



**Guidelines for environmental assessment in a
transboundary context on the procedures for
notification, exchange of information and
consultation among the Mediterranean States
– Draft –**

Split, April 2019

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Draft

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1 Context, the need for and purpose of the Guidelines

Environmental assessments are widely used across the Mediterranean, driven by various regulatory and policy frameworks. Within the UN Environment/ MAP - Barcelona Convention, the environmental assessments are seen as the frontline tools for the implementation of Integrated Coastal Zone Management (ICZM) principles and the achievement of Good Environmental Status (GES) and sustainable development¹. This refers to both strategic environmental assessments (SEA) conducted at the level of plans and programmes (and, where possible, for policies and legislation), and to environmental impact assessment (EIA) procedures conducted for individual projects and activities.

When plans, programmes or projects are likely to have cross-border impacts, multilateral environmental agreements, such as the UNECE Espoo² and Barcelona Conventions, as well as the EU legislation, call for SEA and EIA implementation in a transboundary context. According to the Espoo Convention, transboundary impact is defined as *'any impact, not exclusively of a global nature, within an area of jurisdiction of a Party caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party'* (Article 1 (viii)). The Barcelona Convention calls for cooperation in assessment procedures for the activities likely *'to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction, on the basis of notification, exchange of information and consultation'* (Article 4.3(d)).

In the Barcelona Convention area, implementation of environmental assessments, including in a transboundary context, is an obligation stemming from Article 4 of the Convention (paragraphs 3(c) and 3(d)) and Articles 19 and 29 of the ICZM Protocol. Transboundary environmental assessments are recognised and promoted for their potential to foster cooperation between neighbouring states and to enhance (while respecting national jurisdictions) potential of national plans, programmes or projects to contribute to regional efforts to safeguard the Mediterranean. Extensive guidance on SEA and EIA is available at UNECE and EU levels, but it is not so for the implementation of relevant provisions of the Barcelona Convention (BC) and ICZM Protocol.

To address this gap and in line with Article 29 of the ICZM Protocol, preparation of *Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean states* was mandated under the UN Environment/ MAP Programme of Work (PoW) 2018 – 2019 for the cross-cutting theme on ICZM.

The purpose of the Guidelines laid out in this document is to provide the BC Contracting Parties with an operational tool for carrying out transboundary environmental assessments. The Guidelines draw from the experiences of other relevant policy frameworks while addressing, to the extent possible, regional and sub-regional specificities in the Mediterranean, aiming at the same time to showcase potential and advantages of effective transboundary SEAs and EIAs. Examples of good practices in transboundary environmental assessments are provided throughout the document ([Boxes 4-1, 4-2, 4-3 and 5-1](#)).

Since various international agreements and national regulations apply across the BC area, the aim of the Guidelines is also to create a common reference framework for all the Contracting Parties through identification and promotion of a set of standards and good practice recommendations on carrying out notification, exchange of information and consultations in transboundary environmental

¹ Common Regional Framework for ICZM, March 2019 draft

² United Nations Economic Commission for Europe – Convention on Environmental Impact Assessment in a Transboundary Context

assessments. Finally, the Guidelines recommend possible courses of action to strengthen implementation of environmental assessments in a transboundary context and enhance cooperation for the implementation of ICZM, achievement of GES and sustainable development in the Mediterranean.

2 Legal frameworks for the implementation of transboundary environmental assessments in the Mediterranean

Implementation of transboundary assessments in the Mediterranean is governed by various legal and policy frameworks, including Barcelona Convention/ ICZM Protocol, UNECE Espoo Convention and SEA (Kiev) Protocol³, and the EU environmental assessments Directives. In 2001, Parties to the Espoo Convention adopted an amendment to allow the non-UNECE countries to join the Convention, however this amendment is not in effect yet (eight more ratifications were needed as of 2017).

The southern Mediterranean and other countries where environmental assessments are not regulated under the EU and UNECE instruments have adopted (or are in the process of developing) national EIA regulations. Provisions on SEA in these countries are rare and rudimentary, nevertheless SEAs are sometimes conducted on a voluntary basis in line with international regulations. Requirements to address transboundary impacts by enabling affected countries to take part in the assessment procedures are usually not integrated in the national regulations of the countries that are not Parties to UNECE treaties (and are not EU Member States).

2.1 Barcelona Convention and ICZM Protocol

Article 4 of the Barcelona Convention⁴ calls upon the Contracting Parties to *inter alia* 'protect the environment and contribute to the sustainable development of the Mediterranean Sea Area' by undertaking environmental impact assessment for the activities likely to cause significant adverse impacts on the marine environment, and by promoting cooperation between and among the states in the assessment procedures through notification, exchange of information and consultation (paragraphs 3(c) and 3(d)).

Specific provisions of the ICZM Protocol⁵ on environmental assessments are laid down in Articles 19 and 29. Under Article 19, the Parties are invited to carry out environmental impact assessment for public and private projects as well as strategic environmental assessment for plans and programmes likely to have significant environmental effects on the coastal zones. Sensitivity of coastal/ marine environment, interrelationships between the marine and terrestrial parts, cumulative impacts and coastal zones' carrying capacities are highlighted as issues that should be carefully considered in the assessments.

Article 29 requests the Parties to cooperate in the assessment of environmental impacts of plans, programmes and projects likely to have significant adverse effects on the coastal zones of other Parties. Notification, exchange of information and consultation are highlighted (in line with Article 4.3(d) of the Convention) as the main means to deliver such cooperation and the Parties are invited to develop guidelines to detail pertinent procedures as well as to enter into bilateral or multilateral agreements to implement Article 29 (presented in [Box 2-1](#)).

³ UNECE Kiev Protocol on Strategic Environmental Assessment

⁴ The original Convention is in force since 1978, the amended (1995 Amendments) Convention since 2004.

⁵ In force since 2011.

Participation and consultation requirements (referring to environmental assessments as well as to other processes) are also addressed through the Protocol's Article 6 on general principles of ICZM and Article 14 on participation, the latter calling for appropriate governance and adequate and timely involvement of various stakeholders; Article 27 refers to cooperation in the exchange of information on the use of the best environmental practices.

Box 2-1: Article 29 of the ICZM Protocol on transboundary environmental assessment

1. Within the framework of this Protocol, the Parties shall, before authorising or approving plans, programmes and projects that are likely to have a significant adverse effect on the coastal zones of other Parties, cooperate by means of notification, exchange of information and consultation in assessing the environmental impacts of such plans, programmes and projects, taking into account Article 19 of this Protocol and Article 4.3(d) of the Convention.
2. To this end, the Parties undertake to cooperate in the formulation and adoption of appropriate guidelines for the determination of procedures for notification, exchange of information and consultation at all stages of the process.
3. The Parties may, where appropriate, enter into bilateral or multilateral agreements for the effective implementation of this Article.

For the time being, the above provisions of the BC and ICZM Protocol constitute the only regional framework applicable to the entire Mediterranean, covering also the non-UNECE and non-EU countries where the implementation of transboundary environmental assessments is less supported with regional guidelines and capacity building programmes (compared to the EU and UNECE areas).

2.2 UNECE Convention and SEA Protocol

Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention, in force since 1997⁶) have committed to either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impacts from proposed activities (listed in Appendix I of the Convention). To this end, the Convention stipulates actions to be taken by the Party of Origin (i.e. Party/ies under whose jurisdiction a proposed activity is envisaged to take place) and Affected Party (Party/ies likely to be affected by the transboundary impact of a proposed activity) in all the steps of the assessment procedure: notification, consultations, preparation of EIA documentation, final decision and post project analysis. The Convention also caters for situations where projects other than those listed in the Appendix I are identified as potentially likely to give rise to significant transboundary environmental impacts.

The Espoo Convention allows the Parties to enter into bilateral or multilateral agreements to implement their obligations under the Convention, to regulate in more detail institutional, administrative and other arrangements, assessment and data collection methods, criteria for defining the significance of transboundary impacts, and other elements. A multilateral agreement adopted under the Espoo Convention that is of particular relevance to the Mediterranean region is the Bucharest Agreement (from 2008). The aim of this Agreement concluded among the countries of south-eastern Europe is to set clear, transparent and effective transboundary EIA procedures by regulating in more detail: notification procedures; adoption of criteria for the identification of significant adverse transboundary impacts; establishment of time frame for the affected Party to

⁶ The original Convention was last amended in 2004, to *inter alia* revise the list of activities in Appendix I and include provisions to allow affected Parties to participate in scoping, as appropriate. This amendment entered into force in 2017.

respond to notification; availability/ translation of the relevant documentation; and other relevant matters.

The Kiev Protocol on Strategic Environmental Assessment (in force since 2010) seeks to provide for a high level of environmental protection by ensuring that environmental, including health, considerations are taken into account in the development of plans and programs/ preparation of policies and legislation. It also establishes clear, transparent and effective procedures for strategic environmental assessment. Article 10 of the Kiev Protocol is dedicated to transboundary consultations mirroring the process established in the Espoo Convention.

The requirements of the UNECE instruments refer to different steps of the EIA and SEA processes aiming to ensure that the public and authorities of the areas likely to be affected by transboundary impacts have an equitable opportunity to participate in the decision making process for the respective project, plan or programme. The main provisions of the two UNECE instruments pertaining to co-operation in the assessments of transboundary impacts are presented in [Annex 1, Table 1](#), and were used, together with an overview of current implementation practices, as a primary source for drafting this Guidelines; provisions of Bucharest Agreement were used to this end too.

2.3 EU Directives

In the BC Contracting Parties members of the EU, environmental assessments are regulated under the SEA and EIA Directives, i.e. under:

- Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (in force since 2001); and
- Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (original Directive in force since 1985).

Both Directives contain provisions on assessments in a transboundary context (as presented in [Annex 1, Table 2](#)), consistent with those of the Espoo Convention and Kiev Protocol. Responsibilities of Member States where the project is intended (or plan/ programme prepared) and of those affected are specified in relation to the notification process and documentation, consultations, and information on the decision.

The EU Directives and their provisions on transboundary assessments may also be of relevance for Candidate Countries, potential candidates and countries covered by the EU neighbourhood policy, as well as for the EU co-financed projects where EU Member States are involved (this due to the accession process and/ or specific project requirements). For this reason (as well as for the fact there is extensive experience with the use of SEA and EIA in the EU Member States), the EU environmental assessment regulations and practice with their implementation were also used as an important source for drafting the present Guidelines applicable to the entire Mediterranean.

3 Policy framework of the Barcelona Convention

Integrated management, preservation of Mediterranean ecosystems and sustainable development represent cornerstones of the BC policy framework. The environmental assessments are seen as tools that can significantly aid the delivery of policy objectives in these areas, including objectives of the ICZM Protocol, achievement of GES as the ultimate goal of ecosystem-based management⁷, and

⁷ Under Decision IG. 20/4 on Ecosystem Approach (EcAp) Implementation Roadmap, the BC Contracting Parties have committed to the application of ecosystem based management of human activities in order to achieve (or maintain) GES of the Mediterranean Sea and its coastal region for eleven Ecological Objectives (referring to biodiversity, non-indigenous species, commercially exploited fish and shellfish, marine food webs,

objectives of the Mediterranean Strategy for Sustainable Development (MSSD) 2016-2025. The essence of the ecosystem-based management is to address the coastal zone as a continuum made of land and sea space, preservation of the integrity of its ecosystems and dealing with the processes that occur/ affect them in an integrated manner. Various BC policy objectives are interlinked and mutually reinforcing.

The Common Regional Framework (CRF) on ICZM (the preparation of which is currently underway) is a strategic instrument meant to facilitate the implementation of the ICZM Protocol. The CRF provides guidance mainly for the regional (Mediterranean) and sub-regional (for the four Mediterranean sub-regions, as defined in the Decision IG. 20/4 on EcAp Implementation Roadmap⁸) levels, based on a flexible approach that can be replicated at lower geographical levels (national, sub-national).

According to the CRF, application of EIA and SEA supports the implementation of ICZM principles (Article 6 of the ICZM Protocol) including the need to take into account all elements of natural and cultural systems in an integrated manner; the application of the ecosystems approach to spatial planning, preparation of policies and strategies; the timely participation in decision-making and ensuring that economic activities minimise the use of natural resources and take into account the needs of future generations.

The Contracting Parties are thus recommended to:

- Implement environmental assessments taking into considerations cumulative impacts on the coastal zones and their carrying capacity, possibly based on the use of EcAp Ecological Objectives and related indicators;
- Take on board land-sea interactions (LSI) in environmental assessments (including transboundary ones), in particular interactions and impacts that can alter the equilibrium of marine and terrestrial areas due to natural processes, as well as mutual impacts of maritime activities on land and terrestrial activities on sea;
- Adopt guidelines on the procedures for notification, exchange of information and consultation at all stages, as appropriate. Issues such as GES and related targets, LSI aspects including coastal erosion, cumulative impacts and vulnerability assessments, carrying capacity, climate change and others should be addressed.

The Contracting Parties to the BC adopted the Decision IG.23/7 that envisages introduction of Marine Spatial Planning (MSP) into the BC system. MSP is considered as the main tool/ process for the implementation of ICZM in the marine part of the coastal zone and for planning and managing maritime human activities according to EcAp objectives. SEAs on the other hand should make an integral part of spatial planning (including for marine areas) and in the case of cross-border impact (or impacts on the areas beyond national jurisdictions) of the planned activities, transboundary procedures should be initiated.

In the MSSD, SEA and EIA are highlighted as tools with a prominent role for the implementation of several strategic directions (linked to the six MSSD objectives), for example: on the use of regulatory mechanisms, including MSP, to prevent and control unsustainable open ocean resource exploitation; promoting the sustainable use, management and conservation of natural resources and ecosystems; and promoting implementation and compliance with environmental obligations and agreements. The environmental assessments are also addressed in the MSSD flagship initiative on the development of

eutrophication, sea-floor integrity, hydrography, coastal ecosystems and landscapes, contaminants, marine litter, and underwater noise).

⁸ According to EcAp Implementation Roadmap, the main four sub-regions in the Mediterranean are: Western Mediterranean; Central Mediterranean and Ionian; Adriatic Sea; and Eastern Mediterranean (Aegean-Levantine) sub-region.

capacity-building programmes on issues related to implementation and compliance with environmental obligations and agreements (including EIAs and SEAs).

4 Implementation of environmental assessments in the Mediterranean

Practically all the BC Contracting Parties apply EIA procedures for large-scale development proposals. Recent reports on the implementation of the BC and its Protocols – parts referring to Article 4.3(c) and 4.3(d) of the Convention and Articles 19 and 29 of the ICZM Protocol – and relevant documents⁹ indicate good progress during the last years. At the same time, room for improvements has been identified, in particular as regards the need to better address specificities and fragility of the Mediterranean coastal zones in assessing the impacts. SEAs are predominantly used in the EU members and candidates, even though their importance is recognised by all the countries. Available reports/ relevant documents do not, however, focus on transboundary aspects, therefore limited information is available on how the Mediterranean countries cooperate on notification, exchange of information and consultations in assessing transboundary impacts of projects, plans or programmes.

Legal frameworks in the EU Member States are aligned with the EIA and SEA Directives and their provisions on procedures in case of transboundary impacts. Candidate and/ or countries aspiring to join the EU are gradually bringing their environmental assessments regulations in line with the two Directives too. The UNECE instruments steer the assessment processes in the Parties to the Espoo Convention and Kiev Protocol. On supranational level, the BC/ ICZM Protocol set frame for implementation of transboundary assessments for the Contracting Parties that are not part of the UNECE region¹⁰. An overview of the international instruments (including status of their ratifications) and national legislation governing environmental assessments is provided in [Table 4-1](#).

Some form of EIA regulations was in place in at least 20 out of 22 Contracting Parties to the BC at the time of drafting this Guidelines (information was not available for Egypt and Monaco). In their National Implementation Reports for the 2014-2015 biennium, 12 Contracting Parties reported having put in place cooperation mechanisms and/ or institutional structures for notification, exchange of information and consultation for transboundary EIAs, mainly through the EIA laws. The EIA regulations in countries outside the area of application of the EU and UNECE instruments as a rule do not contain provisions on how the procedures should be conducted in case of transboundary impacts.

SEAs usually take multiple forms and employ diverse methods and procedures, sometimes without an adequate legal framework and institutional set-up. This creates difficulties, particularly for comparability in a transboundary context. Examples of good practice transboundary SEAs exist in the region but more efforts are needed to ensure effective application of notification, exchange of information and consultations requirements in assessing transboundary impacts of plans and programmes.

⁹ Including *Status of Progress in the Implementation of the Barcelona Convention and its Protocols: Analysis of the Information Contained in the National Implementation Reports for the 2014-2015 Biennium* (last updated in July 2018), and *Synthetic Note on the status of implementation of the Protocol on Integrated Coastal Zone Management in the Mediterranean*; the latter is based on responses received in early 2017. Important analytical insights and recommendations for future development of environmental assessment practices are provided through the development of CRF for ICZM (prepared in line with the Decision IG.23/7).

¹⁰ UN Economic Commission for Africa, Office for North Africa, and UN Economic and Social Commission for Western Asia do not have treaties similar to those of UNECE in the area of environmental assessments. When the 2001 amendment to Espoo Convention will be in effect, countries outside the UNECE region will be also welcome to ratify the Convention.

Box 4-1: EIA for the Baltic Sea Gas Pipeline

The deployment of the first Baltic Sea Gas Pipeline (BSGP) was identified as a project likely to give rise to significant environmental impacts at a transboundary level affecting all the countries bordering the Baltic Sea. The countries of origin included four EU Member States (Sweden, Finland, Denmark and Germany) who shared common regulations on Environmental Impact Assessment (EIA) in addition to being Parties to the Espoo Convention; and the Russian Federation, only a signatory to the Convention and with its own distinct national regulations on environmental assessment of projects. Despite this difference these five countries agreed to co-operate to guide the process concerning the EIA and decided that all nine Baltic States are affected, even those countries where the pipeline will not traverse (Estonia, Lithuania, Latvia and Poland). The international Espoo contact points from the five countries of origin established a procedure of meetings where the affected countries and the company responsible for the project attended most of the meetings. The main task of these meetings was to:

- ensure that the company makes an Environmental Impact Statement (EIS) for the whole pipeline in addition to the assessment of individual segments on the basis of relevant national EIA legislation;
- oversee that the minimum technical requirements of the Espoo Convention were met;
- co-ordinate the way the 5 national EIA procedures functioned;
- direct communication between the contact points and the company to ensure that the EIS for the whole project met the technical requirements of the Convention;

Harmonisation of data proved challenging but efforts succeeded to enable the EIS for the whole project to be completed. The public consultation process included the provision of copies of the scoping document and the EIS for the whole project displayed and open for comments at the same time in all nine countries. The documents prepared by the company were translated in all the nine languages. Each respective segment of the pipeline was then assessed at the national level following the respective EIA legislation. The synchronisation of these two levels of assessment was made possible by the national Espoo contact points. Though the process raised particular concerns on the assessment of alternatives the co-ordination meetings managed a complex project effectively.

Source: Koivurova T. et al (2010) Transboundary Environmental Impact Assessment in the Case of the Baltic Sea Gas Pipeline. International Journal of Coastal Law.151-181. Martinus Nijhoff Publishers.

Box 4-2: EIA for the electricity interconnection through the Strait of Gibraltar

Transboundary project to construct second electricity interconnection between Morocco and Spain was finalised in 2006 (the first interconnection was in operation since 1997). A 400 kV underwater cable was laid down alongside the 31.3 km long route through the Strait of Gibraltar connecting substations in Fardioua, Morocco, and Tarifa, Spain. Four underwater cables were deposited on the seabed at a maximum depth of 620 m, some 500 m to the west from the route of the first interconnection. The project also entailed extension of the two substations. The total cost of the project was 115 million euros.

To lead the work of the project, a joint commission was created comprising National Office of Electricity (ONE) for Morocco and Red Eléctrica de España (REE) for Spain. Environmental impact assessments were undertaken in 2003, and the environmental consents for the project issued in 2005. Competent authorities for the review and approval of EIA studies were Moroccan National committee for environmental impact studies (CNEI) and Spanish Ministry of environment. The assessments were prepared based on the national EIA legislation whereas the World Bank, EIB and Africa Development Bank methodologies were also applied.

Environmental mitigation and compensatory measures were identified and implemented, including avoidance of the seagrass meadows of *Cymodocea nodosa* and a set of measures developed (responsibility of Red Eléctrica) to compensate for the adverse impacts on affected Natura 2000 sites. In the framework of the EIA study in Morocco, environmental and social management plan was prepared to minimise/ mitigate impacts, including a set of compensatory measures.

Source: National Office of Electricity of Morocco (2002), Environmental impact assessment study for strengthening the submarine electricity transmission line between Morocco and Spain through the Strait of Gibraltar; Red Eléctrica project related information

Table 4-1: International instruments and national legislation governing implementation of environmental assessments in the Mediterranean

BC Contracting Parties	ICZM Protocol (status of ratification)	UNECE instruments		National regulations on environmental assessments
		Espoo Convention	Kiev Protocol	Applicable EU/ national laws
Albania	04.05.2010/AD	+	+	Law 12/2015 from 2015 amending the EIA Law 10 440 from 2011; SEA Law 91/2013 from 2013
Algeria	-	Not a member of UNECE		Law 03-10 and Executive Decree 18-255 from 2018 amending the EIA Executive Decree 07-145 from 2007; no SEA legislation
Bosnia and Herzegovina	-	+	+	Specific chapters on EIA in the F B&H Law 33/03, 38/09 and RS Law 71/12,79/15; general provisions on SEA in the F B&H Law 33/03, 38/09, specific SEA chapter in the RS Law 71/12,79/15
Croatia	29.01.13/R	+	+	National legislation transposing the EU EIA and SEA Directives
Cyprus	-	+	+	National legislation transposing the EU EIA and SEA Directives
EU	29.09.10/AP	+	+	Directive 2014/52/EU amending the EIA Directive 2011/92/EU; SEA Directive 2001/42/EC
Egypt	-	Not a member of UNECE		Information not available
France	29.10.09/AP	+	-	National legislation transposing the EU EIA and SEA Directives
Greece	-	+	-	National legislation transposing the EU EIA and SEA Directives
Israel	01.02.16/R	-	-	Planning and Building Law (Environmental Impact Assessments) Amendment 1982; no SEA legislation (<i>but SEA conducted for some plans/ programmes, in line with international regulations</i>)
Italy	-	+	+	National legislation transposing the EU EIA and SEA Directives
Lebanon	01.08.2017/AC	Not a member of UNECE		Law 444 from 2002 and EIA Decree 8633 from 2012; SEA Decree 8213 from 2012
Libya	-	Not a member of UNECE		Environmental Protection Law 15/2003 contains general provisions on EIA and SEA (<i>EIA Guidelines recently published</i>)
Malta	-	+	+	National legislation transposing the EU EIA and SEA Directives
Monaco	-	-	-	Information not available
Montenegro	09.01.12/R	+	+	Law on EIA 80/05, 40/10, 73/10, 40/11, 27/13, 52/163; Law on SEA 80/05, 40/11, 59/11, 52/16
Morocco	21.09.12/R	Not a member of UNECE		EIA Law 12-03 from 2003 and implementing Decrees 2-04-563 and 2-04-564 from 2008; SEA legislation in preparation (draft Law 49-17)
Slovenia	01.12.09/R	+	+	National legislation transposing the EU EIA and SEA Directives
Spain	22.06.10/R	+	+	National legislation transposing the EU EIA and SEA Directives
Syria	22.02.2011	Not a member of UNECE		Environment Law 20 from 2012 contains general provisions on EIA and SEA, executive instructions yet to be adopted (previously, EIA and SEA executive instructions issued in 2008)
Tunisia	-	Not a member of UNECE		EIA Decree 2005-1991 from 2005, amending the Decree 91-362 from 1991; no SEA legislation
Turkey	-	-	-	Environment Law 2872 and EIA By-law (last updated in 2008); information on SEA legislation not available

Abbreviations used for the status of ratifications:

Adhesion= AD

AC = Accession

Approval = AP

Ratification = R

Sources on the status of ratifications:

ICZM Protocol: <http://web.unep.org/unepmap/who-we-are/legal-framework/status-signatures-and-ratifications> (accessed on 22 February 2019)

Espoo Convention: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&clang=en (accessed on 22 February 2019)

Kiev Protocol: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4-b&chapter=27&clang=en (accessed on 22 February 2019)

Other sources:

Barcelona Convention National Implementation Reports

Communication (March 2019) with PAP/RAC Focal Points for non-UNECE countries

Website of the Ministry of Tourism and Environment of Albania: <https://www.turizmi.gov.al/2013-2/> (accessed on 20 March 2019)

Box 4-3: SEA and EIA for the extension of Karavanke tunnel

The existing Karavanke tunnel on the A2 motorway connecting Slovenia and Austria is in operation since 1991. Due to increased traffic volumes and safety issues, extension of the tunnel is planned. The extension was included in the national spatial plan of Slovenia, for which a strategic environmental assessment was prepared; environmental impact assessment was carried out for the project itself. Transboundary cooperation between Austrian and Slovenia authorities carried on throughout each SEA and EIA phase. Cooperation on administrative matters was established through the Espoo Convention focal points.

Slovenia sent notification and Austria promptly confirmed its participation in transboundary procedures. Consultations comprised both discussions between the ministries and relevant organisations of the two countries lasting two months, and a public debate on both sides of the border lasting one month. Comments and observations were sent to the country of origin (Slovenia) to be taken into account in final decision-making.

Interdisciplinary teams were organised in both countries to consider possible impacts, mitigation measures and monitoring. Efforts were made to mobilise all the relevant expertise and available data. At the end of the SEA process, the decision was sent to Austria. In the EIA process, additional technical consultations were needed to improve and harmonise monitoring to be carried out during construction of the tunnel. Proposal of the monitoring programme was sent to Austria and following discussions among experts, improvements were agreed upon as regards frequency, timing and chemical parameters to be monitored. The EIA conclusions and related elaborations were then sent to Austria, and following an agreement of both sides, the final decision was made.

The transboundary SEA/ EIA procedures conducted for the extension of Karavanke tunnel showed good cooperation between focal points was very important to manage the process effectively. The example also showcases how engagement of interdisciplinary teams on both sides of the border can help to address the critical points and to find adequate solutions.

Source: Croatian Association of Experts in Nature and Environmental Protection (2017), Book of Abstracts: Third Regional Conference on Environmental Impact Assessment; the author of the case study is Vesna Kolar Planinsic, Espoo Convention Focal Point in the Ministry of Environment and Spatial Planning of Slovenia

5 Transboundary environmental assessments: tools to improve cooperation and contribute to sustainable development in the Mediterranean

Both SEA and EIA effectively promote sustainable development by mainstreaming the environment into economic development and by integrating environmental issues into strategic and project-related decision-making. Wide consultations of relevant authorities and the public, including in the countries that may be affected by cross-border impacts of proposed projects, plans or programmes,

are the key features of EIA and SEA procedures. Practical experiences with the application of these instruments show they often lead to better solutions and improve public acceptance of/ support for the proposed plans and activities.

Environmental assessments conducted in a transboundary context (and environmental assessments in general) are important in terms of compliance with the adopted legal frameworks on supranational and national levels, and are highly relevant for the delivery of the BC policy objectives. They are instrumental in implementing the ICZM Protocol/ CRF, as well as for the implementation of MSP. For the Mediterranean countries that are not bound with the UNECE treaties or EU legislation, transboundary procedures and implementation of environmental assessments in general are helpful in meeting/ anticipating requirements of the projects implemented in the framework of the EU neighbourhood policy and those funded through the International Financial Institutions (this in addition to the role they have in achieving national environmental protection and sustainable development objectives).

The experience with the implementation of SEA in the Mediterranean region is more limited compared to EIA, mainly due to the fact this is a relatively new instrument: in the EU it is in use since 2001, while Kiev Protocol (adopted in 2003) is in force since 2010. With the exception of the EU Member States and some countries aspiring to join the EU, legislative and institutional frameworks for its application in the region are weak. Nevertheless, potential of strategic assessment and its benefits are widely recognised, which calls for stronger capacity building efforts to ensure a more widespread use of the instrument, in particular with the view to the BC overarching goals of applying integrated/ ecosystem-based management and achieving GES.

Box 5-1: SEA for the Plan and Programme for Hydrocarbons Exploration and Exploitation in the Adriatic

Preparation of the Framework Plan and Program (FPP) for Exploration and Exploitation of Hydrocarbons in the Adriatic Sea was initiated in 2014 by the Croatian Hydrocarbons Agency. The FPP preparation lasted close to a year and a constituent part of it was strategic environmental assessment.

The SEA process was carried out simultaneously with the FPP preparation. In line with provisions of the Espoo Convention/ Kiev Protocol, competent authorities of Italy, Montenegro and Slovenia were notified. Italy confirmed its intent to participate in the transboundary procedures and forwarded its comments in January and February 2015. Consultations with Montenegro and Slovenia were carried out through to May 2015. A positive opinion on the SEA was issued in June 2015.

All the comments received through the transboundary consultations were taken into account and integrated in the final SEA and FPP. The key comments received/ improvements requested from/ by the affected countries were to do with the following:

- Italy: biodiversity and noise chapters, inclusion of Italian part of the ecological network in the analysis and formulation of protection measures, accidents and mitigation measures;
- Montenegro: detailed consideration for the situation in border exploration areas with a focus on accidents and related protection measures;
- Slovenia: biodiversity and noise, use of the Marine Strategy Framework Directive descriptors of Good Environmental Status and their determining criteria, accidents and protection measures.

Transboundary cooperation conducted within the SEA process helped improve the environmental report and the FPP.

Source: Ministry of Economy of Croatia (2015), Report on the Strategic Environmental Assessment conducted for the Framework Plan and Program (FPP) for Exploration and Exploitation of Hydrocarbons in the Adriatic Sea

Some of the main benefits of the SEA procedures include: improved planning and programming; identification of new development opportunities; avoidance of costly mistakes and severe effects; efficient and transparent decision-making, strengthened governance and improved public trust in

policy, plan or programme making. These benefits are even more pronounced when procedures are conducted in a transboundary context.

Similar to SEA, conducting EIA procedures offers a wide range of benefits which are enhanced through inclusion of stakeholders from countries other than the country of the project's origin. Even though EIAs are consistently applied across the BC area, regulations and mechanisms for transboundary procedures still need considerable strengthening in a number of countries to ensure better utilisation of the potential they offer.

Reviews of the implementation of relevant international agreements show that as a result of transboundary EIA, new information is often provided, environmental protection measures are added or made stricter, and substantial environmental improvements are introduced into project designs. International cooperation is enhanced, including awareness on the importance of environmental matters in such cooperation, and potential for conflict is reduced. Transboundary EIAs lead to better informed and more objective decision-making and provide better frameworks for preparing conditions and legal agreements for the operation of the project. They also help with identification of project alternatives, mitigation and compensatory measures, as well as with avoidance of damages to environmentally sensitive areas. Finally, transboundary procedures promote good practices and encourage new approaches, they contribute to better understanding between communities and project proponents, and on a more general level – they promote sustainable development and good governance.

6 Guidelines for carrying out transboundary environmental assessments in the Mediterranean

The legal basis for the present Guidelines is found in the Article 4 of the BC and Articles 19 and 29 of the ICZM Protocol on environmental assessments and cooperation in assessing transboundary impacts of projects, plans or programmes in coastal zones. ICZM Protocol Articles 6, 14 and 27 on ICZM principles, public participation and exchange of information are also relevant.

Within the Barcelona Convention area, these provisions are applied in parallel to those of Espoo Convention, Kiev Protocol and the EU EIA and SEA Directives. As a result, a variety of approaches to regulating and conducting transboundary assessments is found across the region. Among the BC Contracting Parties, 12 countries are Parties to Espoo Convention and 10 to Kiev Protocol, with almost all the EU Member States being Parties to both instruments¹¹. To date, 11 BC Contracting Parties have ratified the ICZM Protocol (four EU Member States have still not ratified). Six countries are not Parties to either UNECE agreements or ICZM Protocol; as a rule, provisions on transboundary procedures are missing from EIA legislation in these countries and the SEA legal frameworks are not in place.

The Guidelines represent an attempt to provide a common reference framework for all the Mediterranean countries, and to stimulate exchange of experiences and transfer of good/ effective practices from within the Mediterranean as well as from other regions/ countries. At the same time, areas where further concerted efforts are needed to improve transboundary assessments are identified and specific actions to address current gaps and challenges proposed (as presented in [Chapter 7](#)).

¹¹ France and Greece have not ratified Kiev Protocol yet.

The Guidelines are developed having in mind the existing diverse approaches in the Mediterranean, by using experiences with the implementation of UNECE and EU instruments and while trying to address Mediterranean specificities. The set of guidelines and recommendations provided herewith outlines requirements needed to ensure effective transboundary assessments and consultations yet is flexible enough to be applied in countries with different regulatory frameworks and capacities. To that end, the Guidelines contain recommendations on the basic requirements that would support transboundary procedures in line with the provisions of UNECE agreements and EU Directives, as well as good practice recommendations that go above current legal provisions or have potential to strengthen procedures and related outcomes. An overview of the transboundary SEA practice in the EU Member States¹² is provided in **Annex 1, Table 3**.

The structure of the Guidelines follows the three main elements of transboundary cooperation outlined in Article 4 of the BC and Article 29 of the ICZM Protocol – notification, exchange of information and consultations. Moreover, a set of good practice recommendations is provided on general arrangements and steps in conducting transboundary procedures.

Transboundary procedures are conducted in parallel to national EIA/ SEA processes and are linked to various steps in the assessment procedures. The BC requirements on cooperation in transboundary assessments (in relation to the EIA/ SEA steps) are illustrated in **Figure 6-1**.

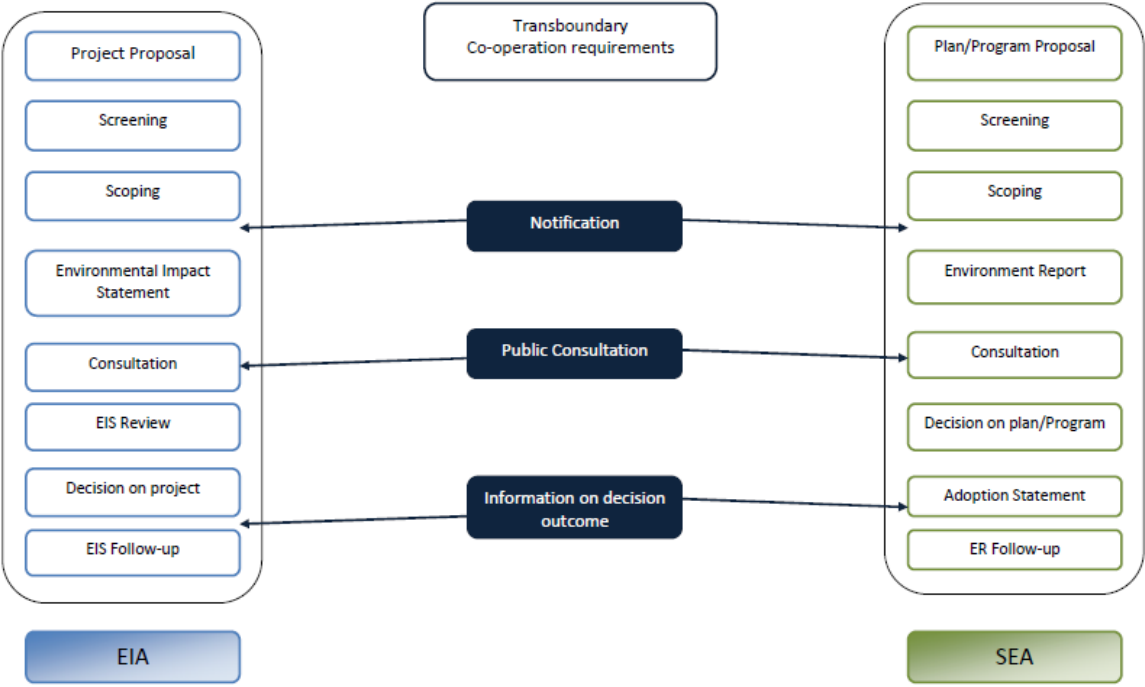


Figure 6-1: Schematic representation of the Barcelona Convention transboundary cooperation requirements in relation to EIA and SEA steps

¹² Based on the EU Member States National Summaries on the SEA Directive, available from http://ec.europa.eu/environment/eia/member_states_summaries.htm

6.1 General arrangements for cooperation in transboundary assessments

The following are the GOOD PRACTICE RECOMMENDATIONS pertaining to general arrangements in transboundary assessments:

- A. On the national level, adequate arrangements (outlining responsibilities and decision-making steps) should be set to ensure appropriate governance framework is in place to support smooth transboundary consultations and completion of procedures.
- B. Close collaboration is necessary between the countries taking part in transboundary procedures, preferably through setting up of coordination bodies. Points of contact (if not already appointed under pertinent international instruments, they should be nominated for the specific procedures) should be used to establish coordination bodies composed of relevant national authorities (e.g. EIA/ SEA competent authorities; designated Espoo Convention/ Kiev Protocol contact points; Barcelona Convention/ ICZM Protocol Focal Points) in the concerned (affected and countries of origin) countries.
- C. Bilateral or multilateral agreements are strongly encouraged, especially for the countries where the existing development plans and commitments indicate multiple transboundary assessments¹³ could be expected in the future, as well as for sub-regions or clusters of countries with similar geographic, natural or cultural characteristics. The agreements can be used to *inter alia* specify: content of notification; relevant timeframes for notification, consultations and transmittal of comments; points of contact and administrative procedures; use and standardisation of assessment practices; criteria to define significance of transboundary impacts, and other elements. Bilateral or multilateral agreements can be also used as a means to exchange experiences between countries with different levels of experience and approaches to SEA and EIA. Possible elements of such agreements are identified by the Espoo Convention (Appendix VI) and also apply to Kiev Protocol. The key elements of the Bucharest Agreement concluded among the countries of south-east Europe in 2008 (mainly governing the EIA process) are presented in **Box 6-1**. The Agreement helped refine the administrative procedures to ascertain clarity and transparency in order to facilitate procedures and deliver efficient and effective assessment.

Box 6-1: Main elements of the Bucharest Agreement

The following are regulated under the Agreement:

- Notification of the designated Competent Authority and point of contact to all Parties and the Secretariat (*of Espoo Convention*);
- The adoption of criteria for the identification of significant adverse transboundary impacts;
- Development of guidelines on the implementation of the same agreement;
- The establishment of joint working groups to determine detailed arrangement for communication and consultations when joint proposed activities are considered;
- The establishment of a 30 day timeframe for the affected Party to respond to notification;
- Having the notification available in the English language;
- The need to translate documentation into the official language of the affected Party.

¹³ Frequency and number of transboundary procedures varies significantly across countries depending on a range of circumstances. As an illustration, data obtained from the implementation reports of the Parties to Espoo Convention for 2013-2015 is provided here: the number of procedures reported by Parties of origin ranged from 1 (Portugal) to 12 (Sweden); the number of procedures reported by affected Parties ranged from 1 (Azerbaijan) to 24 (Czech Republic).

- D. To enhance the efficiency and effectiveness of transboundary procedures, an analysis of the likelihood of significant adverse transboundary impacts should be always carried out. The significance of impacts should be determined before the country of origin notifies the affected country. Appendix III of the Espoo Convention provides general guidance on identifying significant adverse impacts based on existing environmental conditions in the location of the proposed project and the scale or characteristics of its likely impacts. The criteria applied to determine whether significant adverse transboundary impacts are likely to occur vary from one country to another. Bilateral or multilateral cooperation to agree on such criteria among concerned countries, or possibly on a sub-regional level, is highly recommendable. In defining these criteria, sensitivity of the coastal zone and GES objectives should be considered. Moreover, precautionary and prevention principles should apply.
- E. A specificity of the BC area that merits particular attention is the assessment of likely adverse impacts (of plans, programmes or activities) on the areas beyond national jurisdiction; further cooperation is needed to ensure such impacts are adequately addressed and consulted in line with Article 4.3(d) of the Convention and pertinent MSSD objectives/ strategic directions.

6.2 Notification procedures

Notification is usually a first step in the transboundary assessment, which marks the formal start of the procedure.

BASIC REQUIREMENTS

The country of origin should notify the affected country/ countries as early as possible, but no later than when informing its own public. Notification is necessary unless significant adverse transboundary impact of the considered project, plan or programme can be excluded with certainty. Timely notifications are important in order to engage the affected country from early stages of the process and to enable a possibility to capture the most relevant and up-to-date information that may be needed for the assessments.

Potentially affected countries have the right to request notification (if the country of origin fails to notify). This right should not be limited to cases of mandatory SEA/ EIA (as stipulated in the applicable regulations), but should also apply to cases where screening is conducted to determine the need for the assessment. If there is any doubt as to the absence of significant adverse environmental effects, obligation to notify/ the right to request notification must be observed and the assessment procedures be carried out.

As a minimum, notification should contain:

- a. Information on the proposed activity OR information on the draft plan/ programme, including any available information about possible transboundary impacts;
- b. Information about the nature of the decision to be taken/ decision-making procedures;
- c. Period within which the notified country can confirm its intention to participate in the decision-making.

For reference purposes, an overview of the content of notifications for selected Parties to Kiev Protocol is provided in [Box 6-2](#).

Box 6-2: Practices regarding notification content in SEA procedures in the selected Kiev Protocol Parties

Party of Origin	Information included in SEA notification
Bosnia and Herzegovina	Information about the transboundary impacts of the plan or programme (if identified)
Estonia	Name and description of the strategic planning document; information on the person who prepares and adopts it; schedules for the preparation of the document and for carrying out the SEA; a short description of the likely environmental impacts; and the deadline for responding to the notification and submitting comments
Germany	Information on the plan or programme (as far as already available), on the planning and decision-making procedure and on the scoping procedure
Hungary	Entire consultation documentation of the plan or programme, the environmental report, the description of the decision-making process, information on public participation and a request to respond
Slovenia	Draft plan or programme and the environmental report

Source: UNECE Second review of implementation of the Protocol on Strategic Environmental Assessment 2013-2015 (ECE/MP.EIA/SEA/9)

Notification should be sent to the responsible (competent) authority for the EIA/ SEA procedure, which may coincide with official points of contact for the Espoo Convention/ Kiev Protocol (in the Parties to UNECE agreements). Barcelona Convention and/ or ICZM Protocol Focal Points (as appropriate) should be informed of the notification, and for the BC Contracting Parties that have not ratified the UNECE agreements, they may act as a principal recipient of the notification together with nationally designated competent authorities¹⁴.

Notification should be translated into the language used in the affected country; alternatively, English, French, Arabic or other languages shared by the concerned countries could be used. The language of notification and of any subsequent exchange of information should be agreed among the concerned countries at the onset of the process (or through the applicable bilateral or multilateral agreements). A cost-effective approach should be applied: language barriers should not hinder effectiveness of the transboundary procedures (i.e. all the key information in all the assessment steps subject to transboundary cooperation should be translated) whereas translation costs should be kept as low as possible.

The affected countries should respond to the notification in a timely manner, to state their intention to participate in the transboundary procedure or to decline participation. Providing a timely negative response is important for the country of origin to proceed with national procedures without delay. Absence of a timely response may be understood as a lack of interest to take part in the transboundary procedure.

The competent authority of the country of origin may send a request to the competent authority of the affected country to provide reasonably obtainable information relating to the potentially affected environment, once the affected country has confirmed its participation. The affected country should provide such information promptly.

GOOD PRACTICE RECOMMENDATIONS

- A. Informal pre-notification contacts (if formal arrangements are not in place) are highly recommendable.

¹⁴ Practices regarding appointment of competent authorities vary across the countries. In the EU, for example, some Member States have appointed an entity (normally the Ministry responsible for environment) to act as SEA competent authority and as a point of contact for transboundary consultations, while in others the entity responsible for the draft plan or programme also has the responsibility to liaise with the affected countries in transboundary procedures.

- B. It is preferred that affected countries are notified before scoping.
- C. Country of origin may start preliminary consultations (unless bilateral/ multilateral agreements on administrative arrangements are already in place) with the affected countries responding positively to notification to plan and agree on next steps, including: provision of relevant documentation; definition of the time, form and number of consultations; identification of the persons responsible and their contact information, and similar. In this process, it is helpful to share among concerned countries concise information on the national EIA and SEA procedures, including on the key steps for consultation and decision-making, and on minimum public consultation time requirements.
- D. In the EIA procedure, to avoid the need to supply additional information in the future, the notification may contain more detailed information on the key characteristics of the proposed activity and its possible significant adverse impact, as well as relevant information on the assessment procedures, including an indication of the time schedule for the transmittal of comments.
- E. At the request of the country of origin, the potentially affected country may also (in addition to environmental) provide information on the socioeconomic situation in the areas that may be affected by a significant adverse transboundary impact.
- F. Setting up of a dedicated web-page with information on the EIA and SEA process, highlighting key bodies that need to be involved/ contacted for transboundary consultations, including NGOs, is recommended.
- G. The list of points of contact for notification (including Espoo and Kiev Protocol points of contact and national competent authorities in the countries that are not Parties to UNECE agreements) should be kept on the Barcelona Convention website/ in the MAP Info-system.

6.3 Exchange of information

Exchange of information is a crucial part of transboundary environmental assessments procedures. It starts with the notification (or pre-notification consultations)¹⁵, followed by optional information exchange on the assessment procedures among concerned countries. Exchange of information carries on through the assessment process to decision-making and into the post-decision phase, including monitoring.

Cooperation in the exchange of information between all the BC Contracting Parties should be strengthened in order to contribute to the quality and effectiveness of transboundary environmental assessments. Among other provisions of the Barcelona Convention legal framework, Article 27 (b) of the ICZM Protocol calls upon the Parties to establish and maintain up-to-date assessments of the use and management of coastal zones. Information on the Mediterranean regional and sub-regional specificities can, for example, help to better address sensitivities of marine and coastal environment, cumulative impacts and cross-cutting issues such as climate change (which may accelerate and/ or give rise to additional impacts of the project, plan or programme in question). The countries should cooperate in the exchange of data and seek to include Integrated Monitoring and Assessment Programme (IMAP) indicators in transboundary environmental assessments as a common set of indicators also relevant for post-project analysis/ monitoring purposes. Mitigation measures defined in transboundary procedures should take into account GES for various ecological objectives. The

¹⁵ Cooperation on the exchange of information in the notification phase has been described in [Section 6.2](#).

implementation of MSP is expected to emphasise the need for up-to-date information on the state of marine environment and related pressures and impacts, as well as the need for data sharing and cooperation.

BASIC REQUIREMENTS

Following the assessment phase, when Environmental Impact Statement (EIS) OR the Environmental Report (ER) are prepared, the country of origin should ensure that the assessment documentation to be provided to the affected country as a minimum contains the following information:

- a description of the proposed project and its purpose/ contents and the main objectives of the draft plan or programme;
- a description, where appropriate, of reasonable alternatives to the project, plan or programme, including the no-action alternative;
- a description of the environment, including health, likely to be significantly affected by the proposed project, plan or programme and their alternatives;
- a description of the likely significant environmental (including health) impacts of the proposed project, plan or programme and their alternatives;
- a description of considered measures to prevent, reduce or mitigate significant adverse impacts (including information on the predictive methods, assumptions and data used in the assessments);
- an outline of monitoring and management programmes for post-project analysis/ implementation of the plan or programme; and
- a non-technical summary of the information provided.

The relevant documentation should be provided by the competent authority of the country of origin to the respective competent authorities of the affected country for examination and comments. In line with the complexity of the project, plan or programme, the country of origin proposes reasonable timeframes for examination of the documentation, public participation and the provision of comments by the affected country. The key information (in particular non-technical summaries) should be translated into the language of the affected country (or into other appropriate language), where relevant.

The final decision should be provided to the affected country in a timely manner, accompanied with the information shown in [Table 6-1](#) (compiled based on the requirements of the EU and UNECE legal frameworks for both the EIA and SEA). According to the Espoo Convention, concerned Parties should be also informed if additional information (which could have materially affected the decision) becomes available after the final decision is made and before the activity commences. Key information on the final decision should be translated into the language of the affected country (or into other appropriate language), where relevant.

GOOD PRACTICE RECOMMENDATIONS

- A. Close cooperation should be developed among concerned parties in scoping and preparation of the EIS/ ER. Authorities of the affected country should be invited to participate in the scoping (whenever possible/ provided for under national legislation and whenever necessary).
- B. A comprehensive information exchange process is strongly recommended, to preferably start before the assessments are carried out in order to ensure the most up-to-date data is captured.

Table 6-1: Information to be disseminated after the decision is made in EIA and SEA transboundary procedures

	EIA	SEA
EU Directives	<p>The relevant authority of the Member State where the project is to be implemented is to make available the following information:</p> <ul style="list-style-type: none"> ▪ the content of the decision and any conditions attached thereto; ▪ the main reasons and considerations on which the decision is based, including information about the public participation process; ▪ a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects. 	<p>Member States are to ensure that any Member State consulted is informed once the plan or programme is adopted, and to make the following items available to those informed:</p> <ul style="list-style-type: none"> ▪ the adopted plan or programme, and; ▪ a statement of adoption, summarising amongst others how the results of the transboundary consultations have been taken into account, and the measures decided concerning monitoring.
Espoo Convention/ Kiev Protocol	<p>The Party of origin to provide to the affected Party the final decision together with reasons and considerations on which it was based.</p>	<p>A copy of the final plan or programme to be provided to consulted Parties, together with a statement summarising how the environmental, including health, considerations have been integrated into it, how the comments received have been taken into account and the reasons for adopting it in the light of the reasonable alternatives considered.</p>

- C. The use of regional and national databases should be strengthened; the same applies to bi- and multi-lateral cooperation networks and information systems (such as the MAP Info-system).
- D. A central repository on transboundary environmental assessments should be established within the UN Environment/ MAP system with identified Focal Points. The repository should contain a brief description on national procedures in English, French or Arabic, and links to national websites that have information on transboundary environmental assessments.
- E. Countries are strongly recommended to continue cooperation and exchange all relevant information on the post-project analysis and/ or for the monitoring phase, in particular as the existing reviews suggest experiences with implementation of these provisions are rather limited¹⁶ and there is a need for improvements in this area. Development of joint monitoring programmes is encouraged.
- F. For large-scale transboundary projects, preparation of joint environmental reports for entire projects is recommended (followed by individual national environmental reports). The Espoo Convention provides the legal ground for a joint EIA, on the basis of existing or new bilateral or multilateral agreements or other arrangements (Article 8 and Appendix VI, item (g)). For the large-scale transboundary projects, all the countries in which the project would be developed are considered countries of origin, and a joint process may help avoid extensive EIA documentation and allow for an integrated assessment. Exchange of information gains significance in case of joint assessments.

¹⁶ Experience with the implementation of Espoo Convention shows, for example, that very few Parties carried out post-project analyses in the period 2013–2015.

6.4 Consultations

Consultations in transboundary procedures refer to cooperation and exchange of opinions between concerned countries, as well as to public participation and provision of comments. They are typically conducted after environmental assessment documentation is distributed to authorities in the areas likely to be affected and to the public. Some form of consultations may be conducted even at the pre-notification phase, while public participation is often organised in two rounds - before and after the EIS/ ER are prepared.

The likely transboundary impacts of the proposed project, plan or programme and measures to mitigate or eliminate the impacts are the most common subjects of consultations conducted by the country of origin with affected countries after preparation of the environmental assessment documentation. Consultations may also address considered alternatives and any other relevant topic.

Discussions between concerned countries in the consultative process usually include representatives of the competent and other relevant authorities, as well as the project proponents/ plan developers and expert teams that are conducting the assessments. Consultations between concerned countries may take various forms such as joint bodies, expert meetings, written communication and meetings of mid- and high-level officials.

Box 6-3: Public participation under the Espoo Convention

Participation of the public:

- Parties are to establish a national EIA procedure that permits public participation (Article 2.2); national authorities determine the details of such procedure in line with provisions of the Convention (Aarhus Convention may also apply in the countries that have ratified it).
- The party of origin is responsible for providing opportunities to the public in the affected party to participate in the EIA process equivalent to those provided to the public in the party of origin (Article 2.6).
- It is recommended (by the Meeting of the Parties to the Convention) that the costs of public participation (which may include translation, information dissemination, and costs related to organisation of meetings/ public hearings) are borne by the party of origin.

Opportunities for comment:

- The concerned parties have a joint responsibility to ensure that the public of the affected party is informed of, and is given the opportunity to make comments or objections on the proposed activity (Article 3.8).
- The concerned parties have a joint responsibility for the distribution of the EIA documentation and for submission of comments by the public of the affected party (Article 4.2).
- The party of origin should allow sufficient time so that effective consultation with the public in the affected party can be undertaken.
- The affected parties should collect and submit to the parties of origin comments of the public.

Preparing the decision:

- In the final decision on the proposed activity, the parties ensure that due account is taken of the comments on or objections to the proposed activity from the public of the affected party. These include comments on the EIA documentation (Article 6.1).
- The parties of origin prepare the text of the decision, along with the main reasons and considerations on which the decision is based, and make this accessible to the public (in the concerned parties).

Based on the UNECE (2006), Guidance on Public Participation in the Environmental Impact Assessment in a Transboundary Context

Public participation is considered as one of the most important elements of transboundary assessment, and it represents a shared responsibility of the concerned countries. The Espoo

Convention requirements for the involvement of the public in transboundary EIA are presented in **Box 6-3**.

BASIC REQUIREMENTS

Through their competent authorities, countries participating in the transboundary environmental assessments need to jointly ensure that a possibility for effective participation of the relevant authorities and the public is provided in the procedure. Important questions to be agreed upon in order to ensure effective consultations include (but are not limited to): distribution of tasks and responsibilities among concerned countries; ways and means to disseminate information and ensure its accessibility; what are reasonable timeframes to allow for submission of comments; how to inform the public and authorities of the affected country; and what are the appropriate means and timeframes to provide for public participation.

The concerned countries should ensure that the public of the country of origin and of the affected country is informed and provided with possibilities of commenting on or objecting to the proposed project, plan or programme. The concerned countries are responsible for distributing the EIA/ SEA documentation to the authorities and public in areas likely to be affected and for submitting any comments to the competent authority in the country of origin. The comments should be submitted within a reasonable timeframe and before the final decision is made.

Concerned countries should ensure that the public in the areas likely to be affected is informed in a timely, adequate and effective manner, has access to the assessment documentation and a possibility to provide comments, in writing or during public hearings. The following requirements should be met to guarantee effective public hearings (which are usually the main form of public consultations):

- An agreement between concerned countries is needed on whether public hearings should be held in the country of origin, in the affected country or in both. The country of origin can hold public hearings on the territory of the affected country on the basis of bilateral and multilateral agreements or ad hoc arrangements. Another option is to organise public hearings in the country of origin.
- Translation/ interpretation needs to be provided whenever necessary.
- The relevant authorities, project proponents or plan/ programme developers and teams tasked with preparation of environmental assessment documentation should all be present.

Outcomes of the consultations, including oral and written comments and agreements reached, should be noted properly for the purpose of taking them into account in the final decision-making by the country of origin.

The country of origin ensures that comments received from the public and the outcomes of the consultations among the authorities are duly taken into account in the final decision on the proposed project, plan or programme.

GOOD PRACTICE RECOMMENDATIONS

- A. Timely and effective transboundary consultations should preferably be supported through bilateral or multilateral agreements, potentially also at sub-regional level.
- B. Prior knowledge of different consultation procedures in the concerned countries may support the design of an effective consultation program.

- C. The country of origin should initiate early consultations with the affected country to allow enough time to the latter to identify effective tools (including media) to engage the public and appropriate format of information to be provided.
- D. Active involvement of the public should be encouraged by providing clear time-frames for public consultations, appropriate announcements/ dissemination of information, and provision of good quality/ sufficient level of information in an appropriate format. In preparing public consultation schedules, information on national/public holidays and events that could influence consultations should be taken into account.

7 Needs and ways for strengthening transboundary procedures in EIAs and SEAs within the Barcelona Convention area

Transboundary procedures in EIAs and SEAs within the BC area need to be strengthened for several reasons. First of all, the respective BC/ ICZM Protocol requirements need to be complied with in a more consistent manner across the region. Moreover, potential of environmental assessments to contribute to the BC policy objectives needs to be utilised better, and transboundary cooperation and exchange of experiences enhanced. There is also a need for the overall practices within the Barcelona Convention area to be better aligned with the UNECE and EU requirements as both frameworks are highly relevant for all the Mediterranean countries. The UNECE/ EU instruments, for example, provide for and promote application of best practices in transboundary assessments and set standards that should be adopted throughout the Mediterranean. At the same time, UNECE offers significant capacity building opportunities and its agreements are expected to become open for the non-UNECE countries. The EU accession process and neighbourhood policies have an effect on a significant number of the Contracting Parties.

Cooperation mechanisms and/ or institutional structures for notification, exchange of information and consultation for transboundary environmental assessments have been reported for just above half the BC Contracting Parties (12 countries), while the number of ratifications of the ICZM Protocol stands at 11. At the same time, six Barcelona Convention Contracting Parties are not parties to either the ICZM Protocol or the UNECE agreements on EIA and SEA in a transboundary context.

The EIA regulations in countries outside the area of application of the EU and UNECE instruments as a rule do not contain provisions on how the procedures should be conducted in case of transboundary impacts, and the lack of or incomplete provisions on SEA are typically found in these countries. Even when legal provisions are in place and notwithstanding a good progress in the implementation of environmental assessments in recent years, there is a room for improvement in transboundary assessment practices across the region.

It is in particular important to stimulate further cooperation and transfer of experiences in the Mediterranean to overcome the challenges faced in transboundary SEAs which include but are not limited to: weak (or non-existent) institutional/ legal frameworks; insufficient capacities and experiences; complexity of procedures involving two or more countries; potential practical hindrances to effective transboundary consultations such as different/ non-harmonised timeframes, lack of information regarding planning processes/ participation timeframes, translation, additional costs, etc. The need to strengthen application of SEA becomes more pronounced as it is expected that the use of MSP will gain significance in the future, with MSP being considered as the main tool/ process for the implementation of ICZM in the marine part of the coastal zone and for planning and managing maritime human activities according to EcAp objectives.

Having in mind potential of environmental assessments to contribute to the implementation of ICZM, achievement of GES and sustainable development, it is recommended that the Contracting Parties and the UN Environment/ MAP – Barcelona Convention system continue with and step up cooperation to improve transboundary environmental assessments frameworks and practices in the Mediterranean. Further efforts are needed as regards the following:

- Amend/ strengthen legislation to ensure all the projects, plans or programmes with potentially significant transboundary impacts are subject to environmental assessments that include notification, exchange of information and consultations among concerned countries; the Contracting Parties that do not have requirements on transboundary EIAs and/ or SEAs should develop appropriate legal frameworks in line with the Espoo Convention and Kiev Protocol.
- Assist the countries with development of legal frameworks for SEA; promote transboundary procedures on a voluntary basis meanwhile appropriate legal frameworks are in place in all the Contracting Parties.
- Promote ratification of the ICZM Protocol.
- Strengthen capacities for the implementation of transboundary environmental assessments, in particular as regards addressing coastal zone specificities; enhance capacity building efforts within Barcelona Convention system (possibly to focus on: harmonisation of procedures and assessment methods taking into account coastal zone sensitivity, carrying capacity, vulnerability to climate change and land-sea interactions; development of criteria on significance of transboundary impacts with a view to GES/ ecological objectives; development of joint monitoring programmes).
- Encourage the use of the existing and emerging guidelines (developed through relevant initiatives within the Barcelona Convention system and the EU) that can help EIA and SEA practitioners address coastal and marine environment specificities in transboundary assessments adequately.
- Promote good practices in the Mediterranean and transfer of experiences through the development of a network of practitioners; facilitate exchange of information and experiences through the Barcelona Convention website/ in the MAP Info-system.
- Promote application of the UNECE agreements and tap capacity building opportunities offered through UNECE.
- With the assistance of the UN Environment/ MAP, further considerations among the BC Contracting Parties are needed to elaborate procedures for the assessment of plans and activities that could have an impact on the areas beyond national jurisdictions in view of the commitments already taken under the Convention.
- Promote the use of bilateral and/ or multilateral agreements to enhance effectiveness of transboundary environmental assessments.
- Strengthen the Compliance Committee's functions to ensure that the Convention's/ Protocol's provisions on transboundary environmental assessments are implemented.
- Conduct periodic assessments on the implementation of the Barcelona Convention and ICZM Protocol provisions on transboundary assessments; results of the assessments should be used to flag areas where development of further/ targeted guidance would be necessary.

Annex 1: Overview of UNECE and EU provisions on environmental assessments in a transboundary context

Table 1: UNECE legal framework governing co-operation concerning transboundary environmental impacts

Key steps	Espoo Convention	Kiev Protocol
<i>Pre-decision</i>		
Notification	<p>Carried out as early as possible</p> <p>To contain:</p> <ul style="list-style-type: none"> ▪ Information on the proposed activity, including any available information on its possible transboundary impact; ▪ Information on the nature of the possible decision; ▪ An indication of a reasonable time within which a response is required. <p>The affected Party is required to respond in a timely manner on its willingness to participate in consultation.</p>	<p>To contain:</p> <ul style="list-style-type: none"> ▪ The draft plan or programme and the environmental report including information on its possible transboundary effects; and ▪ Information regarding the decision-making procedures, including an indication of a reasonable time schedule for the transmission of comments. <p>The affected Party is required to respond in a timely manner on its willingness to participate in consultation.</p>
Documentation	<ul style="list-style-type: none"> ▪ Relevant information regarding the assessment procedure, including an indication of time schedule for transmittal of comments; and ▪ Relevant information on the proposed activity and its possible significant adverse transboundary impact. <p>If requested, the affected Party is to provide reasonably obtainable information relating to the potentially affected environment under its jurisdiction.</p>	To be submitted as part of the notification
Consultations	<p>Party of origin to provide an opportunity to the public in the areas likely to be affected to participate in relevant procedures on an equivalent bases as the public of the Party of origin.</p> <p>Affected party to be given opportunity to participate in the procedure to determine the content of the environmental impact assessment documentation.</p> <p>Affected party is to:</p> <ul style="list-style-type: none"> ▪ ensure that the public in the areas likely to be affected are informed of and provided with possibilities to make comments or objections on the proposed activity; 	Parties shall agree on detailed arrangements to ensure that the public concerned and relevant authorities 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 timeframe.

	<ul style="list-style-type: none"> ▪ arrange the distribution of the environmental impact assessment documentation to the authorities and public in these areas; ▪ transmit such comments or objections to the competent authority of the Party of origin within a reasonable time before the final decision is taken on the proposed activity. 	
<i>Post-decision</i>		
Documentation	<ul style="list-style-type: none"> ▪ The Party of origin to provide to the affected Party the final decision together with reasons and considerations on which it was based ▪ Inform concerned Party/ Parties if additional information (which could have materially affected the decision) becomes available after the final decision is made and before the activity commences 	<ul style="list-style-type: none"> ▪ A copy of the final plan or programme to be provided to consulted Parties, together with a statement summarising how the environmental, including health, considerations have been integrated into it, how the comments received have been taken into account and the reasons for adopting it in the light of the reasonable alternatives considered.
Monitoring	Provisions for post-project analysis are included, which shall be determined by the concerned Parties which shall include surveillance of the activity and the determination of any adverse transboundary impacts.	

Table 2: Main provisions of the EU legal framework governing co-operation concerning transboundary environmental impacts

Key steps	EIA Directive	SEA Directive
<i>Pre-decision</i>		
Notification and documentation	<p>To be carried out as soon as possible and no later than informing public within Member State where project is intended.</p> <p>To contain:</p> <ul style="list-style-type: none"> ▪ a description of the project, together with any available information on its possible transboundary impact; ▪ information on the nature of the decision which may be taken. <p>A reasonable timeframe is to be communicated to the Member State likely to be affected, within which it can indicate whether it wishes to participate in the environmental decision making procedures (consultations).</p>	<p>To be carried out before the adoption or submission to the legislative procedure of the plan/programme.</p> <p>To contain:</p> <ul style="list-style-type: none"> ▪ a copy of the draft plan or programme; ▪ the relevant environmental report.
Consultation	<p>Member States are to enter into consultation on:</p> <ul style="list-style-type: none"> ▪ the potential transboundary effects of the project, and ▪ the measures envisaged to reduce or eliminate such effects. 	<p>Member States concerned shall agree on:</p> <ul style="list-style-type: none"> ▪ a reasonable timeframe for the duration of the consultations, at the beginning of such consultations.

	<p>A reasonable timeframe for the duration of the consultation period is to be agreed. The detailed arrangements for consultations shall enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures.</p> <p>Such consultations may be conducted through an appropriate joint body.</p>	<ul style="list-style-type: none"> ▪ detailed arrangements to ensure that the relevant authorities and the public in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.
<i>Post-decision</i>		
Information on decision	<p>The relevant authority of the Member State where the project is to be implemented is to make available the following information:</p> <ul style="list-style-type: none"> ▪ the content of the decision and any conditions attached thereto; ▪ the main reasons and considerations on which the decision is based, including information about the public participation process; ▪ a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects. 	<p>Member States are to ensure that any Member State consulted is informed once the plan or programme is adopted, and to make the following items available to those informed:</p> <ul style="list-style-type: none"> ▪ the adopted plan or programme, and; ▪ a statement of adoption, summarising amongst others how the results of the transboundary consultations have been taken into account, and the measures decided concerning monitoring.

Table 3: Transboundary SEA practice in the EU Member States

Member State	Transboundary SEA practice
Belgium	A 45 day timeframe for feedback on the notification is adopted. Within the Flanders Region the timeframe for public participation takes 60 days.
Czech Republic	For plans and programs affecting energy or transport, notification is carried out during scoping to enable the affected country to comment at an early stage of the assessment.
Germany	Authorities of affected state may be invited to participate in the scoping stage of the assessment. When Germany is the affected country it is the responsibility of the competent German authority to specify the authority in the other State to which comments are to be sent.
Hungary	Transboundary consultations are carried out usually at the same time as the domestic ones and the same rules apply as the domestic phase in terms of deadlines for each step. The Ministry for Agriculture has a dedicated website to host all SEA documentation received as an affected party, for public dissemination. Domestic plans or programs with Environment Reports are available on the respective proponent's website.
Ireland	There are informal arrangements with Northern Ireland on transboundary consultation established on a case by case basis to promote early engagement with Northern Ireland environmental authorities in the SEA process. In practice this takes place at the scoping stage. Transboundary consultation with other Members' States occurs on a case by case basis
Lithuania	The plan proponent supplies to the Ministry of the Environment information about the plan or programme under preparation which in turn has 5 days from its receipt to examine the information supplied and decide whether to initiate a transboundary consultation process and notifies its decision to the plan proponent and the assessing stakeholders. Transboundary consultations are held by the plan proponent with the participation of the Ministry of Environment.
Netherlands	The first step is often an 'informal notification' giving information on the plan or programme and when available information on the possible transboundary effects. This is followed by the notification at scoping stage which enables the affected Party to participate at an early stage. Specific agreements exist with the Flanders Region and Germany.
Poland	The documentation submitted in the notification has to be in the language of the affected country. Consultations are normally undertaken by the authority which carries out the SEA but under certain circumstances, such consultations may be carried out by the General Director of Environment Protection.
Portugal	A bilateral protocol has been signed between Portugal and Spain in 2008 in order to simplify the communication formalities, allowing documents and data to be sent directly to the national competent authorities, in parallel with the formal communications made through the competent services of the Ministries of Foreign Affairs. The bilateral protocol establishes a period of 30 days for the affected Party to express an interest in participating in the SEA process. After receiving the documents, the affected Party has a three month period to express its opinion. With other transboundary situations, the specific procedures set in the SEA Decree are followed.
Romania	Transboundary consultations are within the responsibility of the authority proposing the plan or programme. Timeframes are established on a case-by-case basis. There are no bilateral SEA agreements, however, the Ministry of Foreign Affairs, in its role as the central public authority managing Romanian foreign relations, supports the central public authority promoting the plan/programme and makes the necessary arrangements for transboundary consultation.
Slovenia	Information is sent in advance but consultations start after the environmental report is sent.
Slovakia	Established timeframes within which the Ministry for Environment is to send information to the affected Party: to send notification 7 days following receipt from plan proponent that a plan or program may potentially have transboundary impacts; and to send documentation and final reports post decision, within 14 days of their issue.

Annex 2: References

Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment

Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment

European Union (2013), Guidance on the Application of the Environmental Impact Assessment Procedure for Large-scale Transboundary Projects

European Union (2016) Study concerning the preparation of the report on the application and effectiveness of the SEA Directive (Directive 2001/42/EC) final study

Member States' summaries on the implementation of the SEA Directive
http://ec.europa.eu/environment/eia/member_states_summaries.htm

Multilateral Agreement among the Countries of South-eastern Europe for Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (Bucharest Agreement, 2008)

PAP/RAC (2017), Synthetic Note on the status of implementation of the Protocol on Integrated Coastal Zone Management in the Mediterranean

Protocol on Strategic Environmental Assessment, done at Kyiv, on 21 May 2003

Status of Progress in the Implementation of the Barcelona Convention and its Protocols: Analysis of the Information Contained in the National Implementation Reports for the 2014-2015 Biennium (last updated in July 2018)

UNECE (2006), Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7)

UNECE (2006), Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8)

UNECE (2009), Guidance on notification according to the Espoo Convention (ECE/MP.EIA/12)

UNECE (2015), Good practice Recommendations on Public Participation in Strategic Environmental Assessment (ECE/MP.PP/10 - ECE/MP.EIA/SEA/5)

UNECE (2017) Implementation of the Convention on Environmental Impact Assessment in a Transboundary Context 2013-2015: Fifth review (ECE/MP.EIA/25)

UNECE (2017), Second review of implementation of the Protocol on Strategic Environmental Assessment 2013-2015 (ECE/MP.EIA/SEA/9)

UNECE (2019), Revised Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries (ECE/MP.EIA/2019/12)

UNECE and European Union (2018), Application of the Protocol on Strategic Environmental Assessment: manual for trainers

United Nations Environment Programme Mediterranean Action Plan (2011), Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols