



REVIEW OF THE NATIONAL LEGISLATION AND INSTITUTIONAL STRUCTURES FOR THE IMPLEMENTATION OF THE PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSEMENT (SEA) IN THE AZERBAIJAN REPUBLIC

Draft 1 for consultations with national stakeholders on 28 August 2014



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Acknowledgements: This report would not be possible without valuable contributions and support of the Aysel Babaeva, Ministry of Environment and Natural Resources of Azerbaijan, focal point for the Espoo Convention, World Bank expert group at the State State Committee on Urban Planning and Architecture, Mr.Jerzy Jendroska, international consultant, Ms.Elena Santer, Espoo Convention Secretariat (UNECE), and other organisations and individuals.

Legal notice: This draft report was produced with the financial assistance of the European Union in the framework of the EaP GREEN Programme (service contract ENPI/2-12/305-729), coordinated by the OECD and implemented by OECD, UNECE, UNEP, and UNIDO. The views expressed herein can in no way be taken to reflect the official opinion of the European Union and implementing institutions.

Organization responsible for the report: UNECE



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INTRODUCTION

Azerbaijan is not yet a Party to the Protocol on Strategic Environmental Assessment (Protocol on SEA) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). To better prepare for accession to the treaty the country requires to undertake a number of steps and develop a national system to apply SEA procedures according to the provisions of the Protocol, including:

- (a) Improving its legislative and institutional framework to fully comply with the Protocol
- (b) Defining roles and responsibilities of various authorities in the SEA process
- (c) Building national and local capacities, developing practical experience and national guidelines in application of the SEA procedures in line with the Protocol
- (d) Raising awareness and common understanding of the benefits of the SEA at national and local levels and in different sectors, including the benefits of public participation and the consultation of relevant authorities.

At the six session of the Meeting of the Parties to the Espoo Convention and its Protocol, in June 2014 in Geneva, the Government of Azerbaijan confirmed its request to the UNECE secretariat to assist in addressing the above mentioned challenges. The request was reflected in the adopted workplan of the two treaties for 2014–2017 containing the following activities:

- (a) Review of existing strategic environmental assessment (SEA) legislation and procedures to be carried out from June to October 2014, followed by the drafting of relevant legislation in 2015 (if required);
- (b) Pilot application of an SEA procedure to a draft Government plan or programme, scheduled to take place from September 2014 to April 2015, combined with national and local level training workshops on SEA to be held in 2015 and 2016;
- (c) Preparation in 2015 of national guidelines on the application of SEA in Azerbaijan;
- (d) Participation of national experts of Azerbaijan in three annual subregional experience-sharing events.

This review of the national legislation and institutional structures for the implementation of the Protocol on SEA to the Espoo Convention in the Azerbaijan Republic was prepared further to the work-plan with financial assistance from the EU funded Programme 'Greening Economies in the Eastern Neighborhood'. The Report briefly presents the requirements of the Protocol on SEA, summarizes national strategic planning system, environmental assessment system, and presents analysis of the key stakeholders. It further reviews the draft law on EIA vis-a-vis the Protocol and presents a number of recommendations on how to better align the draft law with the requirements of the Protocol and relevant EU legislation.

This is the first draft of the review prepared for consultations with the stakeholders during the round-table event scheduled for 28 August 2014. The authors will finalize the report by the end of September based on the comments and recommendations obtained during and after the round-table discussions.

1. GENERAL CONTEXT

1.1 Introduction of the SEA Protocol

The Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (SEA Protocol) was adopted in 2003 during a ministerial conference "Environment for Europe" in Kyiv (Ukraine). It entered into force on July 11, 2010.

Under the SEA Protocol strategic environmental assessment means *the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying-out of public participation and consultations, and the*

taking into account of the environmental report and the results of the public participation and consultations in a plan or programme (art. 2, para. 6).

The Protocol sets out a process for carrying out the SEA of plans and programmes, as well as, to some extent, of policies and legislation:

- Field of application concerning plans and programmes (at.4)
- Screening (art.5).
- Scoping to determine the content of the environmental report (art. 6).
- Environmental report (art. 7).
- Public participation (art. 8).
- Consultation with environmental and health authorities (art. 9).
- Transboundary consultations (art. 10).
- Decision on the adoption of the plan or programme (art. 11).
- Monitoring of effects (art. 12).
- Application to policies and legislation (art.13).

Main elements of the SEA process are shown in Figure 1 and described in the Table 1 below.

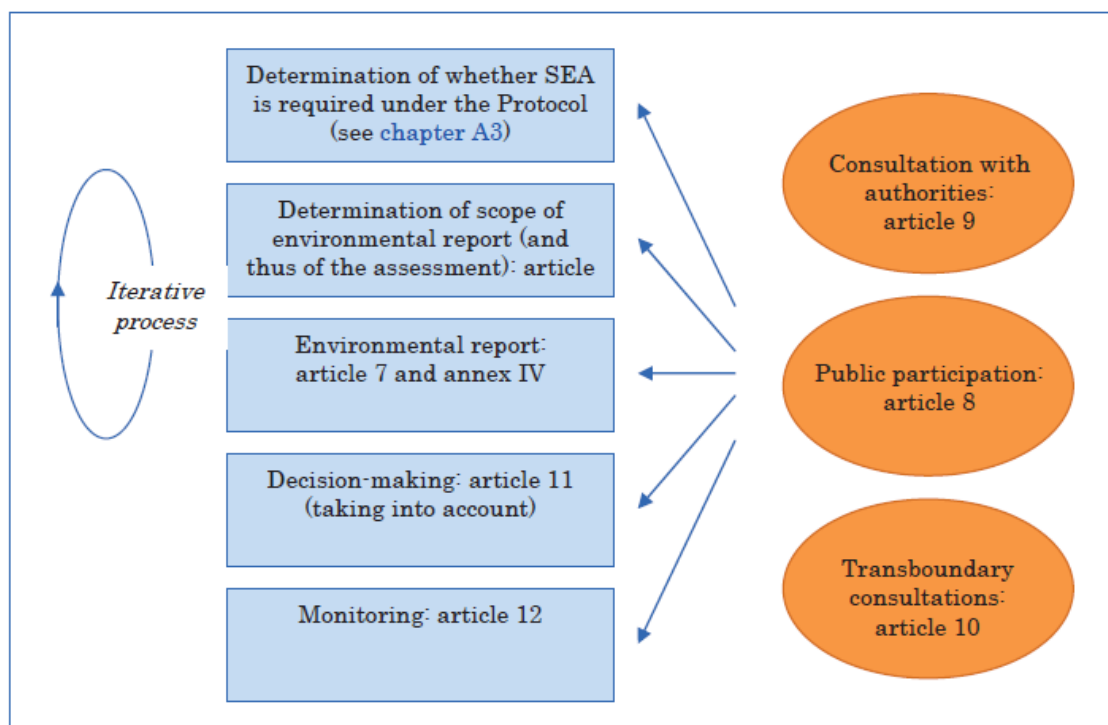


Figure 1. Elements in SEA of plans and programmes.¹

Table 1. SEA Elements.²

Element	Description
Scoping	The first element is, having determined that a plan or programme is to be subject to SEA, to determine the scope of the environmental report. Determining the scope of the report implies also defining the scope of the

¹ Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment. United Nations, New York and Geneva, 2012.

² Ibid.

	analyses that will lead to the preparation of the report. Scoping provides an opportunity to focus the report on the important issues to maximize its usefulness to the public, authorities and decision makers. It does not preclude changes in the scope of the report if the need for them were to become apparent at a later stage. Environmental and health authorities have to be consulted in scoping, and the public may be provided with opportunities to participate.
Environmental report	The second element is the preparation of the environmental report (in line with the scope). The report will provide the public and the authorities consulted with information on the environmental effects of the plan or programme.
Public participation	The third element is the participation of the public. This may have already begun during scoping or even during the determination of whether SEA is required under the Protocol for a plan or programme (see chapter A3). The draft plan or programme and the environmental report must be made available to the public, and the public concerned must be consulted and given the opportunity to express its opinion on the draft plan or programme and the environmental report.
Consultation	The fourth element is the consultation with the environmental and health authorities, which must be allowed the opportunity to express their opinion on the draft plan or programme and the environmental report. Consultation and public participation may occur at the same time. (The public and the authorities are consulted together under article 6 of the SEA Directive.)
Transboundary consultations	If it appears that the plan or programme may have significant transboundary effects (on another Party to the Protocol), or if a potentially affected Party so requests, the affected Party or Parties should be notified and invited to enter into consultations. Those transboundary consultations, which may be done at the same time as the public participation and the consultation with the authorities, must lead to an opportunity for the concerned public and the environmental and health authorities in the affected Party to express their opinion on the draft plan or programme and the environmental report.
Decision-making	The sixth element is the taking of a decision on the adoption of a plan or programme. This decision has to take into account the environmental report and the opinions expressed by the public concerned and the authorities, both domestic and of any affected Party. The decision maker has to produce a statement summarizing how that information was taken into account and why the plan or programme is being adopted in the light of reasonable alternatives. The adopted plan or programme, the decision and the justification must be made publicly available.
Monitoring	The final element is monitoring. SEA does not stop with the decision to adopt a plan or programme. The significant environmental effects of implementation have to be monitored to, among other things, identify unforeseen adverse effects and enable appropriate remedial action to be taken. Monitoring results have to be made available to the authorities and to the public.

