

United Nations Economic Commission for Europe

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

Meeting of the Parties to the Convention
on Environmental Impact Assessment in
a Transboundary Context serving as the
Meeting of the Parties to the Protocol on
Strategic Environmental Assessment

Bureau

Geneva, 9–10 June 2022

Item 4(c)(i) of the provisional agenda

Implementation of the workplan 2021–2023:

Promoting practical application of the Convention and the Protocol:

Subregional cooperation and capacity building

Identification of synergies and possible cooperation activities in marine regions

Draft Assessment Report

Prepared with support from consultants to the UNECE secretariat

Summary

The present document contains a draft assessment report prepared further to the workplan for 2021–2023 under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Protocol on Strategic Environmental Assessment. It has been drafted with support from consultants to the UNECE secretariat to these two treaties, in consultation with the donor country, Italy, building on initial information and feedback from the secretariats of the regional sea conventions and organizations as well as representatives of Parties and stakeholders to the Espoo Convention and its Protocol.

The document:

- (a) Initially evaluates the coherence of the regional seas treaties' environmental assessment provisions and practice with the Espoo Convention and the Protocol;
- (b) Identifies selected provisions and recommendations of relevance developed under the respective regional seas conventions – that are coherent with the Espoo Convention while also including more details and/or good practice elements;
- (c) Further specifies information gaps, development needs and proposes focus areas and activities for future cooperation; and
- (d) Proposes further implementation steps and key items to be discussed (see section V.D, para 178)

The participants at the joint meeting are invited to comment the document, and discuss the further implementation steps and consider key items, including in particular

key areas of interest for possible cooperation activities in marine regions and any information gaps to be filled in the further development of the document prior to the final joint meeting, tentatively scheduled to be held online on 6 and 7 July 2023.

I. INTRODUCTION

A. Mandate and aims

1. The workplan for 2021–2023 adopted by the Meetings of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Protocol on Strategic Environmental Assessment at their last sessions (Vilnius (online), 8–11 December 2020)¹ includes an activity for enhancing subregional cooperation in marine regions, with a view to raising awareness and promoting practical application of the Convention and the Protocol for the protection of regional seas and costal zones; as well as creating and increasing synergies and coherence, coordination and cooperation with relevant regional seas conventions and organizations, reaching also out to United Nations member states that are not member countries of the United Nations Economic Commission for Europe (ECE) but are located in selected marine regions. The activity is being funded by Italy and is implemented with support from two main consultants with expertise on the Espoo Convention and its Protocol as well as on regional sea conventions matters.

2. Subsequently, based on proposals by the secretariat and Italy, the Bureau further defined the scope and implementation steps of this activity² and proposed to involve the following relevant marine regions and corresponding instruments/bodies, subject to their interests and possibilities for cooperation:

(a) The Mediterranean Sea, regulated by the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (**Barcelona Convention**) and its seven Protocols, adopted in the framework of the Mediterranean Action Plan, coordinated by the Coordinating Unit for the Mediterranean Action Plan;

(b) The Arctic Sea, regulated by the **Arctic Council**;

(c) The Baltic Sea, regulated by the Convention on the Protection of the Marine Environment of the Baltic Sea Area (**Helsinki Convention**) and the Baltic Sea Action Plan, both coordinated by the Baltic Marine Environment Protection Commission (Helsinki Commission);

(d) The Black Sea, regulated by the Convention on the Protection of the Black Sea Against Pollution (**Bucharest Convention**) and its three Protocols, coordinated by the Black Sea Commission;

(e) The Caspian Sea, regulated by the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (**Tehran Convention**) and its four Protocols, coordinated by the Convention Secretariat ad interim (located within the UNEP Europe until a permanent Convention Secretariat is put in place); and

(f) the North-East Atlantic marine region – covering the Arctic waters, the Greater North Sea, the Celtic Seas, the Bay of Biscay and the Iberian coast and the wider Atlantic – regulated by the Convention for the Protection of the Marine Environment of the North-East Atlantic (**OSPAR Convention**), and coordinated by the OSPAR Commission Secretariat.

¹ ECE/MP.EIA/30/Add.1–ECE/MP.EIA/SEA/13/Add.1, decision VIII/2–IV/2, annex I.

² See informal notes of the meeting of the Bureau (Geneva (online), 16 and 17 June 2021), para. 49, available at: <https://unece.org/environmental-policy/events/bureau-espoo-convention> and the note from the Bureau to the tenth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 1–3 December 2021) on identification of synergies and possible cooperation activities in marine regions, ECE/MP.EIA/WG.2/2021/5, available at: <https://unece.org/environmental-policy/events/working-group-eia-and-sea-espoo-convention-10th-meeting>.

3. The design of the activity also aims to support implementation of the regional seas conventions and their respective workplans/programmes of work at the national and/or regional/subregional levels with respect to SEA and transboundary EIA etc. The activity involves the following actions:

- (a) Carrying out a feasibility study to map out synergies and benefits for possible future cooperation activities to improve the coherence and the links between the Espoo Convention and its Protocol and the regional seas conventions and their respective Protocols. This work aims in particular to:
 - (i) Identify relevant legal requirements, activities, tools and instruments developed under the selected regional sea conventions, which directly or indirectly imply environmental assessment approaches, including in a transboundary context, for the assessment of the state of the marine environment and of possible environmental, including health, impacts;
 - (ii) Point out similarities and differences amongst the methods and approaches chosen under the respective treaties and evaluate their coherence with the Espoo Convention and its Protocol;
 - (iv) Identify good practice and lessons learned as well as development areas and needs in terms of environmental assessment procedures as set out in the Espoo Convention and its Protocol;
 - (v) Identify monitoring activities and environmental protection measures undertaken and planned for under the regional sea conventions (covering also integrated ecosystem management, maritime spatial planning and “source-to-sea” approach).
- (b) Organizing up to one joint technical meeting per year between the Espoo Convention and the Protocol on SEA and the regional seas conventions, bodies, and the interested Contracting Parties. The envisaged meetings include:
 - (i) Initial joint meeting (0,5 days) conducted online on 19 November 2021;
 - (ii) 2nd meeting (1.5 days) for all interested parties on 16 June 2022 and follow-up coordination/management meeting involving the respective secretariats/commissions on 17 June 2022;
 - (iii) 3rd meeting (online) tentatively planned for 6–7 July 2023 (tbc).
- (c) Preparing a final draft assessment report presenting the identified synergies and a vision for the “way forward” and its benefits, and proposing possible joint activities for the subsequent workplans under the Espoo Convention and its Protocol, starting with the workplan for 2024–2026. The final draft assessment report and the draft workplan for 2024–2026 would be submitted for consideration by the Working Group on Environmental Assessment and Strategic Environmental Assessment at its meeting scheduled for June 2023, prior to being forwarded to the Meetings of the Parties of the Espoo Convention and its Protocol at their sessions in December 2023.

B. Preparatory process

4. As a result of the initial consultations by the secretariat to the Espoo Convention and its Protocol, all the secretariats of the regional seas conventions or bodies listed in paragraph 3 above, aside from the Bucharest Convention, expressed their interest in the identification of synergies and possible cooperation activities and most of them provided information on environmental impact assessment related obligations and actions under the respective treaties and suggestions for cooperation activities. The secretariat also reached out to national focal points under the Espoo Convention and its Protocol to seek their interest to follow the activity more closely. In parallel, after the receipt of the first funding allotment from the donor country, Italy, the secretariat selected two consultants for supporting the activity: one with expertise on environmental impact assessment and strategic environmental assessment and another one with legal expertise on marine and coastal environmental protection and coastal zone management, in particular of the Mediterranean region.

5. The information collected was compiled into a draft initial assessment report that was discussed during an initial joint consultation/kick-off meeting (online, 19 November 2021) with the interested regional sea convention/body secretariats and the Espoo Convention and the Protocol focal points.

6. The progress in the implementation of the activity, including the outcomes of the initial joint meeting was presented for consideration of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment³ at its tenth meeting (Geneva, 1–3 December 2021).⁴

7. The feedback and inputs provided between November 2021 and February 2022 included the following:

- (a) The European Commission shared a link to information on the implementation of maritime spatial plans and strategic environmental assessments in some Member States⁵.
- (b) The Baltic Marine Environment Protection Commission (HELCOM) shared outcomes of its Heads of Delegation meeting held on 8-9 December 2021 that i) welcomed the activity on the identification of synergies and the cooperation process between the Espoo Convention and the Regional Seas Conventions, and ii) took note of comments by Russia that it also welcomed the initiative and noted that since Russia is not a party to the Espoo Convention, its involvement in this process would be on a voluntary basis and not constitute any legal obligation.
- (c) The OSPAR Convention Secretariat suggested edits to initial ideas for cooperation, in addition to minor changes in the draft initial assessment report.
- (d) The Arctic Council's Working Group on the Protection of the Arctic Marine Environment provided information on its relevant activities based on the request for background information from Espoo Convention Secretariat.

8. This report integrates the above information and further work carried out by two consultants, in consultation with the contact points representing the respective Conventions/bodies. It is structured as follows: Chapters II and III evaluate the coherence between relevant provisions and practice under the Espoo Convention and its Protocol, respectively, on the one hand, and the regional seas conventions and bodies on the other hand. Chapter IV specifies information gaps, development needs, proposes focus areas and activities for future cooperation. It also outlines further implementation steps for the finalization of the document.

9. The present document is supplemented with a self-standing annex I which in a tabular format (prepared as a Microsoft Office Excel electronic file) quotes the relevant provisions contained in the legal instruments that were identified through this assignment.

10. In parallel, as a separate document, a compilation of case studies is under development with a view to collecting and exchanging good practices and lessons learned by State Parties in their application of strategic environmental assessment and transboundary environmental impact assessment procedures to plans, programmes and projects in marine regions.

II. RELEVANT PROVISIONS AND RECOMMENDED PRACTICE UNDER THE ESPOO CONVENTION AND SELECTED REGIONAL SEAS CONVENTIONS AND BODIES - AND THEIR COHERENCE

A. Introduction

³ See informal document ECE/MP.EIA/WG.2/2021/INF.7 available at: <https://unece.org/environmental-policy/events/working-group-eia-and-sea-espoo-convention-10th-meeting>.

⁴ Report of the Working Group on its tenth meeting, paras 22–26, ECE/MP.EIA/WG.2/2021/2

⁵ <https://maritime-spatial-planning.ec.europa.eu/countries-overview#2>

11. The present chapter briefly presents and evaluates the coherence between the key provisions and practice, including methods and approaches, of the Espoo Convention, on the one hand, and the regional seas conventions and their respective Protocols, on the other hand. It identifies relevant legal requirements under the selected regional sea conventions, which directly or indirectly imply transboundary environmental assessments. It also considers tools and instruments developed under them to facilitate the application of the treaty obligations and to promote good practice, pointing out similarities and differences. Boxes 1–7 highlight selected provisions, recommendations and/or good practice elements that are coherent with the Espoo Convention.

12. For the purpose of the present document, the relevant provisions, decisions of the conferences of Parties, and guidelines under the regional sea conventions were evaluated against the main procedural requirements for transboundary environmental impact assessment provided for by the Espoo Convention, as summarized in section B below. For details, please refer to the comparative table in a separate Annex 1 to the present document.

B. The Espoo Convention

13. The 1991 Espoo Convention offers a dedicated international legal framework and well established practice regarding the scope and content of the environmental impact assessment procedure between countries for a wide range of proposed activities across the economic sectors that are likely to cause significant adverse transboundary impact. Its procedural obligations support the practical application of the obligation under general international law for all States to undertake an environmental impact assessment of their planned activities that may have a significant impact in a transboundary context.⁶ It also puts into practice the commitments undertaken by all the States Members of the United Nations as part of the 1992 Rio Declaration principles, to provide a “prior and timely notification and relevant information to potentially affected States” and to “consult with those States at an early stage and in good faith” on such planned activities.

14. In force since 1997, the Espoo Convention applies to (currently 45)⁷ Parties across the Caucasus, Central Asia, Europe and North America, including the European Union⁸. The Convention is being opened to all States Members of the United Nations. To date, the Parties to the Convention are the following: Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom.

15. The Espoo Convention requires that its Parties “*take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities*” (article 2(1)), and, ensure that an environmental impact assessment in accordance with the Convention is undertaken before “*a decision to authorize or undertake a proposed activity listed in appendix I that is likely to cause significant adverse transboundary impact*” (article 2(3)).

16. General provisions set out in article 2 of the Espoo Convention call on Parties to take necessary measures individually, on a national level, and jointly, in communication and cooperation with other concerned Parties.

