

EIA Training Resource Manual for South Eastern Europe

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*Elaborated within the REReP 1.4 project
EIA Capacity-Building in South Eastern Europe*

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THE REGIONAL ENVIRONMENTAL CENTER
for Central and Eastern Europe



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The Regional Environmental Center for Central and Eastern Europe (REC) is a non-partisan, non-advocacy, not-for-profit international organisation with a mission to assist in solving environmental problems in Central and Eastern Europe (CEE). The center fulfils this mission by promoting cooperation among non-governmental organisations, governments, businesses and other environmental stakeholders, and by supporting the free exchange of information and public participation in environmental decision-making.

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Introduction

This manual is based on the training framework contained in the UNEP EIA Training Resource Manual, which was published in 1996 and revised in 2002. The UNEP Manual comprises a generic “tool kit for EIA capacity development” in developing and transitional countries that can be customised to meet the special needs of a particular region or country.

In this case, the focus is on SEE countries involved in the Stabilisation and Association process (SAP). The manual is designed for specific application in Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia and Montenegro, including Kosovo (territory under UN interim administration). It has been prepared to strengthen the EIA capabilities of a number of target groups. These include EIA-competent authorities, environmental inspectorates, developers, environmental consultancies, non-governmental organisations and other interested institutions and individuals.

The manual can be used as a basis for organising regional and national capacity-building programmes. It provides relevant materials that have been developed with advice and input from EIA administrators and other key stakeholder groups in the countries concerned. These materials can be easily adapted to the needs of specific countries and used in national workshops and training activities for various stakeholders. Thus various parts of the manual can be further modified to the needs of the audience, the nature of the event, the level of EIA development and other factors.

Overall Context of the Project

The Stabilisation and Association Process

The Stabilisation and Association Process (SAP) is a policy framework to support the efforts of five countries of South Eastern Europe (SEE) toward eventual entry into the European Union. It is an opening strategy for Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia, Serbia and Montenegro, including Kosovo (territory under UN interim administration) to become familiarised with European values, principles and standards. This process is similar to the accession process now nearing completion in Central and Eastern Europe.

The 2003 edition of the European Commission's Annual Report on the Stabilisation and Association

Process for South Eastern Europe indicates that the above countries continue to make gradual progress in reforms that will pave the way to closer integration with Europe. However, shortcomings and slow progress in the reform process are evident in many sectors, and implementation is poor in all countries. Further transition, development and European integration will require the genuine political will and commitment of the countries themselves.

The Regional Environmental Reconstruction Programme for SEE (REReP)

Recent conflict and political instability has left SEE with a particular legacy of environmental problems that require strong regional collaboration. REReP was established in response to this challenge. Because of its political neutrality, this programme provides a unique platform for building trust and confidence to address trans-boundary environmental issues.

Ministers of Environment from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYR Macedonia and Romania endorsed REReP in March 2000 within the framework of the Stability Pact for SEE. Thus environmental problems were taken into account from the very beginning of the overall reconstruction process. The ministers also agreed on the “List of Immediate Project Priorities for the Implementation of REReP.” Serbia and Montenegro joined REReP following the political changes in 2001.

The REReP mechanism was reviewed and adjusted in September 2001 to ensure a link between environmental reconstruction and the Stabilisation and Association Process in SEE. Thus the REReP process in SEE combined SAP objectives for fostering lasting peace, prosperity and stability in the region with harmonisation of environmental policies, institutions and standards in SEE countries with those of the EU. A complementary link to the EU accession process in candidate countries was established through the participation of Bulgaria and Romania.

The implementation of priority REReP projects was supported by the European Commission and the governments of the Czech Republic, Denmark, Germany, Italy, the Netherlands, Norway, Switzerland and the United States.

The Capacity-Building Project for Environmental Assessment in SEE

REReP's regional project titled "Capacity Building for Environmental Assessment in SEE" (hereinafter REReP 1.4) was implemented in Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia, Serbia and Montenegro, including Kosovo (territory under UN interim administration). Croatia also participated in the regional activities offered through the project, but focused all national activities on strategic environmental assessment. The entire project was carried out in the period from August 2001 to August 2003 and was financed by the European Commission (See: http://europa.eu.int/comm/europeaid/projects/index_en.htm) through its Obnova and Phare Programmes.

Initiation of REReP 1.4 was correlated with the beginning of major reforms of institutional and legal systems for EIA in SEE countries (see the "Current Reforms" section for details). While reforms vary in details, their common feature is the serious attention given to several international points of reference for the development of EIA systems in the region. The immediate priority of all project countries is to achieve full compliance with the EC EIA Directive. Their common long-term objective is to ratify or accede to the UNECE Espoo Convention and UNECE convention on Access to Information, Public Participation in Decision Making,

and Access to Justice in Environmental Matters (Aarhus Convention). Some elements of reforms (e.g. scoping) are partly influenced by EIA procedures of two major international lenders, the World Bank and EBRD.

Building on these developments, REReP 1.4 focused on training for the practical implementation of proposed EIA legal reforms. Specifically, the training resource manual focuses on the development of EIA process-management skills (e.g. EIA project management, conduct of screening, scoping or review) where skills were acknowledged to be relatively weak. For example, in a number of SEE countries, the decision-makers remarked that they would need more information and practical training on existing review systems of an EIA report. By contrast, knowledge of technical aspects of EIA (e.g. impact identification and mitigation) is much stronger in SEE countries.

The most important features of the entire project were the working exchanges and levels of cooperation among the participants from different countries. Representatives of national environmental authorities took part in all stages of project implementation from agenda setting to evaluation, and there was a considerable level of mutual assistance, support and cooperation among EIA trainers from various countries. This is the most impressive legacy of the project: it may also be the most enduring.

Current Reforms of EIA Systems in South Eastern Europe

Status as of June, 2003

This chapter provides a summary of EIA requirements and procedures in SEE countries prepared on the basis of the comparative analysis table and national reports from Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia, Serbia and Montenegro, including, Kosovo (territory under UN interim administration). It describes existing and proposed policy provisions and requirements for public involvement, screening, scoping, review and monitoring. In addition, it focuses on the accreditation of experts and companies, which was one of the recurring issues in the debates over the establishment of EIA systems in the SEE region.

Existing and Planned Policy Provisions

All SEE countries are in the process of aligning their EIA systems in accordance with EC requirements.

New national environmental framework laws with EIA provisions were adopted in 2003 in Albania, Kosovo & Bosnia and Herzegovina. The Federation of Bosnia and Herzegovina did the same in 2003 while the Republika Srpska did this in 2002. These countries are in the process of developing secondary EIA legislation. Albania also passed a new EIA law in 2003.

The proposed Serbian Environmental Law on the System of Environmental Protection (hereinafter Environmental Protection Law) lays down basic EIA provisions and has been submitted for approval by Parliament (May 2002). The subsequent EIA Regulation, which lays down detailed EIA procedures, is currently under review. Montenegro initiated reforms to the EIA Act in 2003.

FYR Macedonia is in the process of drafting the Framework Environmental Law, which will provide a future basis for an EIA system.

Croatia already has well-established environmental legislation and practices that apply to EIA. First introduced in 1980, EIA procedure was revised by the Law on Environmental Protection (1994) and now faces amendment in order to bring the EIA legislation in line with the EC EIA Directive.

Ongoing legislative efforts in SEE countries are supported by various institutional strengthening programmes offered inter alia by REReP, the European

Agency for Reconstruction (EAR), the Mediterranean Technical Assistance Program (METAP), the World Bank and other EC assistance projects.

However, as shown by the experience of other Central and Eastern European countries soon to gain EU membership, the transposition of EC legislation is a much simpler exercise than the actual implementation of new requirements. The practical implementation of new provisions is likely to reveal many inconsistencies in the newly introduced EIA systems, which may call for further legislative amendments.

Public Involvement

Provisions for public involvement are not yet in full compliance with EC requirements. According to the requirements of the EIA Directive, the public should be involved at least at the review stage of EIA. This requirement is met only by Bosnia and Herzegovina, Kosovo and Croatia.

In Bosnia and Herzegovina, an appropriate ministry is responsible for informing the public, organising a public hearing, if required, and sending received comments to a developer.

Similarly in Kosovo, based on its new environmental protection law, the EIA report has to be available for public review and a hearing.

There are no detailed prescriptions for public involvement in Croatia. However, relevant state agencies; likely affected municipal-, county- or regional authorities; members of the public either affected, likely to be affected or having an interest in the project; and the general public should be consulted at the review stage. A developer has an obligation to describe whether the public has been consulted in the EIA report.

In Montenegro, there are certain provisions for a public hearing at the review stage. However, a public hearing is (a) not obligatory and depends on the decision of the Ministry of Environment and Physical Planning, and (b) it may be organised only for developments that have a potentially significant impact on the environment. In addition, the results of public debate are not binding.

In Albania, consultation with various authorities and institutions is obligatory, but there is no requirement for

public participation at this stage. However, based on current practice, the public most likely to be affected by a particular development is usually consulted at the review stage.

Macedonia and Serbia have no requirements for public involvement at the review stage.

SEE countries have no obligatory provisions for public involvement at other stages of the EIA process. However, it will be changed by the upcoming wave of new environmental legislation, and particularly by secondary legislation on EIA. Provisions of the Aarhus Convention and recent Directive 2003/35/EC (regarding the implementation of the Aarhus Convention) will be incorporated into national systems that will provide an opportunity for improving public participation in EIA. Even so, much remains to be done in this respect.

Screening

A majority of SEE countries currently legislate or propose to legislate provisions for screening in secondary EIA legislation. There is usually no problem in adopting the Annex I list. However, Annex II already poses more difficulty in terms of establishing and/or interpreting case-by-case criteria and thresholds.

Albania, due to the recent adoption of its EIA law (2003), has the most advanced legal transposition of screening requirements established by the EC EIA Directive. The two annexes follow Annex I and Annex II of the Directive, with full EIA required for Annex I projects and partial EIA required for all projects listed in Annex II. However, the complete practical implementation of these legal requirements will require serious capacity-development efforts.

In terms of practice, Croatia has a long tradition of EIA and the most well-established screening system in SEE. The Croatian Rule Book on EIA (2000) has one list of projects (Annex I of the Rule Book on EIA) subject to obligatory EIA, which incorporates many elements of Annex I of the EIA Directive. However, since it was constructed on the basis of a different approach to grouping activities, it is not in full compliance with the EC Directive.

Bosnia and Herzegovina and Kosovo have just passed new environmental protection laws, which include EIA provisions that provide the basis for introducing a screening system based on both Annex I and Annex II. Both countries are still in the process of defining detailed arrangements concerning screening criteria and thresholds.

Serbia's proposed draft Environmental Protection Law, which includes EIA provisions, has been submitted to Parliament (May 2002) and is awaiting approval. A proposed subsequent EIA regulation includes a very comprehensive screening system that fully incorporates Annex I and II of the EC EIA Directive. The proposed

system for discretionary application of EIA based on Annex II seems to be quite complicated, and its practical application may pose some difficulties. The regulation was prepared within the Yugolex project and submitted to the Ministry for Protection of Natural Resources and Environment in mid-June 2003.

Montenegro is just beginning to transpose its EIA legislation in line with EC requirements. It will follow a similar process as Serbia, since the new legislation will be developed within the Yugolex technical assistance programme.

FYR Macedonia is in the process of drafting its own framework environmental law. Chapter XI of this law will include provisions for EIA. Parallel to this, regulations on screening are designed and will follow Annex I and Annex II of the EC EIA Directive.

Scope of EIA Reports

Both Kosovo and Serbia have adopted the content of the EIA report provided in the EIA Directive on an unofficial basis, and for an interim period, until new EIA systems have been set in place. A similar approach has been adopted in FYR Macedonia, which also applies, on a temporary basis, the unofficial scoping guidelines prepared by the Ministry of Environment and Physical Planning, following the provisions of the EIA Directive.

Montenegro's EIA act (1997) and subsequent guidance on EIA content already closely mirror the requirements of the EIA Directive.

Albania's situation is slightly different since the new law requires two types of EIA to be prepared (full and partial); thus provision is made for scopes of both types of EIA. However, its scope requirements for obligatory (full) EIA are in compliance with the EIA Directive.

Croatia will incorporate the EC scoping requirements into the existing EIA system following the course of the upcoming legislative amendment. The scoping requirements in the Rule Book on EIA (2000) do not presently address all of the content requirements in the EIA Directive. For example, the description of main alternatives, aspects of the environment likely to be affected, and likely significant effects are not addressed adequately, and there is major focus on the location's acceptability and evaluation.

The proposed draft by-law on the scope of the EIA report in Bosnia and Herzegovina is fully compliant with the EIA Directive. Additionally, it incorporates the Espoo Convention's reference concerning the required description of transboundary impacts, along with measures suggested to address them.

Review

The most advanced EIA review system is in place in Croatia. The Ministry of Environment and Physical Planning establishes an independent commission to undertake the review function. The commission evaluates the thoroughness of the EIA study and quality of evidence supplied by a developer. It consists of at least five members proposed by government bodies, local government representatives and relevant technical experts. Commission members are appointed for each respective development, but if a larger number of proposed developments fall in the same category, a permanent commission may be appointed. For example, permanent commissions have been established for roads and airports. The Ministry of Environment and Physical Planning also may authorise the authorities of a respective county, or the City of Zagreb, to appoint a commission for assessing development. At the end of the review process, the Ministry of Environment and Physical Planning (the final competent authority for the review) receives the Commission's decision to approve or refuse a proposed project, together with all the other relevant documentation, and makes its final decision accordingly. In a situation when the information provided to the commission is insufficient, or it faces a dilemma concerning the recommendation, the final decision also rests with the Ministry.

In other countries, the relevant ministries and/or regional authorities that are competent EIA authorities are responsible for the review. In some cases, for example in Montenegro and Albania, external experts are used for a technical review.

Monitoring

Except for Serbia and Kosovo, SEE countries have made some type of provision for monitoring.

For example, in Bosnia and Herzegovina, monitoring requirements are defined in the EIA report, and the developer has to comply with the monitoring programme that becomes part of the environmental permit. A similar but less comprehensive requirement is in place in Montenegro.

In Albania an environmental audit can be requested if complaints are made; and in Croatia monitoring is required only in necessary or justified cases.

In FYR Macedonia, there are no special monitoring requirements, and they are applied only within the existing environmental inspection system (environmental inspectors are authorised and obliged to evaluate the compliance of facilities with present technical norms and equipment standards, in addition to evaluating their compliance with other legal norms). However, an interesting example of EIA monitoring is applied by various

national banks (e.g. Komercijalna Banka Inc. Skopje). All projects financed by a given bank are obliged to monitor basic pollution parameters against existing legal requirements.

Accreditation

The accreditation of individual experts and companies authorised to carry out an EIA process appears in discussions at a governmental level in the SEE region. There are two reasons for taking this step. Firstly, there is no real EIA consultant market available in these countries, except in Croatia. Secondly, there is no adequate EIA review system in place that could safeguard the quality of an EIA report. The establishment, or further continuation, of already existing accreditation systems (even for an interim period until an EIA consultant market is developed) is generally regarded as the best way to ensure EIA quality control.

Currently, accreditation systems exist in all SEE countries. Ministries of environment are the bodies responsible for issuing licenses, and they hold updated lists of accredited individuals and companies who may be consulted by a developer.

There is no accreditation system that is applied on a voluntary basis or administered by a non-governmental body. Such a system exists, for example, in the UK where the Institute of Environmental Management and Assessment accredits EIA practitioners and companies (See <www.iema.net/>). This institute allows registered individuals and companies to demonstrate that they are experienced and qualified to carry out EIA activities. Another example of sharing EIA know-how is the International Association for Impact Assessment (see www.iaia.org).

Overview of EIA International Requirements and Procedures Relevant to SEE Countries

Status as of August, 2003

European Union

All SEE countries are expected to gradually align their national legal frameworks with the *aquis communautaire*. Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (hereinafter EC EIA Directive) is one of the cornerstones of EU environmental legislation.

The directive was adopted in 1985 and came into force in 1988. It stipulates the minimum procedural requirements for the EIA process and defines those projects which need to undergo EIA. The EIA procedure set out in the directive ensures that the environmental effects of certain proposed projects are identified and assessed, that public and relevant authorities are consulted on the proposal, and that the results of the assessment and consultations are taken into account during the decision-making process.

The EC EIA Directive has been amended twice so far. The first amendment was adopted in 1997 (Directive 97/11/EC) to widen the mandatory application of EIA and strengthen the EIA procedure by adding new requirements for screening and optional scoping. The second amendment (Directive 2003/35/EC) was approved in 2003 to ensure that the EC EIA Directive is fully consistent with the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

In order to assist the practical application of the Directive, the European Commission has issued the following guidance documents:

- Guidance on EIA Screening (2001);
- Guidance on EIA Scoping (2001);
- Guidance on EIS Review (2001); and
- Guidelines for the Assessment of Indirect and Cumulative Impacts as well Impact Interactions (1999).

The European Commission regularly analyses implementation and effectiveness of the EC EIA Directive

through five-year reviews. The most recent review was completed in 2003. It recommends five initiatives for future guidance documents, training of officials, enforcement actions and amendments of the directive.

More information about the EC EIA Directive and other requirements can be obtained from the DG Environment EIA website at <www.europa.eu.int/comm/environment/eia/>.

The World Bank

The World Bank requirements for environmental assessment (EA) have been in place since 1989. Current EA policy and procedure are described in Operational Policy 4.01 (OP 4.01) and Bank Procedures 4.01 (BP 4.01).

Environmental assessment applies to all World Bank lending operations. It examines potential environmental risks and benefits and is applied as one of the 10 environmental and social “safeguard policies” of the bank.

The bank’s policy stresses that EA is a process rather than a specific product and presents EA as a tool to improve the quality and sustainability of proposed projects.

The World Bank recognises that implementation of environmental assessment is a complex activity, and therefore helps to build capacity for its undertaking at all levels of government and civil society in all developing countries. A key tool for capacity building is provided by the Environmental Assessment Sourcebook. The sourcebook focuses on operations with major potential for negative environmental impact (such as new infrastructure, dams and highways) and gives practical guidance to all those involved in environmental assessment. The sourcebook is complemented by updates, which provide additional guidance on specific issues.

World Bank experience with EA has been analysed in its Third Environmental Assessment Review (fiscal years 1996-2000), 2002. The document also contains a review of the critical area of capacity building – both within and outside the bank and through projects specifically aimed at institutional development (ID) in client countries.

Summary of key provisions of the Directive 85/337/EEC (as amended)

Screening	<p>Projects listed in Annex I of the EC EIA Directive always require EIA. Projects listed in Annex II require screening either by case-by-case examination or by reference to threshold criteria established by the member state. In doing so, the following criteria listed in Annex III need to be taken into account:</p> <ul style="list-style-type: none"> • project characteristics; • project location; and • characteristics of potential environmental impacts. <p><i>Article 2.4</i> further stipulates that results of screening for Annex II activities must be made available to the public.</p>
Public notification and disclosure of information	<p>Public notification and disclosure of information are stipulated in <i>articles 6.2</i> and <i>6.5</i> of the EC EIA Directive (as amended by Directive 2003/35/EC). These articles are fully consistent with provisions for public notification stipulated in <i>Article 6.2</i> of the Aarhus Convention.</p> <p><i>Article 6.2</i> requires that the public “needs to informed early in the EIA procedure and, at the latest, as soon as information can be reasonably provided.” It also outlines the content of information to be provided.</p> <p><i>Article 6.5</i> states that detailed arrangements for informing the public shall be determined by member states and provides illustrative examples of various notification means (e.g. bill posting or publication in a local newspaper).</p>
Scoping	<p><i>Article 5.2</i> of the EC EIA Directive refers only to a voluntary and internal scoping process. It stipulates that the competent authority shall render an opinion on the contents of the EIA report if the developer so requests.</p> <p>Article 5.2 also allows member states to require competent authorities to render such an opinion, irrespective of the developer’s request.</p>
Public disclosure and review of EIA Reports	<p><i>Articles 6.3, 6.4, 6.5</i> and <i>6.6</i> transpose Aarhus Convention requirements for public participation and public review of an EIA report.</p> <p><i>Article 6.4</i> entitles the public “to express comments and opinions when all options are open to the competent authority before the decision on the request for development consent is taken.”</p> <p><i>Article 6.5</i> stipulates that member states need to determine the detailed arrangements for consulting the public concerned and provides illustrative examples of possible means (e.g. written submissions or by public inquiry).</p> <p><i>Article 6.6</i> requires provisions that allow sufficient time-frames during different phases of EIA for informing the public, and for the public concerned to prepare and participate effectively in the EIA process.</p>
Account of public comments in EIA and decision-making	<p>There are comprehensive requirements for taking due account of public comments during decision-making (<i>Article 8</i>) and for informing the public about the decision (<i>Article 9.1</i>).</p> <p><i>Article 8</i> stipulates that the results of public consultations and the EIA report “must be taken into consideration in the development consent procedure.”</p> <p>When a decision to grant or refuse development consent has been taken, competent authorities must, in accordance with <i>Article 9.1</i>, inform the public, and must disseminate the following information publicly:</p> <ul style="list-style-type: none"> • contents of the decision and any conditions attached to it; • main reasons and considerations on which the decision is based; and • a description of the main measures to avoid, reduce or offset any major adverse effects.
Monitoring and EIA follow-up	<p>There are no requirements for monitoring or post-EIA follow-up.</p>

Summary of World Bank environmental assessment procedure

Screening	<p>All proposals submitted to the World Bank must undergo environmental screening. Environmental screening results in a project being classified into one of three EIA categories:</p> <ul style="list-style-type: none"> • Category-A proposals require full EA; • Category-B proposals require partial EA; and • Category-C proposals do not require EA.
Public notification and disclosure of information	<p>Public notification and disclosure of information is an integral part of initial consultation (scoping), which is required for all Category-A projects.</p>
Scoping	<p><i>Article 15 of Operational Policy (OP) 4.01</i> requires public scoping for Category-A projects. It requests borrowers to first consult the affected public “shortly after environmental screening and before ‘terms of reference’ for the environmental assessment are finalised.” For this initial consultation, the borrower needs to provide a detailed summary of the proposed project’s objectives, functions and potential impacts.</p>
Public disclosure and review of EIA Reports	<p><i>Article 16 of OP 4.01</i> requires borrowers to inform and consult the public about all Category A projects. In such instances, the article stipulates that the borrower provide a summary of EA conclusions, and also make the draft EA report publicly accessible to project-affected groups and local NGOs.</p>
Account of public comments in EIA and decision-making	<p><i>Article 15 of OP 4.01</i> provides general requirements to take due account of the results of public consultation in decision making and in project implementation. Borrowers involved in Category-A projects are required to consult project-affected groups and local NGOs about the project’s environmental aspects and to take these views into account. The borrower is also requested to consult with such groups throughout project implementation as necessary to address those EA-related issues which affect them.</p>
Monitoring and EIA follow-up	<p><i>Article 20 of OP 4.01</i> outlines the general requirements for monitoring. The borrower is required to report during project implementation on:</p> <ul style="list-style-type: none"> • compliance with measures agreed with the World Bank on the basis of EA; • the status of mitigating measures; and • the findings of monitoring programmes.

Detailed information on the World Bank EA policy, publications and related initiatives can be found at the World Bank Environmental Assessment Website: <www.inweb18.worldbank.org/ESSD/envext.nsf/47ByDocName/EnvironmentalAssessment>.

European Bank for Reconstruction and Development (EBRD)

According to its establishing agreement (Article 2.1vii), the European Bank for Reconstruction and Development (EBRD) is directed to “promote, in the full range of its activities, environmentally sound and sustainable development.” Practical tools used by the EBRD to carry out this mandate are described in its new environmental policy (2003) and subsequent environmental procedures (2003).

The EBRD’s environmental appraisal process is a key to integrating environmental considerations into the project cycle. It is also designed to ensure that EBRD-financed projects are environmentally sound, designed to operate in compliance with applicable regulatory requirements, and that their environmental performance is also monitored.

The EBRD intends, through project financing, to contribute to the implementation of relevant principles and rules of international environmental law. It attempts, in particular, to adhere to principles of the UNECE Aarhus Convention and UNECE Espoo Convention.

More information on the EBRD environmental assessment process can be obtained at <http://www.ebrd.com/about/strategy/index.htm>.

UN/ECE Espoo Convention

Albania, Croatia and FYR Macedonia are parties to the UN/ECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991). Bosnia and Herzegovina and Serbia and Montenegro

(including Kosovo) are not parties to the convention. Irrespective of their status, however, they have some existing procedures for EIA projects in a transboundary context, such as screening those projects subject to EIA for any possibility of transboundary impacts.

So far, there have been only seven examples of transboundary EIAs in the region (all involving Croatia). The main reason for this limited application of transboundary EIAs by other SEE countries is a lack of bilateral agreements between them and poor treatment of transboundary impacts within current national EIA systems. Limited bi-lateral cooperation on EIA contrasts with the rapid development of transboundary agreements for the protection of shared natural resources – for example, the memorandum of understanding signed between the former national environment agency in Albania (currently, the Ministry of Environment) and its counterpart in FYR Macedonia on the “Lake Ohrid Protection Project.”

More information on activities that support practical application of the convention can be obtained from the Espoo Convention website at <www.unece.org/env/eia/>.

UN/ECE Aarhus Convention

Albania and FYR Macedonia are the only two SEE countries who are parties to the EU/ECE Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, 1998), although Croatia is a signatory.

The convention does not mention EIA explicitly. EIA is, however, understood to be a major process through which public participation takes place for specific activities. Useful guidance for implementation of the convention, also within the framework of EIA systems, can be obtained from the *Aarhus Convention: An Implementation Guide*. Additional information on relevant activities the Aarhus Convention can be found at its website: <www.unece.org/env/pp/>.

Summary of EBRD environmental impact assessment requirements

Screening	<p>All proposals submitted to the EBRD must undergo environmental screening to identify potential environmental risks and liabilities.</p> <p>Screening classifies proposed projects into one of three EIA categories, each of which are identical to those defined by the World Bank (i.e. A, B, and C). Annex I to the EBRD Environmental Policy lists 26 categories of projects that are always classified as category-A operations, and which require EIA. This annex is fully consistent with Annex I to the EC EIA Directive.</p> <p>In addition, environmental screening also results in determining whether or not a project requires an environmental audit. If an operation requires an environmental audit, it is screened as category "1". If no audit is required, it is screened as "0".</p>
Public notification and disclosure of information	<p>EBRD Environmental Policy (Annex II, <i>Article 3.2</i>) requires sponsors of "A" level projects to provide the potentially affected public with information about the nature of the project for which financing is sought from the EBRD. The way that notification is undertaken will depend on local political, legal, and cultural practice.</p>
Scoping	<p>EBRD Environmental Policy (Annex II, <i>Article 3.3</i>) stipulates that sponsors of "A" level operations must ensure identification of all key issues during the scoping process, in particular by consulting the affected public on the project and taking their comments into account. It stipulates that the scoping process will involve contact by the project sponsor with representatives of the affected public, government agencies, local authorities and other organisations.</p> <p><i>Article 3.3</i> also requires project sponsors to prepare during the scoping process a draft public consultation and disclosure plan (draft PDCP). This document describes the public who may be affected by the project, how communication will work throughout the EIA process, and what information will be disclosed in relevant languages and by what means (e.g. website, libraries, etc.).</p> <p>The public should be able to provide comments and recommendations on this document. The EBRD will also provide input on the draft PDCP where requested and ensure that the final plan meets the EBRD requirements.</p>
Public disclosure and review of EIA Reports	<p>EBRD Environmental Policy (Annex II, <i>Article 3.4</i>) requires project sponsors to make the EIA site, and where relevant, in the capital or other major cities. There may also be other awareness-raising tools used during disclosure, such as fact sheets.</p> <p><i>Article 2.3</i> stipulates that the EBRD does not have specific requirements for public hearings, but encourages the development of appropriate methods of meaningful consultation, depending on the objective of the consultation, cultural norms of the project location and good international practice. Among the mechanisms for consultation that may be used are technical meetings with experts, meetings with community leaders, public meetings, press and other media coverage, information disclosure via websites or libraries, and correspondence.</p> <p><i>Article 3.5</i> strongly encourages all project sponsors to place EIA reports on websites to improve public accessibility to the documents.</p> <p><i>Article 3.7</i> indicates that private-sector projects are subject to a minimum disclosure period of 60 days, while the minimum disclosure period for public-sector projects is 120 days. In practice, the EBRD may require a longer disclosure period for more complex projects. In all cases, project sponsors are required to keep EIA-related documentation in the public domain for the duration of the World Bank's involvement with the project, or at least until project completion.</p>

Summary of EBRD environmental impact assessment requirements (continued)

Account of public comments in EIA and decision-making

Annex II, *Article 3.8* of EBRD Environmental Policy requires the project sponsor to provide, after the completion of the public comment period, information to those commenting and the affected public on how comments were taken into account.

Article 3.9 stipulates that the EBRD will summarise public comments brought to the bank's attention, along with a report on public consultation from the project sponsor. The EBRD will then incorporate this summary into the management review and board review of the project. When considering whether to approve a project, the EBRD will take into account the comments and opinions expressed by consultees, as well as the way these issues are being addressed by project sponsors. The EBRD will consider the extent to which the sponsor has addressed the necessary requirements for public consultation.

Monitoring and EIA follow-up

EBRD Environmental Policy (*Article 27*) states that environmental monitoring ensures that the applicable environmental standards and various environmental components of projects included in loan agreements are observed and in sufficient order to keep track of ongoing environmental impacts associated with projects and the effectiveness of any mitigation measures taken.

Article 27 mandates the World Bank to specify, for each project, appropriate monitoring tools based upon the results of due diligence and any public consultation that has taken place. The bank may use a range of environmental monitoring mechanisms, including reviewing periodic environmental reports and other progress reports, monitoring visits and periodic third party audits.

Article 27 also stipulates that EBRD environmental monitoring requirements are in force until the loan has been repaid.

Summary of key provisions of the Espoo Convention

Screening	<p>All proposed activities listed in Appendix I to the convention have to be screened for the possibility of significant, adverse transboundary impacts.</p> <p>General guidance for determining what constitutes “significant, adverse transboundary impact” is provided in Appendix III to the convention.</p> <p>In addition, concerned parties may discuss whether other activities not listed in Appendix I to the convention are likely to cause a significant, adverse transboundary impact, and thus should be subject to the Espoo convention.</p>
Public notification and disclosure of information	<p><i>Article 3</i> of the convention stipulates details of transboundary notification for proposed activities that are likely to cause significant, adverse transboundary impacts.</p> <p>Initial stages of this notification process happen at the government level. <i>Article 3.8</i> requires both parties to ensure that the concerned public^[1] in the affected party is informed of a proposed activity.</p> <p>[1] The exact wording of the Convention does not use the term “concerned public” – it instead uses the term “public of the affected party in the areas likely to be affected.”</p>
Scoping	<p>The convention stipulates basic elements of the scoping procedure for transboundary EIA in <i>articles 3.5, 3.6</i> and <i>3.8</i>.</p> <p><i>Article 3.5</i> requests the party of origin to inform the affected party about a) proposed activity, b) possible transboundary impacts, and c) applicable EIA procedure.</p> <p><i>Article 3.6</i> requires the affected party to provide the party of origin with information about the potentially affected environment.</p> <p><i>Article 3.8</i> requires both parties to ensure that the concerned public in the affected party can make comments on or objections to the proposed activity.</p>
Public disclosure and review of EIA Reports	<p>The convention requires distribution of EIA documents to affected parties (<i>Article 4.2</i>) and consultations among concerned parties (<i>Article 5</i>).</p> <p><i>Article 4.2</i> requires the party of origin to provide the affected party with EIA documentation. The concerned parties need to jointly arrange distribution of the documentation to the authorities and the concerned public in the affected party. This needs to be done within a reasonable time before the final decision is taken on the proposed activity.</p> <p><i>Article 5</i> requires the party of origin to enter into consultations with the affected party concerning the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact.</p> <p>These consultations must take place after the completion of EIA documentation, without undue delay. At their commencement, parties need to agree on a reasonable time-frame for the duration of the consultation period. The actual consultations may relate to:</p> <ul style="list-style-type: none"> • possible alternatives to the proposed activity and possible mitigation and monitoring measures; • other forms of possible mutual assistance in reducing any significant, adverse transboundary impact; and • any other appropriate matters relating to the proposed activity. <p>Consultations and transmittal of information under <i>articles 4.2</i> and <i>5</i> may be conducted through a joint body established by the concerned parties.</p>

Summary of key provisions of the Espoo Convention (continued)

Account of public comments in EIA and decision-making

The convention provides specific requirements for due account of the outcomes of EIA and outcome of the decision-making.

Article 6.1 requires the parties to ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the EIA. (This includes the EIA documentation, as well as the comments received during transboundary scoping and transboundary consultations).

Article 6.2 requires the party of origin to provide the affected party with the final decision on the proposed activity, along with the reasons and considerations upon which it was based.

Monitoring and EIA follow-up

The convention (*Article 7* and Annex V) outlines very detailed procedural and substantive provisions for monitoring and EIA follow-up.

Article 7.1 requires the concerned parties to determine whether and to what extent a post project analysis shall be carried out, taking into account any likelihood of significant, adverse transboundary impact of the activity. It may be undertaken with a view to achieving the following objectives (listed in Appendix V):

- monitoring compliance with the conditions as set out in the authorisation, or approval of the activity and the effectiveness of mitigation measures;
- review of an impact for proper management in order to cope with uncertainties; and
- verification of past predictions in order to transfer experience to future activities of the same type.

Any post-project analysis may include, in particular, surveillance of the activity and the determination of any adverse transboundary impact.

If either of the concerned parties concludes on the basis of post-project analysis that there is a significant, adverse transboundary impact, or new factors which may result in such an impact, it must inform the other party in accordance with *Article 7.2*. The concerned parties shall then consult on necessary measures to reduce or eliminate the impact.

Summary of the Aarhus Convention obligations that are relevant for EIA

Screening

The term “screening” is not used in the convention, but is described *de facto* in *Article 6.1*

Article 6.1 requires each party to carry out rigorous public participation on proposed activities listed in Annex I to the convention. This list includes all activities mentioned in Annex I to the EC EIA Directive.

Article 6.1 also requires each party to apply public participation provisions to decisions on proposed any activities that may have a significant effect on the environment, even if not listed in Annex I.

Summary of the Aarhus Convention obligations that are relevant for EIA (continued)

Public notification and disclosure of information	<p><i>Article 6.2</i> of the convention stipulates that the “public concerned shall be informed either by public notice or individually, as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner.”</p> <p><i>Article 6.2</i> further defines the content of public notice as:</p> <ul style="list-style-type: none"> (a) the proposed activity and the application on which a decision will be taken; (b) the nature of possible decisions or the draft decision; (c) the public authority responsible for making the decision; (d) the envisaged procedure, including, as and when this information can be provided: <ul style="list-style-type: none"> (i) the commencement of the procedure; (ii) the opportunities for the public to participate; (iii) the time and venue of any envisaged public hearing; (iv) an indication of the public authority from which relevant information can be obtained, and where the relevant information has been deposited for examination by the public; (v) an indication of the relevant public authority or any other official body to which comments or questions can be submitted, and of the time schedule for transmittal of comments or questions; and (vi) an indication of what environmental information relevant to the proposed activity is available; and (e) the fact that the activity is subject to a national or transboundary EIA procedure.
Scoping	<p>The convention makes no explicit reference to public scoping.</p> <p><i>Article 6.4</i>, however, requires each party to “provide for early public participation, when all options are open and effective public participation can take place.” This can be regarded as equivalent to scoping procedure.</p> <p><i>Article 6.7</i> also encourages prospective developers to enter into discussions with the public regarding the objective of their application.</p>
Public disclosure and review of EIA Reports	<p><i>Article 6</i> of the convention requires each party to establish rigorous provisions for public participation.</p> <p><i>Article 6.3</i> stipulates that public participation procedures “shall include reasonable time frames for the different phases, allowing sufficient time for the public to be notified and to prepare and participate effectively during the environmental decision making.”</p> <p><i>Article 6.6</i> requires competent public authorities to give the concerned public free access to all information relevant to decision-making as soon as it becomes available.</p> <p><i>Article 6.7</i> provides an opportunity for the public to submit — in writing or, as appropriate, at a public hearing or inquiry with the applicant — any comments, information, analyses or opinions that it considers relevant to the proposed activity.</p>
Account of public comments in EIA and decision-making	<p>The convention defines specific requirements on taking due account of the outcome of public participation in decision-making and on promptly informing the public.</p> <p><i>Article 6.8</i> stipulates: “Each party shall ensure due account of the outcome of public participation in the decision.”</p> <p><i>Article 6.9</i> requires each party to ensure that public authorities promptly inform the public when a decision has been taken. Each party shall make publicly accessible the text of the decision, along with the reasons and considerations upon which it is based.</p>
Monitoring and EIA follow-up	<p>The convention provides no monitoring and follow-up requirements. However, if data is obtained by public authorities during monitoring or EIA follow-up, it must be made publicly accessible, (<i>articles 4 and 5</i>)</p>

Comparative Analysis of International EIA Requirements and Procedures Relevant to SEE Countries

Provision for EIA Legal and policy basis

EC	Directive on the assessment of effects of certain private and public projects on the environment: No. 85/337/EC (as amended by Directive 97/11/EC and Directive 2003/35/EC).
World Bank	Operational Policy OP 4.01 and Bank Procedures BP 4.01 on Environmental Assessment (January 1999).
EBRD	Environmental Policy (April 2003) and Environmental Procedures (April 2003).
Espoo Convention	UN/ECE Convention on Environmental Impact Assessment in a Transboundary Context (signed in spoo in 1991; entered into force, 1997).
Aarhus Convention	UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; (signed in Aarhus in 1998; entered into force in 2001)

Relevance to Stability Pact operations

EC	<p>All SEE countries are expected to align their national legal frameworks with the EC EIA Directive and the <i>aquis communautaire</i>.</p> <p>They are also recipients of EC financial assistance and of European Investment Bank lending, which has to meet EU EIA requirements.</p>
World Bank	All SEE countries are likely to be recipients of World Bank lending that requires the application of OP 4.01. They are expected to establish legal and institutional frameworks that enable them to meet requirements of OP 4.01.
EBRD	All SEE countries are likely to be recipients of EBRD lending, which requires the application of the EBRD's environmental procedures. They are expected to establish legal and institutional frameworks that enable them to meet requirements of the EBRD's environmental policy and environmental procedures.
Espoo Convention	All SEE countries (except for Bosnia and Herzegovina and Serbia and Montenegro) are either signatories or parties to the Espoo Convention.
Aarhus Convention	<p>Article 2.2 of the convention requires "each Party to take the necessary legal, administrative or other measures to implement the provisions of this convention."</p> <p>All SEE countries (except for Serbia and Montenegro) are either signatories or parties to the Aarhus Convention.</p> <p>The convention does not explicitly mention EIA, but it is understood to be a major process for public participation on decisions on specific activities.</p> <p>Article 2.1 of the convention requires each party to "take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing information, public participation and access-to justice provisions in this convention, as well as proper enforcement measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of this convention."</p>

Definitions of "public" and "public concerned"

EC	Article 1.2 of the EC EIA Directive (as amended by Directive 2003/35/EC) contains definitions of "public" and "public concerned" that are identical with corresponding definitions of the Aarhus Convention.
World Bank	<p>The terms "public" and "public concerned" are not defined, but there are clear requirements to actively identify the affected public.</p> <p>OP 4.01 requires the borrower to identify and consult project-affected groups and local NGOs for all Category "A" and "B" projects.</p>

Comparative Analysis of International EIA Requirements and Procedures Relevant to SEE Countries (continued)

Definitions of “public” and “public concerned” (continued)

EBRD	The terms “public” and “public concerned” are not defined, but there are clear requirements to actively identify the affected public. Annex II to Environmental Procedures defines the “affected public” as potentially affected public and interested NGOs.
Espoo Convention	Article 2 of the Convention defines the term “public” as “one or more natural or legal persons.”
Aarhus Convention	The convention offers the most rigorous definitions of “public” and “public concerned.” Article 2.4 defines “public” as “one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or group.” Article 2.4 defines the “public concerned” as “the public affected or likely to be affected by, or having an interest in, environmental decision making. For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.”

Common features and recommended elements of effective procedure

- **The public is always referred to, but not always defined.**
- **The Aarhus Convention offers the most comprehensive legal definitions of “public” and “public concerned.” This definition has been transposed into the EC EIA Directive. It also fully covers definitions used in the Espoo Convention, and in the World Bank and EBRD procedures.**

EIA Screening

EC	All projects listed in Annex I to the EC EIA Directive require EIA. Projects listed in Annex II require screening, either through case-by-case examination or by reference to threshold criteria that are set by the member state. In either instance of screening, criteria listed in Annex III shall be taken into account. These comprise: project characteristics; project location; and characteristics of potential environmental impacts. Article 2.4 stipulates further that results of screening for Annex II activities must be made available to the public.
World Bank	All proposals that are submitted to the World Bank must undergo environmental screening. Environmental screening results in a project being classified into one of three EIA categories: Category A proposals require full EIA; Category B proposals require partial EIA; and Category C proposals do not require EIA.
EBRD	All proposals submitted to the EBRD must undergo environmental assessment that classifies proposed projects into one of three EIA categories, which are the same as those defined by the World Bank (i.e. A/B/C). Annex I to the EBRD Environmental Policy provides a list of 26 categories of projects that are always classified as category A operations, and thus require EIA. This annex is fully consistent with Annex I to the EC EIA Directive. In addition, environmental screening also results in determining whether or not the project needs an environmental audit. If an operation requires an environmental audit, it is screened in category “1”. If no audit is required, it is screened as “0”.
Espoo Convention	All proposed activities listed in Appendix I to the Convention have to be screened for possible adverse transboundary impact. General guidance for the determination of significance of adverse transboundary impact is provided in Appendix III to the Convention. In addition, concerned parties may discuss whether other activities not listed in Appendix I to the Convention are likely to cause a significant adverse transboundary impact, and thus should be subject to transboundary EIA.

Comparative Analysis of International EIA Requirements and Procedures Relevant to SEE Countries (continued)

EIA Screening (continued)

Aarhus Convention	<p>EIA and screening are not mentioned explicitly, but EIA is understood to be a major process through which decisions on specific activities are made, and a de facto screening procedure is described in Article 6.1</p> <p>Article 6.1 requires each party to carry out rigorous public participation on proposed activities listed in Annex 1 to the Convention. This list includes all activities mentioned in Annex I to the EC EIA Directive.</p> <p>Article 6.1 also requires each party to apply the public participation provisions to decisions on proposed activities not listed in Annex I, but may still have a significant effect on the environment.</p>
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Common features and recommended elements of effective procedure

- **Mandatory application of EIA should be based on the list established by Annex I to the EC EIA Directive.**
- **Discretionary application of EIA should be based on the list established by Annex II to the EC Directive. For these projects, case-by-case screening should be applied, based on criteria defined in Annex III to the EC Directive. This will enable fulfilment of EBRD and World Bank screening requirements.**
- **All projects that require EIA should be immediately screened for potential transboundary impacts, based on the criteria established in Appendix III to the Espoo Convention.**

Public notification and disclosure of information

EC/EIB	<p>Public notification and disclosure of information are stipulated in Articles 6. 2 and 6.5 of EC EIA Directive (as amended by Directive 2003/35/EC). These articles are fully consistent with provisions for public notification stipulated in the Article 6.2 of the Aarhus Convention.</p> <p>Article 6.2 stipulates that the public “needs to be informed early on in the EIA procedure and, at the latest, as soon as information can reasonably be provided.” The Article also requires the contents of information to be provided.</p> <p>Article 6.5 states that detailed arrangements for informing the public shall be determined by member states, and gives illustrative examples of various notification means (e.g. bill posting or publication in local newspaper).</p>
World Bank	<p>Public notification and disclosure of information is an integral part of initial consultation (scoping), which is required for all Category A projects.</p> <p>β OP 4.01 stipulates that, for meaningful initial consultations between the borrower and project-affected groups, and local NGOs, the borrower must provide a summary of: proposed project objectives; functions; and potential impacts.</p>
EBRD	<p>Annex II, Article 3.2 of the EBRD’s Environmental Policy requires the sponsor of A-level projects to provide the potentially affected public with information about the nature of the project for which financing is sought from the EBRD. The way that notification is undertaken will depend on local political, legal, and cultural practices.</p>
Espoo Convention	<p>Article 3 of the Convention stipulates details of transboundary notification for proposed activities that are likely to cause significant, adverse transboundary impact. Initial stages of this notification process happen at the government level.</p> <p>If the proposed project becomes subject to transboundary EIA, the concerned parties need to ensure, in accordance with the Article 3.8, that the concerned public [1] is informed of the proposed activity and is provided with possibilities for making comments or objections.</p> <p>[1] The exact wording of the Convention does not use term “concerned public” – it instead uses the term “public of the affected party in the areas likely to be affected.”</p>
Aarhus Convention	<p>Article 6.2 of the Convention states that the “public concerned shall be informed either by public notice or individually, as appropriate, early in the environmental decision-making procedure, and in an adequate, timely and effective manner.”</p> <p>Article 6.2 further defines the specific contents of public notification. (<i>See below.</i>)</p>

Comparative Analysis of International EIA Requirements and Procedures Relevant to SEE Countries (continued)

Common features and recommended elements of an effective procedure

Provisions of the Aarhus Convention (Article 6.2) and corresponding transposition into the EC EIA Directive (Article 6.2) offer the most comprehensive notification procedure for meeting EBRD and World Bank requirements.

Article 6.2 of the Aarhus Convention requires parties to notify the public about:

- (a) the proposed activity and the application on which a decision will be taken;
- (b) the nature of possible decisions or the draft decision;
- (c) the public authority responsible for making the decision;
- (d) the envisaged procedure, including how and when this information can be provided:
 - (vii) commencement of the procedure;
 - (viii) opportunities for public participation;
 - (ix) the time and venue of any envisaged public hearing;
 - (x) an indication of the public authority from which relevant information can be obtained, and where the relevant information has been deposited for examination by the public;
 - (xi) an indication of the relevant public authority or any other official body to which comments or questions can be submitted, as well as the time schedule for transmittal of comments or questions; and
 - (xii) an indication of what environmental information relevant to the proposed activity will be made available; and
- (e) the fact that an activity is subject to a national or transboundary EIA procedure.

In cases when the proposed activity is made subject to transboundary EIA procedure, the notification document outlined above could be used for notification of the affected public in the affected parties, in accordance with Article 3.8 of the Espoo Convention.

Scoping

EC

Article 5.2 of the EC EIA Directive refers only to a voluntary and internal scoping process. It stipulates that the competent authority shall give an opinion on the contents of the EIA report if so requested by the developer.

Article 5.2 also allows member states to require the competent authorities to render such an opinion, irrespective of a developer's request.

World Bank

OP 4.01 requires public scoping for Category A projects.

Article 15 requires borrowers to consult the affected public "shortly after environmental screening and before the terms of reference for the environmental assessment are finalised." For this initial consultation, the borrower must provide a summary of the proposed project's objectives, a detailed description, and any potential impacts.

EBRD

The EBRD's Environmental Policy (Annex II, Article 3.3) stipulates that sponsors of A-level operations must ensure identification of all key issues during the scoping process; in particular by consulting the affected public on the project and taking their comments into account. It also stipulates that the scoping process will involve contact by the project sponsor with representatives of the affected public, government agencies, local authorities and other organisations.

Article 3.3 also requires the project sponsor to prepare, during the scoping process, a draft Public Consultation and Disclosure Plan (draft PCDP). This document describes the public who may be affected by the project, how communication will work throughout the EIA process, and what information will be disclosed in relevant languages and by what means (e.g. website, libraries, etc.).

The public should be able to provide comments and recommendations on this document. The EBRD will also provide input on the draft PDCP where requested, and ensure that the final plan meets the Bank's requirements.

Comparative Analysis of International EIA Requirements and Procedures Relevant to SEE Countries (continued)

Scoping (continued)

Espoo Convention

The Convention stipulates basic elements of scoping procedure for transboundary EIA in Articles 3.5, 3.6 and 3.8.

Article 3.5 requests the party of origin to inform the affected party about a) proposed activity, b) its possible transboundary impacts, and c) applicable EIA procedure.

Article 3.6 requires the affected party to provide the party of origin with information about the potentially affected environment.

Article 3.8 requires both parties to ensure that the concerned public in the affected party can make comments or objections on the proposed activity.

Aarhus Convention

The Convention makes no explicit reference to public scoping.

However, Article 6.4 requires each party to “provide for early public participation when all options are open and effective public participation can take place.” This can be regarded as an equivalent to the scoping procedure.

Article 6.7, in addition, encourages prospective developers to enter into discussions with the public regarding objectives of the application.

Common features and recommended elements of effective procedure

Scoping is a key element for an effective EIA process. Although provisions vary, it is internationally accepted that scoping should be an open, transparent and public process.

In order to meet the requirements of donor agencies and effective EIA practice, countries may wish to establish a mandatory scoping procedure that:

- enables competent authorities to render an opinion on the contents of the EIA Report (EC Directive);
- takes place when all options are open and when effective public participation can take place (Aarhus Convention);
- occurs immediately after screening and before terms of reference for EIA are finalised (World Bank);
- ensures that views of all competent authorities and the concerned affected public are taken into account in identifying the key issues (EBRD); and
- in case of transboundary EIA procedures, facilitates transboundary consultations in accordance with Articles 3.5, 3.6 and 3.8 of the Espoo Convention.

Public disclosure and review of EIA Reports

EC/EIB

The EC EIA Directive (amended by Directive 2003/35/EC) in Articles 6.3, 6.4, 6.5 and 6.6 transposes the Aarhus Convention requirements for public participation to public review of the EIA Report.

Article 6.4 entitles the public “to express comments and opinions when all options are open to the competent authority before a decision on the request for development consent is taken.”

Article 6.5 requires member states to determine detailed arrangements for consulting the public concerned and gives illustrative examples of possible means (e.g. written submissions or public inquiry).

Article 6.6 requires provisions that allow for sufficient time, during different phases of EIA, to inform the public, and for the public concerned to prepare and participate effectively in EIA.

World Bank

OD 4.01 requires borrowers to inform and consult the public about all Category-A projects.

Article 16 requires the borrower to provide for these consultations a summary of EIA conclusions, and to make the draft EIA report available at a public place that is accessible to project-affected groups and local NGOs.

Comparative Analysis of International EIA Requirements and Procedures Relevant to SEE Countries (continued)

Public disclosure and review of EIA Reports (continued)

EBRD

The EBRD's Environmental Policy (Annex 2, Article 3.4) requires project sponsors to make the EIA publicly available for comment, in strategic locations including at or near the project site, and where relevant (e.g. in the capital or other major cities). There may also be other tools used during disclosure, such as fact sheets on issues, prepared to increase understanding of issues in the EIA.

Article 2.3 stipulates that the EBRD does not have specific requirements for public hearings, but encourages development of appropriate methods of meaningful consultation, depending on the objective of the consultation, cultural norms of the project location, and good international practice. Among the mechanisms for consultation that may be used are: technical meetings with experts; meetings with community leaders; public meetings; press and other media coverage; and information disclosure via websites or libraries, and correspondence.

Article 3.5 strongly encourages all project sponsors to place EIAs on websites to improve public accessibility to the documents.

Article 3.7 indicates a 60-day minimum for private-sector projects, and a 120-day minimum for public-sector projects. In practice, a longer disclosure period may be required by the Bank for more complex projects. In all cases, project sponsors are required to keep EIA related documentation in the public domain for the duration of the Bank's involvement with the project, or at least until project completion.

Espoo Convention

The Convention requires distribution of EIA documents to affected parties (Article 4.2) and consultations among concerned parties (Article 5).

Article 4.2 requires the party of origin to provide the affected party with EIA documentation. The concerned parties need to jointly arrange distribution of the documentation to the authorities and the concerned public in the affected party. This needs to be done within a reasonable time before a final decision is taken on the proposed activity.

Article 5 requires the party of origin to enter into consultations with the affected party concerning potential transboundary impacts of the proposed activity, along with any measures to reduce or eliminate its impact.

These consultations must take place after the completion of EIA documentation, without undue delay. At their commencement, parties must agree on a reasonable time-frame for the duration of the consultation period. The actual consultations may relate to:

- (a) possible alternatives to the proposed activity and possible mitigation and monitoring measures;
- (b) other forms of possible mutual assistance aimed at reducing any significant, adverse transboundary impact; and
- (c) any other appropriate matters relating to the proposed activity.

Consultations and transmittal of information under Articles 4.2 and 5 may be conducted through a joint body established by the concerned parties

Aarhus Convention

Article 6 of the Convention requires each party to establish rigorous provisions for public participation.

Article 6.3 requires public participation procedures to "include reasonable time-frames for the different phases, allowing sufficient time for the public to be notified, prepare and participate effectively during environmental decision-making."

Article 6.6 requires competent public authorities to give the public concerned free access to all information relevant to the decision-making as soon as it becomes available.

Article 6.7 provides an opportunity for the public to submit (in writing or, as appropriate, at a public hearing or inquiry with the applicant) any comments, information, analyses or opinions that it considers relevant to the proposed activity.

Comparative Analysis of International EIA Requirements and Procedures Relevant to SEE Countries (continued)

Common features and recommended elements of effective procedure

- While specific provisions vary, there is a uniform requirement to make the EIA Report available to the public for review and the submission of comments.
- General provisions for public review established by the Aarhus Convention (Articles 6.3, 6.6 and 6.7) have been fully transposed into provisions for public review of EIA Reports stipulated in the EC EIA Directive.
- EBRD Environmental Policy (Annex 1, Articles 3.4 and 2.3) provides useful examples of various means for effective public consultation.
- A Transboundary EIA Report needs to be provided to authorities and the public in the affected party in accordance with Article 4.2 of the Espoo Convention. It becomes subject to transboundary consultations in accordance with the Article 5 of the Convention.

Taking account of public comments in EIA and decision-making

EC	<p>The EC EIA Directive provides comprehensive requirements for taking due account of public comments in the decision-making process (Article 8) and for informing the public about any decision (Article 9.1).</p> <p>Article 8 stipulates that the results of public consultations and the EIA Report “must be taken into consideration in the development consent procedure.”</p> <p>When a decision to grant or refuse development consent has been taken, competent authorities must, in accordance with Article 9.1, inform the public. They must also make publicly available the following information:</p> <ul style="list-style-type: none"> • the content of the decision and any conditions attached to it; • the main reasons and considerations on which the decision is based; and • a description of the main measures to avoid, reduce or offset any major adverse effects.
World Bank	<p>Article 20 of OP 4.01 provides general requirements to take due account of the results of public consultation in decision-making and in project implementation.</p>
EBRD	<p>Annex II to the EBRD’s Environmental Policy (Article 3.8) requires the project sponsor to provide, after the completion of the public commenting period, information to those submitting comments and the affected public on how comments were taken into account.</p> <p>Article 3.9 stipulates that the EBRD will summarise public comment brought to the Bank’s attention, along with the report on public consultation from the project sponsor. The EBRD will incorporate this summary into the management review and board review of the project. When considering whether to approve a project, the EBRD will take into account the comments and opinions expressed by consultees and the way these issues are being addressed by project sponsors.</p> <p>The EBRD will consider the extent to which the sponsor has addressed the Bank’s requirements for public consultation.</p>
Espoo Convention	<p>The Convention defines specific requirements for due account of the outcomes of EIA and decision-making</p> <p>Article 6.1 requires the party of origin to ensure that, in the final decision on the proposed activity, due account is taken of the outcome of EIA: this includes EIA documentation, as well as the comments received during transboundary scoping and transboundary consultations.</p> <p>Article 6.2 requests the party of origin to provide the affected party with the final decision on the proposed activity, along with the reasons and considerations upon which it was based.</p>

Comparative Analysis of International EIA Requirements and Procedures Relevant to SEE Countries (continued)

Taking account of public comments in EIA and decision-making (continued)

Aarhus Convention	<p>The Convention stipulates specific requirements on taking due account of the outcome of public participation in decision-making and on promptly informing the public.</p> <p>Article 6.8 stipulates that “each Party shall ensure due account of the outcome of public participation in the decision.”</p> <p>Article 6.9 requests each party to ensure that public authorities promptly inform the public when a decision has been taken. Each party shall make the text of the decision publicly accessible, along with the reasons and considerations upon which it is based.</p>
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Common features and recommended elements of effective procedure

The provisions of the EC EIA Directive are comprehensive and provide a basis for effective EIA practice that also largely meets the substantive requirements of the ERBD, the World Bank, Espoo Convention and Aarhus Convention. Additionally, the following elements should be incorporated:

- **The results of comments obtained during scoping and transboundary consultations should be made publicly available (World Bank/EBRD).**
- **The public should be informed promptly, in accordance with Article 9.1 of the Directive, when a decision has been taken (Aarhus).**

Monitoring and EIA follow-up

EC/EIB	The EC EIA Directive does not stipulate (neither in the EIA procedure, nor in the contents of the EIA report) any requirements for monitoring or post-EIA follow-up.
World Bank	<p>Article 20 of OP 4.01 outlines the general monitoring requirements. It requires borrowers to report during project implementation on:</p> <ul style="list-style-type: none"> • compliance with measures agreed upon with the Bank on the basis of EIA; • the status of mitigating measures; and • the findings of monitoring programmes.
EBRD	<p>EBRD Environmental Policy (Article 27) states that environmental monitoring is important to ensure that the applicable environmental standards and various environmental components of projects included in loan agreements are complied with and keep track of the ongoing environmental impacts associated with projects and the effectiveness of mitigation measures.</p> <p>Article 27 mandates that the Bank specify appropriate monitoring tools for each project, based upon the results of due diligence and the results of any public consultation that has taken place. The Bank may use a range of environmental monitoring mechanisms, including the review of periodic environmental reports and other progress reports, monitoring visits and periodic third-party audits.</p> <p>Article 27 also stipulates that the environmental monitoring requirements remain in force until the loan has been repaid.</p>
Espoo Convention	<p>The Convention (Article 7 and Annex V) outlines very detailed procedural and substantive provisions for monitoring and EIA follow-up.</p> <p>Article 7.1 requires the concerned parties to determine whether and to what extent a post project analysis shall be carried out; taking into account any likelihood of significant, adverse transboundary impacts of the activity. Any post-project analysis undertaken shall include, in particular, surveillance of the activity and the determination of any adverse transboundary impacts. It may be undertaken with a view towards achieving the following objectives (listed in Appendix V):</p> <ol style="list-style-type: none"> (a) monitoring compliance with the conditions as set out in the authorisation or approval of the activity, and the effectiveness of mitigation measures; (b) review of an impact for proper management in order to cope with any uncertainties; and

Comparative Analysis of International EIA Requirements and Procedures Relevant to SEE Countries (continued)

Monitoring and EIA follow-up (continued)

Espoo Convention (continued)	(c) verification of past predictions in order to transfer experience to future activities of the same type. If either of the concerned parties concludes, on the basis of post-project analysis, that there is a significant, adverse transboundary impact, or new factors which may result in such an impact, the other party must be informed in accordance with Article 7.2. Concerned parties shall then consult on necessary measures to reduce or eliminate any impact.
Aarhus Convention	The Convention provides no monitoring and follow-up requirements. However, if data are obtained by public authorities during monitoring or EIA-follow up, they must be made publicly accessible in accordance with the provisions of Articles 4 and 5 of the Convention.

Common features and recommended elements of effective procedure

SEE countries may wish to establish monitoring requirements in order to:

- ensure compliance with agreed measures and legal and regulatory standards (World Bank, EBRD, Espoo Convention);
- check that mitigation measures are working as intended and being effectively employed (World Bank, EBRD);
- verify that project-induced impacts are as predicted or within acceptable ranges (Espoo Convention);
- take appropriate management actions to reduce, eliminate or offset unacceptable impacts (Espoo Convention);
- carry out periodic reviews, post-project analyses or third-party audits to review progress and transfer experience (EBRD, Espoo Convention);
- make this information publicly available (Aarhus Convention); and
- in the case of transboundary impacts, inform other concerned parties and consult with them on necessary measures to reduce or eliminate impacts (Espoo Convention).

The EC EIA Directive does not meet internationally accepted standards for EIA monitoring and follow-up. SEE countries may wish to refer to monitoring requirements established by the EBRD, World Bank, or the Espoo Convention.