1.2 International law context

Legal status and ratification/accession procedure of MEAs

International agreements to which the Azerbaijan Republic is a party constitute an integral part of legislative system of the Azerbaijan Republic (Art.148 (II) of the Constitution). Whenever there is disagreement between normative-legal acts in legislative system of the Azerbaijan Republic (except Constitution of the Azerbaijan Republic and acts accepted by way of referendum) and international

agreements to which the Azerbaijan Republic is a party, provisions of international agreements shall prevail (Art.151 of the Constitution).

The procedure for signature, ratification, approval and accession to international treaties is set by the Law on the Order for Conclusion, Execution and Denunciation of the International Agreements of Azerbaijan Republic of June 13, 1995 No.1057 and the Rules for Submitting Proposals for Conclusion and Denunciation of the International Agreements of Azerbaijan Republic by Central Executive Authorities and State Owned Enterprises set by Decree of the President of Azerbaijan of January 19, 2011, No.373.

International treaties establishing rules other than those provided by national legislation are ratified by the Parliament of Azerbaijan (Article 8 of the Law on the Order for Conclusion, Execution and Denunciation of the International Agreements of Azerbaijan Republic). The proposals for ratifications/accession are made by the President of Azerbaijan upon a proposal by the Cabinet of Ministers (Art.2.1 of the Rules for Submitting Proposals for Conclusion and Denunciation of the International Agreements of Azerbaijan Republic by Central Executive Authorities and State Owned Enterprises). Proposals for ratifications must be accompanied by the text of the international agreement in one of the authentic languages and official translation into Azerbaijani language (Art. 2.6 of the Rules for Submitting Proposals for Conclusion and Denunciation of the International Agreements of Azerbaijan Republic by Central Executive Authorities and State Owned Enterprises). The same rule is applied to publication of the ratified international treaties: it is published in two official journals in one of the authentic languages and in national language (Art.25 of the Law on the Order for Conclusion, Execution and Denunciation of the International Agreements of Azerbaijan Republic).

Relevant multilateral environmental agreements

The Azerbaijan Republic is not a signatory or party to the SEA Protocol but intends to accede to it.

Azerbaijan is a party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), Convention on Access to Information, Public Participation in the Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and the Convention on Biological Diversity (CBD). These international instruments have direct relevance to the issues covered by the SEA Protocol.

Azerbaijan acceded to the **Espoo Convention** on March 15, 1999. The key national acts in areas covered by the Espoo Convention are the Law on Environmental Protection (1999), Guidelines on Environmental Impact Assessment (OVOS) Process (1996), Rules on Financing State Ecological Expertiza. There're no specific provisions in these legal acts as to the transboundary procedures (notification, consultations).

Azerbaijan acceded to the **Aarhus Convention** on March 23, 2000. The key national acts related to three pillars of the Aarhus Convention are the Constitution of the Azerbaijan Republic (1995), Law on Access to Information (2005), Law on Obtaining Information about the Environment (2002), Law on Public Participation (2013), Constitutional Law on Legal and Normative Acts (2010), Law on the Basis for Town-Planning (1999), Law on Environmental Protection (1999), Law on Environmental Safety (1999), The Civil Code (2000), Administrative Offences Code (2001), Code on Urban Planning and Construction (2012) and various sectoral laws on biodiversity, energy, etc.

Azerbaijan approved the **Convention on Biological Diversity (CBD) on August 3, 2000**. The national acts related to the Convention on Biological Diversity include a number of nature protection and biodiversity legal acts. The list of key of them is attached as Appendix I to this report. There is no separate biodiversity impact assessment procedure (as referred to in Art.14 of the CBD).

Implementation of these treaties by Azerbaijan facilitate establishment of the SEA system in the country, in particularly when it comes to the development of the general environmental assessment framework and public participation procedures.

Relationships with the EU

The main legal basis of comprehensive relations between Azerbaijan and the European Union is Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part (PCA) signed in Luxembourg on April 22, 1996 and came into force in 22 June of 1999. The agreement ensures frameworks of all kinds of cooperation between Azerbaijan and EU (including social, environmental and economic), except military area. PCA was signed for 10 years period and because of the ending of the implementation of the agreement, its execution is extended for a period of one year each year. In 2010 the EU and Azerbaijan started negotiations over new Association Agreement.

In order to fulfill the obligation undertaken on the harmonization of the legislation of the Republic of Azerbaijan to the EU the "Action Plan on approximation of the Azerbaijani legislation to the EU's legislation (2010-2012)" was approved in accordance with the 43rd Article of the PCA. In accordance with the order of the President of the Republic of Azerbaijan dated June 1, 2005, the State Commission on Integration Azerbaijan to EU and some task groups under this Commission were established to strengthen further relations with the EU.

European Neighborhood and Partnership Instrument (ENPI) was under implementation since 2007. Within the framework of this instrument assistance is provided to implement European Neighborhood Policy tasks, including such assistance instruments such as budget support, twinning, technical assistance, TAIEX, SIGMA. In particular, present review is undertaken under ENPI framework to facilitate harmonization of national legislation with the Protocol on SEA and relevant EU legislation (such as the Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment)

2. NATIONAL STRATEGIC PLANNING SYSTEM AND SEA

Implementation of the SEA procedure first requires a clear analysis of the national planning system as such. Integration of SEA procedures into the national legal framework shall take account of and be tailored to the relevant planning procedures falling under the scope of application of the SEA Protocol. The proposed SEA legal framework must cover all planning documents falling under the definition of plans and programs (Art. 2.5 and Art. 4) (and subject to screening requirements, Art. 5), no matter what are the names of the planning documents used in the country.

2.1 Planning system

General aspects of planning system

At the national level various types (names) of the strategic documents were identified. State (national) programs and respective action plans seem to be most often used in policy planning. In particular, state programs are the basis for state budget expenditures, and, therefore, have a major impact on the ground by enabling state financing of specific projects (sometimes called "measures"³). In parallel, state (national) strategies and respective action plans are used for policy planning quite often.

The state programs and state strategies use similar pattern:

- Approved by the President of Azerbaijan;
- Include program/strategy description;

³ E.g, Complex Plan on Measures to Improve Environmental Situation in Azerbaijan (2006-2010).

- Include action (policy measures) plan.

Program/strategy description usually has an introductory part, describes current state of affairs in the area covered by program/strategy, set specific goals/targets (may include indicators) and the financing sources. The level of details in each program/strategy differs, but they follow a general pattern described.

Action plan (sometimes plan of policy measures) is usually included in the text of the program/strategy in the form of a table: action/policy measures>responsible agency>duration/time. Depending on the timeframe of the program/strategy the action plan may covers part or whole period of the program/strategy. Accordingly, it may provide for a mid-term review of completion of targets/goals.

Spatial planning documents are subject to robust procedures described and need to follow the structure/requirements described in this [section below](#).

These and other planning documents identified during the study are summarized in Table 2.

Table 2. Strategic planning instruments in Azerbaijan.

<i>General planning documents</i>	<i>Spatial planning documents</i>	<i>Planning documents in bilateral relations</i>
<ul style="list-style-type: none"> - State programs - National program - Action plan - National action plan - Measures (group of measures) - National Strategy - Development Concept - State investment program - Targeted program 	<ul style="list-style-type: none"> - Region broad plan - City general plan - City detailed plan 	<ul style="list-style-type: none"> - Concession agreements, especially on oil/gas development - Action Plans and programs (with the EU) - Loan agreements with World Bank group.

Definitions and procedures for adoption of strategic planning documents

There are significant differences as to the level of details in the national legislation regarding strategic planning, including definitions and procedures for adoption of various planning instruments (documents). While strategies, programs, and action plans are most often used instruments, there no specific laws or other acts establishing relevant procedures and definitions. In the absence of a clear and comprehensive legal framework, development and adoption of strategies, programs and action plans is subject to general rules for adoption of normative legal acts. Strategies have no definition in the legislation at all. In contrast, spatial planning is subject to detailed legislative provisions. These considerations are discussed in details below.

State programs and action plans

The Constitution of Azerbaijan uses the terms “state social program” and “state economic program”. Yet, the Constitution does not define them.

“Action plans” are usually either part of the program or separate documents, but national legislation does not define this term.

Yet, in practical terms programs and action plans are the most important government’s policy and planning instruments, especially periodically approved state program of social economic development of the regions.

State investment program and targeted program

The Law on Budget System of the Republic of Azerbaijan uses the term “state investment program” as a necessary in budgeting process document encompassing significant investment projects in compliance with the drafts of the state budget and summary budget for the next year, the summary budgets for the following three year. Same law is using the term “targeted program” (which must accompany the draft annual budget to be financed under such annual state budget) without defining it.

Legislative development programs and plans

The Law on Normative Legal Acts uses the term “program for preparation of normative legal acts” and “plan for preparation of normative legal acts” (both being planning documents for legislative process). Yet, no definition is given to these terms.

Spatial planning documents

The three types of the spatial planning documents (region broad plans, city general plans and city detailed plans) are subject to a special legal act - Urban Planning and Construction Code (2012). All of these spatial plans are obligatory acts (art. 20.3 of the Code) and should be open to public access (art. 20.4 of the Code). Each of them is developed on the basis of the preceding (more general) document (art. 20.2 of the Code).

Chapter 5 of the Urban Planning and Construction Code sets out detailed provisions on spatial planning documents.