17. The transboundary environmental impact assessment process provided for by the Convention has distinct main stages for the exchange of information, consultations and cooperation on environmental impact assessment between the concerned Parties. They extend

⁶ Pulp mills on the river Uruguay (Argentina v. Uruguay) 2010 I.C.J. (20 April 2010)

⁷ Up to date information on the status of ratification of the Convention is available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&clang=en

⁸ The European legislation on environmental assessments, and in particular the Environmental Impact Assessment Directive 85/337/CEE, amended several times (see Directives 97/11/EC, 2003/35/EC, 2009/31/EC, 2011/92/EU, 2014/52/EU) is aligned with the Espoo Convention.

from the notification of the Parties likely to be affected on a proposed activity to the final decision on that activity, and if required, can be followed by a post-project analysis.⁹

18. For the purpose of the analysis of coherence between the environmental impact assessment related provisions stipulated by the Espoo Convention and the regional seas conventions, the key procedural requirements of the Espoo Convention¹⁰ are summarized as follows, complemented also with some recommended good practice, tools and actions for their effective practical application¹¹:

- (a) EIA requirement: A Party must establish an environmental impact assessment procedure within its national regulatory framework for proposed activities listed in appendix I of the Convention that are likely to cause significant adverse transboundary impact (article 2(2)).
- (b) Requirement to notify affected Parties as early as possible about proposed appendix I activities that are likely to cause a significant adverse transboundary impact (articles 2(4) and 3).¹² The requirement covers the minimum content of the notification and the procedure to be followed by the concerned Parties. A list of contact points for notification and a recommended format for notification were established to facilitate the practical application of the requirement.¹³
- (c) Environmental Impact Assessment Documentation: Requirement to prepare environmental impact assessment documentation containing as a minimum information listed in the appendix II of the Convention (on the proposed activity and its alternatives, the environment likely to be affected, the potential environmental impact, mitigation measures, data used, information gaps, a non-technical summary, and where appropriate outline for monitoring programmes) (article 4 and appendix II). Good practice recommendations include a scoping procedure with early participation of the affected Party or Parties; and translation, as a minimum, of the non-technical summary.
- (d) Requirement to consult affected Parties on the basis of the environmental impact assessment documentation, to be undertaken without undue delay including on the potential transboundary impact from the proposed activity and measures to reduce or eliminate its impact (article 5).
- (e) Public participation requirement: requirement for the concerned Parties to provide the public of the affected Party in the areas likely to be affected by the proposed activity with equivalent opportunity for participating in the transboundary procedure (commenting on the proposed activity and its likely effects based on the notification and the environmental impact assessment documentation) (articles 2(6), 3(8), 4(2)).
- (f) Requirements regarding the final decision on the proposed activity: that must take due account of the outcome of the environmental impact assessment, (including the related documentation and comments received thereon from the affected Party's public and, the outcomes of the consultations with its authorities); and be transmitted to the affected Party/Parties, along with reasons and considerations on which it was based (article 6).

19. For the effective practical application of the Espoo Convention, its Parties have agreed on a broad range of tools and actions including: decisions by the Meeting of the Parties;

⁹ See the *Guidance on the practical application of the Espoo Convention*, from 2006, available at: <https://unece.org/info/Environment-Policy/Environmental-assessment/pub/21590>.

¹⁰ The full text of the key provisions of the Espoo Convention is presented in table 1, in a separate Annex I to the present document.

¹¹ Resource material on the application of the Espoo Convention include: guidance, available at unece.org/publications/environmental-assessment; decisions by the Meeting of the Parties: available at: unece.org/environment-policy/environmental-assessment/decisions-taken-meetings-parties; Opinions of the Implementation Committee, available at: <https://unece.org/environment-policy/environmental-assessment/implementation-committee>

¹² If the concerned Parties so agree, also other activities that are likely to cause significant adverse transboundary impact can be treated as if they were listed in appendix I (article 2(5)).

¹³ Decisions I/3 and I/4 of the Meeting of the Parties.

guidance materials; mandatory reporting by Parties; review of compliance mechanism led by the Implementation Committee; exchange of good practices; technical assistance and capacity building activities. Moreover, in accordance with article 8 of the Convention, Parties that expect to conduct transboundary assessments on a regular basis may also enter into bilateral and multilateral agreements or other arrangements, including to exchange information on their respective legal systems and to agree in advance on various issues and practical procedural details (such as criteria for determining significance; modalities for consultation of authorities and public participation; translation and interpretation issues).

C. The Barcelona Convention and its Protocols

1. Introduction

20. The 1995 Barcelona Convention has 22 Contracting Parties: Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, European Union, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syrian Arab Republic, Tunisia and Turkey. Out of these contracting parties, 10 Mediterranean States (Algeria, Egypt, Israel, Lebanon, Libya, Monaco, Morocco, Syrian Arab Republic, Tunisia and Turkey) are not Parties to the Espoo Convention.

21. The Barcelona Convention has seven Protocols adopted in the framework of the Mediterranean Action Plan (MAP), which have been ratified by some (but not all) of the Contracting Parties to the Convention:

- (a) the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (**Land-Based Sources Protocol**) which was adopted in 1980 (22 Parties) and amended in 1996 (17 Parties,);
- (b) the Protocol concerning Cooperation in Preventing Pollution from Ships and, in cases of Emergency, combating Pollution of the Mediterranean Sea (**Prevention and Emergency Protocol**) which was adopted in 2002 (17 Parties);
- (c) the Protocol on Integrated Coastal Zone Management in the Mediterranean (**ICZM Protocol**), which was adopted in 2008, has 12 Parties, including the European Union and its 5 Member States in the Mediterranean Region;
- (d) the Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (**Offshore Protocol**), which was adopted in 1994, has 8 Parties, including the European Union and 2 Mediterranean Member States;
- (e) the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (**SPA/BD Protocol**), which was adopted in 1995, has 17 Parties, including the European Union and 7 Mediterranean Member States;
- (f) the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (**Dumping Protocol**), which was adopted in 1976 and amended in 1995 (not yet into force), has 21 Parties, including the European Union and 8 Mediterranean Member States;
- (g) the Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (**Hazardous Wastes Protocol**), adopted in 1996, has 7 Parties, including 1 Mediterranean Member State of the European Union.

22. The following analysis focuses on the Barcelona Conventions and its five Protocols listed in items (a) to (e) above that contain provisions that bear certain similarities with those of the Espoo Convention.

2. Environmental Impact Assessment requirement

23. The Barcelona Convention requests the Contracting Parties to undertake environmental impact assessments, without entering into the details of the process and its distinct stages, in particular, unlike the Espoo Convention, not specifying the list of activities subject to environmental impact assessment obligations. The relevant/related requirements of the Barcelona Convention for its Parties are to:

- (a) implement the precautionary principle and the polluter pays principle (Article 4.3.a and b),
- (b) undertake environmental impact assessment for proposed activities that are likely to cause significant adverse impact on the marine environment (Article 4.3.c)
- (c) promote cooperation on the basis of notification, exchange of information and consultation in case of transboundary Environmental Impact Assessment (Article 4.3.d),
- (d) use of best available techniques (BAT) and best environmental practices (BEP) (Article 4.4.b),
- (e) monitor the pollution of the marine environment and its coastal areas (Article 12), and
- (f) ensure public information and participation (Article 15).

24. In addition, the below mentioned five Protocols to the Barcelona Convention require their Contracting Parties to undertake an environmental impact assessment procedure, tailoring it to the needs of the specific sector being regulated. It should be again noted that, unlike the Espoo Convention, they do not specify the list of activities and/or projects which require environmental impact assessment.

- In particular the environmental impact assessment procedure requirement for pollution prevention is emphasized in **recital** of the **Land-Based Sources Protocol**, and similarly in **recital** of the **Prevention and Emergency Protocol**.
- The Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (**Special Protected Areas Protocol**), **Article 17** requires the Parties shall evaluate the possible impact, including the cumulative one of planning process leading to decisions that could significantly affect protected areas and species and their habitats.
- The **Offshore Protocol** in **Article 5 (1) (a)** requires each Contracting Party to prescribe that for authorisation or renewal of an authorisation the competent authority may require that an environmental impact assessment be prepared (in accordance with Annex IV to the Protocol).
- The **Integrated Coastal Zone Management Protocol** is strongly imbued with elements characterising environmental assessments, starting with the general principles (**Article 6**), which also include that of a preliminary assessment for the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones; **Article 19 (1)** then requires the Parties to ensure that the process of environmental impact assessment for projects likely to have significant environmental effects on the coastal zones, and in particular on their ecosystems, take into consideration the specific sensitivity of the environment and the interrelationships between the marine and terrestrial parts of the coastal zone, as well as the cumulative impacts on the coastal zones and their carrying capacities.

25. It should be also noted that informal **Guidelines for the Conduct of Environmental Impact Assessment under the Offshore Protocol**¹⁴ were adopted by the Contracting Parties to the Barcelona Convention and its Protocols at their 22nd Meeting (2021) with **Decision IG.25/15** to provide advice on the EIA process and suggest methods and tools for identifying and assessing impacts, effects and risk to the environment. The guidance clarifies the terminology, recommends basic stages of good environmental impact assessment practice (screening, scoping, baseline data collection, assessment of impacts, assessment of appropriate mitigation options, decision-making, monitoring, etc.) but does not address transboundary aspects of any such assessments. It also provides only an informal guidance and recognizes that relevant environment impact assessment provisions existing in Contracting Parties' legislation and or regulatory systems prevail.

26. Considering these binding and non-binding provisions, it may be argued that the Barcelona Convention and its Protocols expressly include provisions that require the Contracting Parties to “undertake environmental impact assessment for proposed activities that are likely to cause a significant adverse impact on the marine environment”, referring to the

¹⁴ See https://wedocs.unep.org/bitstream/handle/20.500.11822/37137/21ig25_27_2515_eng.pdf

geographical area of the whole maritime waters of the Mediterranean Sea (Barcelona Convention, Article 1), including the transboundary aspects.

27. The exact field of application of these assessment obligations is however not defined through e.g. an exact list of projects as done in the Espoo Convention Appendix I (List of activities). The Barcelona Convention instruments only formulate the generic principles on environmental impact assessment and leave their contracting Parties with discretion on their application for specific activities.

28. The national implementation reports submitted by the Contracting Parties through the reporting system (Article 26 of the Barcelona Convention), on the latest considered biennium (2018/2019) stated having in place Environmental Impact Assessment laws and regulations, thereby activities or projects which are likely to cause a significant adverse impact on the marine environment are subject to an Environmental Impact Assessment.

3. Transboundary procedure requirements

(i) Notification of and consultation

29. **Article 4 (3)(d) of the Barcelona Convention** requires the Contracting Parties to “*promote cooperation between and among States in environmental impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction, on the basis of notification, exchange of information and consultation.*”

30. The **Integrated Coastal Zone Management Protocol** in its Article 29 (Transboundary environmental assessment) refers to these provisions and requires the Parties to cooperate by means of notification, exchange of information and consultation in assessing the environmental impacts of such plans, programmes and projects, before authorizing or approving plans, programmes and projects that are likely to have a significant adverse effect on the coastal zones of other Parties. It also stipulates that the Parties may, where appropriate, to enter into bilateral or multilateral agreements for the effective implementation of this Article.

31. It is also worth noting that **Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States**¹⁵ were drafted under the **Integrated Coastal Zone Management Protocol**. They contain recommendations for the implementation of transboundary procedures that are coherent with the provisions of the Espoo Convention and the SEA Protocol. These guidelines, not yet formally adopted, have been so far used for training purposes.

Box 1: Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean states under the Integrated Coastal Zone Management Protocol

These guidelines were drafted under the work programme of the Mediterranean Action Plan Programme for 2018 – 2019. They note that some form of EIA regulations was in place in at least 20 out of 22 Contracting Parties to the Barcelona Convention as information was not available for Egypt and Monaco at the time of drafting this Guidelines. In their National Implementation Reports for the 2014-2015 biennium, 12 Contracting Parties reported having put in place cooperation mechanisms and/ or institutional structures for notification, exchange of information and transboundary consultation mainly through the laws on environmental impact assessment. The EA regulations in countries outside the area of application of the EU and UNECE instruments as a rule do not contain provisions on how the procedures should be conducted in case of transboundary impacts.

To this end, the Guidelines recommend that the Parties to the Barcelona Convention:

- Take on board land-sea interactions in environmental assessments (including transboundary ones), in particular interactions and impacts that can alter the

¹⁵ See http://paprac.org/storage/app/media/Meetings/4_Draft%20Guidelines%20for%20transboundary%20EA.docx

equilibrium of marine and terrestrial areas due to natural processes, as well as mutual impacts of maritime activities on land and terrestrial activities on sea; and

- Adopt guidelines on the procedures for notification, exchange of information and consultation at all stages, as appropriate.

They also refer to the Espoo Convention and its Protocol, the relevant EU Directives for strategic environmental assessment and environmental impact assessment and specify basic requirements and good practice recommendations for:

- Notification procedures
- Exchange of information
- Consultations

In addition, the guidelines formulate the following general good practice recommendations for transboundary assessments under the Barcelona Convention:

- (a) Parties should set up adequate arrangements (outlining responsibilities and decision-making steps) to ensure appropriate governance framework is in place to support smooth transboundary consultations and completion of procedures.
- (b) Close collaboration is necessary between the countries taking part in transboundary procedures, preferably through setting up of coordination bodies. Points of contact (if not already appointed under pertinent international instruments) should be used to establish coordination bodies composed of relevant national authorities (e.g. competent authorities supervising environmental assessment processes; designated Espoo Convention and/or its Protocol contact points; Barcelona Convention and/or Integrated Coastal Zone Management Protocol Focal Points) in the concerned (affected and countries of origin) countries.
- (c) Bilateral or multilateral agreements are strongly encouraged, especially for the countries where the existing development plans and commitments indicate multiple transboundary assessments could be expected in the future, as well as for sub-regions or clusters of countries with similar geographic, natural or cultural characteristics.
- (d) To enhance the efficiency and effectiveness of transboundary procedures, it is useful to determine significance of impacts should be determined before the country of origin notifies the affected country. Bilateral or multilateral cooperation could be used to agree on such criteria among concerned countries, or possibly on a sub-regional level. In defining these criteria, sensitivity of the coastal zone and objectives for achieving Good Environmental Status in the Mediterranean should be considered. Moreover, precautionary and prevention principles should apply.

The also offer very informative insights on development needs that would benefit from further cooperation efforts. These insights have informed the conclusions of Chapter IV of this report.

32. The **Offshore Protocol (Article 21 (1)(b))**, requires Contracting Parties to take special measures for the granting of authorization for the protection of the Mediterranean Specially Protected Areas defined in the **Special Protected Areas Protocol**, that may include, *inter alia*, “the preparation and evaluation of environmental impact assessments” and “*intensified exchange of information among operators, the competent authorities, Parties and the Organization regarding matters which may affect such areas*”.

