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**Overview of legislative and administrative reforms for
implementing strategic environmental assessment in
Eastern Europe and the Caucasus**

This document has been developed by consultants to the secretariat and the secretariat, as part of the technical assistance provided to the countries of Eastern Europe and the Caucasus in the framework of the Greening Economies in the Eastern Neighbourhood (EaP GREEN) Programme, and as foreseen in the workplan. The document presents an overview of current legal and institutional reforms of environmental assessment systems in the countries of Eastern Europe and the Caucasus and summarises the process and results of the legislative assistance provided by UNECE from 2013 to 2016 to support these reforms. It is intended to further assist countries in their legal and institutional reforms for enhanced implementation of the Protocol on Strategic Environmental Assessment (SEA). The draft document will be subsequently turned into a publication.

The Working Group and in particular delegations from the countries concerned will be invited to comment on the draft.

The draft is available in English and Russian.

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Overview of legislative and administrative reforms for implementing strategic environmental assessment in Eastern Europe and the Caucasus

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List of terms and abbreviations

Aarhus Convention	United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus (Denmark), 1998
EaP GREEN	EU Programme ‘Greening Economies in the Eastern Neighbourhood’
EC	European Commission
ECE	United Nations Economic Commission for Europe (also sometimes informally abbreviated as UNECE)
EIA	Environmental Impact Assessment
Espoo Convention	United Nations Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo (Finland), 1991
EU	European Union
Natura 2000	Europe-wide network of nature protection areas, consisting of Special Protection Areas (established under the Birds Directive, 1979) and Special Areas of Conservation (established under the Habitats Directive, 1992)
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
OVOS	Russian acronym in whose terms, in direct translation, can be rendered as “assessment of the impact upon the environment”
Protocol on SEA	Protocol on Strategic Environmental Assessment to the Espoo Convention
SEA	Strategic Environmental Assessment
SEA Directive	EU Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment
SEE	State Ecological Expertise
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNIDO	United Nations Industrial Development Organization

I. Introduction

A. About the report

1. This draft report provides an overview of current legal and institutional reforms of environmental assessment systems in the countries of Eastern Europe and the Caucasus¹ and summarises the outcomes of the legislative assistance to support these reforms provided by United Nations Economic Commission for Europe (UNECE) with the financial support of the EU funded Programme ‘Greening Economies in Eastern Neighbourhood’ (EaP GREEN). This technical assistance has been provided as foreseen in the workplans of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Protocol on Strategic Environmental Assessment (Protocol on SEA) for the periods 2014–2017 and 2011–2014 of Convention and the Protocol (see decisions VI/3–II/3 and V/9–I/9).

2. As part of the legislative assistance, the UNECE secretariat supported Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova in reviewing their existing national legislative and institutional frameworks for the application of SEA and environmental impact assessment (EIA) vis-à-vis the requirements of the Protocol on SEA and the Espoo Convention² (the legislative and institutional reviews). Based on the results of the reviews, the countries initiated reforms of their environmental assessment legislation with the aim to align the existing impact assessment procedures (i.e. environmental impact assessment or the so called “OVOS/state ecological expertise” system³ inherited from the Soviet Union, as well as, strategic environmental assessment) with the provisions of the Protocol on SEA and the EU SEA Directive. In parallel, similar legal reform processes have been carried out in Ukraine with the assistance of the EU-funded project ‘Complementary Support to the Ministry of Ecology and Natural Resources of Ukraine for the Sector Budget Support Implementation’. The results of this process are also reflected in this report.

3. The present chapter describes the methodology for the preparation of this report and presents elements the legislative assistance provided to the countries in the past three years.

4. Chapter II of the report briefly summarizes the findings of the legislative and institutional reviews. In particular, it focuses on the differences between environmental assessment of plans and programmes (policies and legislation) under the state ecological expertise/OVOS system in the countries of Eastern Europe and the Caucasus and the SEA systems in the countries of the UNECE region that are compliant with the Protocol on SEA.

5. Chapter III presents an overview of the legislative and administrative reforms in the participating countries. It also provides comparative analysis of approaches and techniques

¹ Eastern Europe: Belarus, the Republic of Moldova and Ukraine; The Caucasus: Armenia, Azerbaijan, Georgia.

² The Espoo (EIA) Convention requires that assessments of the environmental impact be extended across borders between Parties of the Convention when a planned activity may cause significant adverse transboundary impacts. [The Convention was adopted in 1991 and entered into force on 10 September 1997. As of end October 2015 the Convention has 45 Parties. Read more about the history of the Convention following the link: <http://www.unece.org/env/eia/eia.html>

³ OVOS is an abbreviation that stands for an environmental impact assessment system that is common in the countries of Eastern Europe, the Caucasus and Central Asia. As presented in this report the OVOS system is conceptually and procedurally different from the environmental impact assessment (EIA) system under the Espoo Convention and its Protocol on SEA. The abbreviation is used to distinguish between the OVOS and EIA systems. See

selected by the countries in transposing the Protocol on SEA into their national legislation, and presents country specific observations vis-a-vis the Protocol.

6. Chapter IV provides a summary of lessons learned from the UNECE legal assistance to the beneficiary countries. To supplement this report, a consultant to the secretariat has prepared a separate document that provides practical guidance and general recommendations for aligning existing legislative and administrative /implementation frameworks of environmental impact assessment with the Protocol on SEA⁴.

7. Finally, Chapter V provides recommendations for subsequent assistance for further aligning and implementing the reformed legislative, regulatory and administrative/institutional frameworks in the target countries with the provisions of the Protocol on SEA drawing from the experience from selected UNECE countries that are Parties to the Protocol on SEA.

B. Methodology

8. The first draft of this report was prepared by two consultants to the UNECE secretariat in October 2015. From November 2015 to January 2016, that draft was reviewed by the beneficiary countries and the secretariat, and the comments were incorporated into the present draft, together with further editing by the secretariat.

9. The report is based on the experience and the results of the two major activities of the UNECE legislative assistance provided to Armenia, Azerbaijan, Belarus, Georgia and the Republic of Moldova from 2013 to 2016. Namely, (a) the SEA legislative and institutional reviews, and (b) assistance in drafting national legislation on SEA (legal drafting) delivered in 2014 and 2015. As mentioned above, the report also refers to the legislative reforms of the environmental assessment system in Ukraine carried out from 2007 to date.

10. Both activities were jointly implemented by the Ministries responsible for environment in the concerned countries and the UNECE secretariat to the Espoo Convention and its Protocol on SEA with the substantive support provided by experienced international and national consultants.

(a) The SEA legislative and institutional reviews

11. The SEA legislative and institutional reviews were carried out in 2013 in Belarus and the Republic of Moldova and in 2014 in Armenia, Azerbaijan and Georgia. The objectives of the reviews were to detect existing elements for the application of SEA in the national environmental assessment legislation and to identify the legal gaps vis-à-vis the requirements of the Protocol on SEA. Under the guidance of the UNECE secretariat, these reviews were carried out by international and national consultants. The review process included a desk study and in-country visits to examine the legislation, procedures and, as appropriate, practice (case studies) of the application of environmental assessment to plans and programmes; the presentation of the review results to governments and the public at round-table events and the

⁴ ECE/MP.EIA/WG.2/2016/5/INF.7. Draft practical guidance on reforming legal and institutional structures with regard to the application of the Protocol on Strategic Environmental Assessment

preparation of the final review reports based on the comments provided by the Ministries responsible for environment as well as other national authorities and the public.

12. This overview provides a summary of the common legal gaps in the existing environmental systems of the beneficiary countries vis-à-vis the provisions of the Protocol.

