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**Economic Commission for Europe****Meeting of the Parties to the Convention  
on Environmental Impact Assessment  
in a Transboundary Context****Ninth session****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****Fifth session**

Geneva, 12–15 December 2023  
Item 6 of the provisional agenda

**High-level event on the contribution of the Convention  
and the Protocol to energy transition, circular economy and green financing****Energy transition, circular economy and green financing:  
Role of the Espoo Convention and its Protocol****Note by the Bureau prepared with support from two consultants***Summary*

The present document focuses on the role and further potential of the Convention and its Protocol regarding energy transition, circular economy and green financing, to be discussed at a high-level event of the current sessions (14 December, 3.30–5.30 p.m.). It has been prepared further to the workplan,<sup>a</sup> in agreement with the Bureau, with support from consultants to the secretariat funded by Italy, considering the comments of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its twelfth meeting (Geneva, 13–15 June 2023).

During the moderated panel discussion, panellists and delegates are expected to: address key questions related to the three topics, as outlined in the document; share related good practice; and explore ways to increase awareness and the application of the treaty/treaties in that context. Delegations wishing to make short (3 minutes) interventions from the floor are requested to register their statements in advance of the sessions. A draft programme will be available separately (ECE/MP.EIA/2023/INF.10, forthcoming).

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<sup>a</sup> ECE/MP.EIA/30/Add.1–ECE/MP.EIA/SEA/13/Add.1, decision VIII/2–IV/2, annex I, item III.B.1.



## I. Introduction

### A. Objectives

1. This document was prepared under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment to present the role and further potential of those instruments regarding energy transition, circular economy and green financing. This is in line with the priority objectives of the long-term strategy under the Convention and the Protocol (adopted in 2020), which include “advocating the treaties’ role” and “making full use of the treaties’ potential” in addressing global and national commitments and priorities, including in relation to climate change and circular economy, developing best practice concerning energy and Sustainable Development Goals.<sup>1</sup>

2. The focus on the three interlinked topics also stems from their topical nature and relevance for meeting the global commitments under the Paris Agreement and the 2030 Agenda for Sustainable Development, including Sustainable Development Goals 7 and 13 on energy and climate action, respectively.

3. Many countries worldwide are pursuing energy transition, and policies and/or legal instruments are in place or are being developed both nationally and regionally to implement the circular economy and green financing. These developments reflect strong international support for environmental and social sustainability, as reflected in the Sustainable Development Goals. There is significant potential for the Convention and the Protocol to assist with obligations associated with these topics, and to ensure compatibility between them. This document outlines the treaties’ potential role in delivering sustainable energy transitions and the circular economy, as well as supporting green financing goals.

4. This document provides a basis for discussions and proposes key guiding questions/discussion points on each of the three topics for consideration by the invited speakers and the audience. The document is intended to serve as advocacy material for promoting awareness and effective application of the two treaties by their Parties, future Parties and stakeholders within and beyond the United Nations Economic Commission for Europe (ECE) region, including with relevant partner organizations and international financial institutions. The document therefore presents an opportunity to help shape future practice under the Convention and the Protocol in order to better meet challenges (described in sections II–IV below) associated with the topics of energy transition, circular economy and green financing. The document was prepared with consultancy support funded by Italy, in consultation with the Bureau<sup>2</sup> and the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment.<sup>3</sup> The work was supported by the secretariat.

5. The key provisions of the Convention and the Protocol are briefly outlined in subsection I.B (below), with each topic being subsequently introduced in turn in sections II–IV below. The discussion of each of the three topics is divided into five subsections covering:

- (a) An introduction to the concept;
- (b) A brief description of the policy framework;
- (c) The role, benefits and further potential of the Convention and Protocol in relation to the topic;
- (d) Areas for further investigation of the role of the Convention and Protocol and suggested discussion points/key guiding questions for the high-level event;

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<sup>1</sup> ECE/MP.EIA/30/Add.1–ECE/MP.EIA/SEA/13/Add.1, decision VIII/3–IV/3, annex, section II.B.

<sup>2</sup> Informal notes on the Bureau meeting (Geneva (online), 9–10 June 2022), paras. 49–54, available at <https://unece.org/info/Environmental-Policy/Environmental-Impact-Assessment/events/366918>; and informal notes on the Bureau meeting (Geneva, 22–23 February 2023), paras. 21–27, available at <https://unece.org/info/Environmental-Policy/Environmental-Impact-Assessment/events/364365>.

<sup>3</sup> ECE/MP.EIA/WG.2/2022/2, paras. 97–99; and ECE/MP.EIA/WG.2/2023/2, paras. 32–39.

(e) Drawing on a Strengths-Aspirations-Opportunities-Options analysis method, an assessment is conducted of: the strengths of the instruments; aspirations for further improvement; opportunities for an enhanced role in the future; and options for achieving an enhanced role.

## **B. Relevant provisions and practices under the Convention and the Protocol**

6. The Convention and its Protocol were elaborated under the auspices of ECE. The Protocol is accessible to all States Members of the United Nations, and the Convention is expected to become a global instrument in the next few years. The two treaties offer international legal frameworks and well-established practical procedures for preventing, controlling and mitigating significant adverse cross-border environmental impacts of projects; and for ensuring that, environmental, including health, considerations are thoroughly taken into account in plans and programmes, and potentially in policies and legislation. Both instruments apply across multiple economic sectors, contribute to environmental governance and transparency in planning and decision-making through their requirements for public participation and stakeholder consultation, and promote international cooperation. Transboundary environmental impact assessment under the Convention and strategic environmental assessment under the Protocol are actively used by their Parties to green projects, plans and programmes, including in the field of energy, and have the potential to play an increasingly important role in promoting energy transition and circular economy, and in creating enabling conditions for green financing.

7. This section contains a brief explanation of the relevant provisions of the Convention and the Protocol.

### **1. Espoo Convention**

8. The 1991 Espoo Convention requires Parties to apply transboundary environmental impact assessment to proposed projects falling within its remit, between a Party of origin, which is responsible for implementing a project, and an affected Party, or Parties. It puts into practice the commitments undertaken by all the States Members of the United Nations as part of the 1992 Rio Declaration principles, to provide a “prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect” and to “consult with those States at an early stage and in good faith”<sup>4</sup> on such planned activities. The Convention came into force in 1997, with the current ratification status of the Convention and two subsequent amendments updated online.<sup>5</sup>

9. The key procedural requirements of the Espoo Convention are summarized as follows, complemented by recommended good practice, tools and actions for their effective practical application:<sup>6</sup>

(a) Environmental impact assessment requirement: a Party must implement an environmental impact assessment procedure for proposed activities listed in appendix I to the Convention that are likely to cause significant adverse transboundary impact (art. 2 (2)) and before a decision to authorize or undertake any such proposed activity is made (art. 2 (3));

(b) Meaning of “impact”: article 1 (vii) of the Convention defines “impact” as “any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical

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<sup>4</sup> A/CONF.151/26 (Vol. I), annex I, Rio Declaration on Environment and Development, principle 19.

<sup>5</sup> As of 19 September 2023, the Convention counted 45 Parties. Updates are available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-4&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&clang=_en).

<sup>6</sup> Resource material on the application of the Espoo Convention include: guidance, available at <https://unece.org/publications/environmental-assessment>; decisions by the Meeting of the Parties, available at <https://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>.

structures or the interaction among these factors; it also includes effects on cultural heritage or socioeconomic conditions resulting from alterations to those factors”;

(c) Notification requirement: there is a requirement to notify affected Parties, including specifications on the minimum content of the notification and the procedure to be followed by the concerned 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);<sup>7</sup>

(d) Process requirement: there is a requirement to prepare environmental impact assessment documentation containing, as a minimum, information listed in appendix II to the Convention. This includes information on the proposed activity and its alternatives, the environment likely to be affected, the potential environmental impact, mitigation measures, predictive methods and underlying assumptions and data used, information gaps, a non-technical summary and, where appropriate, an outline for monitoring programmes (art. 4 and appendix II). The *Guidance on the Practical Application of the Espoo Convention* (hereinafter “the Guidance”)<sup>8</sup> recommends the conduct of a scoping procedure; furthermore, the second amendment to the Espoo Convention includes a provision stating that where a Party of origin carries out “a procedure for the purposes of determining the content of the environmental impact assessment documentation, the affected Party should to the extent appropriate be given the opportunity to participate in this procedure”;<sup>9</sup>

(e) Consultation requirement: there is a requirement to consult, without undue delay, affected Parties on the basis of the environmental impact assessment documentation, including on the potential transboundary impact of the proposed activity, and measures to reduce or eliminate its impact (art. 5);

(f) Public participation requirement: there is a 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 to participate in the transboundary procedure to that provided to the public of the Party of origin (arts. 2 (6), 3 (8) and 4 (2));

(g) Final decision: requirements regarding the final decision on the proposed activity include taking into account “the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to article 3 (8) and article 4 (2), and the outcome of the consultations as referred to in article 5” (art. 6 (1)); and the Party of origin “shall provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based” (art. 6 (2));

(h) Post-project analysis: article 7 (1) of the Convention facilitates post-project analysis subject to the agreement of the concerned Parties, focusing on the objectives listed in appendix V.

