

Questionnaire for the report of LUXEMBOURG on the implementation of the Protocol on Strategic Environmental Assessment in the period 2016–2018

Information on the focal point for the Protocol

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Part one

Current legal and administrative framework for the implementation of the Protocol

In this part, please describe the legal, administrative and other measures taken in your country to implement the provisions of the Protocol. This part should describe the framework for your country's implementation, and not experience in the application of the Protocol.

Article 3 General provisions

I.1. Please provide the main legislative, regulatory and other measures you have adopted in your country to implement the Protocol (art. 3, para. 1) (more than one option may apply):

(a) Law on SEA (please indicate number/year/name):

The provisions of the Protocol are implemented by the amended *Loi du 22 mai 2008 relative à l'évaluation des incidences de certains plans et programmes sur l'environnement* [hereafter referred to as the amended Act of 22 May 2008], which incorporated into national legislation *Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment*. Furthermore, Luxembourg approved the Protocol through the *Loi du 28 mai 2008 portant approbation du Protocole à la Convention sur l'évaluation de l'impact sur l'environnement dans un contexte transfrontière, relatif à l'évaluation stratégique environnementale, fait à Kiev, le 21 mai 2003*.

(b) SEA provisions are transposed into another law(s) (please specify): /

(c) Regulation (please indicate number/year/name): /

(d) Administrative rule (please indicate number/year/name): /

(e) Other (please specify): /

Your comments:

Article 4 Field of application concerning plans and programmes

I.2. List the types of plans and programmes that require SEA in your legislation:

Under Article 2.2 of the amended Act of 22 May 2008, an environmental assessment is mandatory for all plans and programs:

a) that are developed for agriculture, forestry, fisheries, energy, industry, transportation, waste management, water management, telecommunications, tourism, urban and rural planning or land use, and that establish the framework for authorization of future development projects listed in Annexes I and II of the amended *Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment*, or

b) that, given their likely effects on sites, have been determined to require an assessment under Article 12 of the *Loi modifiée du 19 janvier 2004 concernant la protection de la nature et des ressources naturelles*.

I.3. Explain how you define whether a plan or programme “set the framework for future development consent” (art. 4, para. 2):

By a case-by-case review based on the definition of the project categories in Annexes I and II of the amended Directive 85/337/EEC.

I.4. Explain how the terms “plans and programmes ... which determine the use of small areas at local level” (art. 4, para. 4) are interpreted in your legislation:

By a case-by-case review, in accordance with relevant criteria set out in Article 3 of the amended Act of 22 May 2008 using Annex II of Directive 2001/42/EC. In practice, the article applies primarily in the case of ad hoc changes to a general development plan.

I.5. Explain how you identify in your legislation a “minor modification” to a plan or programme (art. 4, para. 4):

There is no definition. The determination that a plan or program has undergone a minor modification is based on a case-by-case evaluation in accordance with the relevant criteria set out in article 3 of the amended Act of 22 May 2008. Under article 2.3 of the amended Act of 22 May 2008, the Minister of the Environment issues an opinion regarding the need to conduct an environmental assessment in the event of a minor modification to a plan or program.

Article 5 Screening

I.6. How do you determine which other plans and programmes should be subject to a SEA as set out in article 4, paragraphs 3 and 4, in accordance with article 5, paragraph 1? Please specify:

- (a) On a case-by-case basis
- (b) By specifying types of plans and programmes
- (c) By using a combination of (a) and (b)
- (d) Other (please specify):

Your comments:

I.7. Do you provide opportunities for the public concerned to participate in screening and/or scoping of plans and programmes in your legislation (art. 5, para. 3, and art. 6, para. 3)?

