



Chapter A6: Policies and legislation

Resource Manual to Support
Application of the UNECE Protocol on
Strategic Environmental Assessment

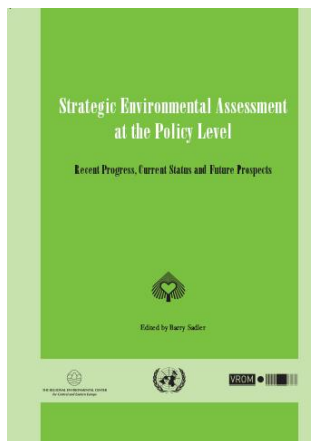
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Protocol on SEA

- Introduction
 - Legal obligations
 - What are policies and legislation?
 - Guidance
- Possible approaches



- Protocol's article 13 on policies & legislation
- Emphasis on applying 'principles & elements' of the Protocol, rather than SEA process similar to that for plans & programmes
- See also *Strategic Environmental Assessment at the Policy Level – Recent progress, current status and future prospects*, edited by Barry Sadler & prepared by the REC on behalf of the Czech Ministry of Environment, as additional information to the Manual



- Article 13 – Policies and legislation
 1. Each Party shall **endeavour** to ensure that environmental, including health, concerns are **considered and integrated** to the extent appropriate in the preparation of its proposals for policies and legislation that are likely to have significant effects on the environment, including health.
 2. In applying paragraph 1, each Party shall consider the appropriate **principles and elements** of this Protocol.
 3. Each Party shall determine, where appropriate, the **practical arrangements** for the consideration and integration of environmental, including health, concerns in accordance with paragraph 1, taking into account the need for **transparency in decision-making**.
 4. Each Party shall report to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol on its application of this article.



What are policies and legislation?

DRAFT

- No definition of ‘policies and legislation’
- Policies generally considered strategic proposals at higher or more general level than plans & programmes
- Oxford English Dictionary definitions:
 - policy: “principle or course of action adopted or proposed as desirable, advantageous or expedient; [especially] one formally advocated by a government, political party, etc.”
 - legislation: “enactments of a legislator or legislature”
- Policies & legislation subject to article 13:
 - those likely to have significant environmental effects



Protocol on SEA



- How can environmental concerns be considered & integrated in preparation of proposals for policies & legislation?
- Protocol provides little information
- But potential for furthering sustainable development is substantial when environmental concerns considered & integrated into decision-making at these more strategic levels
- Lack of a clear process means opportunities for innovative & imaginative approaches
- Flexibility essential as individual policies & legislation very different
- Exciting & challenging area of work with great potential!



- Consideration & integration of environmental concerns generally take different forms in preparation of proposals for (a) policies and (b) legislation
- Policy might undergo form of SEA as part of process of development (incl. assessment of environmental effects, consideration of alternatives, public consultation)
 - not usually applicable in legislative context, because proposals for laws considered & debated under prescribed Parliamentary / other legislative procedures
 - environmental matters might be discussed during such procedures, but formal assessment of type envisaged under Protocol normally has to take place before proposed law presented to legislature
 - parallel with Protocol's provisions on plans or programmes that are adopted "through a formal procedure by a parliament or government", where SEA takes place before finalized plan or programme submitted to formal procedure leading to adoption
- See links on website



- Issues discussed:
 - Development of experience
 - Features & elements
 - Practical matters
 - Advisory service
 - Integration
 - Transparency
 - Guiding principles
 - Aarhus Convention



- Lack of strict requirement for SEA of policies & legislation
- Gives Parties opportunity to approach consideration & integration of the environment in policies & legislation more flexibly:
 - undertaking pilot studies
 - gradually developing experience & skills
- Parties might first consider only those policies & legislation with clear potential to have significant (positive or negative) environmental effects
- Strict definition of field of application & of significance criteria might be developed later



- **Key features** of the ‘consideration & integration’ process apparent in Protocol
 - need to integrate (art. 1(b) and art. 1(e))
 - need to ensure transparency (art. 13.3)
- Other **elements** to be considered might be those in articles 4 to 12 for plans & programmes (i.e. ‘principles & elements’ in art. 13.2):
 - Field of application & determination of significant effects
 - Scoping & environmental report
 - Public participation, consultation with environmental & health authorities, & transboundary consultations
 - Decision-making
 - Monitoring



- Elements need not occur in a strict sequence
 - may be much iteration, returning to earlier elements
 - elements may merge or overlap
- Information gathering at higher & more broad-brush level
- Any prediction & evaluation of effects less precise
- Some existing SEA-like processes for policies & legislation discourage production of separate environmental report
 - findings of SEA instead incorporated into existing documentation that follows policy / legislation through its development
 - support documentation might be available to the public



- Parties might wish to set up ‘advisory service’ / ‘help desk’ to support application of Protocol to policies & legislation
- Might be provided by
 - environment ministry
 - prime minister’s office
 - finance ministry
 - some other central department
 - some combination of these



- **Integration** requires early initiation of ‘consideration & integration’ process in policy- / legislation-making process
- Starting point: combination of objectives of policy / legislation with wider environmental objectives?
- Integration may be made more effective by:
 - Starting early, before any irreversible decisions made
 - Including strong voice on environment within group developing policy / legislation
 - Agreeing within group & with decision-makers how to use process, including any environmental assessment
 - Tailoring ‘consideration & integration’ process to fit policy- / legislation-making process & its timetable
 - Using principles & elements of environmental assessment to enhance discussion of environmental concerns
 - Promoting transparency to provide support for integration of environmental concerns



- **Transparency** may be achieved by various means, e.g.
 - Public information on outcome & reasoning (i.e. why policy / legislation adopted, taking environmental concerns into consideration)
 - Public information at earlier stages of policy- / legislation-making process or ‘consideration & integration’ process, including notification that process is beginning / has begun
 - Early consultation with environmental & health authorities on results of assessment of possible environmental effects of policy / legislation
 - Early public participation, involving not only relevant NGOs, but also wider public (& other Parties to the Protocol when appropriate)



- Guiding principles
 - Early integration
 - Examine alternatives
 - Flexibility
 - Self assessment
 - Appropriate level of analysis
 - Accountability
 - Use of existing mechanisms



- For Parties that are also Parties to Aarhus Convention:
 - Public participation provided for in Aarhus Convention
 - Article 7 (Public participation concerning plans, programmes & policies relating to the environment)
 - Article 8 (Public participation during preparation of executive regulations and/or generally applicable legally binding normative instruments)



- Article 7 (Public participation concerning plans, programmes and policies relating to the environment)
 - ... *To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.*



- Article 8 (Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments)
 - *Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.*
 - *To this end, the following steps should be taken:*
 - a) *Time-frames sufficient for effective participation should be fixed;*
 - b) *Draft rules should be published or otherwise made publicly available; and*
 - c) *The public should be given the opportunity to comment, directly or through representative consultative bodies.*
 - *The result of the public participation shall be taken into account as far as possible.*



- Article 8 might be interpreted as an:
 - obligation to strive to provide public participation during preparation of legislation (etc.), while options still open,
 - by setting up basic procedural framework including
 - time limits
 - notification
 - opportunity for commenting
 - by taking resulting comments into account as far as possible