(b) Legal drafting

13. In early 2014, following the recommendations of the reviews and with a view to join the Protocol on SEA, Azerbaijan, Georgia and the Republic of Moldova expressed their intent to introduce SEA into their national legal frameworks. Azerbaijan and Georgia aimed at preparing each a draft law that combines the respective schemes for EIA and SEA, whereas the Republic of Moldova planned to develop a separate SEA law. The legal drafting in these countries was carried out by national drafting groups established by the Ministries responsible for environment. The national drafting groups consisted of 2 to 5 officials each, including a head of the legal department and a head or a chief specialist of the ecological expertise department. One or two international and national consultants supported the drafting group in preparation of the draft legislation on SEA⁵. The international consultants had extensive expertise and experience with the implementation of SEA across the UNECE region, both within the EU member countries and in the beneficiary countries. The national consultants had experience in drafting national legislation and were familiar with the national legal technique. The drafting group worked very closely with the national and international consultants through a number of personal and virtual meetings and frequent exchange of emails.

14. The law drafting was typically initiated by a discussion regarding the approach to be taken for development of the draft legislation on SEA (see section III B (a) below for an analysis of the approaches and techniques for legislative reforms). To this end, based on the EU countries' experience in developing their SEA legislation, the international consultant(s) provided a list of questions and suggested alternative legal options for addressing certain specific requirements of the Protocol on SEA in a beneficiary country. Once the drafting approach was agreed, the drafting group developed the draft legislation with support from the national consultant and with guidance from the international consultants. Whenever necessary, to support the drafting group, the international consultants prepared drafts for some chapters of the draft law. The revised draft laws in all countries were subject to internal consultations within the Ministry responsible for environment and to consultations with the public and other stakeholders. The provisions of the draft laws were also assessed and tested through a pilot application of the SEA (based on the draft law) to a selected governmental plan or programme. The results of the consultations and recommendations collected during the pilot projects⁶ were addressed in the next drafts laws. These advanced drafts were reviewed by the international consultants, after which the drafting group fully or partially

⁵ In Georgia and Azerbaijan legal drafting also covered EIA procedures (see Table 3). To this end, the UNECE also provided technical assistance for drafting EIA elements of the new environmental assessment legislation. The technical assistance on developing EIA legislative framework was built on the General guidance on enhancing consistency between the Convention and environmental impact assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia, ECE/MP.EIA/2014/2. The results of the assistance are presented in the EaP GREEN progress reports and are outside of this overview.

⁶ Only in Azerbaijan and the Republic of Moldova the pilot project resulted to some recommendations on improving the draft laws. The pilot project on SEA in Georgia was implemented within a tight time-frame. Therefore, pilot SEA was implemented only partially following the SEA procedure proposed in the draft law.

addressed their final comments. Currently (March 2016), the drafts undergo inter-ministerial consultations in the concerned countries with the aim for them to be submitted to the respective national Parliaments in the course of 2016, further to which some changes might be introduced to the drafts. This overview reflects on and provides recommendations to the draft environmental assessment laws developed based on the above mentioned processes as of October 2015.

15. As Party to the Protocol on SEA since 2011, Armenia established its national SEA system by adopting a law on Environmental Impact Assessment and Expertise (Law on EIA) in August 2014. However, the SEA legislative and institutional review revealed that the existing SEA system covered by that law was not fully compliant with the requirements of the Protocol on SEA. With the aim to enhance its national SEA system and to improve implementation of the Protocol, Armenia initiated the legal drafting process in early 2016 back to back with the implementation of the SEA pilot project. The proposed drafting process in Armenia is similar to the processes described above for Azerbaijan, Georgia and the Republic of Moldova. As the drafting process in Armenia is only in its initial stages it is not covered by this overview, which contains comments and recommendations only to the 2014 Law on EIA.

16. The legal drafting in Belarus was structured differently, with a national consultant playing a prominent role and working closely with the Ministry of Natural Resources and Environmental Protection on drafting the new law on EIA, SEA and ecological expertise. The assistance of the international consultant in this process was rather limited. The international consultant commented on the concept paper and visited Belarus once to present the requirements of the Protocol on SEA and of the EU SEA Directive to the general stakeholders (environmental authorities, sectoral planning authorities and the public) and to the small drafting group. Following the visit, a revised draft law was prepared which the international consultant again commented. The draft law was subject to further consecutive revisions following inter-departmental consultations. None of the revised drafts resulting from these consultations was submitted to further scrutiny and comments by the international consultant before the submission of the finalized draft Law to the Parliament in October 2015. This overview looks at the content of the final draft law as submitted to the Parliament.

17. After the signature of the Protocol on SEA by Ukraine in 2003, the country has developed a range of EIA and SEA draft laws and regulations. There have been several attempts to introduce SEA into the legislation both through amending the existing legislation (e.g. amendments to the Law on Environmental Protection and to the Law on Ecological Expertise) and also through developing a dedicated law on SEA. On 16th December 2013, draft law of Ukraine №V3758 on SEA was registered in the Verkhovna Rada, i.e. the Parliament of Ukraine, but it was rejected by the environment Committee of the Verkhovna Rada on 1st April 2014. Following the signature by Ukraine of the EU-Ukraine Association Agreement on 27th June 2014 and taking into account the ensuing necessity for Ukraine to align its legislation with the SEA Directive and to develop the relevant legislation, Ukraine decided to establish a new legal scheme for SEA that is fully compatible with the requirements of the SEA Protocol and with the SEA Directive (except for the reference to Natura 2000). The most recent draft law on SEA was developed in 2014-2015 with the support of several international projects and further elaborated by the Interagency Working Group established by the Ukrainian Ministry of Environment and Natural Resources. The draft law also envisages amendments to existing legal instruments under which strategic documents subject to SEA are being prepared. The draft law on SEA was submitted for

consultations with a wide range of stakeholders, including the public and governmental agencies. This overview refers to the draft law that in October 2015 was registered in the Verkhovna Rada.

II. Environmental assessment of strategic documents in Eastern Europe and the Caucasus and SEA: state of play

A. Environmental assessment of certain strategic documents under the state ecological expertise system

(a) Description of the state ecological expertise (OVOS/expertise) system

18. The SEA legislative and institutional reviews revealed that only Armenia had specific legislation to require and regulate strategic environmental assessment of governmental strategic documents⁷. In other countries(except in Georgia⁸), however, certain categories of strategic documents such as plans, programmes, urban and regional planning documentation are subject to the state ecological expertise (SEE) that is usually regulated by a national law and a series of subordinate acts.

19. SEE is an environmental part of the regulatory framework systems for development control⁹ that are common in the countries of Eastern Europe, the Caucasus and Central Asia¹⁰. SEE is required for planned activities (mostly concrete development projects but also plans, programmes) that have a potential impact on the environment. It is conducted by the competent environmental authorities or by external experts nominated by the competent environmental authorities. The procedure is finalized with the so-called “expertise conclusion”. The activity can be implemented only if the conclusion is positive.

20. Additionally, activities which are considered to have a potentially significant adverse impact on the environment are subject to OVOS, an acronym which as literal translation from

⁷ The SEA scheme under the Law on environmental impact assessment and expertise needs to be enhanced in order to fully comply with the Protocol on SEA (72-76).

⁸ Before reform of Licensing and Permitting system of Georgia (in 2005- 2007) the following plans and programs required environmental assessment and public participation procedures: urbanization and spatial planning programs; industry development programs; transport infrastructure development programs; land use schemes for administrative-territorial units (districts); long-term rehabilitation programs for protected areas; plans on the protection and use of water, forest, land, minerals and other natural resources; national, regional and local construction programs for the location of engineering facilities of all types designed to avoid negative consequences of possible natural disasters. According to the Law on Environmental Permit (1997), it was obligatory to conduct OVOS/expertise and to make decisions on issuing environmental permits through public participation before such plans and programs were adopted, approved or endorsed by the legislative or executive bodies. As a result of the legislative reform (in 2005- 2007) such plans and programs no longer require environmental assessment.

⁹ The regulatory framework for development control systems in most of the countries in Eastern Europe, the Caucasus and Central Asia is based on the system of “expertise” whereby the decision-making process involves the review of planned activities (mostly concrete development projects but also plans, programmes, etc.) by special expert committees/individual experts. The expert committees/experts are affiliated to various governmental bodies, including environmental authorities.

¹⁰ Eastern Europe: Belarus, the Republic of Moldova, and Ukraine; the Caucasus: Armenia, Azerbaijan, Georgia; Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan.

Russian, means “assessment of the impact upon the environment”. There is usually a list of activities which always require State ecological expertise and/or OVOS¹¹. Until recently, the practice has been focused on the individual projects therefore in most countries in the region there have been developed executive regulations (OVOS regulations) to regulate the details of the assessment, in which the respective obligations were put mostly on the developers. Since in principle similar rules apply to both individual projects and to strategic documents, there is a natural tendency to follow the same approach in relation to strategic documents and to put most of the obligations related to the assessment on the authorities responsible for preparing strategic documents subject to assessment.

(b) Practical application of OVOS/expertise for certain strategic document

21. Although according to the national OVOS/expertise legislation in Azerbaijan, Belarus, the Republic of Moldova and Ukraine, SEE procedures should be applied to certain plans and programmes, laws and urban planning documentation, in practice SEE for these strategic documents is rarely carried out and is often limited to the formal approval of the drafts of strategic documents. Only few examples of SEE for strategic documents could be found in Ukraine. Most of these examples are in the field of urban planning (e.g. new master plans). In Azerbaijan, according to the Law on Protection of Environment (adopted in 1999, Art. 54) the State Expertise Department of the Ministry of Ecology and Natural Resources carries out SEE for some regional development programs, master plans and other urban planning strategic documents. However, SEE is not applied for plans and programmes in other economic areas.

22. The main reasons for the limited application of OVOS/expertise to plans and programmes include among others a lack of institutional capacities and financial resources, lack of clear specific legal and procedural requirements for OVOS/expertise for strategic documents as well as lack of enforcement.

B. Main differences between SEA and the state ecological expertise system

23. The SEA legislative and institutional reviews examined the OVOS/expertise features that are common to the beneficiary countries and concluded that the existing OVOS/expertise systems are not adequate for the application of the SEA in line with the Protocol on SEA and the EU SEA Directive. In particular, the following four aspects of OVOS/expertise do not correspond well with the requirements of Protocol on SEA and the EU SEA Directive: (a) scope of assessment (see paragraph 24); (b) role of the environmental report (See paragraph 25); (c) lack of scoping procedure (see paragraph 26); (d) binding nature of the “expertise conclusion” under the OVOS/expertise system (see paragraph 27).

(a) Differences in scope of the assessment under the OVOS/expertise and the SEA systems

24. The environmental assessment under the OVOS/expertise system is focused on compliance with national technical environmental standards, while issues that are not clearly regulated by standards are considered to be outside the scope of assessment. Environmental

¹¹ In some countries the environmental authorities may, upon review of the proposed activity, decide that an OVOS must be conducted, irrespective of whether the activity is included in the list or not.

assessment under the SEA system in line with the Protocol has a preventive nature, and requires consideration of significant impacts (even if those are not included in national environmental standards) as well as the development of alternatives and mitigation measures. In addition, the environmental assessment of plans and programmes under the OVOS/expertise system is implemented by environmental authorities. In contrast, SEA is implemented by the sectoral authorities responsible for the development of the plan or programme in question.

(b) Differences related to the role of the environmental report under the OVOS/expertise and the SEA systems

25. SEA as set out in the Protocol on SEA is defined as the process of evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report (Art. 6) and its preparation (Art. 7)¹², the carrying-out of public participation (Art. 8), consultations with environmental and health authorities (Art. 9), transboundary consultations (Art 10), and the **taking into account of the environmental report and the results of the public participation and consultations in a plan or programme** (Art 11). In other words, environmental report is only one of the elements of the SEA. Under the OVOS/expertise system, the results of the assessment are simply incorporated into the report, based on which the competent authority issues a conclusion that either allows or prohibits implementation of the proposed activity. There is no legal obligation under the OVOS/expertise system for the planning authorities to incorporate the results of the assessment into the final decision authorising the activity subject to OVOS/expertise (i.e. a decision permitting the project or a decision to adopt a strategic document).

(c) Lack of individual scoping under the OVOS/expertise system

26. The OVOS/expertise systems which are operational in the beneficiary countries (with the exception of Armenia) do not envisage a scoping process as a specific procedural step. Instead, there are quite detailed requirements as to the content of the documentation in relation to different types of documents. However, applying a similar approach to a SEA scheme would not be in line with the Protocol on SEA and SEA Directive, which require individual scoping as a mandatory step of the SEA procedure.

(d) Binding nature of the “expertise conclusion” under the OVOS/expertise system

27. The binding nature of the “expertise conclusion” that is produced under the OVOS/expertise is not in line with the nature of the SEA system under the Protocol on SEA and the EU SEA Directive. The Protocol on SEA and the SEA Directive do not require that the planning authorities seek the approval of environmental (and health) authorities for a given plan or programme but rather that these must be consulted and their comments and opinions must be taken into account when deciding whether to adopt the strategic document subject to SEA.

¹² Annex IV of the Protocol specifies the required information to be included in the report, including among others evaluation of the potential environmental impacts, development of mitigations measures and alternative planning option.

(e) Other inconsistencies

28. Other inconsistencies between the OVOS/expertise systems in the beneficiary countries (including Armenia) and the SEA system as set out in the Protocol are among others found in the field of application, provisions on transboundary consultations, procedures for public participation. Table 1 presents a summary of these differences.

Table 1. Differences between the requirements of the Protocol on SEA and the traditional OVOS/expertise system for plans/programs/legislative acts

Requirements under the Protocol on SEA:	Requirements under OVOS/expertise system	Observations regarding OVOS/expertise system
SEA required for plans and programs which are prepared for:		Usually there are no specific requirements in the legislation on OVOS/expertise for plans and programmes (including their modifications) of specific sectors except for urban planning documentation (regional development, town and country planning)
Agriculture	NO	
Forestry	NO	
Fisheries	NO	
Energy	NO	
Industry including mining	NO	
Transport	NO	
Regional development	YES	
Waste management	NO	
Water management	NO	
Telecommunications	NO	
Tourism	NO	
Town and country planning or land use	YES	
Modifications to plans and programs listed above also require SEA	NO	See above
Screening mechanism to deal with minor modifications	NO	
Undertake SEA in plan- and programme-making processes in accordance with definition of SEA in article 2.6 of the Protocol	NO	Under SEE, approval by environmental (and health) authorities is required prior to the adoption of the strategic document
Undertake SEA screening in	NO	All plans and programs/ legislative

accordance with articles 4 and 5 (how to combine mandatory and exclusions lists and when to apply case-by-case examinations, etc.)		acts subject to SEE. (Usually, legislation on SEE contains general requirement that all plans and programs, laws that may have impact on environment as well as urban planning documentation have to pass SEE)
Organize SEA scoping in accordance with article 6 (when to undertake scoping, how to select suitable methods for consultations with public and authorities, how to write terms of reference for SEA, etc.)	NO	Usually there are some standard requirements for scope of the assessment and the structure of chapter on environmental protection in the urban planning documentation
Prepare environmental report: <ul style="list-style-type: none"> • Elaborate environmental baseline studies in SEA (in accordance with annex IV, paras. 2, 3 and 4) • Identify environmental objectives in SEA (in accordance with annex IV, para. 5) • Analyse the likely significant environmental, including health, effects (in accordance with annex IV, para. 6) • Compare alternatives of the plan or programme (in accordance with annex IV, para. 8) • Prepare post-SEA monitoring plans to meet requirements of article 12 and annex IV, paragraph 9 • Analyse transboundary effects (in accordance with annex IV, para. 10) 	NO	No environmental report is required, except for the certain types of urban planning documentation such as Master plans. In these cases it is required to have a chapter on environmental protection and/or use of natural resources with assessment of environmental effects of the planning document.
Organize public review of the SEA report and the draft documents in accordance with article 8	To some extent	Public participation in the form of comments and/or public hearings is required, based on the draft document only (might be held also at the stage of concept).
Organize consultations with environmental and health authorities in accordance with article 9	To some extent	SEE or approval by environmental (and health) authorities based on the draft document only.
Undertake transboundary consultations in accordance with article 10	NO	
Take environmental report and comments from authorities and the public into account during the	To some extent	No environmental report is envisioned, except some urban planning documents

adoption of the plan or programme into account (art. 11)		
Monitor significant environmental and health effects during implementation of plans and programmes (art. 12)	To some extent	General monitoring of implementation of plans and programmes is required