No

Yes (please specify (more than one option may apply)):

- (a) By sending written comments to the competent authority
- (b) By sending written comments to the local municipality
- (c) By providing answers to a questionnaire
- (d) By taking part in a public hearing
- (e) By sending written comments to the consultants/SEA experts or persons preparing the plans and programmes

(f) Other (please specify):

Your comments: Under Article 12 of the amended Act of 22 May 2008, the public may file an application to the administrative tribunal to quash decisions made under article 2.7 (publication of the conclusion not to conduct a strategic environmental assessment) and article 6.3 (determination of the scope and level of detail of the information that must be provided in the environmental impact assessment report) of the Act.

In addition, Article 12 stipulates that such recourse is also available to incorporated associations of national importance certified under Article 29 of the *Loi modifiée du 10 juin 1999 relative aux établissements classés*.

Article 6 Scoping

I.8. How do you determine what is the relevant information to be included in the environmental report, in accordance with article 7, paragraph 2 (art. 6, para. 1)?

Article 6.3 of the amended 2008 Act provides that the minister under whose jurisdiction the environment falls makes a decision or forms an opinion, as appropriate, on the scope and level of detail of the information that must be included in the environmental impact report. The views of other authorities with specific responsibilities for the environment are also taken into consideration. In addition, the environmental report must be prepared by an individual or a public or private company certified under the *Loi du 21 avril 1993 relative à l'agrément de personnes physiques ou morales privées ou publiques, autres que l'État, pour l'établissement de tâches techniques d'étude et de vérification dans le domaine de l'environnement*.

Article 7 Environmental report

I.9. How do you determine “reasonable alternatives” in the context of the environmental report (art. 7, para. 2)? Please specify:

- (a) On a case-by-case basis
- (b) As defined in the national legislation (please specify):
- (c) By using a combination of (a) and (b)
- (d) Other (please specify):

Your comments:

I.10. How do you ensure sufficient quality of the reports? Please specify:

- (a) The competent authority checks the information provided and ensures it includes all information required under annex IV as a minimum before making it available for comments
- (b) By using quality checklists
- (c) There are no specific procedures or mechanisms
- (d) Other (please specify):

The Minister of the Environment and other authorities with specific responsibilities for the environment decide on the quality of the environmental reports via an opinion, in

accordance with Article 7.2 of the amended Act of 22 May 2008. In doing so, the Minister of the Environment verifies, among other things, whether the reports contain at least all information set out in Article 5 of the amended Act of 22 May 2008 (Annex IV). For purposes of administrative streamlining, the public consultation and the consultation of authorities with responsibility for the environment occur at the same time. In addition, the environmental report must be prepared by an individual or a public or private company certified under the *Loi du 21 avril 1993 relative à l'agrément de personnes physiques ou morales privées ou publiques, autres que l'État, pour l'établissement de tâches techniques d'étude et de vérification dans le domaine de l'environnement*.

Your comments:

In the event of the revamping of a general development plan, a guide has been published to clarify the strategic environmental assessment procedure and to standardize the content of environmental impact reports.

Article 8 Public participation

I.11. How do you ensure the “timely public availability” of draft plans and programmes and the environmental report (art. 8, para. 2)? Please specify (more than one option may apply):

- (a) Through public notices
- (b) Through electronic media
- (c) Through other means (please specify):

Your comments: Pursuant to Article 7.2 of the amended Act of 22 May 2008, electronic advertising may be complemented by information sessions convened at the initiative of the authority responsible for the plan or program.

I.12. How do you identify the public concerned (art. 8, para. 3)? Please specify (more than one option may apply):

- (a) Based on the geographical location of the plans and programmes
- (b) Based on the environmental effects (significance, extent, accumulation, etc.) of the plans and programmes
- (c) By making the information available to all members of the public and letting them identify themselves as the public concerned
- (d) By other means (please specify):

Your comments: Given that the purpose of the plan or program and the environmental impact report are made public through publication of excerpts in at least four daily newspapers printed and published in Luxembourg, information on the publication is accessible to the entire population.

I.13. How can the public concerned express its opinion on the draft plans and programmes and the environmental report (art. 8, para. 4)? Please specify (more than one option may apply):

- (a) By sending comments to the relevant authority/focal point
- (b) By providing answers to a questionnaire
- (c) Orally

(d) By taking part in a public hearing

(e) Other (please specify): Pursuant to Article 7.1 of the amended Act of 22 May 2008, interested parties can provide comments and suggestions using the electronic medium via which the environmental report was published, or can forward their written comments directly to the authority responsible for the plan or program.

Your comments:

I.14. Do you have a definition in your legislation of the term “within a reasonable time frame” (art. 8, para. 4)? Please specify:

(a) No, the time frame is determined by the number of days fixed for each commenting period

(b) No, it is defined case by case

(c) Yes (please provide the definition):

(d) Other (please specify): Article 7.1 of the amended Act of 22 May 2008 states that all interested parties can provide comments and suggestions within 45 days following the start of publication by which the public is made aware of the purpose of the plan or program and the related environmental impact report. The authority responsible for the plan or program will make the entire file available for consultation by interested parties for a 30-day period from the date of publication.

Your comments:

Article 9

Consultation with environmental and health authorities

I.15. How are the environmental and health authorities identified (art. 9, para. 1):

- (a) On a case-by-case basis:
- (b) As defined in the national legislation:
- (c) Other (please specify)

Your comments: In the case of municipal general development plans, an ad hoc administrative practice has been implemented to consult the authorities concerned.

I.16. How are the arrangements for informing and consulting the environmental and health authorities determined (art. 9, para. 4):

- (a) On a case-by-case basis:
- (b) As defined in the national legislation:
- (c) Other (please specify)

Your comments:

I.17 Does your national legislation call for consultations with environmental and health authorities?

- (a) Yes
- (b) No

I.18. How can the environmental and health authorities express their opinion (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 3):

- (a) By sending comments
- (b) By providing answers to a questionnaire
- (c) In a meeting
- (d) By other means (please specify)

Your comments:

Article 10

Transboundary consultations

I.19. As a Party of origin, when do you notify the affected Party (art. 10, para. 1)? Please specify:

- (a) During scoping
- (b) When the draft plan or programme and the environmental report have been prepared
- (c) At other times (please specify):

Your comments: Given that the environmental assessment must be conducted by the authority responsible for the plan or program (Article 4 of the Act of 22 May 2008), it is up to that authority to notify the affected Party.

I.20. As a Party of origin, what information do you include in the notification (art. 10, para. 2)? Please specify:

- (a) The information required by article 10, paragraph 2
- (b) The information required by article 10, paragraph 2, plus additional information (please specify):

Your comments:

I.21. As a Party of origin, does your legislation indicate a reasonable time frame for the transmission of comments from the affected Party (art. 10, para. 2)? Please specify:

- (a) No
- (b) Yes (please indicate how long):

Your comments: Within the framework of bilateral relations between the two states affected, it will be ensured that the authorities and public of the state whose territory is likely to be significantly affected are informed and have an opportunity to provide their comments within a reasonable time frame.

I.22. If the affected Party has indicated that it wishes to enter into consultations, how do the Parties agree on detailed arrangements to ensure that the public concerned and the authorities in the affected Party are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame (art. 10, paras. 3 and 4)?

- (a) Following those of the Party of origin
- (b) Following those of the affected Party
- (c) Other (please specify):

Your comments:

Article 11 Decision

I.23. When a plan or programme is adopted, explain how your country ensures, in accordance with article 11, paragraph 1, that due account is taken of:

- (a) The conclusions of the environmental report
- (b) Mitigation measures
- (c) Comments received in accordance with articles 8 to 10

Your comments: Article 9 of the amended Act of 22 May 2008 stipulates that the environmental impact report, the comments and suggestions received during the consultation process, and the results of cross-border consultations must be taken into consideration in the development of the plan or program in question, prior to its adaptation or submission to the legislative or regulatory process.

In addition, the provisions of Article 10 of the amended Act of 22 May 2008, pursuant to which the authority responsible for the plan or program is required to inform the public regarding the consideration of the recommendations of the environmental report and the public consultation, the authority must make a clear statement on the implementation of the recommendations.

In the case of general development plans, the Minister of the Environment can require that certain measures be incorporated into the plan so that it can be

approved in accordance with the provisions of the *Loi modifiée du 19 janvier 2004 concernant la protection de la nature et des ressources naturelles*.

I.24. How and when do you inform your own public and authorities (art. 11, para. 2)?

Under Article 10 of the amended Act of 22 May 2008, the public and authorities are informed as follows: “The public, as well as the Minister and other authorities with specific responsibilities for the environment whose views were heard pursuant to the provisions of Article 6, paragraph 3, are informed of the adoption of a plan or program.

Advertising is by electronic media and by publication of excerpts in at least four daily newspapers printed and published in Luxembourg.

The following documents are made available within one month of the date of adoption of the plan or program:

a) the plan or program as adopted;

b) a statement summarizing how the environmental considerations were integrated into the plan or program, including the environmental impact report prepared in accordance with articles 5 and 6, the comments and suggestions received under article 7 and the results of consultations held under article 8 were taken into consideration as provided for under article 9, and the rationale for the selection of the plan or program as adopted, given the other reasonable solutions that were considered;

c) the measures taken related to the monitoring under article 11.”

I.25. How do you inform the public and authorities of the affected Party (art. 11, para. 2)?

(a) By informing the point of contact

(b) By informing the contact person of the ministry responsible for SEA, who then follows the national procedure and informs his/her own authorities and public

(c) By informing all the authorities involved in the assessment and letting them inform their own public

(d) Other (please specify):

Your comments: To decide case by case.

I.26. How do you ensure that, when a plan or programme is adopted, the public, the authorities and the Parties consulted are informed and that the information mentioned in article 11, paragraph 2, is made available to them?

(a) Pursuant to national legislation (please refer to specific provisions and provide citations in order to clarify the procedure followed):

(b) Other (please specify):

Your comments: See case by case.

Article 12 Monitoring

I.27. Describe the legal requirements for monitoring the significant environmental, including health, effects of the implementation of the plans and programmes adopted under article 11 (art. 12, paras. 1 and 2):

The provisions respecting the monitoring of significant environmental impacts are set out in Article 11 of the amended Act of 22 May 2008 as follows:

1. “In order to identify, at an early stage, any unforeseen adverse effects resulting from the implementation of a plan or program and to be able to take appropriate corrective action, the authority responsible for the implementation shall monitor any unforeseen environmental impact of the plan or program in question.

2. The terms and conditions for the monitoring referred to in paragraph 1 are established by Grand-Ducal Regulation. The Regulation sets out, among other things, the conditions under which the Minister may take the initiative of identifying unforeseen adverse effects or of taking the above-mentioned corrective actions.”

Part two Practical application during the period 2016–2018

In this part, please report on your country’s practical experiences in applying the Protocol (and not your country’s procedures, which were described in part one). The focus of this section should be on identifying good practices as well as difficulties encountered in applying the Protocol in practice. The goal is to enable Parties to share solutions. Please therefore provide appropriate examples highlighting application of the Protocol in your country and innovative approaches to improve its application.

II.1. Does your country object to the information on SEA procedures provided in this section being compiled and made available on the website of the Protocol? Please specify (indicate “yes” if you object):

- (a) Yes
(b) No

Your comments:

1. Consideration of health effects

II.2. Does your SEA documentation always include specific information on health effects? Please specify:

- (a) Yes
(b) No, only when potential health effects are identified

2. Domestic and transboundary implementation in the period 2016–2018

II.3. Does your SEA documentation always include specific information on potential transboundary environmental, including health, effects? Please specify:

- (a) Yes
- (b) No, only when potential transboundary effects are identified

3. Cases during the period 2016–2018

II.4. Please provide the (approximate) number of transboundary SEA procedures initiated during the period 2013–2015 and list them, grouped by the sectors listed in article 4, paragraph 2:

- National actions program to fight pollution caused by nitrates of agricultural origin in vulnerable zones (2016/2017)
- Wallonia waste management plan (2017)
- Grand Est Region waste prevention and management plan (2018)
- FNP Windkraft Südeifel (2018) — (translation: Südeifel Wind Energy Land Occupancy Plan)
- Wallonia ecological liaisons (2018)
- Sectoral master plans (housing, economic activity zones, transportation, landscape) of the Grand Duchy of Luxembourg (2018)

4. Experience with the strategic impact assessment procedure in 2016–2018

II.5. Has your country experienced substantial difficulties in interpreting particular terms (or particular articles) in the Protocol?

- (a) No
- (b) Yes (please indicate which ones):

II.6. How does your country overcome the(se) problem(s), if any, for example by working with other Parties to find solutions? Please provide examples:

II.7. With regard your country's experience with domestic procedures, in response to each of the questions below, either provide one or two practical examples or describe your country's general experience. You might also include examples of lessons learned in order to help others. Please detail:

(a) Has your country carried out monitoring according to article 12 and, if so, for what kinds of plans or programmes (cite good practice cases or good practice elements (e.g., consultation or public participation), if available)?

(b) Would your country like to present a case to be published on the website of the Convention and its Protocol as a "case study fact sheet"?

- (i) No
- (ii) Yes (please indicate which ones):

II.8. With regard your country's experience with transboundary procedures, in response to each of the questions below, either provide one or two practical examples or describe your country's general experience. You might also include examples of lessons learned in order to help others. Please detail:

(a) What difficulties has your country experienced and what solutions has it found?

(i) Translation and interpretation The translation problem primarily concerns Luxembourg's plans and programs, given that the languages of our neighbouring countries are also the official administrative languages of Luxembourg. Note that concerted actions were undertaken in 2018 with the neighbouring regions regarding optimization of cross-border procedures (both for projects and for plans/programs).

(ii) Other issues

(b) What does your country usually translate as a Party of origin? In principle, based on the above-mentioned exchanges, it is not envisioned to translate all the documents, but apart from the non-technical summary, all the parts of the documentation concerning significant potential cross-border incidences and official notification of public consultations. All the details are not definitively clarified as yet on this subject. For the sectoral master plans, the Department of Spatial Planning has provided a translation of the relevant data, particularly the technical summary, to the Francophone authorities, while the file has been established in German.

(c) As an affected Party, has your country ensured the participation of the public concerned and the authorities pursuant to article 10, paragraph 4?

(i) No

(ii) Yes (please indicate how): Theoretical answer, because a cross-border consultation was not requested for any file submitted between 2016 and 2018—as a general rule, participation would be organized similarly to the public consultation for national files without cross-border consultation (announcement on electronic media and in at least four daily print media published in Luxembourg).

(d) What has been your country's experience of the effectiveness of public participation?

(e) Does your country have examples of organizing transboundary SEA procedures for joint cross-border plans and programmes?

(i) No

(ii) Yes (please describe):

(f) As an affected Party, how do you ensure that the public concerned and the authorities are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame (art. 10, para. 4)?

5. Experience regarding guidance in 2016–2018

II.9. Are you aware of any use in your country of the online *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment (ECE/MP.EIA/17)*?¹:

(a) No:

¹ Available from http://www.unece.org/env/eia/pubs/sea_manual.html.

(b) Part of it (Please specify):

(c) Yes (please describe your experience):

Your comments on how the Guidance might be improved or supplemented:

6. Awareness of the protocol

II.10. Does your country see a need to improve the application of the Protocol in your country?

(a) No:

(b) Yes Please describe how your country intends to improve application of the Protocol:

7. Suggested improvements to the report

II.11. Please provide suggestions for how this report may be improved:
