



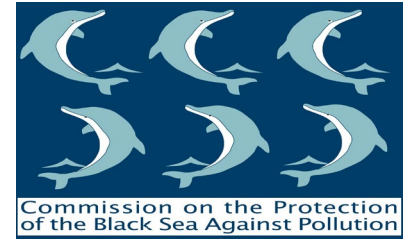
Subregional cooperation in the **Black Sea**

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Bucharest Convention (1)



Convention on the Protection of the Black Sea Against Pollution

- Was signed in **Bucharest** in April 1992;
- Ratified by all six Black Sea Countries in the beginning of **1994**;
- Its basic objective is to substantiate the general obligation of the Contracting Parties **to prevent, reduce and control the pollution in the Black Sea** in order to **protect and preserve the marine environment** and to **provide a legal framework for co-operation and concerted actions** to fulfil this obligation;
- We have:
 - 6 Contracting Parties,
 - 6 Advisory Groups,
 - 4 Protocols,
 - 3 people in the Secretariat ☹

Bucharest Convention (2)



Convention and its four Protocols are being coordinated by the Black Sea Commission:

- ▶ The **Black Sea Commission** is the intergovernmental implementing body of the Bucharest Convention, composed of the Commissioners, high officials from each of the 6 countries which are Parties to the Convention;
- ▶ The Convention includes also the following **4 Protocols**, containing more detailed procedures, measures and regulations linked to specific ecological objectives, principles or obligations that are set out in the Convention, as follows:

Bucharest Convention (3)



It has 4 thematic Protocols:

1. Protocol on the Protection of the Black Sea Marine Environment Against Pollution from **Land Based Sources (LBS Protocol)**;
2. Protocol on the Protection of the Black Sea Marine Environment Against Pollution by **Dumping**;
3. Protocol on Cooperation in Combating Pollution of the Black Sea Marine Environment by **Oil and Other Harmful Substances in Emergency Situations**;
4. The Black Sea **Biodiversity and Landscape Conservation Protocol (CBD Protocol)** (entered into force only in 2011).

Bucharest Convention (4)



- **Strategic Action Plan (BS SAP)** on the Protection and Rehabilitation of the Black Sea – adopted in 1996 and amended in **2009**.
- ▶ It includes, in 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 the future development in the region.

Environmental impact assessment requirement (1):



- ▶ 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 **"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;
- ▶ 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;

Environmental impact assessment requirement (2):



- ▶ In addition, **two Protocols** to the Bucharest Convention require their Contracting Parties to **undertake an environmental impact assessment procedure** (list of activities is not specified though);
- ▶ **LBS Protocol, Article 4 on general obligations**, requires the Parties shall ensure that activities which are likely to cause a significant adverse impact on the marine environment and coastal areas are 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 take fully 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.

Environmental impact assessment requirement (3):



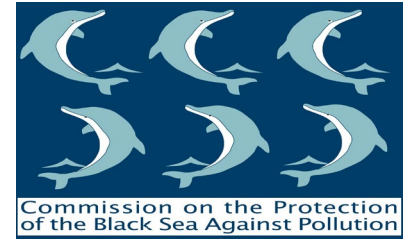
- ▶ **CBD Protocol** directly refers to the Espoo Convention requirements. In particular, its Article 6 stipulates a precise obligation **to regionally develop and agree criteria and objectives pursuant to the Convention and international experience in this matter, e.g. the Espoo Convention**, in the 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.
- ▶ Considering these binding and non-binding provisions, it may be concluded that 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.

Environmental impact assessment requirement (4):



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

Transboundary procedure requirements (1):



- ▶ **(i) Notification and consultation**

- ▶
- ▶ The Bucharest Convention does not provide any indication of the notification and consultation under the environmental impact assessment procedure.



- ▶ **(ii) Environmental impact assessment documentation**



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

- ▶ **(iii) Public participation**



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

Transboundary procedure requirements (2):



- ▶ **CBD Protocol**, in Article 9 (2) requires that the Parties shall endeavor 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;
- ▶ **LBS Protocol**, in Article 14, which is dedicated to “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;
- ▶ It may be concluded that the two Protocols of the Bucharest Convention foresee public participation requirements **in a manner which is broadly coherent with the requirements of the Espoo Convention**. Nevertheless, again, they do not give the same grade of details as stipulated by the Espoo Convention.

Transboundary procedure requirements (3):



- ▶ **(iv) Final decision**
- ▶ 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 (article 6).

EIA procedure in the Black Sea countries (1):



- ▶ The **legal tools differ from country to country**. Apart from national EIA procedures, some countries in the region are the EU members (applying provisions of the **EIA-related Directives**); some are Contracting Parties to the **Espoo and Aarhus Conventions**; also the Black Sea countries are members to Regional Seas Conventions, i.e. **Barcelona Convention and Bucharest Convention**;
- ▶ The multitude of legal instruments available, overlapping and discrepancies in their application make it extremely important to create the synergy between the procedures and practices with a final aim to enforce the implementation of all the above mentioned legal instruments in the Black Sea basin. Also, one of the crucial elements is to facilitate better interaction and cooperation between the bilateral and multilateral MEAs in the region considered and to unify the EIA-related documentation and guidelines;
- ▶ Nevertheless, despite half of the Black Sea countries are parties to UNECE Espoo Convention and all the Black Sea countries proclaim their intention to save the Black Sea environment, so far the **Black Sea Commission failed to adopt the non-legally binding Guidelines on the implementation of the Espoo Convention' provisions** for the Black Sea, let alone to widely implement the EIA legislation in the region.

EIA procedure in the Black Sea countries (2):



	BG	GE	RO	RU	TR	UA
Bucharest Conv	✓	✓	✓	✓	✓	✓
Barcelona Conv	-	-	-	-	✓	-
Espoo Conv	✓	-	✓	-	-	✓
Arhus Conv	✓	✓	✓	-	-	✓
EU Directives	✓	?	✓	-	?	?

EIA procedure in the Black Sea countries (3):



- ▶ The **legal tools differ from country to country**. Apart from national EIA procedures, some countries in the region are the EU members (applying provisions of the **EIA-related Directives**); some are Contracting Parties to the **Espoo and Aarhus Conventions**; also the Black Sea countries are members to Regional Seas Conventions, i.e. **Barcelona Convention and Bucharest Convention**;
- ▶ The so called EIA Directive is considered to be the main instrument of EIA legislation in the EU. Currently, **5 out of 6 countries in the Black Sea basin** are following EU approach (BG, RO + GE, UA and TR).

EIA procedure in the Black Sea countries (4):



- ▶ Due to the obvious need to develop more detailed procedures for EIA in the transboundary context for the Black Sea basin, the **Black Sea Commission requested the support of the UNECE secretariat to the Espoo Convention** in the elaboration of a first draft of such procedures;
- ▶ Such a document was prepared by the Espoo Secretariat, further adjusted by Advisory Group on Integrated Coastal Zone Management (AG ICZM) and Advisory Group on Control of Pollution from Land Based Sources (AG LBS) under the Black Sea Commission (**Draft Recommendations on environmental impact assessment, Black Sea Commission, January 2011**), but, unfortunately was never adopted by the Black Sea Commissioners.

EIA procedure in the Black Sea countries (5):



- ▶ The so called EIA Directive is considered to be the main instrument of EIA legislation in the EU. Currently, **5 out of 6 countries** in the Black Sea basin are following EU approach (BG, RO + GE, UA and TR);
- ▶ The **Bulgarian** and **Romanian EIA** legislation is harmonized with EU Directive, Espoo Convention and Bucharest Convention;
- ▶ There were a couple of Projects (**Crude Oil Pipeline Burgas (BG) - Alexandrupolis (GR) project, Blue Stream (the Black Sea Gas Pipeline Project etc.)**), where there was a lack of information within the BSC about developments.

EIA procedure in the Black Sea countries (7):



- ▶ **Türkiye** has never accessed the Espoo Convention. Despite this, the first EIAs in Turkey were started in 1993 in accordance with the by-law on EIA. After more than 20 years of implementation and four updates of the relevant legislation, EIA practice is considered to be well developed according to interviews with stakeholders. Most of the requirements of the EIA Directive are transposed in the currently applicable Turkish regulations. The only missing provision is that of transboundary EIA;
- ▶ According to the Ministry of Environment and Urbanization of Türkiye, the intention is to transpose Article 7 only by accession to the EU. To date, there has been no transboundary EIA notification from the Turkish side as party (country) of origin. As an intermediary solution developing bilateral agreements with the neighboring countries, Greece and Bulgaria.

EIA procedure in the Black Sea countries (8):



- ▶ **Ukrainian situation with EIA:** having inherited from the Soviet Union quite a sophisticated EIA procedure, Ukraine was found to be in non-compliance with its obligations under Espoo Convention with respect to the Bystroe Canal case. The case was subject to the Espoo Inquiry Commission, consideration by the Implementation Committee and cautions by the Meeting of the Parties to the Espoo Convention. Nevertheless, following cooperation between Romania and Ukraine, the case was finally closed by the Implementation Committee in February 2024, as the Committee confirmed that Ukraine had taken all necessary measures to fully comply with the Convention. The intention of Ukraine to approximate its environmental legislation with the European acquis was reflected in every single document in frames of EU-Ukraine cooperation. And Ukraine created Intergovernmental Coordination Council on the Implementation of the Espoo Convention in Ukraine.
- ▶ UA is now subject to elaboration of **postwar assessment** procedures, BSC participates in all relevant initiatives, but lacks consensus to initiate it. Kachovka Dam explosion became the topics of BSC extraordinary meeting, trilateral cooperation with ICPDR and UNEP/MAP is established, BSC used to have bilateral cooperation with both of them, exchanging data with ICPDR and working on monitoring needs with UNEP/MAP.

Conclusions (1):



- ▶ 1. There is no doubt that **UNECE Espoo Convention is one of the most powerful instruments of International Environmental Procedural Law**, it establishes the clear procedure of EIA and brings about the process of increasing “legalization” of environmental decision-making, public participation and, to some extent, access to environmental justice. Undoubtedly, this is vital element for the implementation of large-scale projects across the borders, since they always involve a large number of stakeholders and imply political and economical aspects.
- ▶ 2. The Espoo Convention is a framework Convention, and, therefore, this gives **a certain level of discretion regarding the interpretation** of its provisions by its Member States. This, in its turn, may cause inadequate transposition of its provisions into the variety of the national legal systems.
- ▶ 3. These discrepancies and gaps (**could be eliminated by proper incorporation of EIA-related provisions into the Regional Environmental Conventions and MEAs** (inter alia, by developing relevant Guidelines and Recommendations for the EIA procedure). The Bucharest Convention should not be an exemption, especially taking into account that three of the Black Sea countries (GE, RU and TR) from six are not yet the Parties to the Espoo Convention, but, nevertheless, apply the EIA procedure on the national level.

Conclusions (2):



- ▶ 4. European Union contributed to the development of the EIA concept by developing its EIA-related legislation and promoting the sophisticated system of infringement procedures and ECJ practice, thus, **helping its Member States to avoid non-compliance with provisions of the Espoo Convention** and other related legal instruments. Here the experience of **Bulgaria and Romania**, as EU Black Sea member states is of particular importance.
- ▶ 5. The common approach in order to facilitate the enforcement of the EIA-related legal instruments in the Black Sea region may include not only the **adoption of Guidelines and Recommendations on the implementation of the EIA-related Conventions and EU EIA-related legislation** in the framework of Bucharest Convention, but also the development of the separate bilateral and multilateral agreements.
- ▶ 6. Therefore we **welcome this initiative of Espoo Convention Secretariat and Government of Italy** to launch this process and hold this particular meeting.



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