



“Espoo” Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment

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United Nations Economic Commission for Europe (UNECE)

BBNJ workshop on Environmental Impact Assessments and Strategic Environmental Assessments in areas beyond national jurisdiction

Brussels, 28 January 2020



UNECE



Overview

ENVIRONMENT



- UNECE & Espoo Convention: Introduction
- Requirements and Procedural Steps
- Experience with application: challenges and solutions
- Short overview of the Protocol on SEA
- Selected benefits & reflections on relevance to BBNJ

UNECE: Over 70 years of cooperation

ENVIRONMENT

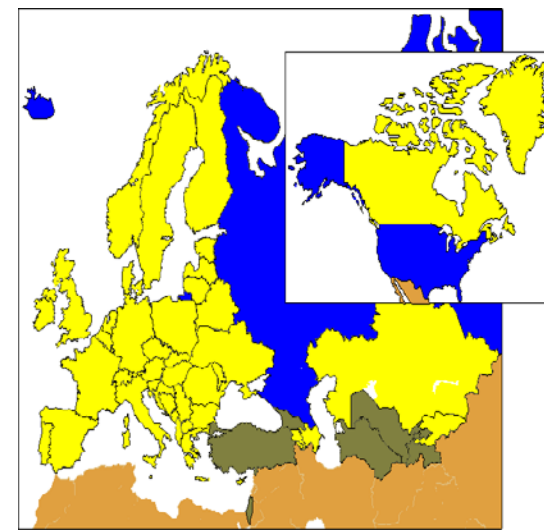


- **Established in 1947** by UN ECOSOC
- One of the 5 UN regional commissions
- **56 member States** (Europe, USA, Canada, Central Asia, Israel, Russia, Turkey) = around 20% of world's population
- Mandate: **facilitate greater economic integration & cooperation in environment, energy + other sectors**, by:
 - **Policy dialogue**
 - **International legal instruments, regulations and norms**
 - **Technical assistance and capacity building**
- The only UN regional commission hosting **17 multilateral environmental instruments** (5 conventions: Aarhus; Espoo; Air Pollution; Industrial Accidents; and Water and their 12 protocols)

UNECE Espoo Convention: Basic facts

ENVIRONMENT

- Negotiated under United Nations Economic Commission for Europe (UNECE)
- Adopted in **Espoo (Finland)** in 1991, in force since 1997
- Amended twice (2001 and 2004 amendments in force since 2014 and 2017)
- Has **45 Parties**, in UNECE region, incl. EU
- **Accession by all UN member States possible once the 1st amendment becomes operational (pending 5 ratifications)**



Espoo Convention's application in UNECE region

ENVIRONMENT



- Routinely applied in Western part of UNECE region, and application elsewhere also developing
- **Bilateral or multilateral agreements considerably help**
- Growth in application:
 - Parties familiar with the process and find it useful
 - Total number of development projects increased
 - “Watchdog” role of NGOs and civil society
 - Vigilance of the Implementation Committee

Espoo Convention objectives (implied)

ENVIRONMENT



- To ensure **environmentally sound and sustainable development**
- To **enhance international co-operation** in assessing environmental impact
- To **prevent, mitigate and monitor** significant adverse **transboundary environmental impact**
- To give explicit **consideration** to environmental factors early in **decision-making** (= precautionary approach, principle of prevention)
- To improve **quality of information** – leading to environmentally sound **decisions**

Preamble, paras. 2, 3, 4, 7

Unique international legal regime on transboundary EIA + a means to implement global commitments

ENVIRONMENT



- **Enshrines principle 19 of Rio Declaration and Agenda 21 (1992)**
 - “States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith”.
- **Codifies an obligation of general international law**
 - “to undertake EIA where there is a risk that a proposed industrial activity may have significant impact in a transboundary context”
Pulp mills on the river Uruguay (Argentina v. Uruguay) International Court of Justice (2010).
- **Together with Protocol on SEA, helps countries to achieve targets under most SDGs**

UNECE Espoo Convention: Scope of application

ENVIRONMENT

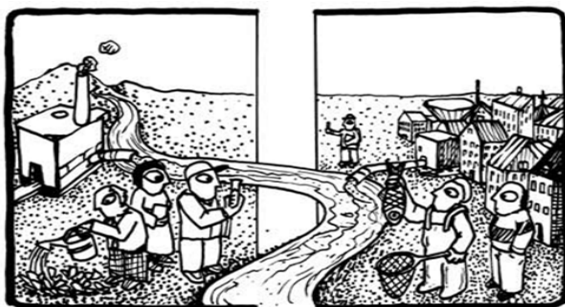


- Applies to:
 - ✓ planned activities with
 - ✓ likely significant adverse environmental impacts (Appendix I, non-Appendix I / further to article 2.5: Appendix III)
 - ✓ across borders

Examples: Power plants&related; cross-boarder infrastructure; water related; mining, waste management; airports; etc.)