C. Existing experience in application of SEA for plans and programmes

29. Practical application of SEA in the countries of Eastern Europe and the Caucasus is rather limited. Out of all six countries, SEA is currently conducted only in Armenia following the requirements of the 2014 Law on Environmental Impact Assessment and Expertise¹³ to some extent. Since the Law was adopted, SEA was conducted for four strategic documents. Environmental, health and planning authorities nevertheless require additional support to clarify the existing SEA procedures and to build capacities on how to conduct some procedural steps and apply various analytical methods.

30. In the other countries, which have not yet adopted SEA legislative frameworks, the SEAs have been implemented on a pilot basis with technical and financial support from international organisations and donor countries.

31. In Belarus, three SEA pilots were carried out with support from United Nations Development Programme (UNDP), including the SEAs of the “National Tourism Development Programme of the Republic of Belarus for 2006-2010”; of the “Programme of Development of Inland Waterway and Sea Transport of the Republic of Belarus for 2011-2015”; and of the “Scheme of integrated spatial planning of Myadzel district”.

32. In Ukraine, the SEA of a Sustainable Development Strategy for Bakhchisaraysky District (Autonomous Republic of Crimea) was implemented in 2010 with support from UNDP. In 2013-2014 SEAs of Development Strategies for the Lviv Region and Dnipropetrovsk Region were conducted in the framework of the Canadian project ‘Building capacity in evidence-based economic development planning in Ukrainian oblast and municipalities’.

33. In Azerbaijan, the SEA of the Greater Baku Regional Development Plan was conducted in 2014 with financial support from the World Bank.

34. Currently (March 2016), Armenia, Azerbaijan, Georgia and the Republic of Moldova (see *Table 2* below) are implementing pilot SEAs with the technical support of UNECE and funds from the EaP GREEN. The pilot projects are linked to legislative development and aim to:

- test and demonstrate opportunities of practical application of SEA according to the draft legal framework
- develop recommendations for further improvement of national legislative and institutional frameworks on SEA
- raise awareness of SEA’s benefits among various national stakeholders

¹³ The SEA scheme under the Law on Environmental Impact Assessment and Expertise needs to be enhanced in order to fully comply with the Protocol on SEA (72-76).

- build capacities in application of SEA procedures at the national level
- propose modifications to the strategic documents to improve the consideration of environment and health aspects.

Table 2: SEA pilot projects and their implementation progress

County	Pilot project focus
Armenia	Application of the SEA to Armenia’s “Strategic Development Plan, Road Map and Long Term Investment Plan for the Solid Waste Management Sector in Armenia” December 2015 – December 2016
Azerbaijan	Application of SEA to the State Strategy on Alternative and Renewable Energy Resources Use in Azerbaijan for 2015-2020 March 2015 – June 2016
Georgia	SEA Pilot Project on National Waste Management Strategy and Action Plan in Georgia July 2015 – March 2016
The Republic of Moldova	Application of SEA to the Master Plan of Orhei Town June 2014 – June 2015
	Practical application of the Draft Law on SEA in the Republic of Moldova to the national Road Map on promoting green economy December 2015 – December 2016

35. The experience from the application of the pilots showed that SEA is a useful tool for greening the economy, avoiding costly mistakes and supporting the decision-making process. However, in absence of a legal framework it is difficult to engage the planning authorities into the SEA process and to develop relevant national practice; therefore the concerned countries will need further support to complete the legislative reforms and to implement the legislation in practice.

III. Legislative and administrative reforms for implementing strategic environmental assessment in Eastern Europe and the Caucasus in line with the Protocol on SEA

36. As mentioned in Chapter II, the current environmental assessment systems in the countries of Eastern Europe and Caucasus significantly differ from the SEA procedure required by the Protocol on SEA and the EU SEA Directive. To meet and to implement the requirements under these instruments, and to join the Protocol, Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine have initiated legislative and administrative reforms. The reforms in Georgia, the Republic of Moldova and Ukraine were largely facilitated by the requirements of the EU Association Agreements that were signed between EU and the above mentioned countries in the period from 2013 to 2014. This chapter presents the state of play of the reforms, provides comparative analysis of the approaches and techniques used by various countries and reflects on the quality of the draft legislative documents of each country.

A. Overview of the legislative reforms

37. The legislative reforms are at different stages in different countries and as of October 2015 neither of the countries has completed the reform. The Table 3 below presents the overview of the status with the draft legislations as of beginning of March 2016.

Table 3. Progress in revising the existing environmental assessment legislative frameworks in Eastern Europe and the Caucasus

Country/ Reform process aim	Status of implementation
<p>Armenia</p> <p>Amend the Law on EIA and ecological expertise and develop a bylaw on SEA to regulate detailed SEA procedure</p>	<p>Ongoing (March 2015 – February 2017). A concept paper for amending the law on EIA and ecological expertise was prepared in March 2015 to eliminate existing flaws in SEA and EIA systems and the public participation procedure. However, as the Law was adopted only in August 2014, the Ministry of Nature Protection decided to first have some experience with implementing the law in practice and clarify the SEA procedures required by the Protocol through a pilot SEA. Based on this experience, the amendments and the bylaw on SEA will be prepared. Armenia also intends to amend the EIA part of the law to bring it closer to the requirements of the Espoo Convention.</p> <p>The Implementation Committee under the Espoo Convention and the Protocol on SEA monitors the progress in preparation of the amendments.</p>
<p>Azerbaijan</p> <p>Amend the draft Law on EIA and develop of relevant bylaws to regulate EIA, SEA and public participation procedures</p>	<p>Ongoing (from November 2014). The amendments to the draft law are developed. Since February 2016, the draft law has been a subject of a final round of inter-ministerial consultations. Azerbaijan intends to submit the law to the Parliament in spring 2016. According to the ECE expert review, the draft law (as of February 2016) provided an improved legal framework on EIA and SEA but, if adopted, amendments would be necessary to bring the law into full compliance with the provisions on the Espoo Convention and its Protocol on SEA.</p> <p>Development of the draft bylaws will be initiated once the draft law is finalised.</p> <p>The Implementation Committee under the Espoo Convention and the Protocol on SEA monitors the progress in preparation of the amendments.</p>
<p>Belarus</p> <p>Develop a chapter on SEA procedures and amendments to improve the existing EIA system within the Law on state ecological expertise</p>	<p>Ongoing (from March 2015). During the drafting process, a substantial amount of changes was proposed not only to SEA system, but also to EIA and SEE schemes. To accommodate these changes, a new law on ecological expertise, SEA and EIA was elaborated.</p> <p>The final draft law (as of 29 October 2015) as submitted to the Parliament of Belarus for its spring session provides an improved legal framework on EIA and SEA. However, if the draft law is adopted, amendments would be necessary to bring the law into full compliance with the Convention, the Protocol. The gaps in the existing draft law were communicated to the Ministry by the secretariat. The Ministry confirmed that there will be a possibility to address some of the identified gaps between the first and the second readings of the draft law in the Parliament. However due to the national legislative technique, some of the gaps can only be addressed through development of relevant secondary legislation.</p>
<p>Georgia</p> <p>Preparing the new draft Law on EIA and SEA (Environmental Assessment Code) and relevant bylaws on detailed SEA and EIA procedures and public participation guidelines</p>	<p>Drafting of the Environmental Assessment Code completed (September 2014 – September 2015). The draft Code (as of 11 December 2015) is mostly in line with the provisions of the Espoo Convention and its Protocol SEA. The draft law was discussed with the high level officials of the sectoral ministries at round table meeting organised to facilitate the adoption of the Code on 11 December 2015.</p> <p>Currently (March 2016) the Draft Code is being considered by the Government of Georgia with the view to be submitted to the Parliament for its 2016 spring session. The situation regarding preparation of the bylaws needs to be clarified further.</p>

