

UNECE Protocol on Strategic Environmental Assessment (SEA)

An Introduction



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Introduction (1/4)

- ★ The Convention on Environmental Impact Assessment (EIA) in a Transboundary Context (the 1991 Espoo Convention) has been supplemented by a Protocol on Strategic Environmental Assessment (SEA).
- ★ The Protocol is an initiative of the second meeting of the Parties to the Convention, which in February 2001 created an Ad hoc Working Group to develop the Protocol.
- ★ That group completed its work in January 2003 with finalization of the draft Protocol text.
- ★ The Protocol was adopted at the Ministerial 'Environment for Europe' Conference in Kiev, Ukraine, on 21 May 2003.
- ★ 38 States and the European Community signed the Protocol.
- ★ Although negotiated under UNECE, the Protocol will be open to all UN members.
- ★ 1st Meeting of Signatories in June 2004, 2nd in April 2005.



Introduction (2/4)

- ✦ The Protocol, once in force, will require its Parties to evaluate the environmental consequences of their official draft plans and programmes.
- ✦ The Protocol also addresses policies and legislation, though the application of SEA to these is not mandatory.
- ✦ SEA is undertaken much earlier in the decision-making process than EIA, and it is therefore seen as a key tool for sustainable development.
- ✦ SEA allows the identification and prevention of possible environmental impact right from the start in decision-making—developing a more sustainable transport policy rather than just minimizing the environmental impact of building a road, for example—and it enables environmental objectives to be considered on a par with socio-economic ones, bringing sustainable development closer.



Introduction (3/4)

- ✦ The Protocol provides for extensive public participation in government decision-making in numerous development sectors, from land-use planning to transport and from agriculture to industry, covering everything from oil refineries to ski-lifts.
- ✦ The public will not only have the right to know about plans and programmes, but also the right to comment, have their comments taken into account, and be told of the final decision and why it was taken.
- ✦ The participation of the public in strategic decision-making builds on the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).

Introduction (4/4)

- ✦ Besides considering the typical environmental effects of plans and programmes, the Protocol places a special emphasis on the consideration of human health, going beyond existing legislation in the region.
- ✦ This reflects the involvement of the World Health Organization in the negotiations as well as the political commitments made at the 1999 London Ministerial Conference on Environment and Health.
- ✦ The text of the Protocol may be found at the Convention web site (<http://www.unece.org/env/sea/>).



Objective (as in the Protocol's Article 1)

There's a special emphasis on health throughout the Protocol.

The Protocol pertains primarily to plans and programmes ...

... though it may also be applied to policies and legislation

The Protocol defines procedures.

It places a special emphasis on public participation (in the spirit of the Aarhus Convention), as well as on consultation of authorities.

The aim is thus to integrate fully environmental objectives into plans and programmes so as to further sustainable development

The objective of this Protocol is to provide for a high level of protection of the environment, including health:

- ✦ by ensuring that environmental, including health, considerations are thoroughly taken into account in the development of plans and programmes;
- ✦ by contributing to the consideration of environmental, including health, concerns in the elaboration of policies and legislation;
- ✦ by establishing clear, transparent and effective procedures for strategic environmental assessment;
- ✦ by providing for public participation in strategic environmental assessment; and
- ✦ by these means integrating environmental, including health, concerns into measures and instruments designed to further sustainable development.

A general definition of Strategic Environmental Assessment

☀️ “Analytical, anticipatory and participatory process that aims to integrate environmental considerations into plans, programmes and other strategic actions and identifies inter-linkages with economic & social considerations.”

☀️ Source: *Applying Strategic Environmental Assessment to Development Co-operation* (OECD, 2006).