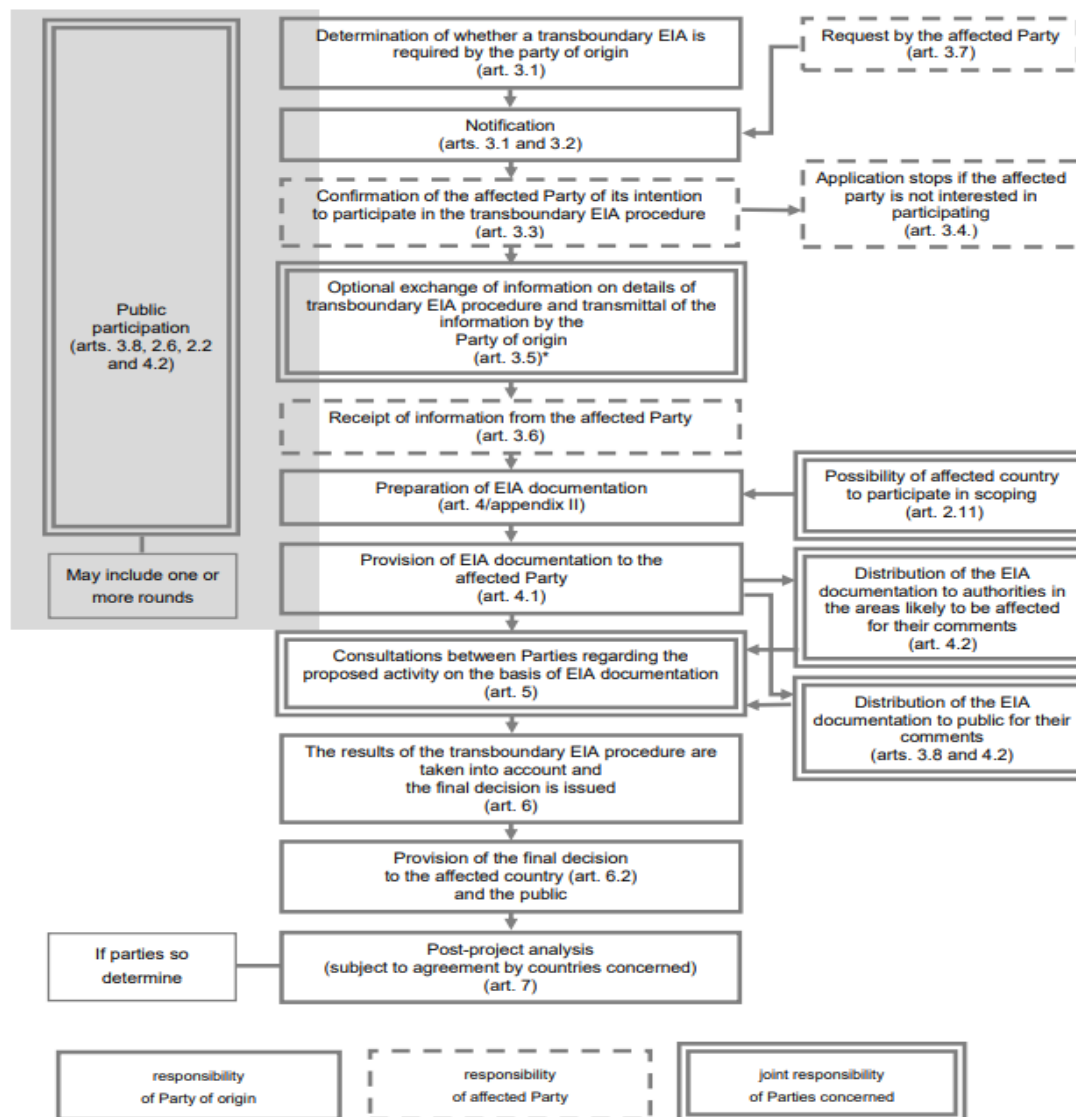
– **mostly inland activities,**

UNECE Espoo Convention: procedural requirements



- Transboundary procedure applies between the Party of origin and the Affected Party

Espoo Convention



Abbreviation: EIA = environmental impact assessment.
 * Although art. 3.5 of the Convention does not require Parties to exchange information on the details of the environmental impact assessment procedure, such an exchange has proven useful for the practical implementation of the transboundary procedure.

Determination of whether transboundary EIA is required = “Screening”

ENVIRONMENT

- By a Party of origin
- For a “proposed/planned activity” (art 1 (v))=
 - Any (new) activity or major change to an (existing) activity
 - Subject to a decision by a competent authority
 - In accordance with applicable national procedure
- **Listed in appendix I to the Convention AND**
- **Likely to cause significant adverse transboundary environmental impact**
- Even if not in appendix I, activity may still fall under Convention if concerned Parties agree that a significant adverse transboundary impact likely (art. 2.5 and appendix III)

Determination of whether transboundary EIA is required = "Screening"

ENVIRONMENT

Groups of activities listed in Appendix I (indicative):

- Oil refineries
- Thermal & hydro- power plants, wind farms;
- Nuclear related activities (NPPs, enrichment of nuclear fuel, processing and final disposal of radioactive waste, etc);
- Cross-boarder infrastructure: railways, road, motorways, powerlines, oil and gas pipelines;
- Airports
- Waterways, including dams for flood protection; groundwater extraction; waste water plants;
- Mining; waste management (incl. waste water), chemical plants; pulp and paper manufacturing; deforestation

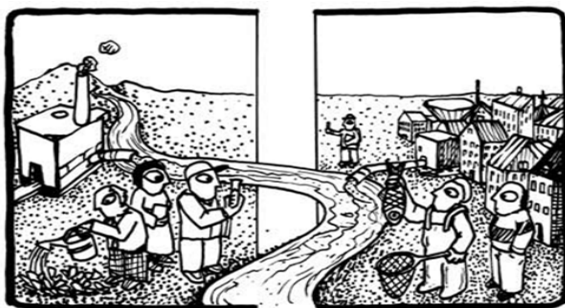
Determination of whether transboundary EIA is required = “Screening”

