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**Manual Part F - Commentary on Legislation on Strategic environmental assessment and Environmental impact assessment in BiH**

Project: **Effective Project Management in the Water Sector in Bosnia and Herzegovina: Implementation of the EU tendering procedures**

Implementing organisation: **Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee)**

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<http://ec.europa.eu/europeaid/funding/about-funding-and-procedures/procedures-and-practical-guide-prag_en>

<http://ec.europa.eu/europeaid/prag/document.do?isAnnexes=true>

NISPAcee is an international association focused on public administration. Its mission is to promote and strengthen the effective and democratic governance and modernization of public administration and policy throughout the NISPAcee region.

1. **Introduction**

This Commentary is based on the Material “Strategic environmental assessment and Environmental impact assessment” delivered from BiH. The Commentary is divided into two Parts – (i) Strategic environmental assessment and (ii) Environmental impact assessment.

This Commentary contains also Suggestions for the next possible changes and amendments of the concerned BiH Legislation.

1. **Strategic environmental assessment**

Strategic environmental assessment is in BiH mainly regulated by the Law on Environmental Protection adopted in 2003 and amended in 2009 and partly in the Law on Physical Planning and land Use adopted in 2006.

Based on the above Material, the regulation of SEA is deriving from the SEA Directive - **Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive)**.

Strategic environmental assessment generally consists of a range of analytical and participatory approaches that aim to integrate environmental considerations into policies, plans and programmes and evaluate the inter-linkages with economic and social considerations.

The SEA Directive applies to a wide range of public plans and programmes (e.g. on land use, transport, energy, waste, agriculture, etc). The SEA Directive is in force since 2001 and should have been transposed by July 2004. This Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different levels of a hierarchy of plans and programmes.

The objective of the SEA Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with the SEA Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.

The SEA procedure in generally based on the SEA Directive can be summarized as follows: an environmental report is prepared in which the likely significant effects on the environment and the reasonable alternatives of the proposed plan or programme are identified. The public and the environmental authorities are informed and consulted on the draft plan or programme and the environmental report prepared. As regards plans and programmes which are likely to have significant effects on the environment in another Member State, the Member State in whose territory the plan or programme is being prepared must consult the other Member State(s). On this issue the SEA Directive follows the general approach taken by the [SEA Protocol](http://www.unece.org/env/eia/sea_protocol.htm) to the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context.

SEA Procedure is in Slovak Law on EIA subject to Paragraph 4 to 17 and describe the SEA Procedure, its scope and Participation of the Public.

1. The Scope of SEA Procedure

The Scope of SEA Procedure is laid down in Article 3 of the SEA Directive as follows –

“*2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,*

*(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or*

*(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.*”.

In Paragraph 4 of the Slovak Law on EIA, the Scope of SEA Procedure is laid down as follows –

*“Subject to impact assessment of strategic documents is a strategic document prepared for agriculture, forestry, fisheries, industry, energy, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, regional development and the environment, as well as the strategic document financed by the European Union, which are likely to have significant effects on the environment while providing a framework for the approval of some of the suggested activities listed in Annex 8 in addition to strategic documents that determine the use of small areas at local level.”*.

 Compared to BiH SEA arrangement, it can be stated, that this has a narrow Scope as it is laid down in the SEA Directive and as a suggestion for the future changes in the particular Legislation it would be necessary to extend it in the Scope prescribed by the SEA Directive. As an Example can be used the Slovak wording above.

1. The Condition for SEA Procedure

The SEA Directive requires the SEA Procedure “*for plans and programmes ….. which are likely to have significant environmental effects*”.

In Paragraph 4 of the Slovak Law on EIA, the wording of this Condition is very similar – “*which are likely to have significant effects on the environment”*.

The Condition for SEA Procedure is stated positive – plans or programmes may have significant effect on the Environment. I can agree with the Comment in the Material, that the wording in the BiH Law – “*if this plans have negative impact on the environment*” - is not in accordance with the SEA Directive.

Also in this case, it is suggested to change the Legislation.

