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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**

##### **First meeting**

Geneva, 24–26 April 2012

Item 8 of the provisional agenda

##### **Promoting ratification and application of the Protocol on Strategic Environmental Assessment**

### **Draft simplified resource manual to support the practical application of the Protocol on Strategic Environmental Assessment**

#### **Note by the secretariat**

##### *Summary*

The present note has been prepared further to decisions I/3 and I/9 taken at the first session of the 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 (see ECE/MP.EIA/SEA/2), which foresaw the elaboration of a compact and simplified version of the *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment* (ECE/MP.EIA/17). The simplified resource manual was to focus on the practical application of the Protocol, and was to be elaborated by the secretariat with the assistance of an editorial group comprising Austria, Finland, the Netherlands, the European

Commission, the World Health Organization and the Regional Environmental Centre for Central and Eastern Europe.

At its first meeting, the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment is expected to decide on the possible publication of the draft simplified resource manual presented herein.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	3
A. Simplified resource manual .....	1–2	3
B. Protocol on Strategic Environmental Assessment .....	3–4	3
C. Strategic environmental assessment .....	5	3
II. Integration of strategic environmental assessment into plan and programme making.....	6–10	4
A. Plan and programme making, strategic environmental assessment and the links between them .....	6–7	4
B. Practical approaches to integrating strategic environmental assessment into plan and programme making.....	8–10	4
III. Determining whether plans and programmes require assessment.....	11–15	6
A. Key provisions .....	11–14	6
B. Guide to determining whether strategic environmental assessment is required .....	15	6
IV. Assessment of plans and programmes .....	16–69	8
A. Scoping .....	17–24	8
B. Environmental report .....	25–38	10
C. Public participation .....	39–46	14
D. Consultation with authorities .....	47–51	16
E. Transboundary consultations .....	52–60	17
F. Decision.....	61–64	18
G. Monitoring.....	65–69	19
V. Policies and legislation .....	70–77	20
A. Key provisions.....	71–72	20
B. Possible approaches .....	73–77	20

## **I. Introduction**

### **A. Simplified resource manual**

1. This simplified version of the *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment* (ECE/MP.EIA/17) was developed following the decision of the Meeting of the Parties to the Protocol in June 2011 providing for “elaboration of a compact and simplified version of the Resource Manual that focuses on the practical application of the Protocol” (ECE/MP.EIA/SEA/2, decision I/3, para. 5).

2. The simplified manual is a short and concise version of the original Resource Manual, serving as an introduction to the Protocol and its practical application. The simplified manual aims to make the Protocol and its provisions better known and to provide guidance on the practical undertaking of strategic environmental assessment (SEA). In addition, it is hoped that it will encourage readers to explore the original Resource Manual for in-depth information on the Protocol and SEA.

### **B. Protocol on Strategic Environmental Assessment**

3. The United Nations Economic Commission for Europe (ECE) Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) was adopted in Kyiv in May 2003. The Protocol entered into force in July 2010 and, as of the beginning of 2012, 22 States and the European Union are Parties to the Protocol.<sup>1</sup>

4. The Protocol establishes a legal requirement to carry out an SEA for certain plans, programmes and, to the extent appropriate, policies and legislation. It applies to the development of plans and programmes irrespective of whether they are likely to have an impact on the territory of another State.

### **C. Strategic environmental assessment**

5. SEA is generally defined as a systematic and anticipatory process, undertaken to analyse the environmental effects of proposed plans, programmes and other strategic actions and to integrate the findings into decision-making. In this simplified manual, the term “SEA” is defined in accordance with the Protocol on SEA as:

the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying-out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme (art. 2, para. 6).

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<sup>1</sup> Regularly updated information providing the current status of ratification is available on the Protocol’s web page on the ECE website ([http://www.unece.org/env/eia/sea\\_protocol.html](http://www.unece.org/env/eia/sea_protocol.html)).

## **II. Integration of strategic environmental assessment into plan and programme making**

### **A. Plan and programme making, strategic environmental assessment and the links between them**

6. The goal in integrating SEA into plan and programme making is to provide early and effective inputs and so ensure that environmental considerations are thoroughly taken into account in the development of plans and programmes (Protocol, art. 1 (a)). SEA has to begin before the draft plan or programme is formulated if it is to comply with the provisions of the Protocol.

7. For SEA to be a proactive instrument that influences the development of the plan or programme, integrating or linking the process defined in Protocol with the general tasks in plan and programme making is necessary. The Protocol sets out a process for carrying out the SEA of plans and programmes in its articles 6 to 12. The elements defined in these articles can usually be linked with corresponding tasks in plan and programme making as illustrated in figure 1 below, though many plan- and programme-making processes do not employ such a clear sequence of tasks.

### **B. Practical approaches to integrating strategic environmental assessment into plan and programme making**

8. Integration of SEA into the development of plans and programmes is based on practical reasons, which extend beyond the legal obligations for early and effective use of SEA in the plan or programme making. Generally speaking, SEA should:

(a) Be undertaken by the authority responsible for a plan or programme. Ideally it should be integrated into and customized to fit the logic of the plan- or programme-making process;

(b) Be applied as early as possible in the decision-making process, when all the alternatives and options remain open for consideration;

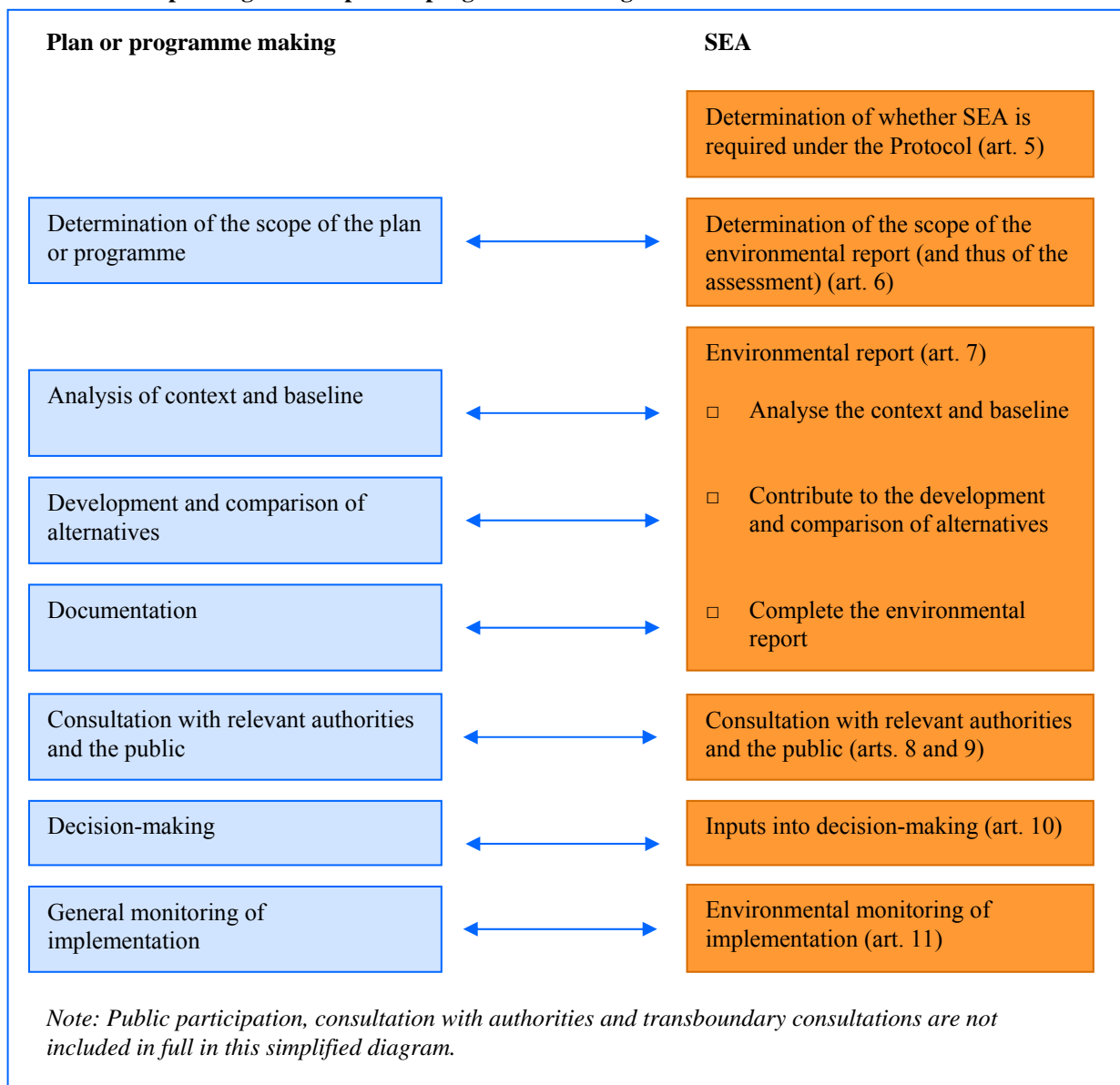
(c) Enable effective consideration of environmental issues in the development of plans and programmes. The capacity of SEA to facilitate the integration of environmental issues into plan or programme making largely depends of the timelines and form of SEA inputs into the plan or programme making;

(d) Evaluate a reasonable range of alternatives, recognizing that their scope will vary with the level of decision-making. Wherever possible and appropriate, it should identify the best practicable environmental option;

(e) Provide appropriate opportunities for the involvement of key stakeholders and the public, and assist in the identification of conflicting views and interests, so increasing the credibility of decision-making. This tends to facilitate rational debate and problem solving, as well as build trust between stakeholders;

(f) Focus on the key issues that matter in the relevant stages of the plan- or programme-making process. This will facilitate the process being undertaken in a timely, cost-effective and credible manner. Application of the Protocol requirements poses certain time demands, which can be minimized by careful organization of the SEA during the plan- or programme-making process. Additional costs may be limited if SEA is carried out in conjunction with the plan or programme making and builds on data gathering, analyses and consultation that may already occur within the plan- or programme-making process.

Figure 1  
Corresponding tasks in plan or programme making and SEA



9. The above overview indicates how important it is to coordinate SEA properly with the development of the plan or programme. Either the SEA process can run in parallel to the development of the plan or programme, or the SEA experts and planning experts can work together as part of one team that develops the plan or programme. In either case, the integration of SEA into plan- or programme-making results in several benefits, such as reduced delays and saved resources. It allows for frequent consultations between the SEA team and the planning team, which facilitate early consideration of different viewpoints and minimize the risk of late surprises and conflicts. Consultations may, as deemed appropriate, also extend to relevant environmental and health authorities and to the public (concerned).

10. Joint work by all parties in the plan- or programme-making process creates an optimal environment for cooperation, and it helps build trust between stakeholders that may normally have different attitudes and values. However, when SEA experts work closely

with planners, care has to be taken to ensure that the SEA experts are not fully co-opted in the plan- or programme-making process, or are marginalized (i.e., have only limited influence) or make trade-offs that will not be publicly disclosed.

### **III. Determining whether plans and programmes require assessment**

#### **A. Key provisions**

11. To determine whether SEA is required under the Protocol, it is necessary to first determine whether the plan or programme being considered falls within the Protocol's definition of a plan or programme. Plans and programmes must be both "required by legislative, regulatory or administrative provisions" and "subject to preparation and/or adoption by an authority or prepared by an authority for adoption, through a formal procedure, by a parliament or a government" (art. 2, para. 5).

12. Second, it is necessary to determine if a plan or programme is within the field of application of the Protocol, considering a set of criteria in article 4, paragraph 2, and annexes I and II. In addition, an SEA is required also for plans and programmes other than those subject to paragraph 2, which set the framework for future development content if it is so determined by screening (art. 4, para. 3). However, if the plan or programme referred to in paragraph 2 determines the use of a small area at a local level, or is a minor modification to a plan or programme (art. 4, para. 4), an SEA will be required only if it so determined by screening. Plans and programmes whose sole purpose is national defence or civil emergencies are not subject to SEA, nor are financial or budget plans or programmes (art. 4, para. 5).

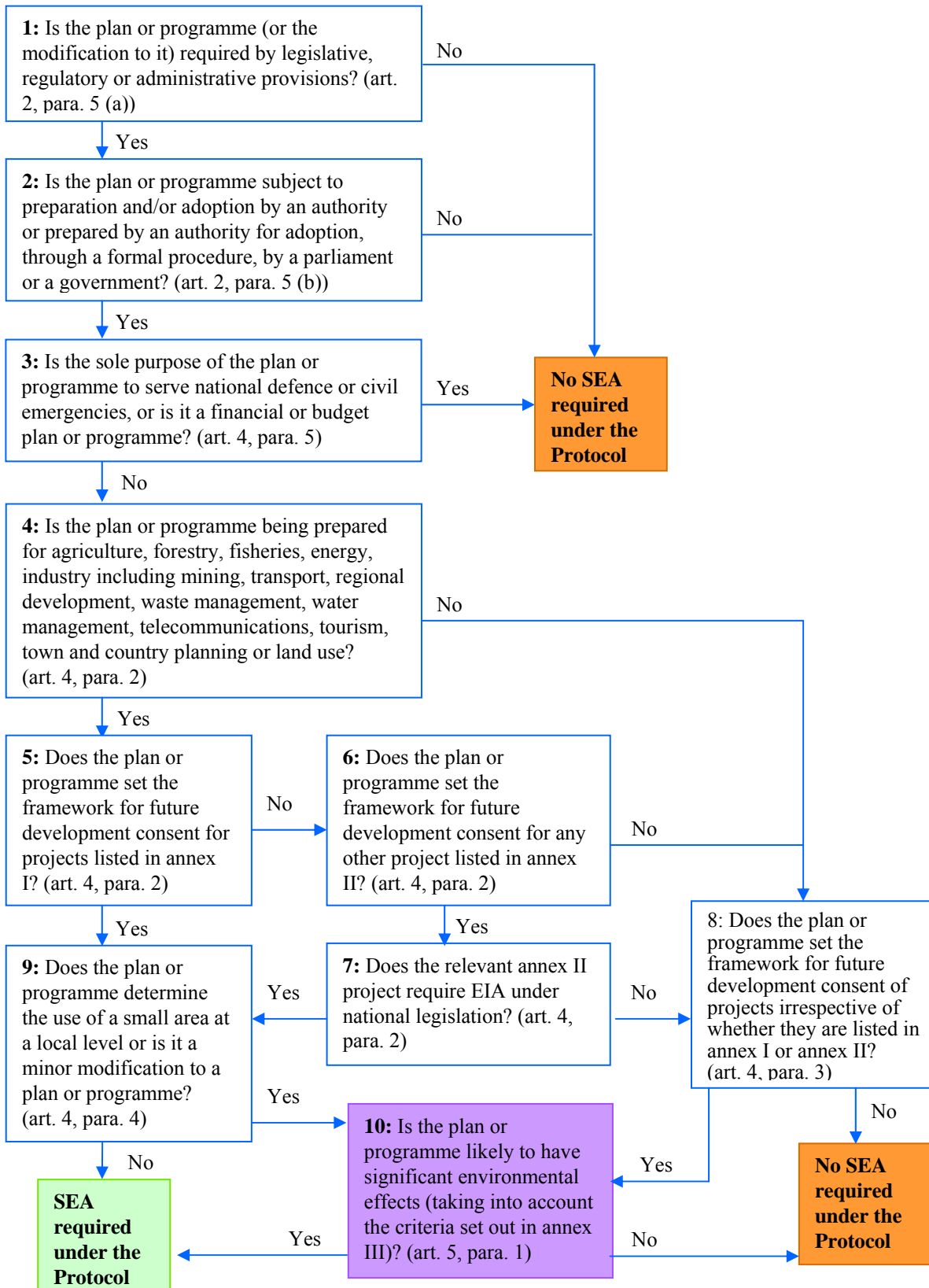
13. The determination of significant effects (screening) may be done by a case-by-case examination, by specifying types of plans and programmes (i.e., listing types of plans and programmes always subject to SEA) or by a combination of the two approaches (art. 5, para. 1). Relevant environmental and health authorities must be consulted during any determination of significant effects (art. 5, para. 2), and the public may be provided with opportunities to participate (art. 5, para. 3).

14. Authorities have to make publicly available the outcome of any determination of significant effects, whether during preparation of lists of types of plans and programmes or during a case-by-case examination (art. 5, para. 4). The information to be made available comprises the outcome of the testing, i.e., whether the plan or programme, or plan or programme type, is to be subject to SEA and the reasons why an SEA is not required, if this is the conclusion.

#### **B. Guide to determining whether strategic environmental assessment is required**

15. Figure 2 below presents a flow chart for determining whether a particular plan or programme is subject to an SEA. It asks nine questions that are set out in the Protocol's field of application (art. 2, para. 5, and art. 4). A tenth question (determination of significant effects, art. 5) may be necessary to determine whether a plan or programme is subject to SEA through screening.

Figure 2  
**Is the plan or programme subject to SEA?**



## IV. Assessment of plans and programmes

16. This chapter gives an overview of practical approaches to the carrying out of an SEA of a plan or programme in accordance with the Protocol.

### A. Scoping

17. Scoping (Protocol, art. 6) might be considered either as a separate element in the SEA process or as a first step in preparing the environmental report. Regardless of the chosen approach, scoping and preparation of the environmental report should preferably be an iterative process.

#### Key provisions

18. Scoping defines the information content in terms of both the topics to be considered and the depth or detail of the information to be presented on each topic. The information to be included in the environmental report has to be relevant (art. 6, para. 1) and, in accordance with the criteria listed in article 7, paragraph 2, environmental and health authorities must be consulted during scoping (art. 6, para. 2), and the public may be provided with opportunities to participate (art. 6, para. 3).

#### Determination of the scope

19. Determination of the scope is the first step of the SEA process to be carried out for a plan or programme subject to SEA. Table 1 below identifies mandatory tasks as well as extra, optional tasks promoting good practice. It should be noted that the mandatory tasks are mandatory within the SEA as a whole to fulfil the obligations of the Protocol; however they may not necessarily be mandatory in the step indicated.

20. Scoping identifies and determines the important issues that need to be assessed and included into the environmental report. For example, it may be relevant to identify the geographical coverage, time periods and environmental aspects to be considered. To identify such aspects, it may also be necessary to recognize the objectives of the plan or programme, relevant environmental problems, environmental objectives and how other plans and programmes might relate to the objectives of the plan or programme. Moreover, it is recommended to begin the consideration of alternatives already during scoping.

21. Scoping normally moves from a long list of concerns to a short list of potentially significant issues. Methods available for scoping are numerous, including:

(a) Policy and legal reviews, which help determine the environmental and health objectives and targets that are relevant to the plan or programme;

(b) Collective expert judgements, which can determine — based on personal experience and case comparisons — possible impacts that should be considered within an SEA;

(c) Checklists, which offer a simple way of identifying whether certain issues are relevant to a proposal and help to avoid overlooking potential issues.

22. Scoping includes consultation with the authorities and, optionally, public participation. If significant transboundary effects appear likely, it is suggested that informal transboundary consultations might be begun during scoping so as to streamline the process. Sections C, D and E below provide information on how to carry out these consultations and provide for public participation, as appropriate.



Table 1  
**Scoping**

<i>Mandatory tasks</i>	<i>Extra, optional tasks</i>
<ul style="list-style-type: none"> <li>▪ Determine relevant information to be included in the environmental report (art. 7, para. 1).</li> <li>▪ Describe the contents of the plan or programme (annex IV, para. 1).</li> <li>▪ Identify main objectives of the plan or programme (annex IV, para. 1).</li> <li>▪ Identify other relevant plans and programmes and explain how they interact with the plan or programme (annex IV, para. 1).</li> <li>▪ Gather information on environmental, including health, problems relevant to the plan or programme (annex IV, para. 4).</li> <li>▪ Identify environmental, including health, objectives relevant to the plan or programme (annex IV, para. 5) and analyse how these relate to the proposed objectives of the plan or programme.</li> <li>▪ Outline reasons for selecting the alternatives dealt with (annex IV, para. 8).</li> <li>▪ Identify environmental and health authorities to be consulted (art. 9, para. 1).</li> <li>▪ Consult authorities on information to be included in environmental report (art. 6, para. 2).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Identify relevant policies and explain how they interact with the plan or programme.</li> <li>▪ Identify likely effects to be assessed.</li> <li>▪ Identify the concerned public to participate, including relevant non-governmental organizations (NGOs) (art. 8, para. 3).</li> <li>▪ Provide for public participation in determining the relevant information to be included in environmental report (art. 6, para. 3).</li> <li>▪ Informally notify and consult affected Parties as appropriate.</li> </ul>

23. There is no requirement in the Protocol to prepare a scoping report. However, it may be useful to record the outcome of the scoping as this would provide the outline of what is to be done when preparing the environmental report. Authorities may choose to make a scoping report publicly available as a matter of good practice.

24. Scoping need not be administratively distinct from the preparation of the environmental report. However, consultation with the authorities on the scope of the environmental report will always be required. It is not sufficient to integrate scoping into report preparation and to consult the authorities only once the report has been prepared.

## **B. Environmental report**

25. This section provides a description of how to go about preparing the environmental report in SEA under the Protocol, having completed scoping. However, as noted above, scoping and preparation of the environmental report should preferably be within an iterative process comprising the following steps:

- (a) Scoping;
- (b) Analysis of the context and baseline;
- (c) Contribution to the development of the plan or programme and its reasonable alternatives;
- (d) Preparation of the environmental report;
- (e) Consultation.

### **Key provisions**

26. The environmental report has to be prepared for plans and programmes subject to SEA (art. 7). This includes consultation with the authorities, public participation and possibly transboundary notification and consultations.

27. The environmental report has to identify, describe and evaluate the likely significant environmental, including health, effects of implementing the plan or programme and its reasonable alternatives (art. 7, para. 2). The resulting report will be used by the decision maker and will normally describe the monitoring arrangements. The content of the report has to reflect the outcome of the scoping (art. 6), but will be based on the list in annex IV of the Protocol and take into account the four criteria specified (art. 7, para. 2). Finally, the environmental report must be of sufficient quality to meet the requirements of the Protocol (art. 7, para. 3).

### **Analysis of the context and baseline**

28. The purpose of baseline analysis is to establish the reference point for assessing the effects of the plan or programme. Table 2 identifies mandatory tasks as well as extra, optional tasks promoting good practice. Typically, it involves describing the current state of the environment and outlining its likely evolution without the plan or programme. The baseline analyses will usually rely on existing data. There are numerous tools that can be used to obtain data, such as:

- (a) Surveys of local environmental quality, although they may be realistically applied in SEA only for very specific local plans and programmes;
- (b) Progress reports on implementation of environmental policy objectives and standards can provide useful insights into obstacles or achievements in realizing already existing environmental objectives and targets.

Table 2  
**Analysis of the context and baseline**

<i>Mandatory tasks</i>	<i>Extra, optional tasks</i>
<ul style="list-style-type: none"> <li>▪ Gather information on the current state of the environment, including health, and its likely evolution if the plan or programme is not implemented (annex IV, para. 2).</li> <li>▪ Gather information on characteristics of the environment, including health, in areas likely to be significantly affected (annex IV, para. 3).</li> </ul>	<ul style="list-style-type: none"> <li>▪ As appropriate, consult authorities and provide for public participation on context, objectives and baseline.</li> <li>▪ Informally notify and consult affected Parties as appropriate.</li> <li>▪ Describe methodology for identification of authorities and the public concerned.</li> <li>▪ Specify the quality of the information gathered and how up to date it is.</li> </ul>

### **Contribution to the development of the plan or programme and its reasonable alternatives**

29. Evaluation of the likely significant environmental, including health, effects is needed to analyse what are the likely environmental effects and how these can be taken into account in decision-making, to compare and evaluate the alternatives and to consider possible mitigation measures. The Protocol treats the draft plan or programme and the alternatives the same. It is therefore suggested that all alternatives are treated equally when assessing the effects — not as one plan or programme plus a number of alternatives, but as if there were just a number of alternatives. Thus is it also recommended to begin the consideration of alternatives already in scoping. Table 3 identifies mandatory tasks as well as extra, optional tasks promoting good practice when developing the plan or programme and its reasonable alternatives. The term “alternative” is not defined in the Protocol, but can be interpreted as:

(a) An alternative plan or programme to that originally proposed, perhaps meeting the same set of objectives;

(b) Alternative elements within a plan or programme, again perhaps meeting the same set of objectives.

30. Types of alternatives might also include alternative locations, land uses, technologies, timing, development paths or even sets of objectives. The alternatives should include a “do-nothing” alternative. Although it is not mandatory, it might also be helpful to include the best practicable environmental option, which helps clarify the basis for choice. Key tools for the purpose of developing alternatives include:

(a) Collective expert judgement, which can determine or develop key alternatives, e.g., through workshops or conferences;

(b) Overlay maps and geographical information systems, which can help develop and optimize alternatives with clear spatial dimensions;

(c) Scenario building, which can outline future options that reflect the most uncertain and important driving forces affecting future development.

31. Irrespective of their origin, all these alternatives can be analysed and mutually compared in terms of their contribution to the attainment of relevant objectives of the plan or programme and of their specific impacts. Most common tools for analysing and comparing the alternatives are mainly the same as those listed above; however, matrices of

impacts and conflicts or synergies, describing the main environmental impacts of proposed options or their main synergies or conflicts with the relevant environmental objectives, as well as trend analysis and extrapolation, may be used also.

Table 3

**Contribution to the development of the plan or programme and its reasonable alternatives**

<i>Mandatory tasks</i>	<i>Extra, optional tasks</i>
<ul style="list-style-type: none"> <li>▪ Describe how the environmental, including health, objectives and other environmental, including health, considerations have been taken into account in preparing the plan or programme, including alternatives (annex IV, para. 5).</li> <li>▪ Assess alternatives by identifying, describing and evaluating likely significant environmental, including health, effects (art. 7, para. 2, and annex IV, paras. 6 and 10).</li> <li>▪ Describe assessment methodologies (annex IV, para. 8).</li> <li>▪ Propose measures to prevent, reduce or mitigate adverse environmental, including health, effects (annex IV, para. 7).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Propose measures to enhance environmental benefits.</li> <li>▪ Provide inputs to the development of alternatives, to maximize their contribution to environmental objectives and to take into account other environmental considerations, including adverse environmental effects.</li> <li>▪ Record how alternatives developed.</li> <li>▪ As appropriate, consult authorities and provide for public participation on alternatives.</li> <li>▪ Consult affected Parties as appropriate.</li> <li>▪ Describe why the methodologies selected were chosen and their limitations.</li> </ul>

32. The health effects of the alternatives should be assessed at least with regard to identifying the positive and negative effects of a plan or programme on relevant health determinants, and based on assessment, overall conclusions should be drawn on whether the plan or programme creates favourable conditions for a healthy population. It should be kept in mind that health effects vary from specific and direct effects to those which are subjective and linked to well-being and the quality of life. Examples of questions that can help to identify the possible effects of plans and programmes on health can be found in the Resource Manual.

**Prepare the environmental report**

33. The environmental report should pull together all the information gathered during the process and should also include a non-technical summary. It should be of sufficient quality and should present complete and reliable information that will be adequate for the purposes of the Protocol. Table 4 identifies mandatory tasks as well as extra, optional tasks promoting good practice in this area.

34. Responsibility for assuring quality will depend on the institutional arrangements in a given country. The same authority that prepared the environmental report might also be responsible for assuring its quality. The body responsible for preparing guidelines might also take on the task of quality control, or an independent commission might be set up or an existing audit commission might have its mandate extended. The sample quality assurance

checklist, provided in the Resource Manual (table A4.4), may be useful in verifying the SEA process is of sufficient quality.

Table 4

**Preparation of the environmental report**

<i>Mandatory tasks</i>	<i>Extra, optional tasks</i>
<ul style="list-style-type: none"> <li>▪ Propose monitoring arrangements (annex IV, para. 9).</li> <li>▪ Identify and describe any difficulties, limitations, uncertainties and risks in the assessment of alternatives, including those arising from gaps in data (annex IV, para. 8).</li> <li>▪ Prepare the environmental report (art. 7, para. 1); the report may be structured following the paragraphs in annex IV.</li> <li>▪ Summarize the information in a non-technical summary (annex IV, para. 11)</li> </ul>	<ul style="list-style-type: none"> <li>▪ In proposing monitoring arrangements, address data gaps and data quality or quantity issues.</li> <li>▪ Revise selected alternatives and the environmental report as necessary.</li> <li>▪ Record how SEA influenced development of the plan or programme and alternatives.</li> <li>▪ Record interactions between planning and SEA teams.</li> <li>▪ Propose follow-up actions, including recommendations for other plans, programmes or projects.</li> </ul>

35. Regardless of the institutional arrangements, the responsible body has to decide whether the environmental report is of sufficient quality, particularly measuring it against the requirements of article 7 and annex IV of the Protocol. If the report is not of sufficient quality, it might be amended or augmented, or part of the SEA repeated, depending on national SEA systems.

**Consultation**

36. Consultation and public participation must occur at this stage, with the authorities and the public concerned commenting on the report and the draft plan or programme alternatives. Their comments need to be taken into account in the decision on the plan or programme, and so should be recorded. Table 5 identifies mandatory tasks as well as extra, optional tasks promoting good practice for this stage. The following two sections, C and D, describe how to implement the Protocol's provisions on public participation and consultation with the authorities.

37. If likely transboundary effects have been determined, transboundary consultations must now be begun. An affected Party might also request that consultations take place (see section E below.)

38. Finally, the report and the plan or programme alternatives might be amended, if appropriate, to take account of the comments received before being submitted to the decision makers.

Table 5  
**Consultation**

<i>Mandatory tasks</i>	<i>Extra, optional tasks</i>
<ul style="list-style-type: none"> <li>▪ Identify the concerned public to participate, including relevant NGOs (if not already done) (art. 8, para. 3).</li> <li>▪ Make the environmental report available to the authorities and the public (art. 8, para. 2 and art. 9, para. 2).</li> <li>▪ Formally notify affected Parties as appropriate (art. 10).</li> <li>▪ Consult the authorities and provide for public participation on the environmental report and selected alternatives.</li> <li>▪ Consult affected Parties as appropriate.</li> <li>▪ Receive comments to be taken into due account in the decision.</li> <li>▪ Formally submit to decision maker (art. 11).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Describe consultation and public participation processes.</li> <li>▪ Record who comprised “the public” and “the public concerned”.</li> </ul>

## C. Public participation

### Key provisions

39. Article 8 requires that there are early, timely and effective opportunities for public participation, when all options are open, in the SEA of plans and programmes (art. 8, para. 1). The timely public availability of the draft plan or programme and the environmental report is required (art. 8, para. 2).

40. The public concerned, including relevant NGOs, has to be identified (art. 8, para. 3). It is the public concerned, not the public in general, that must have the opportunity to express its opinion on the draft plan or programme and the environmental report within a reasonable time frame (art. 8, para 4). Detailed arrangements for informing the public and consulting the public concerned have to be determined and made publicly available (art. 8, para 5). These arrangements have to take into account the provisions listed in annex V.

41. In addition, the Protocol optionally provides for public participation in earlier stages, namely, in the determination of significant effects when determining whether SEA is required (art. 5), as well as in scoping (art. 6).

42. The Protocol provides a number of general rights for the public, in addition to rights to certain information and to consultation on the draft plan or programme and the environmental report. These general rights set out in article 3 include relevant assistance and guidance from officials and authorities, recognition of and support to relevant associations, organizations or groups and the right to exercise their rights under the Protocol.

### **Defining the public**

43. The Protocol makes a distinction between “the public” (in general), which has the right to be informed, and “the public concerned”, which has the opportunity to express its opinion on the draft plan or programme and the environmental report. According to the Protocol, the public means natural and legal person(s) and their associations, organizations and groups. The public concerned is not defined in the Protocol, except that it must include relevant NGOs; however, following the definition in the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), it can be interpreted as the public affected or likely to be affected by, or having an interest in, the environmental decision-making. Certainly, the public concerned, including relevant NGOs, may vary from one plan or programme to another.

### **Practical considerations**

44. The public participation process should serve the purposes of providing information, gathering comments and engaging the public concerned in collaborative problem-solving. The Protocol specifies that the opportunities for public participation be “when all options are open”, i.e., at a stage when reasonable alternatives may be chosen to be put forward for adoption or submission to the legislative procedure.

45. Making information available to the general public may involve appropriate publicity arrangements and easy access to information, though only public availability is strictly required by the Protocol. Effective dissemination, to ensure that in particular the public concerned is informed, might be by public notice (e.g., in a newspaper) or individually (e.g., mailshot). The most common tools include printed materials inviting comments, surveys, consultations, public hearings, information hotlines and exhibitions. A single public participation process serving the SEA plan- or programme-making purposes will simplify the procedure. The Protocol explicitly suggests use of electronic media as a means of ensuring timely public availability of documents. However, it should be ensured that important segments of the public such as the poor, the isolated and the elderly, who might not use the Internet, are not excluded.

46. Different time frames for public participation may be appropriate for different types or complexity of plan or programme, but care should be taken to allow enough time for opinions to be properly developed. Adequate time will also be needed for the planning authority to take these views into account before deciding on the plan or programme. Sometimes requests for more information may be made and the time frame for public participation may also need to take into account the time needed for the responsible authority to respond.<sup>2</sup>

## **D. Consultation with authorities**

### **Key provisions**

47. Article 9 of the Protocol requires that the environmental and health authorities have an early, timely and effective opportunity to express their opinion on the draft plan or programme and the environmental report (art. 9, para. 3). Which environmental and health

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<sup>2</sup> Adapted from *Implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment*, European Commission, para. 7.10, hereafter referred to as the EC Guide.

authorities are to be consulted has to be determined (art. 9, para. 1), as do detailed arrangements for informing and consulting them (art. 9, para. 4).

48. The consultation with environmental and health authorities occurs at a number of stages in the SEA process: in determination of significant effects, if required while determining whether SEA is required (art. 5, para. 2); during scoping (art. 6, para. 2); and in the preparation of the environmental report (art. 9, para. 3).

### **Practical considerations**

49. The “authorities” covers formal governmental or public authorities, defined by administrative or legal requirements. They might include environmental or environmental health inspectorates (national, regional or local level), environmental or health research institutions performing a public task or units in government (national, regional or local) likely to be concerned by, or have expertise in, the effects of implementing the plan or programme in question.<sup>3</sup>

50. Consultation of environmental and health authorities is at the core of the consideration of health within SEA. To facilitate the cooperation between the planners and health authorities, it would be useful if they share information and gradually reach a common understanding on:

(a) The health determinants and risk factors that are likely to be significantly affected by different types of plans and programmes and by the alternatives being considered;

(b) The causal linkages between changes in health determinants and risk factors, and the corresponding occurrence and extent of the likely health effects;

(c) The measures to prevent, reduce or mitigate any significant adverse effects on health;

(d) The arrangements for monitoring actual health effects during implementation of various plans and programmes.

51. The designation of the authorities can be done in a general way by including them in the legislation implementing the Protocol. For example, a national environmental inspectorate could be designated as an authority to be consulted in all cases, or in specified types of cases. Authorities can also be designated case by case, provided the implementing legislation is drafted so as to permit this type of designation.<sup>4</sup>

## **E. Transboundary consultations**

### **Key provisions**

52. Article 10 provides for transboundary consultations when a proposed plan or programme in one country (the Party of origin) is likely to have significant environmental effects on the territory of another country (the affected Party).

53. The Party of origin has to notify the affected Party if it considers that implementation of the proposed plan or programme is likely to have significant transboundary environmental effects, or if so requested by another Party likely to be

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<sup>3</sup> EC Guide, para. 7.11.

<sup>4</sup> EC Guide, paras. 7.13–7.14.



significantly affected (art. 10, para. 1). The first task is therefore to determine whether the plan or programme is likely to have significant transboundary environmental effects.

54. The Protocol does not indicate precisely when transboundary notification and consultations are to take place; it simply requires notification “as early as possible before the adoption of the plan or programme” (art. 10, para. 1). The notification has to include the draft plan or programme, the environmental report, including information on transboundary effects, and information on the decision-making procedure, including information on a time schedule for comments (art. 10, para. 2).

55. Consultations then follow if desired and indicated by the affected Party. The consultations have to address the likely transboundary environmental effects of implementing the plan or programme (art. 10, para. 3), the measures envisaged to prevent, reduce or mitigate adverse effects (art. 10, para. 3) and detailed arrangements for informing the public concerned and authorities in the affected Party, and for giving them the opportunity to forward their opinion on the draft plan or programme and the environmental report (art. 10, para. 4).

56. The opinions of the public concerned and the environmental and health authorities in the affected Party have to be taken into due account, and they have to be informed of how their comments were taken into account (art. 11).

#### **Practical considerations<sup>5</sup>**

57. At the latest, transboundary effects may be identified during preparation of the environmental report, but, if identified earlier, then notification would best be begun earlier as well, during scoping; doing so may reduce delays in reaching the decision-making stage. However, a formal notification including, among other things, the environmental report would then follow later.

58. The Protocol requires that reasonable time frames be provided for consultation in transboundary situations. Compared with non-transboundary situations, these will need to be enough for contact to be made between the Parties concerned, the identification of and consultation with the public and environmental and health authorities in the affected Party, and consideration of the resulting comments by the appropriate authorities in the Party of origin. Practical matters, such as the need to prepare translations, may also lengthen the process.

59. Once the transboundary mechanism is triggered, the concerned Parties have to agree on more detailed arrangements to ensure the necessary consultation with the public concerned and the environmental and health authorities in the affected Party.

60. Transboundary notification and consultations may be arranged purely on an ad hoc basis. However, with environmental impact assessment in a transboundary context (under the Espoo Convention), it has been found that the process can be accelerated and simplified through developing bilateral or multilateral agreements that provide a framework for transboundary consultations, specifying parameters including: contact points; a joint body; language considerations including translation arrangements; assigning costs; criteria of effect significance; public participation arrangements; and dispute settlement procedures. The Espoo Convention’s “Guidelines on good practice and bilateral and multilateral agreements” (ECE/MP.EIA/6, annex IV, appendix) provide advice on these matters. Bilateral and multilateral agreements that have been set up in the framework of the Espoo

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<sup>5</sup> This section is based on paras 7.26–7.29 of the EC Guide.

Convention may, suitably modified to cover plans and programmes, provide a pattern for these arrangements.

## **F. Decision**

### **Key provisions**

61. The decision maker decides which, if any, of the alternative plans or programmes, or alternative elements within a plan or programme, to adopt (art. 11). And in adopting a plan or programme, the decision maker must take into account the conclusions of the environmental report, including the necessary measures to prevent, reduce or mitigate the adverse effects of the various plan or programme alternatives. The decision maker must also take into account opinions expressed by the relevant environmental and health authorities, the public concerned and any affected Parties (art. 11, para. 1).

62. Following adoption of a plan or programme, the relevant environmental and health authorities, the general public (not just the public concerned) and any affected Parties must be informed of that decision (art. 11, para. 2). The adopted plan or programme must be made available to them together with a statement summarizing:

(a) How the environmental and health considerations (as presented in the environmental report) have been integrated into the adopted plan or programme;

(b) How their opinions (as expressed by the public concerned in the case of the public) have been taken into account;

(c) The reasons why the plan or programme has been adopted in the light of the reasonable alternatives considered.

### **Practical considerations**

63. In adopting a plan or programme, the decision maker might wish to take into account, in particular:

(a) Its compatibility with the plan or programme objectives and environmental objectives;

(b) The residual environmental effects.

64. The procedures for informing the public and the contents of the information in the statement are compatible with the Aarhus Convention. No provision is made for confidentiality:

Authorities must provide sufficient information about the conditions under which the environmental information is available and how it can be obtained. The facilities for doing this include, for example, information publications, announcements in government publications or on government websites, television or radio public service announcements, or as part of environmental information catalogues that describe how relevant information can be obtained.<sup>6</sup>

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<sup>6</sup> EC Guide, para 7.31.

## G. Monitoring

### Key provisions

65. Article 12 provides for the monitoring of the significant environmental effects of the implementation of the adopted plan or programme, but does not define how it should be carried out. The Protocol requires that monitoring results be made available to the relevant environmental and health authorities and to the public (art. 12, para. 2). The only explicit reason given for monitoring is to identify, among other things, unforeseen adverse effects and to enable remedial action to be taken (art. 12, para. 1).

### Practical considerations

66. Monitoring has benefits other than those mentioned above and therefore monitoring might be used to:

- (a) Check that the plan or programme is implemented as described, including the prescribed measures to prevent, reduce or mitigate adverse effects;
- (b) Check that environmental conditions imposed by the authorities are being complied with;
- (c) Compare predicted and actual effects, thus providing information on the implementation of the plan or programme;
- (d) Provide experience to help improve future SEAs (i.e., as a quality control tool).

67. The nature of monitoring will vary between different types of plans and programmes. It is suggested that methods chosen should be those that are both available and suited to testing whether the assumptions and predictions made in the environmental assessment correspond with the environmental effects that occur when the plan or programme is implemented. A key consideration is also the ability of the methods to provide early warning of unforeseen adverse effects of the plan or programme so that timely remedial action can be taken.<sup>7</sup> Though the requirement is to identify unforeseen adverse effects, the monitoring can be based on the relevant significant environmental effects as identified in the environmental report. The meaning of “unforeseen” might therefore refer to the unforeseen magnitude or intensity of a foreseen effect, such as greater than expected changes in sulphur dioxide emissions arising from an energy sector plan. It would also be possible to include elements in the monitoring programme that might identify truly unforeseen effects. For example, occasional sampling of a broad range of environmental parameters might identify a change in a parameter that was not expected to be affected by the plan or programme.

68. The Protocol does not discuss what remedial action might be taken if an unforeseen adverse effect is observed. If it is decided to modify the plan or programme as a result, this may require a further SEA, if the requirements of articles 2 and 4 are met.

69. Finally, the significant effects to be monitored might include transboundary effects. The post-project analysis provision of the Espoo Convention (art. 7) might provide inspiration for how to monitor such effects. There is no requirement to share with the affected Party the results of any monitoring, but they should be in the public domain and the affected Party’s assistance might well be required in setting up monitoring in its territory.

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<sup>7</sup> EC Guide, para 8.4.

## V. Policies and legislation

70. This chapter discusses the Protocol's article 13 on policies and legislation. The emphasis is on applying "principles and elements" of the Protocol, rather than an SEA process similar to that for plans and programmes.

### A. Key provisions

71. Article 13 requires that Parties endeavour to ensure that environmental concerns are considered and integrated to the extent appropriate in the preparation of their proposals for policies and legislation, and that the appropriate principles and elements of the Protocol should be considered when doing so. It further states that each Party shall determine, where appropriate, the practical arrangements for the consideration and integration of concerns. As far as a Party applies article 13, practical arrangements should take into account the need for transparency in decision-making. Furthermore, Parties are requested by the article to report to the Meeting of the Parties on its application.

72. The Protocol does not offer a definition of "policies and legislation", though policies are generally considered to be strategic proposals at a higher or more general level than plans and programmes. However, article 13 states that the policies and legislation subject to it are those that are likely to have significant effects on the environment.

### B. Possible approaches

73. The lack of a strict requirement for the SEA of policies and legislation gives the Parties the opportunity to approach the consideration and integration of the environment in policies and legislation more flexibly, undertaking pilot studies and gradually developing experience and skills.

74. However, two key features of the consideration and integration process are apparent in the Protocol — the need to integrate (art. 1 (b) and (e)) and to ensure transparency (art. 13, para. 3). Integration requires early initiation of the consideration and integration process within the policy- or legislation-making process. The combination of the objectives of the policy or legislation with wider environmental objectives would appear an effective starting point for integration.

75. Integration may be made more effective by:

- (a) Starting early, before any irreversible decisions have been made;
- (b) Including an advocate for the environment within the group developing the policy or legislation;
- (c) Agreeing within the group and with decision makers how the consideration and integration process, including any environmental assessment, will be used;
- (d) Tailoring the consideration and integration process to fit the policy- or legislation-making process and, in particular, its timetable;
- (e) Using the principles and elements of environmental assessment to enhance discussion of environment concerns;
- (f) Promoting transparency to provide support for the integration of environmental concerns.

76. Transparency may be achieved by various means, including, for example:

(a) Public information on the outcome and reasoning (i.e., why a policy or legislation has been adopted, taking environmental concerns into consideration);

(b) Public information at earlier stages of the policy- or legislation-making process or the consideration and integration process, including notification that such a process is beginning or has begun;

(c) Early consultation with environmental and health authorities on the results of an assessment of the possible environmental effects of the policy or legislation;

(d) Early public participation, involving not only relevant NGOs, but also the wider public and other Parties to the Protocol when appropriate.

77. Other elements to be considered might be those developed in articles 4 to 12 for plans and programmes (i.e., the “principles and elements” referred to in art. 13, para. 2), which include the field of application and the determination of significant effects, scoping and the environmental report, public participation, consultation with environmental and health authorities, and transboundary consultations, decision-making and monitoring.

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