“*Broad plans*” are documents of territorial⁴ planning (art. 20.1 of the Code) developed within general planning of the territory of Azerbaijan (regions, territorial units) (art. 20.1.1 of the Code) and may contain (art. 21.1 of the Code):

- Settlements system (cities and connecting roadways, as well as future development of them)
- Un-urbanized territories (forests, pastures, subsoil resources, protected areas)
- Territories’ amenities and functional use changes
- Infrastructure sites and corridors
- Important sites for a territory functioning (airports, sea ports, etc).

Broad plans have no expiry date.

“*General plans*” are documents of territorial planning (art. 20.1 of the Code) developed at the level of cities or other settlements (art. 22.1 of the Code). City general plans must specifically indicate (art 22.3 of the Code):

- territories necessary for construction (as well as natural events safety measures)
- territories provided for extraction industry use or processing of minerals
- territories provided for construction activities and having significant amount of environmentally dangerous materials.

City general plans may contain (art. 22.2 of the Code):

- territories provided for construction activities
- objects to provide goods and services, including to meet social and cultural needs, to the inhabitants;
- parks, green areas, beaches and cemeteries
- road infrastructure territories
- territories provided for communication and engineering lines, and wastes
- territories under special environmental protection status

⁴ For the sake of this report and accuracy of citing relevant legislation “territorial” is used when referring to specific provisions of the legislation. The report uses the term “spatial” for general reference to planning of territories.

- water territories provided for ports and water business, as well as water territories which need to remain untouched for flood protection purposes
- territories which require engineering preparatory works, including territories where landscape projects are needed (for drilling or filling), or territories for stone or other extraction
- agricultural lands
- forests
- territories provided for environmental protection and landscape purposes.

General plans must be accompanied by an explanatory note providing description of general plan's goals and significant impacts.

General plans are valid for 20 years.

"Detailed plans" are documents of territorial planning (art. 20.1 of the Code) developed for territories of the cities, settlements, villages, rayons or parts of their territories (art. 23.1 of the Code). Article 23 of the Code defines various elements of such plans, including elements covered in general plans but in more details (e.g, maximum number of apartments in multi-apartment buildings, width and length of territories for construction). In practice, these plans are made in a larger scale compared to general plans. Detailed plans may have no validity date.

Other planning documents

There is no definition of a "strategy", "development concept" or "measures".

Procedure for the preparation of strategic documents

There is no specific procedure for preparation of the state programs and strategies.

In practice, state programs and strategies are approved by a decree of the President of Azerbaijan. An order of the President of Azerbaijan usually starts preparation of the program/strategy, setting out timeframes and stakeholders involved. In most cases, the state programs are prepared by the Cabinet of Ministers upon such orders by the president. The strategies may be prepared by specific agencies (e.g, state water company, energy efficiency agency, etc depending on program subject area), which is important for identifying stakeholders. If the preparation of a program is given to the Cabinet of Ministers, it starts a process of gathering proposals from all central and local executive branches. Final draft of the program is "approved" (given a consent) by all central executive agencies, including the Ministry of Environment and Natural Resources.

Since the programs and strategies are adopted by a decree of president and mostly prepared by the Cabinet of Ministers, in principle such decisions are subject to two general legislative acts setting out rules on all legislative acts in the country: the Law on Normative Legislative Acts (2010) and the Regulation on the Procedure for Preparation and Adoption of Normative Legal Acts by Executive Powers (2011).

Chapter 6 of the Urban Planning and Construction Code sets out detailed procedure for preparation of the broad plans, general plans and detailed plans.

Roles of environmental and other authorities

Draft strategies, programs and plans are subject to consultation (consent) procedure within the Cabinet of Ministers. In this context, all central public authorities are consulted on the draft program or plan, including MENR and Ministry of Health. The draft program/plan needs a consent given by every central authority before it is submitted for approval. This is governed by a general procedure established by the Law on Normative Legal Acts and the Regulation on the Procedure for Preparation and Adoption of the normative legal acts by executive public authorities (this includes acts by President of Azerbaijan, the Government, ministries, committees, and other central authorities).

In practice, central public authorities are consulted twice: to submit their proposals for the draft program or plan and at the end of the preparation procedure when they are providing their consent to draft documents prepared by the Cabinet of Ministers.

There is no formal role of health authorities in the development of the territory planning documents.

Final decision

Strategies, programs are adopted by the President of Azerbaijan in the form of a decree. Broad plans, general plans and detailed plans for territory planning are adopted by local executive authorities. It was reported during fact finding mission that some plans may be adopted by the Cabinet of Ministers but no examples were provided by interviewees.

2.2 Strategic documents at the national level that will require sea under the sea protocol

A strategic environmental assessment shall be carried out for plans and programmes which are prepared for specific sectors: agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use (art.4.2 of the Protocol on SEA). Such programs and plans (meeting, in addition, other requirements of the art.4.2 of the Protocol on SEA) comprise the first group of strategic documents for which SEA will be required in Azerbaijan under the Protocol on SEA. It is also important to understand what other strategic documents are prepared in Azerbaijan for the purpose of the screening requirements under articles 4.3 and 5 of the SEA Protocol.

In Azerbaijan governmental policy is mostly implemented through State Programs, National Action Plans and similar documents. The total number of all strategic documents adopted annually can be estimated as <10. This shall be taken into account when developing national SEA system to estimate administrative burden created by SEA framework if no screening requirements are envisaged (i.e., if all strategic documents are subject to SEA).⁵

The most relevant examples of strategic documents potentially requiring SEA are:

- State Program on Socio-Economic Development in Baku City and its Suburbs - 2011-2013, 4 May 2011, № 1490 (II program);
- Action Program on Socio-Economic Development in the Settlements, February 27, 2006, № 1338 (I program);
- Action in Connection with the Construction and Repair of Roads in the Settlements,
- Detailed Master Plan for Conservation of the Historical Center of Baku, November 8, 2010, № 206;
- State Program on Poverty Reduction and Sustainable Development in the Republic of Azerbaijan - 2008-2015, September 15, 2008, № 3043 (II program);
- State Program for the Social-Economic Development of the Regions of the Republic of Azerbaijan in 2014-2018, 2014 (III program);
- Comprehensive Action Plan for the Years 2006-2010 to Improve the Environmental Situation , September 28, 2006, № 1697 (Plan II is going to be developed)

⁵ Taking into account the number of strategic documents developed on the annual basis in Azerbaijan the expected administrative burden will not be excessive, compared to the benefits that application of SEA brings. For example, in Finland SEA procedures are applied to 1500 strategic documents annually, in UK this number corresponds to 400-500 SEAs per year, and in Austria about 270. At the same time only in Salzburg region (Austria) screening procedures are applied to about 300 documents annually.

- National Program for Sustainable Socio-Economic Development in the Republic of Azerbaijan, February 18, 2003, № 1152 (formerly the National Action Plan was adopted in 1998);
- State Program on the Use of Alternative and Renewable Energy Sources in the Republic of Azerbaijan on, October 21, 2004, № 462;
- State Program on Development of Tourism in the Republic of Azerbaijan 2010-2014, April 6, 2010, № 838 (II program);
- State Program on Reliable Provision of the Population in the Republic of Azerbaijan with Food Products -2008-2015, 25 August, 2008, № 3004 (II program);
- National Strategy and Action Plan on the Conservation and Sustainable Use of Biological Diversity in the Republic of Azerbaijan, March 24, 2006, № 1368.

These state programs and national documents address sustainable socio-economic development, urban planning, environmental protection, material and spiritual heritage, the preservation of historical monuments, the country's natural resources, the effective use of land and their sustainable management, and land degradation. Information gathered about these and other recently adopted strategic documents is summarized in the Table 3 below.

At present, new state programs and strategies are being prepared. One of them is a National Strategy for Solid Waste Management, being prepared with the support of the World Bank. Other documents in preparation include "National Strategy on the Use of Alternative and Renewable Energy Resources for the years 2012-2020", regional development plans for each of the nine regions of Azerbaijan. This project is financed by the Government of Azerbaijan itself.

Azerbaijan receives assistance to achieve its development goals from multi-lateral and bi-lateral international agencies. Several of agencies implement projects that address environmental priorities in the country and in Greater Baku, including the World Bank (water, wastewater, solid waste), UNDP (tourism), and German Development Bank/German International Cooperation Agency (KfW/GIZ - waste, water/wastewater, land remediation/redevelopment). The World Bank's project in Greater Baku area included development of the Greater Baku Regional Development Plan, which was subject to strategic environmental assessment.

Table 3. Strategic documents adopted in specific sectors in recent years.