1. Participation of the Public

Since the last decades SEA has been recognized as a very important and rapidly growing area of research and application in the domain of sustainable development. It has been generally agreed that public participation must be integrated in SEA procedure because it allows information relevant to the decisionmaking process to be included. In this sense, one of the major challenge in this area is to detect some tools which are able to better link the decision-making process and the stakeholders involved in the decision.

 Public consultations are therefore one of the key elements of SEA Procedure. Excluding of public consultations is a important breach of SEA Directive requirements.

 SEA Directive stated in Article 6 -

“*Member States shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.*”.

 The Slovak Law on EIA contains the public consultations in Paragraph 6a as follows –

*“(1) The public concerned when assessing strategic documents is the public who is interested in or may have an interest in the preparation of strategic documents before approving them.*

 *(2) The relevant public when assessing strategic documents include*

1. *natural person over 18 years,*
2. *legal person,*
3. *Citizens' Initiative under paragraph 3.*

 *(3) Citizens' Initiative are natural persons over 18 years who sign a joint opinion on the draft of the strategic document. Citizens' initiative shows a list of signatures, which include the name, surname, permanent address, year of birth and signature of persons supporting a common position.*

 *(4) Representative of a citizens' initiative who can act on its behalf and receive documents is a natural person who is a fiduciary listed in the signature deed. If such information is missing or unclear, Representative of the citizens' initiative is a natural person who is in the signature deed listed in the first place.*

 *(5) The concerned public by assessing the strategic documents has the right to participate in the preparation and impact assessment of the strategic document until the approval of the strategy document, including the right to submit a written opinion pursuant to this Law and participation in the consultation and public discussion of the strategic document.”*.

Public participation is considered a distinguished feature of SEA, and the SEA literature has traditionally identified several benefits attached to it, from more open and transparent decision-making to greater acceptance of plans/programmes' output by the affected population.

However, relatively little empirical evidence has been collected so far on the extent and outcomes of public engagement as it is being carried out in current SEA practice. The public Participation in SEA Procedure can consist of several features, like: the frequency of SEA process featuring deep public participation; its overall influence on plan/programmme-making; the identification of the main factors impeding it; the correlation of public involvement with environmental outcomes; and the increase of costs.

Public engagement in current SEA practice is still relatively limited and with limited influence on decision-making. The main impeding factors seem to be: lack of political willingness by proponents; insufficient information on the SEA process by the public; and weakness of the legal frames. However, respondents also report that when effective public engagement takes place, benefits do arise and identify a positive correlation between the degree of public involvement and the environmental performance of plans and programmes.

The environmental report and the results of the consultations are taken into account before adoption. Once the plan or programme is adopted, the environmental authorities and the public are informed and relevant information is made available to them. In order to identify unforeseen adverse effects at an early stage, significant environmental effects of the plan or programme are to be monitored.

Public involvement has indeed the potential to positively influence both SEA and decision-making, although this should be supported from the policy side by stronger legal frames, higher requirements and improved technical guidance.

1. Main Points of the SEA Procedure

Main steps or point in the SEA Procedure based on the SEA Directive and Slovak experiences suggested for the possible BiH Legislation on SEA can be as follows –

1. In the case of strategic documents, the competent authority shall decide, upon notification to the contracting authority, whether the strategic document will be assessed under the SEA Procedure.
2. When it comes to deciding whether the draft of the strategic document will be assessed under the SEA Procedure, the competent authority shall take into account in particular
a) criteria for screening procedure,
b) the importance of expected impacts on the environment,

 c) opinions and statements of relevant authorities,

 d) the results of consultations.

1. The competent authority shall decide within 15 days whether the strategic document will be assessed under the SEA Procedure. The decision must be substantiated. The competent authority has for the reasoning of its decision to deal with opinions received.
2. A decision on whether the proposed strategic document will be assessed under the SEA Procedure shall the competent authority immediately publish on the web page of the Ministry of Environment and at the same time sends it to a contracting authority. If it is a strategic document of local significance, also to the concerned municipality. If the strategic document will not be assessed under the SEA Procedure, on the web page of the Ministry of Environment will be also publish all reasons why the strategic document will not be assessed under the SEA Procedure.
3. If it is a strategic document of local significance, the concerned municipality, without delay, inform the public of the decision to assess the document as it is in the municipality usual.
4. The Scope of the assessment of the strategic document and, if necessary, the timetable of the assessment is determined by the competent authority, after consultation with the contracting authority, the approval authority, and if it is a strategic document of local significance with the concerned municipality. If it is a strategic document, which may affect alone or in combination with another strategic document or in combination with other activities in the territory of protected areas, also in agreement with the national authority of nature and landscape.
5. The timetable is determined by time sequence and, if necessary, by the period of the single steps.
6. The competent authority shall publish the scope of the assessment of the strategic document on the web page of the Ministry of Environment immediately after its determination and shall also inform the address to which the public may submit opinions to the scope of assessment of the strategic document.
7. The contracting authority shall publish the scope of the assessment of the strategic document immediately after its receipt, if it is a strategic document with local or regional impact, in the form of information on the scope of assessment of the strategic document as it is usual in the concerned region or municipality.
8. The public, concerned municipality, concerned region, the concerned authority and other persons may submit comments on the Scope of the strategic document within ten days of its publication to the competent authority.
9. The outcome of the impact assessment of the strategic document on the environment shall be stated in the assessment report of the strategic document.
10. The competent authority after receiving a full report on the assessment of the strategic document and a draft of the strategic document notify the Address to which can be submit opinions of the public, and shall invite the authority to disclose information, and if it is a strategic document with local or regional impact, in the way as it is usual in the concerned region or municipality.
11. The competent authority shall promptly publish a report on the evaluation of the strategic document and the draft of the strategic document on the web page of the Ministry of Environment with the Address to which the public can submit opinions, and date to which the public can submit opinions.
12. The competent authority shall, within five working days from receipt of the report of the assessment of the strategic document inform about the venue and time of the consultation and submit the report of the assessment of the strategic document and the draft of the strategic document in writing or on electronic data for an opinion to the granting authority and to the concerned authority. If it is a strategic document of local significance also to the concerned municipality and if it is a strategic document, which may affect alone or in combination with another strategic document or in combination with other activities in the territory of protected areas, also to the national authority of nature and landscape.
13. If it is a strategic document of local significance, the concerned municipality within three working days of receipt of the report of the assessment of the strategic document and the draft of the strategic document informs the public as it is usual and inform where and when it is possible to look to the report of the assessment of the strategic document and to the draft of the strategic document, make notes from them, depreciation or at own costs take copies of them.
14. The Report on the assessment of the strategic document and the draft of the strategic document must be accessible to the public at least 21 days.
15. The concerned authorities and concerned municipality will deliver to the competent authority in writing their statements to the report of the assessment of the strategic document and to the draft of the strategic document within 21 days of receipt of the report of the assessment of the strategic document and the draft of the strategic document.
16. The public can deliver a written opinion to the competent authority within 21 days from the publication of information on the report of the assessment of the strategic document.
17. The final opinion on the assessment of the strategic document by the competent authority in addition to the overall impact of the strategic document on environment state also whether it recommends or does not recommend its adoption, or under what conditions, as well as the desired range of monitoring and evaluation.
18. Strategic document, which is likely to be alone or in combination with other documents or activities of a significant impact on the territory of protected areas may approving authority approved only if it is based on the outcome of the impact assessment shows that it will not adversely affect the integrity of that territory in terms of the objectives of its protection.
19. **Environmental Impact Assessment**

Environmental assessment is a procedure that ensures that the environmental implications of decisions are taken into account before the decisions are made. Projects belonging to certain types have significant effects on the environment and those projects

should, as a rule, be subject to a systematic assessment.

Environmental Impact Assessment as a tool used to identify the environmental, social and economic impacts of a project prior to decision-making. It aims to predict environmental impacts at an early stage in project planning and design, find ways and means to reduce adverse impacts, shape projects to suit the local environment and present the predictions and options to decision-makers. By using EIA both environmental and economic benefits can be achieved, such as reduced cost and time of project implementation and design, avoided treatment/clean-up costs and impacts of laws and regulations.

