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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

Working Group on Environmental Impact Assessment and Strategic Environmental Assessment

Twelfth meeting

Geneva, 13–15 June 2023

Item 6(b) of the provisional agenda

Promoting practical application of the Convention and the Protocol: subregional cooperation and capacity-building

Draft report on synergies and possible cooperation activities in marine regions

Note by the Bureau

Summary

The present note by the Bureau contains a draft 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 prepared with support from consultants to the secretariat, in consultation with the donor country, Italy, representatives of the relevant regional sea conventions and organizations and the Espoo Convention and its Protocol, as well as the Bureau and the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment.

The document identifies and evaluates the coherence of the regional sea conventions' environmental assessment provisions and practice with the Espoo Convention and the Protocol, as well as proposing focus areas and possible future activities for increasing cooperation, coordination and synergies.

The Working Group is invited to review and comment on the draft prior to forwarding it to the Meetings of the Parties at their next sessions (Geneva, 12–15 December 2023), also



taking into account the information to be provided by the secretariat on the outcomes of the final joint technical meeting, scheduled to be held online on 16 May 2023.

Selected priority activities for cooperation in marine regions that the Bureau proposed for the draft workplan for 2024–2026 are also included in the document entitled “Draft joint decisions by the Meetings of the Parties to the Convention and the Protocol”, which also contains draft decision IX/3–V/3 on cooperation in marine regions for consideration of the Working Group.

^a ECE/MP.EIA/WG.2/2023/3, decision IX/2–V/2, annex I, item III.A.

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) included 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 sea and coastal zones.¹ The workplan activity also envisaged increasing synergies, coherence, coordination and cooperation with relevant regional sea conventions and organizations, as well as reaching out to and enhancing contacts with non-member States of the United Nations Economic Commission for Europe (ECE) located in the selected marine regions. The activity was funded by Italy and implemented with support from two consultants with expertise on the Espoo Convention, its Protocol on Strategic Environmental Assessment and regional sea conventions matters.

2. In 2021, based on proposals by the secretariat and Italy, the Bureau further defined the scope and subsequent implementation steps of the activity.² The activity covered the following selected marine regions and corresponding instruments/bodies, which had all expressed their interest and availability 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 four 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 ad interim Convention secretariat (located within the United Nations Environment Programme Europe Office until a permanent Convention secretariat is put in place);

(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.

3. The activity also aimed to support implementation of the regional sea conventions and their respective workplans/programmes of work at the national and/or regional/subregional levels with respect to environmental impact assessment in a transboundary context and strategic environmental assessment. The activity included the following actions:

¹ ECE/MP.EIA/30/Add.1–ECE/MP.EIA/SEA/13/Add.1, decision VIII/2–IV/2, annex I, item. III.A.4.

² See informal notes of the meeting of the Bureau (Geneva (online), 16–17 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).

(a) Carrying out a feasibility study to map out synergies and benefits for possible future cooperation activities to improve the coherence and links between the Espoo Convention and its Protocol and the regional sea conventions and their respective protocols. This work aimed in particular to:

(i) Identify relevant legal requirements, activities, tools and instruments developed under the selected regional sea conventions or bodies, 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 between the methods and approaches chosen under the respective treaties and evaluate their coherence with the Espoo Convention and its Protocol;

(iii) 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;

(iv) Identify monitoring activities and environmental protection measures undertaken and planned for under the regional sea conventions or bodies (also covering 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 Strategic Environmental Assessment and the regional sea conventions and bodies, and the interested Contracting Parties;

(c) Preparing a final report presenting the identified synergies and a vision for the “way forward”, setting out its benefits and proposing possible joint activities for the subsequent workplans under the Espoo Convention and its Protocol on Strategic Environmental Assessment, starting with the workplan for 2024–2026. The final draft report and the draft workplan for 2024–2026 would be considered by the Working Group on Environmental Assessment and Strategic Environmental Assessment at its twelfth meeting (Geneva, 13–15 June 2023), prior to its submission to the Meetings of the Parties of the Espoo Convention and its Protocol at their next sessions (Geneva, 12–15 December 2023).

B. Preparatory process

4. Following the initial consultations by the secretariat to the Espoo Convention and its Protocol, the secretariats of the six regional sea conventions or bodies listed in paragraph 2 above expressed their interest in the identification of synergies and possible cooperation activities, and provided information on environmental impact assessment-related obligations and actions under the respective treaties and suggestions for cooperation activities. In addition, the secretariat identified 12 Parties to the Espoo Convention and its Protocol that were interested in following the activity more closely (Azerbaijan, Finland, France, Germany, Greece, Italy, Norway, Poland, Romania, Slovenia, Spain and Sweden). In parallel, the secretariat, in consultation with Italy, selected two consultants to support the activity: one with expertise in environmental impact assessment and strategic environmental assessment and the other with legal expertise in marine and coastal environmental protection and coastal zone management, in particular of the Mediterranean region.

5. The information received from the regional sea conventions and commissions was compiled into a draft initial assessment report, which was discussed during an initial joint technical consultation/kick-off meeting with the interested regional sea convention/body secretariats and the Espoo Convention and its Protocol focal points (Geneva (online), 19 November 2021).³ Subsequently, an updated version of the draft assessment report was prepared and discussed during the second joint technical meeting of representatives of the involved instruments, followed by a coordination and management meeting amongst the

³ See <https://unece.org/info/Environmental-Policy/Environmental-Impact-Assessment/events/361987>.

respective secretariats/commissions (Geneva (online), 16–17 June 2022).⁴ The third and final joint meeting is scheduled to be held online, on 16 May 2023, for further consultations on the proposed cooperation activities.⁵ Aside from the informal exchanges and consultations during the joint technical meetings, the Bureau and the Working Group under the Espoo Convention and its Protocol were formally consulted on the implementation of the activity at their respective meetings in 2021, 2022 and 2023. In parallel, the secretariats to the regional sea conventions and bodies were invited to inform and consult their respective constituencies, as relevant.

6. The present report contains the results of the above-mentioned consultative process and the work carried out by the two consultants under the auspices of the secretariat. It is structured as follows: chapters II and III evaluate the coherence between relevant provisions and practice under the Espoo Convention and its Protocol on Strategic Environmental Assessment, respectively, on the one hand, and the regional sea conventions and bodies on the other hand. Chapter IV specifies development needs, and proposes focus areas and activities for future cooperation.

7. During its preparatory phase, the report was supplemented with a comprehensive self-standing annex in a tabular (Excel table) format,⁶ which quotes (in English) the relevant provisions of the legal instruments covered by the activity.

8. In parallel, case studies have been collected for exchanging good practices and lessons learned by States parties to the Espoo Convention and its Protocol in their application of strategic environmental assessment and transboundary environmental impact assessment procedures to plans, programmes and projects in marine regions. They were presented during the joint meetings and the meetings of the Working Group.

II. Relevant provisions and recommended practice under the Espoo Convention and selected regional sea conventions and bodies - and their coherence

A. Introduction

9. 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 sea 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 below highlight selected provisions, recommendations and/or good practice elements that are coherent with the Espoo Convention.

10. Reference should be made to the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction,⁷ which includes questions on environmental impact assessments. In the present work, this instrument will not be further taken into account, since the Espoo Convention and its Protocol

⁴ See <https://unece.org/info/Environmental-Policy/Environmental-Impact-Assessment/events/368518>.

⁵ See <https://unece.org/info/Environmental-Policy/Environmental-Impact-Assessment/events/376908>.

⁶ Available at : <https://unece.org/info/Environmental-Policy/Environmental-Impact-Assessment/events/368518>

⁷ In its resolution 72/249 of 24 December 2017 (A/RES/72/249), the General Assembly decided to convene an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the preparatory committee established by General Assembly resolution 69/292 of 19 June 2015 (A/RES/69/292) to elaborate the text of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The related negotiations were concluded on 5 March 2023. See www.un.org/bbnj/.

only refer to sea areas within national jurisdictions of their respective Parties, albeit transboundary.

11. 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.

B. Espoo Convention

12. 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.⁸ It also puts into practice the commitments undertaken by all the States Members of the United Nations as part of principle 19 of the 1992 Rio Declaration on Environment and Development, to provide “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”⁹ on such planned activities.

13. In force since 1997, the Espoo Convention counts (as at March 2023) 45¹⁰ Parties across the Caucasus, Central Asia, Europe and North America, including the European Union.¹¹ 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, Czechia, Denmark, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and United Kingdom of Great Britain and Northern Ireland.

14. 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” (art. 2 (1)) and, ensure that an environmental impact assessment in accordance with the Convention is undertaken prior to “a decision to authorize or undertake a proposed activity listed in appendix I that is likely to cause a significant adverse transboundary impact” (art. 2 (3)).

15. 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.

16. 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

⁸ International Court of Justice (I.C.J.), *Pulp mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14.

⁹ A/CONF.151/26 (Vol. I).

¹⁰ 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.

¹¹ The European legislation on environmental assessments, and in particular Council Directive 85/337/CEE of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, *Official Journal of the European Communities*, L 175 (1985), pp. 40–48, 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.

extend 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.¹²

17. For the purpose of the analysis of coherence between the environmental impact assessment-related provisions stipulated by the Espoo Convention and the regional sea conventions, the key procedural requirements of the Espoo Convention¹³ are summarized as follows, complemented by recommended good practice, tools and actions for their effective practical application:¹⁴

(a) Environmental impact assessment requirement: a Party must establish an environmental impact assessment procedure within its national regulatory framework for proposed activities listed in appendix I to the Convention that are likely to cause significant adverse transboundary impact (art. 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 (arts. 2 (4) and 3).¹⁵ 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 have been established to facilitate the practical application of the requirement;¹⁶

(c) Environmental impact assessment documentation: requirement to prepare environmental impact assessment documentation containing, as a minimum, information listed in appendix II to 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, an outline for monitoring programmes) (art. 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 (art. 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) (arts. 2 (6), 3 (8) and 4 (2));

(f) Requirements regarding the final decision on the proposed activity, which 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/ies, along with the reasons and considerations on which it was based (art. 6).

18. 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; guidance materials; mandatory reporting by Parties; review of the compliance mechanism led by the Implementation Committee; exchange of good practices; technical assistance and

¹² See Guidance on the Practical Application of the Espoo Convention (United Nations publication, ECE/MP.EIA/8).

¹³ The full text of the Espoo Convention (ECE/MP.EIA/21/Amend.1) is available at <https://unece.org/environment-policy/environmental-assessment/text-convention>.

¹⁴ 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; and, opinions of the Implementation Committee, available at <https://unece.org/environment-policy/environmental-assessment/implementation-committee>.

¹⁵ If the concerned Parties so agree, other activities likely to cause a significant adverse transboundary impact can also be treated as if they were listed in appendix I (art. 2 (5)).

¹⁶ Decisions I/3–I/4 of the Meeting of the Parties.

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; and translation and interpretation issues).

C. Barcelona Convention and its Protocols

1. Introduction

19. 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 Türkiye. Out of these contracting parties, 10 Mediterranean States (Algeria, Egypt, Israel, Lebanon, Libya, Monaco, Morocco, Syrian Arab Republic, Tunisia, and Türkiye) are not Parties to the Espoo Convention. It is also noteworthy that, as a rule, the environmental assessment regulations in countries outside the area of application of the European Union and ECE instruments do not contain provisions on how the procedures should be conducted in case of transboundary impacts.

20. 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 and has 12 Parties, including the European Union and 5 of its 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, and has 8 Parties, including the European Union and 2 Mediterranean member States thereof;

(e) The Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol), which was adopted in 1995, and has 17 Parties, including the European Union and 7 Mediterranean member States thereof;

(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), and has 21 Parties, including the European Union and 8 Mediterranean member States thereof;

(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, which has 7 Parties, including 1 Mediterranean member State of the European Union.

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

2. Environmental impact assessment requirement

22. 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 (art. 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 (art. 4 (3) (c));
- (c) Promote cooperation on the basis of notification, exchange of information and consultation in case of transboundary environmental impact assessment (art. 4 (3) (d));
- (d) Use best available techniques and best environmental practices (art. 4 (4) (b));
- (e) Monitor the pollution of the marine environment and its coastal areas (art. 12);
- (f) Ensure public information and participation (art. 15).

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

- In particular the environmental impact assessment procedure requirement for pollution prevention is emphasized in the recitals of the Land-Based Sources Protocol, and similarly in the recitals of the Prevention and Emergency Protocol.
- The SPA/BD Protocol in its article 17 requires that Parties shall evaluate the possible impact, including the cumulative impacts, 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 authorization or renewal of an authorization, the competent authority may require that an environmental impact assessment be prepared (in accordance with annex IV to the Protocol).
- The ICZM Protocol is strongly imbued with elements characterizing environmental assessments, starting with the general principles (art. 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 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.

24. It should be also noted that informal Guidelines for the Conduct of Environmental Impact Assessment under the Offshore Protocol¹⁷ were adopted by the Contracting Parties to the Barcelona Convention and its Protocols at their twenty-second meeting (Antalya, Türkiye, 7–10 December 2021) with decision IG.25/15 committing to provide advice on the environmental impact assessment 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 the transboundary aspects of any such assessments. It provides only informal guidance and recognizes that relevant environment impact assessment provisions existing in Contracting Parties' legislation and/or regulatory systems prevail.

¹⁷ See https://wedocs.unep.org/bitstream/handle/20.500.11822/37137/21ig25_27_2515_eng.pdf.

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

26. The exact field of application of these assessment obligations is, however, not defined through, for example, an exact list of projects as outlined in appendix I (List of activities) to the Espoo Convention. 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.

27. The national implementation reports submitted by the Contracting Parties through the reporting system (Barcelona Convention, art. 26), on the latest considered biennium (2018–2019), stated that environmental impact assessment laws and regulations were in place, thereby activities or projects likely to cause a significant adverse impact on the marine environment are subject to an environmental impact assessment.

3. Transboundary procedure requirements

(a) Notification and consultation

28. 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”.

29. 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, enter into bilateral or multilateral agreements for the effective implementation of this article.

30. 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 States¹⁸ were drafted under the ICZM Protocol (see box 1 below). They contain recommendations for the implementation of transboundary procedures that are coherent with the provisions of the Espoo Convention and the Protocol on Strategic Environmental Assessment. These guidelines, not yet formally adopted, have so far been 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 environmental impact assessment regulations was in place in at least 20 out of 22 Contracting Parties to the Barcelona Convention (information was not available for Egypt and Monaco at the time of drafting these Guidelines). In their national implementation reports for the 2014–2015 biennium, 12 Contracting Parties reported having put in place cooperation

¹⁸ See http://paprac.org/storage/app/media/Meetings/4_Draft%20Guidelines%20for%20transboundary%20EA.docx.

mechanisms and/or institutional structures for notification, exchange of information and transboundary consultation, mainly through laws on environmental impact assessment. The environmental impact assessment and strategic environmental assessment regulations in countries outside the area of application of the European Union and ECE 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 equilibrium of marine and terrestrial areas due to natural processes, as well as mutual impacts of maritime activities on land and terrestrial activities on seas.
- Adopt guidelines on the procedures for notification, exchange of information and consultation at all stages, as appropriate.

The Guidelines also refer to the Espoo Convention and its Protocol and the relevant European Union 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 that an 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 coordination bodies. Points of contact (if not already appointed under relevant 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 countries where the existing development plans and commitments indicate multiple transboundary assessments could be expected in the future, as well as for subregions 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 the significance of impacts 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 subregional level. In defining these criteria, the 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 Guidelines 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 the present report.

31. The Offshore Protocol (art. 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”.

32. 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 that is broadly coherent with the requirements of article 2 (4) of the Espoo Convention. It nevertheless does not define specific arrangements for such notification in sufficient detail, as stipulated by article 3 of the Espoo Convention.

33. With regard to transboundary consultations, article 4 (3) (d) of the Barcelona Convention also provides for the exchange of information and consultation, but it does not specify these requirements in sufficient detail to facilitate effective consultations in a manner that would be consistent with the Espoo Convention’s requirements for transboundary consultations laid down in its articles 2 (11), 3 (3) and 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 on a voluntary basis to facilitate this process.

(b) Environmental impact assessment documentation

34. The Barcelona Convention does not provide any indication regarding the preparation and contents of the environmental assessment documentation under the environmental impact assessment process.

35. Nevertheless, the details of the environmental impact assessment process are partly addressed by the Offshore Protocol in its annex IV (see box 2 below), which stipulates the basic contents of such an 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 Organization or other competent international organizations, in order to: (c) 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 by item 2 of annex IV, which 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 IV¹⁹ to 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. Safety zones, where applicable, shall cover areas within a distance of 500 m around installations and be established in conformity with the provisions of general international law and technical requirements;

¹⁹ Annex IV was amended in 2021 by the twenty-second meeting of the Contracting Parties to the Barcelona Convention and its Protocols through decision IG.25/7 “Amendments to the Annexes to 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”. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/37129/21ig25_27_2507_eng.pdf.

- (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 a 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 method 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 a 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) A reference to the methodology used for the environmental impact assessment;
- (i) An indication of whether the environment of any other State is likely to be affected by the proposed activities.

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

(c) Public participation

37. Article 15 (1) and (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 to ensure that the opportunity is given to the public to participate in relevant decision-making processes.

38. The Special Protected Areas Protocol, in article 19 (2), entitled “Publicity, information, public awareness and education”, requires that the Parties shall endeavour to promote the participation of their public and their conservation organizations in environmental impact assessments processes.

39. 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, on “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.

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

41. 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 in 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 was 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.

(d) Final decision

42. The Barcelona Convention does not include any requirements 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 (art. 6).

43. Only the 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 environmental impact assessment processes.

D. Bucharest Convention

1. Introduction

44. The 1992 Bucharest Convention has six Contracting Parties: Bulgaria, Georgia, Romania, Russian Federation, Türkiye and Ukraine; aside from Georgia, the Russian Federation and Türkiye, the other three Contracting Parties are also Parties to the Espoo Convention and two are member States of the European Union.

45. The Black Sea Commission is the intergovernmental implementing body of the Bucharest Convention, composed of the Commissioners, high officials from each of the six Parties to the Convention.

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

(a) The Protocol on Protection of the Black Sea Marine Environment against Pollution from Land-Based Sources (entry into force pending);

(b) The Protocol on Cooperation in Combating Pollution of the Black Sea Marine Environment by Oil and other Harmful Substances in Emergency Situations;

(c) The Protocol on the Protection of the Black Sea Marine Environment against Pollution by Dumping;

(d) The Black Sea Biodiversity and Landscape Conservation Protocol.

47. In addition, the Strategic Action Plan²⁰ for the Environmental Protection and Rehabilitation of the Black Sea, adopted on 17 April 2009, includes, on the basis for cooperative action, point 1.5.4, providing that the principle of anticipatory action shall be applied, and that contingency planning, environmental impact assessment and strategic impact assessment (involving the assessment of the environmental and social consequences of governmental policies, programmes and plans) shall be undertaken in future development in the region.

²⁰ Soon to be available at www.blacksea-commission.org/Official%20Documents/Table%20of%20Legal%20Documents/.

2. Environmental impact assessment requirement

48. The Bucharest Convention does not require environmental impact assessment per se but requests, in particular in its article XV (5) on “Scientific and technical cooperation and monitoring”, that Contracting Parties, when they “have reasonable grounds for believing that activities under their jurisdiction or control may cause substantial pollution or significant and harmful changes to the marine environment of the Black Sea, ... shall, before commencing such activities, assess their potential effects on the basis of all relevant information and monitoring data and shall communicate the results of such assessments to the Commission”. It also requests, in article XVI (4), that the Contracting Parties shall cooperate in developing and harmonizing their laws, regulations and procedures relating to liability, assessment of and compensation for damage caused by pollution of the marine environment of the Black Sea, in order to ensure the highest degree of deterrence and protection for the Black Sea as a whole.

49. The field of application of these assessment obligations is not predefined through a list of activities, but it is left for the discretion of each Party to consider which activity may cause substantial pollution or significant and harmful changes to the marine environment.

50. In addition, two Protocols to the Bucharest Convention require their Contracting Parties to undertake an environmental impact assessment procedure. It should again be noted that, unlike the Espoo Convention, they do not specify the list of activities and/or projects that require environmental impact assessment.

51. The Protocol on Protection of the Black Sea Marine Environment against Pollution from Land-Based Sources, article 4 on general obligations, requires that the Parties shall: ensure that activities that are likely to cause a significant adverse impact on the marine environment and coastal areas be made subject to environmental impact assessment and a prior authorization by competent national authorities; and, promote cooperation between and among the Contracting Parties in environmental impact assessment procedures, on the basis of exchange of information. Moreover, article 12 is entirely dedicated to the environmental impact assessment, requiring Parties to develop and adopt regional guidelines and enhance corresponding national regulations, referring also to transboundary impact; to introduce and apply procedures of environmental impact assessment of any planned land-based activity or project; and that a prior written authorization from the competent authorities for the implementation of activities and projects subject to the environmental impact assessment shall fully take into account the findings and recommendations of such process, seeking the participation of affected persons in any review process and, where practicable, publishing or making available relevant information.

52. The Black Sea Biodiversity and Landscape Conservation Protocol directly refers to the Espoo Convention requirements. In particular, its article 6 stipulates a precise obligation to regionally develop and agree criteria and objectives pursuant to the Convention and international experience in this matter, for example, the Espoo Convention, in the planning process leading to decisions on projects and activities that could significantly affect species and their habitats, protected areas, particularly sensitive marine areas, and landscapes; and to evaluate and take into consideration the possible direct or indirect, immediate or long-term impact, including the cumulative impact of the projects and activities.

53. Considering these binding and non-binding provisions, it may be concluded that the Bucharest Convention expressly includes 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 and coastal areas”, including those likely to cause serious transboundary impact.

54. The exact field of application of these assessment obligations is, however, not defined through, for example, an exact list of projects as set out in appendix I to the Espoo Convention. The Bucharest Convention instruments only formulate the generic principles of environmental impact assessment and grant their Contracting Parties discretion regarding their application for specific activities.

3. Transboundary procedure requirements

(a) Notification and consultation

55. The Bucharest Convention does not provide any indication of the notification and consultation requirements under the environmental impact assessment process.

(b) Environmental impact assessment documentation

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

(c) Public participation

57. The Bucharest Convention does not directly provide specific indication for public participation under the environmental impact assessment process.

58. The Black Sea Biodiversity and Landscape Conservation Protocol, in article 9 (2), requires that the Parties shall endeavour to promote the participation of all stakeholders, including their public, in measures that are necessary for the protection of the areas, species and landscapes concerned, including environmental impact assessments.

59. The Protocol on Protection of the Black Sea Marine Environment against Pollution from Land-Based Sources, in article 14 on “Public Participation”, states that the Parties shall endeavour to promote the participation of the public in measures that are necessary for the protection of the marine environment and coastal areas of the Black Sea from land-based sources and activities, including environmental impact assessments.

60. It may be concluded that the two Protocols of the Bucharest Convention foresee public participation requirements in a manner that is broadly coherent with the requirements of the Espoo Convention. Nevertheless, again, they do not give the same level of detail as stipulated by the Espoo Convention.

(d) Final decision

61. The Bucharest 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 (art. 6).

E. Helsinki Convention

1. Introduction

62. The 1992 Helsinki Convention has 10 Contracting Parties: Denmark, Estonia, European Union, Finland, Germany, Latvia, Lithuania, Poland, Russian Federation and Sweden;²¹ aside from the Russian Federation, all those Contracting Parties are Parties to the Espoo Convention and members of the European Union.

63. The Convention includes 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;

²¹ All of the Contracting Parties, aside from the Russian Federation, are Parties to the Espoo Convention and its Protocol. Eight are also European Union member States and are consequently also bound by Council Directive 85/337/CEE and by Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, *Official Journal of the European Communities*, L 197 (2001), pp. 30–37.

- (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: Prevention of pollution from offshore activities;
- (g) Annex VII: Response to pollution incidents.

64. In addition, the Baltic Sea Action Plan,²² adopted in 2007 and updated in 2021,²³ as the strategic programme of the Baltic Marine Environment Protection Committee (known as the Helsinki Commission, HELCOM), outlines measures and actions for achieving good environmental status of the sea, including 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, for example, actions E4, E22, B12, B31 and S14–S16.

2. Environmental impact assessment requirement

65. The Helsinki Convention, and in particular its article 7 (1), does not require environmental impact assessment per se but requests its Contracting Parties 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 supranational regulations.

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

67. In order to facilitate the practical application of this provision, 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), which 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 below).

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;
 - proposed activities are located close to an international border;
 - proposed activities are located in the catchment area but could give rise to significant transboundary effects far removed [sic] from the site of development;
 - proposed activities are located close to areas of special environmental sensitivity or importance;
- (c) Effects:

²² Available at <https://helcom.fi/baltic-sea-action-plan/>.

²³ Adopted by the Lübeck Ministerial Meeting, see <https://helcom.fi/helcom-at-work/ministerial-meetings/2021-lubeck/>.

- 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.

68. 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 below 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 barium (Ba), chromium (Cr), lead (Pb), copper (Cu), mercury (Hg) and cadmium (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.

3. Transboundary procedure requirements

(a) Notification

69. 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 supranational 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.”

70. In addition, annex VI to the Helsinki Convention 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.”

71. Article 7 (1) of the Helsinki Convention makes it de facto fully consistent with the Espoo Convention. It extends the notification requirements to 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. Nevertheless, the Helsinki Convention does not define specific arrangements for such notification in sufficient detail as stipulated by article 3 of the Espoo Convention.

(b) Consultation

72. With regard to transboundary consultations, article 7 (2) of the Helsinki Convention provides for the obligation to enter into consultations with any Contracting Party that is likely

to be affected by the transboundary impact, whenever consultations are required by international law or supranational 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.

73. It is also worth noting that the earlier mentioned HELCOM recommendation 17/3 recommends 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”.

74. It may be concluded that, since the Helsinki Convention generally refers to applicable international law or supranational regulations, 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.

(c) Environmental impact assessment documentation

75. 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 supranational regulations, recalled in article 7 (1) of the Convention, makes it de facto consistent with the Espoo Convention.

(d) Public participation

76. Apart from article 17, which requires the Contracting Parties to ensure that information shall be available to the public at all reasonable times, with reasonable facilities for obtaining this 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; the Helsinki Convention does not provide any specific indication for public participation under the environmental impact assessment process.

77. Nevertheless, the reference to requirements of international law or supranational regulations, recalled in article 7 (1) of the Helsinki Convention, makes it de facto consistent with the Espoo Convention.

(e) Final decision

78. 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 (art. 6). Irrespective of that, the reference to requirements of international law or supranational regulations, recalled in article 7 (1) of the Helsinki Convention, makes it de facto consistent with the Espoo Convention.

F. Convention for the Protection of the Marine Environment of the North-East Atlantic

1. Introduction

79. 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 Ireland.

80. All of the contracting Parties to the OSPAR Convention, except for Iceland, are Parties to the Espoo Convention, with the resulting implications for their environmental assessment systems.

2. Environmental impact assessment requirement

81. The core provisions of the OSPAR Convention require its Contracting Parties to:
- Prevent and eliminate pollution from land-based sources (art. 3 and annex I).
 - Prevent and eliminate pollution by dumping or incineration (art. 4 and annex II).
 - Prevent and eliminate pollution from offshore sources (art. 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 (art. 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 that have been adversely affected (annex V).
82. The OSPAR Convention itself does not regulate environmental impact assessment processes. Nevertheless, the North-East Atlantic Strategy 2030²⁴ for implementation of the OSPAR Convention in the period 2020–2030 in its 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.
83. 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 below).

Box 5

Technical recommendations adopted under the Convention for the Protection of the Marine Environment of the North-East Atlantic supporting environmental impact assessment processes

- On radioactive substances: Paris Commission for the Prevention of Marine Pollution from Land-based Sources (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 recommends 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” be taken into consideration when assessments of environmental impacts of human activities are prepared.
- 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

²⁴ 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>.

support of decommissioning decisions, as well as a ban on dumping or leaving disused installation in place.

84. 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 support the application of the Espoo Convention through their technical guidelines that provide reference for the specific environmental impact assessments in both national and transboundary settings.

3. Transboundary procedure requirements

(a) Notification and consultation

85. The OSPAR Convention does not provide any indication of the requirements for notification and consultation under the environmental impact assessment process.

(b) Environmental impact assessment documentation

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

(c) Public participation

87. 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.

(d) Final decision

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

G. Tehran Convention and its Protocols

1. Introduction

89. The 2003 Tehran Convention has five Contracting Parties: Azerbaijan, Iran (Islamic Republic of), Kazakhstan, Russian Federation and Turkmenistan.

90. The Convention also includes four protocols:

(a) The Protocol Concerning Regional Preparedness, Response and Cooperation in Combating Oil Pollution Incidents (Aktau Protocol), ratified by five Contracting Parties;

(b) The Protocol on the Protection of the Caspian Sea against Pollution from Land-based Sources and Activities (Moscow Protocol), ratified by four Contracting Parties;

(c) The Protocol for the Conservation of Biological Diversity (Ashgabat Protocol), ratified by three Contracting Parties;

(d) The Protocol on Environmental Impact Assessment in a Transboundary Context, ratified by four Contracting Parties (not yet in force).²⁵

²⁵ Article 16 (5) of the Tehran 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.”

2. Environmental impact assessment requirement

91. 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 (art. 5 (a) and (b));
- (b) Undertake all appropriate measures to introduce and apply procedures of environmental impact assessment (art. 17);
- (c) Promote cooperation for the achievement of the objective of the Convention (sixth recital, arts. 4 (d), 6 and 18);
- (d) Use of the best available environmentally sound technology and best environmental practices (art. 7 (2) (f) and (g));
- (e) Monitor the quality of water and the pollution of the marine environment and its coastal areas (arts. 18 (3) (b) and 19);
- (f) Ensure access to information and public information (arts. 5 (c) and 21 (2)).

92. The Protocol on Environment Impact Assessment in a Transboundary Context provides a comprehensive framework for implementation of effective and transparent environmental impact assessment procedures in a transboundary context to any proposed activity that 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” or the “points of contact for notification”, whose role is described in the text of the Protocol (see box 6 below).

Box 6

Protocol on Environment Impact Assessment in a Transboundary Context to the Tehran Convention

The Protocol is, in some ways, more detailed than the Espoo Convention, for example, in matters pertaining to notification, it:

- Requires that all communications be carried out through the nominated points of contact for notification, specifying that documents are to be transmitted not only to the competent authority of the affected Party but also to the secretariat for the purposes of making the 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, specifying that the time frame should not be less than a given amount of days, and the requested languages of translated texts.
- Provides for a different procedure depending on whether or not the affected Party intends to participate in the environmental impact assessment procedure of the proposed activity.

Unlike the Espoo Convention, which foresees the notification as the first step of the transboundary cooperation, the Protocol to the Tehran Convention requires the communication 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”; as compared to the specification of the Espoo Convention that the notification be communicated “no later than when informing its own public [of the Party of origin]”.

Another difference is that the Espoo Convention Party of origin notifies only the likely affected Party/ies, while the Protocol to the Tehran Convention requires that the secretariat and the affected Party/ies be informed and notified through the indicated point of contact for notification. The content of notification is the same as under the Espoo Convention, but the Protocol to the Tehran Convention

is more detailed, for example, 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” and it is also specified that the notification should be “in State language [sic] with translation of notification documents into English or Russian”.

Moreover, the Protocol to the Tehran Convention specifies that the notification should also include “an indication of the time schedule for the further steps” of the procedure.

Article 5 (6) of the Protocol to the Tehran Convention also 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.

Furthermore, the requirement of public participation is more detailed, for example, requiring that Concerned Parties ensure that the draft environmental impact assessment documentation, including, as appropriate, hardcopies, be made available and easily accessible to the public, including in places open to the public, in accordance with national legislation; and that the public in the areas likely to be affected be provided with the opportunity to comment upon the proposed activity to the competent authorities of the concerned Parties; and that their comments be transmitted to the competent authority.

Lastly, 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, along 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, and including information on how the comments received were taken into account.

93. The Moscow Protocol to the Tehran Convention, 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 that are likely to have significant adverse effect on the marine environment (art. 4 (2) (c)).

94. In the framework of conservation of biological diversity, the Ashgabat Protocol to the Tehran Convention, in 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.

95. In addition, the publication *Guidelines on Environmental Impact Assessment in the Caspian Sea Region: Step-by-Step Procedures* was drafted in 2003 by the United Nations Environment Programme, ECE, the European Bank for Reconstruction and Development and the Caspian Environment Programme.²⁶ These guidelines, although somewhat outdated, nevertheless serve as a useful reference.

96. 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

²⁶ Available at https://unece.org/DAM/env/eia/documents/CaspianGuidelines/Guidelines_en.pdf.

area of the whole of the maritime waters of the Caspian Sea, including the transboundary aspects (Tehran Convention, art. 17).

3. Transboundary procedure requirements

(a) Notification and consultation

97. Apart from a general statement on cooperation between the Contracting Parties in article 18 (1) and the provision in article 17 (3) requiring the Contracting Parties to cooperate in the development of protocols that determine the procedures of environmental impact assessment of the marine environment in a transboundary context, the Tehran Convention does not provide any indication of the notification and consultation requirement under the environmental impact assessment process.

98. Conversely, articles 4 (3), 5 and 7 of the Protocol on Environment Impact Assessment in a Transboundary Context to the Tehran Convention require the Contracting Parties to ensure that affected Parties are notified in a manner coherent with the requirements of article 2 (4) of the Espoo Convention, defining specific arrangements for such notification in similar detail to that stipulated by article 3 of the Espoo Convention.

99. 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 that 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 amongst other things that the notification documents shall be in the State language, with translations into English or Russian.

100. The requirement of consultation is foreseen in detail in articles 6 and 9 of the same Protocol, which are dedicated to communication and consultation between concerned Parties respectively. They stipulate that the competent authorities of the concerned Parties 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 manner coherent with and in similar detail to that stipulated by article 5 of the Espoo Convention.

(b) Environmental impact assessment documentation

101. The Tehran Convention does not provide any indication of the preparation and contents of the environmental assessment documentation under the environmental impact assessment process.

102. Nevertheless, the details of the environmental impact assessment documentation are addressed by the Protocol on Environment Impact Assessment in a Transboundary Context through its articles 6–7, 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 any affected Party. Annex III lists the same minimum information to be included in the draft environmental impact assessment fully consistent with appendix II to the Espoo Convention, which specifies the content of the environmental impact assessment documentation.

(c) Public participation

103. 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 instruction for public participation under the environmental impact assessment process.

104. Article 15 (on public participation) of the Moscow Protocol specifies 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.

105. The public participation requirement is taken into account by the Protocol on Environment Impact Assessment in a Transboundary Context. Its fifth recital 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 fully coherent with the requirements of the Espoo Convention, giving the same level of detail as stipulated by Espoo Convention articles 2 (2) and (6), 3 (8) and 4 (2), requesting Parties to ensure effective public participation at an early stage of environmental impact assessment procedures, and that the public be informed of the proposed activity, that the draft environmental impact assessment documentation be made available and easily accessible, and that the public have the opportunity to comment on the proposed activity, with comments being transmitted to the competent authority of the Party of origin.

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

(d) Final decision

107. 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”.

108. The Land-based Sources Protocol, in article 12 entitled “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.

109. The Protocol on Environment Impact Assessment in a Transboundary Context (arts. 10, on “Final Decision on Implementation of a Proposed Activity”, and partly also 11, on “Post-project analysis”) includes requirements regarding the final decision on the proposed activity and its transmission to the affected Parties, similar to and thus coherent with those under article 6 of the Espoo Convention. The key elements concern the provision of taking the comments received by the competent authority into account when reviewing the final environmental impact assessment documentation and when making the final decision; providing the competent authority of the affected Party and 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 this information is made available to those who submitted comments.

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

H. Arctic Council

1. Introduction

111. 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 Environment,²⁷ have eight member States (Canada, Denmark, Finland, Iceland, Norway, Russian Federation, Sweden and United States of America), and six 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 communities and other Arctic inhabitants on issues such as sustainable development and environmental protection. Five of the member States are also Parties to the Espoo Convention and three are member States of the European Union, with a further two being members of the European Economic Area, and so bound by European Union directives.

²⁷ Unlike for the other marine regions, the protection and sustainable use of the Arctic Sea is not regulated by a regional sea convention but addressed within the framework of the Arctic Council and its Working Group for the Protection of the Arctic Marine Environment.

112. In particular, the Working Group for the Protection of the Arctic Marine Environment 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.

113. 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.

2. Environmental impact assessment requirement

114. The early 1990s witnessed the collective recognition by the Arctic States of the fact that the Arctic region is climatically and culturally unique and environmentally fragile. This inspired a Finnish-led, Arctic-wide effort in 1994 to develop the Guidelines for Environmental Impact Assessment in the Arctic,²⁸ which were approved in 1997 under the Arctic Environmental Protection Strategy, the predecessor of the Arctic Council, and are worth revisiting.

115. In addition, the Arctic Council Sustainable Development Working Group issued a compendium entitled *Good Practices for Environmental Impact Assessment and Meaningful Engagement in the Arctic: Including Good Practice Recommendations* in May 2019.²⁹ The compendium formulates good practice recommendations that encourage Arctic States, their authorities and private or public proponents to promote true dialogue and meaningfully engage with 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 below).

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 Sustainable Development Working Group, contains, 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 ECE Espoo Convention. The Governments of the Arctic States 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

²⁸ Finnish Ministry of the Environment, Arctic Environment Protection Strategy 1997: Guidelines for Environmental Impact Assessment (EIA) in the Arctic (Kirjapaino Auranen, Forssa, 1997).

²⁹ Päivi A. Karvinen and Seija Rantakallio, eds. (n.p., Arctic Council, 2019).

not all Arctic States are parties to the Espoo Convention, the principles of the Convention could be applied voluntarily at a circumpolar level by all.

- Draft agreements or memorandums of understanding to guide transboundary processes. Governments of Arctic States 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 environmental impact assessment of the State of origin of the project for a more binding commitment between neighbours or the whole Arctic region. Such commitments may also be established between regions (e.g., territories) within a specific State. This is especially relevant in instances where each region has its own environmental impact assessment framework or legislation.
- Strengthen cooperation under the Espoo Convention. Arctic States could initiate cooperation by forming an Arctic subregion under the Espoo Convention and agreeing on joint activities to enhance transboundary cooperation within the Arctic region.

116. In addition, there are many activities and actions that directly or indirectly support environmental impact assessment (see examples listed below):

- The project “Demonstration of rapid environmental assessment of pesticide-contaminated sites”, experimenting with methods for rapid environmental assessment for assessing the environmental and health risks of contamination caused by hundreds of old pesticides storage sites in the northern part of the Russian Federation.
- Guidelines for preparing an environmental impact assessment for activities related to the exploration, development, production, decommissioning and transport of hydrocarbons offshore from 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.

117. 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 application of environmental impact assessments compliant with the Espoo Convention in both national and transboundary settings.

3. Transboundary procedure requirements

(a) Notification and consultation

118. The Arctic Council does not provide any indication of the notification and consultation requirements under the environmental impact assessment process.

(b) Environmental impact assessment documentation

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

(c) Public participation

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

(d) Final decision

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

III. Relevant provisions and recommended practice under the Protocol on Strategic Environmental Assessment and selected regional sea conventions and bodies - and their coherence

A. Introduction

122. 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 sea 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 below 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.

123. 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.

B. Protocol on Strategic Environmental Assessment

124. In force since 2010, the Protocol on Strategic Environmental Assessment³⁰ applies to (as at March 2023) 33³¹ Parties across the Caucasus, Central Asia, Europe and North America, including the European Union.³² The Protocol on Strategic Environmental Assessment is open to all States Members of the United Nations. The 33 Parties to the Convention are: Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, European Union, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden and Ukraine.

125. The Protocol requires its contracting Parties to evaluate the environmental consequences of their official draft plans and programmes for a wide range of proposed activities across the economic sectors that are likely to have significant environmental, including health, effects (art. 4). 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.

126. The preamble of the Protocol on Strategic Environmental Assessment recognizes that “strategic environmental assessment should 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 impacts across national borders, the Protocol on Strategic Environmental Assessment applies mainly to domestic

³⁰ The full text of the key provisions of the Protocol on Strategic Environmental Assessment is presented in table 1, sheet 2, in annex I to the present document.

³¹ 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.

³² The European Union legislation on environmental assessments, and in particular the Strategic Environmental Assessment Directive 2001/42/EC, of 27 June 2001, is aligned with the Protocol on Strategic Environmental Assessment.

plans and programmes that set the 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”.

127. The strategic environmental assessment process provided for by the 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 (art. 2 (6)).³³

128. For the purpose of the analysis of coherence between the regional sea conventions and the Protocol, the key procedural requirements of the Protocol and the good practice, tools and actions for their effective practical application³⁴ 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 (2)–(4) of the Protocol, which are likely to have significant environmental effects (art. 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 (art. 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 (art. 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 (art. 10);

(e) **Public participation requirement.** The Protocol requires that there be early, timely and effective opportunities for public participation, providing the opportunity for the public concerned (which has to be identified, including relevant non-governmental organizations (NGOs)) to express their opinion on the draft plan or programme and the environmental report, within a reasonable time frame (art. 8 and annex V; in case of transboundary impacts, art. 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 those actors 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 (art. 11).

³³ See Guidance on the Practical Application of the Espoo Convention (United Nations publication, ECE/MP.EIA/8).

³⁴ See *Resource Manual to Support Application of the UNECE Protocol on Strategic Environmental Assessment* (United Nations publication, ECE/MP.EIA/17) 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. Additional information and guidance materials are available at <https://unece.org/publications/environmental-assessment>.

C. Barcelona Convention and its Protocols

1. Introduction

129. Referring to chapter II above, the following analysis focuses on the Barcelona Convention and its Protocol on Integrated Coastal Zone Management in the Mediterranean, which contain provisions that bear certain similarities to those of the Protocol on Strategic Environmental Assessment.

2. Strategic environmental assessment requirement

130. 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 referenced here) do not request the Contracting Parties to undertake strategic environmental assessment. It may be also useful to note that 12 Mediterranean States (Algeria, Egypt, France, Greece, Israel, Lebanon, Libya, Monaco, Morocco, Syrian Arab Republic, Tunisia and Türkiye) are currently not Parties to the Protocol on Strategic Environmental Assessment.

131. However, the Integrated Coastal Zone Management (ICZM) Protocol to the Barcelona Convention requires Contracting Parties to undertake a strategic environmental assessment procedure, tailoring it to the needs of the specific sector being regulated. In particular, article 6 on general principles also includes a principle on establishing 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) requires 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.

132. It is also worth mentioning the Common Regional Framework for the Implementation of the Integrated Coastal Zone Management in the Mediterranean, adopted by decision IG.23/7 in 2017,³⁵ which is a strategic instrument meant to facilitate the implementation of the ICZM Protocol; as well as the Conceptual Framework for Marine Spatial Planning in the Mediterranean, adopted through the same decision. They foresee the application of strategic environmental assessment to support the implementation of Integrated Coastal Zone Management principles (ICZM Protocol, art. 6), 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; and timely participation in decision-making, ensuring that economic activities minimize the use of natural resources and take into account the needs of future generations.

133. It should also be 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,³⁶ drafted under the ICZM Protocol, contain recommendations for the implementation of transboundary procedures that are coherent with the provisions of the Protocol on Strategic Environmental Assessment. These guidelines, not yet formally adopted, have been used solely for training purposes to date.

134. Considering these binding and non-binding provisions, it may be argued that the ICZM Protocol 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, art. 1),

³⁵ The Common Regional Framework for the Implementation of the Integrated Coastal Zone Management in the Mediterranean was adopted by decision IG.23/7 at the twentieth ordinary meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols (Tirana, 17–20 December 2017).

³⁶ 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*, chap. 4, p. 8.

including the transboundary aspects. However, it does not specify the exact plans and programmes to which it applies in such a clear and binding manner as stipulated in the Protocol on Strategic Environmental Assessment.

135. The national reports submitted by the Contracting Parties through the reporting system (Barcelona Convention, art. 26), on the latest considered biennium (2018–2019), indicated that strategic environmental assessment laws and regulations were in place, thereby activities or projects that are likely to cause a significant adverse impact on the marine environment are subject to a strategic environmental assessment.

136. Nevertheless, strategic environmental assessments are predominantly used in the European Union member States and candidate countries, 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

(a) Notification and consultation

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

138. 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 on 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.

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

140. 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 and consultation (see, respectively, boxes 8 and 9 below).

Box 8

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/ies as early as possible, but no later than when informing its own public. Notification is necessary unless significant adverse transboundary impacts of the considered plan or programme can be excluded with certainty. Timely notifications are important in order to engage the affected country from the 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 them). 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, the obligation to notify/the right to request notification must be observed and the assessment procedures carried out.

As a minimum, notification should contain:

- Information on the draft plan/programme, including any available information about possible transboundary impacts.
- Information about the nature of the decision to be taken/decision-making procedures.
- 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 Protocol on Strategic Environmental Assessment (in the Parties to ECE 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 ECE 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, Arabic, English, French, 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 in taking 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 recommended.
- (b) Preferably, affected countries should be notified before scoping takes place.
- (c) The country of origin may start preliminary consultations (unless bilateral/multilateral agreements on administrative arrangements are already in place) with the affected countries that have responded positively to the notification, to plan and agree on the 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. 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 period requirements.
- (d) At the request of the country of origin, the potentially affected country may also provide information on the socioeconomic (in addition to the environmental) situation in the areas that may be affected by a significant adverse transboundary impact.
- (e) The 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 Protocol on Strategic Environmental Assessment points of contact and national competent authorities in countries not Parties to ECE agreements) should be kept on the Barcelona Convention website/in the Mediterranean Action Plan information system.

Box 9

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 consultation 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 constitutes a reasonable time frame to allow for submission of comments; how to inform the public and authorities of the affected country; and what the appropriate means and time frames to provide for public participation are.

The concerned countries should ensure that the public of the country of origin and of the affected country is informed and provided with opportunities for 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. Comments should be submitted within a reasonable time frame 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 an opportunity 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 organize 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 subregional level.
- (b) Prior knowledge of different consultation procedures in the concerned countries may support the design of an effective consultation programme.

- (c) The country of origin should initiate early consultations with the affected country to allow enough time for the latter to identify effective tools (including media) to engage the public, and for the 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.

141. Considering the above, it may be concluded that, while the Barcelona Convention does not provide any requirements, 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 that is broadly coherent with the requirements of the Protocol on Strategic Environmental Assessment without, nevertheless, defining the content and the specific arrangements for such notification at the level of detail stipulated in its article 10 (1) and (2).

142. 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, contain more detailed provisions that could be used in a voluntary basis to facilitate this process.

(b) Environmental report

143. 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.

(c) Public participation

144. 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.

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

146. 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, on “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.

147. It may be concluded that the Barcelona Convention and one out of its seven Protocols foresee public participation requirements in a manner that is broadly coherent with the Protocol on Strategic Environmental Assessment. Nevertheless, they do not give the same level of details as stipulated by the Protocol on Strategic Environmental Assessment, articles 8 and 10 (4) and annex V.

(d) Final decision

148. The Barcelona Convention and its Protocols do not include any requirements regarding the final decision or its transmission to the affected Parties that would be similar to those under article 11 of the Protocol on Strategic Environmental Assessment.

D. Bucharest Convention

1. Introduction

149. Referring to chapter II above, all the Contracting Parties of the Bucharest Convention, aside from the Russian Federation and Türkiye, are Parties to the Protocol on Strategic Environmental Assessment to the Espoo Convention. Two are also European Union member States and are consequently bound by the European Union Strategic Environmental Assessment Directive.

150. The following analysis focuses on the Bucharest Convention and its Protocols.

2. Strategic environmental assessment requirement

151. The Bucharest Convention and its Protocols do not have specific provisions on strategic environmental assessments apart from in the Protocol on Protection of the Black Sea Marine Environment against Pollution from Land-Based Sources, article 4 (2) (d) of which, on general obligations, requires that Parties shall ensure that environmental considerations, including health aspects, are thoroughly taken into account in the development of relevant plans and programmes, inter alia, by means of strategic environmental assessment.

152. Considering these non-binding provisions, it may be concluded that the Bucharest Convention and its Protocols do not include any requirements that would be similar to those under the Protocol on Strategic Environmental Assessment.

3. Transboundary procedure requirements

(a) Notification and consultation

153. The Bucharest Convention and its Protocols do not provide any indication of the notification and consultation requirements under the strategic environmental assessment procedure.

(b) Environmental report

154. The Bucharest Convention and its Protocols do not provide any indication of the preparation and contents of the environmental report under the strategic environmental assessment process.

(c) Public participation

155. The Bucharest Convention and its Protocols do not provide any specific requirements for public participation under the strategic environmental assessment process.

(d) Final decision

156. The Bucharest Convention and its Protocols do not include any requirements regarding the final decision or its transmission to the affected Parties that would be similar to those under the Protocol on Strategic Environmental Assessment (art. 11).

E. Helsinki Convention

1. Introduction

157. Referring to chapter II above, all the Contracting Parties of the Helsinki Convention, aside from the Russian Federation, are Parties to the Protocol on Strategic Environmental Assessment to the Espoo Convention. Eight are also European Union member States, with the European Union itself being a Party to the Convention, and are consequently also bound by the European Union Strategic Environmental Assessment Directive.

158. The following analysis focuses on the Helsinki Convention and its annexes, as well as its adopted Guidelines, which contain provisions that bear certain similarities to those of the Protocol on Strategic Environmental Assessment.

2. Strategic environmental assessment requirement

159. The Helsinki Convention and its annexes do not have specific provisions on strategic environmental assessments.

160. However, the Vision and Strategies Around the Baltic Sea (VASAB)-HELCOM paper entitled “Guideline for the implementation of ecosystem-based approach in Maritime Spatial Planning (MSP) in the Baltic Sea area”³⁷ highlights the role of strategic environmental assessment as an important tool for implementing the ecosystem-based approach in maritime spatial planning. This paper also refer to the applicable European Union law, specifically to Directive 2001/42/EC, which requires the assessment of maritime spatial plans that are being prepared based on the Maritime Spatial Planning Directive.³⁸

161. Considering these non-binding provisions, it may be concluded that the Helsinki Convention and its annexes do not include any requirements that would be similar to those under the Protocol on Strategic Environmental Assessment, but indirectly support the application of the Protocol on Strategic Environmental Assessment through their technical guidelines that provide reference to the specific strategic environmental assessments in both national and transboundary settings.

3. Transboundary procedure requirements

(a) Notification and consultation

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

163. With regard to transboundary consultations, article 7 (2) of the Helsinki Convention provides for the obligation to enter into consultations with any Contracting Party that is likely to be affected by transboundary impact, whenever consultations are required by international law or supranational 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.

164. In addition, the VASAB-HELCOM Guidelines on transboundary consultations, public participation and cooperation³⁹ 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 on Strategic Environmental Assessment and strengthen the scope of consultations. These guidelines, which may be used voluntarily, are briefly presented in box 10 below.

Box 10

Vision and Strategies Around the Baltic Sea-Helsinki Commission Guidelines on transboundary consultations, public participation and cooperation

³⁷ The Vision and Strategy Around the Baltic Sea (VASAB)-HELCOM Guideline paper was adopted by the seventy-second meeting of the VASAB Committee on Spatial Planning and Development of the Baltic Sea Region on 8 June 2016 and approved by the fiftieth meeting of the HELCOM Heads of Delegation (Laulasmaa, Estonia, 15–16 June 2016). The Guideline paper is available at <https://portal.helcom.fi/meetings/HOD%2050-2016-327/default.aspx>.

³⁸ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning, *Official Journal of the European Union*, L 257 (2014), pp. 135–145.

³⁹ Available at <https://maritime-spatial-planning.ec.europa.eu/practices/guidelines-transboundary-consultations-public-participation-and-co-operation>.

The guidelines cover the following aspects:

- (a) 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;
- (b) 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 the 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 broadening the minimal scope of consultation defined under both the Espoo Convention and its Protocol and propose using them also for a broader range of marine spatial planning issues, in particular socioeconomic issues. 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 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 pan-Baltic in nature, all Baltic Sea region countries and the relevant pan-Baltic organizations should be informed. This applies to all national and subnational 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 initiate a marine spatial planning process. This should be done through a formal letter/email in English (or the national language of the addressee(s)). The information should be sent to the countries affected, as well as to the relevant pan-Baltic organizations;
- (c) The competent authorities clearly state the intention and the nature of the maritime spatial plan, so other countries can understand its possible influence and impacts;
- (d) The competent authorities (preferably via national marine spatial planning contact points) request 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 European Union Directive 2014/89/EU);
- (e) The competent authorities (preferably via national marine spatial planning contact points) also inform the neighbouring countries once the stakeholder process has begun, 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 be provided through a letter/email in English (or the national language of the addressee(s)) describing the location of the plan, its main objectives and possible cross-border impacts.

(b) Environmental report

165. 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 process.

(c) Public participation

166. Apart from article 17, entitled “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 is 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.

167. Nevertheless, the VASAB-HELCOM Guidelines on transboundary consultations, public participation and cooperation (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 Protocol on Strategic Environmental Assessment, and that it is necessary to initiate this process before the maritime spatial plan is fully drafted.

168. It may be concluded that, while the Helsinki Convention does not foresee specific public participation requirements under the strategic environmental assessment process, such a process is inferred by the cited Guidelines to be used on a voluntary basis to facilitate the process foreseen by articles 8 and 10 (4) of the Protocol on Strategic Environmental Assessment, at least in the field of maritime spatial planning.

(d) Final decision

169. The Helsinki Convention and its annexes do not include any requirements regarding the final decision or its transmission to the affected Parties that would be similar to those under the Protocol on Strategic Environmental Assessment (art. 11).

F. Convention for the Protection of the Marine Environment of the North-East Atlantic

1. Introduction

170. Referring to chapter II above, all the Contracting Parties to the OSPAR Convention, aside from Belgium, France, Iceland, Ireland, Switzerland and the United Kingdom of Great Britain and Northern Ireland, are Parties to the Protocol on Strategic Environmental Assessment to the Espoo Convention. Eleven Parties are also European Union member States, with the European Union itself being a Party to the OSPAR Convention, and two additional Parties are European Economic Area countries and, consequently, all these are also bound by the European Union Strategic Environmental Assessment Directive.

171. The following analysis focuses on the OSPAR Convention and related decisions, including the OSPAR North-East Atlantic Environment Strategy 2030,⁴⁰ which contains principles that bear certain similarities to those of the Protocol on Strategic Environmental Assessment.

2. Strategic environmental assessment requirement

172. Aside from the provision in general terms in the OSPAR Convention, the seventh recital 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 (thus, including sect. 4. Monitoring and Environmental Assessment, arts. 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.

173. However, the North-East Atlantic Strategy 2030 for implementation of the OSPAR Convention in the period 2020–2030, in its 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

⁴⁰ 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 www.ospar.org/documents?v=46337.

Plan/Barcelona Convention, the Bucharest Convention and other regional organizations on the implementation of shared goals.

174. Considering these non-binding provisions, it may be concluded that the OSPAR Convention and its annexes do not include any requirements that would be similar to those under the Protocol on Strategic Environmental Assessment, but indirectly support the application of the Protocol on Strategic Environmental Assessment through the principles on which they are based and the objective in Strategy 2030 to require strategic environmental assessments in transboundary settings in the future.

3. Transboundary procedure requirements

(a) Notification and consultation

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

(b) Environmental report

176. 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 process.

(c) Public participation

177. Apart from article 9 on access to information, requiring the Contracting Parties to ensure that their competent authorities shall make available 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.

(d) Final decision

178. The OSPAR Convention and its annexes do not include any requirements regarding the final decision or its transmission to the affected Parties that would be similar to those under the Protocol on Strategic Environmental Assessment (art. 11).

G. Tehran Convention and its Protocols

1. Introduction

179. Referring to chapter II above, the following analysis focuses on the Tehran Convention and its Protocols, to verify if, and to what extent, principles are envisaged that bear certain similarities to those of the Protocol on Strategic Environmental Assessment.

2. Strategic environmental assessment requirement

180. Apart from article 4 of the Protocol on Land-based Pollution to the Tehran Convention, which requires in general terms that environmental factors be 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

(a) Notification and consultation

181. Apart from a general statement in article 18 (1) of the Tehran Convention on cooperation between the Contracting Parties in formulating, elaborating and harmonizing 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 Tehran Convention and its Protocols do not provide any indication of the notification and consultation requirements under the strategic environmental assessment procedure.

(b) Environmental report

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

(c) Public participation

183. 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 and its Protocols do not provide any specific requirement for public participation under the strategic environmental assessment process.

(d) Final decision

184. The Tehran Convention and its Protocols do not include any requirements regarding the final decision or its transmission to the affected Parties that would be similar to those under the Protocol on Strategic Environmental Assessment (art. 11).

H. Arctic Council

1. Introduction

185. Referring to chapter II above, the Arctic States of Norway, Finland, Sweden and Denmark are Parties to the Protocol on Strategic Environmental Assessment to the Espoo Convention. Three are also European Union member States, with a further two being members of the European Economic Area, and consequently also bound by the European Union Strategic Environmental Assessment Directive.

186. The following analysis focuses on the Arctic Council, to verify if and to what extent principles are envisaged that bear certain similarities to those of the Protocol on Strategic Environmental Assessment.

2. Strategic environmental assessment requirement

187. The Arctic Council itself does not conduct nor have specific provisions or any requirements on strategic environmental assessments that would be similar to those under the Protocol on Strategic Environmental Assessment.

188. 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.

189. 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 assessment legal systems vary among Arctic countries, as does the concrete application of strategic environmental assessments.⁴¹

⁴¹ Timo Koivurova, "Transboundary environmental assessment in the Arctic", *Impact Assessment and Project Appraisal*, vol. 26, No. 4 (December 2008), pp. 265–275.

190. Article 2 (7) of the Espoo Convention provides for the non-mandatory application of the principles of environmental impact assessment, beyond the project level, to policies, plans and programmes in a transboundary context. The subsequently negotiated Protocol on Strategic Environmental Assessment to the Convention sets the legal framework for the application of strategic environmental assessment to plans and programmes, and, to the extent appropriate, to policies and legislation (see paras. 124–128 above).

3. Transboundary procedure requirements

(a) Notification and consultation

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

(b) Environmental report

192. The Arctic Council does not provide any indication of the preparation and contents of the environmental report under the strategic environmental assessment process.

(c) Public participation

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

(d) Final decision

194. The Arctic Council does not include any requirements regarding the final decision or its transmission to the affected Parties that would be similar to those under the Protocol on Strategic Environmental Assessment (art. 11).

IV. Focus areas for future cooperation and further implementation steps

A. Introduction

195. The ultimate aim of this activity remains the identification of opportunities for promoting cooperation and exchange of good practice for the effective practical conduct of strategic environmental assessment and transboundary environmental impact assessment across those marine regions that are within or partially within the ECE region. Each of the regional sea conventions and bodies have related obligations and/or activities, which chapters II–III above describe - with reference to provisions of the Espoo Convention and its Protocol. The regional sea conventions or bodies are not expected to replicate the Espoo Convention and its Protocol, which constitute the instruments of reference in terms of procedural requirements for the application of transboundary environmental impact assessment and strategic environmental assessment. Moreover, most of the Contracting Parties to the regional sea conventions are also Parties to the Espoo Convention and its Protocol; in addition, some of them are also bound by the European Union Environmental Impact Assessment Directive and Strategic Environmental Assessment Directive.

196. The main concern is rather about the lack of systematic and compliant application of transboundary environmental impact assessment and strategic environmental assessment, in particular in some specific areas, by those countries that are not (yet) Parties to the Espoo Convention and its Protocol, nor bound by the European Union directives.

197. The aim is not to point to legal gaps and suggest amendments to the regional sea conventions or bodies, but to share concrete relevant experience and discuss how to best prevent, mitigate and control environmental impacts of activities, projects, programmes and plans in marine regions, in particular of a transboundary nature, and how to best further increase cooperation between the relevant instruments, national authorities, experts and stakeholders.

B. Areas of interest for future potential cooperation efforts

198. The present section contains proposals put forward thus far for possible cooperation activities between the Espoo Convention and its Protocol and the respective regional sea conventions/bodies in marine regions. The proposals are based on preliminary ideas presented in the first draft assessment report and reflect informal comments and suggestions received during and in between the joint technical meetings with the regional sea conventions and bodies in 2021–2023, as well as feedback from the Bureau and the Working Group under the Espoo Convention and its Protocol.

199. The potential cooperation areas and options for related activities are categorized as follows:

- (a) Information-sharing;
- (b) Collection and dissemination of good environmental assessment practices in marine and coastal areas;
- (c) Strengthening implementation of existing environmental assessment provisions under the relevant regional sea treaties;
- (d) Pilot projects;
- (e) Information-sharing on the potential for cumulative impacts;
- (f) Long-term coordination/cooperation opportunities.

200. The proposals constitute a preliminary menu of options for Parties and stakeholders under the Espoo Convention and its Protocol and the regional sea conventions/bodies to facilitate their future collaboration, if they so agree, within the framework of the respective workplans and available resources.

201. If deemed useful, the proposals could also serve as a basis for the possible future preparation of informal “aides-memoires” that elaborate practical cooperation arrangements between the Espoo Convention and its Protocol and each specific regional sea convention/body in greater detail.

C. Potential focus areas and activities for future cooperation

202. Considering the development needs that would benefit from further cooperation efforts, and the consultations held, the following tentative list of preliminary options for potential future collaboration has been drawn up for implementation within the framework of the respective workplans and available resources:

203. Information-sharing could be facilitated through the following simple arrangements:

- (a) The secretariats to the Espoo Convention and its Protocol and the regional sea conventions/bodies would share relevant information and meeting invitations with each other, for further dissemination to the relevant networks of Parties and stakeholders under the respective instruments, as appropriate;
- (b) The ECE secretariat would create a dedicated web page on its website for presenting the results of the activity funded by Italy, together with links to any additional information on the practical arrangements for cooperation between the relevant instruments and their structures and networks. The regional sea conventions/bodies secretariats would provide a link to that web page from their respective websites, also for their Parties and stakeholders to refer to, when relevant;
- (c) Parties and stakeholders to the Espoo Convention and its Protocol and the regional sea conventions/bodies would be encouraged to mutually and directly coordinate and share information on the application and effectiveness of the relevant transboundary environmental impact assessments or strategic environmental assessments in marine regions nationally and, at the international level, by making use of contact databases of national focal points/points of contact under the respective treaties. Specifically, the national focal points to the Espoo Convention and its Protocol on Strategic Environmental Assessment could

explore the application and effectiveness of such assessments with their national counterparts under the respective regional sea conventions/bodies and, possibly, report on their experience and lessons learned during the meetings held under the workplans of the relevant conventions/bodies;

(d) To facilitate cooperation focusing specifically on one particular marine region, (e.g., the Mediterranean), the representatives of the concerned Parties to the Espoo Convention and its Protocol would consider organizing meetings with other parties and stakeholders (in the Mediterranean Basin) with a view to informally exchanging details about their forthcoming or ongoing transboundary procedures and other issues of relevance to that particular marine region, and also invite the representatives of the respective regional sea convention to such meetings. A similar practice has proved useful for creating robust networks for improving the informal exchanges of information, as well as for cooperation and coordination among the Parties to the Espoo Convention and its Protocol from around the Baltic Sea that, over nearly two decades, have taken turns to host and organize such “subregional” cooperation meetings, either on an annual basis or at longer intervals.⁴² These meetings would be listed in the workplans and their costs covered in-kind by the concerned countries themselves;

(e) The regional sea conventions/bodies could organize additional events/discussions within their future activities and meetings to explore the application of transboundary environmental impact assessment or strategic environmental assessment. Discussions/events on transboundary environmental impact assessment and strategic environmental assessment could be, for example, held within the framework of the following forums:

- The HELCOM-VASAB Maritime Spatial Planning Working Group and/or HELCOM Working Group on the Reduction of Pressures from the Baltic Sea Catchment Area.
- The OSPAR Convention activities on the development and scaling up of offshore renewable energy in such a way that cumulative environmental impacts are minimized.
- The Barcelona Convention activities on climate change, integrated coastal zone management and marine spatial planning.
- The Bucharest Convention ICZM Advisory Group meetings, as well as bilateral meetings with Barcelona Convention under the memorandum of understanding on cooperation 2016.
- The meeting of the Tehran Convention on the occasion of the entry into force of its Protocol on Environmental Impact Assessment in a Transboundary Context.

(f) The Parties to the Espoo Convention and the Protocol on Strategic Environmental Assessment and the interested regional sea conventions/bodies would be also invited to consider establishing voluntary/informal practical arrangements to (voluntarily) inform the concerned regional sea convention secretariats/bodies of any relevant transboundary environmental impact assessments or strategic environmental assessments conducted in their respective marine regions.

204. The collection and dissemination of information on good environmental assessment practices in marine and coastal areas could be conducted through the following actions:

(a) The Parties to the Espoo Convention and its Protocol and the regional sea conventions/bodies would be invited to provide information on examples illustrating their good environmental assessment practices in marine and coastal areas in the application of the provisions of the two treaties. The information would be provided through the secretariat, via templates (that are in the process of being finalized);

(b) The Parties to the Espoo Convention and its Protocol and to the regional sea conventions/bodies would be encouraged to make use of the good practice recommendations and guidelines developed under the Espoo Convention, its Protocol, the regional sea

⁴² See <https://unece.org/baltic-sea>.

conventions and/or the European Union or ECE system to strengthen the consideration of coastal and marine environmental protection in the relevant environmental assessment processes.

205. Strengthening implementation of existing environmental assessment provisions under the relevant regional sea treaties could involve the following mechanisms:

(a) The regional sea conventions/bodies would periodically critically evaluate, as part of their respective reporting or implementation reviews, the implementation of their relevant provisions related to transboundary environmental impact assessment and strategic environmental assessment; and use the ensuing results to flag related areas where further improvements and/or assistance would be useful;

(b) As relevant, the Chair or Vice-Chair of the Implementation Committee of the Espoo Convention and its Protocol would be invited to a meeting of the corresponding bodies under the regional sea conventions that address compliance/implementation of their relevant provisions (e.g., the Compliance Committee of the Barcelona Convention) to exchange experience on compliance matters related to transboundary environmental impact assessment or strategic environmental assessment of relevant plans and projects;

(c) Any interested corresponding body for any convention would encourage its contracting parties to establish bilateral and/or multilateral cooperation arrangements between the Espoo Convention Parties and non-Parties for the application of transboundary environmental impact assessment or strategic environmental assessment. Such potential cooperation agreements could build on, for example, lessons from twinning of marine protected areas or similar cooperation instruments in marine regions;⁴³

(d) Subject to availability of resources, and as required, legislative assistance or capacity-building support would be provided to parties and future parties for strengthening/aligning of national regulatory frameworks with the respective treaty obligations related to transboundary environmental impact assessment or strategic environmental assessment and supporting their practical implementation;

206. Pilot transboundary environmental impact assessments or strategic environmental assessments conducted in marine regions to facilitate engagement and to help to build trust between the concerned countries. Such pilot assessments might be particularly useful in the following fields with likely significant adverse transboundary impacts/effects:

- Maritime/marine spatial plans (on country or subregional levels, e.g., western Mediterranean)
- Offshore hydrocarbon exploration and exploitation
- Offshore renewable energy
- Pipelines and high-voltage powerlines
- Liquefied natural gas terminals

207. While the secretariat to the Espoo Convention and its Protocol has no capacity for fundraising for such pilot projects, they could be implemented subject to the availability of resources, or conducted via bilateral donor arrangements, and be facilitated by the secretariat. The relevant international development banks, starting with the European Investment Bank and the European Bank for Reconstruction and Development, could also be invited to explore opportunities for supporting such pilot projects through their operations in the respective marine regions.

208. With a view to exchanging data on the potential for cumulative impacts, Parties and relevant intergovernmental mechanisms under the regional sea conventions/bodies could identify emerging cumulative impacts and cross-border issues through the following anticipatory processes that could support future transboundary environmental impact assessments or strategic environmental assessments in marine regions:

⁴³ See, for example, www.rac-spa.org/spami_project.

- Regional or subregional scale assessments exploring the potential cumulative effects of the planned development of offshore renewable energy resources.
- Analyses of evolving baseline trends and impacts of development projections under the business-as-usual scenarios in the relevant assessment reports that the regional sea conventions/bodies prepare.

209. In the long-term perspective, the relevant conventions or bodies may explore the following cooperation opportunities:

(a) Parties to the regional sea conventions/bodies can coordinate with the Parties to the Espoo Convention and its Protocol should they develop any future approaches for the assessment of the potentially significant adverse impacts (of plans, programmes, or activities) on the marine environment;

(b) Parties to the Espoo Convention and its Protocol and the regional sea conventions/bodies may also explore options for the harmonization of procedures and assessment methods, taking into account coastal zone sensitivity, carrying capacity, vulnerability to climate change and land-sea interactions. Such cooperation may gradually begin with sharing of information on marine environmental policy innovations that may be relevant for environmental assessments – such as maximum allowable inputs of nutrients that is being currently developed within the framework of the Helsinki Convention. Such policy innovations could offer a useful reference framework for transboundary environmental impact assessments or strategic environmental assessments in different marine regions exposed to excessive pollution load levels.