<p>The Republic of Moldova</p> <p>Prepare a new draft Law on SEA</p> <p>Prepare draft law on EIA</p>	<p>The Draft law on SEA was prepared and submitted to the Government in December 2014. The draft law (as of May 2015) is in line with the provisions of the Protocol and the relevant EU Directives. In June 2015, the draft law was discussed with the high-level officials of the sectoral ministries at the event organised with the aim to facilitate the adoption of the draft Law organised (17 June 2015). However, adoption of the law was postponed due to frequent changes in the government since June 2014. In August 2015, the draft law was re-circulated for approval of the new Government with the view to be submitted to the Parliament in early 2016. It is anticipated that the draft law will be adopted by the end of 2016.</p> <p>The Law on EIA was prepare and adopted in December 2014, a by law was developed to help implementing the Law on EIA.</p>
<p>Ukraine</p> <p>Prepare a new draft law on SEA</p> <p>A new draft law on EIA</p>	<p>The Law on EIA and Law on SEA are developed in full compliance with the international standards. Both laws are submitted to the Parliament for adoption on its spring session. On 1 March 2016, Ukraine became a Party of the Protocol on SEA.</p>

B. Comparative analysis of the approaches and legislative techniques for legislative reforms

38. As mentioned above the legislative reforms are at different stages in different countries and as of March 2016 neither of the countries has completed the reform. The analysis presented in this section is based on the current situation and intentions reflected in the draft laws regardless of their formal status.

(a) Approaches to legislative reforms in different countries

When undertaking their legislative reforms the countries have taken different approaches towards aligning their traditional OVOS/expertise systems with the requirements of the international standards. While the details vary, in principle the approaches taken may be clustered into 3 groups:

- i. New legal schemes for SEA and EIA following the internationally agreed schemes
- ii. Combination of new legal schemes for SEA and EIA with elements of state ecological expertise
- iii. Addressing requirements of the Protocol on SEA and Espoo Convention within the traditional OVOS/expertise system.

i. New legal schemes for SEA and EIA following the internationally agreed schemes

39. Two countries (namely: Republic of Moldova and Ukraine) have decided to establish new legal schemes for SEA, fully compatible with the requirements of the Protocol on SEA and also compatible (except for reference to Natura 2000 - see below) with the SEA Directive. Similar approach they have taken towards EIA where new EIA schemes were designed fully compatible with the requirements of the Espoo Convention and the EIA Directive (in case of Ukraine largely even with the 2014 Amendment to the EIA Directive).

40. The new legal schemes follow the scope of application, the definitions and procedures of the respective UNECE and EU legal instruments quite strictly. In the case of Ukraine introduction of the new EIA/SEA schemes is combined with the abolishment of the state ecological expertise while in case of the Republic of Moldova the state ecological expertise

seems to be maintained in order to perform some development control tasks outside the EIA and SEA schemes.

41. The major advantage of introducing modern SEA and EIA schemes is that they provide the best way for achieving full compatibility with the international standards which in turn will not only allow meeting respective international obligations but will also facilitate international co-operation and foreign investment. Furthermore, such SEA and EIA schemes have been proven to be quite effective in the market economy and useful in promoting rule of law and participatory democracy.

42. The major disadvantage of establishing SEA and EIA schemes is that they differ significantly from the traditional OVOS/expertise systems and their introduction is likely to meet a certain opposition from those authorities that are familiar with and benefitting from the old systems. Furthermore, the implementation of the new schemes will result in a need to adapt existing structures and practices to new, unknown rules. This will require new skills from the authorities and other stakeholders and, consequently, call for comprehensive capacity building efforts.

ii. Combination of new "modern" legal schemes for SEA and EIA with elements of SEE

43. Two countries (namely: Azerbaijan and Georgia) have decided to combine new legal schemes for SEA and EIA compatible with the international standards with elements of state ecological expertise. The approach in the two countries seems to however considerably differ as regards the "share" of SEA, EIA and SEE within the respective combined scheme .

44. The draft Law on EIA in Azerbaijan seems to incorporate more elements of SEE and as opposed to those of modern SEA and EIA schemes. Moreover, the draft law is of general nature, and require provisions to support the application of EIA and SEA to be developed by subsequent regulations). In Georgia, the new legal schemes for SEA and EIA follow fairly strictly the scope of application, the definitions and the procedures of the respective UNECE and EU legal instruments on SEA; and references to state ecological expertise remain marginal.

45. The above differences are likely to stem from the different state of the current development in the two countries regarding the legal framework for EIA/SEA and the respective practical experience and by their international commitments and aspirations.

46. An advantage of the combined systems is a possibility to strike a balance between the above indicated pros and cons of introducing new separate SEA/EIA schemes and abolishment of OVOS/expertise system. In case of Azerbaijan, given its current level of practical experience and of the development of its institutional infrastructure, introducing entirely new and modern SEA/EIA schemes might not be effective.

47. Georgia, on the other hand, would probably manage to introduce new schemes without even including a reference to ecological expertise. The ecological expertise system under the new draft law of Georgia resembles an expert commissions that are established under the SEA scheme in some EU countries and does not have a functions of the traditional SEE.

iii. Addressing the requirements of SEA Protocol and Espoo Convention within the traditional OVOS/expertise system

48. Two countries (namely: Armenia and Belarus) have decided to address the requirements of the Protocol on SEA and Espoo Convention within the traditional OVOS/expertise system.

49. The approaches in the two countries seems to be however very different as to their key elements. While in both countries some of the details are left to be regulated by the executive (implementing) regulations, the level of detail of the respective laws in Armenia and in Belarus differ considerably.

50. The major difference between the approaches in Armenia and in Belarus is the fact that the law in Armenia provides in principle quite a detailed and modern legal framework which, despite the name of the law, does not have many features of the traditional OVOS/expertise systems and their flaws. It has its own flaws, however, which may seriously hinder its implementation, in particular in relation to SEA (see paragraphs 72-76). At any event, in many respects, the approach chosen by Armenia is more similar to the approach of drafters in Georgia, than the approach of Belarus. In particular, in the Armenian law, the institute of the SEE is combined with quite detailed procedural provisions regarding SEA and EIA, and with elaborated provisions regarding transboundary procedures.

51. The draft law in Belarus leaves practically all the procedural details to the executive regulations, which are not yet known. However, even without these details, it is possible to see some of the main features of the proposed SEA scheme.

52. The approach to environmental assessment (whether EIA or SEA) in the draft law of Belarus reflects the traditional approach employed for ecological expertise with the main task being to establish whether there is compliance or non-compliance with the legal requirements of environmental protection. In practice it means that EIA or SEA is considered to be focused on compliance with technical environmental standards, while issues not clearly regulated by standards are considered to be outside of the scope of assessment. Again, such an approach does not correspond to the approach set out in the Espoo Convention, the Protocol on SEA and the respective EU Directives which, as already indicated, has a preventive nature, and assumes a comprehensive assessment well beyond a mere compliance with technical standards (see paragraph 24).

53. Belarus also decided to maintain the approach to environmental assessment documentation which is typical for the traditional OVOS/expertise system. In this approach the initial SEA or EIA report reflects the views of the authors of the report, whereas the final report (be it EIA or SEA report) is meant to be objective and reflect the results of the assessment procedure, including those of public participation, transboundary consultations (if conducted) and comments from the authorities. Such an approach does not correspond with the approach set out in the Espoo Convention, the Protocol on SEA and the respective EU Directives in which the respective report serves as only one of the elements of the assessment, reflecting the view of those who authored it and the results of any consultations conducted prior to submitting the SEA report for the formal consultations process. The results of the entire SEA as set by the Protocol (i.e the report, the outcomes of the public participation, consultations with environment and health authorities, and the possible transboundary consultations etc) are to be included into the final decision authorizing the activity subject to

the assessment (i.e. a decision permitting the project or a decision to adopt a strategic document). In other words, the results of the formal consultations and the public participation are not included in the environment report.

54. Generally, choosing to address the requirements of the Protocol on SEA and the Espoo Convention within the traditional OVOS/expertise systems presents no benefits other than certain convenience for the drafters. Even if the procedural details of the respective schemes were fully following the UNECE and EU legal instruments, maintaining the above fundamental features of the traditional OVOS/expertise systems does not give any prospect for achieving compatibility with the international standards. Furthermore, this may cause a number of problems for Belarus, in particular in case of transboundary procedures with other countries (as demonstrated for example the compliance case considered by the Espoo Convention bodies regarding the application of the Convention, which opposed Lithuania and Belarus, (EIA/IC/S/4)) because the other countries would legitimately expect the legal framework in Belarus to be compatible with the international standards regarding the assessment reports and the scope of the assessment.

(b) Legislative techniques applied by different countries

56. When undertaking their legislative reforms, the countries in Eastern Europe and the Caucasus have made a number of decisions regarding issues related to legislative technique, namely:

- (i) whether to introduce new SEA/EIA schemes by way of amending the existing laws or by adopting new laws;
- (ii) how to divide the legal norms between various levels of legal acts;
- (iii) how to structure the legal norms.

i. New law/s or amending old legislation

57. As far as formal legal ways of introducing new SEA/EIA schemes into the national legal framework are concerned, the techniques employed in this respect may be clustered into 3 groups as follows:

- a. a new law covering EIA and SEA schemes (Armenia, Azerbaijan Georgia and Belarus);
- b. separate laws on SEA and EIA (Republic of Moldova and Ukraine);
- c. amendments to existing laws (originally Belarus planned to utilise this approach, but later it decided to draft a new law combining OVOS, SEA and SEE).

58. Two countries (namely: the Republic of Moldova and Ukraine) have decided to adopt EIA and SEA schemes within two separate EIA and SEA laws. This technique, gives a clear signal that a significant change towards the modernization of the legal framework is introduced and the old-style legislation abandoned. It also allows to easily recognize all the legal norms related to a given scheme and to facilitate a comparison with the requirements of the respective international standards. The disadvantage of this technique is the fact that some common principles, definitions and legal procedures (like for example public participation or transboundary procedure) which are common for EIA and SEA must be separately addressed under the respective laws. If the drafting of the two laws is not properly coordinated, this may lead to some inconsistencies and a lack of correlation between the two schemes.

59. Four countries (namely: Armenia, Azerbaijan, Belarus and Georgia) have decided to adopt EIA and SEA schemes as part of a new joint EIA/SEA law and to combine in that law new (modern) legal schemes for SEA and EIA with elements of the traditional state ecological expertise. The Georgian draft law is called the Environmental Assessment Code, which, according to the Georgian legislative technique, gives the law more prominence as compared to other possible legislative documents.

60. This technique, if properly employed, gives similar advantages than separate EIA and SEA laws and also provides an additional advantage of addressing jointly the principles, definitions and legal institutions (like for example public participation or transboundary procedure) which are common for EIA and SEA.

61. The major disadvantage of a joint law, as compared with the separate laws for EIA and for SEA, is the larger ambit of the new law and the wider set of stakeholders that must be involved in the law-drafting and capacity-building (SEA draft laws are among others consulted with planning authorities, while the draft EIA laws are also consulted with project developers, planning institutes, representatives of business community).

62. One country (Belarus) first decided to introduce separate SEA and EIA schemes into the national legal framework by amending the existing legislation (law on State Ecological Expertise). However, after testing this technique it decided to draft a new law combining OVOS, SEA and SEE. As a result, however, the current draft (as of October 2015) is only formally a “new law”- as effectively it is an attempt to introduce an SEA scheme into the existing legal framework of the state ecological expertise.

63. This technique (including SEA into the existing ecological expertise legislation) has the major disadvantage of being extremely demanding. It is an attempt to unite two legal schemes which were created at different times and for slightly different purposes, and which therefore differ from each other both conceptually and terminologically. Thus, the challenge is to create legal schemes of EIA and SEA that would be conceptually and terminologically consistent and fit with the terminology and concepts used in the existing law and at the same time assure compliance with the Espoo Convention and the Protocol on SEA that provide for yet again different terminology and concepts.

ii. Division of legal norms between various levels of legal acts

64. Usually, in the countries of Eastern Europe and the Caucasus, the implementation of international obligations has heavily relied upon constitutional provisions that give priority to international treaties over domestic legislation. This has prompted some countries (e.g. in their reports of implementation of the Espoo Convention) to merely refer to a requirement in their Constitutions to apply directly the provisions of the respective international treaties instead of transposing them first into the national legal framework through a set of detailed provisions.

65. Furthermore, traditionally, environmental legislation has been of a rather framework nature regulating only certain issues considered to be most important and leaving most details to the delegated acts (or implementing legislation) in the form of executive regulations of various legal nature.

66. In this context, it is important to note the opinion of the Implementation Committee under the Espoo Convention, which, considering the submission by Romania regarding Ukraine's compliance with the Convention (EIA/IC/S/1), concluded that: "The provision in the Constitution to directly apply international agreements ... is considered by the Committee as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation. In particular, the national regulatory framework should clearly indicate: (a) Which of the decisions for approving the activities should be considered the final decision for the purpose of satisfying the requirements of the Convention; (b) Where in the decision-making process there is a place for a transboundary EIA procedure and who is responsible for carrying it out and by which means." (Decision IV/2, annex I, ECE/MP.EIA/10¹⁴).

67. On another occasion, the Committee stated that: "details of the EIA procedure, for example regarding public participation, should rather be included in the legislation than left for implementing regulations" (Decision IV/2, annex II, para. 32) and that a "domestic regulatory framework was necessary for implementation of the Convention, especially with respect to public participation" (ECE/MP.EIA/IC/2010/4, para. 19 (a)).

68. In line with the above opinions, and in practice, in most continental EU member countries the issues of significant legal importance are regulated at the legislative level while issues of technical or purely implementing nature may be regulated by executive regulations. Since in the vast majority of EU member countries SEA has been considered of significant legal importance and not only of technical nature, they have introduced it to their national systems through adopting legislative acts.

iii. Structure of the legal norms

69. Traditionally, the legal acts in most of the countries in Eastern Europe and Caucasus are structured to reflect certain principles and rights or obligations of the stakeholders (rights and obligations of central authorities, rights and obligations of local authorities etc.) rather than consecutive steps of the regulated procedures. This approach does not correspond with the structure of the Protocol on SEA and the SEA Directive (nor to the Espoo Convention and the EIA Directive) which contain provisions on the subsequent steps of the SEA and EIA procedures (field of application and screening, scoping, etc.).