Definition of “Strategic Environmental Assessment” in the Protocol (Art. 2.6)

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

Note the special reference to health

1. Define the scope of the assessment

2. Prepare the environmental report

3. Get the public's views

4. And consult with the authorities

5. Develop the plan or programme taking into account the above.

Context

Rio de Janeiro

London

Johannesburg

It is not yet clear how exactly the relationship between the Protocol and these Conventions will work in practice

The 'EIA Convention'

The 'Aarhus Convention'

The EC 'SEA' Directive had a significant influence on development of the Protocol

☀ Conferences:

- United Nations Conference on Environment and Development (1992)
- Ministerial Conference on Environment and Health (1999)
- World Summit on Sustainable Development (2002)

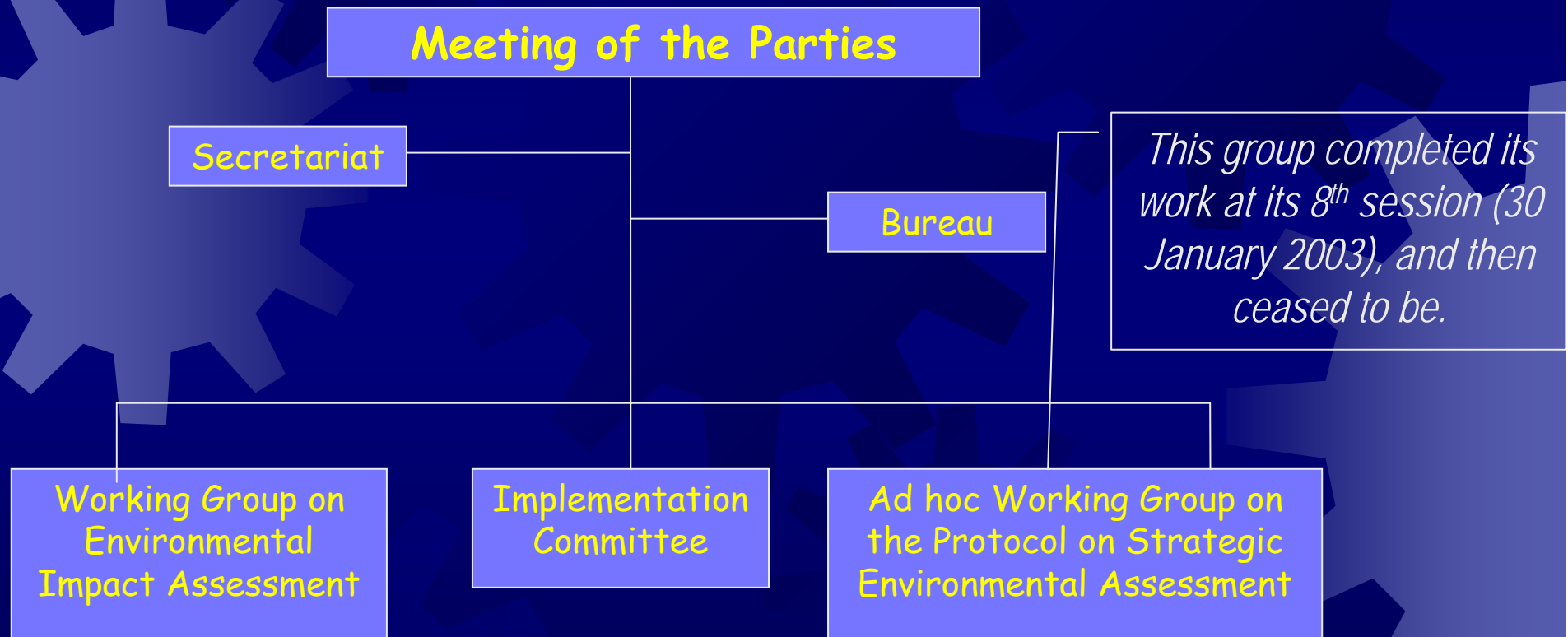
☀ International Conventions (UNECE):

- Convention on Environmental Impact Assessment in a Transboundary Context (Espoo) – in force since 1997
- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus) – in force since 2001

☀ **EC Directive** on the assessment of the effects of certain plans and programmes on the environment – into force in 2004

Development (a)

- Decision of the 2nd Meeting of the Parties to the EIA Convention, 26-27 February 2001



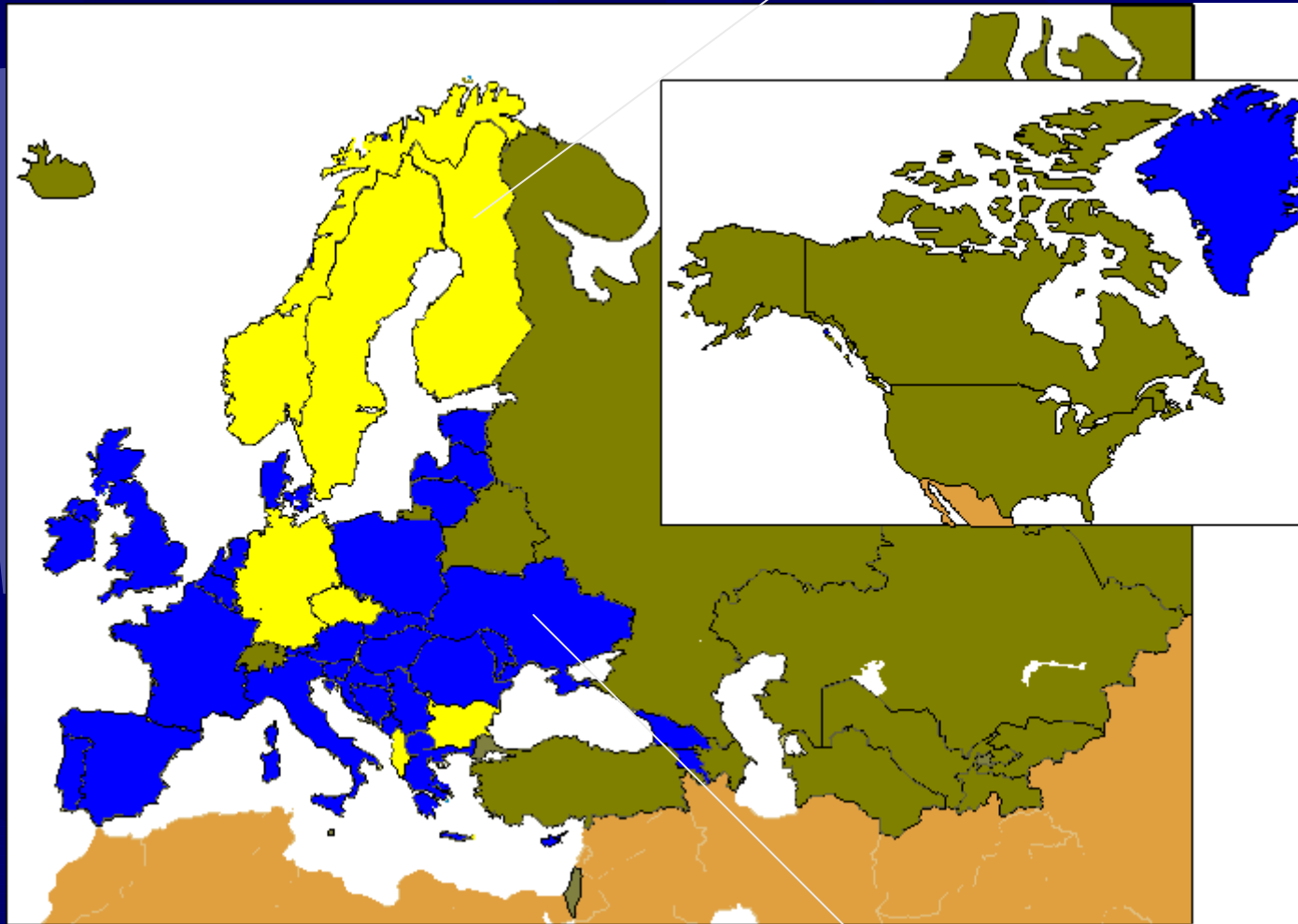
Development (b)

- ★ Decision of the 2nd Meeting of the Parties to the EIA Convention, 26-27 February 2001
- ★ Finalisation of text by ad hoc Working Group on the SEA Protocol, 30 January 2003 (8th session)
- ★ Open for Adoption and Signature at the 5th Pan-European Environmental Ministers Conference (“Environment for Europe”), 21-23 May 2003
- ★ ... and thereafter at UN Headquarters in New York

Kiev, Ukraine

Development (c)

Parties in yellow



Parties:

- ★ Albania
- ★ Bulgaria
- ★ Czech Rep.
- ★ Finland
- ★ Germany
- ★ Norway
- ★ Sweden

Dec. 2007

United Nations Economic
Commission for Europe

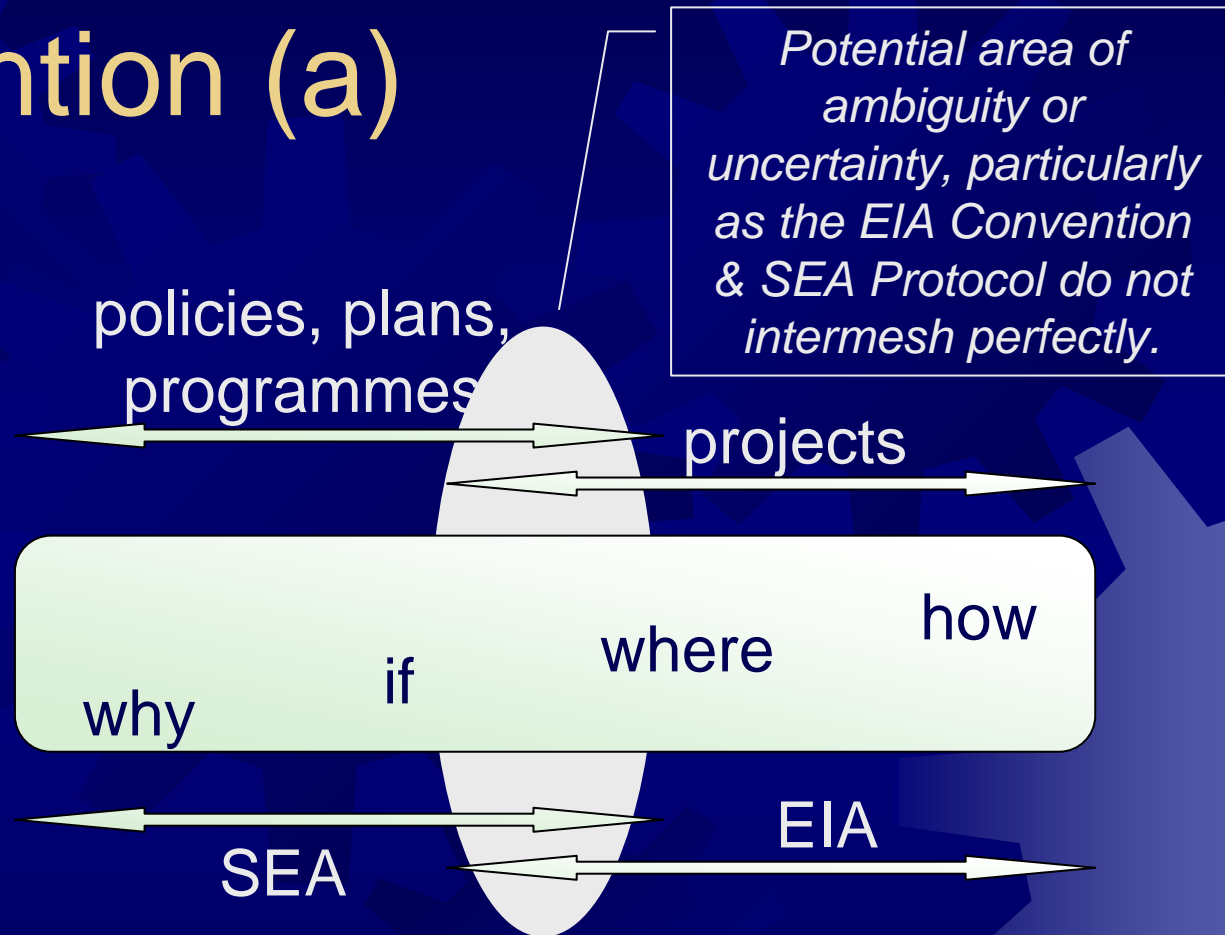
December 2007

Signatories in blue 13



Relationship with EIA Convention (a)

SEA relates to plans & programmes (and perhaps policies & legislation), whereas EIA relates to projects. However, the distinction between the two is not always clear. Is an urban regeneration project really a programme of smaller projects, for example?



