in which these objectives and other environmental, including health, considerations have been taken into account during its preparation.

f) The likely significant environmental, including health, effects, including secondary, cumulative, synergistic, short-, medium- and long-term, permanent and temporary, positive and negative effects

g) Measures to prevent, reduce or mitigate any significant adverse effects on the environment, including health, which may result from the implementation of the plan or programme.

h) An outline of the reasons for selecting the alternatives dealt with and a description of how the assessment was undertaken including difficulties encountered in providing the information to be included such as technical deficiencies or lack of knowledge.

i) Measures envisaged for monitoring environmental, including health, effects of the implementation of the plan or programme.

j) The likely significant transboundary environmental, including health, effects.

h) A non-technical summary of the information provided.

(2) The public authorities in the field of environmental protection and healthcare are entitled to determine additional requirements towards the environmental report in accordance

with the particularities of the baseline planning document.

### **Development of environmental report**

(1) Having in regard the scope of SEA under the relevant procedure the environmental report shall be prepared, which shall identify, describe and evaluate the likely significant environmental, including health, effects of implementing the plan or programme and its reasonable alternatives with reference to the objectives of the document and the territory covered.

(2) The environmental report prepared, according to the paragraph (1), contains information, which may reasonably be required, taking into account current knowledge and methods of assessment, the contents and the level of detail of the plan or programme and its stage in the decision-making process.

(3) Available information, obtained at different stages of decision-making or from other legal acts, on environmental impacts of implementation of the document can be used to prepare environmental report.

(4) In the course of preparation of environmental report the initiator defines the scope of public authorities to consult and agree with, which by virtue of their jurisdiction may be affected by the environmental impacts of the implementation of the document.

(5) The initiator makes the draft of baseline planning document available on its web page, as well as notifies the public in accordance with the provisions of the article(s) [...] of current Law, and in other forms about the time-frames for submitting remarks, suggestions on the mentioned documents and for implementing public consultations/discussions.

14. Having in regard the paragraph 7.3 of the current document the expert has not been assigned with a task to sketch the legal framework of environmental expertise. However, taking into consideration the intentions of the Republic of Armenia to entrench in the EIA Law the institute of EE along with EIA and SEA, the expert suggests in the Example 4 a legal construction which incorporates the EE into the process of SEA.

### **Example 4**

#### **Consultation with public authorities and issuance of environmental expertise**



## **conclusion<sup>19</sup>**

(1) Initiator makes available the draft of baseline planning document and environmental report for consideration to:

- a) the competent authority and the central authority of state governance in the field of healthcare, if the baseline planning document is of state significance;
- b) to the competent authority and the territorial/local division of the central authority of state governance in the field of healthcare, if the baseline planning document is of local significance;
- (c) other concerned authorities, listed in the article [....].

(2) the competent authority after receiving the draft of baseline planning document and environmental report makes it available on its web page indicating the address where they are available, disseminates via email the mentioned documents to the non-governmental organizations promoting environmental protection.

(3) The governmental authority in the field of healthcare, other concerned authorities provide initiator remarks and suggestions on the draft of baseline planning document and environmental report copying those documents to the competent authority in a time frame not exceeding [30] days from the day of receiving them.

(4) Initiator based on the arrangements with the competent authority carries out consultations concerning the quality of environmental report, the possible impacts of implementing the baseline planning document and measures to mitigate those impacts.

(5) The competent authority, based on the consideration of environmental requirements of the draft of baseline planning document and environmental report, opinion of concerned authorities and public, adopts a decision;

- a) to issue environmental conclusion, if the provided documents satisfy the necessary requirements;
- b) on revision of environmental report and/or baseline planning document indicating the measures that shall be taken;
- c) on refusal to issue environmental conclusion indicating the reasons for such decision.

(6) The time-frame for decision-making and issuance of environmental conclusion shall not exceed [....] calendar days from the day of receiving by competent authority of the draft of

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<sup>19</sup> Under environmental conclusion we mean the expertise conclusion.

baseline planning document and environmental report.

(7) In case the baseline planning document and environmental report has been submitted for the revision according to the paragraph [...] of the current article the time frame for reconsideration and issuance of environmental conclusion shall not exceed [...] calendar days from the day of receiving by competent authority of the revised documents.

(8) The competent authority informs the public authorities and the general public about the issuance of environmental conclusion and makes the latter available on its web-page.

(9) The competent authority keeps a record of implemented SEA, including data on the environmental reports prepared and environmental conclusions issued under the SEA.

15. The experts in the paragraph 7.5 above draw attention on the necessity of reconsideration of the forms of stipulation of public participation in EIA and SEA procedures. In the Example 5. the expert suggests a legal construction which might for a possible legal framework of public notification under SEA.

#### **Example 5**

##### **Principles of public notification and public participation in the SEA procedure.**

(1) The responsibility to notify and provide public participation is reserved for the initiator of the baseline planning document [and competent authority].

(2) The initiator of the baseline planning document as agreed with the competent authority is responsible to notify and provide participation of public in the SEA procedure by means of:

a) determining the scope of public which can be affected by the realization of the baseline planning document, or which show interest in the adoption of decision, including non-governmental organizations promoting environmental protection;

b) defining the ways of public notification using different methods of notification, such as announcements in the mass media, public areas, individual post delivery, dissemination of information on official web pages,

c) defining the ways of consulting with public via collection of comments and/or organization of public hearings,

d) establishment of reasonable time frames allowing effective public participation at all the stages of SEA,

e) maintaining public participation in case of transboundary consultations.

(3) The initiator of baseline planning document bears all the expenses of maintenance of public notification and public participation at all the stages of SEA.

(4) The initiator of baseline planning document at the stage of preliminary assessment and definition of the scope of scope of SEA shall inform the public via different means envisaged in the article [...] of the current law about the preliminary assessment procedure and definition of the scope of scope of SEA, and provide information which will be included in the environmental report. The initiator of baseline planning document shall provide the public at the stage of preliminary assessment with an opportunity to express its opinion concerning the possible impacts on the environment following the implementation of the provisions of baseline planning document, as well as express its opinion at the stage of defining the scope of SEA concerning the information that needs to be incorporated in environmental report.

The public is entitled with the right to submit remarks and suggestions to the initiator of the planning baseline document and/or to the competent authority within time frame not exceeding [...] days from the day of notification.

(5) The initiator of the planning baseline document at the stage of preparation of environmental report publishes on its web page and the web page of competent authority the draft of planning baseline document, environmental report, information stipulated in the paragraph 6 below, as well as informs about the access to the mentioned documents via mass media and other available forms in compliance with the requirements of article [...] of the current law for the purpose of consideration of suggestions and remarks of the public.

(6) the information mentioned in the paragraph 5 above shall contain;

a) short description of the baseline planning document;

b) data on the public authority responsible for the adoption of the baseline planning document;

c) data on the envisaged procedures to provide public participation (including about the date and the place of public discussion; the address, where the draft of the baseline planning document and the environmental report are available; the time frame for submission of remarks and suggestions);

d) data on the public authority, which receives the remarks and suggestions concerning the draft of baseline planning document and environmental report;

e) the probability of applying transboundary impact assessment to the baseline planning

document.

(7) The time frame for the submission of remarks and suggestions by public shall be determined by the initiator of the baseline planning document and shall not exceed 30 days following the day of publication of information, stipulated in the paragraph 5 of the current article.

(8) Access to information, stipulated in the paragraphs 5,6 of the current article, for the purpose of collecting remarks and suggestions, does not exclude the possibility of exercising public hearings, as well as other additional forms of public discussion about the draft of baseline planning document and the draft of environmental report, in accordance with the requirements of RA legislation, on the national or local level depending on the territorial scope of the baseline planning document.

16. Having in regard the paragraphs 70-72 of the Review, the experts in the following Example 6 suggest a legal construct which reflects the specificities of SEA during the decision-making and post-project monitoring.

#### **Example 6**

##### **Decision-making**

(1) The findings of environmental report, environmental conclusion, remarks received in the course of consultations with public and public authorities, and as well as in course of transboundary consultations in accordance with the articles [...] of the current law shall be taken into consideration in the final decision adopting the baseline planning document.

(2) Following the adoption of the baseline planning document the initiator on its official web-page makes available the environmental conclusion and relevant information on:

- (a) the adoption of the baseline planning document,
- (b) the consideration of environmental, including health impacts of the baseline planning document;
- (c) the consultations with public, public authorities, as well as transboundary consultations carried out in accordance with the article [...] of the current law;
- (d) the grounds for favoring the particular baseline planning document in the light of other alternatives considered.

