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### **Economic Commission for Europe**

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

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

### **Working Group on Environmental Impact Assessment and Strategic Environmental Assessment**

#### **Seventh meeting**

Geneva, 28–30 May 2018

Item 3 of the provisional agenda

#### **Compliance and implementation**

### **Updated Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries**

**Prepared by consultants to the secretariat in consultation with the  
Central Asian countries**

#### *Summary*

At their seventh and third sessions (Minsk, 13–16 June 2017), respectively, the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment mandated the finalization of the development and update of the Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries (see ECE/MP.EIA/23/Add.1-ECE/MP.EIA/SEA/7/Add.1, decision VII/3–III/3, annex I, item I.10.).

The revised Guidelines were further developed and updated at the initiative of Kyrgyzstan with the aim to provide further guidance on application of the transboundary environmental assessment procedure in Central Asian countries. The updated Guidelines were prepared by consultants to the secretariat in consultation with the five Central Asian countries at three

subregional workshops (Almaty, 9 February 2017; Bishkek, 5 April 2017; Kyiv, 2–3 November 2017) and electronically.

The Working Group, in particular the delegates from the Central Asian countries, will be invited to review and comment the draft revised Guidelines. The Working Group is expected to consider recommending the endorsement of the updated Guidelines by the Meeting of the Parties at its intermediary session (Geneva, 5–7 February 2019). As relevant, it is expected to discuss and agree on the text of draft decision on the endorsement of the Guidelines (ECE/MP.EIA/WG.2/2018/6).

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## About the preparation of the guidelines

1. The present document is the outcome of the revision of the Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries (2007 Guidelines) (ECE/MP.EIA/WG.1/2007/6), which were drafted in 2007 and noted by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) at its fourth session (Bucharest, 19–21 May 2008; ECE/MP.EIA/10, decision IV/5, para. 2). The 2007 Guidelines presented recommendations for the practical implementation of the procedures based on the Convention along with an overview of the state of legislation and practice on environmental impact assessment (EIA) in the five Central Asian countries up to mid-2005. The further development and update of the 2007 Guidelines was undertaken at the request of Kyrgyzstan for further guidance on the transboundary environmental assessment procedure, including regarding notification, consultations based on the environmental impact assessment documentation, public participation and the final decision. Owing to changes in the environmental impact assessment legislation in the Central Asian countries introduced since 2005, the overview of national legislation with regard to the application of the transboundary environmental impact assessment procedure was also to be updated.<sup>1</sup>

2. The work has been carried out by consultants to the Convention secretariat (since 2016) in close cooperation with Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan and further to the workplans for the implementation of the Convention and its Protocol on Strategic Environmental Assessment for 2014–2017 (ECE/MP.EIA/20/Add.3-ECE/MP.EIA/SEA/4/Add.3) and 2017–2020 (see ECE/MP.EIA/23/Add.1-ECE/MP.EIA/SEA/7/Add.1, decision VII/3-III/3, annex I, item I.10). The activity has been implemented with the administrative and substantive support of the Regional Environmental Centre for Central Asia and with financial support from the Swiss Federal Office for the Environment.

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<sup>1</sup> Presentation of the representative of Kyrgyzstan, “Guidelines on Environmental Impact Assessment (EIA) in a Transboundary Context for Central Asian countries” (2005). Overview & way forward at the first subregional workshop, 9 February 2017, slide 8. Available from <http://www.unece.org/index.php?id=45327> (Russian only).

3. The present draft guidelines reflect the recommendations and comments provided by representatives of Kyrgyzstan, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan in writing and during three subregional workshops, which took place on 9 February 2017 in Almaty,<sup>2</sup> 5 April 2017 in Bishkek,<sup>3</sup> and on 2 and 3 November 2017 in Kyiv,<sup>4</sup> respectively. The draft guidelines also take into account the results of an initial overview carried out by the national experts of the current national environmental legislation in each country.

4. That initial overview revealed that, as of October 2017, only Kyrgyzstan as a Party to the Convention had transposed the provisions of the Convention into its national legislation. Kazakhstan as a Party to the Convention applied the Convention directly, which without more detailed provisions in the national legislation is considered by the Implementation Committee under the Convention and the Protocol as being insufficient for proper implementation of the Convention (see ECE/MP.EIA/10, decision IV/2, annex I, para. 64). Similarly, Tajikistan, Turkmenistan and Uzbekistan, which are currently not Parties to the Convention, have no national legislative framework for the application of a transboundary EIA procedure.

5. Consequently, the participants of the third subregional workshop agreed that the revised Guidelines should contain only general and specific recommendations on carrying out the transboundary EIA procedure in Central Asian countries, definitions and the list of the activities based on the Convention. They also agreed that, to facilitate the practical

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<sup>2</sup> At the first subregional workshop the representatives of the beneficiary countries agreed on a concept for revision of the 2007 Guidelines, outlining that the revised Guidelines should be based on the principles of the Convention, take into account the general principles of environmental assessment systems of the Central Asian countries and address issues of applicability of the Guidelines in all Central Asian countries. When assessing the scope of the anticipated revisions of the Guidelines, the representatives of the beneficiary countries recommended to focus, first and foremost, on procedural aspects of the transboundary EIA and on preparation of the initial overview of the current national environmental legislation in each country. The participants further noted the document, "Procedure for carrying out a transboundary environmental impact assessment in a transboundary context for the Central Asian countries", prepared by a group of experts in 2009 with financial support from the Government of Norway and the Organization for Security and Cooperation in Europe (2009 Procedure for EIA). They further invited the international experts to consider using this document during the preparation of the revised Guidelines by, for example, shortening it and providing more practical examples of the application of the transboundary environmental impact assessment procedure in States Parties to the Convention. The participants also agreed that the structure of the revised Guidelines would differ from 2007 Guidelines.