70. When SEA is introduced in the legislation that follows the traditional structure, it is difficult to provide for a clear picture of the entire SEA legal scheme. Moreover, it might be difficult to implement the scheme, without the ability to properly identify all the details of the SEA procedural steps.

C. Overview of the administrative reforms

71. All the countries in Eastern Europe and the Caucasus recognise a need for institutional reforms in order to ensure the implementation of the legislative reforms of the environmental assessment systems. Currently, the draft laws of Belarus and Georgia envision the establishment of separate entities under the Ministries responsible for the environment, inter alia, for reviewing EIA and SEA documentation and for carrying out the SEE. The proposed

¹⁴ <http://www.unece.org/fileadmin/DAM/env/documents/2008/eia/decision.IV.2.e.pdf>

legal frameworks in Armenia, Azerbaijan, the Republic of Moldova and Ukraine do not specifically refer to a need for an institutional reform. However, in all the concerned countries, the Ministries responsible for the environment consider restructuring of their respective environment expertise departments in a way that would allow increasing the human resources tasked with the environmental assessment. The introduction of SEA into the institutional structures of sectoral planning authorities represents, however, the greatest challenges for the countries. Pending the adoption and the enforcement of a legislative framework on SEA. The planning authorities are only marginally interested in the SEA related discussions by the environmental authorities. To remedy to the situation, since early 2016, the UNECE secretariat is developing for most of the countries, guidelines that specify the roles and responsibilities of various authorities in the SEA process with funding from the EaP GREEN. Following the development of the guidelines, the feasibility of the institutional reforms, involving also the planning authorities, will be addressed during the sub-regional conference foreseen in the workplan of the Protocol on SEA is planned for early in 2017.

D. Some country specific observations

Armenia

72. The Law of the Republic of Armenia on Environmental Assessment and Expertise of 2014 is quite elaborated and provides a number of procedural elements of both EIA and SEA. Despite referring to ecological expertise, the Law does not include most of the flaws of the traditional state expertise systems. The transboundary procedure seems to be in principle sufficiently regulated in the Law.

73. The law envisages issuance of executive regulations to address some procedural aspects of public participation – the new regulations however have not been the subject of the review yet.

74. The Law does have some features which may raise concerns. It addresses both EIA and SEA within the same legal scheme. This is a rather unusual approach and does not take into account the differences between EIA and SEA. In particular, when it comes to the the role of the conclusions of the state expertise which are binding both for activities subject to EIA and for strategic documents subject to SEA. As mentioned above, this approach, while not necessarily non-compliant, does not properly contribute to the effectiveness of the SEA scheme (See paragraph 27).

75. Other deficiencies of the law include among others lack of requirements for screening and for the development of the scoping report. In addition, the definitions do not correspond fully with the respective definitions in the Protocol on SEA (e.g. definitions of SEA, environmental report, plans and programmes). The field of application of SEA does not seem to fully correspond with the requirements of the Protocol on SEA (e.g. plans and programmes in the fields of tourism and telecommunications are excluded from the list of strategic documents that require SEA, modifications to the plans or programmes are also not specified as being subject to SEA). Moreover, the requirements regarding the content of the SEA report do not fully correspond to the requirements of the Protocol. Finally, the law does not envision any role for the health authorities in the SEA.

76. During the practical implementation, the law might be difficult to interpret as the elements of SEA, OVOS and SEE systems that the law covers are not always clearly separated.

Azerbaijan

77. the reviewed draft law of Azerbaijan is reported to be ready for submission to the Parliament. Although that law is very general, it appears to provide a general framework for the most main steps of the SEA procedure as required by the Protocol on SEA and the EU SEA Directive (screening, scoping, consultations, and decision). However, the draft law is still not fully compatible with the international standards for EIA and SEA.

78. Adoption of the draft law in its current version would not ensure compliance with the Protocol on SEA. For example, the provisions related to definitions in the draft law of Azerbaijan are incomplete (as compared with the definitions of the Protocol on SEA, the definition of SEA does not cover the procedural part of the SEA). Moreover, as far as the field of application of SEA is concerned, the exemptions appear to be wider (including all documents serving for civil emergency or national defence purposes) than allowed under the Protocol on SEA (that only covers documents the “sole purpose” of which is civil emergency or national defence). In addition, the draft law does not provide any reference to screening criteria for minor modifications.

79. Generally, the draft is not fully internally consistent. For example, the elements of the SEA scheme are not always fully consistent with provisions reflecting some of the features of the traditional OVOS/expertise systems (for example the role of the SEA report).

80. Finally, the draft law of Azerbaijan does not foresee any amendments to any other national laws regarding the planned preparation of strategic documents with a view to introducing a need to apply the SEA procedure.

Belarus

81. The reviewed draft law of Belarus is reported to have been submitted to the national Parliament in October 2015. As mentioned above, the draft law has a framework nature and does not regulate sufficiently the main steps of the SEA procedure as required by the Protocol on SEA (screening, scoping, consultations, and decision). While some of the details might be regulated in the executive regulations on SEA (which are envisaged by the law to be issued - but not yet drafted) leaving almost all of the important elements of the legal scheme for SEA to the executive regulations rather than including them into the law itself, does not contribute to the legal certainty and does not constitute good practice.

82. Most of the definitions included in the draft law of Belarus do not correspond with the respective definitions in the Protocol on SEA (e.g. the definition of SEA). The field of application of SEA as defined in the draft law does not correspond fully with the field of application defined in the Protocol on SEA (e.g. no mention of telecommunications, forestry, fisheries, and exemptions are wider than allowed under the Protocol on SEA). There are no references to human health, nor to consultation with the health authorities. Conceptually, the draft seems to be following all the systemic inconsistencies with the requirements of the Protocol on SEA, which are characteristic for the traditional OVOS/expertise systems (see paragraphs 23-28). Thus, in its current version, the draft law is grossly incompatible with the requirements of the Protocol on SEA. Moreover, most of the above mentioned flaws in the law itself cannot be compensated by introducing proper executive regulations.

83. The adoption of the draft law in the current (reviewed) version would not assure compliance with the Protocol on SEA.

Georgia

84. The draft law (Environmental Assessment Code) as at September 2015 appears to be generally compatible with the requirements of the Protocol on SEA and the SEA Directive (except for the lack of reference to Natura 2000). Some minor corrections to improve the internal consistency and to facilitate the future implementation of the law might be needed. The most important correction in this respect would be to supplement the draft with provisions for the inclusion of SEA-related provisions into the general legal frameworks for land-use planning and for building and into sector specific legislation (such as for waste management, water management, forest management and transport).

Republic of Moldova

85. The draft law on SEA submitted to the UNECE as a final draft appears to be generally compatible with the requirements of the Protocol on SEA and SEA Directive (except for the lack of reference to Natura 2000).

86. To further facilitate the legal reform, it is important to introduce SEA-related provisions into a general legal frameworks for land-use planning and for building and into sector specific legislations (like waste management, water management, forest management, transport).

Ukraine

87. The draft law on SEA #3259 as submitted to the Parliament of Ukraine in October 2015 is generally compatible with the requirements of the Protocol on SEA and SEA Directive (except for reference to Natura 2000).

IV. Lessons learned from the initial steps of the legislative and administrative reforms and major existing challenges

A. Lessons learned

(a) SEA scheme and ecological expertise

88. Combination of modern SEA scheme with SEE has proven to be very difficult. It may well be successful only in countries that either do not envisage any role for expertise in the SEA scheme (like the Republic of Moldova), treat state ecological expertise as advisory expert commission (like Georgia) or treat state ecological expertise as one of the steps in SEA (e.g. use it as a way of consulting with environmental authorities). Maintaining all the features of the traditional OVOS/expertise systems within the proposed SEA scheme appears not to be

contributing to compatibility of the SEA scheme with international standards (as described with the example of the draft in Belarus. See paragraph 53).