In order to ensure a high level of protection of the environment and human health, screening procedures and environmental impact assessments should take account of the impact of the whole project in question, including, where relevant, its subsurface and underground, during the construction, operational and, where relevant, demolition phases.

When determining whether significant effects on the environment are likely to be caused by a project, the competent authorities should identify the most relevant criteria to be considered and should take into account information that could be available following other assessments required by EU legislation in order to apply the screening procedure effectively and transparently.

In this regard, it is appropriate to specify the content of the screening determination, in particular where no environmental impact assessment is required. Moreover, taking into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities, even though no formal consultation is required at the screening stage, constitutes good administrative practice.

The effects of a project on the environment should be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life.

Environmental Impact Assessment should not be a barrier to growth and will only apply to a small proportion of projects considered within the town and country planning regime. Local planning authorities have a well established general responsibility to consider the environmental implications of developments which are subject to planning control. The 2011 Regulations integrate Environmental Impact Assessment procedures into this framework and should only apply to those projects which are likely to have significant effects on the environment. Local planning authorities and developers should carefully consider if a project should be subject to an Environmental Impact Assessment. If required, they should limit the scope of assessment to those aspects of the environment that are likely to be significantly affected.

The EIA process should be applied:

• As early as possible in decision making and throughout the life cycle of the proposed activity;

• To all development proposals that may cause potentially significant effects;

• To biophysical impacts and relevant socio-economic factors, including health, culture, gender, lifestyle, age, and cumulative effects consistent with the concept and principles of sustainable development;

• To provide for the involvement and input of communities and industries affected by a proposal, as well as the interested public;

• In accordance with internationally agreed measures and activities.

European legal base for EIA is the **DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the assessment of the effects of certain public and private projects on the environment. Directive 2011/92/EU has been amended in 2014 by** [**DIRECTIVE 2014/52/EU**](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0052). This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

Member States have several options for implementing Directive as regards the integration of environmental impact assessments into national procedures. Accordingly, the elements of those national procedures can vary. Due to this fact, the reasoned conclusion by which the competent authority finalises its examination of the environmental impact of the project may be part of an integrated development consent procedure or may be incorporated in another binding decision required in order to comply with the aims of this Directive.

Member States may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects, or parts of projects, having defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose, if they deem that such application would have an adverse effect on those purposes.

1. Proper transposition of the Directive in to national legal system –

Due to the Article 13 of the Directive – “*Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.*”.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

We would recommend to cover the Directive by the Law and not by any Bylaws. The Rules of EIA are important for its proper execution and should not by changed every time. Adoption of a Law increase the legal certainty of competent Authorities, municipalities, public and the Developer and other business companies operating under the EIA regulation.

Coming out from the delivered Material, the Transposition of the EIA Directive is today in BiH subject to Law on Environmental Protection and Rulebook on plants and installations for which EIA is obligatory. This Rulebook was published in the O. G. of FBiH, which is an official Journal of FBiH Law. From the limited information it is not possible to evaluate if this way of transposition would the proper from the Point of View of the Directive.

For the Future we therefore recommend to adopt a new Law on EIA with covering the above mentioned EIA Directive from 2014 in the Form of a Law and not a Bylaw.

1. The Scope of EIA Procedure

Projects listed in Annex I of the EIA Directive shall be made subject to an assessment in accordance with this Directive.

For Projects listed in Annex II of the Directive, Member States shall determine whether the project shall be made subject to an assessment in accordance with this Directive. Member States shall make that determination through:

(a) a case-by-case examination or

(b) thresholds or criteria set by the Member State.

 The Scope of EIA Procedure should cover at least plans and project from this areas –

1. Mining industry
2. Energy industry
3. Metallurgical industry
4. Chemical, pharmaceutical and petrochemical industry
5. Woodworking, pulp and paper industry
6. Industry of building materials
7. Engineering and electrical industry
8. Other industries
9. Infrastructure
10. Water management
11. Agriculture and forestry
12. Food Industry
13. Transport and telecommunications
14. Purpose-built facilities for sport, recreation and tourism
15. Military construction

 Minimal requirements for the scope of EIA Procedure in the field of Water Management is –

- Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres,

- Works for the transfer of water resources between river basins where that transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year,

- In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 % of that flow,

- In both cases transfers of piped drinking water are excluded,

- Waste water treatment plants with a capacity exceeding 150 000 population,

- Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres,

- Installations for hydroelectric energy production,

- Canalisation and flood-relief works.

 By evaluating this minimal Requirements set by the Annexes of EIA Directive compared with the Article 4 and 6 of the BiH Rulebook, this can be seen as sufficient from the Perspective of the Scope of EIA in the field of Water and Water Management.

1. Public participation in EIA procedure

Absence of public participation in EIA procedure in BiH legislation can be seen as relevant Problem. Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.

Participation, including participation by associations, organisations and groups, in particular nongovernmental organisations promoting environmental protection, should accordingly be fostered, including, inter alia, by promoting environmental education of the public.

The aim of EIA is also to ensure that the public are given early and effective opportunities to participate in the decision making procedures.

 The EIA Directive requires, in order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically and by public notices or by other appropriate means, of the following matters early in the environmental decision-making procedures and, at the latest, as soon as information can reasonably be provided:

(a) the request for development consent,

(b) the fact that the project is subject to an environmental impact assessment procedure,

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions,

(d) the nature of possible decisions or, where there is one, the draft decision,

(e) an indication of the availability of the information,

(f) an indication of the times and places at which, and the means by which, the relevant information will be made available,

(g) details of the arrangements for public participation.

The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

The detailed arrangements for informing the public, for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry, shall be determined by the Member States. Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

Reasonable time-frames for the different phases shall be provided for, allowing sufficient time for:

(a) informing the authorities and the public and

(b) the authorities and the public concerned to prepare and participate effectively in the environmental decision-making.

The time-frames for consulting the public concerned on the environmental impact assessment shall not be shorter than 30 days.

Member States shall also ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions.

 Therefore we suggest to add the legislation on EIA Procedure by the definition of the public and the Public concerned and its rights and position in the EIA Procedure and in the review Procedure as the second level of EIA Procedure. The definition can be based on Slovak EIA Law as follows –

“*Public is a natural person, legal person or more natural or legal persons, their organizations or groups*” and

“*Public concerned means the public affected or likely to be affected by proceedings in relation to the environment, or having an interest in such proceedings; it is considered that a non-governmental organization promoting environmental protection and satisfying the requirements laid down in this Act has an interest in such proceedings*”.

Public Participation on EIA procedure drives not only from the Directive, or European law generally, but it is also subject to an international Convention regarding access of Public to the Justice in the Environmental Matters - the **Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**, usually known as the **Aarhus Convention**.

The Aarhus Convention grants the public rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the local, national and transboundary environment. It focuses on interactions between the public and public authorities.

The Aarhus Convention is a multilateral environmental agreement through which the opportunities for citizens to access environmental information are increased and transparent and reliable regulation procedure is secured. It is a way of enhancing the [environmental governance](https://en.wikipedia.org/wiki/Environmental_governance) network, introducing a reactive and trustworthy relationship between civil society and governments and adding the novelty of a mechanism created to empower the value of [public participation](https://en.wikipedia.org/wiki/Public_participation) in the decision making process and guarantee access to justice: a "governance-by-disclosure" that leads a shift toward an environmentally responsible society. The Aarhus Convention was drafted by governments, with the highly required participation of [NGOs](https://en.wikipedia.org/wiki/NGOs), and is legally binding for all the States who ratified it becoming Parties. Among the latter is included the [EC](https://en.wikipedia.org/wiki/European_Economic_Community), who therefore has the task to ensure compliance not only within the member States but also for its institutions, all those bodies who carry out public administrative duties. Each Party has the commitment to promote the principles contained in the convention and to fill out a national report, always embracing a consultative and transparent process

The Aarhus Convention is a rights-based approach: the public, both in the present and in future generations, have the right to know and to live in a healthy environment.

A distinction is made between "the public", all the civil society's actors, and the "public concerned" precisely, those persons or organisations affected or interested in environmental decision-making (e.g. environmental NGOs).

"[Public authorities](https://en.wikipedia.org/wiki/Public_authority)" are the addressees of the convention, namely, governments, international institutions, and privatized bodies that have public responsibilities or act under the control of public bodies. The private sector, for which information disclosure depends on voluntary, non- mandatory practices, and bodies acting in a judicial or legislative capacity, are excluded.

Other significant provisions are the "non-discrimination" principle (all the information has to be provided without taking account of the nationality or citizenship of the applicant), the international nature of the convention, and the importance attributed to the promotion of [environmental education](https://en.wikipedia.org/wiki/Environmental_education) of the public.

### The Three Pillars Aarhus Convention are –

1. Access to information: any citizen should have the right to get a wide and easy access to environmental information. Public authorities must provide all the information required and collect and disseminate them and in a timely and transparent manner. They can refuse to do it only under particular situations (such as national defence); UNECE, 2006
2. Public participation in decision making: the public must be informed over all the relevant projects and it has to have the chance to participate during the decision-making and legislative process. Decision makers can take advantage from people's knowledge and expertise; this contribution is a strong opportunity to improve the quality of the environmental decisions, outcomes and to guarantee procedural legitimacy
3. Access to justice: the public has the right to judicial or administrative recourse procedures in case a Party violates or fails to adhere to [environmental law](https://en.wikipedia.org/wiki/Environmental_law) and the convention's principles.

The Aarhus convention is a "proceduralisation of the environmental regulation", it focuses more on setting and listing procedures rather than establishing standards and specifying outcomes, permitting the parties involved to interpret and implement the convention on the systems and circumstances that characterize their nation. This model embodies a perfect example of a [multi-level governance](https://en.wikipedia.org/wiki/Multi-level_governance).

The risk could lay in a loss of time and resources that could be otherwise invested in defining the outcomes, notwithstanding the fact that it renders the convention vague, weak and open to multiple interpretations. Other critiques note the fact that private bodies are excluded from the mandatory procedures, and that, moreover, it can also be debated whether the NGOs involved are faithfully representing environmental interests, ordinary citizens often do not have the financial means to participate effectively and are therefore have no choice but to be represented by these larger organisations. The relative differences between the participants and social groups' resource inequalities also suggests the possibility for irregular and imbalanced [environmental protection](https://en.wikipedia.org/wiki/Environmental_protection).

The **Aarhus Convention Compliance Committee** was established to fulfill the requirement of Article 15 of the Convention on review of compliance to establish arrangements for reviewing compliance with the Convention.

The Convention has a unique Compliance Review Mechanism, which can be triggered in four ways:

1. a Party makes a submission concerning its own compliance,
2. a Party makes a submission concerning another Party's compliance,
3. the Convention Secretariat makes a referral to the Committee, or
4. a member of the public makes a communication concerning the compliance of a Party.

The Compliance mechanism is unique in international environmental law, as it allows members of the public to communicate concerns about a Party's compliance directly to a committee of international legal experts empowered to examine the merits of the case (the Aarhus Convention Compliance Committee). Nonetheless, the Compliance Committee cannot issue binding decisions, but rather makes recommendations to the full Meeting of the Parties (MoP). However, in practise, as MoPs occur infrequently, Parties attempt to comply with the recommendations of the Compliance Committee.

d) Assessment of significant modification

 From the Article 1 of the Rulebook derives also to assess through EIA Procedure significant modifications of existing plants, installations and facilities. Such an arrangement is to be appreciate.

 Important Question is to define the modification and the Scope of the modification of existing plants of facilities to be subject of EIA Procedure. The Definition can be twice – (i) formal of (ii) substantive.

 Formal definition of modifications is bound on legal conditions for EIA and if this are met, the EIA is required. The Definition can be –

“*modification of the activity, plant, installation or facility, where such modification itself meets or exceeds the standards for the proposed activity set in this Law*”.

 Substantive Definition of the Modification is based on the character of the changes –

“*modification of the activity, plant, installation or facility which may have significant negative effects on the environment*”.

 We suggest therefore to add an Definition of the Modification in the Legislation.

e) Transboundary environmental impact assessment

 Important part of EIA is also transboundary environmental impact regulated by Convention on Environmental Impact Assessment in a Transboundary Context - the “Espoo (EIA) Convention”.

 We suggest to adopt the national Rules for transboundary EIA in the BiH Legislation based on the Rules from the Espoo Convention, that are described in the following text.

 General requirements set by Espoo Convention are as follows -

1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.

2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in [Appendix I](http://www.unece.org/env/eia/about/eia_text.html#appendix1) that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in [Appendix II](http://www.unece.org/env/eia/about/eia_text.html#appendix2).

3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in [Appendix I](http://www.unece.org/env/eia/about/eia_text.html#appendix1) that is likely to cause a significant adverse transboundary impact.

4. The Party of origin shall, consistent with the provisions of this Convention, ensure that affected Parties are notified of a proposed activity listed in [Appendix I](http://www.unece.org/env/eia/about/eia_text.html#appendix1) that is likely to cause a significant adverse transboundary impact.

5. Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in [Appendix I](http://www.unece.org/env/eia/about/eia_text.html#appendix1) is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated. General guidance for identifying criteria to determine significant adverse impact is set forth in [Appendix III](http://www.unece.org/env/eia/about/eia_text.html#appendix3).

6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.

7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.

8. The provisions of this Convention shall not affect the right of Parties to implement national laws, regulations, administrative provisions or accepted legal practices protecting information the supply of which would be prejudicial to industrial and commercial secrecy or national security.

9. The provisions of this Convention shall not affect the right of particular Parties to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention.

10. The provisions of this Convention shall not prejudice any obligations of the Parties under international law with regard to activities having or likely to have a transboundary impact.

11. If the Party of origin intends to carry out a procedure for the purposes of determining the content of the environmental impact assessment documentation, the affected Party should to the extent appropriate be given the opportunity to participate in this procedure.

##### For transboundary environmental impact is necessary a notification of the Party/State of the origin of the activity -

1. For a proposed activity listed in [Appendix I](http://www.unece.org/env/eia/about/eia_text.html#appendix1) that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under [Article 5](http://www.unece.org/env/eia/about/eia_text.html#article5), notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.

2. This notification shall contain:

(a) Information on the proposed activity, including any available information on its possible transboundary impact;

(b) The nature of the possible decision; and

(c) An indication of a reasonable time within which a response under paragraph 3 of this Article is required, taking into account the nature of the proposed activity;

and may include the information set out in paragraph 5 of this Article.

3. The affected Party shall respond to the Party of origin within the time specified in the notification, acknowledging receipt of the notification, and shall indicate whether it intends to participate in the environmental impact assessment procedure.

4. If the affected Party indicates that it does not intend to participate in the environmental impact assessment procedure, or if it does not respond within the time specified in the notification, the provisions in paragraphs 5, 6, 7 and 8 of this Article and in [Articles 4 to 7](http://www.unece.org/env/eia/about/eia_text.html#article4) will not apply. In such circumstances the right of a Party of origin to determine whether to carry out an environmental impact assessment on the basis of its national law and practice is not prejudiced.

5. Upon receipt of a response from the affected Party indicating its desire to participate in the environmental impact assessment procedure, the Party of origin shall, if it has not already done so, provide to the affected Party:

(a) Relevant information regarding the environmental impact assessment procedure, including an indication of the time schedule for transmittal of comments; and

(b) Relevant information on the proposed activity and its possible significant adverse transboundary impact.

6. An affected Party shall, at the request of the Party of origin, provide the latter with reasonably obtainable information relating to the potentially affected environment under the jurisdiction of the affected Party, where such information is necessary for the preparation of the environmental impact assessment documentation. The information shall be furnished promptly and, as appropriate, through a joint body where one exists.

7. When a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in [Appendix I](http://www.unece.org/env/eia/about/eia_text.html#appendix1), and when no notification has taken place in accordance with paragraph 1 of this Article, the concerned Parties shall, at the request of the affected Party, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. If those Parties agree that there is likely to be a significant adverse transboundary impact, the provisions of this Convention shall apply accordingly. If those Parties cannot agree whether there is likely to be a significant adverse transboundary impact, any such Party may submit that question to an inquiry commission in accordance with the provisions of [Appendix IV](http://www.unece.org/env/eia/about/eia_text.html#appendix4) to advise on the likelihood of significant adverse transboundary impact, unless they agree on another method of settling this question.

8. The concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.

#####  Crucial Part of transboundary environmental impact are consultations -

The Party of origin shall, after completion of the environmental impact assessment documentation, without undue delay enter into consultations with the affected Party concerning, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact. Consultations may relate to:

(a) Possible alternatives to the proposed activity, including the no-action alternative and possible measures to mitigate significant adverse transboundary impact and to monitor the effects of such measures at the expense of the Party of origin;

(b) Other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity; and

(c) Any other appropriate matters relating to the proposed activity.

The Parties shall agree, at the commencement of such consultations, on a reasonable time-frame for the duration of the consultation period. Any such consultations may be conducted through an appropriate joint body, where one exists.

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The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to [Article 3](http://www.unece.org/env/eia/about/eia_text.html#article3), paragraph 8 and [Article 4](http://www.unece.org/env/eia/about/eia_text.html#article4), paragraph 2, and the outcome of the consultations as referred to in [Article 5](http://www.unece.org/env/eia/about/eia_text.html#article5).  The Party of origin shall provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based. If additional information on the significant transboundary impact of a proposed activity, which was not available at the time a decision was made with respect to that activity and which could have materially affected the decision, becomes available to a concerned Party before work on that activity commences, that Party shall immediately inform the other concerned Party or Parties. If one of the concerned Parties so requests, consultations shall be held as to whether the decision needs to be revised.

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The concerned Parties, at the request of any such Party, shall determine whether, and if so to what extent, a post-project analysis shall be carried out, taking into account the likely significant adverse transboundary impact of the activity for which an environmental impact assessment has been undertaken pursuant to this Convention. Any post-project analysis undertaken shall include, in particular, the surveillance of the activity and the determination of any adverse transboundary impact. Such surveillance and determination may be undertaken with a view to achieving the objectives listed in [Appendix V](http://www.unece.org/env/eia/about/eia_text.html#appendix5).

When, as a result of post-project analysis, the Party of origin or the affected Party has reasonable grounds for concluding that there is a significant adverse transboundary impact or factors have been discovered which may result in such an impact, it shall immediately inform the other Party. The concerned Parties shall then consult on necessary measures to reduce or eliminate the impact.

f) Time schedule of EIA Procedure

In the Slovak Republic, the EIA is governed by a separate law and constitutes a separate procedure that is not part of the authorization procedure. In terms of adjustment in European countries, it is an exception rather than a rule. We are familiar with the case of the Czech Republic, where the EIA is the same as in Slovakia. In other countries, it is part of the permitting process.

The advantage that EIA is part of the authorization procedure is that this procedure is then faster and more efficient. Everything (including EIA) will be resolved within it. If the EIA is not part of the authorization procedure but constitutes a separate procedure, the authorization process prolongs it.

On the other hand, the advantage of a separate EIA is that this process may be more objective and more thorough.

The EIA process is preceded to the authorization procedure. In the Slovak Republic, the result of the EIA is a decision which is a binding basis for the authorization procedure. Therefore, the EIA in the Slovak Republic is preceded to the authorization procedure. The EIA participant is automatically a participant in the authorization procedure. This ensures that the EIA decision will be respected in the authorization process. The EIA Procedure takes about 6 months to complete.

1. **Conclusion**

The SEA and EIA procedures are very similar, but there are some differences:

* the SEA requires the environmental authorities to be consulted at the screening stage;
* scoping (i.e. the stage of the SEA process that determines the content and extent of the matters to be covered in the SEA report to be submitted to a competent authority) is obligatory under the SEA;
* the SEA requires an assessment of reasonable alternatives (under the EIA the developer chooses the alternatives to be studied);
* under the SEA Member States must monitor the significant environmental effects of the implementation of plans/programmes in order to identify unforeseen adverse effects and undertake appropriate remedial action.
* the SEA obliges Member States to ensure that environmental reports are of a sufficient quality.