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Working Group on the Development of the Convention

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Item 4 (b) of the provisional agenda

**Guidance by the Conference of the Parties: safety and
land-use planning**

Outline for a guidance document on safety and land-use planning

Note by the secretariat

Summary

At its eighth meeting (Geneva, 3–5 December 2014), the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents requested the Working Group on the Development of the Convention to review a guidance document on safety and land-use planning, on the basis of a draft drawn up with external expertise, for possible adoption at the ninth or, alternatively, tenth meeting of the Conference of the Parties (ECE/CP.TEIA/30, para. 45).

The present document gives an overview of the projected development of the guidance document on safety and land-use planning, including its background and mandate, objectives and content, methodology, and the organization of work and timelines for its accomplishment. Annexed to the present document is an outline for the guidance document, which will be developed by a consultant in cooperation with the secretariat and the European Investment Bank, as the lead organization for this activity.

The Working Group is invited to review the outline and to provide comments.



I. Background and mandate

1. At its eighth meeting (Geneva, 3–5 December 2014), the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) requested the Working Group on the Development of the Convention (Working Group on Development) to review a guidance document on land-use planning, on the basis of a draft drawn up with external expertise. The Conference of the Parties asked for the document to be ready for possible adoption at its ninth or, alternatively, tenth meeting (ECE/CP/TEIA/30, para. 45). The 2015–2016 workplan adopted by the Conference of the Parties (*ibid.*, annex II) envisages the development of guidance and the sharing of good practices on safety and land-use planning in cooperation with the United Nations Economic Commission for Europe (ECE) Protocol on Strategic Environmental Assessment (Protocol on SEA) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the ECE Committee on Housing and Land Management.

2. Further to a proposal from the secretariat of the Industrial Accidents Convention to promote synergies between the application of the Convention and the Protocol on SEA, the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Working Group on EIA and SEA), at its fourth meeting (Geneva, 26–28 May 2015), agreed to include the development of the guidance document on safety and land-use planning in its workplan, as a joint activity with the Industrial Accidents Convention (ECE/MP.EIA/WG.2/2015/2, paras. 33–34). To support the preparation of the joint guidance, the Working Group on EIA and SEA also agreed on the organization of a joint workshop in April 2016 to exchange experiences on approaches to land-use planning taking due account of the two legal instruments.

3. The European Investment Bank (EIB) is acting as lead organization for the development of the joint guidance and the organization of the joint workshop for sharing of good practices on safety and land-use planning, including by providing financing for these activities (see ECE/CP.TEIA/30, annex II). In cooperation with the respective ECE secretariats to the two legal instruments, EIB has prepared the terms of reference for a consultancy and identified and engaged a consultant for the development of the guidance document. The consultant, with expertise predominantly in the area of land-use planning with regard to hazardous activities and industrial accidents, has sub-contracted a legal expert and an expert on the implementation of the Protocol on SEA in order to prepare a guidance document that addresses the relevant legal and implementation aspects under both treaties.

4. At its fifth meeting (Geneva, 11–13 May 2015), the Working Group on Development was presented with and took note of the proposed approach to the development of the guidance document on safety and land-use planning (ECE/CP.TEIA/WG.1/2015/5).

5. Furthermore, the Working Group on Development decided to establish a small group of experts on land-use planning in order to review the work of the consultant, examine the outline, initial and intermediate drafts and provide expert comments for the finalization of the guidance document, as set out in the small group's terms of reference (ECE/CP.TEIA/WG.1/2015/2, annex I).

II. Objectives and content

6. The guidance document will be prepared in order to assist Parties with the implementation of the Industrial Accidents Convention and the Protocol on SEA in the field

of safety and land-use planning with regard to industrial hazardous activities.¹ It should support their public authorities and practitioners involved in decision-making on land-use policies, plans and programmes, including related environmental assessment, in order to mitigate the consequences of possible industrial accidents for human health, the environment and cultural heritage. The guidance document will share experiences and good practices on the development and implementation of land-use policies, strategies and measures and related safety aspects. The experiences and good practices will relate in particular to the siting of hazardous activities, their significant modification and the establishment of policies on significant developments in areas that could be affected by the transboundary effects of industrial accidents. Experiences concerning the consultation of the environmental and health authorities and public participation will also be presented.

7. The intent of the guidance document is to clarify the legal requirements of both the Industrial Accidents Convention² and the Protocol on SEA³ and to address practical implementation aspects with regard to safety and land-use planning in order to assist the Parties to the two instruments to apply their respective provisions effectively, in accordance with the existing good practice, and in a mutually consistent and complementary manner. Furthermore, the guidance will include technical background information on the risks and possible consequences of industrial accidents arising from hazardous activities; it is of crucial importance that such information be taken into account in land-use planning and the determination of appropriate safety criteria and standards. This background information will also assist in determining whether a land-use plan or programme is likely to have significant environmental, including health, impacts, and therefore be subject to the Protocol on SEA (screening),⁴ as well as in the determination of the scope of the assessment (scoping).

8. In order to achieve these objectives, the guidance document will address the following aspects of safety and land-use planning:

(a) Decision-making on the siting of hazardous activities and their significant modifications and developments in areas that could be affected by the transboundary effects of an industrial accident, including the relevant processes and a description of the elements and criteria to be taken into account;

¹ In accordance with article 1, subparagraph (b), of the Industrial Accidents Convention, “hazardous activity” means any activity in which one or more hazardous substances are present or may be present in quantities at or in excess of the threshold quantities listed in annex I of that Convention and which is capable of causing transboundary effects.

² In accordance with article 7 of the Industrial Accidents Convention, Parties under whose jurisdiction an industrial accident is capable of occurring are required to seek the establishment of policies on the siting of new hazardous activities and on significant modifications to existing hazardous activities. Further, affected Parties must seek the establishment of policies on significant developments in areas which could be affected by the transboundary effects of an industrial accident arising out of a hazardous activity so as to minimize the risks involved. Annexes V and VI to the Convention set out matters to be considered in this regard.

³ In accordance with article 2, paragraph 2, of the Protocol on SEA, a strategic environmental assessment must be carried out for plans and programmes that are prepared for, inter alia, town and country planning or land use, and that set the framework for future development consent for projects that require an environmental impact assessment procedure under the Protocol (annex I) and any other project that requires an environmental impact assessment under national legislation (annex II).

⁴ The Protocol on SEA applies to government plans and programmes and, to the extent appropriate, to policies and legislation. It covers their likely significant environmental and health impacts both domestically and on the territory of another State.

(b) Clarification of the linkages between the general provisions of the Industrial Accidents Convention in article 3, paragraph 1, and land-use planning procedures in article 7;

(c) Strategic environmental assessment (SEA) requirements and procedures, including consultation of relevant authorities and public participation, as they apply to land-use planning with regard to the siting and significant modifications of hazardous activities.

In addition, it will provide examples of policies, legislation and measures on land-use planning, the siting of hazardous activities and their significant modifications, and identify good practices, with a particular emphasis on the transboundary context. The examples and good practices will include cases in which SEA procedures have been applied, as well as the related consultations with the relevant authorities and the public.

9. Further to promoting synergies between the Industrial Accidents Convention and the Protocol on SEA as regards land-use policies, plans and programmes and the siting of hazardous activities and significant modifications to them in a transboundary setting, the guidance document will take into consideration the following other relevant provisions, guidelines and recommendations:⁵

(a) Provisions of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and the European Union (EU) Seveso III Directive,⁶ with regard to public information and participation in the development of land-use plans and policies;⁷

(b) Provisions of the Espoo Convention, with regard to environmental impact assessment (EIA) of relevant planned industrial activities that are likely to cause a significant adverse transboundary impact;

(c) EU Directives on EIA⁸ and SEA;⁹

(d) Linkages with principles and guidelines to land management, as developed under the ECE Committee on Housing and Land Management;¹⁰

⁵ The Conference of the Parties to the Industrial Accidents Convention requested that the guidance document explain how the notion of land-use plans and programmes used in other relevant ECE multilateral environmental agreements applies to the provisions of the Industrial Accidents Convention on the siting of hazardous activities.

⁶ Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC.

⁷ The Conference of the Parties to the Industrial Accidents Convention also requested that the guidance document be prepared in order to align the practice under the Industrial Accidents Convention with the Aarhus Convention and the Seveso III Directive (ECE/CP.TEIA/30, para. 45).

⁸ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

⁹ 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.

¹⁰ *Spatial Planning: Key instrument for Development and Effective Governance with Special Reference to Countries in Transition* (ECE/HBP/146). Available from www.unece.org/hlm/publications_recent10.html. Following the decision by the Committee on Housing and Land Management at its seventy-fifth session to develop a policy brief on spatial planning (ECE/HBP/179, para. 51), the preparation of a policy study on urban planning for inclusive, safe, resilient and sustainable cities and human settlements in the ECE region (ECE/HBP/2014/6) is under development.

(e) Conclusions of the seminar on land-use planning around hazardous industrial sites jointly organized by the Industrial Accidents Convention and the ECE Committee on Housing and Land Management (The Hague, 11–12 November 2010);¹¹

(f) Guidance at the EU level prepared for the implementation of the Seveso II Directive.¹²

10. The draft outline of the guidance document, prepared by the consultant, in cooperation with the EIB and the ECE secretariat (see annex) takes account of the elements outlined in paragraphs 8–9 above. The Working Group is invited to discuss and provide comments on the outline.

III. Methodology

11. The guidance document will be developed on the basis of a desk review, a survey and information and comments provided by national authorities, experts and stakeholders.

12. The desk review of relevant material will analyse existing guidance under the Industrial Accidents Convention, the Protocol on SEA and the ECE Committee on Housing and Land Management. Other documents and guidance developed by the EU and other ECE member States, as well as the recommendations arising from relevant workshops, will be taken into account.

13. A brief survey will be developed to collect information from national authorities on legislation, policies and measures on safety and land-use planning with regard to hazardous activities, possible industrial accidents and their potential transboundary effects, as well as the related implementation of the ECE legal instruments. On the basis of the information, countries' needs will be identified and existing approaches and good practices distilled.

14. A joint workshop on safety and land-use planning will serve to present and take stock of relevant experiences, good practices and challenges by ECE member States. The workshop will bring together representatives of national authorities and stakeholders with expertise on industrial safety, SEAs and land management, representing three distinct communities with a stake in land-use planning and related safety aspects. To that end, the workshop is planned to be organized in the framework of the seventh meeting of the Industrial Accidents Convention's Working Group on Development (Geneva, 11–14 April 2016) and the fifth meeting of the Espoo Working Group on EIA and SEA (Geneva, 11–15 April 2016), in cooperation with the ECE Committee on Housing and Land Management. The information presented and the discussions held at the workshop will serve as a basis for updating and finalizing the guidance document.

¹¹ The report of the meeting is available from <http://www.unece.org/index.php?id=21983#/>.

¹² I.e., Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances; Claudia Basta, Michael Struckl and Michalis Christou, eds., *Implementing Art. 12 of the Seveso II Directive: Overview of roadmaps for land-use planning in selected Member States*, Joint Research Centre (JRC) Scientific and Technical Reports, EUR 23519 EN (Luxembourg: Office for Official Publications of the European Communities, 2008), available from <http://publications.jrc.ec.europa.eu/repository/handle/JRC47504>; and M. D. Christou, M. Struckl and T. Biermann, eds., *Land use planning guidelines in the context of Article 12 of the Seveso II Directive* (European Commission JRC, September 2006), available from: http://ec.europa.eu/environment/seveso/pdf/landuseplanning_guidance_en.pdf.

IV. Organization of work and timelines

15. In drafting, updating and finalizing the guidance document, the consultant will take into account comments and suggestions by the Working Group on Development, the small group of experts on land-use planning established under its umbrella, the Bureau of the Meeting of the Parties to the Protocol on SEA and the Working Group on EIA and SEA.

16. The small group of experts on land-use planning consists at present of members nominated by focal points to the Industrial Accidents Convention from Austria, Belgium, Germany, Italy, the Russian Federation, Switzerland and the United Kingdom of Great Britain and Northern Ireland. Nominations for the following two organizations to contribute as observers have also been put forward through the network of focal points of the Espoo Convention and its Protocol on SEA: the World Health Organization Regional Office for Europe and the Albanian non-governmental organization Studio D — Centre for Development and Dialogue. At its twenty-ninth meeting (Geneva, 8–9 July 2015), the Bureau of the Conference of the Parties to the Industrial Accidents Convention considered that it would be desirable to enhance the participation of representatives from Eastern and South-Eastern Europe, the Caucasus and Central Asia in the work of the small group. Representatives from these countries are invited to inform the secretariat of additional nominations in response to the related invitations circulated by the secretariat in May, June and August 2015.

17. The small group of experts and the Bureaux of the governing bodies of the Espoo Convention and its Protocol on SEA will review and provide comments on the outline. The comments received will be taken on board by the consultant in the preparation of an updated outline, which will be presented, along with the elements to be addressed under each chapter, to the Working Group on Development at its sixth meeting and to the Bureaux of the governing bodies of the Espoo Convention and its Protocol on SEA at their meeting on 19 and 20 January 2016.

18. After incorporating comments and feedback received on the outline, the consultant will prepare an initial draft of the guidance document that will be made publicly available on the ECE website in advance of the joint workshop on safety and land-use planning (provisionally scheduled for 14 April 2016) for comments by Parties, other ECE member States and stakeholders. The document is expected to be informally translated into Russian to facilitate input from Russian-speaking focal points. Taking into account the comments received, the consultant will prepare a revised draft guidance document for presentation at the joint workshop for discussion and further comments by participants.

19. On the basis of the information exchanged, the experiences and good practice examples presented and the discussion at the workshop, the consultant will prepare a new revised version of the draft guidance document. This draft will be sent via e-mail for comments to the small group of experts, the Working Group on Development and the Bureau under the Espoo Convention and the Protocol on SEA.

20. The final draft of the guidance document, addressing any further comments provided, will then be submitted to the Working Group on EIA and SEA for approval at its sixth meeting (Geneva, 7–10 November 2016) and subsequent forwarding to the Meeting of the Parties to the Protocol on SEA at its third session (in May or June 2017) for adoption. Depending on the conclusions by the Working Group on EIA and SEA in November 2016, the guidance could already be presented to Conference of the Parties to the Industrial Accidents Convention at its ninth meeting (expected in November 2016) for its possible adoption. Alternatively, should more time be required for revising and finalizing the guidance document, it would be presented for review and adoption by the the Conference of

the Parties to the Industrial Accidents Convention at its tenth meeting (in the fourth quarter of 2018).

21. Following the adoption of the guidance document by the two governing bodies, it would be issued and printed as a United Nations publication in the official languages of ECE.

Annex

Outline for the guidance document on safety and land-use planning

I. Introduction

- 1.1 Background
- 1.2 Goals and objectives
- 1.3 Methodology
- 1.4 Structure

II. Legal requirements of relevance to land-use planning and industrial hazardous activities

- 2.1 ECE legal instruments
 - 2.1.1 Convention on the Transboundary Effects of Industrial Accidents
 - 2.1.2 Protocol on Strategic Environmental Assessment
 - 2.1.3 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)
 - 2.1.4 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
- 2.2 EU legislation
 - 2.2.1 EU Seveso III Directive
 - 2.2.2 EU Directive on Environmental Impact Assessment
 - 2.2.3 EU Directive on Strategic Environmental Assessment
- 2.3 National legislation in ECE countries
- 2.4 Interlinkages, synergies and complementarities between the Industrial Accidents Convention and the Protocol on SEA

III. Existing guidance and recommendations

- 3.1 Location criteria and guidance under the Industrial Accidents Convention
- 3.2 Guidance under the Protocol on SEA
- 3.3 Principles and guidelines on spatial planning under the Committee on Housing and Land Management
- 3.4 Recommendations of the joint seminar on land-use planning around hazardous industrial sites
- 3.5 European Union guidance
- 3.6 Guidance developed by ECE member States

3.7 Guidance on public information and participation

IV. Experiences of and good practice on safety and land-use planning with regard to siting and modification of hazardous activities

4.1 Land-use planning approaches

4.1.1 Consequence based

4.1.2 Risk based

4.2 Land-use planning and control

4.2.1 Existing industrial activities

4.2.2 New industrial activities

4.2.3 Areas that could be affected by the transboundary effects of an industrial accident

4.3 Application of strategic environmental assessment for land-use plans and programmes

4.4 Experiences and good practices of ECE member States¹³

V. Guidance to Parties on safety, land-use planning and the siting of hazardous activities

5.1 Guidance on legal, procedural and administrative aspects

5.2 Guidance on technical aspects

Annex

Aspects of land-use planning in the context of industrial hazardous activities

A.1 Receptors impacted by industrial accidents

A.1.1 Human beings

A.1.1 Environmental receptors

A.1.2 Other receptors

A.2 Stakeholders involved

A.2.1 Authorities

A.2.2 Industry

A.2.3 General public

¹³ This information could also be presented throughout the chapter with summary boxes highlighting the experiences and good practice of ECE member States.

A.2.4 Non-governmental organizations

A.3 Elements and criteria to support decision-making on land use and safety

A.3.1 Consequences

A.3.2 Effects

A.3.2.1 Thermal radiation

A.3.2.2 Blast overpressure

A.3.2.3 Toxicity

A.3.3 General public

A.3.3.1 People outdoors

A.3.3.2 People indoors

A.3.4 Property damage

A.3.5 Damage to the economy (impacts on business, infrastructure, etc.)

A.3.5 Domino effects

A.3.6 Criteria for risk assessment (including health effects)

A.3.6.1 Individual risk criteria

A.3.6.2 Societal risk