<sup>3</sup> The second subregional workshop provided the participants with an opportunity to learn about the experience in the application of transboundary EIA in the European Union, to discuss the first draft revised Guidelines and to identify further steps to finalize the work on the Guideline's update, in particular the text presented in this document. The participants of the workshop requested the international consultants to incorporate some structural and contextual comments into the draft and agreed that, owing to frequent changes in the national environmental legislation, the initial overview of the current national environmental legislation in each country should not be included in the main text of the Guidelines, but rather should be annexed to it, if necessary. They also noted that the 2009 Procedure for EIA required significant reworking in order to be included into the draft revised Guidelines (possible as another annex) and that such work might require additional financial and human resources.

<sup>4</sup> At the third subregional workshop the participants, among others, considered the consistency between the Convention and EIA procedures within State ecological expertise in Central Asian countries. The participants also identified existing challenges related to the application of the transboundary EIA procedure at the national and subregional level, including the absence of the relevant legislative frameworks in most of the counties of the subregion. In addition, they considered actions needed to address these challenges, including legislative reforms and broad awareness-raising campaigns to promote the benefits of transboundary EIA at the national and subregional levels. Finally, they agreed on the way forward as presented in paragraphs 1 to 5 of the present document.

application in the subregion of transboundary EIA procedures in line with the Espoo Convention, the draft guidelines should be complemented subsequently with:

- (a) An explanatory note providing further practical details, and where possible existing practice, on implementing specific articles of the Convention, or a detailed model of a bilateral agreement for the implementation of the Espoo Convention;
- (b) Specific recommendations on how to align the national legislation of each of the Central Asian countries with the provisions of the Convention, based on relevant reviews of national legislation;
- (c) Awareness-raising and capacity-building activities to promote the benefits of transboundary EIA as a tool for greening economies and to share practical examples of the efficient implementation of the Convention with the decision makers in all Central Asian countries, in particular in the context of the One Belt One Road initiative.

## I. Introduction

### A. International legal framework for environmental impact assessment in a transboundary context

6. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.<sup>5</sup>

7. Since the late 1960s environmental impact assessment is considered to be an effective tool to prevent and mitigate the negative impacts and enhance the positive impacts of planned industrial activities. In accordance with Principle 17 of the Rio Declaration on Environment and Development<sup>6</sup> “environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority”.

8. In accordance with the Espoo Convention the Parties to the Convention must carry out EIA for a proposed activity that is likely to have a significant adverse transboundary impact.<sup>7</sup> The Convention was negotiated under the auspices of ECE in 1991 and it has been in force since 1997. It was amended twice — in 2001 and 2004 — and both amendments are in force (see ECE/MP.EIA/4, decision II/14 and ECE/MP.EIA/6, decision III/7). The Convention is in the process of becoming a global instrument. In general terms, the Convention provides a legal and procedural framework for transboundary procedures while allowing for differences between national EIA systems and procedures. In 2003, the Convention was supplemented by a Protocol on Strategic Environmental Assessment,<sup>8</sup> which applies to Government plans and programmes and to the extent possible also to policies and legislation.

<sup>5</sup> Declaration of the United Nations Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972 (A/CONF.48/14/Rev.1)*, part one, chap. I, Principle 21.

<sup>6</sup> See *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

<sup>7</sup> See United Nations, *Treaty Series*, vol. 1989, No. 34028, article 2.

<sup>8</sup> United Nations, *Treaty Series*, vol. 2685, No. 34028.

9. Although all five Central Asian countries are member States of the United Nations Economic Commission for Europe (ECE), to date only two of them, Kazakhstan and Kyrgyzstan, are Parties to the Convention (since 2001) and, therefore, have specific mutual obligations to carry out a transboundary impact assessment procedure for a proposed activity that is likely to have significant adverse transboundary impacts. At the same time, practical implementation of the environmental impact assessment procedure in a transboundary context has for decades been an important element of international cooperation for environmental protection and sustainable development in the subregion, and acknowledged to be a principle of general international law.<sup>9</sup> That international practice has above all been built under the Espoo Convention.<sup>10</sup>

10. Transboundary EIA is a useful instrument that can facilitate a constructive dialogue among the Central Asian countries to contribute to preventing negative environmental impacts. It also makes it possible to assess the cumulative impacts from a series of industrial activities, including on a shared natural resource, and to develop efficient mitigation measures to reduce anticipated negative environmental impact. In addition, the transboundary EIA procedure based on the Espoo Convention and the strategic environmental assessment procedure based on the Protocol on Strategic Environmental Assessment are considered to be important instruments for helping countries to ensure the alignment of their economic development with the achievement of the Sustainable Development Goals adopted by the United Nations General Assembly on 25 September 2015 (see resolution 70/1).<sup>11</sup> Transboundary EIA provides a framework for the comprehensive integration of environmental and health concerns into a wide range of development activities in all economic sectors. It is worth noting that, in this respect, the strategic environmental assessment that applies at the earliest stages of government planning and decision-making on economic and regional development is recognized to be a particularly useful tool.