33. Considering the above it may be concluded that Article 4(3)(d) of the **Barcelona Convention** requires the Contracting Parties to promote cooperation in environmental impact assessment procedures through notification, exchange of information and consultation in a manner which is broadly coherent with the requirements of the Article 2(4) of the Espoo Convention. It nevertheless does not define specific arrangements for such notification in a sufficient detail as stipulated by the Article 3 of the Espoo Convention.

34. With regards to transboundary consultations, Article 4(3)(d) of the **Barcelona Convention** provides also for the exchange of information and consultation, but it does not

again specify these requirements in sufficiently to facilitate effective consultations in a manner that would be correspondent to the Espoo Convention's requirements for transboundary consultations laid down in its Article 2(11) and Article 3(3) and Article 5. Nevertheless, the Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States elaborated within the framework of the **Integrated Coastal Zone Management Protocol** could be used in a voluntary basis to facilitate this process.

(ii) EIA documentation

35. The **Barcelona Convention** does not provide any indication of the preparation and contents of the environmental assessment documentation under the environmental impact assessment processes.

36. Nevertheless, the details of the environmental impact assessment process are partly addressed by the **Offshore Protocol** in its Annex IV (see Box 2) which stipulates the basic contents of such environmental impact assessment. It should be noted that item 1(i) of Annex IV requires environmental impact assessment to contain "*an indication of whether the environment of any other State is likely to be affected by the proposed activities*". In addition, Article 23(1) requires the Parties to '*cooperate, either directly or through the Organisation or other competent international organisations, in order to: (d) Formulate and adopt guidelines in accordance with international practices and procedures to ensure observance of the provisions of Annex VI*'. This requirement is further taken up item (2) of Annex IV that requires Each Party to "*promulgate standards taking into account the international rules, standards and recommended practices and procedures, adopted in accordance with Article 23 of the Protocol, by which environmental impact assessments are to be evaluated*".

Box 2: Annex IV of the Offshore Protocol to the Barcelona Convention

1. Each Party shall require that the environmental impact assessment contains at least the following:

- (a) A description of the geographical boundaries of the area within which the activities are to be carried out, including safety zones where applicable, with particular regard to the environmental sensitivity of areas likely to be affected.;
- (b) A description of the initial state of the environment of the area (baseline scenario) and the likely evolution of the state in a "no- project scenario", on the basis of available information and scientific knowledge;
- (c) An indication of the nature, aims, scope and duration of the proposed activities, including description of reasonable alternatives and an indication of the main reasons for selecting the chosen option supported by a comparison of environmental effects;
- (d) A description of the methods, installations and other means to be used, possible alternatives to such methods and means;
- (e) A description of the foreseeable direct or indirect short and long-term and cumulative effects of the proposed activities on the environment, including fauna, flora, soil, air, water, climate and the ecological balance, including possible transboundary impacts. This description shall include an estimate by type and quantity of expected discharges and emissions (pollutants, water, air, noise, vibration, heat, light, radiation) produced during the construction and operation phases, as well as demolition and decommissioning works, where relevant;
- (f) A statement setting out the measures proposed for reducing to the minimum the risk of damage to the environment as a result of carrying out the proposed activities, including possible alternatives to such measures;
- (g) An indication of the measures to be taken for the protection of the environment in order to avoid, prevent, reduce and if possible offset pollution and any other likely pollution and other pollution and other adverse effects during and after the proposed activities;

- (h) An indication of whether the environment of any other State is likely to be affected by the proposed activities.

37. It may be concluded that while the Barcelona Convention does not define the contents of the environmental impact assessment, the Offshore Protocol, Annex IV is almost fully consistent with the Appendix II of the Espoo Convention that specifies the content of the environmental impact assessment documentation.

(iii) Public participation

38. **Article 15 (1)(2)** of the **Barcelona Convention** requires the Contracting Parties to “ensure that their competent authorities shall give to the public appropriate access to information on the environmental state” and “on activities or measures adversely affecting or likely to affect it”; and that the participation of the public in relevant decision-making processes is ensured.

39. The **Special Protected Areas Protocol**, in **Article 19 (2)** titled “Publicity, information, public awareness and education” requires that the Parties shall endeavor to promote the participation of their public and their conservation organizations in environmental impact assessments process.

40. The **Integrated Coastal Zone Management Protocol**, listing the general principles in **Article 6 (d)**, requests Parties to implement the Protocol guided by the principle, among others, of “(d) appropriate governance allowing adequate and timely participation in a transparent decision making process by local populations and stakeholders in civil society concerned with coastal zones”. Moreover, **Article 14**, which is dedicated to “Participation”, states that the Parties shall ensure appropriate participation in the phases of the formulation of coastal and marine strategies, plans and programmes or projects, providing information in an adequate, timely and effective manner, and ensuring the availability to any stakeholder of mediation or conciliation procedures and a right of administrative or legal recourse.

41. It may be concluded that the Barcelona Convention and two Protocols foresee public participation requirements in a manner which is broadly coherent with the requirements of the Espoo Convention. Nevertheless, again, they do not give the same grade of details as stipulated by the Espoo Convention, Articles 2(2), 2(6), 3(8) and 4(2).

42. The requirement of ensuring public participation and consultation in decision-making processes and in the Environmental Impact Assessment process for proposed activities that are likely to cause damage to the marine environment and its coastal areas in the Barcelona Convention, can be also referred to the implementation arrangements included into the national implementation reports submitted by the Contracting Parties through the reporting system, according to which all reporting Contracting Parties on the biennium 2018/2019 reported having put in place the legal and regulatory measures needed to ensure public participation and consultation. This has been mainly achieved through general laws protecting the environment, public participation and access to information laws, and/or Environmental Impact Assessment and Strategic Environmental Assessment laws; and in particular thanks to the available mechanisms for public participation and consultation under the relevant domestic legislation.

(v) Final decision

43. The Barcelona Convention does not include any requirement regarding the final decision on the proposed activity or its transmission to the affected Parties that would be similar to those under the Espoo Convention (article 6).

44. Only, the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf (Offshore Protocol), in its Article 25, requires the Contracting Parties to “inform one another directly or through the Organization of measures taken, of results achieved and, if the case arises, of difficulties encountered in the application of the Protocol”. However, this general requirement does not specifically refer to EIA processes.

D. The Helsinki Convention

Introduction

45. The 1992 Helsinki Convention has 10 Contracting Parties: Denmark, Estonia, European Union, Finland, Germany, Latvia, Lithuania, Poland, Russian Federation and Sweden¹⁶.

46. The Convention includes also the following **seven Annexes**, containing more detailed procedures, measures and regulations linked to specific ecological objectives, principles or obligations that are set out in the Convention:

- (a) **Annex I** Harmful substances,
- (b) **Annex II** Criteria for the use of Best Environmental Practice and Best Available Technology,
- (c) **Annex III** Criteria and measures concerning the prevention of pollution from land-based sources
- (d) **Annex IV** Prevention of pollution from ships,
- (e) **Annex V** Exemptions from the general prohibition of dumping of waste and other matter in the Baltic Sea Area,
- (f) **Annex VI** on prevention of pollution from offshore activities,
- (g) **Annex VII** Response to pollution incidents.

47. In addition, the **Baltic Sea Action Plan**¹⁷, adopted in 2007 and updated in 2021¹⁸, as the HELCOM's strategic programme of measures and actions for achieving good environmental status of the sea, include commitment to achieve the management objectives under the segments and the horizontal topics as well as to implement all the specific actions, among which various levels of impact assessment are referred to, e.g. actions E4, E22, B12, B31, S14, S15 and S16.

Environmental impact assessment requirement

48. The Helsinki Convention and in particular its **Article 7(1)** does not require environmental impact assessment per se but requests its Contracting Party to notify the Helsinki Commission and any potentially affected Contracting Party whenever they conduct environmental impact assessment for a proposed activity that is likely to cause a significant adverse impact on the marine environment of the Baltic Sea area based on their own respective obligations under international law or supra-national regulations.

49. The field of application of these environmental assessment obligations is not predefined through a list of projects, but it is left for the discretion of each Party to consider which activity can cause a significant adverse impact on the marine environment in the light of their respective obligations under international law or supra-national regulations.

50. In order to facilitate the practical application of this provision, the HELCOM adopted **Recommendation 17/3 on Information and Consultation with Regard to Construction of New Installations Affecting the Baltic Sea** (adopted in 1996, revised in 2015) that formulates criteria to assist Contracting Parties in determination of environmental significance of related proposed activities with a significant potential adverse impact on the Baltic Sea where an Environmental Impact Assessment is required by either national or international law (See Box 3).

Box 3: Criteria to assist in determination of environmental significance of proposed activities

- a) Size:
 - proposed activities are large for this kind of activity;
- b) Location:
 - proposed activities are located in the Convention area;

¹⁶ All of them aside from the Russian Federation are Parties to the Espoo Convention and its Protocol. Eight are also European Union member States, and consequently, with the same European Union, also bound by the EU Directive on the assessment of the effects of certain public and private projects on the environment.

¹⁷ Available at the following link link to 2021 BSAP: <https://helcom.fi/media/publications/BSAP-full-publication-v21-220405.pdf>

¹⁸ Adopted by the Lübeck Ministerial Meeting, see <https://helcom.fi/helcom-at-work/ministerial-meetings/2021-lubeck/>

- proposed activities are located close to an international frontier;
- proposed activities are located in the catchment area but could give rise to significant transboundary effects far removed from the site of development;
- proposed activities are located close to areas of special environmental sensitivity or importance;

c) Effects:

- proposed activities cause disturbances of natural hydrological (including sediment transport), hydrochemical and biological regime (e.g. behaviour of fish and marine mammals)
- proposed activities result in release of hazardous substances (operational/accidental).

Source: HELCOM Recommendation 17/3

51. In addition, **Annex VI, Regulation 3** of the Helsinki Convention requires an environmental impact assessment for offshore activities that cover any exploration and exploitation of oil and gas in the Baltic Sea area. It also defines environmental sensitivity of the sea area around a proposed offshore unit that should be assessed as part of this process. See Box 4 for details.

Box 4: Environmental sensitivity of the sea area around a proposed offshore unit in the Baltic Sea

Environmental sensitivity of the sea area around a proposed offshore unit should be assessed with respect to the following:

- a) the importance of the area for birds and marine mammals;
- b) the importance of the area as fishing or spawning grounds for fish and shellfish, and for aquaculture;
- c) the recreational importance of the area;
- d) the composition of the sediment measured as: grain size distribution, dry matter, ignition loss, total hydrocarbon content, and Ba, Cr, Pb, Cu, Hg and Cd content;
- e) the abundance and diversity of benthic fauna and the content of selected aliphatic and aromatic hydrocarbons.

Source: Helsinki Convention, Annex VI, Regulation 3

Transboundary procedure requirements

(i) Notification

52. **Article 7(1)** of the **Helsinki Convention** requires that “*whenever an environmental impact assessment of a proposed activity that is likely to cause a significant adverse impact on the marine environment of the Baltic Sea Area is required by international law or supra-national regulations applicable to the Contracting Party of origin, that Contracting Party shall notify the Commission and any Contracting Party which may be affected by a transboundary impact on the Baltic Sea Area.*”

53. In addition, the **Helsinki Convention Annex VI** on prevention of pollution from offshore activities, in its Regulation 3.1 (Environmental impact assessment and monitoring) states that “*an environmental impact assessment shall be made before an offshore activity is permitted to start. In case of exploitation referred to in Regulation 5 (Discharges on the exploitation phase) the outcome of this assessment shall be notified to the Commission before the offshore activity is permitted to start.*”

54. **Article 7(1)** of the **Helsinki Convention** makes it *de facto* fully consistent with the Espoo Convention. It extends the notification requirements beyond the relevant Contracting

Parties also to the nevertheless does not define specific arrangements for such notification in a sufficient detail as stipulated by the Article 3 of the Espoo Convention.

(ii) Consultation

55. With regards to transboundary consultations, **Article 7(2)** of the **Helsinki Convention** provides for the obligation to enter into consultations with any Contracting Party which is likely to be affected by transboundary impact, whenever consultations are required by international law or supra-national regulations applicable to the Contracting Party of origin. Moreover, **Article 7(3)** of the Convention could be used as a framework for transboundary cooperation between parties that share transboundary waters within the catchment area of the Baltic Sea to ensure that potential impacts on the marine environment of the Baltic Sea Area are fully investigated within the environmental impact assessment.

56. It is also worth noting that the earlier mentioned **HELCOM Recommendation 17/3** provides that the Contracting Parties “*inform and, where necessary, consult with any Contracting Party likely to be significantly affected by the construction of an installation with a significant potential adverse impact on the Baltic Sea where an Environmental Impact Assessment is required by either national or international law*”.

57. It may be concluded that since the Helsinki Convention generally refers to applicable international law or supra-national regulations, recalled in Article 7(1) of the Convention, makes it *de facto* fully consistent with the Espoo Convention. It also goes beyond the Espoo Convention requirements by requiring not only consultations but also transboundary cooperation between parties that share transboundary waters.

(ii) Environmental impact assessment documentation

58. The Helsinki Convention does not provide any indication of the preparation and contents of the documentation under the environmental impact assessment process. However, the reference to requirements of international law or supra-national regulations, recalled in Article 7(1) of the Convention, makes it *de facto* consistent with the Espoo Convention.

(iii) Public participation

59. Apart from **Article 17**, that requires the Contracting Parties to ensure that information are made available to the public, at all reasonable times, with reasonable facilities on the condition of the Baltic Sea and the waters in its catchment area, measures taken or planned to be taken to prevent and eliminate pollution and the effectiveness of those measures; the Helsinki Convention does not provide any specific indication for public participation under the environmental impact assessment process.

60. Nevertheless, the reference to requirements of international law or supra-national regulations, recalled in Article 7(1) of the Helsinki Convention, makes it *de facto* consistent with the Espoo Convention.

(iv) Final decision

61. The Helsinki Convention does not include any requirement regarding the final decision on the proposed activity or its transmission to the affected Parties that would be similar to those under the Espoo Convention (article 6). Irrespective of that, the reference to requirements of international law or supra-national regulations, recalled in **Article 7(1)** of the Helsinki Convention, makes it *de facto* consistent with the Espoo Convention.

E. The OSPAR Convention

Introduction

62. The 1992 OSPAR Convention has 16 Contracting Parties: Belgium, Denmark, European Union, Finland, France, Germany, Iceland, Ireland, Luxembourg, Netherlands,

Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland¹⁹.

63. All of the contracting parties to the OSPAR Convention except Iceland are parties to the Espoo Convention with the resulting implications on their environmental assessment systems.

Environmental impact assessment requirement

64. The core provisions of the OSPAR Convention require its contracting parties to:

- prevent and eliminate pollution from land-based sources (article 3 and Annex I),
- prevent and eliminate pollution by dumping or incineration (article 4 and Annex II),
- prevent and eliminate pollution from offshore sources (article 5 and Annex III),
- cooperate on measures, procedures and standards for protecting the maritime area against pollution from other sources,
- assess the quality of the marine environment (article 6 and Annex IV),
- take the necessary measures to protect and conserve the ecosystems and the biological diversity of the maritime area, and to restore, where practicable, marine areas which have been adversely affected (Annex V)

65. The OSPAR Convention itself does not regulate environmental impact assessment processes. Nevertheless, the North-East Atlantic Strategy 2030²⁰ for implementation of the OSPAR Convention in the period 2020-2030 in its sub strategic objective 5.03 (S5.03) foresees that, by 2024, OSPAR will establish a mechanism to provide that where Contracting parties are authorizing human activities under their jurisdiction or control that may conflict with the conservation objectives of OSPAR Marine Protected Areas in the Areas Beyond National Jurisdiction, these activities are subjected to an Environmental Impact Assessment or Strategic Environmental Assessment.

66. Moreover, the OSPAR Convention has also adopted several decisions related to specific thematic areas that contain many suggestions that directly or indirectly support environmental impact assessments – see Box 5.

Box 5: Technical recommendations adopted under the OSPAR Convention supporting environmental impact assessment processes

- **On radioactive substances: PARCOM Recommendation 94/8 on Environmental Impact from Discharges of Radioactive Substances** which states that the Contracting Parties have agreed to undertake the preparation of a summary environmental impact assessment of the effect and relative contributions of remobilized historical discharges and current discharges of radioactive substances, including wastes, on the marine environment.
- Also, the **OSPAR Agreement: 2016-07e on a Methodology for Deriving Environmental Assessment Criteria and their application for OSPAR purposes** recommend the use of Environmental Assessment Criteria in future OSPAR assessments as part of a suite of assessments tools.
- **On specific biodiversity concerns: OSPAR Recommendation 2010/5**, which recommends that the ‘OSPAR List of threatened and/or declining species and habitats’ is taken into consideration when assessments of environmental impacts of human activities are prepared

¹⁹ All of these Parties, aside from Iceland, are also Parties to the Espoo Convention.

²⁰ The Strategy of the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic 2030 (Agreement 2021-01: North-East Atlantic Environment Strategy, replacing Agreement 2010-03. OSPAR 21/13/1, Annex 22: See: <https://www.ospar.org/documents?v=46337>

- **On the use and implementation of environmental management systems by the offshore industry - OSPAR Recommendation 2003/5**
- **On decommissioning: OSPAR Recommendation 2006/5** on a management regime for offshore cuttings piles;
- **On the disposal of disused offshore installations: OSPAR Decision 98/3**, which includes an assessment framework and consultation procedure in support of decommissioning decisions, as well as a ban on dumping or leaving disused installation in place.
- **On offshore oil and gas activities: OSPAR Recommendation 2003/5** to promote the use and implementation of environmental management systems by the offshore industry.
- **On the Storage of Carbon Dioxide Streams in Geological Formations: OSPAR Decision 2007/02**

67. Considering these binding and non-binding provisions, it may be concluded that the OSPAR Convention and its Annexes do not include any requirement (and the related specific step) that would be similar to those under the Espoo Convention but indirectly supports the application of the Espoo Convention through its technical guidelines that provide reference for the specific environmental impact assessments in both national and transboundary settings.

Transboundary procedure requirements

(i) Notification of and consultation

68. The OSPAR Convention does not provide any indication of the notification and consultation under the environmental impact assessment procedure.

(ii) Environmental impact assessment documentation

69. The OSPAR Convention does not provide any requirement for the preparation and contents of environmental impact assessment documentation.

(iii) Public participation

70. Apart from **Article 9 on access to information**, requiring the Contracting Parties to ensure that their competent authorities shall make available the information on activities or measures likely to affect the maritime area to any natural or legal person, (limited to) “in response to any reasonable request”; the **OSPAR Convention** does not provide any specific indication for public participation under the environmental impact assessment process.

(iv) Final decision

71. The OSPAR Convention does not include any requirement regarding the final decision on the proposed activity or its transmission to the affected Parties that would be similar to those under the Espoo Convention (article 6).

F. The Tehran Convention and its Protocols

Introduction

72. The 2003 **Tehran Convention** has 5 Contracting Parties: the Republic of Azerbaijan, the Islamic Republic of Iran, the Republic of Kazakhstan, the Russian Federation and Turkmenistan.

73. The Convention also includes four protocols:

- (a) the Protocol Concerning Regional Preparedness, Response and Cooperation in Combating **Oil Pollution Incidents** ("**Aktau Protocol**"), ratified by 5 Contracting Parties;
- (b) the Protocol on the Protection of the Caspian Sea against Pollution from **Land-based Sources** and Activities ("**Moscow Protocol**"), ratified by 4 Contracting Parties;
- (c) the Protocol for the Conservation of **Biological Diversity** ("**Ashgabat Protocol**"), ratified by 3 Contracting Parties; and
- (d) the Protocol on **Environmental Impact Assessment in a Transboundary Context**, ratified by 4 Contracting Parties, not yet in force²¹.

Environmental impact assessment requirement

74. The **Tehran Convention** requests the Contracting Parties to undertake environmental impact assessments, without entering into the details of the process and its distinct stages. The relevant/related requirements of the Tehran Convention for its Parties are to:

- (a) implement the precautionary principle and the polluter pays principle (Article 5 (a) and (b));
- (b) **undertake all appropriate measures to introduce and apply procedures of Environmental Impact Assessment (Article 17);**
- (c) promote cooperation for the achievement of the objective of the Convention (Recital 6, Articles 4 (d), 6, and 18);
- (d) use of the best available environmentally sound technology (BAT) and best environmental practices (BEP) (Article 7.2 (f) and (g));
- (e) monitor the quality of water and the pollution of the marine environment and its coastal areas (Articles 18.3(b) and 19); and
- (f) ensure access to information and public information (Articles 5 (c) and 21.2).

75. The **Protocol on Environment Impact Assessment in a Transboundary Context** provide a comprehensive framework for implementation of effective and transparent environmental impact assessment procedures in a transboundary context to any proposed activity which is likely to cause significant transboundary impact on the marine environment and land affected by proximity to the sea. Its provisions are very similar although not identical (e.g. minor differences can be found in the timing of the public consultations, etc.) to those of the Espoo Convention. However, the Protocol **is not yet in force**. Therefore, the Tehran Convention Parties have not nominated the “competent authorities” nor the “points of contact for notification” whose role is described in the text of the Protocol. See Box 6

Box 6: The Protocol on Environment Impact Assessment in a Transboundary Context to the Tehran Convention

The Protocol is in some case more detailed than the Espoo Convention, e.g. in matters pertaining to the notification, it:

- explicates that all the communications shall be done through the nominated Points of Contact for Notification, specifying to transmit documents not only to the Competent Authority of the Affected Party but also to the Secretariat for making this information available to any Contracting Party;
- specifies that documentation shall be provided in the format and language(s) as previously agreed by Concerned Parties; the content of notification, precisising the time-frame should not be less than a given amount of days, and the requested languages of translated texts;
- provides for different procedure depending on if the Affected Party intend or does not intend to participate in the environmental impact assessment procedure of the proposed activity.

²¹ Article 16.5 of the Teheran Convention states that the “*Protocol shall enter into force on the ninetieth day after the date of deposit of the instrument of ratification, acceptance, approval or accession by all Caspian littoral States.*”

In particular, while the Espoo Convention foresees the notification as the first step of the transboundary cooperation the Tehran Protocol foresees the activity of *"information of the proposed activity that is likely to cause a significant transboundary impact"* through the Point of Contact for Notification, followed by the notification, both of them *"as early as possible"* with the specification of the Espoo that *"no later than when informing its own public (of the Party of origin)"*.

Another difference consists in that the Espoo Party of origin notifies only the likely affected Party/Parties, while the Tehran informs and notifies also the Secretariat and the Party/Parties through the indicated Point of contact for notification. The content of notification is specular, but the Tehran Protocol is more detailed, e.g. specifying that the indication of *"a reasonable time-frame for the submission of the Affected Party's response to the notification"* *"should not be less than 30 days from receipt of notification"* which is also specified should be *"in English and Russian"*.

Moreover, the Tehran specifies that the notification should also include *"an indication of the time schedule for the further steps"* of the procedure.

Finally, Article 5 (6) of the Tehran Convention expressly provides that *"if the Affected Party indicates that it does not intend to participate in the environmental impact assessment procedure of the proposed activity"* or *"if it does not respond within the time specified in the notification"*, the Party of Origin is only obliged to send the draft environmental impact assessment documentation to the Secretariat (which may inform the other Contracting Parties), excluding de facto the Affected Party from the ongoing environmental impact assessment procedure.

Also the requirement of public participation is more detailed, e.g.: explicating that Concerned Parties shall ensure that the draft environmental impact assessment documentation, including, as appropriate, hardcopies, is made available and easily accessible to the public, including in places open for the public, in accordance with national legislation; and that the public in the areas likely to be affected is provided with the opportunity to comment upon the proposed activity to the Competent Authorities of the Concerned Parties; and that their comments shall be transmitted to the Competent Authority.

Finally, the Protocol foresees that the Competent Authority of the Party of Origin shall provide the Competent Authority of the Affected Party and the Secretariat with the final decision on the proposed activity not only with the reasons and considerations on which it was based, ensuring that due account is taken of the outcome of the whole process including the comments thereon received and the outcome of the Consultations, but also requesting to include the information on how the comments received were taken into account.

76. The **Land-based Sources** or "**Moscow Protocol**" in **Article 12** requires the Parties to "introduce and apply procedures of environmental impact assessment of any planned land-based activity or project within its territory that is likely to cause significant adverse effect on the marine environment and coastal areas of the Caspian Sea", adopting regional and corresponding national guidelines, also on the aspects of possible transboundary impacts. It therefore promotes cooperation between and among Parties in environmental impact assessment related to activities which are likely to have significant adverse effect on the marine environment (**Article 4.2 (c)**).

77. In the framework of conservation of biological diversity, the thematic **Biological Diversity** or "**Ashgabat Protocol**", **Article 13**, requires the Parties to apply the procedures of Environmental Impact Assessment as a tool for preventing and minimizing adverse impacts on biological diversity in the marine environment.

78. In addition, **Guidelines on Environmental Impact Assessment** in the Caspian Sea region have also been drafted in 2003 by United Nations Environment Programme, UNECE, the European Bank for Reconstruction and Development, and the Caspian Environment

Programme. These guidelines, although somewhat outdated, nevertheless serve as a useful reference.

79. Considering these binding and non-binding provisions, it may be argued that the Tehran Convention and its Protocols expressly include provisions that require the Contracting Parties to “take all appropriate measures to introduce and apply procedures of environmental impact assessment of any planned activity, that are likely to cause significant adverse effect on the marine environment of the Caspian Sea”, referring to the geographical area of the whole maritime waters of the Caspian Sea, including the transboundary aspects (article 17 of the Tehran Convention).

Transboundary procedure requirements

(i) Notification of and consultation

80. A part a general statement on cooperation between the Contracting Parties, in **Article 18.1** and the provision of **Article 17.3** that Contracting Parties shall co-operate in the development of protocols that determine procedures of environmental impact assessment of the marine environment in transboundary context, the **Teheran Convention** does not provide any indication of the notification and consultation under the environmental impact assessment procedure.

81. Conversely, **Articles 5, 4.3 and 7** of the dedicated **Protocol on Environment Impact Assessment in a Transboundary Context** requires the Contracting Parties to ensure that affected Parties are notified in a manner which is coherent with the requirements of the Article 2(4) of the Espoo Convention, defining specific arrangements for such notification in a similar detail as stipulated by the Article 3 of the Espoo Convention.

82. In particular, **Article 5 on notification** requests the Competent authority of the Party of Origin to notify as early as possible through the Point of Contact for notification any Contracting Party which it considers may be a potentially Affected Party, as well as the Secretariat, which will inform the other Contracting Parties. Paragraph 2 lists the criteria and the minimum content of the notification, specifying among other things that the notification documents shall be in State language with translation in English or in Russian language.

83. The requirement of consultation is foreseen in detail in **Articles 6 and 9** of the same Protocol, dedicates to communication and therefore to consultation between concerned Parties, which shall agree on a reasonable time-frame for the duration of the consultation period, concerning, inter alia, measures to reduce potential transboundary impact, in a coherent and similar detail as stipulated by the Article 5 of the Espoo Convention.

(ii) Environmental impact assessment documentation

84. The **Tehran Convention** does not provide any indication of the preparation and contents of the environmental assessment documentation under the environmental impact assessment processes.

85. Nevertheless, the details of the environmental impact assessment documentation are addressed by the **Protocol on Environment Impact Assessment in a Transboundary Context**, by **Articles 6 and 7**, according to which the documentation shall contain, as a minimum, the content of the items referred to in **Annex III**, in addition to information requested by Affected Party. Annex III lists the same minimum information to be included in the draft environmental impact assessment fully consistent with the Appendix II of the Espoo Convention that specifies the content of the environmental impact assessment Documentation.

(iii) Public participation

86. Apart from **Article 21.2 on exchange of and access to information**, requiring the Contracting Parties to ensure public access to environmental conditions of the Caspian Sea, measures taken or planned to be taken to prevent, control and reduce pollution of the Caspian Sea in accordance with their national legislation and taking into account provisions of existing international agreements concerning public access to environmental information; the **Tehran Convention** does not provide any specific indication for public participation under the environmental impact assessment process.

87. This provision is recalled by the **Protocol for the Protection of the Caspian Sea against Pollution from Land-based Sources and Activities**, which Article 15 on public participation specify that Parties shall promote the participation of the public in measures that are necessary for the protection of the marine environment and coastal areas of the Caspian Sea against pollution from land-based sources and activities, including environmental impact assessments.

88. Once again, also this requirement is taken into the due account by the **Protocol on Environment Impact Assessment in a Transboundary Context**. Its **recital 5** underlines the importance of access to information and public participation in decision-making in environmental matters. Therefore, **Articles 4 and 8** foresee public participation requirements in a manner which is fully coherent with the requirements of the Espoo Convention, giving the same grade of details as stipulated by the Espoo Convention, Articles 2(2), 2(6), 3(8) and 4(2), requesting Parties to ensure effective public participation at early stage of environmental impact assessment procedures, and that the public are informed of the proposed activity, the availability and easily accessible of the draft documentation, the opportunity and procedure for public consultations, which comments shall be transmitted to the Competent Authority of the Party of Origin.

89. It may be concluded that the Tehran Convention framework with the two Protocols foresee public participation requirements in a manner which is broadly coherent with the requirements of the Espoo Convention.

(iv) Final decision

90. The **Tehran Convention** in its Article 17.2 requires the Contracting Parties to “take all appropriate measures to disseminate results of environmental impact assessment to other Contracting Parties”.

91. The **Land-based Sources Protocol**, in **Article 12** titled “Environmental Impact Assessment” requires (in **para. 3**) that the findings and recommendations of the environmental impact assessment shall be taken fully into account in authorizing the implementation of the concerned activities and projects.

92. The **Protocol on Environment Impact Assessment in a Transboundary Context (Articles 10 on Final Decision on Implementation of a Proposed Activity and partly also 11 on Post-project analysis)** does include requirement regarding the final decision on the proposed activity and its transmission to the affected Parties, similarly to and thus coherently with those under the Espoo Convention (Article 6). The key elements concern the provision of taking the comments received into account by the Competent Authority when reviewing the final environmental impact assessment documentation and when making the final decision; providing the Competent Authority of the Affected Party as well as the Secretariat with the final decision along with the reasons and considerations on which it was based, including information on how the comments received were taken into account; and ensuring that these information are made available to those who submitted comments.

93. It may be concluded that the Tehran Convention and two Protocols foresee final decision requirements in a manner which is broadly coherent with the requirements of the Espoo Convention.

G. The Arctic Council

Introduction

94. The Arctic Sea, regulated by the **Arctic Council** established by the 1996 Ottawa Declaration, and its Working Group for the Protection of the Arctic Marine Environment²², has 8 Member States (Canada, Denmark, Finland, Iceland, Norway, Russian Federation, Sweden and United States of America), and 6 Arctic Council Permanent Participants (indigenous peoples’ organizations). It serves as a forum for promoting cooperation, coordination, and interaction among the Arctic States, with the involvement of the Arctic Indigenous

²² Unlike for the other marine regions, the protection and sustainable use of the Arctic Sea is not regulated by a regional seas convention but addressed within the framework of the Arctic Council and its Working Group for the Protection of the Arctic Marine Environment.

communities and other Arctic inhabitants on issues such as sustainable development and environmental protection.

95. In particular, the **working group on Protection of the Arctic Marine Environment (PAME)** operates across the domains of Arctic shipping, maritime pollution, marine protected areas, ecosystem approaches to management resources exploitation and development, and associations with the marine environment. It is tasked with producing guidelines and recommendations for policy improvement, with projects approved every two years by the Council. Two of its overarching objectives are fully coherent with the main scope of the current analysis:

- To determine the adequacy of applicable international/regional commitments and promote their implementation and compliance.
- To facilitate partnerships, programme and technical cooperation and support communication, reporting and outreach both within and outside the Arctic Council.

96. The Arctic Council has developed a framework for implementing an ecosystem approach to a comprehensive and integrated management of human activities based on the best available scientific, traditional and local knowledge about the ecosystem. The Arctic Council, an intergovernmental forum for collaboration, conducts environmental impact assessments and provides status reports, guidelines and recommendations, based on best available science and traditional and local knowledge. In fact, the Arctic Council aims at identifying and taking action on factors that are critical to sustainable ecosystems, including indigenous and local communities.

Environmental impact assessment requirement

97. The early 1990's witnessed the collective recognition by the Arctic states that the Arctic region is climatically and culturally unique and environmentally fragile. This inspired a Finnish-led, Arctic-wide effort in 1994 to develop Arctic Environmental Impact Assessment Guidelines that were approved in 1997 under the Arctic Environmental Protection Strategy, the predecessor of the Arctic Council. The guidelines are still worth visiting.

98. In addition, the Arctic Council's Sustainable Development Working Group has in May 2019 issued a **compendium of Good Practices for Environmental Impact Assessment and Meaningful Engagement in the Arctic**. The compendium formulates Good Practice Recommendations that encourage Arctic states, their authorities and private or public proponents to promote true dialogue and meaningfully engage relevant stakeholders; utilize Indigenous knowledge and local knowledge to complement scientific knowledge; build internal capacity to work in the Arctic context and provide resources to communities to meaningfully engage in environmental impact assessment; and strengthen circumpolar cooperation on transboundary environmental impact assessment (See Box 7).

Box 7: Recommendations on strengthening circumpolar cooperation on transboundary environmental impact assessment in the Arctic

A compendium of Good Practices for Environmental Impact Assessment and Meaningful Engagement in the Arctic formulated by the Arctic Council's Sustainable Development Working Group formulated, amongst others, the following recommendations to be actively used in the Arctic region by the Arctic states, their authorities and private or public proponents:

- Apply the principles of the UNECE Espoo Convention. The Arctic states' governments are encouraged to cooperate to give equal opportunity for the public to engage in environmental impact assessment on both sides of the border if a project is likely to have significant adverse transboundary impacts. Even though not all Arctic states are parties to the Espoo Convention, the principles of the Convention could be applied voluntarily on a circumpolar level by all.
- Draft agreements or Memorandums of Understanding to guide transboundary processes. Arctic states' governments are invited to discuss drafting bilateral or

multilateral agreements or memorandums of understanding that address the possibility for the affected state and its public to engage in the EIA of the state of project's origin for a more binding commitment between neighbors or the whole Arctic region. Such commitments may also be established between regions (for example territories) within a specific state. This is especially relevant in instances where each region has its own EIA framework or legislation.

- Strengthen cooperation under the Espoo Convention. Arctic states could initiate cooperation by forming an Arctic sub-region under the Espoo Convention and agree on joint activities to enhance transboundary cooperation within the Arctic region.

99. In addition, there are many activities and actions which directly or indirectly support environmental impact assessment, as per some examples listed below.

- The **project** 'Demonstration of rapid environmental assessment of pesticide-contaminated sites', experimenting the methods of Rapid Environmental Assessment for assessing the environmental and health risks of contamination caused by hundreds of old pesticides storage sites in Northern Russia
- **Guidelines** for preparing an Environmental Impact Assessment for activities related to the exploration, development, production, decommissioning and transport of hydrocarbons offshore Greenland.
- **Guidelines** for Environmental Impact Assessment for Seismic Activities in Greenland waters, covering the application, execution and reporting of offshore hydrocarbon activities (excluding drilling).
- **Environmental Impact Assessments reports for exploration drilling activities:** which have been developed to assist operators planning to conduct drilling operations within Greenland by providing information and explanation of the requirements contained in the Greenland Minerals Resources Act, and subordinate legislation.

100. Considering these examples, it may be concluded that while the Arctic Council does not define any legally binding requirements that would be similar to those under the Espoo Convention, it indirectly supports the specific environmental impact assessments in both national and transboundary settings.

Transboundary procedure requirements

(i) Notification of and consultation

101. The Arctic Council does not provide any indication of the notification and consultation under the environmental impact assessment procedure.

(ii) Environmental impact assessment documentation

102. The Arctic Council does not provide any indication of the preparation and contents of the environmental assessment documentation under the environmental impact assessment processes.

(iii) Public participation

103. The Arctic Council does not provide any specific indication for public participation under the environmental impact assessment process.

(iv) Final decision

104. The Arctic Council does not include any requirement regarding the final decision on the proposed activity or its transmission to the affected Parties that would be similar to those under the Espoo Convention (article 6).

III. RELEVANT PROVISIONS AND RECOMMENDED PRACTICE UNDER THE PROTOCOL ON SEA AND SELECTED REGIONAL SEAS CONVENTIONS AND BODIES - AND THEIR COHERENCE

A. Introduction

105. The present chapter briefly presents and evaluates the coherence between the key provisions and practice of the Protocol on Strategic Environmental Assessment to the Espoo Convention, on the one hand, and the Barcelona Convention and other regional seas conventions and their respective Protocols, on the other hand. It identifies relevant legal requirements under the selected regional sea conventions, which directly or indirectly imply strategic environmental assessment, as well as tools and instruments developed under them to facilitate the application of the treaty obligations and to promote good practice, pointing out similarities and differences. Boxes 8-10 highlight selected provisions and recommendations that are coherent with the Protocol on Strategic Environmental Assessment and include good practice elements that are relevant for marine regions.

106. For the purpose of the present document, the relevant provisions, decisions of the conferences of Parties, and guidelines under the regional sea conventions were evaluated against the main procedural requirements for strategic environmental assessment provided for by the Protocol on Strategic Environmental Assessment, as summarized in section B below. For details, please refer to the comparative table in a separate Annex 1- sheet 2 to the present document.

B. The Protocol on Strategic Environmental Assessment

107. The 2003 **Protocol on Strategic Environmental Assessment** (or **SEA Protocol**) is an international agreement that provides for legal obligations and a procedural framework for the implementation of strategic environmental assessment, requiring its Parties to evaluate the environmental consequences of their official draft plans and programmes for a wide range of proposed activities across the economic sectors which are likely to have a significant environmental, including health, effects (article 4).

108. The Protocol refers throughout to “the environment, including health”. To avoid repetition, the present chapter refers only to the environment, but this should always be understood to include health.

109. In addition to the regional sea conventions, the European Union legislation on maritime spatial planning²³ recognizes the environmental assessment as an important tool to integrate environmental considerations in the preparation and adoption of plans and programs, especially in cases where the management plans of the maritime space may have significant effects on the environment (recalling the Strategic Environmental Assessment) as well as in cases of presence of protected natural areas/Natura 2000 sites.

110. Strategic environmental assessment is undertaken much earlier in the decision-making process than project environmental impact assessment, and it is therefore seen as a key tool for sustainable development. The Protocol also provides for extensive public participation in government decision-making in numerous development sectors²⁴.

111. In force since 2010, the SEA Protocol applies to (currently 33)²⁵ Parties across the Caucasus, Central Asia, Europe and North America, including the European Union²⁶. The Protocol is open to all member States of the United Nations. The 33 Parties to the Convention are: Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus,

²³ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning.

²⁴ For more information, please visit the official site <https://unece.org/introduction-sea-protocol>.

²⁵ Up to date information on the status of ratification of the Convention is available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4-b&chapter=27&clang=_en

²⁶ The European legislation on environmental assessments, and in particular the Strategic Environmental Assessment Directive 2001/42/EC of 27 June 2001 is aligned with the SEA Protocol.

Czechia, Denmark, Estonia, European Union, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland.

112. The preamble of the SEA Protocol recognizes that the “*strategic environmental assessment have an important role in the preparation and adoption of plans, programmes, and, to the extent appropriate, policies and legislation, and that the wider application of the principles of environmental impact assessment to plans, programmes, policies and legislation will further strengthen the systematic analysis of their significant environmental effects*”. However, unlike the Convention, which applies only to proposed activities that are likely to cause significant adverse impact across the national frontiers, the Protocol applies mainly to domestic plans and programmes that set framework for activities requiring an environmental impact assessment under national legislation. Its Article 10 is dedicated to **transboundary consultation**, mirroring the process established in the Espoo Convention, requiring that “where a Party of origin considers that the implementation of a plan or programme is likely to have significant transboundary environmental effects or where a Party likely to be significantly affected so requests”, the affected Party is notified “as early as possible before the adoption of the plan or programme”.

113. The strategic environmental assessment process provided for by the SEA Protocol has distinct main stages, that comprise the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme (article 2.6)²⁷.

114. For the purpose of the analysis of coherence between the strategic environmental assessment related provisions stipulated by the SEA Protocol and the regional seas conventions, the key procedural requirements of the SEA Protocol²⁸ complemented also with some recommended good practice, tools and actions for their effective practical application²⁹ can be summarized as follows:

- (a) **Strategic Environmental Assessment requirement:** a Party must establish a strategic environmental assessment procedure within its national regulatory framework for plans and programmes referred to in article 4 paragraphs 2, 3 and 4 of the Protocol, which are likely to have significant environmental effects (articles 3 (1) and (4), in accordance with the procedure set out in articles 5–10).
- (b) **Requirement to prepare the environmental report:** requirement to identify, describe and evaluate the likely significant environmental effects of implementing the plan or programme and its reasonable alternatives (article 7 (2) and Annex IV).
- (c) **Requirement to notify countries likely to be affected:** the Party of origin has to notify the affected Party if it considers that implementation of the proposed plan or programme is likely to have significant transboundary environmental effects, or if so requested by another Party likely to be significantly affected (article 10).
- (d) **Requirement to consult countries likely to be affected:** should transboundary effects be likely, the Protocol provides for transboundary consultations, which follow if desired and indicated by the affected Party (article 10).
- (e) **Public participation requirement.** The Protocol requires that there are early, timely and effective opportunities for public participation, providing the opportunity for the public concerned (which has to be identified, including relevant NGOs) to express their opinion on the draft plan or programme and the environmental report, within a

²⁷ See the *Guidance on the practical application of the Espoo Convention*, from 2006, available at: <https://unece.org/info/Environment-Policy/Environmental-assessment/pub/21590>

²⁸ The full text of the key provisions of the SEA Protocol is presented in table 1, sheet 2, in annex I to the present document.

²⁹ See the *Resource Manual to Support Application of the UNECE Protocol on Strategic Environmental Assessment*, from 2012, which does not constitute formal legal or other professional advice, but instead provides guidance to those applying the Protocol or supporting others in doing so. The Manual is available at: <https://unece.org/DAM/env/documents/2011/eia/ece.mp.eia.17.e.pdf> Additional information and guidance material available at: <https://unece.org/publications/environmental-assessment>

reasonable time frame (article 8 and Annex V; in case of transboundary impacts, article 10 (4)).

- (f) **Requirement regarding the final decision**, ensuring that the comments and objections of the public concerned and the environmental and health authorities - including, as relevant, in likely affected Parties - are taken into account in the final decision, and that they are informed accordingly, and that the plan or programme is made available to them together with a statement summarizing how the environmental considerations have been integrated into it, how the comments received have been taken into account and the reasons for adopting it in the light of the reasonable alternatives considered (article 11).

C. The Barcelona Convention and its Protocols

1. Introduction

115. Referring to what has already been said in Chapter II, the following analysis focuses on the Barcelona Convention and its Protocol on Integrated Coastal Zone Management in the Mediterranean that contain provisions that bear certain similarities with those of the SEA Protocol.

2. Strategic Environmental Assessment requirement

116. The **Barcelona Convention and six out of seven of its Protocols** (other than the general principles and requirements specified in the chapter on environmental impact assessments, which are referred here) do not request the Contracting Parties to undertake strategic environmental assessment. It may be also useful to note that 14 Mediterranean States (Algeria, Egypt, France, Greece, Israel, Lebanon, Libya, Monaco, Morocco, Syrian Arab Republic, Tunisia and Turkey) are currently not Parties to the SEA Protocol.

117. However, the **Integrated Coastal Zone Management Protocol** to the Barcelona Convention requires Contracting Parties to undertake strategic environmental assessment procedure, tailoring it to the needs of the specific sector being regulated. In particular, **Article 6** on general principles also includes that of a preliminary assessment for the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones; and then **Article 19 (2)** requiring the Parties to formulate, as appropriate, a strategic environmental assessment of plans and programmes affecting the coastal zone, taking into consideration the specific sensitivity of the environment and the interrelationships between the marine and terrestrial parts of the coastal zone, as well as the cumulative impacts on the coastal zones and their carrying capacities.

118. It is also worth to mention the **Common Regional Framework for the implementation of the Integrated Coastal Zone Management in the Mediterranean**, adopted by Decision IG.23/7 in 2017³⁰, which is the strategic instrument meant to facilitate the implementation of the Integrated Coastal Zone Management Protocol; as well as the **Conceptual Framework for Marine Spatial Planning in the Mediterranean**, adopted with the same Decision. They foresee the application of strategic environmental assessment to support the implementation of Integrated Coastal Zones Management principles (Article 6 of the Integrated Coastal Zones Management Protocol), including the need to take into account all elements of natural and cultural systems in an integrated manner; the application of the ecosystems approach to spatial planning on the preparation of policies and strategies; the timely participation in decision-making, ensuring that economic activities minimize the use of natural resources and take into account the needs of future generations.

119. It should be also noted that the **Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States**³¹ drafted under the **Integrated Coastal Zone Management Protocol**, contain recommendations for the implementation of transboundary

³⁰ The Common Regional Framework for the implementation of the Integrated Coastal Zone Management in the Mediterranean was adopted by Decision IG.23/7, COP 20, Tirana, Albania, December 2017.

³¹ See the draft *Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States*, Chapter 4, pg 8.

procedures that are coherent with the provisions of the SEA Protocol. These guidelines, not yet formally adopted, as already specified, have been so far used for training purposes.

120. Considering these binding and non-binding provisions, it may be argued that the Protocol on Integrated Coastal Zone Management to the Barcelona Convention includes provisions that require the Contracting Parties to undertake environmental assessments, including the strategic environmental assessment of plans and programmes affecting the coastal zone, referring to the geographical area of the whole maritime waters of the Mediterranean Sea (Barcelona Convention, Article 1), including the transboundary aspects. However, it does not specify the exact plans and programmes in such a clear and binding manner as stipulated in the Protocol on SEA.

121. The national reports submitted by the Contracting Parties through the reporting system (Article 26 of the Barcelona Convention), on the latest considered biennium (2018/2019) stated having in place Strategic Environmental Assessment laws and regulations, thereby activities or projects which are likely to cause a significant adverse impact on the marine environment are subject to a Strategic Environmental Assessment.

122. Nevertheless, strategic environmental assessments are predominantly used in the European Union members and candidates, even though their importance is recognized by all the Contracting Parties. As highlighted in the Guidelines, “available reports/relevant documents do not, however, focus on transboundary aspects; therefore, limited information is available on how the Mediterranean countries cooperate on notification, exchange of information and consultations in assessing transboundary impacts of projects, plans or programmes”.

3. Transboundary procedure requirements

(i) Notification of and consultation

123. The **Barcelona Convention** and **six out of seven of its Protocols** do not provide any indication of the notification and consultation under the strategic environmental assessment procedure.

124. Only the **Protocol on Integrated Coastal Zone Management**, in its article 29 (Transboundary Environmental Assessment) refers to these provisions and requires the Parties, before authorizing or approving plans and programmes that are likely to have a significant adverse effect on the coastal zones of other Parties, to cooperate by means of notification, exchange of information and consultation in assessing the environmental impacts of such plans and programmes. To this end, the Parties are called to cooperate in the formulation and adoption of appropriate guidelines for the determination of procedures for notification, exchange of information and consultation at all stages of the process.

125. The Parties are also called, where appropriate, to enter into bilateral or multilateral agreements for the effective implementation of the provisions of the Protocol.

126. It is also worth noting that the cited **Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States** contain specific recommendations on notification (see Box 8) and consultation (see Box 9).

Box 8: Excerpts from Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States. drafted under the Integrated Coastal Zone Management Protocol

The guidelines cover the following aspects on notification procedures.

6.2 BASIC REQUIREMENTS

The country of origin should notify the affected country/countries as early as possible, but no later than when informing its own public. Notification is necessary unless significant adverse transboundary impact of the considered plan or programme can be excluded with certainty. Timely notifications are important in order to engage the affected country from early stages of the process and to enable a possibility to capture the most relevant and up-to-date information that may be needed for the assessments.

Potentially affected countries have the right to request notification (if the country of origin fails to notify). This right should not be limited to cases of mandatory strategic environmental assessment (as stipulated in the applicable regulations) but should also apply to cases where screening is conducted to determine the need for the assessment. If there is any doubt as to the absence of significant adverse environmental effects, obligation to notify/the right to request notification must be observed and the assessment procedures be carried out.

As a minimum, notification should contain:

- a. Information on the draft plan/programme, including any available information about possible transboundary impacts.
- b. Information about the nature of the decision to be taken/decision-making procedures.
- c. Period within which the notified country can confirm its intention to participate in the decision-making.

Notification should be sent to the responsible (competent) authority for the strategic environmental assessment procedure, which may coincide with official points of contact for the SEA Protocol (in the Parties to UNECE agreements). Barcelona Convention and/or Integrated Coastal Zone Management Protocol Focal Points (as appropriate) should be informed of the notification, and for the Barcelona Convention Contracting Parties that have not ratified the UNECE agreements, they may act as a principal recipient of the notification together with nationally designated competent authorities.

Notification should be translated into the language used in the affected country; alternatively, English, French, Arabic or other languages shared by the concerned countries could be used. The language of notification and of any subsequent exchange of information should be agreed among the concerned countries at the onset of the process (or through the applicable bilateral or multilateral agreements). A cost-effective approach should be applied: language barriers should not hinder effectiveness of the transboundary procedures (i.e. all the key information in all the assessment steps subject to transboundary cooperation should be translated) whereas translation costs should be kept as low as possible.

The affected countries should respond to the notification in a timely manner, to state their intention to participate in the transboundary procedure or to decline participation. Providing a timely negative response is important for the country of origin to proceed with national procedures without delay. Absence of a timely response may be understood as a lack of interest to take part in the transboundary procedure.

The competent authority of the country of origin may send a request to the competent authority of the affected country to provide reasonably obtainable information relating to the potentially affected environment, once the affected country has confirmed its participation. The affected country should provide such information promptly.

GOOD PRACTICE RECOMMENDATIONS

- A. Informal pre-notification contacts (if formal arrangements are not in place) are highly recommendable.
- B. It is preferred that affected countries are notified before scoping.
- C. Country of origin may start preliminary consultations (unless bilateral/ multilateral agreements on administrative arrangements are already in place) with the affected countries responding positively to notification to plan and agree on next steps, including: provision of relevant documentation; definition of the time, form and number of consultations; identification of the persons responsible and their contact information, and similar. In this process, it is helpful to share among concerned countries concise information on the national strategic environmental assessment procedures, including on the key steps for consultation and decision-making, and on minimum public consultation time requirements.
- D. At the request of the country of origin, the potentially affected country may also (in addition to environmental) provide information on the socioeconomic situation in the areas that may be affected by a significant adverse transboundary impact.

- E. Setting up of a dedicated web-page with information on the strategic environmental assessment process, highlighting key bodies that need to be involved/contacted for transboundary consultations, including NGOs, is recommended.
- F. The list of points of contact for notification (including SEA Protocol points of contact and national competent authorities in the countries that are not Parties to UNECE agreements) should be kept on the Barcelona Convention website/in the MAP Info-system.

Box 9: Excerpts from Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States. drafted under the **Integrated Coastal Zone Management Protocol**

The guidelines cover the following aspects on consultations procedures.

6.4 BASIC REQUIREMENTS

Through their competent authorities, countries participating in the transboundary environmental assessments need to jointly ensure that a possibility for effective participation of the relevant authorities and the public is provided in the procedure. Important questions to be agreed upon in order to ensure effective consultations include (but are not limited to): distribution of tasks and responsibilities among concerned countries; ways and means to disseminate information and ensure its accessibility; what are reasonable timeframes to allow for submission of comments; how to inform the public and authorities of the affected country; and what are the appropriate means and timeframes to provide for public participation.

The concerned countries should ensure that the public of the country of origin and of the affected country is informed and provided with possibilities of commenting on or objecting to the proposed project, plan or programme. The concerned countries are responsible for distributing the strategic environmental assessment documentation to the authorities and public in areas likely to be affected and for submitting any comments to the competent authority in the country of origin. The comments should be submitted within a reasonable timeframe and before the final decision is made.

Concerned countries should ensure that the public in the areas likely to be affected is informed in a timely, adequate and effective manner, has access to the assessment documentation and a possibility to provide comments, in writing or during public hearings. The following requirements should be met to guarantee effective public hearings (which are usually the main form of public consultations):

- An agreement between concerned countries is needed on whether public hearings should be held in the country of origin, in the affected country or in both. The country of origin can hold public hearings on the territory of the affected country on the basis of bilateral and multilateral agreements or ad hoc arrangements. Another option is to organise public hearings in the country of origin.
- Translation/interpretation needs to be provided whenever necessary.
- The relevant authorities, project proponents or plan/ programme developers and teams tasked with preparation of environmental assessment documentation should all be present.

Outcomes of the consultations, including oral and written comments and agreements reached, should be noted properly for the purpose of taking them into account in the final decision-making by the country of origin.

The country of origin ensures that comments received from the public and the outcomes of the consultations among the authorities are duly taken into account in the final decision on the proposed plan or programme.

GOOD PRACTICE RECOMMENDATIONS

- A. Timely and effective transboundary consultations should preferably be supported through bilateral or multilateral agreements, potentially also at sub-regional level.

- B. Prior knowledge of different consultation procedures in the concerned countries may support the design of an effective consultation program.
- C. The country of origin should initiate early consultations with the affected country to allow enough time to the latter to identify effective tools (including media) to engage the public and appropriate format of information to be provided.
- D. Active involvement of the public should be encouraged by providing clear time-frames for public consultations, appropriate announcements/dissemination of information, and provision of good quality/sufficient level of information in an appropriate format. In preparing public consultation schedules, information on national/public holidays and events that could influence consultations should be taken into account.

