

Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context

The Parties to this Protocol,

Recognizing the importance of integrating environmental, including health, considerations into the preparation and adoption of plans and programmes and, to the extent appropriate, policies and legislation,

Committing themselves to promoting sustainable development and therefore basing themselves on the conclusions of the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 1992), in particular principles 4 and 10 of the Rio Declaration on Environment and Development and Agenda 21, as well as the outcome of the third Ministerial Conference on Environment and Health (London, 1999) and the World Summit on Sustainable Development (Johannesburg, South Africa, 2002),

Bearing in mind the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, and decision II/9 of its Parties at Sofia on 26 and 27 February 2001, in which it was decided to prepare a legally binding protocol on strategic environmental assessment,

Recognizing that strategic environmental assessment should have an important role in the preparation and adoption of plans, programmes, and, to the extent appropriate, policies and legislation, and that the wider application of the principles of environmental impact assessment to plans, programmes, policies and legislation will further strengthen the systematic analysis of their significant environmental effects,

Acknowledging the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998, and taking note of the relevant paragraphs of the Lucca Declaration, adopted at the first meeting of its Parties,

Conscious, therefore, of the importance of providing for public participation in strategic environmental assessment,

Acknowledging the benefits to the health and wellbeing of present and future generations that will follow if the need to protect and improve people's health is taken into account as an integral part of strategic environmental assessment, and recognizing the work led by the World Health Organization in this respect,

Mindful of the need for and importance of enhancing international cooperation in assessing the transboundary environmental, including health, effects of proposed plans and programmes, and, to the extent appropriate, policies and legislation,

Have agreed as follows:

Article 1

OBJECTIVE

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

- (a) Ensuring that environmental, including health, considerations are thoroughly taken into account in the development of plans and programmes;
- (b) Contributing to the consideration of environmental, including health, concerns in the preparation of policies and legislation;
- (c) Establishing clear, transparent and effective procedures for strategic environmental assessment;
- (d) Providing for public participation in strategic environmental assessment; and
- (e) Integrating by these means environmental, including health, concerns into measures and instruments designed to further sustainable development.

Article 2

DEFINITIONS

For the purposes of this Protocol,

1. "Convention" means the Convention on Environmental Impact Assessment in a Transboundary Context.
2. "Party" means, unless the text indicates otherwise, a Contracting Party to this Protocol.
3. "Party of origin" means a Party or Parties to this Protocol within whose jurisdiction the preparation of a plan or programme is envisaged.
4. "Affected Party" means a Party or Parties to this Protocol likely to be affected by the transboundary environmental, including health, effects of a plan or programme.
5. "Plans and programmes" means plans and programmes and any modifications to them that are:
 - (a) Required by legislative, regulatory or administrative provisions; and
 - (b) Subject to preparation and/or adoption by an authority or prepared by an authority for adoption, through a formal procedure, by a parliament or a government.
6. "Strategic environmental assessment" means the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.
7. "Environmental, including health, effect" means 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.
8. "The public" means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups.

Article 3

GENERAL PROVISIONS

1. Each Party shall take the necessary legislative, regulatory and other appropriate measures to implement the provisions of this Protocol within a clear, transparent framework.
2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in matters covered by this Protocol.
3. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental, including health, protection in the context of this Protocol.
4. The provisions of this Protocol shall not affect the right of a Party to maintain or introduce additional measures in relation to issues covered by this Protocol.
5. Each Party shall promote the objectives of this Protocol in relevant international decision-making processes and within the framework of relevant international organizations.
6. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Protocol shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.
7. Within the scope of the relevant provisions of this Protocol, the public shall be able to exercise its rights without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Article 4

FIELD OF APPLICATION CONCERNING PLANS AND PROGRAMMES

1. Each Party shall ensure that a strategic environmental assessment is carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are likely to have significant environmental, including health, effects.
2. A strategic environmental assessment shall be carried out for plans and programmes which are prepared for agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent for projects listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation.

3. For plans and programmes other than those subject to paragraph 2 which set the framework for future development consent of projects, a strategic environmental assessment shall be carried out where a Party so determines according to article 5, paragraph 1.

4. For plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and for minor modifications to plans and programmes referred to in paragraph 2, a strategic environmental assessment shall be carried out only where a Party so determines according to article 5, paragraph 1.

5. The following plans and programmes are not subject to this Protocol:

- (a) Plans and programmes whose sole purpose is to serve national defence or civil emergencies;
- (b) Financial or budget plans and programmes.

Article 5 SCREENING

1. Each Party shall determine whether plans and programmes referred to in article 4, paragraphs 3 and 4, are likely to have significant environmental, including health, effects either through a case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose each Party shall in all cases take into account the criteria set out in annex III.

2. Each Party shall ensure that the environmental and health authorities referred to in article 9, paragraph 1, are consulted when applying the procedures referred to in paragraph 1 above.

3. To the extent appropriate, each Party shall endeavour to provide opportunities for the participation of the public concerned in the screening of plans and programmes under this article.

4. Each Party shall ensure timely public availability of the conclusions pursuant to paragraph 1, including the reasons for not requiring a strategic environmental assessment, whether by public notices or by other appropriate means, such as electronic media.

Article 6 SCOPING

1. Each Party shall establish arrangements for the determination of the relevant information to be included in the environmental report in accordance with article 7, paragraph 2.

2. Each Party shall ensure that the environmental and health authorities referred to in article 9, paragraph 1, are consulted when determining the relevant information to be included in the environmental report.

3. To the extent appropriate, each Party shall endeavour to provide opportunities for the participation of the public concerned when determining the relevant information to be included in the environmental report.

Article 7 ENVIRONMENTAL REPORT

1. For plans and programmes subject to strategic environmental assessment, each Party shall ensure that an environmental report is prepared.

2. The environmental report shall, in accordance with the determination under article 6, identify, describe and evaluate the likely significant environmental, including health, effects of implementing the plan or programme and its reasonable alternatives. The report shall contain such information specified in annex IV as may reasonably be required, taking into account:

- (a) Current knowledge and methods of assessment;
- (b) The contents and the level of detail of the plan or programme and its stage in the decision-making process;
- (c) The interests of the public; and
- (d) The information needs of the decision-making body.

3. Each Party shall ensure that environmental reports are of sufficient quality to meet the requirements of this Protocol.

Article 8

PUBLIC PARTICIPATION

1. Each Party shall ensure early, timely and effective opportunities for public participation, when all options are open, in the strategic environmental assessment of 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. Each Party shall ensure that the public referred to in paragraph 3 has the opportunity to express its opinion on the draft plan or programme and the environmental report within a reasonable time frame.
5. Each Party shall ensure that the detailed arrangements for informing the public and consulting the public concerned are determined and made publicly available. For this purpose, each Party shall take into account to the extent appropriate the elements listed in annex V.

Article 9

CONSULTATION WITH ENVIRONMENTAL AND HEALTH AUTHORITIES

1. Each Party shall designate the authorities to be consulted which, by reason of their specific environmental or health responsibilities, are likely to be concerned by the environmental, including health, effects of the implementation of the plan or programme.
2. The draft plan or programme and the environmental report shall be made available to the authorities referred to in paragraph 1.
3. Each Party shall ensure that the authorities referred to in paragraph 1 are given, in an early, timely and effective manner, the opportunity to express their opinion on the draft plan or programme and the environmental report.
4. Each Party shall determine the detailed arrangements for informing and consulting the environmental and health authorities referred to in paragraph 1.

Article 10

TRANSBOUNDARY CONSULTATIONS

1. Where a Party of origin considers that the implementation of a plan or programme is likely to have significant transboundary environmental, including health, effects or where a Party likely to be significantly affected so requests, the Party of origin shall as early as possible before the adoption of the plan or programme notify the affected Party.
2. This notification shall contain, inter alia:
 - (a) The draft plan or programme and the environmental report including information on its possible transboundary environmental, including health, effects; and
 - (b) Information regarding the decision-making procedure, including an indication of a reasonable time schedule for the transmission of comments.
3. The affected Party shall, within the time specified in the notification, indicate to the Party of origin whether it wishes to enter into consultations before the adoption of the plan or programme and, if it so indicates, the Parties concerned shall enter into consultations concerning the likely transboundary environmental, including health, effects of implementing the plan or programme and the measures envisaged to prevent, reduce or mitigate adverse effects.
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 a reasonable time frame.

Article 11

DECISION

1. Each Party shall ensure that when a plan or programme is adopted due account is taken of:
 - (a) The conclusions of the environmental report;
 - (b) The measures to prevent, reduce or mitigate the adverse effects identified in the environmental report; and
 - (c) The comments received in accordance with articles 8 to 10.

2. Each Party shall ensure that, when a plan or programme is adopted, the public, the authorities referred to in article 9, paragraph 1, and the Parties consulted according to article 10 are informed, and that the plan or programme is made available to them together with a statement summarizing how the environmental, including health, considerations have been integrated into it, how the comments received in accordance with articles 8 to 10 have been taken into account and the reasons for adopting it in the light of the reasonable alternatives considered.

Article 12

MONITORING

1. Each Party shall monitor the significant environmental, including health, effects of the implementation of the plans and programmes, 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, paragraph 1, and to the public.

Article 13

POLICIES AND LEGISLATION

1. Each Party shall endeavour to ensure that environmental, including health, concerns are considered and integrated to the extent appropriate in the preparation of its proposals for 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 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.

Article 14

THE MEETING OF THE PARTIES TO THE CONVENTION SERVING AS THE MEETING OF THE PARTIES TO THE PROTOCOL

1. The Meeting of the Parties to the Convention shall serve as the Meeting of the Parties to this Protocol. The first meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall be convened not later than one year after the date of entry into force of this Protocol, and in conjunction with a meeting of the Parties to the Convention, if a meeting of the latter is scheduled within that period. Subsequent meetings of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall be held in conjunction with meetings of the Parties to the Convention, unless otherwise decided by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol.

2. Parties to the Convention which are not Parties to this Protocol may participate as observers in the proceedings of any session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol. When the Meeting of the Parties to the Convention serves as the Meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by the Parties to this Protocol.

3. When the Meeting of the Parties to the Convention serves as the Meeting of the Parties to this Protocol, any member of the Bureau of the Meeting of the Parties representing a Party to the Convention that is not, at that time, a Party to this Protocol shall be replaced by another member to be elected by and from amongst the Parties to this Protocol.

4. The Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and, for this purpose, shall:

- (a) Review policies for and methodological approaches to strategic environmental assessment with a view to further improving the procedures provided for under this Protocol;
- (b) Exchange information regarding experience gained in strategic environmental assessment and in the implementation of this Protocol;
- (c) Seek, where appropriate, the services and cooperation of competent bodies having expertise pertinent to the achievement of the purposes of this Protocol;
- (d) Establish such subsidiary bodies as it considers necessary for the implementation of this Protocol;
- (e) Where necessary, consider and adopt proposals for amendments to this Protocol; and
- (f) Consider and undertake any additional action, including action to be carried out jointly under this Protocol and the Convention, that may be required for the achievement of the purposes of this Protocol.

5. The rules of procedure of the Meeting of the Parties to the Convention shall be applied *mutatis mutandis* under this Protocol, except as may otherwise be decided by consensus by the Meeting of the Parties serving as the Meeting of the Parties to this Protocol.

6. At its first meeting, the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall consider and adopt the modalities for applying the procedure for the review of compliance with the Convention to this Protocol.

7. Each Party shall, at intervals to be determined by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol, report to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on measures that it has taken to implement the Protocol.

Article 15

RELATIONSHIP TO OTHER INTERNATIONAL AGREEMENTS

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.

Article 16

RIGHT TO VOTE

1. Except as provided for in paragraph 2 below, each Party to this Protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 17

SECRETARIAT

The secretariat established by article 13 of the Convention shall serve as the secretariat of this Protocol and article 13, paragraphs (a) to (c), of the Convention on the functions of the secretariat shall apply *mutatis mutandis* to this Protocol.

Article 18

ANNEXES

The annexes to this Protocol shall constitute an integral part thereof.

Article 19

AMENDMENTS TO THE PROTOCOL

1. Any Party may propose amendments to this Protocol.
2. Subject to paragraph 3, the procedure for proposing, adopting and the entry into force of amendments to the Convention laid down in paragraphs 2 to 5 of article 14 of the Convention shall apply, *mutatis mutandis*, to amendments to this Protocol.
3. For the purpose of this Protocol, the three fourths of the Parties required for an amendment to enter into force for Parties having ratified, approved or accepted it, shall be calculated on the basis of the number of Parties at the time of the adoption of the amendment.

Article 20

SETTLEMENT OF DISPUTES

The provisions on the settlement of disputes of article 15 of the Convention shall apply *mutatis mutandis* to this Protocol.

Article 21

SIGNATURE

This Protocol shall be open for signature at Kiev (Ukraine) from 21 to 23 May 2003 and thereafter at United Nations Headquarters in New York until 31 December 2003, by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraphs 8 and 11 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this Protocol, including the competence to enter into treaties in respect of these matters.

Article 22

DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this Protocol.

Article 23

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Protocol shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations referred to in article 21.
2. This Protocol shall be open for accession as from 1 January 2004 by the States and regional economic integration organizations referred to in article 21.
3. Any other State, not referred to in paragraph 2 above, that is a Member of the United Nations may accede to the Protocol upon approval by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol.
4. Any regional economic integration organization referred to in article 21 which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. If one or more of such an organization's member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and its member States shall not be entitled to exercise rights under this Protocol concurrently.
5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 21 shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary of any relevant modification to the extent of their competence.

Article 24

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.

2. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organization referred to in article 21 shall not be counted as additional to those deposited by States members of such an organization.

3. For each State or regional economic integration organization referred to in article 21 which ratifies, accepts or approves this Protocol or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

4. This Protocol shall apply to plans, programmes, policies and legislation for which the first formal preparatory act is subsequent to the date on which this Protocol enters into force. Where the Party under whose jurisdiction the preparation of a plan, programme, policy or legislation is envisaged is one for which paragraph 3 applies, this Protocol shall apply to plans, programmes, policies and legislation for which the first formal preparatory act is subsequent to the date on which this Protocol comes into force for that Party.

Article 25

WITHDRAWAL

At any time after four years from the date on which this Protocol has come into force with respect to a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary. Any such withdrawal shall not affect the application of articles 5 to 9, 11 and 13 with respect to a strategic environmental assessment under this Protocol which has already been started, or the application of article 10 with respect to a notification or request which has already been made, before such withdrawal takes effect.

Article 26

AUTHENTIC TEXTS

The original of this Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Kiev (Ukraine), this twenty-first day of May, two thousand and three.