## **B. Background and goals of the Guidelines**

11. The Central Asian countries recognize that environmental threats do not respect national borders and that it is important to prevent and mitigate environmental damage at the subregional level. At the same time, all the countries of the subregion whether they are Parties to the Convention or not face difficulties in carrying out transboundary EIA procedures for their proposed activities that are likely to cause a significant adverse transboundary impact.

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<sup>9</sup> The International Court of Justice has recognized undertaking environmental impact assessment where there is a risk that a proposed industrial activity may have significant impact in a transboundary context as a practice that has become an obligation of general international law (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14).

<sup>10</sup> At the European Union level, article 7 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (Environmental Impact Assessment Directive) also includes specific provisions for cases in which a project implemented in one member State is likely to have significant effects on the environment of another member State. These provisions are aligned with the Convention. The Parties to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), including Kazakhstan and Turkmenistan, have since 2005 been negotiating a draft protocol on transboundary environmental impact assessment to that Convention, but have not yet adopted it. Finally, it is important to note that Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan are Parties to the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice (Aarhus Convention) and are bound by its provisions.

<sup>11</sup> For more information see the unofficial document “Mapping of the Convention and the Protocol activities that support countries in achieving the Sustainable Development Goals” (ECE/MP.EIA/WG.2/2016/5/INF.16) submitted to the fifth meeting of the Working Group. Available from <http://www.unece.org/index.php?id=40431> (Unofficial Documents tab).

Many of these difficulties are related to systemic inconsistencies between the national environmental assessment systems in the Central Asian countries and the international standards for EIA set out in the Espoo Convention. In particular, a number of obstacles arise when steps and outputs of national EIA and permitting procedures on a proposed activity should be coordinated with steps to be undertaken within a transboundary EIA procedure for the purpose of carrying out consultations between the concerned countries regarding the proposed activity.

12. The objective of the revised Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asia Countries (revised Guidelines) is to serve as a tool for the Central Asian countries for the practical implementation of transboundary EIA procedures in accordance with the Convention while also taking account of their subregional and national contexts and national legislation. Moreover, the preparatory process has brought the countries together facilitating common understanding and dialogue at the subregional level concerning the procedures for carrying out an environmental impact assessment in a transboundary context. The revised Guidelines have a recommendatory nature and include a detailed description of the procedure for transboundary EIA. They may serve as a useful reference for the development of national legislation in accordance with the Convention.

### **C. Target audience**

13. The revised Guidelines have been developed for: public authorities and officials that take decisions regarding proposed activities; competent authorities responsible for carrying out EIA procedures in a transboundary context in the Central Asian countries and neighbouring countries; project proponents at the national level; and EIA consultants and non-governmental organizations that participate in the EIA procedures both at the national and transboundary levels.

### **D. Legal sources for the Guidelines**

14. The revised Guidelines consider and base themselves on existing national environmental legislation in the countries of the subregion and international agreements to which some of the Central Asian countries are already Parties (mainly the Espoo Convention but also the relevant provisions of the Aarhus Convention). The Guidelines reflect general distinctive features of the EIA systems of the Central Asian countries that consist of the “OVOS”<sup>12</sup> environmental assessment system and a State environmental expertise system.<sup>13</sup> The revised Guidelines also address trends and needs to enhance the existing national legal and institutional frameworks for carrying out EIA procedures. Enhancing legislative frameworks in all the Central Asian countries in line with the international standards is one

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<sup>12</sup> OVOS is an abbreviation that stands for an environmental impact assessment system that has been common in the countries of Central Asia as well as in some countries of Eastern Europe and the Caucasus. The OVOS system is conceptually and procedurally different from the environmental impact assessment (EIA) system under the Espoo Convention and its Protocol. For more details see “General guidance on enhancing consistency between the Convention and environmental impact assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia” (ECE/MP.EIA/2014/2).

<sup>13</sup> The regulatory framework for development control systems in most of the countries in Central Asia as well as in Eastern Europe and the Caucasus is based on the system of “expertise” whereby the decision-making process involves the review of planned activities (mostly concrete development projects but also plans, programmes, etc.) by special expert committees or individual experts. The expert committees or experts are affiliated to various governmental bodies, including environmental authorities.

of the main prerequisites for an efficient application of a transboundary EIA procedures in the region.

## **E. Structure and the content of the Guidelines**

15. The present revised Guidelines differ both structurally and substantively from the 2007 Guidelines. They provide general and specific guidance on carrying out transboundary impact assessment procedure in the Central Asia countries (included in chapters II and III, respectively) and are supplemented with two annexes containing a suggested list of activities to be subject to transboundary EIA (annex I) and definitions and terms (annex II). The revised Guidelines are structured along a transboundary EIA procedure that reflects both the subregional context and the requirements of the Espoo Convention (see diagram below).