Source: after Swedish National Board of Housing, Building & Planning and Swedish Environmental Protection Agency. 2000. *Planning with environmental objectives! A guide.*

Relationship with EIA Convention (b)

- ✦ Overlap EIA v. SEA
- ✦ EIA Convention – all about transboundary impacts of projects
- ✦ SEA Protocol – mainly about SEA of plans & programmes within a state, with consideration of transboundary effects being secondary



Provisions

- ✦ Objective
- ✦ Definitions
- ✦ ...

We have already seen the definition of SEA, but a couple other definitions are useful before continuing with other provisions of the Protocol.

Definition of “Plans and programmes” (Art. 2.5)

Plans and programmes and any modifications to them that:

- a) Are required by legislative, regulatory or administrative provisions; and
- b) Are subject to preparation and/or adoption by an authority or are prepared by an authority for adoption, through a formal procedure, by a parliament or a government

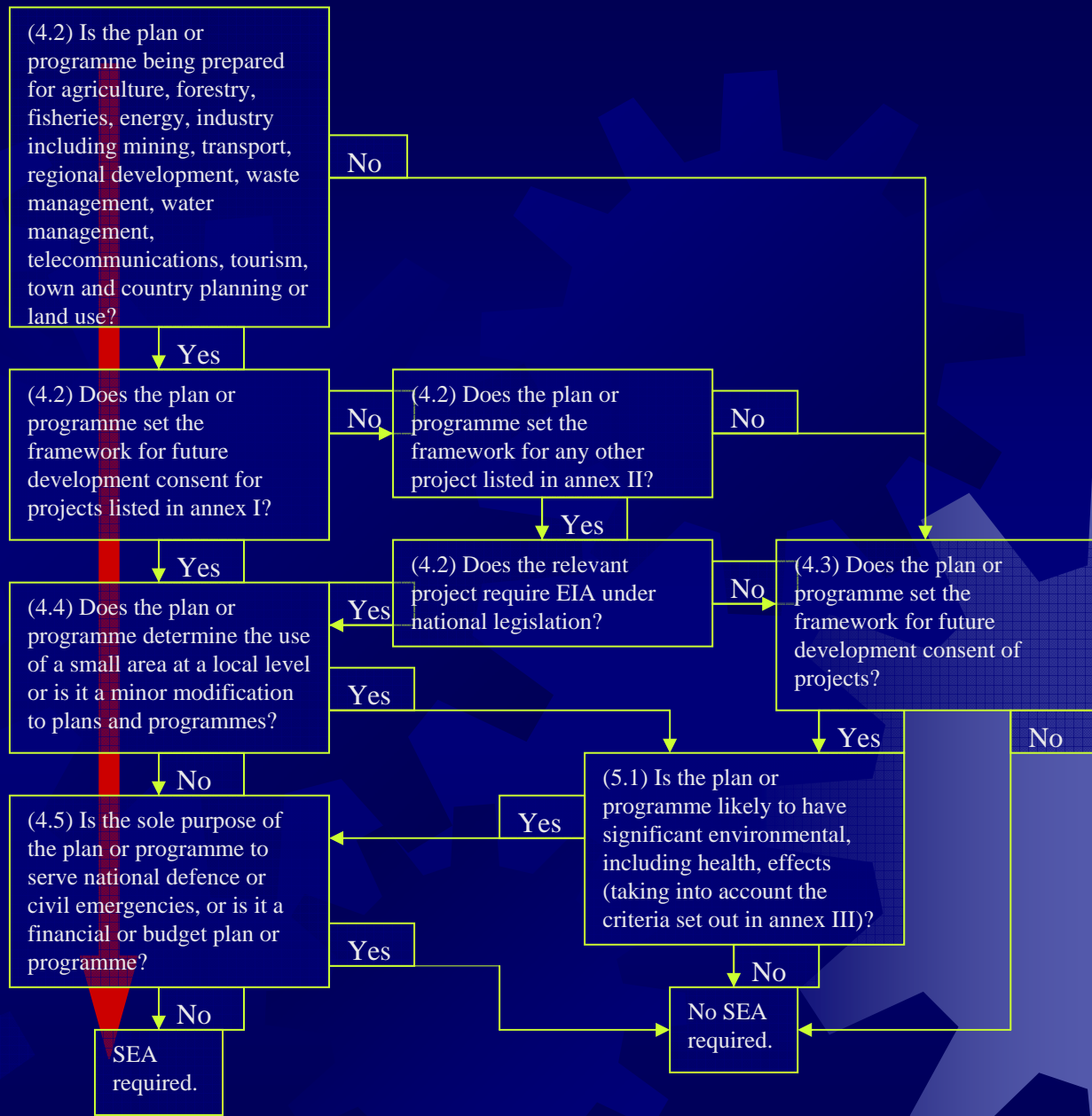
Definition of “Environmental, including health, effect” (Art. 2.7)

- ✦ Any effect, on the environment, including human health, flora, fauna, biodiversity, soil, climate, air, water, landscape, natural sites, material assets, cultural heritage and the interaction among these factors

Note that socio-economic conditions are not included, whereas they are considered within the definition of environmental impacts in the EIA Convention.

Field of application (Art. 4) & Significance (Art. 5)

The process of determining whether a plan or programme should be subject to SEA is quite complex.



Screening (Art. 5)

- ✦ Determination of the significance of a plan or programme
- ✦ Consultation with authorities
- ✦ Public participation, “**to the extent appropriate**”, i.e. it is optional
- ✦ Publication of outcome

Article 5 applies to the determination of whether borderline cases of plans and programmes need to be subject to SEA.

Scoping (Art. 6)

- ✦ Determination of the content of the environmental report
- ✦ Consultation with authorities
- ✦ Public participation, “**to the extent appropriate**”, i.e. it is optional

Note that no publication of the scoping outcome (a report) is required.

Environmental Report (Art. 7)

- ✦ “identify, describe and evaluate the likely significant environmental, including health, effects of implementing the plan or programme and reasonable alternatives”

Note the importance of considering not only the draft plan or programme but also alternatives – alternative means of attaining the same plan or programme objectives.

'Outside' involvement

- ★ Public Participation
- ★ Consultation of public authorities (health & environmental)
- ★ Consultation of other Parties to the Protocol

These are discussed in the following three slides.

Public Participation (Art. 8)

1. Each Party shall ensure early, timely and effective opportunities for public participation, when all options are open, in strategic environmental assessment for plans and programmes.
2. Each Party, using electronic media or other appropriate means, shall ensure the timely public availability of the draft plan or programme and the environmental report.
3. Each Party shall ensure that the public concerned, including relevant non-governmental organizations, is identified for the purposes of paragraphs 1 and 4.
4. ...

Public participation has to be ...

... "early, timely and effective", ...

... "when all options are open".

Public availability of documents.

The expression "public concerned" is not defined, though it is in the Aarhus Convention. It is expected that some clarification will be necessary.

Consultation (Art. 9)

- ★ Designated authorities, having specific environmental or health responsibilities
- ★ Given early, timely & effective opportunity to express opinion

Transboundary Consultation (Art. 10)

☀ Notification:

- Notification if Party of origin determines that plan or programme is likely to have significant transboundary effects, or if Party likely to be significantly affected so requests (*no recourse available to an inquiry commission, only to the dispute settlement procedures – Article 20*)
- Notification of affected Party by Party of origin
- Affected Party indicates whether it wishes to be consulted

Significant potential for transboundary consultations of the public and authorities in an affected state.

☀ Consultation (paragraph 4):

- Where such consultations take place, the Parties concerned shall agree on detailed arrangements to ensure that the public concerned and the authorities referred to in article 9 paragraph 1, in the affected Party are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within reasonable time frames.

Note again the expression "public concerned".

Decision (Art. 11)

- ☀ Decisions on plans and programmes must take due account of
 - ☀ Conclusions of the environmental report
 - ☀ Comments received (from the public, the authorities and any affected Parties)
- ☀ Must inform of decision and explain
 - ☀ How the environmental considerations have been integrated into the plan or programme
 - ☀ How the comments received have been taken into account
 - ☀ Why the plan or programme has been adopted in the light of reasonable alternatives

Monitoring (Art. 12)

1. Each Party shall monitor the significant environmental, including health, effects of the implementation of the plans and programmes, as adopted under article 11, in order, inter alia, to identify, at an early stage, unforeseen adverse effects and to be able to undertake appropriate remedial action.
2. The results of the monitoring undertaken shall be made available, in accordance with national legislation, to the authorities referred to in article 9.1 and to the public.

Note only monitoring the effects of the plan or programme, not whether it is implemented according to the SEA recommendations.

Policies & Legislation (Art. 13)

1. Each Party shall endeavour to ensure that environmental, including health, concerns are considered and integrated to the extent appropriate, in preparing any of its proposed policies and legislation that are likely to have significant effects on the environment, including health.
2. In applying paragraph 1, each Party shall consider the appropriate principles and elements of this Protocol.
3. Each Party shall determine, where appropriate, the practical arrangements for undertaking the consideration and integration of environmental, including health, concerns in accordance with paragraph 1, taking into account the need for transparency in decision making.
4. Each Party shall report to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol on its application of this article.

The provisions regarding policies and legislation are much weaker than those for plans and programmes ...

... However, the requirement to report on application is strong – there is no equivalent requirement for plans and programmes.

Relationship to other International Agreements (Art. 15)

1. The relevant provisions of this Protocol shall apply without prejudice to the UNECE Conventions on Environmental Impact Assessment in a Transboundary Context and on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

There are further references to the EIA and Aarhus Conventions in the Preamble

Summary of provisions

- ✦ Application to plans and programmes
- ✦ Optional application to policies and legislation
- ✦ Explicit reference to health
- ✦ Reasonable alternatives
- ✦ Emphasis on public participation (*though with possible limitations*) & consultation
- ✦ Transboundary consultation & public participation

Resources

- ✦ *Resource Manual to Support Application of the Protocol (Draft Final, 2007)* – see http://www.unece.org/env/eia/sea_manual/
- ✦ Belgrade Initiative on SEA – see http://www.unece.org/env/sea/belgrade_initiative.htm
- ✦ Capacity-development activities in Eastern Europe, Caucasus & Central Asia – see http://www.unece.org/env/sea/ecca_capacity.htm

Next steps ...

- ✦ Ratification: 16 needed for entry into force
- ✦ Promotion of ratification and support for implementation – funding is required to support these activities
- ✦ Entry into force ...
 - ✦ Further support of implementation and compliance
 - ✦ Promotion outside UNECE region

Protocol on Strategic Environmental Assessment

✦ EIA Convention Secretariat
UN Economic Commission for Europe

✦ <http://www.unece.org/env/sea/>