ENVIRONMENT

- **Likely to cause significant adverse transboundary environmental impact**

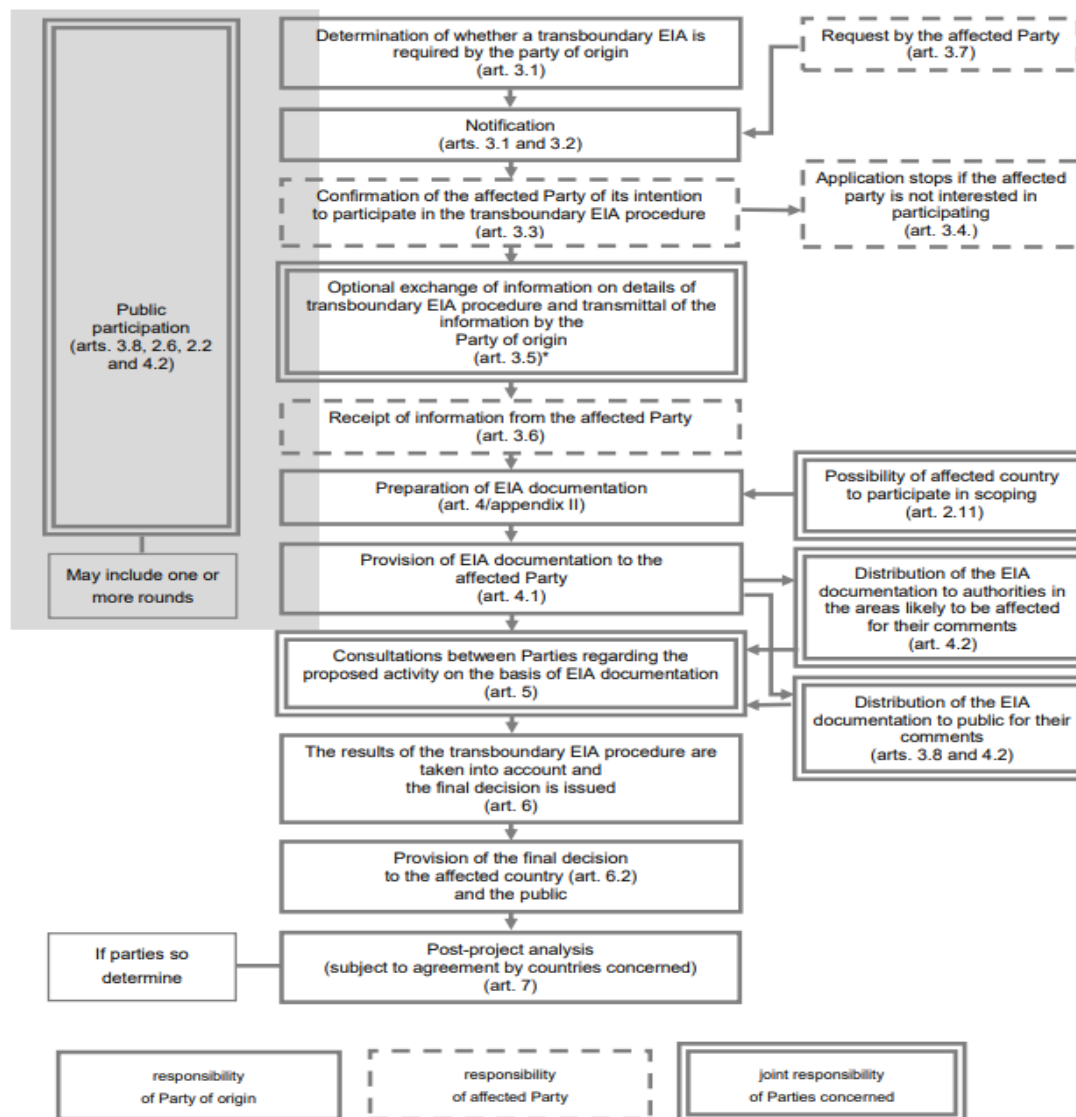
21. “Article 3, paragraph 1, of the Convention stipulates that Parties shall notify any Party of a proposed activity listed in appendix I that is likely to cause a significant adverse transboundary impact. The Committee is of the opinion that, while the Convention’s primary aim, as stipulated in article 2, paragraph 1, is to ‘prevent, reduce and control significant adverse transboundary environmental impact from proposed activities’, even a low likelihood of such an impact should trigger the obligation to notify affected Parties in accordance with article 3. This would be in accordance with the *Guidance on the Practical Application of the Espoo Convention*, paragraph 28, as endorsed by decision III/4 (ECE/MP.EIA/6, annex IV). This means that notification is necessary unless a significant adverse transboundary impact can be excluded” (decision IV/2, annex I, para. 54).

UNECE Espoo Convention: procedural requirements



- Transboundary procedure applies between Parties (governments)

Espoo Convention



Abbreviation: EIA = environmental impact assessment.
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Notification – art. 3

ENVIRONMENT

- **Party of origin must notify** affected Party/Parties, asking for response by a certain date
- **Affected Party must:**
 - Inform own authorities and public
 - Decide whether participate in procedure
 - Respond within deadline, perhaps with comments on and objections to planned activity
- **If negative/no response: End of the Espoo procedure** (but cf. Aarhus)
- **“Exceptional” situation (art.3.7):** If not notified, affected Party can request exchange of information & discussions on likelihood of transboundary impact

Notification – art. 3

ENVIRONMENT

- **Timing (art.3.1): When to notify?**
 - As early as possible (when all options still open)
 - **No later than when informing its own public**
 - Recommendation to involve affected Party in scoping (art 2.11)
 - Preceding informal contacts useful
- **Target: Which countries/whom to notify?**
 - Parties' criteria differ depending on scope; location; distance
 - Neighboring countries/beyond?
 - **Points of contact for notification**
 - Listed on-line – if not nominated, to MFA
 - Unless otherwise provided in bi/multi-lateral agreements

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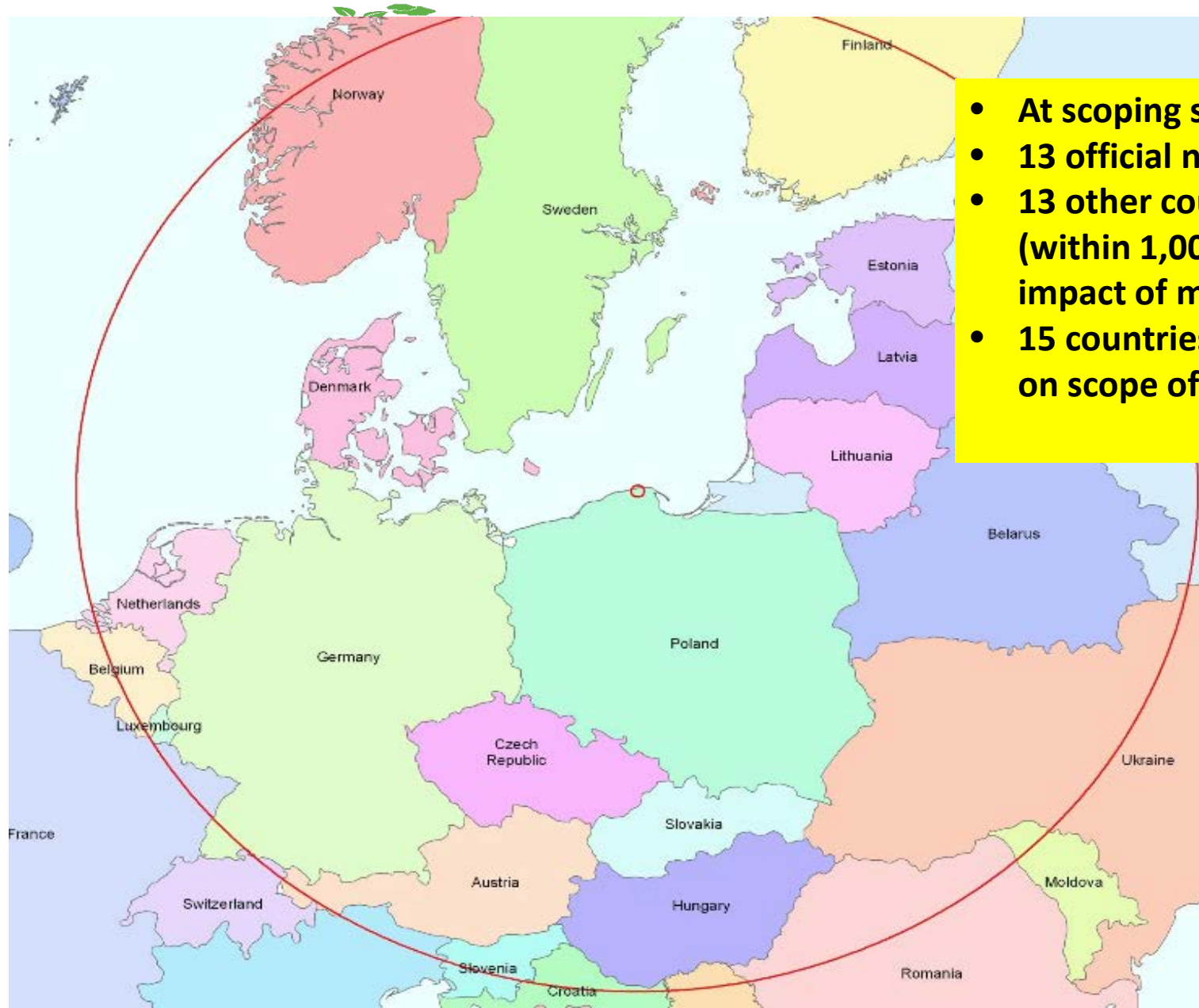
Lithuania, Lituanie, Lietuva

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• **Content**

- **Information in Art. 3.2 on**
 - Proposed activity + its possible transboundary impact
 - Nature of decision
 - Reasonable time frame for response
- Recommended to add **«other information»** on
 - Domestic EIA procedure + timeschedule (art.3.5)
 - Permitting system + decision-making procedure
- **Format** (decision 1/4)
- **Sufficient information + quality to enable decision on participation**

Notification: 1st nuclear power plant in Poland



- **At scoping stage**
- **13 official notifications sent**
- **13 other countries informed (within 1,000 km radius = possible impact of major accident)**
- **15 countries in total commented on scope of Polish EIA report**

Preparation of EIA documentation art. 4 + appendix II

ENVIRONMENT

• **Scoping**

- Non-mandatory but recommended stage
- Useful to allow affected Party to participate (Art.2.11)

• **Content** (Art.4.1 and App.II): Description of

- Proposed activity
 - Alternatives – including no-action
 - Environment likely to be affected
 - Transboundary impact
 - Mitigation measures
 - Methodology
 - Gaps and risks
 - Possible monitoring, post project analysis
- **Prepared by** developer (with help from consultants) and sent for comments + approval by competent authorities

Transmitting EIA documentation and comments to it art. 4.2

ENVIRONMENT

- **Party of origin**
 - Receive **EIA documentation** from developer/proponent
 - Send EIA documentation to affected Party
- **Affected Party** (“concerned countries” together)
 - Distribute EIA documentation to own **authorities** and **public**
 - Arrange for **comments** on EIA documentation, sent directly to Party of origin/ through own competent authority

*Joint
responsibility*

Public participation (art. 2.6, 3.8, 4.2)

ENVIRONMENT

- Public
 - National
 - From affected Party (from areas likely to be affected)
 - Equivalent opportunities (Art.2.6)
- Joint responsibility of Parties concerned! (cf. Belarus-Lithuania)
- Possibility to submit comments (Art.4.2)
 - Directly to competent authority in the Party of origin or
 - Through Party of origin (for example via Point of Contacts)
- Public participation at various stages (see scheme)
- Public must be informed about the final decision and possibilities to appeal

Consultations (art. 5)

ENVIRONMENT

- Carried out between authorities of Po and aP
 - At least in writing, possibly with Q&A sessions or meetings (e.g., expert meetings)
- Without undue delay
- Based on completed and publicly available EIA documentation
- Regarding e.g. further information on:
 - Potential transboundary impact
 - (Nuclear safety issues)
 - Measures to reduce or eliminate impact
 - Possible alternatives
 - Monitoring
- Prior agreement on organizational aspects and reasonable timeframe
 - Usually 1-2 months, in complex cases up to 6 months
 - Consultation meetings, 1 day; costs (venue, interpretation) usually paid by Party of origin
- Through appropriate body if one exists



- Issued by governmental authorities
- Content - Art.6.1
 - Due account taken of the outcome of the procedure
 - EIA documentation
 - Comments from the public and authorities (equal treatment, irrespective of national boundaries)
 - Consultations under Art.5
 - Reasons and considerations on which the decision is based
 - (When many comments, decision-making can take longer)
- Must be provided
 - to the affected Party (Art.6.2)
 - its authorities and the public

Post project analysis

ENVIRONMENT

- Non mandatory activity
 - If Party requests, determination whether and what extent to be carried out
- Objectives - Appendix V
 - Must analyse as a min. activity and its impact
 - If unexpected results, consultations on necessary measures
- May be conducted jointly on territories of both Parties
- Guidance on post project analysis (ECE/MP.EIA/8)
- **Good practice: Agreeing on monitoring and reporting mechanisms during consultations**

Espoo Convention: Challenges (based on findings of reviews of implementation)

ENVIRONMENT



- Social, economic, cultural differences between Parties
- National implementation varies
- Diversity of legal & practical approaches
 - ✓ Western concept vs. OVOS/State expertise system
- Uncertainty about: time frames for procedural steps (delays), translation of documentation, cost sharing; procedure for consultations
- Differences in Parties definitions of and approach to key terms (such as impact; transboundary impact; significance of the impact; major change; final decision (identification/ receipt))
- Procedural challenges: Late involvement or failure to meet deadlines; limited access to information; insufficient quality of the information (translation/interpretation)

Espoo Convention: Challenges

ENVIRONMENT



- Difficulty in identifying whom to notify and ensure receipt (in particular for Federal States)
- Challenging project types: Joint projects & Nuclear projects
- Challenges related to public participation
 - ✓ Legislation and practice on public involvement vary;
 - ✓ Frequent lack of definition of «the public»;
 - ✓ Late public involvement;
 - ✓ Limited access to (understandable) information;
 - ✓ Quality of the information;
 - ✓ Limited or “overwhelming” public interest

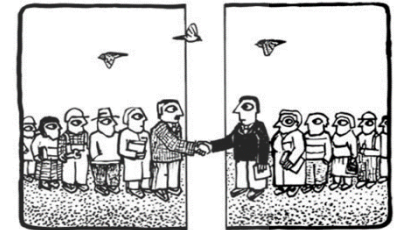
Espoo Convention: Solutions

ENVIRONMENT



Many practical difficulties can be overcome through better awareness & cooperation between Parties e.g. through

- **Bilateral or multilateral agreements or other arrangements** (art. 8, appendix VI), e.g. joint bilateral/multilateral bodies
- Exchanges between **national focal points**
- Information through reporting
- Sharing of good practice (seminars, sub-regional workshops, guidance)
- Assistance oriented review of compliance (Implementation Committee)
- Technical assistance & Capacity building (pilots etc)



application of the Convention & relevance to BBNJ

ENVIRONMENT



Geographical coverage

- Espoo convention transboundary procedure - between Parties concerned (Party of Origin and Affected Party):

"Transboundary impact" means

- ***any impact, not exclusively of a global nature, within **an area** under the 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**;*

In terms of UNCLOS the Espoo Convention covers:

- Territorial sea, exclusive economic zone, continental shelf, but
- NOT the Area and High Seas – areas beyond national jurisdiction

application of the Convention & relevance to BBNJ

ENVIRONMENT



Scope of application

BBNJ art 24: Thresholds and criteria for environmental impact assessment

- Appendix I of the Espoo Convention – limited application to marine related activities
 - offshore hydrocarbon production. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 metric tons/day in cases of petroleum and 500 000 cubic meters/day in the case of gas

Difficult to determine further relevance – scope of application of the new agreement under consideration?

- only activities carried out at the Area and High seas?
- or also activities carried out at the continental shelf and inland that have significant impact on the marine environment of ABNJ?

-

Application of the Convention & relevance to BBNJ



ENVIRONMENT

- Transboundary procedures established and experience gained under the Espoo Convention are highly relevant for the new instrument (**BBNJ art. 30 – 39**)

Selected examples:

- Early notification;
- Early clarification of final decision
- Sufficient time for consultations;
- Division of responsibilities for consultations (Party of origin, Affected Party not developer)

+ Relevant definitions:

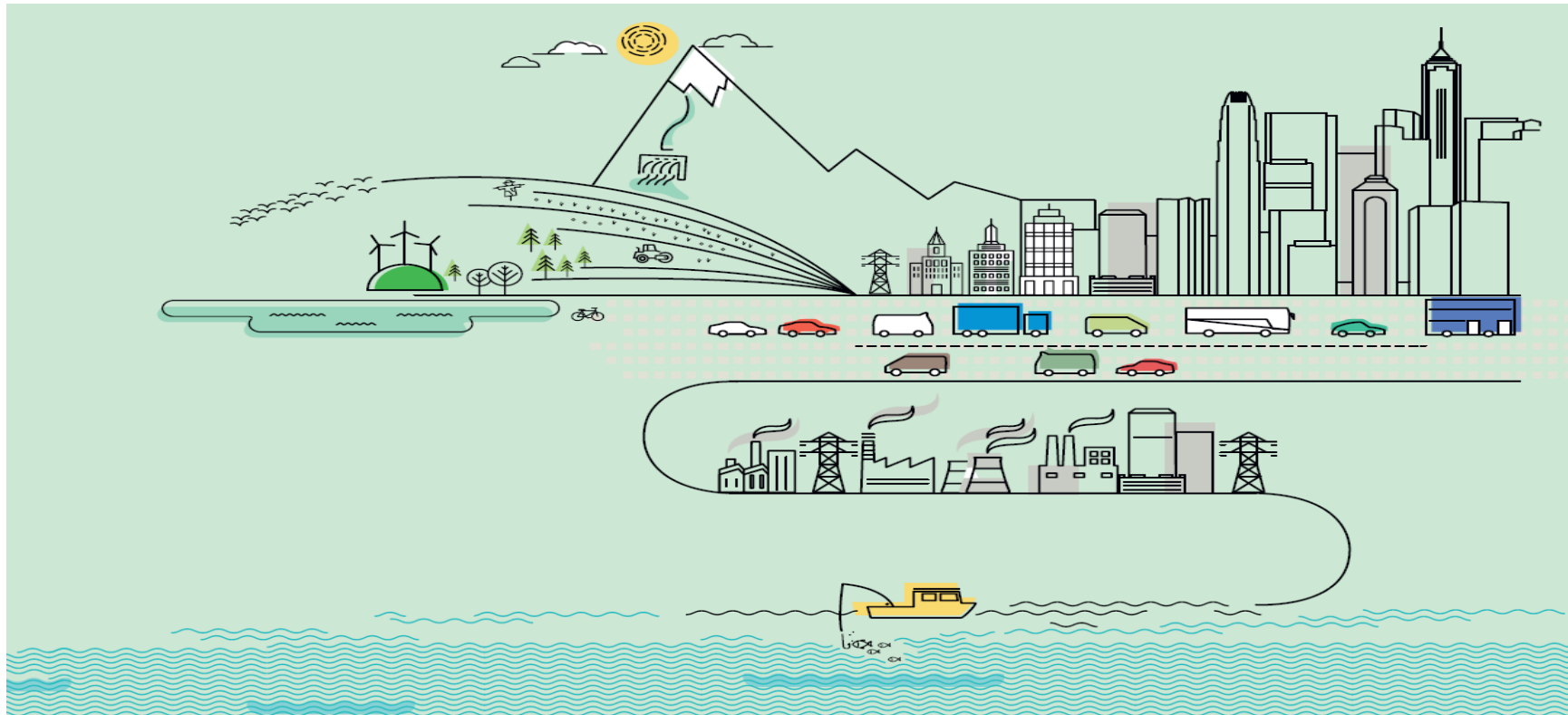
- **BBNJ**: use of terms Impact / Effect?

- Espoo Convention as a future global instrument => harmonized national procedures enhancing procedures for inter-state consultations:

Parties should take necessary legal, administrative or other measures to implement the provisions of the Convention including the establishment of an EIA procedure that permits public participation and preparation of EIA documentation

PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT

to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)



Protocol on SEA: Basic facts

ENVIRONMENT

- Protocol on SEA to the Espoo Convention
- Adopted in Kyiv, 2003, in force since 2010
- Has now 33 Parties, in UNECE region, including EU
- Open to all United Nations Member States
- Applies to public plans & programmes at national level or with likely transboundary impacts + to policies and legislation, as appropriate
- Similar to EU SEA Directive but with stronger emphasis on health and public participation



APPLICABILITY OF THE PROTOCOL ON SEA

article 4

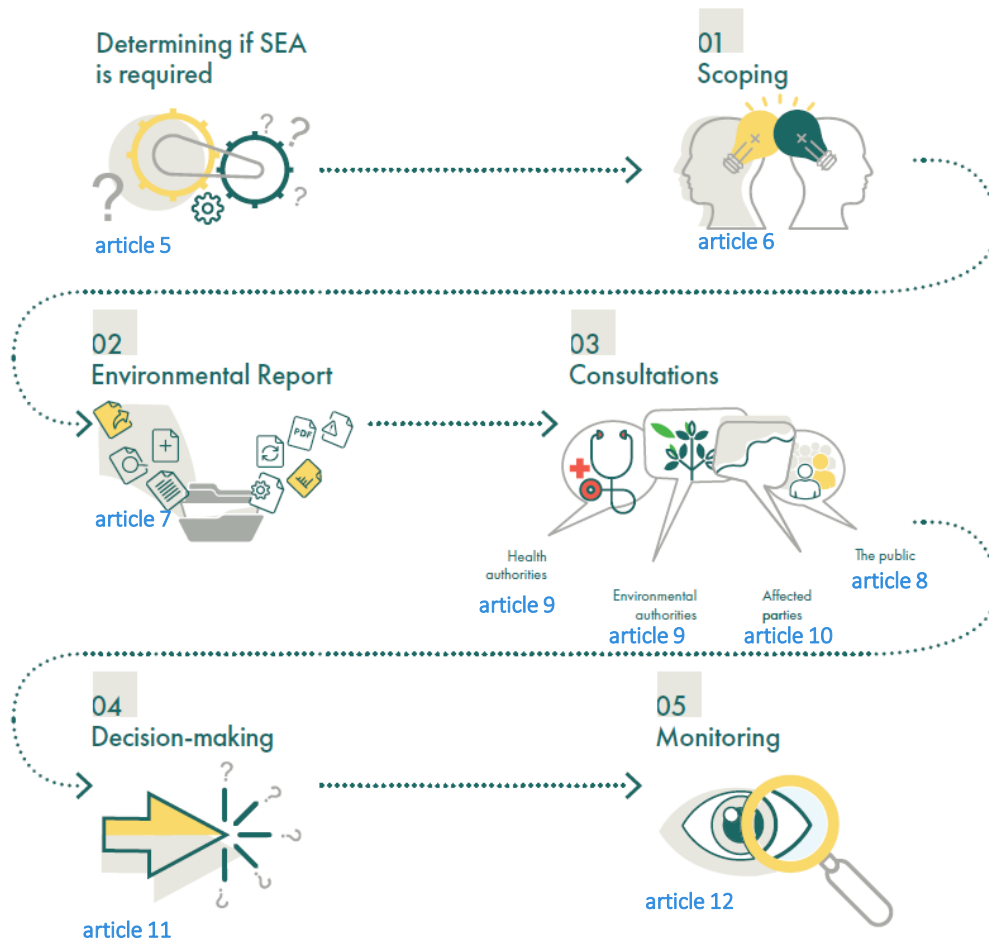
Applicable to “Plans and programmes” and any modifications to them that are:

- (a) Required by legislative, regulatory or administrative provisions; and
- (b) Subject to preparation and/or adoption by an authority or prepared by an authority for adoption, through a formal procedure, by a parliament or a government.