10. Article 8 of the Convention highlights the possibility of concerned Parties entering into agreements between one another, and the Guidance indicates that such agreements should take note of other stakeholders such as the developer, international financing institutions and non-governmental organizations (NGOs).<sup>10</sup> Such agreements include practical arrangements for cost-sharing/allocation, covering issues such as translation, hearings and additional studies. They therefore have the potential to act as templates for collaboration on energy transition, circular economy and/or green finance initiatives.

11. The Guidance presents two situations that may lead to the special case of joint environmental impact assessments: joint projects with impacts on one or both of the two Parties of origin; joint projects with impacts not only on the two Parties of origin but also on other Parties.<sup>11</sup> Some energy transition projects will fall into this category (e.g., new electricity infrastructure) and could form a useful means of developing a circular economy

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<sup>7</sup> 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)).

<sup>8</sup> United Nations publication, ECE/MP.EIA/8.

<sup>9</sup> Decision III/7 on the second amendment to the Espoo Convention, para. 3 (a), available at <https://unece.org/environment-policy/environmental-assessment/decisions-taken-meetings-parties>.

<sup>10</sup> ECE/MP.EIA/8, para. 14.

<sup>11</sup> *Ibid.*, para. 83.

through collaboration over elements of a transboundary environmental impact assessment, where waste from one project forms the raw material for another in a different country.

## 2. Protocol on Strategic Environmental Assessment

12. The 2003 ECE Protocol on Strategic Environmental Assessment further helps to lay the groundwork for sustainable development by requiring Parties to apply its procedures for strategic environmental assessment to a broad range of sectoral plans and programmes, and recommending (in art. 13) their application also to relevant policies and legislation, as appropriate. The Protocol came into force on 11 July 2010, with current ratification status updated online.<sup>12</sup>

13. The Protocol's key procedural requirements<sup>13</sup> are summarized as follows, complemented by recommended good practice, tools and actions for their effective practical application:<sup>14</sup>

(a) Strategic environmental assessment requirement: article 4 (1) of the Protocol requires that “each Party shall ensure that a strategic environmental assessment is carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are likely to have significant environmental, including health, effects”. Article 4 indicates which plans and programmes are subject to the Protocol. Article 13 (1)–(2) asks Parties to endeavour to apply the Protocol in the preparation of their proposals for policies and legislation that are likely to have significant effects on the environment, including health;

(b) Meaning of “effect”: article 2 (7) states that “‘environmental, including health, effect’ means any effect on the environment, including human health, flora, fauna, biodiversity, soil, climate, air, water, landscape, natural sites, material assets, cultural heritage and the interaction among these factors”;

(c) Process requirements: Parties undertake a “screening” process to determine which plans and programmes are subject to the Protocol (arts. 4, 5 (1) and annex III), a “scoping” process to determine what information to include in the environmental report prepared “in accordance with article 7 (2)” (art. 6 (1)), and produce an “environmental report” including information specified in annex IV (as may reasonably be required) to “identify, describe and evaluate the likely significant environmental, including health, effects of implementing the plan or programme and its reasonable alternatives” (art. 7 (2));

(d) Consultation requirements: each Party must ensure that the environmental and health authorities referred to in article 9 (1) are consulted over both the screening and scoping decisions (art. 5 (2)), and the same authorities must be ensured access to the draft environmental report and allowed to express their opinion “in an early, timely and effective manner” (art. 9 (3));

(e) Public participation requirements: each Party shall ensure “early, timely and effective opportunities for public participation, when all options are open”, when undertaking the strategic environmental assessment (art. 8 (1)). In particular, Parties shall endeavour to provide opportunities for the participation of the public concerned when undertaking the screening of plans and programmes (art. 5 (3)), when scoping the content of the environmental report (art. 6 (3)), and at the draft stage of the environmental report (art. 8 (4)). Parties must ensure that the public (including relevant NGOs) is identified and that “detailed arrangements for informing the public and consulting the public concerned are determined and made publicly available” (art. 8 (5));

(f) Transboundary consultations: article 10 sets out requirements to conduct transboundary consultations “where a Party of origin considers that the implementation of a plan or programme is likely to have significant transboundary environmental, including health, effects or where a Party likely to be affected so requests”;

<sup>12</sup> As at 19 September 2023, the Protocol counts 33 Parties. Updates are available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-4-b&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4-b&chapter=27&clang=_en).

<sup>13</sup> ECE/MP.EIA/SEA/8.

<sup>14</sup> *Resource Manual to Support Application of the UNECE Protocol on Strategic Environmental Assessment* (United Nations publication, ECE/MP.EIA/17).

(g) Final decision: article 11 (1) requires that Parties' decisions to adopt a plan or programme must take "due account" of the outcomes of the strategic environmental assessment, including, as relevant, of transboundary consultations. Authorities must state how environment, including health, considerations have been integrated, the comments taken into account, and provide "the reasons for adopting it in the light of the reasonable alternatives considered" (art. 11 (2));

(h) Monitoring: each Party is obliged to monitor the significant environmental, including health, effects of the implementation of plans and programmes adopted subject to the Protocol (art. 12 (1)).

14. The ECE *Resource Manual to Support Application of the UNECE Protocol on Strategic Environmental Assessment*<sup>14</sup> emphasizes the role that strategic environmental assessment can play in the consideration of alternatives and the shift in decision-making towards sustainable development.

## II. Energy transition

### A. What is an energy transition? Introduction to the concept

15. "Transition" is defined by the Intergovernmental Panel on Climate Change in their sixth assessment report as "the process of changing from one state or condition to another in a given period of time. Transition can occur in individuals, firms, cities, regions and nations, and can be based on incremental or transformative change".<sup>15</sup> Sustainable Development Goal 7 aims, by 2030, to ensure universal access to energy, substantially increase the renewable energy share, double the rate of improvement of energy efficiency, enhance international cooperation to facilitate access to clean energy, and expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all developing countries.<sup>16</sup> A central pillar in the energy transition is a global shift towards renewable energy (and hence low to net zero carbon emissions), but the concept is often taken to also imply changes in energy distribution systems (e.g., smart grids) and consumption behaviour.

### B. Policy frameworks, goals and targets for energy transition

16. Sustainable Development Goal 13 calls on nations to take "urgent action to combat climate change and its impacts".<sup>17</sup> Helping to deliver this, the 2015 Paris Agreement goal,<sup>18</sup> adopted at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) (Paris, 30 November–11 December 2015), is to reduce energy-related carbon dioxide (CO<sub>2</sub>) emissions such that global mean temperature rises are held well below 2°C, and that efforts are pursued to limit the rise to within 1.5°C of pre-industrial levels. The twenty-sixth session of the Conference of the Parties to UNFCCC (Glasgow, United Kingdom of Great Britain and Northern Ireland, 31 October–12 November 2021)<sup>19</sup> called for stronger climate plans (nationally determined contributions) to be developed more quickly. The twenty-seventh session of the Conference of the Parties to UNFCCC (Sharm El-Sheikh, Egypt, 6 November–20 November 2022) shifted towards implementation,<sup>20</sup> with operative paragraph 9 of the Sharm El-Sheikh Implementation Plan stating that the Conference of the Parties "recognizes that the unprecedented global energy crisis underlines the urgency to rapidly transform energy systems to be more secure, reliable, and resilient, including by accelerating clean and just

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<sup>15</sup> See [www.ipcc.ch/site/assets/uploads/2019/11/11\\_Annex-I-Glossary.pdf](http://www.ipcc.ch/site/assets/uploads/2019/11/11_Annex-I-Glossary.pdf), p. 825.

<sup>16</sup> See <https://sdgs.un.org/goals/goal7>.

<sup>17</sup> See <https://sdgs.un.org/goals/goal13>.

<sup>18</sup> See <https://unfccc.int/process-and-meetings/the-paris-agreement>.

<sup>19</sup> See <https://unfccc.int/topics/adaptation-and-resilience/workstreams/glasgow-sharm-el-sheikh-WP-GGA#Workshops>.

<sup>20</sup> See <https://unfccc.int/process-and-meetings/conferences/sharm-el-sheikh-climate-change-conference-november-2022/five-key-takeaways-from-cop27>.

transitions to renewable energy during this critical decade of action”.<sup>21</sup> The negotiation process under that Convention and related Conference of the Parties decisions in recent years strongly emphasize the need for a transition to clean energy.

17. The Energy Transitions Commission calculates that global capital investment will need to average \$3.5 trillion per annum between 2023 and 2050 (from starting levels of between \$0.9 trillion and \$1.2 trillion) to realize the energy transition.<sup>22</sup> The Convention and the Protocol are therefore central to assessing the potential impacts arising from the plans, programmes and projects resulting from this investment. There are also numerous interlinkages between investments in energy transitions and the circular economy and green financing. For example, the European Green Deal, as one example of a strategy for delivering the energy transition, incorporates a circular economy action plan adopted in 2020<sup>23</sup> (see section III below), while green financing rules are also being adopted worldwide to ensure the sustainable allocation of investments (see section IV below).

18. The European Green Deal<sup>24</sup> is a best practice example of a strategy aiming for net zero (i.e., carbon neutrality) by 2050. It includes a clean energy transition that involves building interconnected energy systems and better integrated grids. To make the European Green Deal objective legally binding, the European Commission adopted the European Climate Law,<sup>25</sup> which requires net greenhouse gas emissions to be reduced by at least 55 per cent by 2030 compared to 1990 levels. The “Fit for 55 package”,<sup>26</sup> which was developed to deliver this target, comprises a variety of initiatives, involving the development of plans and projects, which can benefit from the assessment of potential impacts required under the Convention and the Protocol.

19. The Paris Agreement requirement for Parties to develop climate actions in “nationally determined contributions”<sup>27</sup> means that similar strategies to those listed for the European Union exist in other countries. However, it is important to recognize that energy transition starting points vary considerably across the ECE region and beyond. The Renewable Energy Policy Network for the 21st Century and ECE jointly prepared the 2022 UNECE Renewable Energy Status Report, which examines the status of renewables in 17 ECE countries plus Kosovo,<sup>28</sup> focusing on South-Eastern and Eastern Europe, the Caucasus, Central Asia and the Russian Federation.<sup>29</sup> This study finds that the focus countries “have significant potential for renewable energy deployment, yet most countries continue to depend heavily on fossil fuels, with relatively smaller shares of renewables in their total final energy consumption”. Energy transition plans will therefore look very different, at least in the short to medium term, across the Parties to the Convention and the Protocol.

20. Renewable energy strategies in many countries are leading to the development of spatial plans related to renewable energy sources, for example, in Greece<sup>30</sup> and Austria.<sup>31</sup> These plans are subject to strategic environmental assessment under the Protocol for Parties thereto, which provides a timely opportunity to ensure sustainable implementation of energy transition within the carrying capacity of the environment. Where such plans are not

<sup>21</sup> See [https://unfccc.int/sites/default/files/resource/cop27\\_auv\\_2\\_cover%20decision.pdf](https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf).

<sup>22</sup> Energy Transitions Commission, *Financing the Transition: How to Make the Money Flow for a Net-Zero Economy*, (n.p., 2023).

<sup>23</sup> See [https://eur-lex.europa.eu/resource.html?uri=cellar:9903b325-6388-11ea-b735-01aa75ed71a1.0017.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:9903b325-6388-11ea-b735-01aa75ed71a1.0017.02/DOC_1&format=PDF).

<sup>24</sup> See [https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF).

<sup>25</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1119>.

<sup>26</sup> See [www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/#:~:text=The%20European%20climate%20law%20makes,EU%20climate%2Dneutral%20by%202050.](http://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/#:~:text=The%20European%20climate%20law%20makes,EU%20climate%2Dneutral%20by%202050.)

<sup>27</sup> See <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs#:~:text=The%20Paris%20Agreement%20and%20NDCs,the%20impacts%20of%20climate%20change.>

<sup>28</sup> References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

<sup>29</sup> See [www.ren21.net/wp-content/uploads/2019/05/REN21\\_UNECE2022\\_FullReport.pdf](http://www.ren21.net/wp-content/uploads/2019/05/REN21_UNECE2022_FullReport.pdf).

<sup>30</sup> See <https://energynews.eu/tag/res-sector-special-spatial-plan/>.

<sup>31</sup> Gernot Stoeglehner, “Integrated spatial and energy planning: a means to reach sustainable development goals”, *Evolutionary and Institutional Economics Review*, vol. 17 (2020), pp. 473–486.

developed, the limitations of project-based environmental impact assessment to identify the cumulative effects of multiple energy projects have been demonstrated through the *European Commission vs. Republic of Bulgaria* (Kaliakra) case before the Court of Justice of the European Union.<sup>32</sup> The preparation of energy transition plans and their subsequent evaluation using strategic environmental assessment therefore reflects good practice that has demonstrable environmental benefits.

### C. Role, benefits and further potential of the Convention and Protocol in promoting energy transition

21. The *Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities*<sup>33</sup> were endorsed by the Meeting of the Parties to the Espoo Convention at its seventh session, and the *Guidance on the Applicability of the Convention to the Lifetime Extension of Nuclear Power Plants*<sup>34</sup> was endorsed by the Meeting of the Parties at its eighth session (Vilnius (online), 8–11 December 2020). A workshop was held in Geneva on 3 June 2014 to provide insights into the application of the Convention and the Protocol to wind and hydro energy-related activities.<sup>35</sup> At the same event, a panel discussion highlighted key achievements, lessons learned and remaining challenges in the application of the Convention and the Protocol to energy-related issues,<sup>36</sup> and a seminar showcased the experience of international finance institutions in applying environmental assessments within and beyond the ECE region, including to transboundary energy infrastructure projects.<sup>37</sup> The Convention and the Protocol are therefore well placed to enable the identification of impacts associated with emerging energy transition plans, programmes and projects (see section II.B above), and to identify measures for reducing or eliminating these impacts for transboundary projects (Convention, art. 5).

22. Recognizing the importance of marine areas in delivering renewable energy, the potential to enhance the effective application of the Convention and the Protocol has also been explored in relation to synergies between these instruments and regional sea conventions. This work draws on good practice for assessment and mitigation under the Convention and Protocol to further promote cooperation within and beyond the ECE region. This work, funded by Italy, has been conducted in cooperation with representatives of the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and the following regional sea conventions and bodies: the Working Group on the Protection of the Arctic Marine Environment under the Arctic Council; the Bucharest Convention on the Protection of the Black Sea against Pollution; the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area; the Tehran Framework Convention for the Protection of the Marine Environment of the Caspian Sea; and the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention).<sup>38</sup> Additionally, a European Union Directive was adopted in 2014<sup>39</sup> requiring member States to develop maritime spatial plans by 2021 that are designed to contribute to the energy sectors at sea. Each maritime spatial plan will benefit from the application of the Protocol in member Parties.

23. Rapid development of renewable energy “has led to local opposition movements emerging in numerous countries”.<sup>40</sup> This has led to a stronger emphasis on the social acceptability of renewable energy infrastructure and of the distribution of societal benefits and disbenefits. Additionally, world leaders, in an open letter published on 21 June 2023, argued that “the transition to a net zero world and the goals of the Paris Agreement present

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<sup>32</sup> See <https://curia.europa.eu/juris/document/document.jsf?docid=173520&doclang=EN>.

<sup>33</sup> See [https://unece.org/DAM/env/eia/Publications/2017/1734724\\_ENG\\_web.pdf](https://unece.org/DAM/env/eia/Publications/2017/1734724_ENG_web.pdf).

<sup>34</sup> See [https://unece.org/sites/default/files/2021-07/2106311\\_E\\_WEB-Light.pdf](https://unece.org/sites/default/files/2021-07/2106311_E_WEB-Light.pdf).

<sup>35</sup> ECE/MP.EIA/2014/INF.7.

<sup>36</sup> ECE/MP.EIA/2014/INF.9.

<sup>37</sup> ECE/MP.EIA/2014/INF.8.

<sup>38</sup> ECE/MP.EIA/2023/3–EIA/MP.EIA/SEA/2023/3 (forthcoming).

<sup>39</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0089>.

<sup>40</sup> Breffni Lennon, Niall Dunphy and Estibaliz Sanvicente, “Community acceptability and the energy transition: a citizens’ perspective”, *Energy, Sustainability and Society*, vol. 9, No. 1 (2019), art. No. 35.



an opportunity for this generation to unlock a new era of sustainable global economic growth ... we must prioritize just and inclusive transitions to ensure that the poor and most vulnerable can fully reap the benefits of this opportunity, rather than disproportionately bearing the cost”.<sup>41</sup> The Convention and Protocol have comprehensive public participation requirements, which, subject to Parties agreeing to undertake or participate in a transboundary assessment, are in line with the best practice obligations of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

24. Considerable investment in new energy infrastructure is expected as part of the energy transition and many of the proposals for new infrastructure will likely cross national borders and therefore require transboundary environmental impact assessment. Within this context, it is notable that wind farms accounted for the largest number of transboundary consultation procedures by far that took place between 2019–2021, according to data reported by the Convention Parties.<sup>42</sup> This indicates that the Convention already plays an important role in the energy transition. Box 1 below provides a case example of how the Protocol and the Convention are helping to deliver the energy transition in the Baltic Sea region through the assessment of the environmental (and health, under the Protocol) effects of offshore wind energy developments.

25. The International Association for Impact Assessment “FasTips” advice note entitled “Impact Assessment and the Sustainable Development Goals” highlights that it is important to: “Support the adoption or adaptation of [impact assessment] guidelines to incorporate [Sustainable Development Goal] principles and concepts, develop sector-based [impact assessment] guidelines aligned with the [Sustainable Development Goals], and generate well-documented case studies that highlight the links between [impact assessment] and the [Sustainable Development Goals]”.<sup>43</sup> It is noteworthy that “twelve Parties and Georgia report that transboundary environmental impact assessment made a significant contribution to the implementation of the Sustainable Development Goals”.<sup>44</sup>

#### Box 1

##### **Case study of the use of the Protocol and Convention for offshore wind energy development in the Baltic Sea region**

Many countries worldwide are increasingly looking offshore, to the marine environment, to significantly scale-up their renewable energy generation capacity. In this context, eight Baltic Sea region countries (Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland and Sweden) signed the Marienberg Declaration<sup>a</sup> in August 2022, which establishes “combined ambitions for offshore wind in the Baltic Sea region of at least 19.6 GW by 2030, seven times the current capacity”. The parties to the Declaration also committed to: pursuing joint cross-border renewable energy projects; cooperating in establishing the required energy transmission infrastructure; and heightening political cooperation in achieving these goals.

Strategic environmental assessment under the Protocol and transboundary environmental impact assessment under the Convention have a key role to play in realizing energy transitions, such as that envisaged under the Marienberg Declaration. The Convention’s second amendment added wind farms to the list of activities in appendix I for which transboundary environmental impact assessments may be required and many transboundary consultations have been undertaken for this development activity in recent years (see para. 24 above). The Protocol requires that a strategic environmental assessment be carried out for energy plans and programmes, amongst other things. Not only do these ECE treaties provide important mechanisms for securing environmental safeguards and progress towards the Sustainable Development Goals, but they also play a role in developing stronger cross-border political cooperation, as called for in the Marienberg Declaration.

<sup>41</sup> See [www.theguardian.com/environment/2023/jun/21/a-green-transition-that-leaves-no-one-behind-world-leaders-release-open-letter](http://www.theguardian.com/environment/2023/jun/21/a-green-transition-that-leaves-no-one-behind-world-leaders-release-open-letter).

<sup>42</sup> See [https://unece.org/sites/default/files/2022-11/ece\\_mp.eia\\_wg.2\\_2022\\_3\\_eng.pdf](https://unece.org/sites/default/files/2022-11/ece_mp.eia_wg.2_2022_3_eng.pdf).

<sup>43</sup> See [www.iaia.org/uploads/pdf/Fastips\\_19%20SDGs.pdf](http://www.iaia.org/uploads/pdf/Fastips_19%20SDGs.pdf).

<sup>44</sup> ECE/MP.EIA/WG.2/2023/5, decision IX/5, para. 5 (f).

The transboundary environmental impact assessment currently being undertaken for the proposed Saare Wind Energy offshore wind farm,<sup>b</sup> in the Estonian part of the Baltic Sea, exemplifies the important role that these treaties play. The Saare Wind Energy offshore wind farm will consist of up to 100 wind turbines (total production capacity: 1,400 MW), and associated transmission infrastructure, and will be located over 10 km from the coast of the island of Saaremaa, Estonia. The chosen location is based upon an assessment of preferred areas for wind farm construction established in the Estonian Maritime Spatial Plan, which was subject to a strategic environmental assessment that examined environmental, including health, impacts across national borders and involved transboundary consultations.

The environmental impact assessment procedure for the Saare Wind Energy offshore wind farm, which commenced in 2020, led to the early involvement of potentially affected Parties to the Convention and the establishment of a comprehensive plan for the procedure to help coordinate subsequent consultation and participation activities. Long time frames have been established in the plan for the transboundary procedure for the receipt of responses from potentially affected Parties to aid them in facilitating effective national public participation activities. Use has been made of e-documents and web pages to aid communication with interested actors. The network of national points of contact and focal points for the Convention has been found to be very useful in realizing both the goals of the Convention and cross-border political coordination more generally.

<sup>a</sup> See [www.regeringen.dk/aktuelt/tidligere-publikationer/the-marienburg-declaration/](http://www.regeringen.dk/aktuelt/tidligere-publikationer/the-marienburg-declaration/).

<sup>b</sup> See [www.swe.ee/en/](http://www.swe.ee/en/).

26. Energy transition evidently encompasses multiple strategies, each with a variety of options available. One recent experience in Saskatchewan, Canada, involved the use of a specific transition-based strategic environmental assessment approach to address the wider capacity needs, opportunities, risks and obstacles in existing governance arrangements.<sup>45</sup> This illustrates a case where strategic environmental assessment helped to explore the decision-making context, and promoted consistency between diverse governance and institutional arrangements (which could assist in embedding green financing and circular economy obligations into decision-making). This suggests that the Protocol could have an important role to play in overseeing multiple energy transition plans across different sectors, including where applied to policies, with the benefit of identifying cumulative effects, public concerns, potential areas of conflict, and helping to steer and modify the projects, which are then subject to environmental impact assessment.

#### **D. Areas for further investigation of the role of the Convention and the Protocol in promoting energy transition**

27. Whilst both the Convention and the Protocol require a consideration of climate impacts, they were designed before adaptation, in particular, became an important policy driver. Thus, there is less clarification over the scope of climate than is found in, for example, the 2014 amended European Union Environmental Impact Assessment Directive, which refers to the need to consider climate among the factors to be significantly affected by the project (e.g., the magnitude of greenhouse gas emissions and the impacts relevant to adaptation).<sup>46</sup> The Paris Agreement explicitly requires Parties to consider climate adaptation as well as mitigation in their nationally determined contributions.<sup>47</sup>

28. Many businesses worldwide make use of the Greenhouse Gas Protocol<sup>48</sup> to help account for and manage their emissions through classification of emissions into three categories: Scope 1 emissions are direct emissions from operations of a business (including fleet

<sup>45</sup> Kelechi Nwanekezie, Bram Noble and Greg Poelzer, “Strategic assessment for energy transitions: A case study of renewable energy development in Saskatchewan, Canada”, *Environmental Impact Assessment Review*, vol. 92 (January 2022).

<sup>46</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0052>.

<sup>47</sup> See

[https://unfccc.int/files/meetings/paris\\_nov\\_2015/application/pdf/paris\\_agreement\\_english\\_.pdf](https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf).

<sup>48</sup> See <https://ghgprotocol.org/>.

transport and emissions from manufacturing processes); Scope 2 emissions are indirect emissions (including any electricity/heating/cooling purchased); and Scope 3 emissions are also indirect emissions but from customers and suppliers (including everything emitted by suppliers and customers across the value chain, a term that includes both suppliers in the supply chain and retailers and consumers after the point of sale). Achieving Sustainable Development Goal 13 relies on inclusion of Scope 1, 2 and 3 emissions, and yet Scope 3 emissions are not explicitly listed in the Convention or Protocol as environmental impacts to be considered. The significant indirect impacts of a proposed project usually have to be considered under other environmental impact assessment legislation, for example, under article 3 of the original 2011 European Union Environmental Impact Assessment Directive.<sup>49</sup> The lack of specific focus on Scope 3 emissions in the Convention and the Protocol could restrict the ability of assessments to gain the greatest benefits in terms of reduced emissions and could be a source of tension in transboundary environmental impact assessment cases where the Parties have different approaches to their inclusion.

29. Carbon removals through, for example, tree planting, are classed as compensation, or offsetting. Article 6 of the Paris Agreement allows nations to trade emissions as part of their nationally determined contributions – another form of offsetting. Whilst some civil society organizations (e.g., Amnesty International, the Center for International Environmental Law (CIEL), Climate Action Network-Europe (CAN-E), Earthjustice, the European Environmental Bureau (EEB), Human Rights Watch (HRW) and Association Justice & Environment) dispute the value of emissions trading in advancing climate resilient development if appropriate safeguards are not incorporated,<sup>50</sup> this focus on offsetting is not foreseen under the Convention or the Protocol. This may be restrictive in terms of the ability of measures that might be proposed under these treaties to ensure consistency with other carbon reduction strategies (see box 2 below for suggested discussion points/key guiding questions).

**Box 2**

**Suggested discussion points/key guiding questions**

1. How can the value of the Convention and the Protocol in promoting the social acceptability of energy transition best be demonstrated?
2. Should life cycle impacts, including indirect impacts (and specifically emissions), be more clearly included in the scope of the Convention and the Protocol to fully capture emissions that occur outside the Party of origin, but are contingent on a plan, programme or project, and, to the extent appropriate, policies and legislation, in the Party of origin (to prevent exporting Scope 3 emissions to other Parties)?
3. Does the consideration of climate impacts under the Convention and the Protocol need clarifying, e.g., through agreement by Parties to better align with the Paris Agreement focus on climate mitigation and, where relevant, adaptation?
4. Should the Convention and the Protocol also promote consideration of offsets as allowable mitigation measures? If so, how should this be undertaken?
5. How can Parties best be encouraged to implement the recommendation under the Protocol to conduct policy-level strategic environmental assessment to ensure consistency between sector-specific plans with relevance to energy transition?
6. What best practice cases exist for the use of strategic environmental assessment and transboundary environmental impact assessment in promoting energy transition?

<sup>49</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0092>.

<sup>50</sup> See <https://www.ciel.org/wp-content/uploads/2023/05/Public-Letter-to-AarhusParties.pdf>.

## E. Strengths-Aspirations-Opportunities-Options analysis of the Convention and the Protocol for energy transitions

<i>Strengths</i>	<i>Aspirations</i>	<i>Opportunities</i>	<i>Options</i>
<ul style="list-style-type: none"> <li>· Operational frameworks covering energy transition plans, programmes and projects: data indicate Convention is playing active role in securing transboundary consultations for renewable energy projects (a strength for Convention and Protocol)</li> <li>· Comprehensive provisions for consultation and public participation exist, and there is associated guidance (a strength for both Convention and Protocol)</li> <li>· Strong emphasis on health (especially in Protocol)</li> </ul>	<ul style="list-style-type: none"> <li>· More detailed consideration of climate change would aid decision-making: e.g., a requirement to address climate resilience (including adaptation and vulnerability to climate change) (an aspiration for Convention and Protocol)</li> <li>· Increased expectation to quantify direct and indirect transboundary carbon emissions (including Scope 3 emissions in particular) (an aspiration for Convention and Protocol)</li> </ul>	<ul style="list-style-type: none"> <li>· Existence of bi- and multilateral implementation agreements provides opportunity for efficient and effective implementation of best practices (an opportunity for Convention and Protocol)</li> <li>· Inclusion of compensation and offsetting measures, alongside mitigation measures (e.g., in appendices II and IV to Convention)</li> <li>· Faster, more transition-focused assessments to facilitate more timely planning and decision-making (an opportunity for Protocol)</li> <li>· Direct reference to Sustainable Development Goal 7 targets and indicators in consideration of impacts when applying Convention and Protocol could strengthen practice (an opportunity for Convention and Protocol)</li> </ul>	<ul style="list-style-type: none"> <li>· Agree how best to extend factors to be considered under Convention and Protocol, taking into account likely political resistance (an option for Convention and Protocol)</li> <li>· Conduct research to overcome methodological challenges in quantifying indirect emissions (an option for Convention and Protocol)</li> <li>· Promote capacity development to ensure opportunities and aspirations are met (an option for Convention and Protocol, subject to availability of resources)</li> <li>· Use Convention and Protocol as tools of choice for avoiding and managing overlaps in requirements for green finance, circular economy, and actions addressing implications of Kyoto Protocol to UNFCCC for countries</li> </ul>

### III. Circular economy

#### A. What is circular economy? Introduction to the concept

30. “The [circular economy] concept is generally understood as a transition from a linear (take, make, use, dispose) model to a circular (restorative and regenerative) model”.<sup>51</sup> The World Bank reported in 2018 that 2.01 billion tons of municipal solid waste were produced, with this amount forecast to rise to 3.4 billion tons per year by 2050.<sup>52</sup> The United Nations Conference on Trade and Development had previously indicated that, globally, waste production was based on manufacturing processes using 54 per cent of the world’s energy.<sup>53</sup> Linear production systems therefore act as a barrier to energy transition that relies on reducing energy demand. The same report points to imbalances between countries in their production and/or use of goods, with a transition towards greater circularity leading to further transboundary implications for trade. Implementing a circular economy includes a transition

<sup>51</sup> World Health Organization Regional Office for Europe (WHO/Europe), *Assessing the Health Impacts of a Circular Economy* (Copenhagen, 2019).

<sup>52</sup> See <https://openknowledge.worldbank.org/bitstream/handle/10986/30317/9781464813290.pdf>.

<sup>53</sup> See [https://unctad.org/system/files/official-document/presspb2017d10\\_en.pdf](https://unctad.org/system/files/official-document/presspb2017d10_en.pdf).

to the use of renewable energy.<sup>51</sup> The World Economic Forum highlights three key ways in which the circular economy is vital for the energy transition:<sup>54</sup>

(a) Recycling can conserve critical materials – the International Energy Agency calculates that a transition to carbon neutrality by 2040 will require a six-fold increase in mineral input.<sup>55</sup> Within this context, recycling will be key to managing demand for newly mined minerals;

(b) Using low-carbon, circular materials – emissions generated by the production of all materials globally has more than doubled in the last 20 years, yet recycled aluminium, for example, emits 95 per cent less CO<sub>2</sub> than that produced from mined minerals;

(c) Designing circular systems – first-generation renewable energy systems (wind turbines and solar) will need to be decommissioned in the 2030s, accounting for up to 121 million tons of waste globally; therefore, new systems need to be designed for longer lifetimes and for ease of reuse and recycling.

31. It has been argued that the circular economy rests on three key principles:<sup>56</sup> eliminate waste and pollution; circulate products and materials; and regenerate nature. In terms of climate, eliminating waste reduces emissions across the value chain; circulating products and materials retains their embodied energy; and regenerating nature sequesters carbon.

## B. Policy frameworks for a circular economy and implementation status

32. Planning is already underway to transition to a circular economy. For example, the European Union has adopted the Circular Economy Action Plan,<sup>23</sup> which embeds it as an overarching model for delivering key elements of: the European Green Deal – the new industrial strategy for Europe, leading to green growth and digital transition;<sup>57</sup> and the blue economy (circular economy examples include renewing standards for fishing gear design, ship recycling and decommissioning offshore platforms).<sup>58</sup> In addition, the proposal for a regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials<sup>59</sup> contains a section on circularity aiming to reduce dependence on primary raw materials in, amongst other things, the renewable energy sector.