### **Monitoring**

(1) The initiator of the baseline planning document within its competences carries out monitoring of significant environmental impacts entailing from the realization of the baseline document for the purpose of identification at an early stage to prevent unforeseen adverse environmental impacts and adoption of mitigation measures.

(2) The initiator submits the outcomes of the monitoring of the baseline planning document to the competent authority in the field of environmental protection and makes it publicly available on its web page for the purpose of notifying public.

## **IV. The Content and the structure of EIA**

17. As it has been stated in the paragraph 5 of the Assessment the EIA Law has achieved a significant progress in regulating the EIA, however for some cases the EIA Law gives a reference to by-laws regulating specific methods and procedures, concerning the procedure of environmental expertise, methodology of impact assessment, methodology of assessing the economic harm, the procedure of reimbursing by the initiator of the economic harm, procedure of public notification and public hearings, as well as the procedure of appealing the expertise conclusion. Many of the mentioned questions are left to the regulation of the governmental decisions<sup>20</sup>. However, in the context of compliance by Armenia with its obligations under the Aarhus Convention and ESPO Convention it is essential to revise the provisions of public notification and participation in the EIA procedure.

18. While developing the part in the redrafted EIA Law on EIA it is recommended to rely on the existing regulatory framework, to draft a separate part dedicated to EIA and include in it provisions on the following: the objective of EIA, the compulsory nature of EIA, objects of EIA (including the exceptions for a specific objects), the scale and the elements of EIA, the preliminary assessment under EIA and determination of the report on EIA, preparation of the EIA report, public notification and public participation, environmental expertise of the EIA

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<sup>20</sup> Experts consider, however, that the public participation procedure shall be regulated on the level of the Law (paragraph 7 of the current document) .

report and related information, issuance of EE, the term of the EE conclusion, post-project analysis.

19. While developing the part of EIA a special consideration should be given, based on the paragraph 18 above, to the refinement types of planned activities subject to EIA. It is essential to pay attention to the complete compliance of the types of activities falling under the EIA to the Annex I of the ESPO Convention (Assessment of the Law paragraphs 14-15). It is essential also to refine the content of EIA report (the content of the reports on environmental and human impact assessment) (article 18 of EIA Law). The article 18, paragraph 2 of the EIA Law required executive summary of the report, while the Aarhus Convention and ESPO Convention require “non-technical summary”. The latter is an obligatory part of EIA documentation and shall describe in a non-technical language findings, which have been included in each of the previous parts essential for the understanding of the report by all concerned parties.<sup>21</sup>.

20. It is recommended to include in the EIA Law how the outcomes of EIA have been Considered in the final decisions on a specific type of activity, as well as remarks on the documentation received from the public and in course of consultations with the Affected Party, as it is required by the article 6 of ESPO Convention.<sup>22</sup>.

21. The paragraph 12 of the article 18 of the EIA Law contains provision on the post project monitoring, however further in the text the content and the mechanisms of implementing post-project monitoring is not provided. It is suggested to include in the EIA Law provisions on the mechanisms of implementing EIA in line with the article 7 of ESPO Convention.

22. More detailed, non-structural suggestions on the improvement of EIA regulations are provided in the Table of the current Concept, Part II.

## **V. Structure and the content of chapter dedicated to public participation in EIA and SEA**

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<sup>21</sup> The same holds truth for the paragraph 1, article 10, article 18 with regard to SEA report.

<sup>22</sup> If the expertise conclusion (expert conclusion) is not a final decision in the context provided by the Espoo Convention. About final decision see paragraphs 67-73 of the “General guidance on the improvement of the compliance between ESPO Convention and environmental assessment within state environmental expertise in the EECCA countries”(ECE/MP.EIA/2014/2)

- [http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE.MP.EIA.2014.2\\_r.pdf](http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE.MP.EIA.2014.2_r.pdf)

23. As it has been indicated by the experts in the paragraph 7.5 of the current document, the choice between two possible formats of public participation in EIA and SEA remains under the discretion of the specialists in the Republic of Armenia. However, it is also possible to assert that the current approach of regulating public participation under one article 26 does not allow to consider all the peculiarities of notifying public and providing public participation in the EIA and SEA procedure, which are distinguished by their objectives, elements, and results. When drafting a separate Chapter on public participation or including relevant provisions under the Chapters dedicated to EIA and SEA, the authors shall also take into consideration the recommendations in the paragraphs 20-30, 34 of the Assessment and paragraph 59-60,80-83 of the Overview.

24. Methodologically it would be correct if the authors first will review the Chapters on EIA and SEA, and only afterwards to draft the Chapter on public participation with due reference to the considerations expressed in the paragraphs 7.5 of the current Concept. If the option 2 will be chosen to proceed with the regulation of public participation, then in the Chapter on public participation in decision-making, the following, in particular, shall be included: the content of the right of the public to participate, the objects of participation, the responsibilities of public authorities in relation to organization of public participation, general provisions on the public participation (notification, submission of comments by public and their consideration, right to appeal (access to justice)). Based on the provisions of EIA Law it will be possible to regulate procedural aspects of public notification and participation on the level of governmental decision (e.g. the procedure of organization of public hearings).

25. Analysis of both the provisions in the EIA Law and newly adopted Governmental decision on public discussions evidenced that the process of public participation is not regulated comprehensively. In other words, separate elements of the EIA Law and by-law are not fully in compliance with the international obligations of Armenia. In this regard it is reasonable and feasible to stipulate procedural and substantial provision on public notification and participation in the EIA Law itself. Following the revision of the provisions in the Law it is recommended to amend the current Governmental Decision or to redraft it.

26. According to the Decision IV/9a of the Meeting of the Parties invited the Party concerned to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that: (i) Thresholds for activities subject to an EIA procedure, including

public participation, are set in a clear manner; (ii) The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation, (iii) The responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedures are defined as clearly as possible; (iv) A system of prompt notification of the public concerned of the final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection;

27. The EIA Law does not distinguish clearly the obligations among competent authorities, initiator and local self-governance authorities in relation with notification of the public and organization of public hearings, as well as the absence of the procedure, according to which the mentioned entities will exercise their responsibilities.<sup>23</sup>

28. Also according to the paragraphs 2 and 5 of the article 26 and paragraph 2 of article 27 the responsibility of notifying the public and organization of public hearings is reserved after the initiator as well, this is not in full compliance with the provisions of ESPO convention. According to the wording of articles 3.8 and 4.2 of the ESPO convention the remarks of the public shall be submitted to the competent public authority. The approach has been reiterated in the Practice of ESPO Convention Implementation Committee<sup>24</sup>. However, under the national systems it is possible that competent authority and initiator share responsibility of organizing public involvement in decision making. However, the initiator shall not be held liable for the public participation excluding the responsibility of public authority. (ECE/MP.EIA/IC/2010/4, paragraph 19(b)). Similar approaches been adopted the Aarhus Convention Compliance Committee (CE/MP.PP/2008/5/Add.6 и ACCC/C/2009/37 ECE/MP.PP/C.1/2010/6/Add.4 пункт 77)<sup>25</sup>.

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<sup>23</sup>See also paragraphs 57-66 of the “General guidance on the improvement of the compliance between ESPO Convention and environmental assessment within state environmental expertise in the EECCA countries”(ECE/MP.EIA/2014/2)

[http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE.MP.EIA.2014.2\\_r.pdf](http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE.MP.EIA.2014.2_r.pdf)

<sup>24</sup>According to the article 1 of the ESPO Convention “Competent authority” means the national authority or authorities designated by a Party as responsible for performing the tasks covered by this Convention and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity;.

<sup>25</sup>According to the article 2 of the Aarhus Convention “public authority” means “Government at national, regional and other level; (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above; (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention”.



29. Also the time frame of 7 days for the notification of the public stipulated in the paragraphs 2 and 4 of the article 26 of the EIA Law is not in full compliance with the paragraph , article 6 of the Aarhus Convention and paragraph 4, article 8 of the SEA Protocol. The Compliance Committee of the Aarhus Convention noted in of the communication concerning compliance by Lithuania, that the time frame of 10 working days, stipulated in the EIA Law of Lithuania, to familiarize with the documentation, including EIA report, and to prepare for the participation in the decision-making concerning to a large landfill, does not comply with the requirement of reasonable time-frames of the paragraph 3, article 6 of the Aarhus Convention<sup>26</sup>.

30. Paragraph 3 of the article 26 of the EIA Law does not fully reflect the requirement of the paragraph 2, article 6 of the Aarhus Convention in terms of the content of notification of the public: no reference to the need to include in the notification information on the public authority responsible for decision-making, envisaged procedure (the beginning of the procedure, opportunities for public participation, time and place of planned hearings, on the public authority, where the relevant information is available, and comments, questions about what environmental information can be submitted is available, the coverage of activities by national or transboundary EIA.

31. Paragraph 4 of article 26 of the EIA Law does not fully comply with paragraph 2 of Article 6 of the Aarhus Convention and paragraph 2 of article 8 of the Protocol on SEA, with regard to the effectiveness of public notification. Requirements on the effectiveness of public notification, according to the position of the Compliance Committee of the Aarhus Convention, means that public authorities should endeavor to provide a means for informing the public, which would allow all potentially affected parties to have a real opportunity to learn about the decision-making process regarding the proposed activities and available opportunities to them to participate in it<sup>27</sup>. The form of notification enshrined in paragraph 4 of article 26 of the EIA Law, that is making information available on the website of the competent authority may not be fully effective in cases when not every member of the public has access to the Internet. It is appropriate to provide other effective ways of notification, including, in the vicinity of the

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<sup>26</sup>Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, paragraph 70// Aarhus Convention Compliance Committee Practice, 2004-2011, pg. 48.

<sup>27</sup>Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, paragraph 70// Aarhus Convention Compliance Committee Practice, 2004-2011, pg. 47.

implementation of activities.<sup>28</sup> Paragraph 4 of article 26 of EIA Law which regulates both notification and making the documents available through the web pages requires greater detail.<sup>29</sup>

32. Article 26 of the Law on EIA provides for public participation only in the form of hearings. In addition to the public hearings the public should be granted an opportunity to present in writing:

(a) any comments on the appropriate decisions without requiring that these comments were justified;

(b) during the period of commenting (paragraph 7, Art. 6 of the Aarhus Convention).

33. Paragraph 8 of article 26 of the EIA Law indicates that the initiator and the competent authority shall take into account the reasonable comments of the public. According to paragraph 7 of article 6 of the Aarhus Convention "Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity". This means that, provided that the comments, information, analyses or opinions fall within the scope of the decision to be taken and the competence of the public authority, the latter should seriously consider all comments received, regardless of:

- Whether they focus on the protection of private or public interests;
- Whether they are related to environmental or other issues (eg, economic analysis);
- Whether they are justified or not.

## **VI. Overview of possible amendments to the legislation of the Republic of Armenia following the modification of EIA Law**

34. In the case of redrafting and approving the EIA Law following the requirements of the legislation of the Republic of Armenia on the legislative technique the following may be required:

- Making amendments to the following laws / decrees and adoption of bylaws:
  - codes and laws that contain notion "plans and programs" attributable to the objects of the SEA (in terms of the use of legal definitions - the baseline planning document, SEA,

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<sup>28</sup> See paragraph 60 of the "General guidance on the improvement of the compliance between ESPO Convention and environmental assessment within state environmental expertise in the EECCA countries" (ECE/MP.EIA/2014/2)

- [http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE.MP.EIA.2014.2\\_r.pdf](http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/MOP/ECE.MP.EIA.2014.2_r.pdf)

<sup>29</sup> See also paragraphs 61-63.

stipulating responsibilities of public authorities in the field of environmental protection and health)

- concerning self-governance, including in Yerevan, Presidential Decree of the Republic of Armenia from July 18, 2007 №174-N "On establishing the organization of the activities of the Government of the Republic of Armenia and other state bodies subordinate to the Government" (in terms of verifying the competence of state bodies involved in EIA and SEA: in the field of environmental protection and health)
- Governmental decisions of the Republic of Armenia approving the statutes of Ministry of Nature Protection, Healthcare (competence in EIA and SEA EE)
- The Code of Administrative Offences (in terms of responsibility of officials for dereliction of duty in EIA and SEA, EE)
- on the methods/methodology of EIA and SEA (manuals, technical regulations).

35. Of the six Government decisions referred to in the decision of the Government of the Republic of Armenia N 541-N, at the time of preparation of the Concept, the adoption of the three decisions has been identified. While revising the EIA Law, it is recommended to consider the possibility of adopting the other decisions, as well as amendments to or adoption of a new governmental decision on public participation.

## PART II

### TABLE I

This part of the concept includes some specific proposals for the revision of the EIA and expertise (hereinafter - the Law, EIA Law). It is worth to note, that proposals in this part reflect the conceptual approaches of the first part of the current Concept.

Title, article, chapter, paragraph or provision of the Law	The proposed amendment	Substantiation
The title of the Law	Reformulate the title of the Law as follows: - The Law "On Environmental impact assessment"	<ul style="list-style-type: none"><li>- Referring to the content of the EIA law, which factually regulates relations in the field of environmental impact assessment, part of which state expertise, <i>as well as</i></li><li>- to the legislative framework of the European Union, evolved mostly on the basis of the European Directive of 1985 (35/337 / EEC) (the main changes have been codified in Directive 2011/92 / EU) "On Environmental impact assessment" and the experience of the United States of America,</li><li>- Bering in mind the need for terminologically consistency between the EIA Law and international treaties of the Republic</li></ul>

		<p>of Armenia (in particular, the Espoo Convention and the SEA Protocol),</p> <ul style="list-style-type: none"> <li>- there are two considerations on the basis of which it is proposed to retain in the EIA Law the term "expertise": <ul style="list-style-type: none"> <li>- 1. In the post-Soviet Union countries EIA system is developed on the basis of the state ecological expertise, and differs from EIA of the Western European countries and the USA,</li> <li>2. In this particular case, the law regulates two systems of relations - EIA and state expertise.</li> </ul> </li> </ul> <p><b>In relation to the first consideration,</b> it is possible to state that in almost all Western European countries participation of public authorities in checking the legality of environmental impact assessment of specific projects both in terms of substantive and procedural legality , is an integral part of the EIA procedure. Articles 2, 6 and 8 of Directive 2011/92 / EU speak of the need for participation of governmental authorities and a review of available information when issuing decisions. According to the legislation of the United Kingdom, as well as many European countries (France, Luxembourg, the Netherlands, Switzerland and so on.), the EIA</p>
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		<p>procedure includes the steps of sending the application to the competent authority and issuance of a decision authorizing the activity. We consider it necessary to emphasize that the relevant legal acts of the above mentioned countries use as their title the notion "Environmental impact assessment".</p> <p>In the current law, compared with the previous, elements of the EIA are regulated in more detail, which changes the system of environmental impact assessment, making it on the textual level more comparable with the legislation of the European countries. It follows logically that on the example of European countries, participation of public authorities, becomes a part of the process, regardless of the fact whether the country applies integrating permitting system / authorization of specific activities or not (functionally public authorities fulfill the same task). In other words, EE becomes not a separate procedure, but an integral part of EIA.</p> <p>Based on the above mentioned and following the rules of legal technique , it is proposed to change the name of the Law. Accordingly, it is recommended to refrain from the simultaneous use of the term "expertise" and "impact" in the Law, unless such use is not conditioned by the need to underline the differences</p>
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		<p>between the two terms.</p> <p>This approach was also reflected in the paragraph 7 of the Assessment o: "... for a clearer understanding of the concept envisaged in the draft law and its further implementation the term environmental impact assessment shall be clarified to make obvious whether it is used to name: 1) the entire assessment process, including environmental impact expertise; 2) environmental impact expertise, including EIA and SEA; or 3) Environmental impact assessment, as a separate procedure, implemented by the initiator (ie, the draft regulates the EIA + environmental impact expertise and SEA + environmental impact expertise</p>
<b>Articles 1, 2.</b>	<p>✓ Reformulate article 1 in order to exclude from the phrase "including in the field of cross-border, state environmental impact expertise (further expertise)."</p> <p>✓ Reformulate article 2 in order to</p>	<p>✓ This proposal is determined by the above approach, according to which the law shall govern relations of environmental impact assessment, which presupposes expertise and transboundary impact assesment.</p> <p>✓ The current wording does not include entities, such as</p>

	<p>include in it all entities subject to this law.</p>	<p>municipalities or non-governmental organizations. Meanwhile, the Law covers also these subjects. In this connection, it is necessary to give an exhaustive list of the entities subject to law.</p>
<p><b>Article 4.</b></p>	<p>It is proposed to clarify the definitions of law.</p>	<p>The drafters of the amendments to EIA Law shall include the following definitions considering how they are defined in international treaties of Armenia: “public”, “concerned public”, «strategic environmental assessment”, “environmental, including health related impacts”, “plans and programs/ planning documents” (as objects of SEA), “impact”, “transboundary impact”<sup>30</sup>;</p> <p>This suggestion is aimed to exclude:</p> <ol style="list-style-type: none"> <li>1. the contradictions between the definitions and other provisions of EIA Law. For example, in case of the definition of the “participants of the procedure”, the EIA Law defines the possible framework of participants. However, the “terms of reference” is defined as a document stipulating the framework of participants of the process. In the meantime, the paragraph 3 of article 19 includes, in the list of indicators on the basis of which the expertise conclusion is issued, among others, the soundness, effectiveness of notification, of public hearings and consideration of public opinion. With this approach the framework of participants remains vague, because it</li> </ol>

<sup>30</sup> Accordingly, it is necessary to reconsider the definitions in the article 4 of the EIA Law having in regard formulation in international treaties.



		<p>is unclear on which basis the public authority defines the framework of participants if it is already defined in the law.</p> <p>2. Definitions that do not reveal the content of defined concepts. For example, the definition of "evaluation".</p> <p><i>To possible give</i> wording that clearly expresses the content of the definition:</p>
<b>Article 5.</b>	It is recommended to consider the wording of the principles in subparagraphs 1 and 8 of paragraph 2.	<p>It is suggested to exclude from the list:</p> <p>principle of compensation by the initiator of damage caused to the environment. Such proposal is determined by the fact that the issue of compensation for harm caused to the environment, is not subject to regulation of the EIA law. In legal terms, there is no tort Institute, as the initiator goes through a valid EIA process. Since in many cases the implementation of a specific activity presupposes integrated use of natural resources, inevitable, the economic principles of calculation of harm can be used to determine the amount that the initiator has to pay in the process of natural resources.</p> <p>However, this approach is applicable only in cases where the legal regulation of economic mechanisms for the protection and use of natural resources is not sufficiently developed. In this regard, it is</p>

		<p>recommended to reconsider the appropriateness of adoption of the Governmental Decision "On approval of the evaluation and compensation of potential economic harm caused to the environment", which is provided for in paragraph 4, article 17 of the EIA Law. It seems to be more comprehensive approach to create a system of legislation of the Republic of Armenia on economic evaluation of harm, the principles of which can be applied while conducting economic analysis under EIA. In this context, it is also necessary to revise the wording of paragraph 3, paragraph 2, art. 18 of the Act.</p> <p>If the competent authority considers this approach appropriate, then the evaluation of the effectiveness of selected regulatory format can be given after the development of economic instruments.</p>
<b>Chapter 2.</b>	It is suggested to reconsider the desirability of maintaining the Chapter 2 of the Law in the current form.	<p>It is possible to keep the Chapter 2 of the EIA Law in current format, however it shall contain provisions not only about the environmental, but healthcare authorities (see the paragraphs 66-69 of the Review). According to the experts the redrafting of this part shall be conducted only after the detailed revision of the Chapters dedicated to SEA and EIA.</p> <p>The second approach to this chapter can be formulated in the</p>

		<p>manner. Almost all the provisions of the Chapter 2 can be excluded from the EIA Law. This kind of approach is determined by the fact that the current chapter comprises all the authorities, which are integral part of other articles and/or depicted in the other legal acts of the Republic of Armenia. Dedication of a separate chapter to the governance is justified only in cases when the law defines the actual legal status of an authority. In this context we can bring an example of article 10 of EIA Law, where the three main authorities listed are also included in the Governmental Decision No 1237-N. The described approach shall be considered while looking at all the competences of public authorities.</p>
<b>Article 14.</b>	It is essential once again to compare the list of Activities in the Law with the list of ESPO Convention and SEA Protocol.	<p>While reviewing the EIA Law it is essential to check the list of activities, in a way that it takes into consideration national specificities, but also is in full compliance with the Annex I of ESPO Convention (e.g. to include large dams, quarries, deforestation on large areas and so on. No direct reference to such activities has been identified; however, they may be covered by other specified activities). In case of SEA, it is necessary to consider the Annex I and Annex II of SEA protocol.</p>

<b>Article 15.</b>	✓ It is necessary in the paragraph 1 of the article 15 to list major procedural issues to be subject to governmental decisions of RA.	✓ According to the paragraph 1, article 15 of the EIA Law the Government of Armenia should adopt decision on the procedure of environmental impact expertise. Having in regard that the expertise is considered as an integral part of EIA process, it is necessary include in the law the man procedural requirements on expertise. In this particular case, even the comparison with foreign experience does not allow to define the scope of the issue the lawmaker had in mind while making reference to the decision of the Government. More comprehensive, substantiated and predictable approach will be stipulation of relevant provisions in the Law itself.
<b>Article 16.</b>	✓ It is suggested to formulate the of the paragraph 5.3 of the article 16 as a separate paragraph.	Under the current wording of the authorized body as a result of studying the proposal takes one of the decisions, including the decision on the transboundary impact assessment. However, the decision can not be taken as an alternative to other decisions. In this regard, it is necessary to stipulate this provision separately in the Law, emphasizing the fact that the decision of public authority may be taken simultaneously with the decision on carrying

	<p>✓ It is recommended to reconsider the formulation of paragraph 5.1 of the article 16.</p>	<p>out the EIA.</p> <p>✓ Under the current wording the public authority may decide on the inadmissibility of the implementation of a particular activity or baseline planning documents based on the environmental protection requirements of the environmental legislation. In fact, the very system of environmental legislation is based on protection requirements, and in this case once can speak only of those requirements in sectoral legislation, which prohibit the implementation of specific activities and, as a rule, on the territories that have special legal status.</p>
<p><b>Expertise Conclusion (article 20, 21)</b></p>	<p>The article regulating adoption, suspension and cancelation of expertise conclusion need to be systematically reviewed. The review shall be done in three main dimensions.</p>	<p>Based on the achievements of the environmental legal science and administrative law science, as well as the experience of European countries, two major reasons are underlined that can cause amendments, suspension and cancelation of expertise conclusion;</p> <p>1. Reasons that are out of the influence of the initiator,</p>

		<p>2. Reasons, which raise in relation to the illegal activity of the initiator.</p> <p>The first category of reasons covers all the cases mentioned in the paragraph 1, article 21 and in paragraph 2.4,2.5 of article 21 of EIA Law. In this context, it is essential to consider that ;</p> <p>1) The law does not clearly define the differences between adoption of a new environmental legislation and amendments (review) of environmental legislation in terms of consequences these changes will entail for the expertise conclusion,</p> <p>2) it seems to be identical the emergence of new environmental factors and shifts in environmental conditions.</p> <p>It is necessary to indicate that if the emergence of above mentioned reasons does not depend on the initiator the expertise conclusion cannot be automatically canceled. The exceptions shall be only the cases, when the continuation of the activity on that specific geographical area is not environmental and economically feasible.</p> <p>In all other cases, the expertise conclusion can be reviewed (amended) in order to provide compliance with the newly emerged conditions and adopted requirements. In course of these measures means of administrative coercion –e.g. suspension of the activities</p>
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		<p>of the initiator. And only if the initiator refuses to undergo the legal process, then the expertise conclusion can be canceled (repealed).</p> <p>In all the other cases, when illegal actions of initiator result in violation of/non-compliance with the provisions of expertise conclusion hence with environmental legislation, fall under the second category of cases. In these cases the competent public authority shall notify the initiator on the necessity of elimination of violations within the time-frame set by the public authority. And only in cases when the violation/non-compliance is not eliminated, the public authority shall make a decision on cancellation of expertise conclusion /this approach does not exclude the possibility of applying administrative liability in the form of fine for the violation of the requirements of expertise conclusions/.</p> <p>While drafting rules on public participation, it is necessary to consider the right of the public to be engaged in the process of amending, suspending and canceling the expertise conclusion. It is also necessary to consider that expertise conclusion is an administrative act, and together with specificities of EIA it shall reflect also the general requirements of Armenian legislation on administrative acts.</p>
Public participation	See section V of the current Concept,	

(Article 26)	Part I	
Article 28, 29	See section paragraph 8 a) of the current Concept, Part I	