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Foreword

The environmental issues represent a growing concern of the last years. More and more, the states are imposing restrictive procedures to ensure a clean and healthy environment for the next generations. The environmental protection policy facilitates a sustainable development, being also a condition for Romania's accession to the European Union.

In 2001 the Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment – SEA Directive - was adopted. This stipulates the compulsion for considering the issues with an impact on the environment within an environmental assessment. The directive was also transposed in Romania by GD no. 1076/2004, which establishes the legal framework.

Among the essential components of the accession process to the European Union, the “public participation” can be found. In this sense, Romania ratified, by Law no. 86/2000, the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters.

These Guidelines were elaborated within the project “Public participation within the implementation of the SEA Directive”, financed by The Netherlands Embassy through the Matra KAP Programme and proposes to make a presentation of the existing legal requirements both at European and national levels on environmental assessment and of a procedure for the public participation according to the national legislation.

Starting from the GD no. 1076/2004, which regulates also the participation of the public to the environmental assessment procedure, we wished to realise a tool for facilitating the understanding and awareness by NGOs on the right which these have to participate in the decision-making.

We are taking into consideration that NGOs' importance is highlighted by the GD no. 1076/2004 itself, starting from the EU recommendation. We are recommending to the NGOs to use these Guidelines as a starting base, eventually to design brochures for the general public, with a reduced information volume and more accessible from the language point of view.

We are taking this opportunity to thank the NGOs which answered our invitation to participate in the two workshops organised within the project; we paid special consideration to their suggestion for the improvement of these Guidelines. The list of the participant NGOs, and also their contact details are an Annex to these Guidelines.

We hope that the Guidelines on public participation within the environmental assessment procedure will prove itself useful and the pioneership marked by its publication will be followed by many others...

Abbreviations/ acronyms

CAEP – *Competent authorities for environmental protection;*

CE – *European Commission;*

DG Environment – *Directorate General for Environment of the European Commission;*

EA – *Environmental assessment;*

EIA – *Environmental impact assessment;*

EIS – *Environmental impact study;*

EPA – *Environmental protection agencies;*

ER – *Environmental report;*

EU – *European Union;*

GD – *Governmental Decision;*

NEPA – *National Environmental Policy Act;*

NGO – *Nongovernmental organisation(s);*

P/P – *Plans/ Programmes;*

REC – *The Regional Environmental Centre for Central and Eastern Europe;*

SEA – *Strategic environmental assessment;*

SEIA – *Strategic environmental impact assessment;*

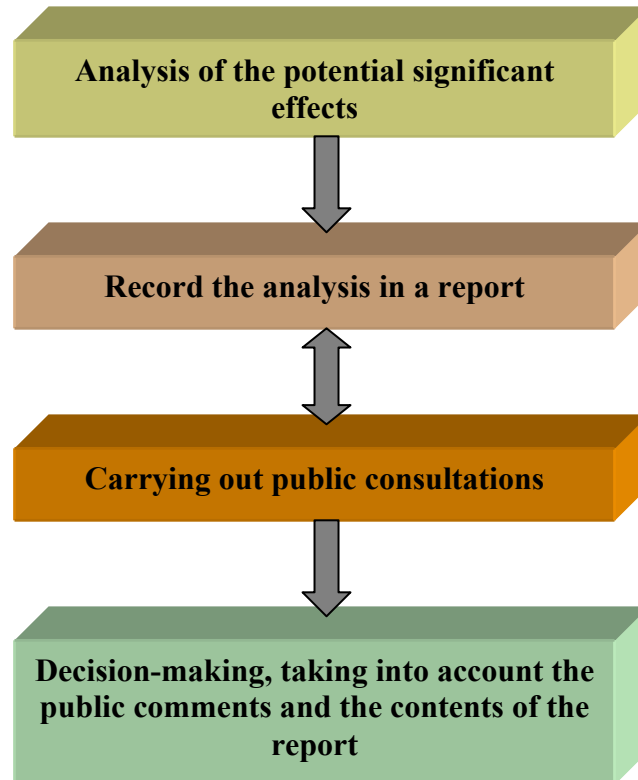
UNECE – *United Nations Economic Commission for Europe.*

Part I: Environmental assessment for plans and programmes

1.1 – What is the environmental assessment

The environmental assessment is a procedure through which the environmental issues are taken into consideration when making decisions, before their adoption.

The environmental assessment process involves the following main steps:



The environmental assessment can be carried out for:

- individual projects (ex.: building of a dam, an airport, a power plant, a refinery, for the development of mining activities etc.), which are falling under the incidence of the *environmental impact assessment* – EIA;
- plans, programmes and policies, which are the object of the strategic environmental assessment - SEA.

In these Guidelines we will have in view the environmental assessment for plans and programmes in the manner established by the Directive 2001/42/EC of the European Parliament and European Council on the assessment of the effects of certain plans and programmes on the environment (SEA Directive).

SEA Objectives

- **to contribute to making a more sustainable decision (through an approach which brings together the environmental, social, economic institutional and political issues);**
- **to facilitate the understanding of the environmental values and their integration with the social and economic values;**
- **to promote the making of an integrated decision which takes into account many points of view (defined according to cultural and technical factors);**
- **to facilitate a new way of making a decision to improve the political and institutional context which characterises the future decision making.**

SEA answers to the major institutional challenge of the '90s, the consideration of the ecological aspects in the same time with the economic or other type of dimensions, representing a priority of the sixth Action Plan for Environment of the European Commission.

1.2 – Principles and benefits of SEA

Principles of an effective SEA

SEA represents an *ex ante* approach which is applied in the incipient phases of the draft plans and programmes formulation, when the major alternatives and options are still open and before the decision-making.

We are describing below a series of principles which have to direct the SEA process, so as to reach its aim for which it was conceived and the objectives of the proposal, bringing them in with other objectives of the sustainable development:

- SEA process should be designed taking into account the characteristics of the plan or programme elaboration;
- SEA process should have all the time in view the environmental objectives and priorities;
- SEA should identify the way in which the development alternatives and proposals can contribute to a sustainable development, and also the best practical option for environment, where this is possible and adequate;
- SEA should cover all plans and programmes which are likely to have significant effects on the environment; the SEA field should be proportional with the problem importance, foreseeing the possibility that this should be approached at other levels of the decision-making hierarchy;
- SEA should focus on problems which are counting when making the decision;
- The SEA process should take into account the environmental considerations, and also the social ones if adequately and necessary;

- SEA process should include clear requests and procedures, including a proper public participation level;
- SEA should be undertaken by the developer of the plan or programme;
- SEA should facilitate the timely involvement of the key stakeholders;
- SEA should use adequate and efficient analytic methods and techniques from the cost point of view.

SEA benefits

SEA leads to a better preservation and management of the environment, promoting sustainable development. As well, it strengthens the process of policies, plans and programmes elaboration, providing this way a series of immediate and long-term benefits for the development agencies, planning authorities and governments. The procedural benefits of SEA include making efficient the planning processes and the government improvement.

SEA can support the stakeholders:

- to achieve a secure and sustainable development from the environmental point of view;
- to strengthen the policies, plans and programmes elaboration processes;
- to save time and money, avoiding expensive errors;
- to improve the government and to „build” the public trust in decision-making.

1.3 – European legal framework

1.3.1 – Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive)

Introduction

The Commission ever since 1996 a Proposal for a Directive on Environment Assessment of certain plans and programmes. In December 1999, the Ministries of the Environment made a political agreement on a common text of the future Directive. The common position was officially adopted on March 30, 2000. The European Parliament acting also as co-legislator approved with amendments the Common Position, on which the Commission expressed its opinion on October 16, 2000.

Finally, in 2001 the European Parliament and Council officially adopted the SEA Directive, this being published on July 21, 2001. The Directive entered into force in July 2004.

According to the Directive, the objective of SEA is represented by the protection of the environment and the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development .

This Directive requests that the environmental assessment be carried out for a series of plans and programmes which are likely to have significant effects on the environment.

SEA Directive shall apply for the plans and programmes the formal preparation of which started after July 21, 2004, as well as for those which were under preparation at that time, but will not be adopted or submitted to the procedure until July 21, 2006.

Even if is frequently named the “SEA Directive”, this does not use the term of “strategic environmental assessment”, providing for an “environmental assessment” of certain plans and programmes.

According to SEA Directive, the environmental assessment includes:

- the preparation of the environmental report on the potential significant effects of the draft plan or programme;
- the carrying out of consultations on the draft plan or programme and on the corresponding environmental report;
- the consideration of the draft plan or programme and of the consultation results when making the decision, and
- the information on the moment of adoption of the draft plan or programme presentation of the way how the results of the environmental assessment were taken into consideration.

The scope of the Directive

The plans and programmes which are falling under the incidence of this Directive are those which:

- are subject to preparation and/or adoption by an authority at national, central or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and which
- are required by legislative, regulatory or administrative provisions.

The carrying out of an SEA is mandatory for the plans and programmes with *likely significant environmental effects*:

- which are prepared for agriculture, forestry, energy, industry, waste management, etc. which set the future framework for the development of projects listed in Annexes I and II to EIA Directive EIA (for which a “development consent” will be issued);
- and for which the assessment was determined to be necessary according to the Habitats Directive 92/43/EEC.

For the plans and programmes which determine the use of small areas at local level or minor modifications to plans and programmes above-mentioned, a *screening process* is necessary to determine if they are likely to have significant environmental effects and if, accordingly, needs an SEA.

The screening shall be done through:

- a case by case examination,
- a specification of the plan or programme type,
- a compilation of the two methods

Annex II of the Directive enumerates the criteria for establishing the likely significant effects, which shall be followed at screening stage.

SEA must take place during the preparation of the plan or programme and before their adoption or submission to the legislative procedure.

Exemptions

SEA Directive shall not apply for:

- plans and programmes the sole purpose of which is to serve national defence or civil emergency;
- financial or budget plans and programmes.

Who should develop a SEA?

The Directive does not mention who should prepare the SEA, but it has in view that normally this will be the responsibility of the authority which prepares the plan or programme.

The environmental report

The environmental report identifies, describes and assesses the likely significant effects on the environment and the reasonable alternatives, taking into account the objectives and the geographical scope (Annex I of the Directive).

The Directive requests that the establishment of the scope (scoping) and the level of details to be done with the consultation of the interested authorities, as well as of the public.

The elaboration of the environmental report shall usually begin as soon as possible, ideally at the same time with the preparation of the plan and programme.

Consultations

The SEA Directive stipulates the compulsoriness of consultations in the following cases, for which adequate time frames should be set:

- The scoping procedure will be developed with the consultation of the public and of the authorities with specific environmental responsibilities. These authorities shall be appointed by the Member States.
- The public and the same authorities should be consulted for establishing the assessment field and the detail level of the information included in the report.
- The draft plan or programme should be made available for the environmental authorities and the public. Timely and effective opportunity should be given to the environmental authorities and affected public/potentially affected/ having an interest in the decision making process, to express their point of view.
- The Directive stipulates also the organisation of transboundary consultations with other EU Member States if their environment is potentially affected by the plan or programme.

Decision making

The decision-making will consider:

- The environmental report,
- The opinions of the authorities and of the public and
- The results of the transboundary consultations.

The Member States shall establish procedures so as to ensure for the interested authorities and public the availability of:

- The plan or programme as adopted;
- The statement summarising how environmental considerations have been integrated, how the environmental report has been prepared, how the comments of the public and of the authorities with environmental responsibilities have been taken into account, the result of the transboundary consultations and the justification of the chosen option;
- The measures decided concerning monitoring.

Monitoring

The monitoring is used for the identification at an early stage of the unforeseen adverse effects and for undertaking appropriate remedial actions, and it can be also used as a reference basis for future plans and programs.

EC Guidance on SEA Directive Implementation

The European Commission has published Guidance on the implementation of Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment. The Guidance was elaborated by the representatives of the Member States and of the DG Environment of EC, taking also into account the discussions between the SEA experts.

The aim of this document is to help the Candidate and Member States to fully understand the obligations stipulated by the SEA Directive, to transpose the provisions of the Directive into their national legislations and to create or improve the procedures which will put in practice the legal obligations.

The guidance is not final, being opened to updates, and does not have a compulsory nature.

Each section comprises the reference to the appropriate provision(s) of the Directive, a brief introduction to the topic and a discussion of the issues which arise.

I.3.2 – UNECE Protocol on Strategic Environmental Assessment

Introduction

This Protocol was elaborated at the initiative of the civil society, namely of European ECO Forum together with REC, within the second Meeting of the Parties of the Aarhus Convention (2000). SEA Protocol was adopted on May 21, 2003 in the Extraordinary Meeting of the Espoo Convention on environmental impact assessment - EIA in transboundary context, Kiev, May 21-23, 2003. Currently, the Protocol was signed by 37 UNECE states (including Romania), which will be followed by the national ratification processes.

SEA Protocol is complementary to SEA Directive, being a new instrument for raising the transparency of the strategic decisions and for preventing or reducing the negative effects on environment and health; at the same time, it sets minimum provisions which can be enlarged by the Parties.

Field of application

The SEA Protocol shall be carried out for plans and programmes:

- Which are likely to have significant environmental, including health, effects,
- Prepared for agriculture, forestry, land use and urbanism etc. and which set the framework for future development consent for projects,
- Other plans and programmes which might have significant environmental effects.

Stages of SEA process

The SEA Protocol requests SEA to be timely started: during the *preparation of the plan and programme*.

- For the screening and scoping stages, consultations with the environment and health authorities will be carried out; the parties shall make efforts in order to ensure the participation of the interested public (identified by the government).

- Referring to the environmental report, the SEA Protocol shows that this identifies, describes and evaluates the likely significant environmental, including health, effects of implementing the plan/ programme and its reasonable alternatives.

Public participation

The participation of the public is the essential dimension of the SEA process, being in fact the starting point for this Protocol. Accordingly, an **early, timely and effective** public participation shall be ensured in SEA for plans and programmes. In this sense, the parties:

- Using electronic media/ other appropriate means, shall ensure the timely public availability of the draft plan or programme;
- Shall ensure that the public has the opportunity to express its opinion on the draft plan or programme within a reasonable time frame;
- Shall ensure the arrangements for informing and consulting the public concerned, as well as made them publicly available.

In decision-making process, the comments of the public and also of the environmental and health authorities will be taken into account.

One of the imperative provisions of the Protocol is related to the transboundary consultations, respectively the consultation of the public concerned and the environment and health authorities from the state potentially affected through the adoption of the plan/programme.

Monitoring

The monitoring of the significant environmental, including health, effects of the implementation of a certain plan or programme and made them publicly available is mandatory.

Policies and legislation

Although in the beginning SEA was intended to cover all strategic decisions, in the end the *SEA procedure became fully applicable only for plans and programmes*. According to SEA Protocol, the procedure established for plans and programmes, including the public participation, could be used for the environmental assessment of policies and legislation, but it is not mandatory.

I.3.3 – Other sources of community legislation

Below we are presenting a series of other legislative tools which concern the environmental assessment and public participation in the environmental assessment procedure:

- Directive 79/409/EEC on the conservation of wild birds,
- Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
- Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive),
- Directive 2000/60/EC establishing a framework for Community action in the field of

water policy,

- **Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC,**
- **Convention on Environmental Impact Assessment in a Transboundary Context, 1991 (in its framework the SEA Protocol was adopted),**
- **Rio de Janeiro Convention on biological diversity, 1992,**
- **Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998 (in particular art. 7 and 8 which refer to the public participation in the preparation of plans, programmes, policies, enforcement regulations and other legal acts).**

I. 4 – SEA versus EIA

SEA for plans and programmes differs from EIA for projects in terms of aspects which are related to a higher level of application when making a decision, a larger variety of open alternatives to be taken into consideration and a greater opportunity to achieve the environmental objectives.

Further, we are presenting a series of different characteristics of SEA in comparison to EIA:

- **a greater uncertainty related to the effects of a plan, programme (general directive) comparing to those of a project (concrete actions);**
- **a larger variety of the environmental consequences which have to be taken into account (from implications to impact);**
- **a complete set of connexions with the economic and social issues (for example, a national energetic plan comparing to a power plant);**
- **a larger scale/ period of time for taking into account the effects and consequences on the environment (for example, the effects of the carbon dioxide emissions for the climate change);**
- **the methodology consisting of probable impact and scenarios for SEA versus identifiable impact in EIA case;**
- **the sustainability of SEA versus the compatibility in EIA's case;**
- **the assessment internalised by the developer as approach in SEA's case comparing to the evaluation by a third party in EIA's case;**
- **a more evasive/distant perception of the public in SEA's case, comparing to EIA's case when this is more reactive (NIMBY – „not in my back yard”);**
- **the data sources in SEA's case are the environmental status reports, the Local 21 Agenda, statistical data, policy and planning tools; for EIA these sources can be: the work on the field, measurements, statistical data.**

Nevertheless, SEA and EIA are very similar and have a common base. SEA developed mainly as an answer to the level and types of decision-making which were not covered by EIA. Thus, SEA drew out, adjusted and implemented EIA procedures and methodologies particularly at the level of plans and programmes.

1.5 – International experiences

Various authors tried on different occasions to catch the SEA status. This process is however a very dynamic one, suffering continuous changes. In the table below we will illustrate the SEA experience of some states, through the highlight of the issues related to the SEA birth, field, legal and institutional framework, adopted methods and techniques.

Country	Genesis	Fields of application	Legal and institutional framework	Methods and techniques
Canada	<ul style="list-style-type: none"> • The policy of self-assessment influenced environmental assessment in Canada since the early days of project' EIA in 1972. • Canada started-off the concept of Policy Impact Assessment and in 1990 a Cabinet Directive is issued requiring all federal Departments and agencies to apply a mandatory, yet non-legislated, environmental process to federal policy and programme proposals submitted to Cabinet consideration. • This Directive was reviewed and a more systematic procedure introduced in 1999. 	<ul style="list-style-type: none"> • All kinds of policies, plans and programmes. 	<ul style="list-style-type: none"> • The 1999 Directive and Guide for SEA. • The implementation of this Directive is overviewed by the Canadian Environmental Assessment Agency. • However each federal Department and Agency, and regional institutions develop specific procedures. 	<p>Diverse, according to cases, but include:</p> <ul style="list-style-type: none"> • Checklists and the environmental and sustainable benchmarking, alternatives comparison, visioning assessment, cumulative impact assessment, matrix evaluation.
Denmark	<ul style="list-style-type: none"> • Influenced by a strong planning system since the early 70's, the integration of environmental issues of plans and programmes was an inherent component in the planning process through what was initially called environmental zoning. • Policy assessment, through the environmental assessment of government legislative proposals, is also in place since 1993. 	<ul style="list-style-type: none"> • Policies, including legislative governmental proposals, through the Administrative Order, • Plans and programmes through the planning system. 	<ul style="list-style-type: none"> • An administrative Order of the Prime Minister requiring an environmental assessment of all proposals submitted to parliamentary approval was issued in 1993, and further reviewed in 1995. Responsibility lies with the Ministry for the Environment. • For plans and programmes responsibility stays with competent authorities for plan and programme development. 	<ul style="list-style-type: none"> • Policy assessment is made through a checklist with 57 significance criteria, grouped in 11 categories, ranging from physical, ecological, human and risk issues. • Plans and programmes are assessed through planning techniques.
Great Britain	<ul style="list-style-type: none"> • Like in Denmark, influenced by a strong planning system since the early 70's, the integration of environmental issues in plans and programmes was an inherent component in the British planning process through what was initially called environmental zoning. However the UK takes a leadership role in SEA not only because it creates the terminology but also because is the most active in establishing guidance for good practice in SEA since 1991 (with further guidance issued in 1993, 1998 and 1999). • More recently the concept of sustainability appraisal was introduced which extends to the regional level the practice with the 	<ul style="list-style-type: none"> • SEA is developed in the UK especially at the regional and local land-use planning levels, and also • At the sectoral policy and planning levels related to transports and energy. 	<ul style="list-style-type: none"> • There are no legal requirements so far, practice is led by the existing guidance, which is issued by the Department of Environment, Transports and the Regions. 	<p>Diverse but including:</p> <ul style="list-style-type: none"> • sustainability indicators and criteria, • environmental and sustainability benchmarking, • scoping approaches, • cost-benefit analysis, • policy impact matrices.

Country	Genesis	Fields of application	Legal and institutional framework	Methods and techniques
	environmental appraisal of development plans (guidance issued in 1993), initially applied only to local levels and having a too physical-ecological approach.			
South Africa	<ul style="list-style-type: none"> • SEA has been evolving in South Africa strongly influenced by the project' EIA practice. • However, more recently, after the enactment of the National Environmental Management Act in 1998, new provisions exist for the development of assessment procedures to apply to policies, plans and programmes. This has been influencing a stronger integrative nature with land-use planning, also incorporating principles of sustainability. 	<ul style="list-style-type: none"> • Policies, plans and programmes • The practice shows stronger application at the level of sectoral and land-use planning. 	<ul style="list-style-type: none"> • There are no legal requirements for SEA, except for the provisions in the National Environmental Management Act. 	Diverse but including: <ul style="list-style-type: none"> • indicators and environmental criteria, • scoping approaches, • impact assessment matrices.
Holland	<ul style="list-style-type: none"> • Together with the USA, the Netherlands perform an evident case for the use of a project-based EIA procedure to the assessment of plans and programmes. • However at the level of policy assessment a different system, called the E-test, has been established. • What makes the Dutch system quite innovative however is the practical development of the tiering approach, whereby the various layers in the decision-making process are structurally and functionally inter-connected. 	<ul style="list-style-type: none"> • P/P with what is called the SEIA - Strategic Environmental Impact Assessment • Legislative proposals through the E-test. 	<ul style="list-style-type: none"> • The Environmental Impact Assessment legislation of 1987, and subsequently the Environmental Management Act of 1998 provide the legal context for both EIA and SEIA, under the administration of the EIA Commission. • The E-test is based on an administrative order jointly issued by the Ministry of Economy and Ministry of Environment. 	<ul style="list-style-type: none"> • The E-text is mainly based on a checklist. • The SEIA uses the similar techniques to project' EIA, may be with a greater use of scenarios development and other planning techniques.
USA	<ul style="list-style-type: none"> • The USA is the birth of the concept, more precisely by National Environmental Policy Act – NEPA from 1969. • SEA evolved deeply rooted in project' EIA, as practice with the Programmatic EIS demonstrate. • Together with the Dutch system, it certainly provides an example of a bottom-up approach to SEA. • The application to policies has been limited to non-existent. 	<ul style="list-style-type: none"> • Sectoral and land-use plans and programmes. 	<ul style="list-style-type: none"> • At the federal level the context is provided by NEPA. • Some states have developed their own legal and procedural requirements, with particular emphasis to the situation in the state of California. 	<ul style="list-style-type: none"> • Very much related to project' EIA methods and techniques, perhaps with a stronger use of scenarios building and land-use planning techniques.

I. 6 – Transposition of SEA Directive in Romania

The transposition of SEA Directive in Romania was done by governmental decision, GD no. 1076 from July 8, 2004 on establishment of the procedure for the development of environmental assessments for plans and programmes. Romania framed within the deadline established (July 21, 2004). The methodological norms for the implementation of SEA Directive will be elaborated by the central authority for environmental protection, with the support of a technical assistance project, financed by the European Commission through the Phare programme.

Currently, the National Environmental Protection Agency is preparing a guidance document for the implementation of the environmental assessment for plans and programmes, the finalisation of which is scheduled to take place until the end of 2005. Also, this year, a database of plans and programmes from Romania will be developed, which will be made available for consultation on the web page of the Ministry of Environment and Water Management.

Based on GD no. 1076/2004, in Romania, the environmental assessment procedure is **integrated** into the procedure for the adoption of the plans and programmes (Art. 1 (3)).

The procedure is applied for the issuance of the environmental license for plans and programmes with likely significant environmental effects. In this regard, the Governmental Decision defines:

- the role of the competent authority for environmental protection,
- the requirement for the consultation of stakeholders, and
- the request for the public participation.

The environmental assessment is carried out during the preparation of the plan or programme and before its adoption or submission to legislative procedure – Art. 3 (1).

The **main actors** in this procedure are:

- the competent authorities – public authorities for environmental protection;
- the representatives of the public central or local authorities which have attributions and responsibilities in the field of environmental protection;
- the plan or programme developer;
- the interested public.

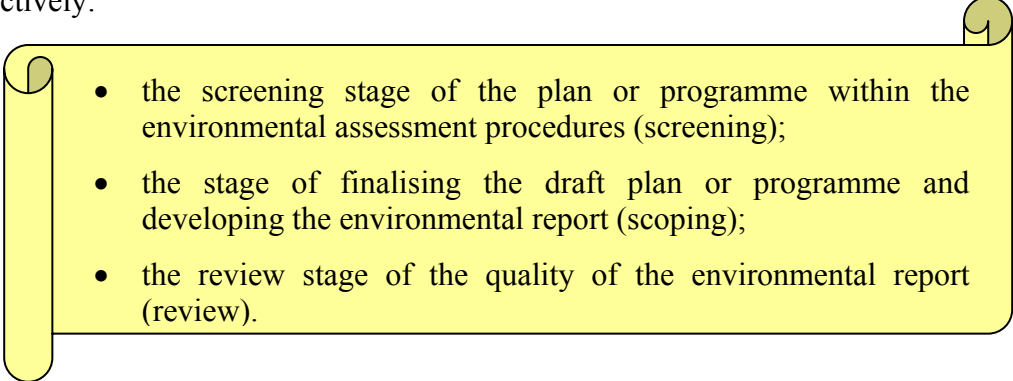
One of the important provisions aim at avoiding duplications. This means that environmental assessment for the plans and programmes developed at local and regional level, which are a constitutive part of the regional or national plans or programmes which were already submitted to environmental assessment, will take into account the result of this evaluation, in order to avoid duplications.

Definitions

The Governmental Decision defines in Art. 2 the terms of ‘environmental license’, ‘environmental assessment’, ‘plans and programmes’, ‘public’, ‘environmental report’, ‘plan or programme developer’. In Annex VI of these Guidelines, we will present an explanation of these terms, and also of other terms.

Stages

The Romanian procedure is staged according to the *acquis communautaire*, respectively:

- 
- the screening stage of the plan or programme within the environmental assessment procedures (screening);
 - the stage of finalising the draft plan or programme and developing the environmental report (scoping);
 - the review stage of the quality of the environmental report (review).

Competent authorities

According to Art. 7 (2) to GD no. 1076/2004, the competence for issuing the environmental licence devolves upon the **regional agencies for environmental protection**, for the local and county plans and programmes, and of the **central environmental protection authorities** for the national and regional plans and programmes.

Scope of EA

1. The following plans and programmes shall be made subject to EA:
 - The plans and programs which are prepared for specific areas as agriculture, forestry, fisheries and aquaculture, energy, industry, including the activity of useful mineral extraction, transport, waste management, water management, telecommunications, tourism, regional development, town and country planning and land use, which establish the framework for the issuance of future **environmental agreements** (similar term for „**development consent**” from SEA Directive) for the projects included in Annexes 1 and 2 to the Governmental Decision no. 918/2002 establishing the framework procedure for carrying out the environmental impact assessment and approving the list of public-private projects subject to these procedures; or which
 - Due to the likely effects, affect the areas of special fauna protection or special conservation area.
 - The plans and programmes co-financed by the European Union through structural funds or rural development funds, including the European Agricultural Guidance and Guarantee Fund – Guarantee Section, the first version of which will be realised before 2006, respectively before 2007, and

which are submitted to adoption procedure or to the legislative procedure before this date.

2. The following types of plans and programmes **are subject of the screening stage in the environmental assessment** procedure:
 - P/P which determine the use of small areas at local level,
 - P/P involving minor modifications to above-mentioned plans and programmes,
 - P/P establishing the framework for future development of projects subject to the environmental permitting procedure only by issuance of the environmental permit.
3. The following plans and programmes **are exempted** from the environmental assessment:
 - plans and programmes the sole purpose of which is to serve national defence or civil protection,
 - financial or budget plans and programmes,
 - plans and programmes for rural development through the European Agricultural Guidance and Guarantee Fund – Guarantee Section, for 2007.

The screening stage

This stage is led by CAEP, with the consultation of the especially established committee formed by the developer, health authority and other interested authorities identified by CAEP.

The steps of the screening stage:

- The developer **notifies in writing the CAEP and informs the public** on the initiation of the plan or program elaboration process and realisation of the first version, including the location where this can be consulted;
- The public can formulate in writing to CAEP **comments and proposals** for the first version;
- The developer is obliged to **make available to the committee especially established**, for consultation, the first version;
- CAEP carries out the screening taking into account the comments of the public and based on the criteria in Annex no. 1;
- CAEP **makes the screening decision** within the especially established committee (25 days from the notification);
- The **public is informed** (within 3 calendar days after the adoption), and can makes comments (10 days from the information);
- CAEP **can reconsider the decision** within the committee; it makes the final decision, which is made available to the public (within 3 days).

According to Art. 13, the plans and programmes which, following the screening stage, do not require an environmental assessment, will be made subject to an adoption procedure without an environmental license.

The stage of finalising the draft plan or programme and developing the environmental report (scoping)

The finalisation of the draft plan or programme, the establishment of the scope and the detail level of the information which have to be included in the environmental report, and the analysis of the significant effects of the plan or programme on the environment are done within a working group, formed of:

- The plan or programme developer,
- The competent authorities for environmental protection,
- The competent authorities for health,
- Other interested authorities,
- Natural or legal persons certified according to the legal provisions in force and
- Experts employed.

The steps of the scoping stage:

- The plan or programme developer presents to the working group the **specific objectives of the plan or programme;**
- The certified persons analyse the significant environmental problems and determines **the environmental objectives relevant in comparison with the specific objectives of the plan or programme**, which are at their turn presented to the working group;
- The developer designs **possible alternatives**, taking into account:
 - the objectives and geographical scope and
 - the relevant environmental objectives;
- The working group assesses the alternatives and makes **recommendations;**
- Based on the recommendations, the developer **elaborates in detail the alternatives** which meet the relevant environmental objectives;
- The certified persons analyse the alternatives, from the point of view of the **significant effects** on the environment (criteria in Annex no. 1);
- The developer presents to the working group the **final alternative and the prevention, reduction, compensation measures and the monitoring programme of the significant effects;**

- The certified persons and the experts employed elaborate the **environmental report** (the framework content of which is presented in Annex no. 2 to GD no. 1076/2004 and in Annex II of these Guidelines);
- The plan or programme developer makes announcements in the mass-media about the availability of the draft plan or programme, the finalisation of the environmental report, the location and hour for their consultation;
- The interested public can express their opinion (within 45 days from the announcement);
- Based on the comments, the plan or programme developer can bring modifications to the draft plan or programme and/or the environmental report elaborated in this sense.

Review stage of the quality of the environmental report and decision-making

The final stage of the EA procedure has as result the final decision for issuing/rejection of the environmental permit.

The steps of the review stage:

- The developer sends to CAEP, health authorities and other interested authorities the **draft plan or programmes and the environmental report** (including to the environmental central authority from the potentially affected state);
- The developer organises the **public debate**;
- CAEP **reviews the quality of the environmental report**, taking into account some elements (enumerated in Art. 24 (3)), including the detailed points of view of the authorities, making the decision to issue the environmental license;
- After the public debate, CAEP **makes the decision** to issue the environmental license, and informs the developer and public (on the Internet);
- The public **can consult the endorsed version** of the draft plan or programme at the CAEP's premises;
- CAEP can groundedly order, in writing, the re-elaboration of the draft plan or project, if the environmental report or the comments of the public highlight a potential significant negative effect.

Special attention is given to the monitoring programme, which is an integral part of the environmental license and is the responsibility of the developer. The results of the monitoring are annually submitted; CAEP analyses and publishes them on its web page.

Public information and participation

We will present in details this section in Part II of these Guidelines, which is dedicated to public participation.

Transboundary environmental assessment

GD no. 1076/2004 stipulates also the carrying out of transboundary consultations with the states potentially affected by the significant effects of the plans and programmes initiated on the territory of Romania.

Part II: Public participation

II. 1 – Context, aims and objectives of public involvement and participation

Context

During the last period, a development of the request for the participation and involvement of the public in decision-making was registered. The reasons which form the basis of this trend are connected to the policy and politics changes at world and national level, the continuous evolution of the multi- and bilateral agencies and to the lessons learned from the assessments of the policies, programs and projects.

1. Policy and politics trends:

- **increase of the democratic governance figures,**
- **the trend to decentralise the decision making,**
- **decrease of the public sector influence and increase of the privatisations.**

2. Politics of the most influent agencies:

- **promotion of a good governance;**
- **accent on fighting against poverty and gender discrimination;**
- **promotion of the environmental capacity building for improving the capacity of the governments to make more efficient decisions.**

3. Lessons learned from the assessment of the implemented policies, programs:

- **early and planned involvement and consultation of the public encourages the elaboration of better policies, programs and projects;**
- **policies, programs and projects in which the public was involved have better chances to achieve their objectives;**
- **public involvement can contribute to avoiding the costly delays in the assessment and of the difficulties in getting the permits and licenses.**

The involvement and participation of the public represent a valuable resource of information related to: categories of key impacts, possible measures for reducing the impact, and also the identification and selection of the alternatives. At the same time, it ensures an open, transparent and robust process, and also well justified and consolidated analysis.

In most cases, the EIA/SEA procedures are developed more often with the consultation of the public than with its participation. As a minimum requirement, the implication and consultation of the public should give the opportunity for those

directly affected by a proposal to express their point of view on the proposal and on the environmental and social impact.

Essentially, there are three ways for the stakeholders to be involved in the environmental assessment:

- Dissemination of information – the information flow is one way: from the developer to the public.
- Consultations which involve an exchange of information between the developer and the public within a two-way information flow. The public can express its opinion, but the developer is not obliged to take it into consideration.
- Public participation – requires a shared involvement and responsibility. Essentially, this involves an element of common analysis and control of the decision and its implementation.

Regardless of the option adopted, the governments should identify and encourage the decision makers to explore the opportunities given by each of them in the environmental assessment process. These involvement and consultation options should be institutionalised when the states introduce or modify the environmental assessment procedure.

Aims and objectives of public participation

The public involvement and consultation:

- Allows the public to express its point of view about SEA scope and content (and of the draft plan or programme);
- Allows to obtain local and traditional knowledge (corrective and creative) before the decision-making;
- Allows a more rational consideration of the alternatives and measures for impact reduction;
- Ensures that important categories of impact and benefits maximization are not omitted;
- Reduces the conflict through early identification of the problems generating disputes;
- Influences the elaboration of a draft plan or programme in a positive manner (creating a sense of property on the proposal);
- Improves the transparency and responsibility in decision-making and
- Raises the trust of the public in SEA process (or EIA).

The experience denotes that the involvement and consultation of the public provides a broad range of such benefits for all participants in the environmental assessment process. A lot of benefits are real, as it is for example the improvement of the way for elaborating the draft plan or programme. Other benefits are intangible and incidental, being created through the participation in the process. For example, the participants can see that their ideas are supporting the improvement of the proposals, and gain self-confidence and respect.

II. 2 – Public participation to SEA versus EIA

The basic principles of the public participation are equally applied to EIA and SEA. However, given the special characteristics of SEA, in certain cases, the public consultation can be different compared to EIA.

The scale and scope of SEA are substantially different in comparison to EIA, with the appropriate implications for the public participation. For example, in some cases SEA becomes a *continuous process*, because it will make a constitutive part from the life cycle of the policy, plan or programme. Thus, it is possible that SEA produces specific written results comparable with the EIA report. The public involvement and consultation will be diffuse and there will be no single report or event acting as a releaser factor.

The public consultation will be inevitably different compared to usual situations of the EIA process. Actually, some governments might not see very as beneficial the involvement of the public in the early stages of the policies formulation.

Due to the continuous nature, the involvement of a large scale of stakeholders and the use of all involvement and consultation techniques will be probably unpractical. The costs will be too high. The use of some target groups representatives of the stakeholders would be more adequate. Many times, the division into internal and external stakeholders could be more important for the decision-making process.

For a developer from the industry field, which needs a permit from a local authority, SEA within the national policies context could be a more internalised activity in comparison to EIA.

The internal stakeholders are those who either are the decision makers (politicians, governments), or support the decision makers (the personnel in the ministries).

The external stakeholders are those whose interests could be affected by a proposed initiative. The importance of the stakeholders in these situations becomes essential for ensuring the input and external analysis.

It was highlighted that stakeholders should include also the commercial interests, not only the representatives of the public, like NGOs or other groups and associations of civil society, being considered important that sufficient opportunities be given to stakeholders:

- to be involved in the creative process for problem definition or redefinition (if this is the starting point of SEA) and in providing alternatives;
- to follow its own interests and to be capable to enter into negotiations for finding “win-win” solution or benefits which can be maximised and
- to be involved in all decisions made during SEA process, not only into final decision.

These principles are focussing on public involvement and consultation, and their enforcement in EIA is creating problems due to the individual EIA diversity and compared to the usually practice. SEA is more recent and less “controlled” by precedents and regulations. That’s why the principles presented above can be more easily enforced in SEA context.

Despite the above, problems may arise in the implementation of the principle related to stakeholder's role in defining the problems to be approached through the proposed action and in decision making.

The responsibilities in the decision-making process shall be clearly defined. It is very possible that the elected decision makers be unsatisfied by the dilution of their attributions due to the interventions of the persons not chosen, no matter who they represent.

There is another problem which can become important once with the increase of the SEA number and complexity. This is the case of formulating commercial policies and of elaborating national fiscal policies. In these cases, SEA could take into consideration some information which should be secret for financial, commercial or national security reasons. SEA could use a more restrictive involvement of the public: use of the selected NGOs instead of consulting the general public.

The commercial secret is a problem in EIA, but its importance can be considered relatively reduced, except for some cases when EIA process for a specific project was modified taking into account these considerations.

II. 3 – Who is the public?

The SEA Directive (2001/42/EC) stipulates that “the public shall mean one or more natural or legal persons and, in according with national legislation or practice, their associations, organisations or groups”. The same definition is given also by the Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC. This definition was literally transposed in GD no. 1076/2004, Art. 2, letter d).

The SEA Directive speaks about the *public affected or likely to be affected by, or having an interest in the decision-making*.

The consultation of all those which can consider themselves as forming the public is not possible. The current practices are focussing on the stakeholders which collectively can be considered the public.

The stakeholders are individuals or groups who have an interested which might be affected by the decision made on the plan or programme.

The stakeholders can be classified as follows:

1. The ways their interests could be affected
 - *Primary stakeholders* – those whose interests would be directly affected by the decision related to a proposed initiative (example: local communities);
 - *Secondary stakeholders* – those who will not be directly affected, but would be indirectly affected and/or can influence the decision (examples: international NGOs and local/ national mass-media).
2. Their position reported to decision-making
 - *Internal stakeholders* – those involved in the decision-making, and

- *External stakeholders* – those whose interests could be directly or indirectly affected.

The difference between internal/external stakeholders is not commonly used.

In the box below, we are presenting a list of the typical stakeholders for the environmental assessment:

STAKEHOLDERS REPRESENTING THE PUBLIC IN SEA:

- local communities and citizens of the local communities potentially affected by the plan or programme; traditional leaders or the representatives of the bodies from the community level can be consulted for obtaining the community point of view;
- social groups formed by the non-resident persons which can use regularly or not the local resources (for example the shepherds);
- social categories as women, older people and poor persons (the current concern of the international financial institutions and of bilateral donors);
- religious leaders;
- politicians;
- NGOs and organizations of volunteers as the groups acting for the development of the local communities or the groups of resources users, gender differences groups, cooperatives;
- private structures as the professional bodies, commercial associations and trade chambers;
- mass-media (newspapers, radio, TV) and
- national and local governmental structures, departments and agencies which activities and responsibilities are including areas and sectors which could be affected (health, natural resources and territorial planning).

These persons, groups or organisations probably represent the minimum criteria demanded by those who are planning the involvement and consultation of the public. Not all above-mentioned categories are participating in each environmental assessment. Frequently, the environmental assessment gives the opportunity to be involved to other categories (for example, scientific researchers which could be experts in the problems of a place which is to be affected).

In certain situations other categories of stakeholders should also be included, as, for example, the plan or programme’s developers (which can be local or not).

Concerning NGOs, it could be difficult to identify which are the stakeholders, taking into account that many are developing international activities, and thus not being present at local or national levels.

A special category of the public is represented by the public (which can be represented by stakeholders as those mentioned above) from the state potentially affected by the transboundary effects of a plan of programme initiated on another state territory. This type of public could be also interested and has the right to participate in SEA process, right given both by the community legislation and GD no.1076/2004.

II. 4 – Public participation to the stages of the environmental assessment procedure according to GD no. 1076/2000

We will further present the public participation procedure, as it is regulated by the Romanian legislation.

We bear in mind that Romania ratified by Law no. 86/2000 the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998. GD no. 1076/2004, which transposes the SEA Directive in Romania, represents the framework procedure, taking into account also the provisions of the Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC. At the same time, Romania is among the signatory states of the SEA Protocol – Kiev, 2003.

GD no. 1076/2004 stipulates from Art. 7 (2) that the public is effectively participating in the environmental assessment procedure from the initiation of the plan or programme and dedicates the entire Section 4 to public information and participation in EA.

II.4.1 – Obligations of the competent authorities for environmental protection

The competent authorities for environmental protection (CAEP) ensures the information and participation of the public in the environmental assessment procedure. Art. 28 of GD no. 1076/2004 set the activities which have to be undertaken in this sense:

- CAEP identifies the public which have the right to participate in EA, namely:

Affected public

Public likely to be affected

Public which has an interest in decision-making related to the issue of the environmental license

Relevant NGOs, as those promoting the environmental protection

Other interested organisations

The notion of “public” is, in this sense, quite broad, taking into account especially the third category enumerated by the GD: the public which has an interest in the decision-making.

Bearing in mind that CAEP identify this public does not mean that this will limit the public which can participate in the EA procedure, according to the criteria identified by CAEP. It should be understandable that environmental authority will identify the minimum area covering the public being right in to participate, having in view the data of the specific plan or programme.

Nothing will hinder other categories of the public to be involved, communicating this intention to the authority or the developer, which, in order to extend the public, will inform the authority.

- CAEP establishes the location where the information available can be consulted.
- CAEP establishes the way for informing the public:

- *display in a specific area,*
- *public announcements in the local media,*
- *announcements in the electronic media (on the Internet),*
- *exhibitions with plans, tables, graphics,*
- *etc.*

- CAEP sets the means for public consultation:

- *written information notes,*
- *public debates,*
- *electronic means,*
- *etc.*

- CAEP sets up adequate deadlines for allowing the public to participate timely and effectively to the stages of the EA procedure.
- CAEP informs on the possibility that the plan or programme to be submitted to an environmental assessment procedure in a transboundary context.

The information of the public from the potentially affected state by the effects of the plan or programme initiated under the territory of Romania is done by the authorities from the state potentially affected, which are at their turn informed by the Romanian central public authority which promotes the plan or programme (Art. 34).

- In the end, CAEP are making available, upon request, the irrelevant documents for the plan or programme submitted to EA, others than those provided by the plan or programme developer.

II.4.2 – Public participation in the screening stage

The **responsibility** for involving the public in the screening stage devolves both on the plan or programme developer and on CAEP (Art. 29 (1)).

CAEP leads the screening stage, with the consultation of a committee especially established from which the following are part of:

- The plan or programme developer,
- The public health authority and
- The authorities interested by the effects of the plan or programme implementation (identified by CAEP).

What does the developer do?

- **publishes** twice in mass-media, at a 3 day interval and announces on its own web page:

- **the elaboration of the first version of the plan or programme,**
- **its nature,**
- **the launching of the scoping stage,**
- **the location and timetable for the consultation of the plan or programme and**
- **the possibility to send comments and suggestions at CAEP premises, within 15 days of the date of the last announcement.**

- **Publishes** in mass media the initial and final decisions on the screening stage, within 3 days from the adoption.

What does CAEP do?

- **takes into account the comments and proposals received from the public within the 15 days,**
- **announces on its own web page the decision at this stage and the possibility for the public to formulate proposals in writing for its reconsideration, at the CAEP premises, within 10 days of the date of the announcement,**
- **makes the final decision concerning the screening within the committee especially established within 15 days of the expiration of the deadline set for receiving proposals for**

reconsideration from the public,

- displays on its own web page the final decision of the screening stage, with justifications, within 3 days of the adoption.

II.4.3 – Public participation in the stage of finalising the draft plan or programme and developing the environmental report

During this stage, the procedure is developed within the **working group** established at the initiative of the developer, composed of:

- representatives of the plan or programme developer,
- representatives of the competent authorities for environmental protection and health,
- representatives of other authorities interested by the effects of the plan or programme implementation,
- natural or legal persons certified according to the legal provisions in force, and
- experts employed.

The following take place within the working group:

- the finalisation of the draft plan or programme (final alternative),
- the identification of the field and level of detailing the information which have to be included in the environmental report and
- the analysis of the significant effects on the environment of the plan or programme.

The results of this stage are: the finalisation of the draft plan or programme and the elaboration of the environmental report.

The responsibility for involving the public in the finalisation stage of the plan or programme and of the elaboration of the environmental report is of the plan or programme developer (art. 30).

What the does the developer do?

- **Publishes** twice in mass media, at a 3 day interval and announces on its web page:

- the availability the draft plan or programme,
- the finalisation of the environmental report,
- the location and time of their consultation, and
- that the public can send written comments and proposals to the premises of the developer and of the competent authority for environmental protection, within 45 days from the date of the last announcement release.

- **modifies** the draft plan or programme and/or the environmental report based on the documented comments received from the public.

To be remembered:

The involvement of the public is more effective if it is **under the coordination or assistance of an NGO** with an environmental, health, democracy development, human rights etc. profile. They can ask for assistance from other NGOs, are prepared from the theoretical and practical point of view in the public participation issues, know the environmental status in the area.

II.4.4 – The review stage of the report quality and of taking the decision-making process

The responsibility for involving the public in the review stage of the report quality and decision-making is both of the plan or programme developer and CAEP.

What does the developer do?

- **Sends** the draft plan or programme and the environmental report to:
 - CAEP, health authorities and to other interested authorities, within **5 days** from the finalisation of the draft plan or programme and environmental report, including the comments of the public (from the previous stage, according to Art. 21 (3)), and
 - The central environmental authority from the potentially affected state within **20 days** (in English), with the support of the promoter central public authority.
- **Announces** in mass media, at a 3 day interval and on its own web page, the **organisation of the public debate**,
 - within **45 days** from the expiration the 5 days deadline, and
 - within **60 days** in case of plans and programmes with likely transboundary e

The content of the public announcement (Art. 31 (2)):

- **location, date and hour of the public debate;**
- **participant authorities;**
- **if the debate is opened also to the public and authorities from the states potentially affected, in case that the implementation of the plan or programme is likely to have significant transboundary effects.**

- **Invites** to the public debate:

- CAEP, health competent authorities, and the authorities involved in the scooping stage (Art. 31 (3));
- CAEP and health authorities from the potentially affected states, and also the affected public or which potential to be affected or has an interest in de decision-making process from these states, **70 days** in advance, with the support of the promoter central public authority from the potentially affected state (Art. 31 (4)).
- **Announces in mass-media the decision related to the issuance of the environmental license**, within 5 days of its publication on the internet by CAEP.
- **Informs and makes available** for the consulted authorities, public and potentially affected states (also with the support of the promoter central public authority) (Art. 33 (1)):

- **the adopted plan or programme;**
- **a statement concerning:**
 - the way that environmental considerations were integrated in the plan or programme,**
 - the preparation modality of the environmental report (Art. 19 and 20),**
 - the manner of taking into account the opinions expressed by the public and by the authorities and, if needed, the results of the transboundary consultations (Art. 34), when making the decision for the issuance of the environmental permit,**
 - the reasons for choosing the endorsed alternative of plan or programme, comparing it with other alternatives presented;**
- **the measures taken on monitoring the environmental effects.**

- **Announces** in mass media and on its web page the location and timetable for the consultation of the documents.
- **Submits for adoption** the plan or programme, and, as applicable, any other change, only in the format endorsed by CAEP.

What does CAEP do?

- **Receives the detailed and documented point of view** from the health competent authorities and from the other interested authorities; these authorities will send the point of view within 45 calendar days of the receipt date from the developer (Art. 22 (3)).
- **Chairs the public debate**, records the justified proposals from the public and authorities from the potentially affected states (in case of the transboundary procedure) and elaborates the minute of the debate (Art. 31 (5)).
- **Analyses the quality of the environmental report**, taking into account:

- the detailed and documented points of view of the health and other authorities interested in the effects of the plan or programme implementation,
- the results of the public consultation and their inclusion into the environmental report,
- the results of the transboundary consultations.

THE REVIEW OF THE ENVIRONMENTAL REPORT QUALITY HAS IN VIEW - ART. 24 (3):

- the observance of the framework-content stipulated in Annex no. 2;
- the presentation of the technical, procedural and of any other kind of difficulties met and explanation of any hypothesis and uncertainties;
- the presentation of the analysed alternatives, the reasons upon which choosing one of them was based upon,
- the presentation of the manner in which the environmental considerations were integrated into the draft plan or programme, and also the process for the finalisation of the draft based on the information resulted during the environmental assessment;
- the detailed justification of the reasons which formed the basis for the elimination from the analysis of some aspects;
- the consideration of the aspects pointed out during the consultation process with other authorities and the public;
- the presentation of the graphic information – maps, schemes, diagrams;
- the existence of an appropriate monitoring program of the effects on the environment.

- **Orders in writing the completion of the environmental report** if the environmental report is incomplete or of an unsatisfactory quality for ensuring the conformity with the provisions of the GD no. 1076/2004.
- Makes the **decision to issue** the environmental permit within 15 days of the public debate date/ of the transboundary consultations, if the first deadline for their finalisation is not respected.
- **Informs the developer**, in writing, on the decision to issue the environmental license.
- **Publishes the decision** posting on its web page, within 3 days from its adoption (which is to be published in mass media by the developer within 5 days from the posting date, as it was mentioned above) (art. 25 (3)).

The decision of issuance is materialised in the environmental permit (the content of which is presented in Annex no. 3, and also in Annex III of these Guidelines).

The decision to issue the environmental license includes – Art. 25 (4):

- **the reasons motivating its issuance;**
- **the decided measures on monitoring the effects on the environment, according to Art. 27, including, as applicable, supplementary monitoring measures;**
- **the measures for reduction or compensation of the significant effects on the environment and significant transboundary effects on the environment.**

- **Makes available to the public** at its premises, upon request, the draft plan or programme in the endorsed format (Art. 25 (5)).
- **Orders, in writing, the developer to revise** the draft plan or programme, in order to prevent, reduce and compensate the significant negative effects on the environment if the EA or the comments of the public emphasise a significant negative potential effect.
- **Analyses the results of the monitoring program received from the developer and informs the public**, displaying it on their web page.

II. 5 – Advantages and difficulties of the public participation

It seems that when extending the decision-making process to an additional element such as the participation of the public, the process can be slowed down and hindered. In reality, this situation will not be met as long as the involvement of the public is well prepared and led. Before CAEP makes a decision concerning the plan or programme, all important data and information related to the potential environmental impact should be available. This aspect has the same importance as the assurance that the respective plan or programme has taken into account all the technical requirements. The reaction of the public contributes frequently in a significant manner to the identification of the additional potential impact on the environment which could be generated by the plan or programme.

Due to the participation of the public from the very first steps of the project plan, each stakeholder can study all potential impacts of the respective project and analyse the activities which should be developed for minimising the estimated consequences of the impact.

The participation of the public can cause difficulties for all interested parties by a certain project: the plan or programme developer, CAEP and the public. Therefore, it is indispensable to initiate activities focussed on the minimisation of all possible threats and difficulties.

We will present the advantages and difficulties of the public participation in the environmental assessment procedure for plans and programmes, from three angles, namely:

- Advantages and difficulties for CAEP,
- Advantages and difficulties for the plan or programme developer and
- Advantages and difficulties for the public.

II.6.1 Advantages and difficulties of the public participation for CAEP

<i>Advantages for CAEP</i>	<i>Difficulties for CAEP</i>
<ul style="list-style-type: none"> • CAEP can examine the attitudes and expectations of the public and have the opportunity to properly integrate those attitudes in the decisions making; • The public has the possibility to become more familiarised with the plans and programmes and with the related decisions; • The public knows better the attributions and responsibilities of CAEP and, as a consequence, has a better understanding of the issues related to their activities; • The public is more open to accept the decision on which participated, comparing to those agreed only by CAEP; • The participation of the public may identify new and important environmental problems, which should be taken into consideration when making the decision; • The public participation allows avoiding or minimising a redundant or wrongly directed discussions; • The knowledge of the public or its intellectual potential are better emphasized; • The public from the project area knows very well the properties of that area and the CAEP may save material and human resources; • The efficiency of the decision-making process is increased due to raising the public skills to participate in the decision-making process; • The pressure of the public may help CAEP to avoid the political pressure in making the decision on the plan or programme, contributing to the observance of the legislation; • Better decisions made by CAEP leads to a better protection of the environment and to a healthier and happier society. 	<ul style="list-style-type: none"> • Possibility of slowing down the EA process. This issue necessitates to be seen from a larger perspective, taking into that the time “spent” during the EA process is the time “won” for the further steps, due to the decrease of the number of observations and appeals from the public at the final decision; • The need of increasing the resources allocated (time, personnel, money); sometimes communication tools do not exist (not all authorities have web pages). At the same time, it has to be highlighted that the developer has to also participate actively in all activities related to the notification of the public and its participants to the EA process; • The comments of the public are not always pertinent and suitable, which complicates the task of CAEP; • The public participation does not lead to a decision accepted by all stakeholders. In some cases, CAEP has to make a decision in accordance with the interests of a larger circle of the society, which may remain in conflict with the interests of the local communities. In this kind of situation, the participation of all stakeholders may be helpful in finding solutions for compensating the possible disadvantages and losses; • The attitude of the representatives of the public in the public participation procedure may be negative if the project directly concerns them and especially if they are against the project. In such a situation, the developer shall play an active role in indicating the project advantages and of the groups which will benefit from that type of project, ensuring a balance and a better dialogue between the stakeholders; • The negative attitude of CAEP for ensuring a better participation of the public. CAEP’s representatives may feel threatened by the public participation procedure, because this involves the assessment of a CAEP decision by the public and frustrates the possibility to promote some private interested. The openness and transparency of the activities developed by CAEP determines the increase of the public trust, which, in its turn, determines the increase of the efficiency of the decision made.

II.6.2 Advantages and difficulties for the developer

<i>Advantages for the developer</i>	<i>Difficulties for the developer</i>
<ul style="list-style-type: none"> • The expensive delays in the plan or programme implementation are avoided; • It is easier for the developer to modify its plan or programme before the final decision; • New, alternative and creative solutions are found more easily; • Is more facile and rapid to find an understanding mean with the society and the public, to explain the nature of the plan or programme and to obtain the approval of the public for its implementation; • The credibility and public image of the developer is improved and it is easier to build a friendly public atmosphere. 	<ul style="list-style-type: none"> • The fear to negatively affect the public image. The participation of the public may bring into attention unpopular projects. Though, a dialogue between the developer and the public is the only means to reach an understanding and to find the best solutions; • The involvement of the public can lead to the project non-achievement; • Increased human and financial resources for the developer; • The potentially affected states may have a critical attitude, hampering the achievement of the plan or programme; • A too long duration of the EA process may request updates of the plan or programme, because these may become out of date; • Developer’s low level of knowledge of the role and value of the public participation. The developer may be against the decisions which were influenced by the public opinion, as long as the comments of the public are considered “unprofessional”.

II.6.3 Advantages and difficulties for the public

<i>Advantages for the public</i>	<i>Difficulties for the public</i>
<ul style="list-style-type: none"> • Increased transparency when drafting the project which may have a significant impact on the environment and when making-decisions for plans and programmes; • Possibility to make comments and recommendations about the technical aspects of a plan or programme and to present its attitude; • Access to data concerning a certain plan or programme; • Possibility to know the risks for the public and to express its opinion about a certain plan or programme; • An easier acceptance of the changes which will produce in the area, taking into account that the public will be part of the decision-making process; • A better understanding of the decision-making process; • A better understanding of the aspects when making a certain decision by CAEP; • Improvement of the knowledge related to some competent administrative institutions in the decision-making; understanding of what kind of data are necessary for making the decision; what aspects have to be taken into consideration when making a decision; in what proportion the public opinion has to be taken into consideration; • A better understanding of the environmental protection and sustainable development issues; • Better life standards due to better decisions; • The achievement of a plan or programmes means economic development; • Stronger feeling of local community ownership and common responsibility for the public interest problems; through these strengthening the democratic principles. 	<ul style="list-style-type: none"> • The opinions of the public about a specific project are not always unanimous; they may be contradictory, as long as different groups of the public have different interests or problems; • The expectations related to the public participation may be excessive and unrealistic. Therefore, CAEP should clearly specify the subject of the EA procedure, limiting the extension of the disputes beyond the purpose of discussion. Further more, CAEP should highlight that the decision will be made after the comments and recommendations are analysed, action which is not equivalent to the consideration of those comments and recommendations. During the EA procedure, it has to be clear that CAEP, and not the public, makes the decisions; • It happens frequently that the public participation does not produce any change to the initial draft plan or programme. It is not necessary that such changes be introduced as long as it is confirmed that the documentation was prepared analysing all comments and recommendations. Though, if the majority of the proposed comments and recommendations have not been taken into consideration, it may be plausible that the decision produce controversies, protests and appeals; • The public may be disappointed by and may loose its trust in CAEP and in the public participation procedure if it is convinced that its opinions were not analysed or – even worse – were not taken into consideration in an appropriate manner. Therefore it is essential that the presentation of a decision to the public be accompanied by the modality in which the public comments and recommendation have been taken into consideration. • Risks concerning the development of the procedure: no sufficient information is available, the public does not know where may inquire (for example, it is not known the existence of the information centres within EPA), the developer may choose inappropriate newspapers for making the procedural announcements, there is the risk that the involvement and consultation of the public take place in an inadequate manner of organisation.

II. 6 – Recommendation for NGOs

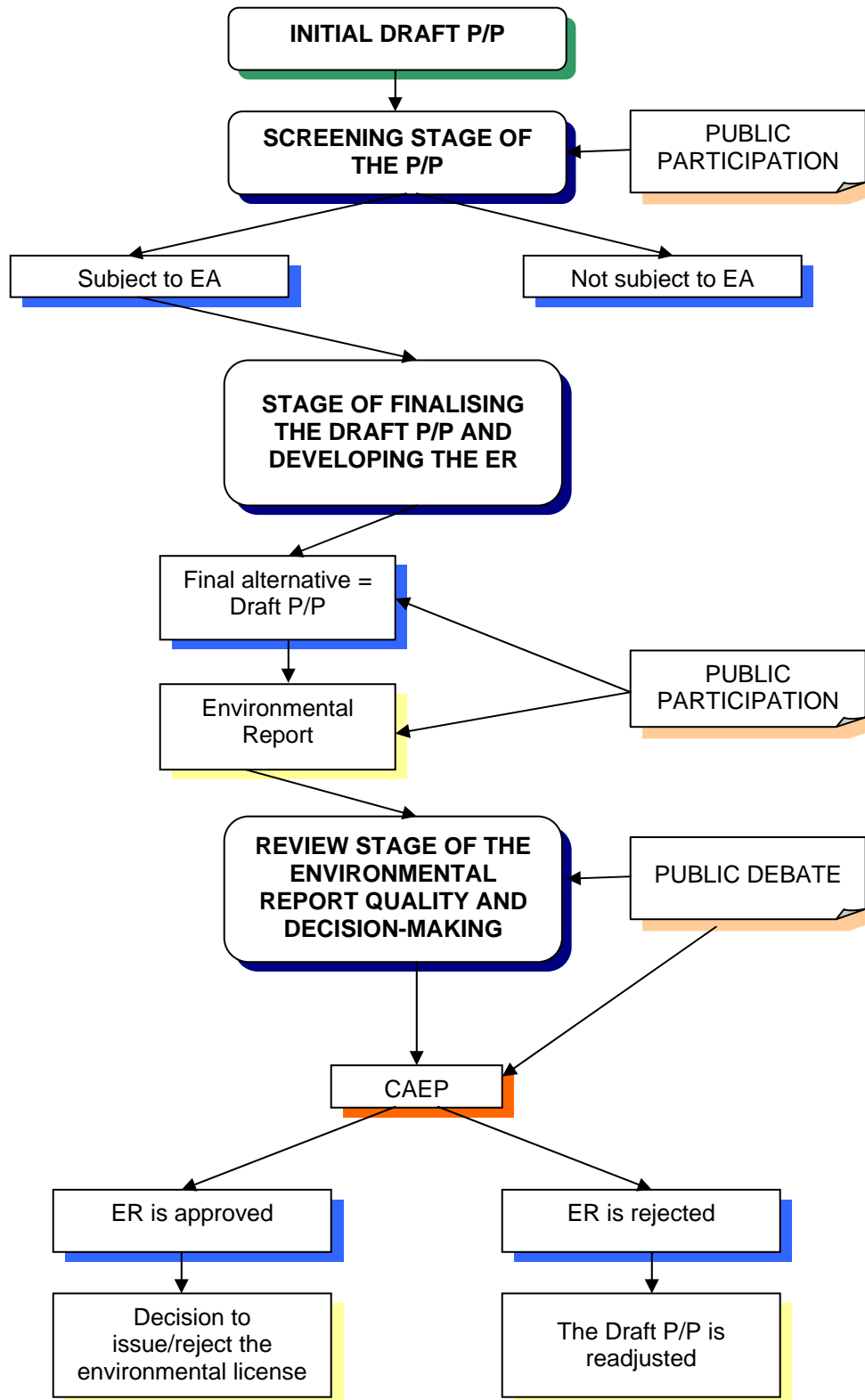
The NGOs are acting as main interface between the authorities and general public and must be familiarized with the requirements of the SEA process and with the methods of the public participation. The European Commission itself recommends in the Guidance on SEA Directive Implementation the establishment of a working group of NGOs which actions in the information and consultation process within the SEA procedure, as a bridge between the stakeholders and the public.

As we have already showed the NGOs expertise can be extremely valuable in the participation of the public at the environmental assessment procedure. The NGOs are those which could ask for information and raise the awareness of the general public on the current environmental public, on the ways they can express their views as regarding the draft plan or programme and on the procedural moments during which they can present their comments.

We are presenting below some useful recommendations for the environmental NGOs interested of the problem approached by the current Guidelines, the public participation.

- **NGOs should regularly consult the web pages of the environmental authorities, taking into account that these have the obligativity to post the decisions of the environmental assessment procedure, including the final decision on environmental permit issue on their web pages; also, it could be useful to consult periodically the posters from their headquarters;**
- **NGOs should read the mass-media in order to know when an authority, as developer, initiates a plan or a programme;**
- **NGOs should remain informed about the legislation which includes provisions about the participation of the public to EA, especially to know very well the procedural deadlines which may interfere;**
- **NGOs can prepare different brochures, posters or other accessible materials which can be disseminated to the public for awareness raising purposes;**
- **NGOs can develop information and awareness campaigns on environmental problems and the right to participate as interested public in the environmental decision-making process and to have taken into consideration the pertinent and documented comments;**
- **NGOs should organise fora on their web pages, where the general public can formulate comments and debate on the current environmental problems, including those raised by a certain initiated draft plan or programme;**
- **NGOs may organize workshops that can be attended by the environmental NGOs, and also the public and to which representatives of the environment authorities, institutes and other environment organizations may be invited;**
- **NGOs should submit for getting finance projects proposals which could promote the above-presented desiderata etc.**

Annex I: Flow diagram of the public participation process in the environmental assessment procedure



Annex II: Framework contents of the Environmental Report

1. the presentation of the contents and of the main objectives of the plan or programme, as well as of the relation with other relevant plans and programmes;
2. the relevant aspects of the current environmental status and of its likely development in the situation when the implementation of the plan or programme does not take place;
3. the characteristics of the area likely to be significantly affected;
4. any existing environmental issue, which is relevant for the plan or programme, including, in particular, those related to any area representing a special significance for environment, such as areas with a special protection status or special preservation areas regulated according to the Emergency Government Ordinance no. 236/2000 on the status of natural protected area, natural habitats and species of wild flora and fauna conservation, approved with modifications and completions by Law no. 462/2001;
5. the environmental protection objectives, established at national, community or international level, which are relevant for a plan or programme, and the way that these objectives and any other environmental considerations have been considered during the preparation of the plan or programme;
6. the likely significant environmental effects¹⁾, including effects on aspects such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage, including the architectonical and archaeological heritage, landscape and on the relations among them;

1) These effects must include secondary, cumulative, synergic, short, medium and long term, permanent and temporary, positive and negative effects.

7. the likely significant environmental effects, including those on health, in transboundary context;
8. the measures considered in order to prevent, reduce and compensate as completely as possible any adverse effect on the environment of the implementation of the plan or programme;
9. a presentation of the reasons for selecting the alternatives considered and a description of the way the assessment has been carried out, including any difficulties (such as technical gaps or lack of know-how) faced when processing the requested information;
10. a description of the measures considered as regarding monitoring of the significant effects of the plan or programme implementation;
11. a non-technical summary of information provided according to the above.

Annex a III-a: Environmental License Template

MINISTRY OF ENVIRONMENT AND WATER MANAGEMENT

Approved.
State Secretary,
.....
(for the Ministry)

Regional Environmental Protection Agency
.....

ENVIRONMENTAL LICENSE

No. of

Following the notification submitted by, with premises in, region/ county, municipality/ city/ commune, sector ..., street no., registered at no. of, following the review of the documents submitted and the verification, following the integral carrying out of the procedural stages, on the grounds of the Governmental Decision no. 408/2004 on the organisation and operation of the Ministry of Environment and Water Management and of the Environmental Protection Law no. 137/1995, re-published, as subsequently amended and completed, we are issuing the following:

LICENSE

for
promoted by,
for the propose of adoption/ approval,
upon the following conditions:

.....
.....
.....

(the measures for reduction or compensation of the significant effects on the environment are listed, which are proposed by the developer in the monitoring program, including the supplementary monitoring measures, as applicable, as well as measures for reduction or compensation of the significant transboundary effects, as applicable)

The issuance of the environmental license was made by taking into consideration

.....
.....

(the following are listed: the way how the environmental consideration have been considered, how the environmental problems have been solved in the environmental report, how the opinions expressed by the public and the other authorities have been considered, and also, as applicable, the results of the transboundary consultations, the motivation for choosing one of the plan/ programme alternatives presented)

This license is valid from the date of issuance, during the entire validity period of the plan/

programme, unless modification thereof occurs.
Non-observance of the conditions in this license represents an offence and shall be punished according to the legal provisions in force.

Director,
.....
Chief of Department for Regulations,
.....
Drawn up,
.....

Annex IV: Case study

Case study: Detailed Urban Plan and a SEA for the Beach Area of the City of Varna, Bulgaria

Until recently, Bulgarian legislation provided for – public participation in plans only at a public hearing for announcing the plan and to hear the results from the SEA after both of them are ready. There was no explicit requirement for the general public to be involved in the planning process itself.

A new Ordinance on the SEA was adopted in Bulgaria in 2003, stipulating a procedure for involving the general public at an early stage of the planning process. Despite these provisions, the local authorities do not always find it so easy to involve the general public in the development of urban plans and their SEA.

In a recent planning process in Varna, Bulgaria, run as a pilot project (the “Detailed Urban Plan and SEA”) two groups of people had different reasons to “talk” to the public: 1) the city administration; and 2) the SEA team of experts.

The **city administration** wished to promote its urban development policy by a timely announcement of its vision of the future development of the coastal zone; by getting feedback from the public about their vision of the coastal zone and about the planning process; and by gaining public support for the decisions incorporated in the Detailed Plan.

The **SEA experts** had entirely different interests in “talking” to the public. Their interest was to identify the main environmental concerns of the citizens; to identify the purposes, the goals and the intentions of the different public sectors related to the beach zone; and to get creative ideas for future use of the environmental resources and concrete technical solutions of existing environmental problems.

There have been insufficient provisions for public participation in the development of urban plans and their environmental assessments in Bulgaria and a lack of experience among the local authorities in involving the public in such processes.

The Varna SEA process worked:

- To complement the official process of development of the Detailed Urban Plan and the SEA process;
- To include all stakeholders in the decision-making process;
- To try alternative ways, different from those provided by the Bulgarian legislation, for involving the public in the development of urban plans.

The process included the following *major steps*:

- Identification of the stakeholders (7 groups of stakeholders were identified);
- Selection of methods and techniques for approaching and involving the public in the decision making and in the SEA process (12 different methods were used);
- Approaching the public - the “seven different times” concept was used;
- Analyses of the information acquired (done by specialists on the basis of specially prepared Terms of Reference);

- Decision on the SEA report made by the Competent Authority (including the supplement to the report made on the basis of the information feedback obtained from the public).

12 different methods and techniques were used for approaching and involving the public in the decision making on the Detailed Urban Plan of the Beach Area in Varna and in the SEA process:

- 1) Public opinion poll (350 interviews on the basis of a 4-page questionnaire);
- 2) Telephone enquiries;
- 3) Public meetings;
- 4) Articles in the press;
- 5) TV information about the results of the public meetings;
- 6) Staffed display of the Urban Plan, the SEA Report and other relevant materials;
- 7) Press announcements about the public meetings and about the staffed display of materials;
- 8) Radio announcements about the public meetings and the staffed display of materials;
- 9) Written invitations for an expert workshop;
- 10) Expert workshop;
- 11) Staffed telephone lines;
- 12) Non-staffed displays of the Urban Plan Concept and of the SEA main findings;

Almost all the methods that were used proved to be quite efficient and created excellent results. They provided opportunities for the general public to participate meaningfully in the decision-making process for the Detailed Urban Plan and in the infrastructure planning by giving comments and suggestions, and expressing its demands. The SEA team and the city authorities provided information to the general public about the procedure for the development of the Detailed Urban Plan, the SEA and the Infrastructure Planning. Important feedback was obtained from the citizens, which was extended to the competent authorities who were responsible for approving the Detailed Urban Plan and the SEA.

This pilot project tested and verified the effectiveness of several alternative ways for involving the public in the development of a detailed urban plan and an SEA of a very sensitive zone (both in environmental and in social context) in a well developed middle-sized East European city (400,000 inhabitants). Many useful results were achieved, coupled with definite benefits for the city administration, for the local politicians, for the developers and for the SEA team of experts, including:

- High level of public awareness;
- Significant public interest (more than 500 people attended the public hearing of the SEA; Report and 15 newspaper articles had been published);
- Public support for the planning process and confidence in the urban planning decisions;
- Demonstration of important practical linkages between the Aarhus Convention and the Espoo Convention/SEA Protocol;

- Technical alternatives for building the coastal infrastructure (drinking water supply and sewer system) and for utilizing the geothermal mineral waters, suggested by the public;
- The *Transverse Bypass Method* – an engineering solution for coping with the beach erosion and for increasing the total beach area in the urban coastal zone, suggested by the public;
- Public involved not only in the development of the urban plan and its SEA, but also in the subsequent Implementation of the plan.

Annex V: Nongovernmental Organisations

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11	Clubul de Ecologie și Turism MOLDAVIA Pașcani	Gelu ȚIGĂNAȘU 0232-76 22 67 cetmoldavia@hotmail.ro
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25	INCDI&ARMEDD, București	Gabriela FLORESCU 021-224 07 36/ 021-224 07 57 gflores@ici.ro floresgabi@yahoo.com
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Annex VI: Glossary

Definitions from the current national legislation, with interpretation

A

approximation: a unique obligation concerning the EU (European Union) integration. This means that the countries aiming at integrating within the EU must align their national legislation, regulations and procedures in order to apply entirely the EU legislation comprised by the *acquis communautaire*

acquis communautaire: includes directives, regulations and decisions adopted on the basis of the various Treaties, which, altogether, form the main legislation of the EU and the Communities. It is the term used to describe all the principles, policies, laws and objectives adopted by EU

C

competent authority for environmental protection (CAEP): central public authority for environmental protection (presently, *the Ministry of Environment and Water Management*) for national and regional plans and programmes or, as applicable, **the regional environmental protection agencies** for local and county plans and programmes

D

damage: the quantifiable effect in terms of cost of the damages on the human health, assets or the environment caused by polluters, ecological accidents or hazardous natural phenomena

E

environment: the entirety of Earth's natural conditions and elements: air, water, soil and sub-soil, all atmosphere strata, all organic and in-organic matters, as well as living beings, natural systems in interaction comprising the elements previously enumerated, including material and spiritual values

environmental agreement: the decision of the competent authority for environmental protection, which entitles the project developer to achieve the project. The environmental agreement is a technical-judicial act issued in writing, which establishes the conditions for carrying out a project, from the environmental protection point of view

environmental assessment (EA): is a part of the permitting procedure, as a process destined to ensure that the environmental problems are taken into consideration into the decision-making concerning the issuance of the environmental license for **plans and programmes**. The environmental assessment includes: the elaboration of the environmental report, the consultation of the public and of the public authorities interested in the effects caused by the implementation of the plans and programmes, the taking into consideration of the environmental report and of the results of such consultations in the decision-making process and the ensurance of the information on the decision made

environment deterioration: the alteration of the physical-chemical and structural features of the environment, the reduction of the biological diversity or productivity of the natural and human ecosystems, the disturbance of the natural balance with effects on life quality, caused, mainly, by water, atmosphere and soil pollution, over-exploitation of resources, incondite valorification thereof, as well as by an inappropriate land use

environmental impact: the effects on the environment, following the carrying out of a human activity

environmental impact assessment (EIA): is a part of the permitting procedure, as a process destined to identify, describe and establish, depending on each case and in accordance with the legislation in force, the direct and indirect, the synergic, cumulative, main and secondary effects of a **project** on the human health and the environment

environmental impact assessment study (EIA study): the document elaborated by natural or legal persons certified according to the law, which quantifies the causes and the adverse environmental effects of projects with a significant impact within the environmental impact assessment process

environmental license: the decision of the competent authority for environmental protection which entitles the plan or programme developer to adopt the plan/ programme or to submit it for adoption to a legislative procedure. The environmental license is a technical-juridical act, issued by the competent authority for environmental protection, which confirms the taking into consideration of the environmental problems in making the decision regarding the issuance or non-issuance of the environmental license for the plan/ programme subject to adoption

environmental monitoring: the overseeing, prognosis, warning and intervention in view of the systematic assessment of the dynamics of the environmental factors' qualitative characteristics, for the purpose of getting the knowledge on the quality status and the ecological significance thereof, of the evolution and social implications of the changes occurred, followed by appropriate measures

environmental report: a part of the documentation of the plans or programmes which identifies, describes and evaluates the likely significant environmental effects of their application and their reasonable alternatives, taking into consideration the objectives and the related geographical area

especially established committee: the committee established at the screening stage, formed of the developer, the health authorities and other interested authorities identified by the competent authority for environmental protection, considering their specific environmental competences and responsibilities. CAEP consults this committee in view of making the decision concerning the screening stage

I

integrated environmental agreement: a technical-juridical act issued by the competent authority for environmental protection, according to the legal dispositions in force, which entitles to establish the conditions for carrying out an activity ever since the design stage, in order to ensure that the installation complies with the legal requirements in force. The agreement can be issued for one or more installations or parts of the installations located on the same site

P

permitting: the carrying out of the procedural stages for the purpose of obtaining the environmental license, agreement and/or permit

plan or programme developer: the public authority promoting a plan or programme. The respective authority elaborates and/or adopts the plan or programme or prepares it in order to be adopted, through a legislative procedure, by the Parliament or the Government

polluter: any solid, liquid, gaseous substance or under the shape of vapours or energy (electromagnetic, ionising, thermal, phonic radiation or vibrations) which, when introduced in the environment, changes the equilibrium of its constituents and of the living organisms and causes damages to the material assets

pollution: direct or indirect introduction, as a result of an activity carried out by human, of substances, vibrations, heat and/or noise in the air, water or soil, which may damage the material assets or may cause a deterioration or an obstruction in using the environment for entertainment or other legitimate purposes

project: the execution of the construction works or other installations or arrangements, other interventions on the natural surroundings and landscape, including those involving the extraction of mineral resources. The term **project** defined by the Governmental Ordinance no. 91/2002 refers both to investment projects and to those for significant changes of existing/carried out projects, including decommissioning projects

project developer: the applicant for permitting of a certain project or the public authority initiating a project; the project developer can be either a natural or a legal person

public: one or more natural or legal persons and, in accordance with the national legislation or practice, their associations, organisations or groups

S

significant changes: the changes in the functioning of an installation or in the way of carrying out an activity which, in the opinion of the competent authority for environmental protection, is likely to have a significant adverse impact on the humans and the environment

significant impact on the environment: the effects on the environment determined as being important by applying criteria relating to project size, location and characteristics or relating to the characteristics of certain plans and programmes, having in view the predicted quality of the environmental factors

sustainable decision: the decision to issue or not the environmental license, made by the competent authority for environmental protection in view of a sustainable development

sustainable development: the development corresponding to the needs of the present, without compromising the possibility for future generation to satisfy their own needs

T

transposition: taking over into the national legislation of the package of regulations corresponding to the European Union

W

working group: the group established at the stage of finalising the draft plan or programme and developing the environmental report. The following take place within the working group: the finalisation of the draft plan or programme, the establishment of the detail level of the information to be included in the environmental report, as well as the analysis of the significant effects on the environment. The working group is formed of: the plan or programme developer, the competent authorities for environmental protection, the competent health authorities and other interested authorities, natural or legal persons certified according to the legal provisions in force, as well as experts employed

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