127. Considering the above it may be concluded that, while the Barcelona Convention does not provide any requirement, the **Protocol on Integrated Coastal Zone Management to the Barcelona Convention** requires the Contracting Parties to promote cooperation in strategic environmental assessment procedures through notification, exchange of information and consultation in a manner which is broadly coherent with the requirements of the SEA Protocol. It nevertheless does not define the content and the specific arrangements for such notification in a sufficient detail as stipulated by the Article 10 (1) and (2) of the SEA Protocol.

128. Nevertheless, the Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States, elaborated within the framework of the **Integrated Coastal Zone Management Protocol**, contains more detailed provisions that could be used in a voluntary basis to facilitate this process.

(ii) Environmental Report

129. The **Barcelona Convention** and **its Protocols** do not provide any indication of the preparation and contents of the environmental report under the strategic environmental assessment processes.

(iii) Public participation

130. **Article 15 (1)(2)** of the **Barcelona Convention** requires the Contracting Parties to “ensure that their competent authorities shall give to the public appropriate access to information on the environmental state” and “on activities or measures adversely affecting or likely to affect it”; and that the participation of the public in relevant decision-making processes is ensured.

131. Nonetheless, the **Barcelona Convention** and **six out of seven of its Protocols** do not provide any indication on a specific manner for public participation under the strategic environmental assessment process.

132. Only the **Protocol on Integrated Coastal Zone Management**, listing the general principles in **Article 6 (d)**, requests Parties to implement the Protocol guided by the principle, among others, of “appropriate governance allowing adequate and timely participation in a transparent decision making process by local populations and stakeholders in civil society concerned with coastal zones”. Moreover, **Article 14**, which is dedicated to “Participation”, states that the Parties shall ensure appropriate participation in the phases of the formulation of coastal and marine strategies, plans and programmes, providing information in an adequate, timely and effective manner, and ensuring the availability to any stakeholder of mediation or conciliation procedures and a right of administrative or legal recourse.

133. It may be concluded that the Barcelona Convention and one out of its seven Protocols foresee public participation requirements in a manner which is broadly coherent with the requirements of the SEA Protocol. Nevertheless, again, they do not give the same grade of details as stipulated by the SEA Protocol, Article 8, Annex V and Article 10 (4).

(iv) Final decision

134. The **Barcelona Convention** and its Protocols do not include any requirement regarding the final decision or its transmission to the affected Parties that would be similar to those under the SEA Protocol (article 11).

D. The Helsinki Convention

1. Introduction

135. Referring to what has already been said in Chapter II, it should be specified that all the Contracting Parties of the **Helsinki Convention**, aside from the Russian Federation, are Parties to the Protocol to the Espoo Convention. Eight are also European Union member States, and consequently, with the same European Union, also bound by the European Union Strategic Environmental Assessment Directive.

136. The following analysis focuses on the Helsinki Convention and its Annexes, as well as its adopted Guidelines that contain provisions that bear certain similarities with those of the SEA Protocol.

2. Strategic Environmental Assessment requirement

137. The **Helsinki Convention and its Annexes** do not have specific provisions on strategic environmental assessments.

138. However, the **VASAB-HELCOM Guidelines for the implementation of ecosystem-based approach in Maritime Spatial Planning in the Baltic Sea area**³² should be mentioned, which highlight the role of strategic environmental assessment as an important tool for implementing the ecosystem-based approach in maritime spatial planning. These guidelines also refer to the applicable European Union law, specifically to the Directive 2001/42/EC on strategic environmental assessment³³, that requires the assessment of maritime spatial plans that are being prepared based on the Directive 2014/89/EU establishing a framework for maritime spatial planning.

139. Considering these non-binding provisions, it may be concluded that the Helsinki Convention and its Annexes do not include any requirement (and the related specific step) that would be similar to those under the SEA Protocol, but indirectly supports the application of the SEA Protocol through its technical guidelines that provide reference for the specific strategic environmental assessments in both national and transboundary settings.

3. Transboundary procedure requirements

(i) Notification of and consultation

140. The **Helsinki Convention and its Annexes** do not provide any indication of the notification and consultation under the strategic environmental assessment procedure.

141. With regards to transboundary consultations, **Article 7(2)** of the **Helsinki Convention** provides for the obligation to enter into consultations with any Contracting Party which is likely to be affected by transboundary impact, whenever consultations are required by international law or supra-national regulations applicable to the Contracting Party of origin. Moreover, **Article 7(3)** of the Convention could be used as a framework for transboundary cooperation between parties that share transboundary waters within the catchment area of the Baltic Sea to facilitate this process.

142. In addition, the **VASAB-HELCOM Guidelines on Transboundary Consultations, Public Participation and Cooperation**³⁴ which give recommendations to the competent authorities in the Baltic Sea Region on how to facilitate cooperation amongst the Baltic Sea Countries under the Espoo Convention and its Protocol and strengthen the scope of consultations. These guidelines that can be used voluntarily are shortly presented in Box 10.

Box 10: Excerpts from VASAB-HELCOM Guidelines on transboundary consultations, public participation and cooperation

³² The VASAB-HELCOM Guidelines were adopted by the 72nd meeting of VASAB CSPD/BSR on 8 June 2016 and approved by HELCOM HOD 50-2016 on 15-16 June 2016. The Guidelines are available at:

https://helcom.fi/media/documents/Guideline-for-the-implementation-of-ecosystem-based-approach-in-MSP-in-the-Baltic-Sea-area_June-2016.pdf

³³ See note above.

³⁴ See note above.

The guidelines cover the following aspects:

- i) consultations between marine spatial planning authorities of neighbouring countries and/or those countries directly affected by Maritime Spatial Planning and the related public participation process that should take place concerning transboundary aspects during the process of drafting a maritime spatial plan.
- ii) cooperation between marine spatial planning authorities at pan-Baltic scale on issues affecting most or all of the Baltic Sea and/or the level involving most or all countries in Baltic Sea region as well as the process foreseen to ensure effective stakeholder engagement at a more strategic level.

Besides regulating the marine spatial planning process, the guidelines suggest to broaden the scope of consultation under both treaties to deal with a broader range of marine spatial planning issues, in particular socio-economic ones. They also highlight that timing of formal transboundary consultations remains a critical issue as it gives neighbouring countries a chance to understand the essence of the envisaged plan, and a real chance to contribute not only to the planning provisions/solutions but also to the planning process.

In particular, item 3.2 of these guidelines proposes the following steps:

- a) All Baltic Sea countries should start consulting neighbouring countries at the early stage of preparation of a maritime spatial plan as a part of the routine marine spatial planning process. If the impact of the plan is of pan-Baltic nature, all Baltic Sea region countries and the relevant pan-Baltic organisations should be informed. This applies to all national, but also to sub-national maritime spatial plans if these are expected to have cross-border impacts.
- b) The competent authorities should inform their neighbouring counterparts of their intention to start a marine spatial planning process. This should be done in the form of a formal letter/e-mail in English (or national language of the addressees). The information should be sent to the countries affected, as well as to the relevant pan-Baltic organisations.
- c) The competent authorities clearly state the intention and the nature of the maritime spatial plan, so other countries can understand the possible influence and the impacts of the plan.
- d) The competent authorities (preferably via National marine spatial planning contact points) ask for relevant documents and any other information, if available (or public sources of such information) from the neighbouring countries. The requested documents and information should have an impact on the development of the envisaged plan, such as environmental data and information on human uses of the sea, in particular with cross-border elements (e.g. issues suggested under Article 8 of Directive 2014/89/EU of the European Parliament and of the Council).
- e) The competent authorities (preferably via National marine spatial planning contact points) also inform the neighbouring countries, once the stakeholder process begins in order to give the neighbouring country the option of installing a parallel domestic stakeholder process (or public participation) on issues of cross-border significance. It is suggested that the information is being given in the form of a letter/e-mail in English (or national language of the addressees) describing the location of the plan, its main objectives and possible cross-border impacts.

In addition, Section 3.5 of these guidelines on Strengthening informal transboundary cooperation processes recommends that informal routes of communication should be established between the relevant authorities before a maritime spatial plan is drafted, as this can facilitate the informal supply of information outside the narrow confines of (potentially restrictive) formal channels.

143. It may be concluded that while the Helsinki Convention does not define the contents of the strategic environmental assessment notification nor of consultation, with a merely generic referral to the last one, the cited Guidelines could be used in a voluntary basis to facilitate this process, at least in the field of maritime spatial planning.

(ii) Environmental Report

144. The Helsinki Convention and its Annexes do not provide any indication of the preparation and contents of the environmental report under the strategic environmental assessment processes.

(iii) Public participation

145. Apart from **Article 17**, titled 'Information to the public', requiring the Contracting Parties to ensure that information on the condition of the Baltic Sea and the waters in its catchment area, measures taken or planned to be taken to prevent and eliminate pollution and the effectiveness of those measures are made available to the public, at all reasonable times, with reasonable facilities; the **Helsinki Convention and its Annexes** do not provide any specific indication for public participation under the strategic environmental assessment process.

146. Nevertheless, **VASAB-HELCOM Guidelines on Transboundary Consultations, Public Participation and Cooperation**³⁵ (see Box 10 above) suggest that the public participation process, at the instigation of the maritime spatial planning authorities of neighbouring countries, should take place earlier than required by the SEA Protocol and that it is necessary to start this process before the maritime spatial plan is fully drafted.

147. It may be concluded that while the Helsinki Convention does not foresee specific public participation requirements under the strategic environmental assessment process, the concerned process in a certain way may be argued from the cited Guidelines, that could be used in a voluntary basis to facilitate the process foreseen by articles 8 and 10 (4) of the SEA Protocol, at least in the field of maritime spatial planning.

(iv) Final decision

148. The **Helsinki Convention and its Annexes** do not include any requirement regarding the final decision or its transmission to the affected Parties that would be similar to those under the SEA Protocol (article 11).

E. The OSPAR Convention

1. Introduction

149. Referring to what has already been said in Chapter II, it should be specified that all the Contracting Parties of the **OSPAR Convention**, aside from Belgium, France, Iceland, Switzerland and the United Kingdom, are Parties to the Protocol to the Espoo Convention. Eleven Parties are also European Union member States, and consequently, with the same European Union, also bound by the European Union Strategic Environmental Assessment Directive.

150. The following analysis focuses on the OSPAR Convention and related decisions, including the **OSPAR's North-East Atlantic Environment Strategy 2030**³⁶, that contain principles that bear certain similarities with those of the SEA Protocol.

2. Strategic Environmental Assessment requirement

151. Aside from the provision in general terms in the **OSPAR Convention, Recital 7**, which provides that the Contracting Parties recall the relevant provisions of customary international law reflected in Part XII of the United Nations Law of the Sea Convention (*ed. notes*, thus, including Section 4. Monitoring and Environmental Assessment, Articles 206 on Assessment of potential effects of activities, and 205 on Publication of reports); the **OSPAR Convention and its Annexes** do not have specific provisions on strategic environmental assessments.

³⁵ See note above.

³⁶ The Strategy of the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic 2030 (Agreement 2021-01: North-East Atlantic Environment Strategy, replacing Agreement 2010-03. OSPAR 21/13/1, Annex 22). See: <https://www.ospar.org/documents?v=46337>

152. However, the **North-East Atlantic Strategy 2030** for implementation of the OSPAR Convention in the period 2020-2030 in its sub strategic objective 5.03 (S5.03) foresees that, by 2024, OSPAR will establish a mechanism to provide that where Contracting parties are authorizing human activities under their jurisdiction or control that may conflict with the conservation objectives of OSPAR Marine Protected Areas in the Areas Beyond National Jurisdiction, these activities are subjected to (an Environmental Impact Assessment or) Strategic Environmental Assessment. The North-East Atlantic Strategy 2030 also, aims, inter alia, to strengthen cooperation with the Helsinki Convention, the Mediterranean Action Plan/Barcelona Convention, the Bucharest Convention and other regional organisations on the implementation of shared goals.

153. Considering these non-binding provisions, it may be concluded that the **OSPAR Convention and its Annexes** do not include any requirement (and the related specific step) that would be similar to those under the SEA Protocol, but indirectly supports the application of the SEA Protocol through the principles on which it is based and the recall, in Strategy 2030, that provide reference for the specific strategic environmental assessments in transboundary settings.

3. Transboundary procedure requirements

(i) Notification of and consultation

154. The **OSPAR Convention and its Annexes** do not provide any indication of the notification and consultation under the strategic environmental assessment procedure.

(ii) Environmental Report

155. The **OSPAR Convention and its Annexes** do not provide any indication of the preparation and contents of the environmental report under the strategic environmental assessment processes.

(iii) Public participation

156. Apart from **Article 9 on access to information**, requiring the Contracting Parties to ensure that their competent authorities shall make available the information on activities or measures likely to affect the maritime area to any natural or legal person, (limited to) “in response to any reasonable request”; the **OSPAR Convention and its Annexes** do not provide any specific indication for public participation under the strategic environmental assessment process.

(iv) Final decision

157. The **OSPAR Convention and its Annexes** do not include any requirement regarding the final decision or its transmission to the affected Parties that would be similar to those under the SEA Protocol (article 11).

F. The Tehran Convention and its Protocols

1. Introduction

158. Referring to what has already been said in Chapter II, the following analysis focuses on the **Tehran Convention and its Protocols**, to verify if and in what extend are envisaged principles that bear certain similarities with those of the SEA Protocol.

2. Strategic Environmental Assessment requirement

159. Apart from **Article 4 of the Protocol on Land-based Pollution to the Tehran Convention**, which requires in general terms that environmental factors are thoroughly taken into account in the development of relevant plans and programmes; the **Tehran Convention and its Protocols** do not provide for specific provisions on strategic environmental assessments.

3. Transboundary procedure requirements

(i) Notification of and consultation

160. A part a general statement in **Article 18.1 of the Teheran Convention** on cooperation between the Contracting Parties in formulating, elaborating and harmonising rules, standards, recommended practices and procedures consistent with this Convention and with the account of requirements, commonly used in international practice, in order to prevent, reduce and control pollution of and to protect, preserve and restore the marine environment of the Caspian Sea; the **Teheran Convention and its Protocols** do not provide any indication of the notification and consultation under the strategic environmental assessment procedure.

(ii) Environmental Report

161. The **Teheran Convention and its Protocols** do not provide any indication of the preparation and contents of the environmental report under the strategic environmental assessment processes.

(iii) Public participation

162. Apart from **Article 21.2 on exchange of and access to information**, requiring the Contracting Parties to ensure public access to environmental conditions of the Caspian Sea, measures taken or planned to be taken to prevent, control and reduce pollution of the Caspian Sea in accordance with their national legislation and taking into account provisions of existing international agreements concerning public access to environmental information; the **Teheran Convention and its Protocols** do not provide any specific indication for public participation under the strategic environmental assessment process.

(iv) Final decision

163. The **Teheran Convention and its Protocols** do not include any requirement regarding the final decision or its transmission to the affected Parties that would be similar to those under the SEA Protocol (article 11).

G. The Arctic Council

1. Introduction

164. Referring to what has already been said in Chapter II, it should be specified that the Arctic states of Norway, Finland, Sweden and Denmark are Parties to the Protocol to the Espoo Convention. Four are also European Union member States, and consequently also bound by the European Union Strategic Environmental Assessment Directive.

165. The following analysis focuses on the **Arctic Council**, to verify if and in what extend are envisaged principles that bear certain similarities with those of the SEA Protocol.

2. Strategic Environmental Assessment requirement

166. The **Arctic Council** itself does not conduct nor have specific provisions or any requirement (and the related specific step) on strategic environmental assessments that would be similar to those under the SEA Protocol.

167. With regard to policy and practice of environmental assessment, all Arctic states have in principle established national environmental assessment systems, and some have also signed international treaties on transboundary environmental assessment.

168. In theory, by having adopted regulations for strategic environmental assessment in their national legal systems, Arctic states are obligated to carry out environmental assessments for overarching policies, plans and programmes that could potentially harm their Arctic environments. However, the established strategic environmental assessments legal systems vary among Arctic countries, as does also concrete strategic environmental assessments application (Koivurova 2008³⁷).

169. As stated in Article 2.7 of the Convention, strategic environmental assessments should be carried out for policies, plans and programmes in transboundary contexts. However, the

³⁷ Koivurova T 2008 Transboundary environmental assessment in the Arctic *Impact Assess. Project Appraisal* 26 265–75

use of strategic environmental assessments for such strategic actions above the individual project level was here expressed as discretionary.

3. Transboundary procedure requirements

(i) Notification of and consultation

170. The **Arctic Council** does not provide any indication of the notification and consultation under the strategic environmental assessment procedure.

(ii) Environmental Report

171. The **Arctic Council** does not provide any indication of the preparation and contents of the environmental report under the strategic environmental assessment processes.

(iii) Public participation

172. The **Arctic Council** does not provide any specific indication for public participation under the strategic environmental assessment process.

(iv) Final decision

173. The **Arctic Council** does not include any requirement regarding the final decision or its transmission to the affected Parties that would be similar to those under the SEA Protocol (article 11).

IV. INFORMATION GAPS, DEVELOPMENT NEEDS, FOCUS AREAS FOR FUTURE COOPERATION, AND FURTHER IMPLEMENTATION STEPS

A. Information gaps

174. The present analysis is constrained primarily by a limited information on the implementation arrangements for the key existing provisions requiring environmental impact assessment, transboundary information sharing or consultations, and application of strategic environmental assessment in the respective marine regions – such as the actual transposition of the Article 4.3.d. of the Barcelona Convention and Article 19(2) of its Protocol on Integrated Coastal Zone Management. While the reporting mechanism under the Barcelona Conventions suggests a full compliance, it may be useful to undertake a deeper examine of the actual provisions adopted by its Contracting Parties to promote cooperation on the basis of notification, exchange of information and consultation in case of transboundary Environmental Impact Assessment (Article 4.3.d).

175. In addition, for the purposes of the separate compilation of good practice it may be also useful to again invite the Parties to the Espoo Convention and the Protocol on SEA to share their practical examples on its application in the Arctic Sea and the Mediterranean Sea. Currently, the analysis of the information provided by the Parties and publicly available documents on internet was able to identify only several practical case studies located in the Baltic Sea and the North-East Atlantic. This fact may well reflect the scope of work on promoting transboundary environmental impact assessment and strategic environmental assessment in these marine regions.

B. Development needs that would benefit from cooperation efforts

176. The following table offers an updated summary overview of potential cooperation activities based on the ideas shared by the regional seas conventions/commissions for possible cooperation activities with the Espoo Convention and its Protocol on SEA, and outcome of their preliminary coherence analysis:

Initial ideas for cooperation	Barcelona Convention	Helsinki Convention	OSPAR Convention	Tehran Convention
General guidance/exchange of experience on procedures and institutional arrangements for Transboundary EIA and SEA	<p>Review of the practical arrangements for the application of the Art 4.3.(c) and (d) of the Barcelona Convention and, if needed, strengthen the Compliance Committee's capacities to assess compliance with the Convention and its Protocols, as appropriate.</p> <p>Cooperate on the implementation of the Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean states and assist with their practical application through training and exchange of experience, in particular for the benefit of the southern Mediterranean countries</p>	Status of implementation of the relevant Recommendations, Guidelines and other related EIA and SEA documents within different RCSs	Cross-regional collaboration on the application of EIA/SEA.	<p>Designation of the national authorities by the Contracting Parties under the EIA Protocol</p> <ul style="list-style-type: none"> • Standard notification/communication forms and procedures. • Review and harmonization of national legislation. • Procedures for consultation, transparent decision making and post project analysis • Public consultation procedures. • Procedures for dispute settlement. • Inventory of proposed activities listed in Annex I to the EIA Protocol
Assessment of likely adverse impacts (of plans, programmes or activities) on the areas beyond national jurisdiction	This is an area that will merit particular attention in the future		Mechanism to provide for EIA/SEA of activities that may conflict with the conservation objectives of MPAs in Areas Beyond National Jurisdiction	
SEA in marine spatial planning	Transboundary EIA/SEA for the implementation of	The Regional MSP Roadmap	Explore the potential future role of EIA/SEA	

	integrated coastal zone management and marine spatial planning at sub-regional level in the Mediterranean	2021-2030 ³⁸ (e.g. under Objective 3 framework on applying SEA), HELCOM Recommendation 24/10 ³⁹ on Implementation of integrated coastal management and maritime spatial planning in the Baltic, Guidelines on transboundary consultations, public participation and co-operation (and other MSP related documents and processes)	in regional-scale ecosystem-based management.	
EIA/SEA related to pollution prevention efforts	Application of Offshore Protocol EIA Guidelines in a transboundary context Transboundary EIA/SEA for sub-regional marine oil pollution contingency plans	EIA/SEA related pollution prevention efforts that could consider flagship approaches, such as the regional HELCOM nutrient reduction scheme ⁴⁰ (updated and reinforced in the 2021 ⁴¹) maximum allowable inputs of nutrients (indicating the maximum level of inputs of water and airborne nitrogen and phosphorus to the Baltic Sea sub-basins) and the Nutrient input ceilings (concerning also	Share/exchange guidelines and other documents which can support EIA/SEA decision-making	Capacity building workshops with test cases/demonstration projects

³⁸ <https://helcom.fi/wp-content/uploads/2021/10/Regional-Maritime-Spatial-Planning-Roadmap-2021-2030.pdf>

³⁹ Amended in 2019: <https://helcom.fi/wp-content/uploads/2019/06/Rec-24-10-R.pdf>

⁴⁰ <https://helcom.fi/baltic-sea-action-plan/nutrient-reduction-scheme/>

⁴¹ <https://helcom.fi/media/publications/Nutrient-input-ceilings-2021.pdf>

		transboundary rivers). Such environmental objectives could offer a useful reference framework for EIA and SEA processes in marine areas exposed to excessive pollution load levels.		
EIA/SEA for climate change mitigation actions		EIA/SEA for climate change mitigation actions, building e.g. on the Climate Change Fact Sheet ⁴² published by HELCOM with Baltic Earth in September 2021. The CCFS contains concise and easily accessible information in the form of key messages on climate change effects for 34 parameters, varying from parameters directly affected by climate change, e.g. sea temperature, to those indirectly affected by climate change, e.g. benthic habitats. Such materials could be used to better integrate CC concerns into the EIA/SEA processes.	Development of guidance to promote and facilitate sustainable development and scaling up of offshore renewable energy in a way that cumulative environmental impacts are minimised.	

⁴² <https://helcom.fi/wp-content/uploads/2021/09/Baltic-Sea-Climate-Change-Fact-Sheet-2021.pdf>

C. Potential focus areas and activities for future cooperation

177. Considering the development needs that would benefit from further cooperation efforts, a following tentative list of preliminary options for the potential future collaboration could be drawn:

- (a) Information-sharing
 - i. Facilitate exchange of information and experiences through a) the websites of the relevant conventions/bodies and b) joint informal network of national focal points and secretariats dealing with environmental impact assessment in a transboundary settings and strategic environmental assessment both in domestic and transboundary setting (hereafter environmental assessment).
 - ii. sharing of experience between conventions/bodies in an accessible way, for instance as regular events exchanging experience with EIA/SEA application in marine regions (that can be possibly organized on the margins of relevant larger meetings)
- (b) Development of regulatory frameworks
 - i. Strengthen the capacities of the Compliance Committees of the regional seas conventions (where they exist) to assess compliance with all relevant legally binding provisions including relevant obligations, as appropriate.
 - ii. Assist the Contracting Parties of the regional seas conventions with a) the implementation of the transboundary environmental impact assessment process and b) the development of legal frameworks/tools for strategic environmental assessment through a joint informal network of national focal points and secretariats.
 - iii. Support the Contracting Parties in amending/ strengthening national legislation to ensure that all projects, plans or programmes with potentially significant transboundary impacts are subject to transboundary environmental assessments that include notification, exchange of information and consultations, public participation, and transmission of the final decision on the proposed activity, along with the reasons and considerations on which it was based, among concerned countries.
 - iv. Promote the use of bilateral and/ or multilateral agreements to enhance effectiveness of transboundary environmental assessments.
- (c) Pilot projects
 - i. Promote transboundary procedures on a voluntary basis meanwhile appropriate legal frameworks are in place. The prime candidates for such voluntary applications and pilot testing could be particularly environmental assessments of plans and projects in :
 - marine spatial planning
 - offshore hydrocarbon exploration
 - offshore renewable energy,
 - ii. Encourage the use of the existing and emerging guidelines (developed through relevant initiatives within the regional seas conventions system and the UNECE and EU) that can help EIA and SEA practitioners address coastal and marine environment specificities in transboundary assessments adequately.
- (d) Long-term coordination/cooperation efforts
 - i. Periodically assess the implementation of the relevant provisions on transboundary assessments; and use the ensuing results to flag areas where development of further/ targeted guidance would be recommended.
 - ii. Cooperate on the development of common approach for the assessment of likely adverse impacts (of plans, programmes or activities) on the marine environment

[covering possibly also areas beyond national jurisdiction where applications of EIA/SEA principles are currently being discussed and developed under the UN Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction] in view of the commitments already taken under the various regional seas conventions in the UNECE region. This may possibly focus on: harmonisation of procedures and assessment methods taking into account coastal zone sensitivity, carrying capacity, vulnerability to climate change and land-sea interactions; development of criteria on significance of transboundary impacts with a view to the relevant environmental objectives for achieving good ecological status.

- iii. Share experience on the role of environmental assessment as tools to better achieve good ecological status through the use of relevant environmental objectives set forth under the existing supranational legislation, such as maximum allowable inputs of nutrients that could offer a useful reference framework for EIA and SEA processes in marine areas exposed to excessive pollution load levels.

D. Next steps: Key items to be discussed at the joint meeting

178. Given the information generated through this review, it appears useful to focus the second joint meeting between representatives of the Espoo Convention and its Protocol on Strategic Environmental Assessment and interested regional seas conventions of 16 June 2022 on the following issues:

- (a) Discussion on environmental impact assessment in a transboundary context in the respective marine regions
 - Recap of the key obligations under the Espoo Convention and presentation of good practice example of its application in the marine area
 - Presentation of key findings from the initial analysis of the coherence of the regional seas treaties' with the Espoo Convention, including presentation of arrangements developed by the regional seas conventions and bodies to promote transboundary environmental impact assessment and the related cooperation in this field in the respective marine regions
 - Key areas of interest for possible cooperation activities in marine regions related to environmental impact assessment in a transboundary context
- (b) Discussion on strategic environmental impact assessment – both in national and transboundary context - in the respective marine regions
 - Recap of the key obligations under the Protocol on SEA and presentation of good practice example of its application in the marine area
 - Presentation of key findings from the initial analysis of the coherence of the regional seas treaties' with the Protocol on SEA, including presentation of innovative arrangements developed by the regional seas conventions and bodies to promote transboundary strategic environmental assessment and the related cooperation in this field in the respective marine regions
 - Key areas of interest for possible cooperation activities in marine regions related to strategic environmental assessment – both in national and transboundary context
- (c) Discussion on key areas of interest for possible cooperation activities in marine regions and information gaps that need to be filled before the third meeting to be held within this activity
 - Discussion on possible cooperation activities in marine regions that would reflect on the development needs and focus areas presented in Chapter IV.6 of this report and refine them based on the insights gained during the meeting
 - Discussion on priority areas for potential future cooperation

- Determination of information gaps that need to be filled before the third joint meeting within this activity, tentatively scheduled for 6–7 July 2023.