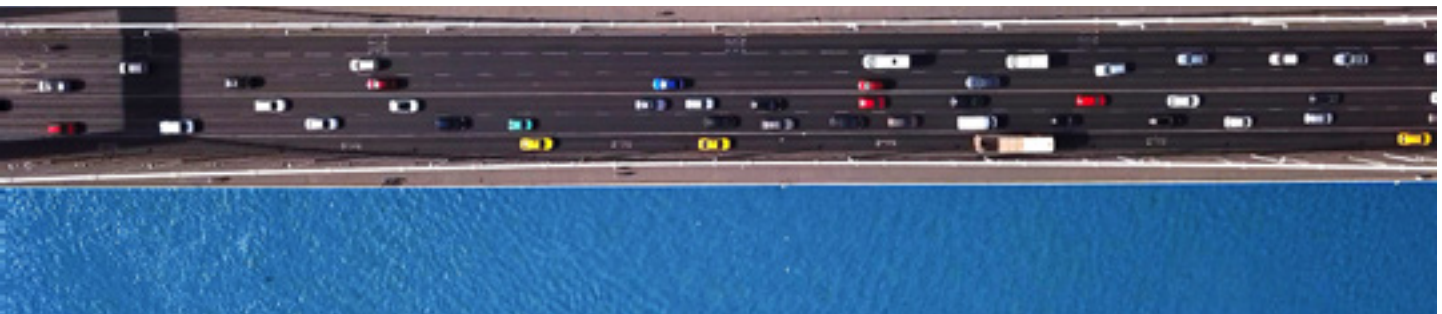


Revised Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries





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FOREWORD

The economies of the Central Asian countries have seen unprecedented growth over the past two decades and have ambitious goals for the future, including with regard to modernizing industries and enhancing infrastructure to support inclusive economic development and connectivity in the subregion.

The Governments of these countries recognize that it is imperative for them to ensure that industry- and infrastructure-development projects not only provide short-term economic benefits but also guarantee long-term sustainable growth and the right of future generations to a clean and healthy environment.

In this context, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan increasingly acknowledge that environmental impact assessment is an effective mechanism for ensuring that environmental and health considerations are incorporated into development projects at an early stage. This approach facilitates attainment of the Sustainable Development Goals and the objectives of the Paris Agreement. Consequently, those countries are also increasingly aware of the importance of the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and interested in application of the procedure set out therein, in particular, regarding cross-border infrastructure-development projects and energy-related activities. As of June 2019, of the five Central Asian countries, only Kyrgyzstan and Kazakhstan were Parties to the Convention. At the same time, at the end of 2018, with technical support from the United Nations Economic Commission for Europe secretariat, other countries, notably Tajikistan and Uzbekistan, initiated a process of legislative reform of their environmental assessment systems, with a view to aligning them with the provisions of the Convention.

The present publication contains the Revised Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries, prepared at the request of the Governments of the Central Asian countries and with the assistance of the secretariat in the course of 2017 and 2018. The aim of the Guidelines is to assist Governments in the consistent practical application of transboundary environmental impact assessment procedures and in the development of their national legislation in accordance with the Convention. The Guidelines present the legal obligations under each of the procedural steps provided for by the Convention, complemented by related good practice recommendations, and provide suggestions for overcoming current difficulties in application of the transboundary environmental assessment procedure in the subregion.

I firmly believe that the transparent exchange of information, close inter-State cooperation and effective involvement of the public at an early stage in the decision-making process, in compliance with the Convention, can facilitate a constructive dialogue among the Central Asian countries, contributing to the prevention, reduction and control of significant adverse transboundary environmental impacts in the subregion. I therefore welcome the Guidelines as a tool to promote the application of the Convention in current and future Parties and to further the achievement of the Sustainable Development Goals, and I encourage Central Asian Governments and stakeholders to make use of them.



Olga ALGAYEROVA

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ABOUT THE PREPARATION OF THE REVISED GUIDELINES

1. The present document is the outcome of the revision of the Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asian Countries (2007 Guidelines) (ECE/MP.EIA/WG.1/2007/6), which were drafted in 2007 and noted by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) at its fourth session in 2008 (ECE/MP.EIA/10, decision IV/5, para. 2). The 2007 Guidelines presented recommendations for the practical implementation of the procedures based on the Convention along with an overview of the state of legislation and practice on environmental impact assessment in the five Central Asian countries up to mid-2005. The further development and update of the 2007 Guidelines was undertaken at the request of Kyrgyzstan for further guidance on the transboundary environmental assessment procedure, including regarding notification, consultations based on the environmental impact assessment documentation, public participation and the final decision. Owing to changes in the environmental impact assessment legislation in the Central Asian countries introduced since 2005, the overview of national legislation with regard to the application of the transboundary environmental impact assessment procedure was also to be updated.
2. The work has been carried out by consultants to the Convention secretariat since 2016, in close cooperation with Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, and further to the workplans for the implementation of the Convention and its Protocol on Strategic Environmental Assessment for 2014–2017 (see ECE/MP.EIA/20/Add.3-ECE/MP.EIA/SEA/4/Add.3) and 2017–2020 (see ECE/MP.EIA/23/Add.1-ECE/MP.EIA/SEA/7/Add.1). The activity has been implemented with the administrative and substantive support of the Regional Environmental Centre for Central Asia and with financial support from the Swiss Federal Office for the Environment.
3. The present Revised Guidelines on Environmental Impact Assessment in a Transboundary Context for Central Asia Countries (Revised Guidelines) reflect the recommendations and comments provided by representatives of Kyrgyzstan, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan in writing and during three subregional workshops, which took place on 9 February 2017 in Almaty,¹ 5 April 2017 in Bishkek,² and on 2 and 3 November 2017 in Kyiv,³ respectively. The Revised Guidelines also take into account the results of an initial overview carried out by the national experts of the current national environmental legislation in each country.
4. As at October 2018, out of the five Central Asian countries, only Kyrgyzstan and Kazakhstan are Parties to the Convention (since 2001). Although currently not Parties to the Convention, Tajikistan, Turkmenistan and Uzbekistan have expressed an increasing interest in undertaking transboundary environmental impact assessments of relevant

¹ At the first subregional workshop the representatives of the beneficiary countries agreed on a concept for revision of the 2007 Guidelines, outlining that the Revised Guidelines should be based on the principles of the Convention, take into account the general principles of environmental assessment systems of the Central Asian countries and address issues of the applicability of the Guidelines in all Central Asian countries. When assessing the scope of the anticipated revisions of the Guidelines, the representatives of the beneficiary countries recommended to focus, first and foremost, on procedural aspects of transboundary environmental impact assessment and on the preparation of the initial overview of the current national environmental legislation in each country. The participants further noted the document, "Procedure for carrying out a transboundary environmental impact assessment in a transboundary context for the Central Asian countries", prepared by a group of experts in 2009 with financial support from the Government of Norway and the Organization for Security and Cooperation in Europe (2009 Procedure for Environmental Impact Assessment). They further invited the international experts to consider using this document during the preparation of the Revised Guidelines by, for example, shortening it and providing more practical examples of the application of the transboundary environmental impact assessment procedure in States Parties to the Convention. The participants also agreed that the structure of the Revised Guidelines would differ from 2007 Guidelines.

² The second subregional workshop provided the participants with an opportunity to learn about the experience in the application of transboundary environmental impact assessment in the European Union, to discuss the first draft Revised Guidelines and to identify further steps to finalize the work on the Guideline's update, in particular the text presented in this document. The participants of the workshop requested the international consultants to incorporate some structural and contextual comments into the draft and agreed that, owing to frequent changes in the national environmental legislation, the initial overview of the current national environmental legislation in each country should not be included in the main text of the Guidelines, but rather should be annexed to it, if necessary. They also noted that the 2009 Procedure for Environmental Impact Assessment required significant reworking in order to be included into the draft Revised Guidelines (possible as another annex) and that such work might require additional financial and human resources.

³ At the third subregional workshop the participants, among others, considered the consistency between the Convention and environmental impact assessment procedures within State ecological expertise in Central Asian countries. The participants also identified existing challenges related to the application of the transboundary environmental impact assessment procedure at the national and subregional level, including the absence of the relevant legislative frameworks in most of the counties of the subregion. In addition, they considered actions needed to address these challenges, including legislative reforms and broad awareness-raising campaigns to promote the benefits of transboundary environmental impact assessment at the national and subregional levels. Finally, they agreed on the way forward as presented in paragraphs 1 to 5 of the present document.

planned activities, including in the context of the recent and planned economic development of the region, for example under the Belt and Road Initiative.

5. To date, only Kyrgyzstan as a Party to the Convention has transposed the provisions of the Convention into its national legislation. Kazakhstan as a Party to the Convention applied the Convention directly, which without more detailed provisions in the national legislation is considered by the Implementation Committee under the Convention and the Protocol as being insufficient for proper implementation of the Convention (ECE/MP.EIA/10, decision IV/2, annex I, para. 64). Similarly, the non-Parties to the Convention, Tajikistan, Turkmenistan and Uzbekistan, have no national legislative framework for the application of a transboundary environmental impact assessment procedure.

6. Consequently, the participants of the third subregional workshop agreed that the Revised Guidelines should contain only general and specific recommendations on carrying out the transboundary environmental impact assessment procedure in Central Asian countries, definitions and the list of the activities based on the Convention. They also agreed that, to facilitate the practical application in the subregion of transboundary environmental impact assessment procedures in line with the Espoo Convention, the draft guidelines should be complemented subsequently with:

- a)** An explanatory note providing further practical details, and where possible existing practice, on implementing specific articles of the Convention, or a detailed model of a bilateral agreement for the implementation of the Espoo Convention;
- b)** Specific recommendations on how to align the national legislation of each of the Central Asian countries with the provisions of the Convention, based on relevant reviews of national legislation;
- c)** Awareness-raising and capacity-building activities to promote the benefits of transboundary environmental impact assessment as a tool for greening economies and to share practical examples of the efficient implementation of the Convention with the decision makers in all Central Asian countries, in particular in the context of the Belt and Road Initiative.

7. The draft Revised Guidelines were considered by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its seventh meeting (Geneva, 28–30 May 2018). As requested by the Working Group, the secretariat finalized the text of the Revised Guidelines based on the comments during and after the meeting and submitted the document to the Meeting of the Parties to the Convention for endorsement through decision IS/3, at its intermediary session.

8. Throughout these guidelines, “should” or “must” refer to the requirements of the Espoo Convention, and “may”, “could”, “it is recommended”, “as a matter of good practice”, refer to recommended additional good practice and more detailed guidance intended to facilitate the implementation of transboundary environmental impact assessment, including, in the specific context of the Central Asian countries.

9. The information and considerations set out in these Revised Guidelines are not legally binding: they are without prejudice to existing obligations set out in the Espoo Convention.



1.

INTRODUCTION

I. Introduction

A. International legal framework for environmental impact assessment in a transboundary context

10. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.⁴

11. Since the late 1960s environmental impact assessment has been considered to be an effective tool to prevent and mitigate the negative impacts and enhance the positive impacts of planned economic activities. In accordance with Principle 17 of the Rio Declaration on Environment and Development, environmental impact assessment, as a national instrument, should be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

12. In accordance with article 2 of the Espoo Convention, the Parties to the Convention must carry out environmental impact assessment for a proposed activity that is likely to have a significant adverse transboundary impact. The Convention was negotiated under the auspices of ECE in 1991 and it has been in force since 1997. It was amended twice — in 2001 and 2004 — and both amendments are in force (see ECE/MP.EIA/4, decision II/14 and ECE/MP.EIA/6, decision III/7). The Convention is in the process of becoming a global

national environmental impact assessment systems and procedures. In 2003, the Convention was supplemented by a Protocol on Strategic Environmental Assessment, which applies to plans and programmes of public authorities and, to the extent possible, also to policies and legislation.

13. Although all five Central Asian countries are member States of the United Nations Economic Commission for Europe (ECE), to date only two of them, Kazakhstan and Kyrgyzstan, are Parties to the Convention (since 2001) and, therefore, have specific mutual obligations to carry out a transboundary impact assessment procedure for a proposed activity that is likely to have significant adverse transboundary impacts. At the same time, practical implementation of the environmental impact assessment procedure in a transboundary context has for decades been an important element of international cooperation for environmental protection and sustainable development in the subregion and acknowledged to be a principle of general international law.⁵ That international practice has above all been built under the Espoo Convention.⁶

14. Transboundary environmental impact assessment is a useful instrument that can facilitate a constructive dialogue among the Central Asian countries to contribute to preventing negative environmental impacts. It also makes it possible to assess the cumulative impacts from a series of economic activities, including on a shared natural resource, and to develop efficient mitigation measures to reduce anticipated negative environmental impact. In addition, the transboundary environmental impact assessment procedure based on the Espoo Convention

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