(b) New law vs. amendment of the old laws

89. Definitely, the best results in relation to compatibility of the SEA scheme with international standards have been achieved in countries that have decided to introduce a new law. This conclusion applies regardless of whether the draft law is a separate law dedicated to SEA (like in the Republic of Moldova or Ukraine) or whether it covers both EIA and SEA (like in Georgia). The most difficult avenue for reaching compliance with the international standards is through the amendment of the old laws on SEA because of the conceptual differences between the modern SEA scheme and the traditional OVOS/expertise systems as well as the differences in the structure of the legal act (See paragraphs 23-28).

(c) Organization of law-drafting

90. The legislative review has proven to an indispensable initial step of the legal reform. The main role of the review is to set the scene for the law-drafting by identifying the existing legal and institutional frameworks for strategic decision-making, as well as gaps, and by developing basic options for the legislative intervention. The reviews also provide a justification for the reforms and help to build consensus among the stakeholders as to the necessary legal, regulatory, administrative and other measures necessary for a proper implementation of a SEA system. In addition, the reviews were also useful in ensuring the ownership of the law drafting process and helped to build relevant capacities. In countries with no (or very little) previous experience with SEA, the review is most useful if - in addition to local experts - it involves international experts with extensive experience with drafting SEA legislation.

91. In relation to law-drafting, the best results are achieved when a small core group of drafters is established to oversee the preparation of the draft, while the actual draft is written by one person familiar with the local legislation. The technical assistance demonstrated that the use of the international consultants was the most effective when they were involved in the small drafting group and regularly provided to the group their advice and suggestions, including sharing experience from other legislations. The key issue was to ensure that the international consultants assess and comment on each consecutive version of the draft law. To this end, it is clear that much of the assistance can be provided electronically by written submissions and participation in tele-conferences or webinars.

(d) Pilot projects

92. A pilot project on the application of SEA to a selected government plan or programme based on the international standards considerably helps to clarify the required procedures and also supports the drafting of legislation, in particular, in the countries without prior SEA experience. To this end, the pilot project is most useful when the members of the drafting group take an active part in the pilot and when sufficient time is allocated for the preparation and the possible amending of the draft law before its submission to the Parliament. The biggest challenge however is to co-ordinate time-frames for both processes, i.e the pilot implementation and the finalization of the legal drafting. Without such co-ordination, it is difficult to test the envisaged procedures and approaches in the draft law.

B. Existing challenges

(a) Division of legal norms between various levels of legal acts

93. For most countries that have not yet finalized their legislative reform on SEA, the challenge is to strike a proper balance between the legal norms included in the respective law or laws and the legal norms to be included in the secondary legislation. The principles and the provisions of the main law should be complimentary and fully consistent with the respective legislative provisions and norms introduced through the secondary legislation.

(b) Legislative process

94. At the time of the completion of the present overview (March 2016) the draft laws are still subject to legislative procedures either in the Government or in the Parliament of the respective countries. These national procedures are likely to entail some further revisions to the draft laws. The challenge is to not only to monitor all revisions introduced to the drafts from the point of view of their compliance with international standards but also to prevent any revisions which might result in bringing the provisions into non-compliance. Non-environmental or sectoral planning authorities are not sufficiently aware of the SEA procedures and of their own role and responsibilities as the developers of the SEA report. To this effect, concerted awareness raising and educational efforts would be needed, including promotional events for the authorities reviewing the draft law and for the members of the Parliament.

(c) SEA - related amendments to other laws

95. In some countries, the drafts do not foresee the introduction of other legislative provision and/or regulatory measures on SEA into general legal frameworks for land-use planning and for building and into sector specific legislations (like waste management, water management, forest management, transport). Without such complementary legislative changes, the effectiveness of the SEA scheme may be doubtful (see also Draft practical guidance on reforming legal and institutional structures with regard to the application of the Protocol on Strategic Environmental Assessment. ECE/MP.EIA/WG.2/2016/5/INF.7¹⁵)

Biodiversity assessment

96. In neither of the countries the issue of biodiversity assessment has been addressed in the national legislation, alongside with SEA and EIA schemes. This remains a challenge not only for countries willing to align their legislation with the EU law (including obligations related to creation of Natura 2000 system) but also to all countries that are Parties to the Convention on Biological Diversity. A further scrutiny of the ongoing legal reforms related to nature conservation (in particular to creation of Natura 2000 system) is needed with a view to assure the full compatibility of biodiversity assessment with the EIA/SEA schemes.

Capacity building

¹⁵ Available as an informal document ECE/MP.EIA/WG.2/2016/5/INF.7 to the 5th session of the Working Group on EIA and SEA

97. All the beneficiary countries are already sufficiently familiar with the basic concepts and solutions for the respective proposed SEA schemes to test them in practice, through pilot projects. Aside from the pilot projects, it is important that the countries actively design and seek assistance and funding for capacity building, including also national training workshop on the application of the new law on SEA and for producing national guidance materials for relevant planning authorities and other stakeholders.

V. Recommendations for further action by countries in Eastern Europe and the Caucasus to enhance implementation of the Protocol on SEA

A. Monitoring further legislative steps at the national level

99. Additional assistance in relation to the remaining challenges is needed for all countries in order to (a) facilitate the further legislative process (adoption of the legislation that complies with the Protocol on the SEA and the EU SEA Directive) ; (b) draft executive (implementing) regulations; (c) identify a list of relevant other national legal acts to be amended. It would be particularly important for the countries to benefit from immediate assistance in monitoring all the revisions introduced to the draft laws during the legislative process from the point of view of their compliance with the international standards. To this end, the translation of the national draft legislation might be needed.

B. Further capacity building and technical assistance

100. The environmental and sectoral planning authorities are not always sufficiently aware of the SEA procedures. In particular, the sectoral authorities do not understand their own role and responsibility to develop the SEA report. Environmental authorities are not always clear about their role in screening, scoping and quality control of SEA documentation. Thus, efforts must be made to raise the awareness, knowledge and skills on SEA among sectoral planning authorities and environmental authorities. To this end, a large national level pilot project on SEA that involves a number of sectoral authorities might be useful.

101. To ensure smooth implementation of the SEA based on the new legal framework it is crucial to build capacities of relevant stakeholders (e.g. relevant environmental and health authorities, authorities that prepare plans and programs, NGOs) on the application of the new law. To this end, it is important to envision the development and incorporation of SEA related courses into vocational education and training programmes of the governmental officials and prepare guidance materials that help interpreting the new legal provisions on SEA. The courses and guidance materials should be focused not only on the SEA methodology for preparing a SEA report, which is necessary for SEA practitioners, but also on teaching the relevant environmental and health authorities, planning authorities as well as representatives of public how to understand, interpret and use the proposed new provisions in given country. Preparing a group of trainers that can develop and deliver the above-mentioned courses might be an efficient first step.

102. After the adoption of the national legislation on SEA, it is important to establish institutional and financial capacity to conduct SEA not only as part of a pilot project but on a

regular basis. This may involve developing practical arrangements for involvement of the relevant SEA/EIA experts, organizing public consultations, dissemination of information as well as development of the data-base for the relevant registers (i.e. register of experts, register of SEA documentation, etc.).

103. All countries may start the implementation the new provisions on SEA within the current institutional structures. However, in order to ensure the full implementation of the newly developed provisions after their adoption, the countries might need support for institutional reforms. To best assist these reforms, additional institutional needs assessment exercise might be useful in all the beneficiary countries.

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¹⁶ Available on the webpage: <http://www.unece.org/environmental-policy/conventions/environmental-assessment/about-us/protocol-on-sea/enveiaaboutep-green/enveiaaboutep-greenprotocol-on-seaenvseaeapgreenlegal.html>