Sectors	Names and legal basis of strategic documents in each given sector that are being prepared or are required to be prepared by public authorities at all levels of government	Information of the number actual documents prepared during last five years, current situation and planned changes in the legislation and any other relevant information
Agriculture	Program, strategy or plan.	1 (Vine-Growing Program 2011). In previous years programs were adopted to address agrarian sector, food supply.
Forestry	Program, strategy or plan.	0 In previous years a program was approved for forests development and rehabilitation.
Fisheries	Program, strategy or plan.	No information available.
Energy	Concession (production sharing) agreement, program, strategy. Alternative Energy Development strategy under preparation currently.	5-10 Most relate to extraction of oil/gas deposits), in the form of concession (production sharing agreements) or on investigation

		and extraction of specific group of deposits, except for Energy Fuel Complex Development Program for 2005-2015. In previous years several strategic documents were adopted: long term strategy on management of revenues from oil and gas, alternative and renewable energy sources program, etc.
Industry	Program, strategy or plan.	1 (Outer Space Industry Development Program, 2009).
Mining	Program, strategy or plan.	0 State Program on efficient use and development of natural stone beds in Absheron Peninsula in(2003-2006)
Transport	Program, strategy or plan.	2 (Railways Development Program for 2010-2014 and Plan of Measures for Modernizing Transport System in Baku city for 2008-2013).
Regional development	Program or plan. Regional development plans for other regions are under development.	<10 There is an overarching and major national program periodically adopted: State Program on Social and Economic Development of the Regions of Azerbaijan, the most recent adopted in 2014 for the period of 2014-2018. A number relate to social and economic development of specific territories.
Water Management	Program or plan. Improved water supply and sanitation program is to be implemented in Absheron peninsula under World Bank funded project.	1-2 relating to drinking water supply.
Telecommunications	Program, plan, strategy.	5 relating to information and communication technologies development (plans, programs and strategies).
Tourism	Program or plan. No under development.	1 State Tourism Development Program.
Town and country planning or land use	Broad plans and general plans. Greater Baku Regional Development Plan is under approval, as well as regional development plans.	See also regional development.
Other national and subregional relevant documents	Programs, strategies, plans, measures.	>10 Most important include State Program on Poverty Eradication and Sustainable Development (2008-2015), National Action Plan on Operation of Development of an Open Government (2012-2015), National Action Plan to Fight Corruption (2012-2015), Strategy on Employment (2006-2015), Complex Plan on Measures

		to Improve Environmental Situation in Azerbaijan (2006-2010), Additional Measures on Protection of Caspian Sea (2008).
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3. DESCRIPTION OF THE CURRENT ENVIRONMENTAL ASSESSMENT PROVISIONS

It is important to understand current environmental assessment system in the country in order to develop feasible and comprehensive approach for integrating requirements of the Protocol on SEA into national environmental assessment and planning system. In particular, screening requirements of the Protocol on SEA directly refer to project level decisions and projects requiring EIA under national legislation (art.4.2 of the Protocol). Current environmental assessment framework shall also be assessed for its applicability to strategic decisions from the perspective of both current practice and compliance with the requirements of the Protocol on SEA, including when (if) it is applied to strategic decision-making.

3.1 Environmental assessment system

The environmental assessment system in Azerbaijan is based on state environmental review/expertiza system (SER), which includes EIA documentation developed by the project initiator and its subsequent review by environmental authority (EIA/SER system).

Under current practice, the initiator submits information form (describing proposed activity) to the Department of Expertiza at MENR. The expertiza department takes screening decision. If a full scale EIA procedure is needed, then it also takes a scoping decisions. The initiator develops EIA documentation (OVOS) and submits it to the Department of Expertiza at MENR. To assess EIA documentation an expert commission is set by the department. Experts analyze EIA documentation, discuss it at a meeting and adopt conclusions of the state environmental expertiza. The experts can be both officials and sub-contracted outside persons. Recently NGOS have been invited to the meetings of the expert commissions.

The conclusions of the state environmental expertiza are approved by the head of the Department of Expertiza at MENR. In total, over 500 conclusions were issued last year, vast majority of which relate to land use projects⁶ (investment projects covered by Annex I to the Espoo Convention and SEA Protocol amount to be just 20-25 per year). The conclusions of the state environmental expertiza have permitting nature and can impose conditions upon project implementation.

Yet, in the absence of a comprehensive legal framework leads to unsystematic application of the EIA/SER process in Azerbaijan, where a number of projects falling under Annex I to the Espoo Convention and SEA Protocol) are implemented without being subject to EIA/SER.⁷

All experts interviewed share an opinion that no comprehensive legal framework for environmental assessment exists in Azerbaijan. There two legislative acts in this area: the Law on Environmental Protection (1999) and Rules on Financing State Ecological Expertiza. Relevant international treaties have also direct application under the Constitution.

⁶ In Azerbaijan EIA/SER procedure is applied to land-use documentation (land use is subject to decision-making separate from construction permit for a industrial project, for example).

⁷ This conclusion is based on information obtained from unofficial sources during desk research and fact finding mission.

The *Law on Environmental Protection* is the only legal act that provides a basis for EIA/SER in Azerbaijan. At the same time, relevant provisions of this law (articles 50-58) do not specify any details as to the procedure: scope of application, screening, scoping, requirements on EIA report (documentation).

The law has a broad definition of “objects” of the state environmental expertiza without any reference any specific field of economic activity (like Annex I to the Espoo Convention) and includes:

- Draft state and local programs on development and location of productivity forces in accordance with economy sectors;
- Feasibility studies, projects for construction (reconstruction, widening, introduction of new technologies) and liquidation of business entities and complexes, EIA documentation (OVOS);
- Documents on development, including import from abroad, of new technique, technologies, materials and substances;
- Draft educational and normative technical documents in environmental protection area;
- Environmental conditions⁸ evolved in the process of economic activity or emergency situations;
- Environmental conditions in regions, specific natural sites and complexes (ecosystems);
- Environmental chapters of agreements (contracts) for natural resources use based on a decision of a relevant executive public authority.

The law also provides for so called public environmental expertiza (environmental expertiza carried out by citizens associations), a procedure which should not be considered relevant in the context of public participation concept.

There are Guidelines on Environmental Impact Assessment (OVOS) Process (1996) (approved by MENR coordination board), which are being used without having legal status. These guidelines define various procedural as described below. They are not applicable to the strategic documents.

No information was found as to biodiversity assessment in the legislation (in relation of Article 14 of CBD) in Azerbaijan. This suggests no such assessment is carried out, in particular as a separate procedure.

Applicability of the current assessment procedures to strategic documents

Currently SER procedure is applied to strategic documents on a case-by-case basis only. Development and adoption of the strategic documents is not mandatory subject to SER. While planning documents are listed among SER objects, this is not sufficient for a routine process where some strategic documents would undergo SER in an obligatory manner. No legal requirements on environmental assessment report (or similar document) were identified for strategic documents. There is no guidance as to the content of such report.

There is information that on a pilot basis some strategic documents were subject to SEA (in line with SEA Protocol/Directive) and/or state environmental review. For example, in 2013-2014 comprehensive SEA process has been carried out for the Greater Baku Development Plan (covering the whole Absheron Peninsula, which is much beyond Baku city). This planning process in general precedes a World Bank project on improving sanitation and water supply in Absheron peninsula. SEA was carried out by a consultant (EPTISA) with a close cooperation with planning agency. Another example is a regional economic development plan for one of the regions was subject to state environmental review.

No examples were found for application of SER procedure to state sectoral programs or plans (adopted by the President of Azerbaijan).

Scoping requirements

⁸ It is unclear what is meant by “environmental conditions”. It is likely to include state of the environment (including changes in it), pollution levels, etc.

There are no requirements as to scoping in relation to environmental assessment during development/adoption of strategies, programs or plans. The available practice for SEA suggests scoping was made by the initiator (Greater Baku Development Plan is the most recent example).

Under Urban Planning and Construction Code a construction project documentation shall have “an environmental chapter” (Article 83.0.6). Article 10 of the Code requires that environmental safety and protection must be ensured in urban planning and construction. Provisions on preparation of specific spatial planning documents (broad plans, general plans and detailed plans) set out requirement on indication of the territories which need protection, measures to address pollution, etc. *See also chapter 2.1*). These requirements still leave space for individual scoping, especially in relation to environmental impacts.

Under current practice for projects, scoping was made by the initiator. The Law on Environmental Protection sets general requirements on project documentation and location preparation (Articles 36-37). The Guidelines on Environmental Impact Assessment (OVOS) have specific requirements on the content of the EIA report (OVOS documentation) of the project. However, the Guidelines do not address strategic documents, plans and programmes.

3.2 Public participation

Public participation is one of the key elements of the SEA procedure under the Protocol on SEA. In addition to Article 8 of the Protocol on SEA, respective requirements on public participation are part of every stage under the Protocol: screening (art.5.4), scoping (art. 6.3), transboundary consultations (art. 10.4), final decision (art.11).

Public participation in EIA/SER Public participation and access to information framework is separate from EIA/SER provisions (except for public environmental expertiza) and includes the following key acts:

- Law on Environmental Protection (Articles 6 and 7)
- Law on Public Participation (2013)
- Rules on public hearings and discussions of legal acts, prepared by central and local executive authorities and local self-governing bodies (2014)
- Law on Obtaining Information about the Environment (2002).

The Law on Environmental Protection (Articles 6 and 7) broadly defines rights and duties of the citizens and their associations, including on access to environmental information and public environmental expertiza.

The *Law on Obtaining Information about the Environment* defines environmental information, procedure for providing the information, grounds for refusal, timeframes.

The *Law on Public Participation* was adopted rather recently and covers various forms and detailed requirements on public participation in decision making. While many provisions reflect key international law principles and provisions applicable, including those by the Aarhus Convention, the scope of application of the law is vague: “law regulates relations arising when involving the citizens of the Republic of Azerbaijan in the realization of state governance”(preamble of the Law). In particular, the definition of public participation is:

“public participation - participation in preparation and implementation of the state policy in different fields of state and social life; participation of citizens and civil society institutions in decision-making on nationwide and local level; participation of citizens and civil society institutions in the forms

defined in this Law in organization of public control over the activity of the central executive authority bodies defined by the relevant executive authority bodies (hereinafter – central executive authority bodies), local executive authority, and self-government bodies; consultation of state bodies with the society and consideration of the public opinion”. [Article 1.0.1]

The only specific application area defined for public participation is public discussion of the draft laws to be organized by the Parliament (Chapter V).

In summary, public participation framework under the Law on Public Participation sets overall requirements on public participation process but needs individual integration into sectoral laws (e.g., EIA).

On the basis of the Law on Public Participation, the government recently adopted *Rules on public hearings and discussions of legal acts, prepared by central and local executive authorities and local self-governing bodies*. These Rules set requirements on public participation during the preparation of legal acts by executive authorities.

Since key strategic documents are adopted by the President of Azerbaijan, the requirements set by the Law on Public Participation do not automatically apply to such decision-making process. In this context, there are examples when a process of preparation of a strategic document initiated by an order of the President of Azerbaijan (e.g., Order No2786 of May 1, 2008, on Development of the State program on Secure Food Supply to Population) required involvement of the non-governmental and citizens organizations.

Public participation in spatial planning

The Code on Urban Planning and Construction sets rather detailed requirements on public participation in territorial planning. Articles 26-34 of the Code sets a clear principle of transparency of the preparation process, which is further strengthened by the following requirements: the procedures to ensure transparency of the process of development of the territorial planning documents include (a) informing about territorial planning, (b) creating conditions for the public to examine draft documents on territorial planning, (c) consideration of any objections and proposals on territorial planning and (d) carryout public debates; [Art 26.0]. Article 27 sets detailed requirements on notice, examination and public discussion of draft documents on territorial planning. Article 28 sets a right of the public to submit comments on first draft within 30 days of a notice. Article 30 is specifically devoted to public discussion procedures.

In summary, there is sufficient legal framework for public participation in the adoption of the spatial planning documents, such as broad plans, general plans and detailed plans.

Public participation in the existing pilot SEA practice in Azerbaijan

The examples of SEA gathered during the fact finding mission suggest that public participation was ensured to some extent. For example, for the Greater Baku Development Plan public participation was organized twice with different approaches:

- During the SEA process as such public consultations were held in 8 rayons
- During the final stage of the plan development a public hearing was organized in May 2014.

The public consultations organized by the initiator (together with contractor for SEA) was subject to international applicable standards, such as Article 7 of the Aarhus Convention. At the same time, recent public hearing in Baku had nature of stakeholders consultations, since the hearing was targeted at public authorities, universities and the public.

Transboundary Procedures

National legislation does not provide for transboundary consultations in EIA/SER. Practice analyzed in relation to EIA/SER and SEA provides for no examples of transboundary consultations.

Responsibilities in EIA/SEA process

MENR is responsible for screening in the EIA/SER process. No screening is made for SEA purposes (strategies, programs and plans).

Initiator is responsible for scoping at the EIA stage. It was also initiator responsibility for SEA examples identified.

Public participation is ensured by the initiator in EIA/SER procedure, as well in SEA examples identified (run by relevant subcontractors preparing strategic documents). For the purposes of SEA it may satisfy SEA Protocol requirements since vast majority of the strategic documents is initiated and/or prepared by public authorities.

Upcoming changes in the legislation

There is an intention to adopt a law on environmental impact assessment (see draft in Annex I). It basically covered three regulatory areas: EIA, SEA and SER. The draft text is DISCUSSED in the sections 5-6 below.

4. KEY STAKEHOLDERS IN ASSESSMENT REFORMS

Department of Expertiza of MENR is the only public authority currently involved in the environmental assessment procedure. For the purpose of the future SEA framework main stakeholders can be divided into following groups:

- State Authorities
- Local Authorities
- Corporate Entities
- Non-governmental organisations.

Their roles and responsibilities relevant to application of SEA to strategic documents are described below.

State Authorities

The main stakeholders in this group include :

Ministry of Ecology and Natural Resources (MENR) implements State environmental policy through programs to maintain environmental quality, protection of ecological systems and efficient use of natural resources.

Currently, there are a number of environmental issues that await their resolution: pollution of water basins, including that of the Caspian Sea with waste water originated from domestic and industrial activities; damages incurred by changing level of the Caspian Sea; emission of harmful gases into the atmosphere at a level that exceeds acceptable norms; decreased biodiversity, erosion and salinization of land; and problems arisen from utilization of domestic and industrial waste.

To address these issues as the first document in reference to national environmental policy during the period of independence of Azerbaijan the “Environmental Concept of the Republic of Azerbaijan” was developed on the basis of “Sustainable Development” principles. This Concept reflects main guidelines for resolution of pressing issues in terms of protection of the environment.

The Ministry in collaboration with other agencies on environment built its work with other stakeholders based on the following tasks and principles in regards to the main priorities of environmental policies:

- Conducting decision-making processes with short and long term economic, ecological and social consequences and expected complications in mind and considering alternatives as part of this process;
- Increased recruitment of the representatives of public and non-governmental organizations into decision-making processes that involve protection of the environment;
- Prevention of activities that could cause irreparable violation of an environmental component;
- Ensuring strong and diversified economic development that involves lesser amounts of waste;
- Broadening of cooperation with international organizations and developed countries in the area of protection of the environment;
- Increasing public's awareness and promotion of the environment.

Since social and economic processes have rapidly developed during the transition period in Azerbaijan, new methods and principles have also emerged in the country's environmental policies. From this point of view, the National Program "On Environmentally sustainable social and economic development" developed by the Ministry of Ecology and Natural Resources and endorsed by the President of Azerbaijan, reflected further enhanced environmental policies and created additional opportunities for implementation of these policies.

In order to involve other stakeholders into environment related discussions the regional branch of MENR closely cooperates with the executive power of relevant regions through commissions created by them or organised meetings with other agencies.

Ministry of Transport is responsible for roads and road infrastructure.

The Ministry monitors the requirements of environmental policy and responsibilities related to road sector during implementation of road construction works, monitors security of roads during other construction works, monitors activities to prevent environmental problems related to the sector in cooperation with other organizations, local executive authorities and MENR.

Ministry of Emergency Situations protects people and areas from emergency situations to secure public safety, and takes actions to address emergencies.

Carries out activities related to prevention of natural and anthropogenic impacts to environment, human health, residential areas and different areas of economy in cooperation with other organizations, local executive authorities and MENR.

The Ministry works to prevent natural and anthropogenic impacts and other emergency situations to environment, human health, residential areas and different areas of economy if normative-legislative acts are not followed.

Ministry of Culture and Tourism is responsible for development of tourism, protection of historical and cultural monuments.

The Ministry identifies and protects historic and cultural monuments, as well as cultural heritage, and takes required measures related to culture and tourism in cooperation with other organizations and local executive authorities.

The Ministry prevents impacts of other activities in the territories where historical and cultural monuments are situated.

Ministry of Agriculture is responsible for issues on land reform and food supply.

Carries out activities related to land reform, food supply and conservation/fertility of agricultural land in cooperation with other organizations, local executive authorities and Ministry of Justice.

Monitors environmental requirements during the planning of land use.

Ministry of Education is responsible for preparing of educational programs.

The Ministry may develop and deliver environmentally-related education materials for use in schools.

Ministry of Health is responsible for protection of human health.

The Ministry carries out activities related to human health in cooperation with other organizations, local executive authorities and MENR.

The Ministry ensures public health, prevents hazardous impacts of industrial activities and facilities, and also regarding carbon emissions from cars on the environment and human health.

State Committee of Land **and Cartography of Azerbaijan** is responsible for monitoring of lands, land reform, organizing effective use of land resources.

The Committee carries out activities related to monitoring of lands, land reform, organizing effective use of land resources in cooperation with other organizations, local executive authorities and MENR.

Carries out activities related to legal use of lands.

State Committee on Urban Planning and Architecture is responsible for the overall urban planning framework of Azerbaijan.

The Committee carries out its activities having consideration for the policies and objectives of the Government of Azerbaijan. The Committee was responsible for the preparation of the Greater Baku Regional Development Plan.

Local Authorities

The main stakeholders in this group include:

Local Executive Powers are responsible for overall supervision and monitoring of government policy within their jurisdictions, and for implementation of a range of services at the local level (e.g. solid waste management). They also take spatial planning decisions.

Local Executive Powers monitor and apply environmental requirements relevant to their activities within the rayon.

Municipalities are responsible for delivery of services at the local level; however, legal frameworks to support their activities are often either weak or incomplete and their authorities are often subsumed by the local Executive Power.

Municipalities monitor environmental requirements and requirements of human health.

Corporate Entities

The main stakeholders in this group include: AZERSU, State Company for Alternative Energy, SOCAR, AZERIGAS, AZERIENERGY, Bakielektrikshebeke, Sumgaitelektrikshebeke. It has been reported that

such agencies were responsible for development of the draft program/plan in the past for the relevant sector.

AZERSU is responsible for water supply, and for establishment and maintenance of sewerage system.

AZERSU Carries out activities related to environmental issues in water supply and sanitation in cooperation with other organizations, local executive authorities, Melioration and Water Economy JSC, State Water Agency of the Ministry of Emergency Situations and MENR.

State Agency for Alternative Energy is responsible for identifying and implementing alternative energy projects. The Company carries out activities related to producing of alternative energy in cooperation with other organizations, local executive authorities and MENR.

SOCAR is responsible for oil-gas sector and also production and transportation of oil-gas.

SOCAR carries out activities related to management of environmental impacts of the oil-gas sector and also production and transportation of oil-gas in cooperation with other organizations, local executive authorities and MENR.

AZERIGAS is responsible for gas supply.

AZERIGAS carries out activities related to reduction of environmental impacts to gas supply in cooperation with other organizations, local executive authorities and MENR.

AZENERGY is responsible for electrical power generation, and for the transmission of electrical power to the entities responsible for its distribution. AZENERGY undertakes its activities in cooperation with the appropriate State agencies.

Bakielektrikshebeke and **Sumgaitelektrikshebeke** distribute electrical power to households, industrial users and commercial users throughout Baku and Sumgayit respectively. Both entities manage the receipt of power from AZERENERGY and cooperate with the relevant State agencies.

Non-Governmental Organizations and Institutes

The main stakeholders in this group include Ecores, AIHP, Towards Sustainable Development, Ecolex and other NGOs that may be identified during the project.

These NGO's carry out activities related to environmental issues in cooperation with other organizations, local executive authorities and MENR. They have right to request organizations or authorities to follow environmental requirements according to the law, and may request the Executive Power or the Ministry to take measures regarding these issues.

5. ANALYSIS OF CURRENT ENVIRONMENTAL ASSESSMENT PROVISIONS

Since there's no legal framework for SEA currently available in Azerbaijan it's not feasible to provide analysis of the current environmental provisions. For this reason chapters 5 and 6 reflect the analysis of the proposed framework on environmental assessment (draft Law on Environmental Impact Assessment). Such approach seems to be the most appropriate to meet the goals of the legal review as such, i.e. to provide technical assistance to the Azerbaijan Republic in the process of development of the national framework for SEA Protocol implementation.

TERMINOLOGY NOTE: The English text of the draft law on EIA (provided by Azerbaijan MENR) uses the term “Public Environmental Examination”, which means *state ecological expertiza*, a procedure often referred to as “state environmental review” in English-language sources. For the sake of clarity in the context of the further analysis of the draft legislation, the terms “*state ecological expertiza*”, “*state environmental review*” and “*public environmental examination*” shall be understood as equal.

Main weaknesses and strengths of the proposed SEA system are summarized in the table 4 below in relation to key elements/requirements of the SEA Protocol. Some key issues relating to the proposed EIA/SEA system include the following.

5.1 General observations

The Draft Law on Environmental Impact Assessment (Annex I to this report) was designed as a **framework law** which requires adoption of subordinate legal acts defining various procedural requirements for EIA, SEA and SER.

The draft law incorporates three major legal concepts: (a) EIA/OVOS, (b) SEA and (c) SER (“public environmental examination”).

For EIA level projects the proposed environmental assessment system uses existing **expertiza/OVOS system** where EIA/OVOS is responsibility of the developer and SER is a permitting procedure, which verifies/checks information in the EIA/OVOS.

Similarly, the same approach was taken for SEA level of decision making: SEA outcomes are submitted for SER procedure. Since SER is a permitting procedure, the whole **SEA process is proposed as a permitting procedure**.

In the draft law SEA indeed is defined as a decision-making process, which consists of the following stages: (a) identification of coverage of the environmental report, (b) development of final [SEA] report, (c) public participation⁹ (d) decision making and (e) monitoring of results.

5.2 Key conclusions (observations)

The proposed SEA provisions in the draft Law on Environmental Impact Assessment is a solid base for implementation of the Protocol on SEA in Azerbaijan, subject to observations below and comments reflected in Table 3. While current text of the draft law raises some questions and concerns, some of the inconsistencies can be addressed by amending proposed text, some can be addressed in the subordinate act.

Application of SER concept to SEA may well avoid some intrinsic problems of EIA/SER system. Proposed concept of SEA process where it ends with SER decision (conclusions) may well avoid some of the “systemic” problems with EIA/SER. In particular, since initiator of a strategic document in Azerbaijan is a public authority, requirements on public participation and consultations may well be implemented a stage of the development of SEA report (before SER). At the same time, this may be complicated if the initiator subcontracts a legal entity to develop draft program/plan or strategy.

The proposed “framework” nature of the draft law could be acceptable. It is possible to have a framework law together with a package of subordinate acts (depending on the legal nature and status of such acts). Moreover, such practice seems to be most applicable in Azerbaijan and in accordance with its Constitutional Law on Normative Legal Acts. At the same time, the draft law on EIA needs establishing, in a

⁹ “Public participation” is not included into the English translation of the draft EIA law. It appears only in the unofficial Russian translation of Article 10 provided by the national consultant.

sufficient and balanced manner, a minimum level so that the requirements of the Protocol on SEA can be met by the overall legal framework.

Legal link between SEA and decision-making on strategic documents is not clear. It is unclear how SEA, in particular SER, outcomes can impact on decision-making process for plan/program. In the proposed legal framework it may well be legally possible that plan/program/strategy is adopted without SEA. If SEA is considered a “parallel” process to the development and adoption of a strategic document itself, the legislation needs to specify links between the two decision-making procedures on the same strategic document. The necessity of SEA as such needs to be ensured in a way that a program/plan/etc. cannot be adopted without SEA unless it is screened out or gets a positive feedback (decision) of SER.

The draft law on EIA defines “objects” of SEA and SER in the same way (e.g, draft program) which creates legal uncertainty. There is no legal certainty whether SEA ends with SER outcomes as a final decision or decision to adopt the plan/program is a final decision. This is important for the purpose of implementation of the Article 11 of the Protocol ‘Decision’.

Permitting nature of SER may be legally difficult to apply for strategic documents. Most strategic documents are adopted by the President of Azerbaijan. At the same time SER outcomes are defined as permit. It seems to be legally difficult (if possible) to have a permitting procedure applied to what basically is a legislative process in the country.

There is uncertainty as to who bears obligation to carry out some stages of SEA. In particular, the draft law does not define who is responsible for screening, scoping, preparation of SEA report and monitoring.

There is a need to include provisions on consultations with health authorities. Proposed provisions on SEA have references to health issues/impacts. At the same time, no provisions are made to make sure that health authorities are involved.

Very inclusive proposed categorical screening approach leads to situation that all possible strategic documents must be subject to SEA (with exception on national defense, budget, etc). In principle, this should not create significant administrative, time and financial burden on planning in Azerbaijan in the future.

There are a number of requirements of the SEA Protocol which are not met by the provisions of the draft law. These inconsistencies are reflected in the Table 4 and can be dealt in various ways, as suggested in the recommendations (see section 6.1).

It is unclear what is “referred information” for the purpose of Article 10 and 10.6 of the draft law. This uncertainty is important for the purpose of legal analysis reflected in Table 4. The analysis is based on the assumption that “referred information” is information to be gathered or produced during the SEA process and included into SEA report. However, this needs to be clearly confirmed during national consultations.

Table 4. Main strengths and weaknesses of the proposed SEA framework in Azerbaijan

Requirements under the Protocol on SEA:	Requirements under draft law on EIA (as presented in the Annex I)	Comment as to how the draft law meets the provisions of the Protocol
Undertake SEA in plan- and programme-making processes in accordance with definition of SEA in article 2.6 of the Protocol (e.g., how to link SEA to the decision-making process, etc.)	Strategic environmental assessment (SEA) – is a systematic (planned) and transparent decision making process applied in the proposed plans and programs aimed at sustainable use of environment and provision	The definition of SEA as such does not correspond to the definition of SEA in the Protocol on SEA. In particular, draft law defines SEA as a decision-making process. If it’s a separate decision making process then it leaves

	<p>of other feasibly sustainable development aspects, and identified the implementation feasibility in the early stage through assessment of their consequences of negative effects on environment and human health.[Art. 1.0.3]¹⁰</p> <p>The goal in the strategic environmental assessment (SEA) is to ensure sustainable development of environment and environmental safety during implementation of plans and programs with making correct decisions based on consideration of environmental discretions precisely and identification of potential environmental impacts simultaneously with delivery of early and effective information when developing the proposed plans and programs. [Art. 7.1]</p> <p>Strategic environmental assessment (SEA) process is conducted in parallel with the development of plans and programs, and the obtained results are incorporated to the SEA environmental reports and their environmental examinations are performed.[Art. 10.1]</p> <p>SEA process is consisted of identification of coverage of the environmental report for verification of the content of it, development of final report on the obtained results, decision making and monitoring of results.[Art. 10.2]¹¹</p>	<p>open the question of how other applicable legal instruments can contribute to the SEA system. E.g., the public participation provisions available in urban planning or in general law on public participation will unlikely be applicable to SEA process as such. <i>See also comment on Article 10.</i></p> <p>The definition focuses on “negative” consequences of the effects on environment and human health. The definition proposed is based on the terms “plans” and “programs” leaving aside strategies. These are clear shortcomings of proposed system.</p> <p>At the same time, the goal of SEA phrased in Article 7 refers to “impacts” without referring to negative consequences.</p> <p>The definition in article 1 is complemented by Article 10.1 and 10.2 which specify, basically, that SEA process proposed is similar to the EIA scheme: there’s an assessment process which is followed by SER (“public environmental examination”).</p> <p>The draft law makes no cross-references to the strategic decision-making process as such. As a result it may well happen that a program/plan/strategy can be adopted without any SEA.</p>
Undertake SEA screening in accordance with articles 4 and 5 (e.g., how to combine mandatory and exclusions lists and when to apply case-by-case examinations, etc.)	Article 8. Strategic environmental assessment objects and scope 8.1. The objects of strategic environmental assessment are as follows: 8.1.1. State plans, programs and strategies;	The SEA “objects” listed in Article 8 potentially cover all relevant strategic documents in the country. Unlike the definition of SEA, the objects include strategies,

¹⁰ All references are made to provisions of the draft Law on Environmental Impact Assessment attached in Appendix II.

¹¹ Russian translation also includes “public participation”.

	<p>8.1.2. General plans of administrative regions, major and detailed plans of cities and other settlements;</p> <p>8.1.3. The entities, manufacturing, service and infrastructure complexes of strategic importance regardless of property and organizational-legal forms;</p> <p>8.1.4. Development programs in the especially sensitive territories (environmental disaster, free economic and environmental zones and etc.).</p> <p>8.1.5. The projects derived from international conventions and concession agreements envisaging the use of natural resources in the Republic of Azerbaijan.</p> <p>8.2. Strategic environmental assessment is not applied in the plans and programs on emergency situations, civil defence, finance and budget.[8]</p>	<p>concession agreements and territorial planning documents.</p> <p>“Objects” of SEA are not limited to any particular area of economic or territorial development. They are neither limited by significance of their potential impacts.</p> <p>It’s unclear why SEA shall be applied to “entities, manufacturing, service and infrastructure complexes of strategic importance”. Such activities should normally be subject to EIA procedure.</p> <p>Exceptions in the scope of application are in line with Article 4.5 of the Protocol on SEA.</p> <p>Therefore, the draft law potentially includes any strategic document into the scope of application of SEA. There is no separate screening procedure.</p> <p>While such approach may be difficult in some countries, it seems that the overall number of strategic documents adopted per year is small (<5) so it may not create significant pressure on the planning system as such.</p>
<p>Organize SEA scoping in accordance with article 6 (e.g., when to undertake scoping, how to select suitable methods for consultations with public and authorities, how to write terms of reference for SEA, etc.)</p>	<p>SEA process is consisted of identification of coverage of the environmental report for verification of the content of it, development of final report on the obtained results, decision making and monitoring of results.[10.2]</p> <p>Detailed information and environmental prognosis are reflected in the SEA environmental report while development of plans and programs. The report provides the defined scope of plans and programs, analysis of preliminary information, comparison and selection of alternatives, monitoring of significant environmental impacts, as well</p>	<p>It is unclear what is relation between “identification of coverage” and “defined scope of programs”. The former likely refers to scoping as required by SEA Protocol.</p> <p>Requirement for SEA report to provide “the defined scope of plans and programs” is unclear as it refers to scope of program/plan, not the scope of SEA process.</p>

	as the results of consultations of the relevant executive authority on the public environmental examination with the community subsequently. [10.3]	
Prepare environmental report:	SEA process is consisted of identification of coverage of the environmental report for verification of the content of it, development of final report on the obtained results , decision making and monitoring of results.[10.2]	There is no indication who is responsible for the preparation of the SEA report.
- Elaborate environmental (baseline) studies in SEA (in accordance with annex IV, paras. 2, 3 and and 4)	<p>The report provides the defined scope of plans and programs, analysis of preliminary information, comparison and selection of alternatives, monitoring of significant environmental impacts, as well as the results of consultations of the relevant executive authority on the public environmental examination with the community subsequently.[10.3]</p> <p>10.6.1. Expected quality of welfare of population and environment related to natural and man-made factors in various stages of implementation of plans and programs.</p> <p>10.6.2. Existing and potential actions which have negative effect on the environment and human health</p> <p>10.6.6. Current status of environmental context of natural ecosystems and natural and economical systems related to economic activity. [Art. 10.6]</p>	<p><i>See the last observation in the narrative text of this section (above) on applicability of provisions of Article 10.6.</i></p> <p>The requirement to include information on the current status of the environment and impact of existing activities seems to cover some elements of the paragraphs 2-4 of Annex IV.</p> <p>Requirements on existing health problems are lacking (para 4 Annex IV of SEA Protocol).</p> <p>The provision to provide information on “expected” quality of welfare and environment may well be sufficient to implement the requirement on “evolution” in para 2 of Annex IV of the SEA Protocol. Health issues are likely to be left outside (“welfare” does not necessarily include health).</p>
- Use environmental objectives in SEA (in accordance with annex IV, para. 5)	N/A	
- Analyse the likely significant environmental, including health, effects (in accordance with annex IV, para. 6)	<p>10.6.2. Existing and potential actions which have negative effect on the environment and human health</p> <p>10.6.5. Results of environmental risk assessment related to the facts of negative effect on environment and human health;</p>	There is no clear requirement to include information on effects as such.

	[Art. 10.6]	
- Compare alternatives of the plan or programme (in accordance with annex IV, para. 8)	The report provides the defined scope of plans and programs, analysis of preliminary information, comparison and selection of alternatives , monitoring of significant environmental impacts, as well as the results of consultations of the relevant executive authority on the public environmental examination with the community subsequently.[Art. 10.3] Development scenarios of relevant activities in accordance with the proposed plans and programs, their technological solutions, spaces for implementation of activities or alternatives on subsequent completion of the activity, including submission, comparison and environmental efficiency of selection of alternative actions shall be justified to prevent negative environmental effects, mitigate their outcome.[Art. 10.4]	The requirements on SEA report content provide for alternatives to be reflected in it. Requirements of article 10.4 are rather unclear as they impose requirements on programs/plans as such. In light of the fact that the draft law covers only SEA and there is no legislation covering development of plans or programs as such, this requirement will unlikely be applicable to the process of development of the plan/program.
Ensure that SEA report includes proposals for the scope, timing and methods of monitoring to carry out post-SEA monitoring to meet requirements of article 12 and annex IV, paragraph 9	Detailed information and environmental prognosis are reflected in the SEA environmental report while development of plans and programs. The report provides the defined scope of plans and programs, analysis of preliminary information, comparison and selection of alternatives, monitoring of significant environmental impacts , as well as the results of consultations of the relevant executive authority on the public environmental examination with the community subsequently.[Art. 10.3]	No requirement to have "monitoring plan".
Analyse transboundary effects (in accordance with annex IV, para. 10)	N/A	Needs to be addressed in subordinate act(-s).
Organize public review of the SEA report and the draft plan/programme in accordance with article 8 (e.g., how to identify the public concerned; how to inform the public and	SEA process is consisted of identification of coverage of the environmental report for verification of the content of it, development of final report on the obtained results, decision	Public participation is included as a stage in SEA process (in the Russian translation of Article 10.2). Public consultations are

<p>collect feedback, how to review public comments, etc.)</p>	<p>making and monitoring of results.[Art. 10.2]¹²</p> <p>Consultations with the community are launched upon definition of the scope of a plan and program draft. [Art. 10.5]</p> <p>The referred information to conducts strategic environmental assessment is as follows:[...] The results of public discussions and hearing in the development period of the plans and programs referred to SEA object.[Art. 10.6.10]</p> <p>Duties of relevant executive authority on environmental examination are as follows: 17.2.4. To send information to relevant executive and self-governing authorities, scientific institutions, non-governmental organizations, individuals and legal entities providing proposals on realization of the envisaged activity about consideration of those proposals during public environmental examination; [...] 17.2.6. Inform to mass media about results of the conducted public environmental examination based on the inquiry provided in accordance with legislation; 17.2.7. Ensure public awareness on the results of public environmental examination through mass media or public presentations as stipulated by the legislation.</p>	<p>envisaged at the stage of the preparation of the SEA report. No indication is made who is responsible for this and no details on the procedure are set.</p> <p>It is not clear what is subject to public consultations: draft program and/or SEA report.</p> <p>At the stage SER relevant public authority us under obligation to “send information” to those who provided comments on the envisaged “activity” about consideration of such proposals.</p> <p>There is no clear obligation to notify the public of the results of SER or SEA process in general. Results of the public examination are given to mass-media upon request only. The relevant SER authority is under obligation to “raise awareness” on the results of SER which clearly lacks an element of informing the public about the results (final decision0.</p> <p>Therefore, public participation provisions are not clear enough to ensure implementation of the Protocol on SEA. The fact that public consultations are envisaged at SEA report preparation stage in itself does not contradict the requirements of the Protocol on SEA (unless development of draft program/plan is subcontracted to private entity).</p>
<p>Organize consultations with environmental and health authorities in accordance with article 9 (e.g., how to identify relevant authorities, how to effectively consult them during SEA, etc.)</p>	<p>Rights and duties of relevant executive authority on environmental examination are as follows: [...] to collaborate with other state bodies, offices and organizations within its authorities. [Art. 17.1.10]</p>	<p>There is no direct reference to involve health authorities.</p>
<p>Undertake transboundary consultations in accordance</p>	<p>Authorities of relevant state and local self-governing bodies in the</p>	<p>There is only general obligation in the draft law that “International</p>

¹² Russian translation also includes “public participation”.

<p>with article 10 (e.g., when to notify, what level of document should be exchanged, how to organize effective transboundary consultations)</p>	<p>sphere of environmental examination [...] in case of necessity for implementation of environmental examination on the complexes and objects having or posing negative effect on environment and human health in the boundaries of the Republic of Azerbaijan with locating in the territory of a foreign country to resolve the related issues in accordance with participation in the EIA process, exchange of information, public awareness on the EIA document and organization of public discussions reciprocally with those foreign countries or in accordance with the international covenants supported by the republic of Azerbaijan. [Art. 16.0.3]</p> <p>Rights and duties¹³ of relevant executive authority on environmental examination are as follows: [...] in case of necessity for implementation of environmental examination on the complexes and objects having or posing negative effect on environment and human health in the boundaries of the Republic of Azerbaijan with locating in the territory of a foreign country to resolve the related issues in accordance with participation in the EIA process, exchange of information, public awareness on the EIA document and organization of public discussions reciprocally with those foreign countries or in accordance with the international covenants supported by the republic of Azerbaijan. [Art. 17.1.6]</p> <p>Article 35. International cooperation in terms of environmental impact assessment 35.0. International cooperation in terms of environmental impact assessment is implemented in accordance with the obligations stipulated by the international</p>	<p>cooperation in terms of environmental impact assessment is implemented in accordance with the obligations stipulated by the international agreements supported by the Republic of Azerbaijan”.</p> <p>State authorities in the field of environmental protection and those in charge of SER have certain obligations “to resolve issues”. It is unclear whether the words “with locating in the territory of a foreign country” cover situations when Azerbaijan needs to act as a country of origin. In any case such obligations arise only at the stage of SER, therefore after the preparation of the SEA report.</p> <p>Therefore, proposed SEA system does not include detailed provisions on transboundary consultations procedure which need to be included into subordinate act.</p>
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¹³ There is no distinction in the text (list) between duties and rights under Article 17.1.

	<p>agreements supported by the Republic of Azerbaijan in the sphere of environmental impact assessment and environmental protection, environmental safety and public awareness, and the following principles are guided in such case:</p> <p>35.0.1. Priority of ecological safety;</p> <p>35.0.2. Share of information and experience;</p> <p>35.0.3. Joint participation in the prevention of economic activity which might pose regional and global problems in the sphere of environmental protection and use of nature (natural resources);</p> <p>35.0.4. Violation of sovereign rights of the state over its natural resources;</p> <p>35.0.5. Expansion of international relations in the sphere of environmental impact assessment, SEA, EIA and environmental examination process methodologies, methods and forms, also scientific and technical information sharing in this direction;</p> <p>35.0.6. Fulfilment of international obligations in the sphere of environmental impact assessment and environmental protection, use of nature (natural resources).[Art. 35]</p>	
<p>Take environmental report and comments from authorities and the public into account during the adoption of the plan or programme into account (art. 11)</p>	<p>Article 11. The goals and roles of environmental examination</p> <p>11.1. The goal of environmental examination is to define the fullness and accuracy of environmental impact assessment, environmental safety level of the made decisions, the efficiency of the actions proposed for the use of nature (natural resources) and environmental protection in accordance with Article 5.2 of this law, during the activities envisaged on the objects of environmental examination specified in Article 14 of the law.[Art. 11]</p>	<p>The proposed SEA system, by analogy with EIA/SER model it uses, proposes that SEA objects are subject to the state environmental expertiza.</p> <p>It is unclear whether in practice SEA report will be subject to SER or draft strategic document as such.</p> <p>There is no indication on who is responsible for submitting SEA report and/or other documents (e.g.draft program) to SER authority. The procedures for SER use the term “project client”</p>

	<p>Article 14. Environmental examination objects 14.0. Environmental examination objects are as follows: 14.0.1. Strategic environmental assessment (SEA) objects in accordance with Article 8.1 of this law; 14.0.2. The drafts of normative and legal acts, guideline-methodological documents and technical normative acts in the sphere of environmental protection...[Art. 14]</p> <p>17.1. Rights and duties of relevant executive authority on environmental examination are as follows: 17.1.1. Organize and implement environmental examination for the objects specified in the Article 14 of this law...[Art. 17]</p> <p>Article 20. Implementation of public environmental examination 20.1. Public environmental examination is considered a type of activity of relevant executive authority. 20.2. Public environmental examination is conducted on the objects specified in the Article 14 of this law which have impacts on the environment and human health during projections of economic activity as well as use of nature (natural resources). [Art. 20]</p> <p>24.1. Public environmental examination feedback is consisted of grounded results about the feasibility of the realized project and permissible limit of potential impacts on environment and human health. 24.2. The positive feedback of public environmental examination is an official permit for realization of environmental examination object. [Art. 24]</p>	<p>[1.0.10] which clearly does not cover an initiator of the program or plan.</p> <p>The outcome of the SER process is “public environmental examination feedback” which is issued by executive environmental authority and it has a clear permitting nature.</p> <p>It is unclear what would be the consequences of a negative feedback: can the program be still adopted and/or implemented?</p> <p>Since SEA is defined as a “parallel process” the outcomes SEA process are only taken into account during SER procedure. As such SER procedure is not a decision-making process for a plan or program.</p> <p>At the same time, no obligation to take account of SEA outcomes is put upon public authority adopting the plan/program.</p> <p>Therefore, the legal link between SEA process, SER and adoption of the strategic document is not clear under proposed law.</p>
<p>Monitor significant environmental and health effects during implementation of plans and</p>	<p>SEA process is consisted of identification of coverage of the environmental report for</p>	<p>There is only a general provision stating monitoring shall follow decision-making on</p>

programmes (art.12)	verification of the content of it, development of final report on the obtained results, decision making and monitoring of results. [Art. 10.2]	plans/programs. It is unclear what the term “results” refers to.
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6. RECOMMENDATIONS FOR THE REQUIRED AMENDMENTS TO ALIGN THE EXISTING LEGISLATIVE FRAMEWORK TO THE PROVISIONS OF THE PROTOCOL

6.1 General recommendations

The consultant is of the opinion that new legislation needs to be introduced in the Azerbaijan Republic to form sufficient legal framework for implementation of the SEA Protocol. **The proposed draft law on environmental impact assessment is a solid starting point** for the development of new legislation on SEA.

The “framework” nature of the draft law on EIA, in particular provisions on SEA, can be acceptable. However, the development of the legal framework for SEA shall include work on a package (consisting of relevant subordinate acts) as a whole, especially to avoid any gaps which would not be possible to fill at the level of subordinate acts. For example, a missing in the law legal term may not be then included into a subordinate act. For this reason, **it is strongly recommended that the government immediately starts development of the draft subordinate act(-s) related SEA procedure.**

The framework law should equally treat key elements of the SEA Protocol. For the time being, scoping, public participation, transboundary consultations and monitoring are not sufficiently addressed. **It is strongly recommended to ensure that all elements of SEA, provided by the Protocol on SEA, are included into the framework law and equally treated, including the level of procedural details set for them.**

Various inconsistencies identified in the Section 5 should be addressed in the draft law or act(-s), as appropriate. Some of the shortcomings identified can be resolved at a level of subordinate act. Yet, it is strongly recommended that the decision on this is taken only when having the whole package of draft acts available.

6.2. Specific recommendations

a)The link with planning decision-making

To clarify legal link between strategic decision-making and SEA process, it is recommended to introduce amendments into the Urban Planning and Construction Code and the Constitutional Law on Normative Legal Acts (and/or Regulation on the Procedure for Preparation and Adoption of Normative Legal Acts by Executive Powers) to make sure that a draft strategy/program/plan and territory planning documents must be subject to the proceedings of the SEA law if they fall under the scope of application of the Protocol on SEA. Such legal “hooks” will help avoid a situation when program/plan is adopted without SEA.

b) Objects of SEA/SER

It is recommended to amend Article 14.0.1. by a provision stating that SEA Report should be a subject to SER procedure. This would provide for legal certainty and help solving the issue with permitting nature of SER in relation to strategic decision-making. There is also need to amendment in Article 21.1 to list documents submitted for SER as SEA objects. It needs also to be ensured that draft strategic document is submitted together with SEA Report for SER review.

c) Permitting nature of SER decision

It is recommended to change the nature of the SER decision in relation to SEA objects. This can be done by providing an additional wording into article 24.2 stating that for SEA objects conclusions of SER have recommendatory nature for final decision-maker or obligatory nature for the initiator (developer) of the draft program/plan. If such approach is taken, then amendments are needed into legislation governing development of the strategies/programs/plans (such as the Law on Normative Legal Acts) to make sure there is an obligation to take SEA outcomes into consideration by the authority approving such programs/plans.

d) Distribution of responsibilities

It is recommended to make clear identification of who is responsible for screening, scoping, development of SEA report, public participation at the level of law. It needs to be taken into account that private entities (if subcontracted for developing draft program/plan) cannot bear all of these responsibilities.

e) Role of health authorities

There is a need to provide for consultations with health authorities. Unfortunately, the consultant was not in a position to get views of these authorities during the meeting with Ministry of Health representative in Baku.

f) Discuss potential scope of SEA application

It is recommended that consultations are run with stakeholders to identify any possible threats from the fact that categorical screening proposed basically covers any draft strategy/program/plan. It is advised to discuss the possibility for introducing screening procedure as set by Article 5 of the Protocol on SEA. Screening should result in a decision whether implementation of plan/program is likely to have significant environmental, including health, effects (as required by art. 5.1 of the Protocol on SEA), taking into account criteria set in the Annex III to the Protocol on SEA.