



**Economic and Social
Council**

Distr.
GENERAL

MP.EIA/AC.1/2002/3
11 January 2002

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

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

**Ad hoc Working Group on the Protocol
on Strategic Environmental Assessment
(Fourth session, Warsaw, 11-13 February 2002)**

**REVISED TEXTS FOR THE SUBSTANTIAL PROVISIONS OF
A PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT**
Prepared by the Bureau

The Parties to this Protocol,

Mindful of the importance of developing policies to prevent, mitigate and monitor significant adverse environmental and health implications, and of promoting public participation and the exchange of information,

Recognizing that the application of the principles of environmental impact assessment to strategic decision-making will further strengthen the systematic analysis of the environmental effects of proposed policies, plans, programmes and legislation,

Committing themselves to promoting sustainable development in all sectors of society and therefore basing themselves on the conclusions of the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 1992), in particular the Rio Declaration on Environment and Development and Agenda 21, as well as on the outcome of the third Ministerial Conference on Environment and Health (London, 1999),

Acknowledging the benefits to the health and well-being of future generations [that follow] [that will follow if the need to protect and improve people's health is taken into account as an integral part of the environmental analysis of strategic decisions,] [from the conclusions of an environmental analysis of strategic decisions,]

Commending the studies undertaken by the United Nations Economic Commission for Europe to strengthen the application of strategic environmental assessment at national and international levels,

Recognizing that improved public participation in strategic decisions enhances the quality and implementation of decisions, contributes to public awareness of environmental issues, gives the public the opportunity to express its concerns and enables public authorities to take due account of such concerns,

[*Recognizing* the work led by the World Health Organization (WHO) to develop and strengthen the methodologies and application of health impact assessments at national and international levels,]

Bearing in mind the relevant provisions of the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998, and other regional conventions,

[*Bearing in mind* also the obligation to establish environmental and environment-related health objectives in accordance with relevant international agreements and the need to take these into consideration in making strategic decisions and assessing their environmental and environment-related health implications,]

Conscious that the adoption of this Protocol will have contributed to the further strengthening of the "Environment for Europe" process and to the results of the Fifth Ministerial Conference in Kiev, in May 2003, [and to the "Environment and Health" process and the WHO Health 21 Strategy,]

[*Conscious* of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being and to avail of the highest level of protection of the environment and environment-related health,]

Have agreed as follows:

Article 1

OBJECTIVE

The objective of this Protocol is to ensure that the protection of the environment and [environment-related] health forms a[n] [integral] part of strategic decision-making and thus contributes to sustainable development. Accordingly, each Party shall establish [at all appropriate

levels, internationally, nationally, regionally and locally] as well as in transboundary [and non-transboundary] contexts, a[n] [strategic] environmental assessment mechanism. The mechanism shall provide for the early and ongoing integration of environmental and environment-related health implications of proposed [strategic decisions] [plans, programmes, policies and legal acts] into the decision-making process and for effective public participation [, when all options are open], in accordance with the provisions of this Protocol.

Article 2

DEFINITIONS

For the purpose of this Protocol,

1. “Party” means, unless the text indicates otherwise, a Contracting Party to this Protocol;
2. “Party of origin” means a Contracting Party or Parties to this Protocol within whose jurisdiction a proposed strategic decision is envisaged to be taken;
3. “Affected Party” means a Contracting Party or Parties to this Protocol likely to be affected by the transboundary impact of a proposed strategic decision;
4. “Convention” means the Convention on Environmental Impact Assessment in a Transboundary Context;
5. “Meeting of the Parties” means the Meeting of the Parties to the Convention;
6. “Sessions of the Parties” means sessions of the Parties to the Protocol;
- [7. “Strategic environmental assessment” (SEA) means a participatory evaluation of the potential significant implications for the environment of a proposed strategic decision, with the purpose of integrating environmental and [environment-related] health protection into the decision-making process [and reducing potential negative implications];]
- [8. “Strategic decision” means [a decision related to plans and programmes, policies or legislation/legal acts as defined below]:
 - (a) “Plans and programmes” means plans, programmes [, strategies] and other similar decisions [at national, regional or local level] and any modifications to them that
 - (i) [Are explicitly envisaged by] [Have a basis in] [Are required by] legislative, regulatory or administrative provisions; and
 - (ii) Are subject to preparation and/or adoption by a [n] [public] authority or are prepared by a [n] [public] authority for adoption, through a formal procedure, by parliament or the Government,

with the exception of “policies” and “legal acts” as respectively defined in subparagraphs (b) and (c) below;

- (b) “Policies” means decisions and any modifications to them that
- (i) Set policy objectives and/or provide guidance for [public] authorities and other natural or legal persons; and
- (ii) Are subject to preparation and/or adoption by a [n] [public] authority; and
- (iii) [Are not explicitly envisaged by] [Do not have a basis in] [Are not required by] legislative, regulatory or administrative provisions;

(c) “Legal acts” means legislative acts, regulations and any other generally applicable legally binding normative instruments [and any amendments to them] that are prepared by a [n] [public] authority for adoption, through a formal procedure by parliament or the Government.]]

9. “[Competent] [public] authority” means:

- (a) [Government] [Governmental bodies] at national, regional and local level;
- (b) [[Natural or] Legal persons [having public responsibilities or functions, or] providing public services in the key sectors referred to in article 6;]
- (c) [The institutions of any regional economic integration organization referred to in article 25 that is a Party to this Protocol.]

This definition includes authorities that are preparing or taking a strategic decision [as well as environmental and health authorities,] but does not include bodies or institutions acting in a judicial or legislative capacity;

[10. “Public health authorities” means institutions with a statutory function to protect, promote and/or monitor the public's health, including the health of communities and of entire populations. These authorities may also have responsibility to restore people's health, by providing for the care of individuals who are ill and for the management of health care services;]

[11. “Environmental authorities” means ...]

[12. ”Public health experts” are people recognized by their peers as having skills and experience in assessing and monitoring health impacts, developing and implementing activities aimed at protecting and promoting the public's health, including the health of communities and of entire populations. Their skills differ from those needed for the health care of individuals who are ill;]

[13. “Public health” is one of the efforts organized by society to protect, promote and restore people's health. It is the combination of science, skills and beliefs that are directed to the maintenance and improvement of the health of all people through collective or social actions;]

14. [“Implication”][“Impact”][“Effect”] means the likely significant changes in the environment or in [environment-related] health, directly or indirectly resulting from the proposed strategic decision, and the resulting changes in human health, safety and well-being, including changes in, inter alia:

- (a) [The state of] elements of the environment, such as air and atmosphere, water, soil,

land, landscape and natural sites, biological diversity and its components, [including genetically modified organisms,] and the interaction among these elements; and

(b) Conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the changes in the environment;

15. “The public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups;

16. “The public concerned” means one or more natural or legal persons, and their associations, organizations or groups, affected or likely to be affected by or having an interest in the strategic decision, [for the purposes of this definition, non-governmental organizations promoting environmental and health protection and meeting any requirements under national law shall be deemed to have an interest.]

Article 3

GENERAL PROVISIONS

1. Each Party shall take the necessary legislative, regulatory and other appropriate measures to implement the provisions of this Protocol within a clear, transparent framework.

[1 bis] In order to ensure the effective integration of environmental concerns into strategic decisions by means of SEA, each Party shall establish environment-related health objectives and targets in the context of its national sustainable development strategy or national environmental action plan.]

[1 ter] Each Party shall, where appropriate, modify the planning and decision-making frameworks to facilitate the integration of SEA, environmental and environment-related health considerations and public concerns into strategic decisions, in accordance with the provisions of this Protocol.]

2. Each Party shall endeavour to ensure that [decision-making] officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in strategic decision-making and in seeking access to justice in matters covered by this Protocol.

3. Each Party shall provide for appropriate recognition of [and support to] associations, organizations or groups promoting environmental and health protection [and health improvement] in the context of strategic environmental assessment.

4. The provisions of this Protocol shall not affect the right of a Party to maintain or introduce more stringent measures in relation to issues covered by this Protocol.

5. Each Party shall promote the principles and, to the extent possible, the provisions of this Protocol in international decision-making processes having environmental [and health] implications and within the framework of international organizations.

6. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Protocol shall not be penalized, persecuted or harassed in any way for their

involvement.

[7. Within the scope of the relevant provisions of this Protocol, the public shall have access to information, have the possibility to participate in strategic decision-making and have access to justice in relation to strategic decisions without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.]

8. Each Party shall to the extent possible apply the provisions of this Protocol [to changes] to existing strategic decisions [with significant implications][especially in the course of their review and modification].

[9. Each Party shall take the appropriate measures to ensure collaboration and cooperation between the authorities engaged in environment, health and other assessments of impacts, at an early stage of the process.]

Article 4

PUBLIC PARTICIPATION [IN STRATEGIC ENVIRONMENTAL ASSESSMENT]

1. Each Party shall take the necessary legislative, regulatory and other measures to establish and maintain a clear, transparent and consistent framework to ensure timely and effective public participation in [procedures for making strategic decisions for which strategic environmental assessment is required under this Protocol, including] the strategic environmental assessment procedure [itself]. The public shall [be entitled to] participate throughout the procedure in a manner and to the extent appropriate to the type of strategic decision and the procedural stage of the decision-making.

2. The public participation procedures shall include reasonable time frames for the different phases, allowing sufficient time for informing the public and for the public to prepare and participate effectively during the decision-making procedure from an early stage.

3. Each Party shall identify the public concerned in accordance with article 2, paragraph 11 [, and the environmental and health authorities for the purposes of this Protocol].

4. Each Party shall ensure that the public concerned is informed on a strategic decision early in the decision-making procedure referred to in paragraph 1 [, when options are open and effective public participation can take place.] This information shall be provided in an adequate, timely and effective manner, taking into account annex II a.

5. Each Party shall require the competent public authorities to give the public concerned access for examination, free of charge and as soon as it becomes available, to all information relevant to the strategic decision-making procedure referred to in this article that is available at the time of the public participation procedure.

Article 5

SCOPE OF APPLICATION

This Protocol shall apply to plans, programmes, [policies and legislation/legal acts] [strategic decisions] in accordance with [the following provisions] [the provisions of articles 6-9].

Article 6

PLANS AND PROGRAMMES

1. Each Party shall ensure that a [n] [strategic] environmental assessment is carried out in accordance with articles [7, 10 – 15, 17, 18] of this Protocol for plans and programmes which:

(a) Are prepared for sectors such as agriculture, forestry, fisheries, energy, industry [including extraction of mineral resources], transport, [economic development, regional development,] waste management, water management, telecommunications, tourism, town and country planning or land use, [trade,] [military training grounds,] [nature conservation][and modern biotechnology]–(*the sectors to be defined*) [and] [or] set the framework for future development consent of projects listed in annex [a] [(*current Espoo list / amended Espoo list / Aarhus list*)];

(b) [Or otherwise may have significant [adverse] impacts on the environment] [[and] [or] set the framework for future development consent of projects].

2. Plans and programmes referred to in paragraph 1 (a) which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 1 (a) require a [n] [strategic] environmental assessment if the Party determines that they are likely to have significant environmental effects.

[3. The following are not subject to this Protocol:

(a) Plans and programmes whose sole purpose is to serve national defence or civil emergencies;

(b) Financial or budget plans and programmes.]

Article 7

[PROCEDURE FOR] SCREENING [PLANS AND PROGRAMMES]

1. Each Party shall determine whether plans and programmes referred to in article 6, paragraph 1 (b), [and article 6, paragraph 2,] [may] [are likely to] have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose each Party shall in all cases take into account the criteria set out in annex I (*should include also health effects*). In application of this paragraph, environmental authorities and/or health authorities shall be consulted.

[2. Each Party shall ensure that its conclusions pursuant to paragraph 1, including the reasons for not requiring a [n] [strategic] environmental assessment, are made available to the public.]

Article 8

POLICIES

[Scope of application + Screening to be decided]

Article 9

LEGISLATION/LEGAL ACTS

[Scope of application + Screening to be decided]

Article 10

NOTIFICATION [OF STRATEGIC ENVIRONMENTAL ASSESSMENT

1. When, pursuant to articles [5, 6, 7, 8, 9], a strategic decision is deemed to be subject to strategic environmental assessment, each Party shall ensure that [a competent authority] [the public authority responsible for the strategic decision] prepares a notification document describing the steps and timetable for the drawing-up of the strategic decision in question and the practical arrangements taken to implement the requirements of this Protocol, including public participation arrangements. [A notification document shall contain as a minimum the information specified in annex II a.]
2. The notification document shall be provided to environmental authorities and health authorities and to the public concerned in a timely manner in order to allow for effective participation in the strategic environmental assessment. The notification document shall also be made publicly accessible.

Article 11

SCOPING

1. Each Party shall arrange for [a competent authority] [the public authority responsible for the strategic decision] to determine the information to be included in the strategic environmental assessment [documentation][report] depending on the level and detail of the strategic decision and taking into account the elements included in annex II b.
2. Each [competent authority] [public authority responsible for the strategic decision] shall, when determining the information to be included in the strategic environmental assessment [documentation][report] referred to in paragraph 1 of this article, ensure that environmental and health authorities take part in the preparation of the strategic environmental assessment [documentation][report] and decisions on the scope of the strategic environmental assessment.
3. Each Party shall ensure that the public concerned is able to provide comments on the scope of strategic environmental assessment before any decision is made on its scope. The decision on the scope shall reflect how these comments have been taken into account.

Article 12

STRATEGIC ENVIRONMENTAL ASSESSMENT [DOCUMENTATION] [REPORT]

For strategic decisions subject to strategic environmental assessment in accordance with articles [5, 6, 7, 8, 9], [each Party] [the Parties] shall assemble, document and make available to the public, health and environmental authorities, and to the affected Party, [a] strategic environmental assessment [documentation] [report] containing as a minimum the information specified in annex II b. This information shall be in such detail as may be required taking into account the level of detail of the proposed strategic decision, its stage in the decision-making process, the interests of the public and the information needs of the decision-making body. The content of the strategic environmental assessment [documentation] [report] in individual cases shall be determined in accordance with article 11. [Parties shall make SEA [documentation] [reports] available on the Internet [and] [or] through other media to facilitate wider public access.]

Article 13

CONSULTATION

1. The draft strategic decision and the strategic environmental assessment [documentation][report] prepared in accordance with article 12 shall be made available to the authorities referred to in paragraph 3 of the present article and the public concerned, at least [two months] before the deadline for the submission of comments referred to in paragraph 2.
2. The authorities referred to in paragraph 3 and the public concerned referred to in paragraph 4 shall be able to [express their opinion][submit their comments] on the draft strategic decision and the accompanying strategic environmental assessment [documentation][report] before the adoption of the strategic decision or its submission to the legislative procedure.
3. Each Party shall designate the authorities to be consulted which, by reason of their specific environmental or health responsibilities, are likely to be concerned by the environmental and health implications of implementing the strategic decision.
4. Each Party shall identify the public concerned as defined in article 2, paragraph 11, for the purposes of paragraph 2 above, including relevant non-governmental organizations.
5. Each Party shall determine and make publicly available the detailed arrangements for informing and consulting the environmental and health authorities and the public concerned referred to in paragraph 1 above.

Article 14

QUALITY CONTROL OF STRATEGIC ENVIRONMENTAL ASSESSMENT [DOCUMENTATION][REPORT]

Each Party shall make the necessary arrangements to ensure that the quality of the strategic environmental assessment [documentation][report] as referred to in article 12 is appropriate for the decision, taking into account the comments on the quality of the [documentation] [report] by environmental and health authorities and by the public.

Article 15

DECISION

1. Each Party shall ensure that strategic decisions [are guided by and] take due account of the conclusions of the strategic environmental assessment documentation, that in the strategic decision reference is made to measures to prevent or mitigate the implications identified in the strategic environmental assessment [documentation/ report] and that due account is taken of the comments received in accordance with article 13.
2. Each Party shall ensure that the strategic decision is made publicly available together with [a summary of] the reasons and considerations on which it is based and how the comments by the public have been taken into account.

Article 16

ACCESS TO JUSTICE

1. Each Party shall ensure that members of the public concerned have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of: [(i) the decision on screening in accordance with article [7, 8, 9]; (ii) the decision on scoping in accordance with article 11; and (iii)] the preparation and content of any strategic environmental assessment [documentation/report] prepared in accordance with article 12.
- [2. In addition and without prejudice to the review procedure referred to in paragraph 1 above, each Party shall, within the framework of its national legislation, ensure that members of the public with a sufficient interest have access to independent and impartial administrative and judicial procedures to challenge the substantial and procedural legality of the strategic decision referred to in article 15].

Article 17

MONITORING

1. Each Party shall make the necessary arrangements to monitor the actual significant implications related to the implementation of the strategic decisions referred to in article 15 in order, inter alia, to assess the effectiveness of the measures taken to prevent or mitigate their negative implications and to be able to undertake appropriate remedial action.
2. The result of the monitoring undertaken in accordance with paragraph 1 shall be made available to the authorities involved and to the public.

3. When the results of the monitoring give reasonable grounds for concluding that the strategic decision has significant negative implications, the competent authority, taking into account the comments submitted by the public and by environmental and health authorities, shall reconsider the relevant aspects of the strategic decision, including the possibility of its modification or termination.

[4. Each Party shall prepare, at least on a [biennial] [yearly] basis, a monitoring report to review the negative implications of strategic decisions for which a strategic environmental assessment has been prepared. The monitoring report shall be made publicly accessible.]

Article 18

STRATEGIC DECISIONS WITH TRANSBOUNDARY IMPLICATIONS

1. Where a Party of origin considers that the implementation of a proposed decision referred to in article 5 is likely to have a significant transboundary implication or where a Party likely to be significantly affected so requests, the Party of origin shall, before the decision's adoption or finalization, notify the affected Party.

2. The notification shall contain, inter alia:

(a) Information on the proposed strategic decision, including information on its possible transboundary implications; and

(b) Information regarding the decision-making procedure, including an indication of the time schedule for the transmittal of comments.

3. The Party of origin shall provide, in accordance with the provisions of this Protocol, an opportunity to the environmental and health authorities and the public concerned of the affected Party to participate in relevant decision-making procedures regarding strategic decisions with transboundary implications and shall ensure that the opportunity provided to the environmental and health authorities and the public concerned of the affected Party is equivalent to that provided to the environmental and health authorities and the public concerned of the Party of origin.

4. Pursuant to article 15, each Party shall ensure that strategic decisions with transboundary implications are guided by and take due account of the conclusions of the strategic environmental assessment documentation and the comments received pursuant to paragraph 3 above.

5. Each Party shall ensure that the environmental and health authorities and members of the public concerned of the affected Party have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of a strategic decision with transboundary implications, in particular in relation to internationally established objectives of sustainability and of environmental and health protection.

Annex I

GENERAL CRITERIA TO ASSIST IN THE DETERMINATION OF "SIGNIFICANT EFFECTS" AS REFERRED TO IN ARTICLE [5]

Significance thresholds:

- Nature of the objectives of the strategic decision (e.g. relating to environment, health, sustainable development);
- Types (i.e. sector, requiring development consent) and scale (i.e. national or local) of strategic activity,
- Extent of the geographical area covered by the strategic decision;
- Nature and scale of the effect (irreversible, transboundary, etc.);
- Duration, magnitude and probability of the effect;
- The degree to which the strategic decision will affect protected areas (national and international);
- The degree to which the strategic decision will affect species protected by national legislation or international agreements;
- The degree to which the strategic decision sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;
- The degree to which the strategic decision influences other strategic decisions including those in a hierarchy;
- The relevance of the strategic decision for the integration of environmental and health considerations in a comprehensive system of promoting sustainable development;
- Environmental and health problems relevant to the strategic decision;
- The degree to which the strategic decision will further strengthen the application of environmental and health objectives in other economic sectors;
- The degree to which the strategic decision is likely to be a matter of significant public concern.

Annex II a

INFORMATION REFERRED TO IN ARTICLE 4

The information to the public shall:

- (a) Describe the nature of the possible strategic decisions or the draft strategic decision;
- (b) Name the public authority responsible for making the strategic decision;
- (c) Describe the envisaged procedure, including:
 - (i) The commencement of the procedure;
 - (ii) The opportunities for the public to participate;
 - (iii) The time and venue of any envisaged public hearing;
 - (iv) The public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
 - (v) The public authority to which comments or questions can be submitted and the time schedule for the transmittal of comments or questions; and
 - (vi) What environmental information relevant to the proposed activity is available; and
- (d) Specify whether the plan, programme, policy, regulation or legislation is subject to a national or transboundary assessment procedure.

Annex II b

INFORMATION REFERRED TO IN ARTICLE 12

The [information in the] strategic environmental assessment documentation shall:

- (a) Contain information on the content and the main objectives of the strategic decision drafted and its link with other documents;
- (b) Identify, analyse and assess the current state of the environment and environment-related health and the likely evolution of this state should the provisions of the document drafted not be implemented;
- (c) Identify, analyse and assess the state of the environment and environment-related health in areas likely to be significantly affected;

- (d) Identify, analyse and assess the existing environmental and environment-related health problems which are relevant to the [document drafted][strategic decision];
- (e) Identify, analyse and assess the environmental protection and environment-related health objectives and those of the sustainable development strategy established at international, national, regional and local levels which are relevant to the document drafted and the ways in which these objectives and other environmental considerations have been taken into account during the preparation of the document;
- (f) Identify, analyse and assess the likely significant effects on the environment and environment-related health, including positive and negative, cumulative and indirect implications at local, regional or global levels for a short or long duration;
- (g) Identify, analyse and assess measures to enhance positive implications or to prevent, reduce or offset any adverse implications on the environment which may result from the implementation of the strategic decisions;
- (h) [Identify the changes in the achievement of environmental and environment-related health targets, goals and timetables set out in the national environmental (sustainable development) strategy which may result from the implementation of the strategic decisions;]
- (i) Present options or relevant alternatives to those contained in the proposed strategic decision, along with a justification for their choice and a description of the methods applied for the assessment resulting in this choice, including an indication of difficulties encountered as a result of inadequate techniques or gaps in current knowledge;
- (j) Contain information on the methods applied while preparing the strategic environmental assessment documentation;
- (k) Contain information on the methods envisaged for monitoring the implementation of the document drafted;
- (l) Contain information on any likely transboundary effect on the environment;
- (m) Contain a summary in non-technical language.