PROCEDURE SET BY THE PROTOCOL ON SEA

mainstreams environmental and health considerations into development planning and policy making



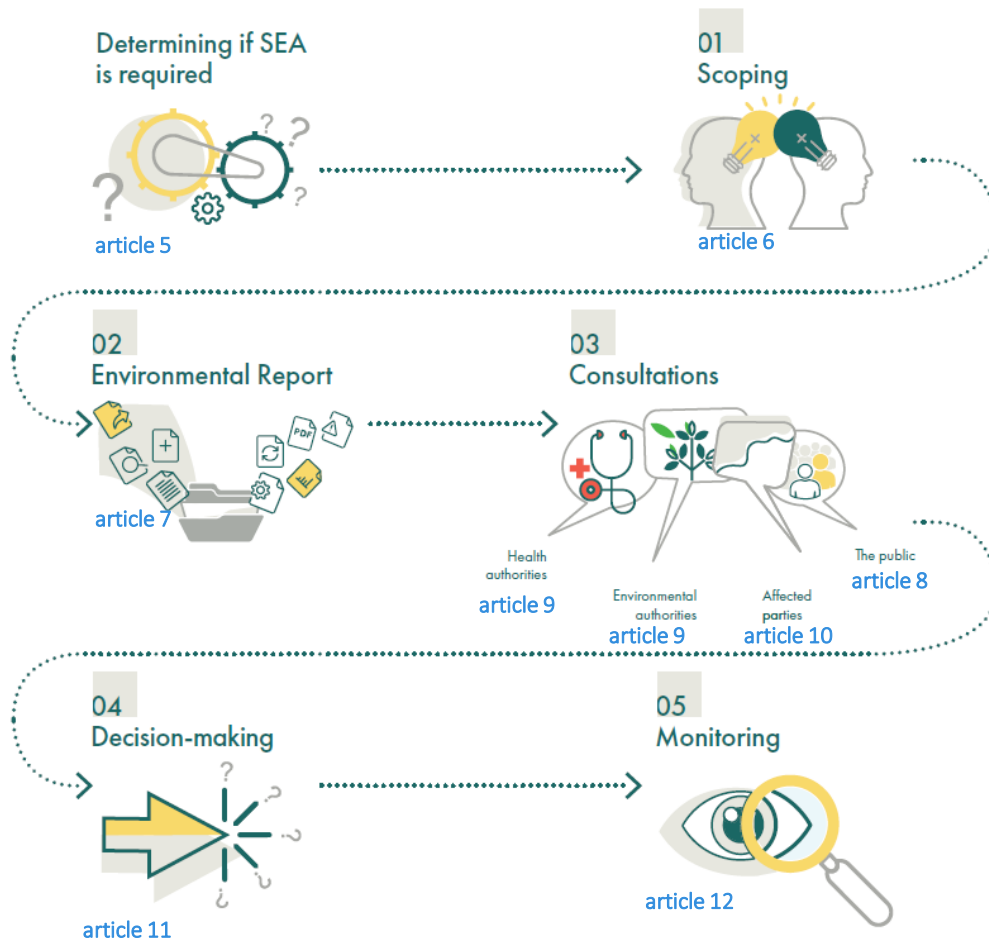
SEA IS OBLIGATORY FOR PLANS AND PROGRAMMES IN:

- Agriculture
- Forestry
- Fisheries
- Energy
- Industry, including mining
- Transport
- Regional development
- Waste management
- Water management
- Telecommunications
- Tourism
- Town and country planning
- Land use

which set the framework for future development consent for projects listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation.

PROCEDURE SET BY THE PROTOCOL ON SEA

mainstreams environmental and health considerations into development planning and policy making



SEA IS OBLIGATORY FOR PLANS AND PROGRAMMES IN:

- Agriculture
- Forestry
- Fisheries
- Energy
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- Transport
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- Waste management
- Water management
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article 4

Two types of plans and programmes are exempt from the application of SEA:

- Plans and programmes exclusively serving national defence and civil emergencies (Article 4.5)
- Purely financial or budgetary plans and programmes (Article 4.5).

The Protocol on SEA applies to plans and programmes prepared by public authorities at national and local levels. It is not applicable to already existing strategic documents that were adopted by a country before it joined the Protocol but only to proposed new plans and programmes.

Relevance of the Protocol to BBNJ

ENVIRONMENT



(Article 28 of BBNJ)

Scope of application of the Protocol to BBNJ – not clear, no definition of plans/programmes/strategic documents

Procedure – same as EIA?

Protocol – global instrument providing a potential basis for a global regulatory framework on SEA and therefore a basis globally consistent standards for SEA

Each Party shall take the necessary legislative, regulatory and other appropriate measures to implement the provisions of this Protocol within a clear, transparent framework.(art.3.1.) -> **harmonisation of national legislative frameworks**

Allows addressing cumulative effects (act. 7.2. annex IV) **(article 25 of BBNJ)**

Selected benefit of both instruments & additional reflections on relevance to BBNJ

ENVIRONMENT



- Provide **common framework** for discussing planned developments + **cooperating** with other States (binding but flexible, simple procedures, guidance + assistance available, NFP networks, “Espoo family”)
 - + **BBNJ art. 21 bis**: Achieve a coherent environmental impact assessment framework for activities in areas beyond national jurisdiction
 - + **BBNJ definition of SEA** is similar to the one in the Protocol

Selected benefit of both instruments & additional reflections on relevance to BBNJ



ENVIRONMENT

- **Confidentiality respected:** not prejudicial to industrial & commercial secrecy or national security
 - **BBNJ:** proposal to art 34(5): second sentence refers to non-disclosure non-public information or information that would undermine intellectual property rights
- **Reciprocity:** other Parties obliged to notify & consult your country
- **Sovereignty is retained:** decision-making power remains in country where the development is planned
 - **BBNJ:** *Marine biodiversity in ABNJ = common good - common heritage of mankind*
 - **BBNJ:** *Who should hold final decision making power?*
 - *alternatives: State Party / Conference of the Parties based on the recommendation of Scientific and Technical body*

Selected benefit of both instruments & additional reflections on relevance to BBNJ

ENVIRONMENT



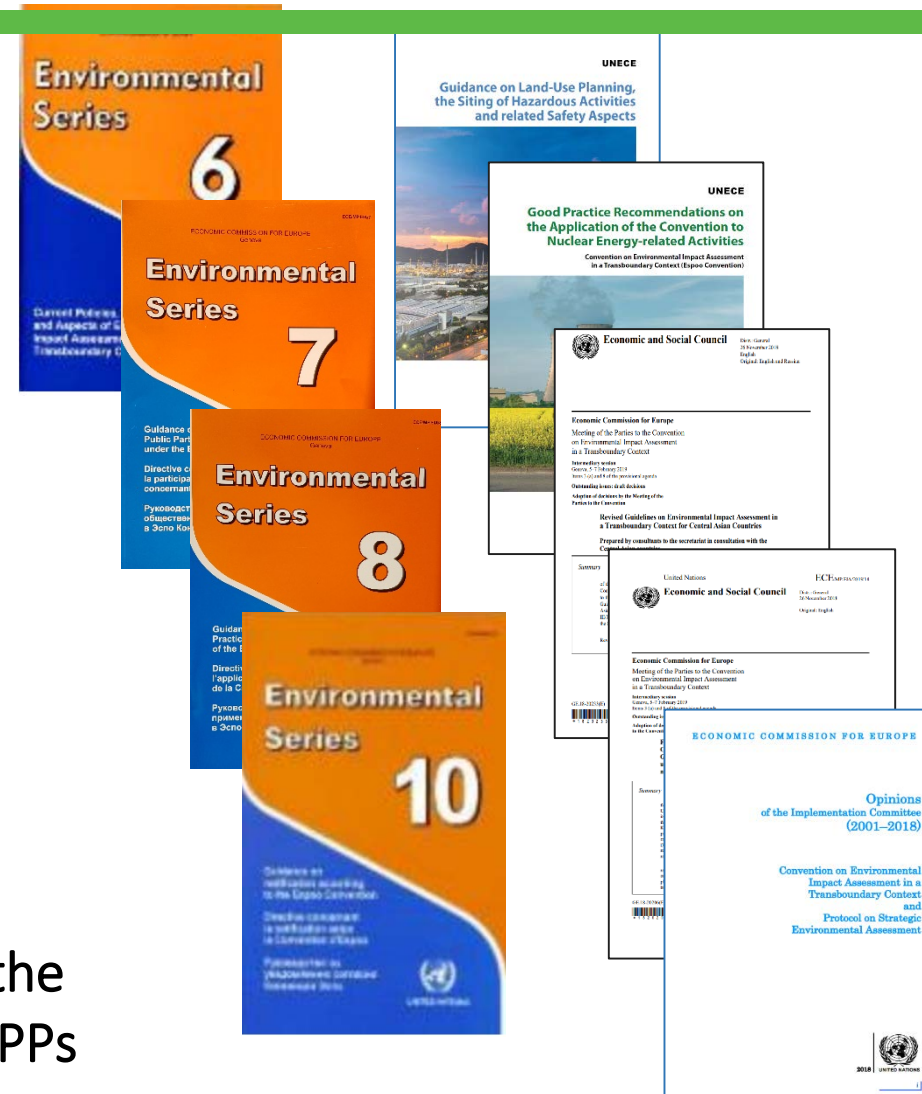
- Enhances **governance**: transparency, participation, ownership, democracy
 - **BBNJ: article 34(3)**, but who should be consulted? who is responsible for consultations? by what means? how to take comments into account?
- **Better environmental protection**: impacts avoided/reduced by mitigation/compensatory measures/revising project design/re-siting
 - **BBNJ**: Who holds final decision making power?
- **Better planning**: improved project design, better alternatives, higher env. standards + credibility, **costly mistakes reduced/avoided**
 - **BBNJ??**
- **Decision-making better-informed & more objective**, helps better govern future project operation, **decisions better understood + accepted**

Espoo Convention: Resources



ENVIRONMENT

- Text of the Convention
- Guidelines adopted by the Meeting of the Parties
- Reviews of Implementation
- Decisions on review of Compliance
- Opinions of the Committee
- Findings and recommendations of the Committee on specific matters
- Good practice recommendations on application of the Convention to Nuclear related activities
- Upcoming Guidance on the applicability the Convention to the lifetime extension of NPPs



Protocol resource materials

ENVIRONMENT

- Protocol on SEA: Facts and Benefits (Good Practice Recommendations on Public Participation in SEA)
- Resource Manual to Support Application of the SEA Protocol + Simplified Resource Manual
- Reviews of implementation and national reports
 - http://www.unece.org/env/eia/implementation/review_implementation.html
 - Opinions of the Implementation Committee (2001-2017)
http://www.unece.org/env/eia/implementation/implementation_committee.html
- Decisions by the Meetings of the Parties
- Upcoming Guidance on assessment of potential health impacts of plans and programmes and for the involvement of health authorities in SEA





Thank you

More information from:

www.unece.org/env/eia/welcome.html

E-mail: eia.conv@un.org