33. Circular economy strategies have been developed in, amongst other countries, the United States of America, China and Japan,<sup>60</sup> and business networks established, such as the Ellen MacArthur Foundation (United Kingdom of Great Britain and Northern Ireland), Circle Economy (Netherlands) and Circular Change (Slovenia). An increasing numbers of circular economy initiatives are also in place at the regional and city levels (e.g., the Circular City Funding Guide).<sup>61</sup> Lastly, standards (including BS 8001<sup>62</sup> (United Kingdom of Great Britain and Northern Ireland) and XP X30-901<sup>63</sup> (France)) are being established to harmonize concepts, terminology, approaches and metrics used in relation to the circular economy.

<sup>54</sup> See [www.weforum.org/agenda/2022/02/3-ways-circular-economy-renewables-energy-transition/](http://www.weforum.org/agenda/2022/02/3-ways-circular-economy-renewables-energy-transition/).

<sup>55</sup> See [www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/executive-summary](http://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/executive-summary).

<sup>56</sup> See <https://ellenmacarthurfoundation.org/topics/circular-economy-introduction/overview#:~:text=The%20circular%20economy%20gives%20us,emissions%2C%20was%20and%20pollution>.

<sup>57</sup> See [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/industry-and-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/industry-and-green-deal_en).

<sup>58</sup> See [https://oceans-and-fisheries.ec.europa.eu/ocean/blue-economy/sustainable-blue-economy\\_en](https://oceans-and-fisheries.ec.europa.eu/ocean/blue-economy/sustainable-blue-economy_en).

<sup>59</sup> See [https://eur-lex.europa.eu/resource.html?uri=cellar:903d35cc-c4a2-11ed-a05c-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:903d35cc-c4a2-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>60</sup> See <https://doi.org/10.1787/ae4a2176-en>.

<sup>61</sup> See [www.circularcityfundingguide.eu/circular-city-initiatives-and-resources](http://www.circularcityfundingguide.eu/circular-city-initiatives-and-resources).

<sup>62</sup> See [www.bsigroup.com/en-GB/standards/benefits-of-using-standards/becoming-more-sustainable-with-standards/BS8001-Circular-Economy](http://www.bsigroup.com/en-GB/standards/benefits-of-using-standards/becoming-more-sustainable-with-standards/BS8001-Circular-Economy).

<sup>63</sup> See [www.afnor.org/en/news/practical-guide-circular-economy](http://www.afnor.org/en/news/practical-guide-circular-economy).

### **C. Role, benefits and further potential of the Convention and Protocol in promoting a circular economy**

34. Circular economy is listed as an environmental objective in the European Union Taxonomy for sustainable activities (see section IV below). Moreover, circular economy plans are foreseen to be developed at the national level and, ideally, at the regional and local levels. The Protocol is ideally placed to comprehensively assess the implications of those plans, with subsequent projects potentially requiring transboundary environmental impact assessment. Therefore, there are opportunities for the Convention and Protocol to ensure a just transition to the circular economy, with environmental implications identified and mitigated as appropriate.

35. The development of the circular economy requires both vertical (from policies down to projects) and horizontal (across sectors) implementation. The requirement to apply strategic environmental assessment under the Protocol, the recommendation to apply strategic environmental assessment to policies, and the requirement under the Convention to apply transboundary environmental impact assessment under some circumstances, all help to facilitate thorough evaluation of vertical implementation. Such vertical implementation can be enhanced by tiering between these different levels of environmental assessment, ensuring that knowledge is passed down from policy to plan to project level. Research developed in Ireland has helped to clarify how more strategic levels of assessments can influence project-level assessments, albeit tiering in practice remains rare.<sup>64</sup> Additionally, the multisector application of the Convention and the Protocol means that they are ideally placed to assist with horizontal implementation of the circular economy, ensuring that environmental impacts are fully considered in decision-making.

36. The European Economic and Social Committee made recommendations based on research into emerging circular economy strategies across Europe (European Union member States, plus Norway and United Kingdom of Great Britain and Northern Ireland) and argued for “stronger involvement of civil society organizations in earlier phases of strategy development”.<sup>65</sup> As both the Convention and the Protocol apply across multiple sectors and have comprehensive public participation requirements, they are ideally placed to help with the implementation of the circular economy to ensure social acceptability.

37. The European Commission has recognized the supportive role in delivering a circular economy that environmental impact assessment plays.<sup>66</sup> Additionally, the World Health Organization Regional Office for Europe (WHO/Europe) recognizes the role that strategic environmental assessment and environmental impact assessment can play in considering the human health implications of moving towards a circular economy.<sup>67</sup>

### **D. Areas for further investigation of the role of the Convention and the Protocol in delivering the circular economy**

38. The Convention and the Protocol are ideally placed to facilitate examinations of the impacts of proposed interventions across a broad range of environmental, and health, components. They were established, however, at a time before circularity emerged as an important design concept and their requirements to report on the significance of potential impacts of reasonable alternatives, and to suggest mitigation measures for any significant impact, fall short of embedding circularity principles into the assessment. Thus, the International Association for Impact Assessment recognizes that some alignment is needed between impact assessment and circular economy approaches.<sup>68</sup>

39. Research suggests that advancement towards developing a circular economy across European Union countries is varied, leading to the existence of a two-speed Europe in this

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<sup>64</sup> See [www.epa.ie/publications/research/socio-economics/Research\\_Report\\_391.pdf](http://www.epa.ie/publications/research/socio-economics/Research_Report_391.pdf).

<sup>65</sup> See [www.eesc.europa.eu/sites/default/files/files/qe-01-19-425-en-n.pdf](http://www.eesc.europa.eu/sites/default/files/files/qe-01-19-425-en-n.pdf).

<sup>66</sup> See <https://op.europa.eu/en/publication-detail/-/publication/0619e465-581c-41dc-9807-2bb394f6bd07>.

<sup>67</sup> WHO/Europe, *Assessing the Health Impacts*.

<sup>68</sup> See [www.iaia.org/uploads/pdf/Fastips\\_22%20Circular%20Economy\\_5.pdf](http://www.iaia.org/uploads/pdf/Fastips_22%20Circular%20Economy_5.pdf).

regard.<sup>69</sup> As such, opportunities to highlight the potential role of the Convention and/or the Protocol in delivering the circular economy, in the ECE region and beyond, could help to harmonize progress and prevent economic imbalances from arising (see box 3 below for suggested discussion points/key guiding questions).

Box 3

**Suggested discussion points/key guiding questions**

1. How can the Convention and the Protocol be used to stimulate best practice approaches to the circular economy, encompassing both vertical and horizontal integration and civil society engagement?
2. How can transboundary environmental impact assessment under the Convention best be used to identify and promote circular economy opportunities (e.g., where waste generated by the Party of origin can be used as a raw material by any of the concerned Parties)?
3. How can consideration of whether a proposed action will enable/prevent progress towards circularity be secured under the Protocol and/or the Convention? Should, for instance, the consideration of circularity be recommended as good practice in applying the Convention and/or the Protocol by the Parties through a decision by the Meeting of the Parties?
4. How can the Convention and/or the Protocol best be used to avoid short- and medium-term economic imbalances that might result from uneven development of the circular economy across Parties?
5. Should environmental reports (under the Protocol) and environmental impact assessment documentation (under the Convention) be required to include circular economy alternatives as part of the consideration of reasonable alternatives? How can such a requirement be defined, codified and implemented?
6. How best can circular economy plans developed by Parties be assessed under the Protocol?

**E. Strengths-Aspirations-Opportunities-Options analysis of the Convention and the Protocol for circular economy**

<i>Strengths</i>	<i>Aspirations</i>	<i>Opportunities</i>	<i>Options</i>
<ul style="list-style-type: none"> <li>· Convention and Protocol provide strong, institutionalized framework that is already embedded vertically and horizontally in Parties (a strength for Convention and Protocol)</li> <li>· Comprehensive provisions for consultation and public participation, and associated guidance all help to deliver timely and meaningful civil society involvement (a strength for Convention and Protocol)</li> <li>· WHO recognizes role of environmental impact assessment and strategic environmental assessment in</li> </ul>	<ul style="list-style-type: none"> <li>· Development of experience in embedding circular economy principles into environmental impact assessment and strategic environmental assessment (an aspiration for Convention and Protocol)</li> <li>· Introduction of obligation to consider circularity in strategic environmental assessment or transboundary environmental impact assessment (an aspiration for Convention and Protocol)</li> </ul>	<ul style="list-style-type: none"> <li>· Opportunity to deliver more consistent and timely adoption of circular economy principles across Parties and of circularity opportunities across borders (especially using Convention's transboundary provisions) (an opportunity for Convention and Protocol)</li> <li>· Evaluation of circularity of proposed plans, programmes and/or projects can maximize carbon reductions (an opportunity for Convention and Protocol)</li> </ul>	<ul style="list-style-type: none"> <li>· Agree how best to include consideration of circularity under Convention and Protocol, taking into account likely political resistance (an option for Convention and Protocol)</li> <li>· Harmonization of progress towards development of circular economy by Parties and future Parties to deliver level economic playing field (an option for Convention and Protocol)</li> <li>· Development of Scope 3 emissions certification system to facilitate the inclusion of Scope 3 emissions in environmental</li> </ul>

<sup>69</sup> Ewa Mazur-Wierzbicka, "Circular economy: advancement of European Union countries", *Environmental Sciences Europe*, vol. 33, art. No. 111 (2021).

<i>Strengths</i>	<i>Aspirations</i>	<i>Opportunities</i>	<i>Options</i>
<p>delivering health opportunities through circular economy (a strength for Convention and Protocol)</p> <ul style="list-style-type: none"> <li>· Convention and Protocol already require assessments of impacts on broad range of environmental components, and health, which are fundamental to delivering three key circular economy principles (a strength for Convention and Protocol)</li> </ul>		<ul style="list-style-type: none"> <li>· Potential to change mindset over linear models of development to them being action of last resort (an opportunity for Convention and Protocol)</li> <li>· Double materiality requirements of sustainability reporting standards (see green financing in section IV below) have potential for identifying circularity opportunities associated with financial risks to businesses (an opportunity for Convention and Protocol)</li> </ul>	<p>assessments (an option for Convention and Protocol)</p> <ul style="list-style-type: none"> <li>· Obligations to deliver circular economy to overcome reticence related to short-term cost implications (an option for Convention and Protocol)</li> </ul>

## IV. Green Financing

### A. What is green financing? Introduction to the concept

40. Green financing involves the alignment of financial investments with climate and sustainability goals. Such financing can be subject to voluntary high-level principles such as those agreed at the G20 Sustainable Finance Working Group:

- (a) Principle 1: Ensure material positive contributions to sustainability goals and focus on outcomes;
- (b) Principle 2: Avoid negative contribution to other sustainability goals (e.g., through “do no significant harm” to any sustainability goal requirements);
- (c) Principle 3: Be dynamic in adjustments reflecting changes in policies, technologies and state of the transition;
- (d) Principle 4: Reflect good governance and transparency;
- (e) Principle 5: Be science-based for environmental goals and science- or evidence-based for other sustainability issues;
- (f) Principle 6: Address transition considerations.<sup>70</sup>

41. More than 20 different taxonomies – classifications of what counts as green, or sustainable, financing – are known to have been developed, or are under development, globally (including one for the European Union that applies to 27 member States, and one for the 11 Association of Southeast Asian Nations member States), covering more than 50 countries. Whilst each has different definitions of what does or does not constitute a green investment, most incorporate “do no significant harm” measures.<sup>71</sup>

### B. Policy frameworks for green financing and implementation status

42. An example of one of the many green taxonomies being developed is the European Union Taxonomy for Sustainable Activities,<sup>72</sup> which has the following six policy objectives: climate change mitigation; climate change adaptation; sustainable use and protection of water

<sup>70</sup> See <https://g20sfwg.org/wp-content/uploads/2021/10/G20-SFWG-Synthesis-Report.pdf>.

<sup>71</sup> See <https://futureofsustainabledata.com/taxomania-international-overview-update-2022/>.

<sup>72</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020R0852>.



and marine resources; transition to a circular economy; pollution prevention and control; and protection and restoration of biodiversity and ecosystems. It defines economic activity as being sustainable only where it:

- (a) Makes a substantial contribution to at least one of these environmental objectives;
- (b) Does no significant harm to any other environmental objectives;
- (c) Complies with minimum social safeguards;
- (d) Complies with technical screening criteria established by the European Commission through delegated acts.

43. The European Union Taxonomy is supported by delegated acts, which set out technical screening criteria that must be satisfied in order for an economic activity to be considered sustainable.<sup>73</sup> Therefore, such taxonomies will begin to influence investments from banks.

44. In January 2023, the European Union Corporate Sustainability Directive<sup>74</sup> entered into force and requires sustainability reporting by businesses of a certain size. Reporting will be governed by European Sustainability Reporting Standards (the first draft set of which has been published)<sup>75</sup> produced by the European Financial Reporting Advisory Group, an independent body that is also building on, and contributing to, international sustainability reporting standards being produced by the International Sustainability Standards Board (launched on 3 November 2021, at the twenty-sixth session of the Conference of the Parties to UNFCCC). These reporting standards incorporate the concept of double materiality, which means that the impact of the business (and its activities) on sustainability matters should be considered (“impact materiality”), as well as how sustainability matters affect the business and its activities (“financial materiality”). Whilst the reporting standards do not directly influence green financing, businesses will inevitably seek to ensure that investment can be favourably reported, should said investment subsequently lead to reporting requirements.

45. Thus, green financing will increasingly require that environmental, social and governance considerations be taken into account in the investments that can be made by banks (through evaluating their sustainability) and will increasingly affect investment decisions made by businesses because they will later have to report on the sustainability of the resulting operation (risking shareholder discontent if not sufficiently sustainable).

### **C. Role, benefits and further potential of the Convention and the Protocol in promoting green financing**

46. Greenwashing has been defined by three European Union Supervisory Authorities (European Insurance and Occupational Pensions Authority, European Banking Authority, European Securities and Markets Authority) as “a practice whereby sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants”.<sup>76</sup> A significant concern amongst the public is the potential for greenwashing associated with sustainability claims related to financing or reporting. In one European Insurance and Occupational Pensions Authority survey, 63 per cent of consumers indicated that they did not trust the sustainability-related (or “green”) claims made by providers/distributors.<sup>77</sup> According to the European Banking Authority, recent quantitative analyses show a “clear

<sup>73</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2139&from=EN>; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1214&from=EN>; and [https://finance.ec.europa.eu/system/files/2023-06/taxonomy-regulation-delegated-act-2022-environmental\\_en\\_0.pdf](https://finance.ec.europa.eu/system/files/2023-06/taxonomy-regulation-delegated-act-2022-environmental_en_0.pdf).

<sup>74</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464>.

<sup>75</sup> See [www.efrag.org/lab6](http://www.efrag.org/lab6).

<sup>76</sup> See [www.eiopa.europa.eu/system/files/2023-06/EIOPA%20Progress%20Report%20on%20Greenwashing.pdf](http://www.eiopa.europa.eu/system/files/2023-06/EIOPA%20Progress%20Report%20on%20Greenwashing.pdf).

<sup>77</sup> See [www.eiopa.europa.eu/system/files/2023-01/eiopa-consumer-trends-report-2022.pdf](http://www.eiopa.europa.eu/system/files/2023-01/eiopa-consumer-trends-report-2022.pdf).

increase in the total number of potential cases of greenwashing across all sectors, including for [European Union] banks”.<sup>78</sup> This could be countered by encouraging methodological transparency and ensuring thorough assessments performed under the Convention and/or the Protocol, as these would entail transparent and objective assessment processes that could deliver public and stakeholder confidence.

47. There is an expectation of increasing conditionality of financing based on the sustainability performance of proposed investments; for example, the European Bank for Reconstruction and Development raised its target to achieving a green finance ratio of at least 50 per cent of annual investments by 2025.<sup>79</sup> Therefore, it is anticipated that green taxonomies will become increasingly important benchmarks underpinning investment decisions. Suggestions have already been made that environmental impact assessment (including under the Convention and the Protocol) could play a significant role in examining whether proposed investments meet European Union Taxonomy requirements during several stages of the environmental impact assessment process, including: scoping; consideration of alternatives and development of mitigation measures; and review of environmental impact assessment documentation.<sup>80</sup>

48. Sustainable financing directly overlaps with both energy transition (through climate change mitigation and adaptation objectives) and with the transition to a circular economy. Taxonomy policy objectives also overlap with the environmental components that are the focus of both the Convention and the Protocol, which are well placed to play a key role in ensuring the sustainability and public acceptability of policies, plans, programmes and projects requiring financial assistance.