16. Subsequently, the revised Guidelines will be supplemented with:

(a) Country-specific recommendations on how to align national legislation with the Convention, which will be based on legislative reviews to be carried out in the Central Asian countries with support from the secretariat and donor funding;

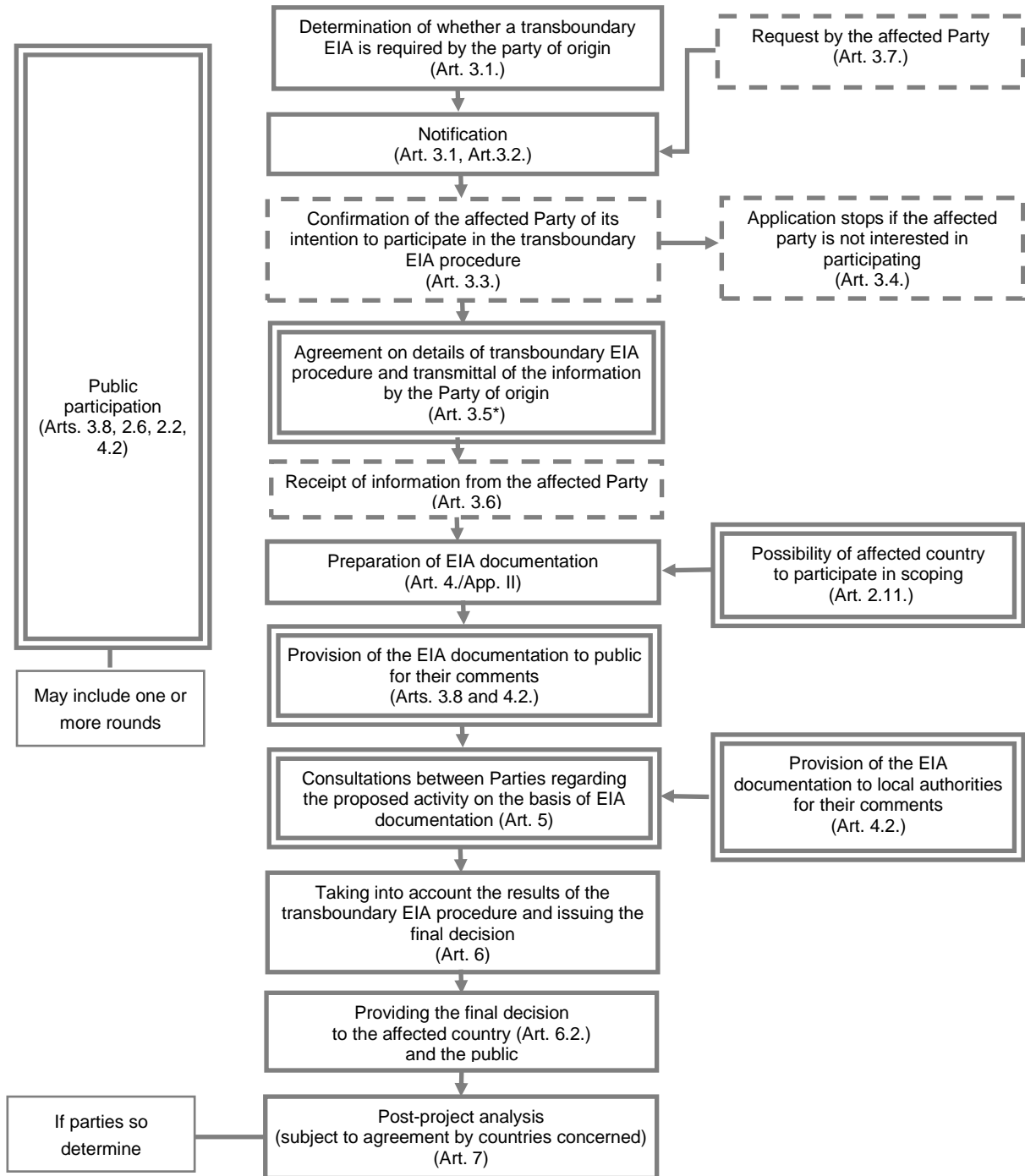
(b) [An explanatory note providing further practical details, and where possible existing practice, on implementing specific articles of the Convention] [A detailed model of a bilateral agreement for the implementation of the Espoo Convention].

17. To facilitate the practical application of the transboundary EIA procedures in the subregion, in particular in the context of the One Belt One Road initiative, there is a need to promote the benefits of transboundary EIA as a tool for greening economies and ensuring environmentally friendly and sustainable investments among the decision makers in all Central Asian countries. This may be implemented through, among others, awareness-raising and capacity-building activities along with sharing practical examples of efficient implementation of the Convention in other parts of the ECE region.

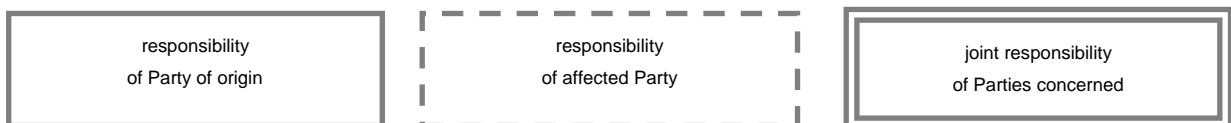


Figure

**General scheme for a transboundary environmental impact assessment procedure**



\* Although art.3.5. of the Convention does not require the establishment of an agreement on the details of the EIA procedure, such an agreement has proven useful for the practical implementation of the transboundary EIA procedure.



## **F. Other information on the practical application of transboundary environmental impact assessment on the basis of the Convention**

18. When developing national legislative frameworks and applying measures to implement transboundary EIA procedures, Central Asia countries may also take into account other guidance documents developed under the Convention. In particular, they may refer to the Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8), the general guidance on enhancing consistency between the Convention and environmental impact assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia (ECE/MP.EIA/2014/2), the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7) and the guidance on notification according to the Espoo Convention (ECE/MP.EIA/12). In addition, the opinions of the Implementation Committee<sup>14</sup> and the reviews of implementation of the Convention<sup>15</sup> could also constitute useful references for the countries on the practical application of the Convention by its current Parties.

## **II. General guidelines on environmental impact assessment in a transboundary context for Central Asian countries**

19. A transboundary EIA is carried out on the basis of the relevant principles and norms of international law, as set out in the Espoo Convention, and in other relevant regional and bilateral agreements. The present revised Guidelines have been developed also taking into account the national circumstances of all the Central Asian countries, independently of whether they have already joined the Convention or not. Thus, they are applicable for all countries of the subregion.

20. For carrying out a transboundary EIA procedure, the countries should:

(a) Adopt and develop the necessary legal and administrative measures at the national level to carry out the procedure for assessing likely significant adverse impacts on the environment from proposed activities. Such a procedure should be integrated into the national permitting system applicable to proposed activities subject to transboundary EIA and should ensure the proper role of the public authorities and for public participation in it;

(b) Endeavour to develop common approaches to transboundary EIA, based on relevant national and international law and practice. Reviews of current national legislation in the field of EIA in Central Asia countries may prove useful in developing such common approaches and concrete, mutually beneficial solutions for the effective application of transboundary EIA. For the purpose of transboundary EIA, existing national procedures on State environmental expertise that include requirements regarding EIA documentation and end with the conclusion of the State environmental expertise should be considered as a decision-making process on a proposed activity;

(c) Take all relevant and effective measures to prevent, reduce and control significant adverse transboundary impacts from a proposed activity.

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<sup>14</sup> See “Opinions of the Implementation Committee (2001–2017)”, an informal document prepared for the seventh session of the Meeting of the Parties to the Convention (Geneva, 2–5 June 2014), available from <http://www.unece.org/index.php?id=45098#/>.

<sup>15</sup> Reviews of implementation are available from the Conventions website: [http://www.unece.org/env/eia/implementation/review\\_implementation.html](http://www.unece.org/env/eia/implementation/review_implementation.html).

### III. Specific guidelines on environmental impact assessment in a transboundary context for Central Asia countries

21. The transboundary EIA procedure — including screening to determine whether a transboundary EIA should be carried out for a specific proposed activity, informing affected countries about the activity and its likely impacts, conducting inter-State consultations on the basis of EIA documentation, ensuring public participation and taking a final decision — is carried out by public authorities in accordance with national legislation and practice.

22. In Central Asian countries, competent environmental authorities are usually appointed as the responsible public authorities for carrying out a transboundary EIA procedure. They implement these functions under the oversight of the ministry of foreign affairs in accordance with national legislation and practice. Each country should independently determine the functions of its public authorities in the transboundary EIA procedure, and inform the countries concerned thereof.<sup>16</sup>

#### A. Determination of whether a transboundary environmental impact assessment is required

23. When planning for an activity, a public authority responsible for decision-making regarding the proposed activity in the country of origin should identify, together with the proponent of that activity, whether the proposed activity is likely to have a significant adverse transboundary impact on the environment. For this purpose, when a proposed activity is listed in annex I to these Guidelines, the countries should ensure that an analysis is undertaken to determine whether the activity may cause a significant transboundary impact.

24. The proponent of the activity must at an early stage carry out an analysis of the likelihood of a significant adverse transboundary impact and submit the results of the analysis to the public authority responsible for decision-making regarding the proposed activity. Depending on national legislation and practice, such an analysis may involve pre-project feasibility studies, pre-EIA, a statement (declaration) of intent, a concept development stage, etc.

25. When identifying the likelihood of a significant adverse transboundary impact, the countries should use the following criteria:

- (a) The significance of the impact is assessed on the basis of:
  - (i) Its intensity regarding established standards and goals of environmental and sanitary-hygienic safety;
  - (ii) The irreversibility of the consequences in affected areas of other countries;
  - (iii) The likely adverse impacts for protected areas and objects in affected countries;
- (b) The transboundary nature of the impact can be expected at the very least when:

<sup>16</sup> By decision I/3 the Meeting of the Parties to the Espoo Convention agreed that “notifications of proposed activities likely to cause significant adverse transboundary impact shall be transmitted to the relevant points of contact” (ECE/MP.EIA/2, decision I/3, para. 1). The list of national points of contact for notification and national focal points for administrative matters established by that decision is available on the Convention’s website and is kept up to date by the secretariat based on the information provided by countries: <https://www.unece.org/env/eia/contacts.html>

- (i) The location of the proposed activity is within 15 kilometres from a country border;
- (ii) There is a likelihood of adverse consequences for shared natural resources, in particular owing to locating the proposed activity on such shared resources or in close proximity to them;
- (iii) There is a likelihood of accidents with transboundary consequences;
- (iv) There is a likelihood of a breach of existing international treaties for protection and sustainable use of transboundary natural resources.

The countries may develop additional national criteria to assist them in identifying the likelihood of significant adverse transboundary impacts (e.g., size, location and consequences for the environment), in accordance with appendix III to the Convention.

26. In addition to the above criteria, the countries — individually or within the framework of bilateral or multilateral treaties or other agreements — may find it useful to adopt a list of activities (with thresholds where appropriate) that should always require notification.<sup>17</sup>

27. Upon the initiative of any of the countries, the countries may through consultations also determine on the basis of the criteria referred to in paragraph 25 that any activity not listed in annex I to these guidelines is likely to cause significant adverse transboundary impact and agree on the need to carry out a transboundary EIA procedure for such an activity individually or within the framework of bilateral, multilateral or other agreements.

28. After having identified the likelihood of a significant adverse transboundary impact the public authority immediately takes a decision to initiate the notification procedure. Such a decision should be based on the assumption that a notification is needed unless a likely significant adverse transboundary can be excluded (see ECE/MP/EIA/10, decision IV/2, annex I, para. 54).

## **B. Notification**

29. Notification of affected countries is an official and obligatory step to initiate the procedure for transboundary EIA. The notification can be transferred by one competent authority to another if countries in advance determined such authorities for the purpose of transboundary EIA;<sup>18</sup> or it may be transferred by another competent authority, which in accordance with national law and existing arrangements is responsible for such tasks. The notification is sent by an official letter, usually through diplomatic channels or by post. It is recommended to send the electronic version to the public authority responsible for decision-making regarding the proposed activity in advance so that it is informed about the forthcoming notification.

30. The notification is a brief letter of a non-technical character containing:

- (a) Brief information about the proposed activity, including information about its likely transboundary impact;
- (b) Information about the nature of the decision to be taken;
- (c) A suggested time frame within which a response is anticipated;

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<sup>17</sup> See list of activities in appendix I to the Convention.

<sup>18</sup> The list of points of contact for notification, including those for all Central Asian countries, is available on the Convention's website and should be referred to when notifying affected countries about a proposed activity that is likely to cause a significant adverse transboundary impact (see [http://www.unece.org/env/eia/points\\_of\\_contact.html](http://www.unece.org/env/eia/points_of_contact.html); see also footnote 27).

- (d) An address to which the response needs to be sent;

To avoid the need to supply additional information in the future, the notification may contain more detailed information on the key characteristics of the proposed activity.

31. In the absence of any other agreements, the notification is sent in the language commonly used in diplomatic correspondence between the countries. Taking into account engineering and technical practice in Central Asian countries, the countries involved in the transboundary EIA procedure may use the Russian language for the purpose of notification and the provision of other information.

32. The affected countries should endeavour to always provide a response to the notification within time frames suggested by the country of origin, which, as a rule, should be from two to four weeks. Absence of a timely response may be understood as a lack of willingness to participate in the transboundary EIA procedure. At the same time, a timely negative response (regarding non-participation in the transboundary assessment) is of importance for the country of origin, since it would allow continuing a national EIA without delay.

33. Upon receipt of the positive answer from an affected country or countries, the competent authority of the country of origin starts preliminary consultations with such country or countries for the purpose of planning the next steps. Such steps may include provision of EIA documentation; the definition of the time, form and number of consultations; and the identification of the persons responsible and their contact information. Once a common agreement on the next steps is reached, the results of the preliminary consultations should be noted in the form of minutes, which include as a minimum information about the steps referred to above.

34. Upon receipt of the consent from an affected country to participate in a transboundary EIA, the competent authority of the country of origin may send a request to the competent authority of the affected country to provide information about the socioeconomic and environmental situation in the territories that may be affected by a significant adverse transboundary impact that are necessary for preparation of the EIA materials (documentation).

### **C. Absence of notification**

35. In case no notification was made, a country that considers itself likely to be affected by a transboundary impact of a proposed activity, based on the information available to that country, may approach the country of origin to start consultations on the need to carry out a transboundary EIA.

### **D. Documentation on environmental impact assessment**

36. The country of origin should ensure that the EIA documentation contains at least the following information:

- (a) A description of the proposed activity and its goals;
- (b) A description of reasonable alternatives, including the (zero) no-action alternative;
- (c) A description of those elements of the environment that are likely to be significantly affected by the proposed activity;
- (d) A description of the possible types of impacts on the environment and an estimation of their significance;

- (e) A description of measures to prevent an adverse environmental impact;
- (f) An explicit indication of the predictive methods and underlying assumptions as well as the relevant environmental data used;
- (g) Identification of gaps in knowledge and uncertainties encountered when developing EIA materials;
- (h) An outline for monitoring and management programmes and any plans for post-project analysis;
- (i) A non-technical summary.

37. The countries that provide in their national legislation a possibility for scoping of the information to be included in the EIA documentation on the proposed activity should allow participation of the affected country in the scoping.

38. EIA documentation is provided by a competent authority of the country of origin to the respective competent authorities of the affected country for examination and comments. Subject to the complexity of the project, the country of origin proposes reasonable time frames for examination of the EIA documentation, public participation and the provision of comments by the affected country.

## **E. Public participation**

39. Countries participating in the transboundary EIA jointly ensure through their competent authorities the possibility for effective participation of the relevant local authorities and the public in this procedure.

40. For the purpose of public participation procedures, the countries should identify measures to determine the public that may be interested in transboundary EIA and to inform it in a timely, adequate and effective manner, ensuring access to EIA documentation and the possibility to provide, in writing or during public hearings, any comments without the need for reasoning such comments. Upon mutual agreement between the competent authorities of the countries concerned, comments and proposals received from the public, may be provided to the country of origin through a competent authority of the affected country or directly to the competent authority and/or public authority(-ies) responsible for decision-making regarding the proposed activity in the country of origin. For that purpose the countries should take into account the requirements of national legislation and international standards, in particular the relevant provisions of the Aarhus Convention.

41. Although the responsibility for ensuring the public participation lies with the public authorities, to ensure that the procedure is carried out properly administrative functions to organize such procedures may be delegated to bodies or persons specializing in public participation or mediation that are unbiased and do not represent interests related to the proposed activity subject to decision-making.

42. The country of origin of the proposed activity ensures that the final decision duly reflects the results of public participation. (For additional information on methods to take account of the outcomes of public participation, see the general guidance on enhancing consistency between the Convention and environmental impact assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia and the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context.

## **F. Consultations**

43. After preparation of the EIA documentation, the country of origin conducts consultations with affected countries on the basis of the documentation regarding the likely transboundary impact of the proposed activity and measures to mitigate or eliminate the impacts. In particular, the consultations may address possible alternatives to the proposed activity, other forms of mutual cooperation to reduce any significant adverse transboundary impact from a proposed activity and any other issues related to the proposed activity.

44. Consultations should mean negotiations between two national States. Countries may include in the consultations representatives of proponents (developers) of EIA documentation for the proposed activity, including their experts, representatives of authorities responsible for decision-making regarding the proposed activity and representatives of local authorities.

45. Consultations may be held in various forms for the purpose of the effective exchange of information at different stages of the consultations, taking into account cultural differences in arranging the negotiations. Such forms may include joint bodies, expert meetings, exchange of (electronic) letters and meetings at the mid and high officials level. It is recommended that forms and timing of consultations are agreed in advance (see para. 33 above).

46. Outcomes of the consultations, including oral and written comments and agreements reached, should be noted properly for the purpose of taking them into account in the final decision-making by the country of origin, for example by compiling meeting minutes, exchanges of letters and other methods.

## **G. Final decision**

47. The country of origin of the proposed activity shall immediately provide the affected country with the final decision, including the reasoning for its adoption and discussion materials, along with a translation of the final decision into a language used during the notification and/or the consultations. Any likely significant impact on the affected country should also be reflected in these documents.

48. The final decision means a decision that intrinsically sets environmental conditions for the operation of the proposed activity and covers all the key parameters and main environmental consequences of the proposed activity in question. Unless the country of origin informs the affected country(ies) otherwise, such a decision means the conclusion of the State environmental expertise along with the final EIA report and the relevant construction permit, if the latter is foreseen by the national legislation of the country of origin.

49. The final decision shall contain a summary of the comments received during consultations and public participation, and how these and transboundary EIA results were included or in another way taken account in the final decision, in the light of the reasonable alternatives considered as described in the EIA documentation. The final decision should also indicate, further to the national legislation, procedures to appeal that decision. The final decision may also include provisions for monitoring (post-project analysis) during the operation of the proposed activity.

50. To finalize the transboundary EIA procedure the proponent of the proposed activity provides the competent authority and the authority responsible for decision-making regarding the proposed activity with the following documents, in both paper and electronic versions, in the language agreed in advance for the purpose of diplomatic communication:

- (a) The approved EIA report;

(b) The positive conclusion of the State environmental expertise containing, among others, an assessment of the design criteria determined during the EIA procedure to ensure environmental safety of the proposed activity, within 10 days after the approval of the project documentation;

(c) Information about the decision taken to permit the construction of the object of the proposed activity together with the reasoning for that decision, to be provided within 10 days after the adoption of the decision.

51. The competent authority and/or authority responsible for the decision-making regarding the proposed activity within three days of receipt sends to the affected countries using diplomatic channels the documentation received from the proponent referred to in paragraph 50 above. The public authority responsible for the decision-making regarding the proposed activity uploads these materials to its website and informs the public and the local authorities that took part in the transboundary EIA about it.

52. If new circumstances or information about the likelihood of significant adverse transboundary impact are identified, countries should endeavour to immediately notify each other and, upon the request of any of them, begin consultations on the issue of reviewing the final decision if the implementation of the proposed activity has not yet been started.

## **H. Other issues**

53. At the request of a country, the countries concerned take a decision regarding the need for a post-project analysis. Such an analysis should cover at least the activity that was subject to the EIA and its significant adverse transboundary impact. If the outcomes of the post-project analysis demonstrate unexpected results, the country of origin must inform the affected countries thereof and conduct consultations on necessary measures.

54. The countries should endeavour to apply these principles of transboundary EIA to strategies, plans and programmes. If the assessment of strategies, plans and programmes is foreseen by bilateral or multilateral agreements, it is important to reach agreement regarding which policies, plans and programmes should be subject to transboundary EIA.

55. Expenses, necessary for carrying out transboundary EIA (including preparation of the EIA documentation) are borne, as a rule, by the proponent of the proposed activity.



## Annex I

### **Suggested list of activities to be subject to transboundary environmental impact assessment<sup>1</sup>**

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 metric tons or more of coal or bituminous shale per day.
2. Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and nuclear power stations and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. Installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing of irradiated nuclear fuels or for the storage, disposal and processing of radioactive waste.
4. Major installations for the initial smelting of cast iron and steel and for the production of non-ferrous metals.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 metric tons finished product; for friction material, with an annual production of more than 50 metric tons finished product; and for other asbestos utilization of more than 200 metric tons per year.
6. Integrated chemical installations.
7. Construction of motorways, express roads and lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more; and construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such a new road, or realigned and/or widened section of road, would be 10 kilometres or more in a continuous length.
8. Large-diameter pipelines for the transport of oil, gas or chemicals.
9. Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 metric tons.
10. Waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes; and waste-disposal installations for the incineration or chemical treatment of non-hazardous waste with a capacity exceeding 100 metric tons per day.
11. Large dams and reservoirs.
12. Groundwater abstraction activities or artificial groundwater recharge schemes where the annual volume of water to be abstracted or recharged amounts to 10 million cubic metres or more.

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<sup>1</sup> This list of activities was prepared based on appendix I of the Convention before the second amendment to the Convention, which extended the original list of activities, entered into force on 23 October 2017. The countries may wish to take into account the list of the activities as amended (see ECE/MP.EIA/6, decision III/7). Kazakhstan and Kyrgyzstan as Parties to the Convention may consider ratification of the second amendment.

13. Pulp, paper and board manufacturing of 200 air-dried metric tons or more per day.
14. Major quarries, mining, on-site extraction and processing of metal ores or coal.
15. Offshore hydrocarbon production. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 metric tons per day in the case of petroleum and 500 000 cubic metres per day in the case of gas.
16. Major storage facilities for petroleum, petrochemical and chemical products.
17. Deforestation of large areas.
18. Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year; and in all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5 per cent of this flow. In both cases transfers of piped drinking water are excluded.
19. Waste-water treatment plants with a capacity exceeding 150,000 population equivalent.
20. Installations for the intensive rearing of poultry or pigs with more than:
  - 85,000 places for broilers;
  - 60,000 places for hens;
  - 3,000 places for production pigs (over 30 kilograms); or
  - 900 places for sows.
21. Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.
22. Wind farms for the harnessing of wind power for energy production comprising over 20 installations of over 50 metres in height each.

## Annex II

### Definitions and terms

1. “Impact” means 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 structures or the interaction among these factors; it also includes effects on cultural heritage or socioeconomic conditions resulting from alterations to those factors.
2. “Environmental impact assessment documentation” means a set of documents, prepared in the procedure for carrying out environmental impact assessment of the proposed activity.
3. “Proponent of the activity” (contractor, developer, investor, applicant) means legal or physical person, which has an intention to carry out a proposed activity and is responsible for the preparation of documentation on the proposed activity in accordance with normative regulations applicable to such an activity for the purpose of obtaining relevant permits.
4. “Affected country” means a country likely to be affected by the transboundary impact of a proposed activity, initiated beyond its jurisdiction, planned on the territory of the country of origin.
5. “Concerned countries” means affected country and country of origin, which participate in the procedure of transboundary EIA.
6. “Competent authority” means an environmental public authority or authorities, appointed in the country of origin and affected country for the functions covered by the transboundary EIA procedure.
7. “Environmental impact assessment” means a national procedure for assessing the likely impact of the proposed activity on the environment, which precedes taking a permitting decision regarding a proposed activity.
8. “Authority responsible for decision-making regarding a proposed activity” means the public authority or authorities that are empowered by the country of origin to take decisions regarding the proposed activity and its permissibility from the perspective of environmental protection and/or environmental safety.
9. “Public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups.
10. “Proposed activity” means any activity or any major change to an activity subject to a permitting decision of an authority responsible for decision-making regarding such a proposed activity in accordance with an applicable national procedure.
11. “Post-project analysis” at the stage of operation of an activity means the monitoring of the activity at the stage of construction and operation, control over compliance with the conditions as set out in the authorization and the effectiveness of mitigation measures, comparisons of conclusions made as a result of environmental impact assessment with real impacts, i.e., comparison of predictive calculations with real effects, and the development, where appropriate, of additional measures for mitigating the impacts.
12. “Country of origin” means a country under whose jurisdiction a proposed activity is envisaged to take place;.

13. “Transboundary impact” means any impact, not exclusively of a global nature, within an area under the jurisdiction of one country caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another country.

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