49. As sustainable finance taxonomies are relatively new, there are very few case applications that have explored the overlap between the application of a green taxonomy and the practice of either strategic environmental assessment or environmental impact assessment. One example reported from Czechia concluded that a proposed systematic alignment between the strategic environmental assessment for an operational programme and the technical screening criteria associated with the European Union Sustainable Finance Taxonomy “is indeed useful”.<sup>81</sup> Box 4 below summarizes the experience gained in this example.

Box 4

**Case study of the alignment of the Protocol’s application with elements of the European Union Sustainable Finance Taxonomy in Czechia<sup>a</sup>**

The formal closing of a strategic environmental assessment for a Czech operational programme, “Technologies and Applications for Competitiveness 2021–2027”, required the consultants contracted by Czechia (“Integra Consulting”) to produce internal sign-off recommendations on its environmentally sound implementation. The consultants used this task to develop a briefing paper that explored options for the integration of the European Union Taxonomy technical screening criteria into the selection of future projects (in energy production, circular economy initiatives, innovation processes, etc.) that would be supported through this operational programme. The novelty of this approach led to scrutiny by the client through interdepartmental review. The relevant officials concluded that the proposed alignment between the operational programme and the European Union Taxonomy was indeed useful and should be followed through during implementation.

A Czech operation programme, “Just Transition 2021–2027”, facilitates economic development in three coal regions that will be adversely affected by the energy transition through a mixture of projects and diversification initiatives. The scoping terms of reference for the strategic environmental assessment included a new requirement to consider the “do no significant harm” principle. The contracted consultants assessed all proposals contained

<sup>78</sup> See [www.eba.europa.eu/esas-present-common-understanding-greenwashing-and-warn-related-risks](http://www.eba.europa.eu/esas-present-common-understanding-greenwashing-and-warn-related-risks).

<sup>79</sup> See <https://www.ebrd.com/documents/environment/ebd-sustainability-report-2020-pdf>.

<sup>80</sup> Jiří Dušík and Alan Bond, “Environmental assessments and sustainable finance frameworks: will the EU Taxonomy change the mindset over the contribution of EIA to sustainable development?”, *Impact Assessment and Project Appraisal*, vol. 40, No. 2 (2022), pp. 90–98.

<sup>81</sup> Alan Bond and Jiří Dušík, “Environmental assessments and sustainable finance taxonomies – a riposte”, *Impact Assessment and Project Appraisal*, vol. 40, No. 2 (2022), pp. 123–128.

in the programmes based on the requirements of the Taxonomy and highlighted Taxonomy-related criteria that the specific projects or funding calls should consider during their design and environmental impact assessment studies.

<sup>a</sup> Alan Bond and Jiří Dusík, “Environmental assessments and sustainable finance taxonomies – a riposte”, *Impact Assessment and Project Appraisal*, vol. 40, No. 2 (2022), pp. 123–128.

50. Sustainability reporting standards will require evidence to be gathered on sustainability matters, and assessments conducted under the Convention and Protocol are likely to be able to contribute to this reporting obligation, improving the efficiency of the process and potentially countering accusations of greenwashing.

#### **D. Areas for further investigation of the role of the Convention and the Protocol in shaping green financing**

51. The European Union Taxonomy has policy objectives to make a substantial contribution to:

- (a) Climate (climate change mitigation and adaptation);
- (b) Water (protection of water and marine resources);
- (c) Soil and air (pollution prevention and control), biodiversity (Protocol only);
- (d) Fauna and flora (protection and restoration of biodiversity and ecosystems).

52. Projects subject to transboundary environmental impact assessment, or plans and/or programmes subject to strategic environmental assessment, could be approved based on acceptance by the competent authorities of the impacts and mitigation measures identified; but then the same interventions may be refused finance if they cannot demonstrate the achievement of “do no significant harm” and/or a substantial contribution to Taxonomy environmental policy objectives. As such, there is a need to ensure consistency between the Taxonomy and the assessment of significance in transboundary environmental impact assessment under the Convention, and in strategic environmental assessment under the Protocol, and to reflect the taxonomy policy objectives to make a substantial contribution to its policy objectives.

53. The focus on double materiality is not reflected in the text of the Convention or the Protocol as these examine the impacts of projects, plans and/or programmes on the environment. Whilst these assessments can provide valuable evidence related to the sustainability of business operations, the risks from the environment to the proposed project, plan and/or programme are not explicitly considered under the Convention or Protocol (see box 5 below for suggested discussion points/key guiding questions).

##### **Box 5**

##### **Suggested discussion points/key guiding questions**

1. How should the key concepts of green taxonomies (notably, “Do no significant harm” and “Makes a substantial contribution to at least one of these environmental objectives” (on climate change mitigation, climate change adaptation, sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems)) best be aligned with the Convention and the Protocol to ensure consistent decision-making throughout planning and financing stages?
2. How can Parties best be encouraged to implement the recommendation under the Protocol to conduct policy-level strategic environmental assessment in order to ensure consistency between sector-specific plans with relevance to green financing?
3. In line with question 3 from the energy transition topic (see box 2 above), does the meaning of “climate” under the Convention and Protocol need to be harmonized with the understanding thereof under green finance taxonomies?

4. Is there merit in determining how any screening criteria supporting the application of sustainable finance taxonomies can be aligned with assessment obligations under the Convention and the Protocol?
5. What role can the Convention and the Protocol play in assisting with sustainability reporting standards?
6. Is the concept of double materiality as embedded in sustainability reporting standards relevant to transboundary environmental impact assessment conducted under the Convention, and strategic environmental assessment conducted under the Protocol? If so, what can be done to improve the linkages between the operation of these instruments and sustainability reporting standards requirements?

### E. Strengths-Aspirations-Opportunities-Options analysis of the Convention and the Protocol for green financing

<i>Strengths</i>	<i>Aspirations</i>	<i>Opportunities</i>	<i>Options</i>
<ul style="list-style-type: none"> <li>· Comprehensive provisions for consultation and public participation, and associated guidance help to deliver timely and meaningful civil society involvement (a strength for Convention and Protocol)</li> <li>· Transboundary environmental impact assessment under Convention and strategic environmental assessment under Protocol potentially have important role to play in certifying sustainability of investments against green finance taxonomies’ technical screening criteria (a strength for Convention and Protocol)</li> <li>· Convention and Protocol already have requirements to investigate impacts on specific environmental components that green financing requirements list as being protected from harm, including climate, water and biodiversity (a strength for Convention and Protocol)</li> <li>· Early attempts at alignment of strategic environmental assessment</li> </ul>	<ul style="list-style-type: none"> <li>· Ensuring Convention and Protocol deliver “do no significant harm” and “positive contribution” requirements (an aspiration for Convention and Protocol)</li> <li>· Increase understanding of how environmental impact assessment and strategic environmental assessment can support implementation of taxonomies and sustainability reporting standards (an aspiration for Convention and Protocol)</li> </ul>	<ul style="list-style-type: none"> <li>· Convention and Protocol can help provide data to help comply with “do no significant harm” and “positive contribution” requirements from green financing (an opportunity for Convention and Protocol)</li> <li>· “Do no significant harm” and “positive contribution” requirements from green financing could enhance environmental protection, with important implications for progress towards Sustainable Development Goals (an opportunity for Convention and Protocol)</li> <li>· Assessments under Convention and Protocol can potentially provide some of the data needed by businesses obliged to report under sustainability reporting standards (an opportunity for Convention and Protocol)</li> </ul>	<ul style="list-style-type: none"> <li>· Highlight value of Protocol and Convention in avoiding accusations of ‘greenwashing’. This addresses risk that accounting firms may develop own systems for reporting under sustainability reporting standards that are not aligned with requirements of Convention and Protocol (an option for Convention and Protocol)</li> <li>· Influencing practice related to implementation of Protocol and Convention to better align with emerging conditionality requirements for sustainable funding, i.e., aligning with “do no significant harm” and “positive contribution” requirements (an option for Convention and Protocol)</li> </ul>

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<i>Strengths</i>	<i>Aspirations</i>	<i>Opportunities</i>	<i>Options</i>
and European Union Taxonomy have been found to be useful (indicating a strength for Protocol)			

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