



EaP GREEN PROGRAMME

**Review of legislation of the Republic of Moldova with regard to
implementation of the UNECE Protocol on Strategic
Environmental Assessment**

FINAL REPORT

English translation

Unedited version

December, 2013



EaP GREEN PROGRAMME

Author: Elena Laevskaya, international consultant

Contributions: Natalia Zamfir, national consultant

Acknowledgements: This report would not be possible without valuable contributions and support of the Ministry of Environment of the Republic of Moldova and various stakeholders, experts and assistance providers. In particular, valuable contributions and comments in shaping this report were received from Tatiana Plesco, Natalia Zamfir, Pavel Zamfir, Valeriu Gonchar, Faina Muntiany, Lidia Ilashku, Illia Trombitski, Andrei Isak, Katalina Scortesku. The professional support of the Espoo Convention Secretariat is also gratefully acknowledged, in the persons of Tea Aulavuo, Elena Santer, Aphrodite Smagadi, Minna Torkkeli, and Nadiya Dzyubynska.

Legal notice: This 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



EaP GREEN PROGRAMME

Contents of the report:

Abbreviations	4
Introduction	5
Review of existing and draft legislation relating to SEA	6
<i>General context</i>	6
<i>Identifying plans and programmes – “screening”</i>	8
<i>Consultations with environmental and health authorities</i>	12
<i>Public participation</i>	13
<i>Draft legislation under preparation</i>	16
Focus on institutions and procedures relating to SEA	18
<i>Planning process: key public authorities</i>	18
<i>Procedures for preparation of plans/programmes</i>	24
Analysis: gaps and inconsistencies	26
<i>General remarks</i>	27
<i>Field of application of the Protocol on SEA (including screening)</i>	28
<i>Scoping</i>	28
<i>Public participation</i>	28
<i>Consultations with Environmental and Health Authorities</i>	29
<i>Transboundary consultation</i>	30
<i>Decision</i>	30
<i>Monitoring</i>	30
Recommendations	31
<i>A new law on SEA</i>	32
<i>Proposed amendments to the existing legislative/regulatory framework</i>	33
<i>Relationship of the proposed new SEA procedure to the existing SEE</i>	35
<i>Institutional changes</i>	35
<i>Further steps to become Party to the Protocol on SEA</i>	36
Annex – List of legislation	39

Appendices (not translated into English):

Appendix 1. Concordance table of the main provisions of the Protocol on SEA and the SEA Directive

Appendix 2. The draft Law on Strategic Environmental Assessment



EaP GREEN PROGRAMME

Abbreviations

Art.	article
EIA	Environmental impact assessment
Espoo Convention	Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) under the UNECE
MoE	Ministry of Environment of the Republic of Moldova
NGO	non-governmental organization
para.	paragraph
Protocol on SEA	Protocol on Strategic Environmental Assessment to the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (New York and Geneva, 2003) under the UNECE
RM	Republic of Moldova
SEA	Strategic environmental assessment
SEA Directive	Directive 2001/42/EC of the European Parliament and Council on the assessment of the effects of certain plans and programmes on the environment
SEE	State environmental expertise
UNECE	United Nations Economic Commission for Europe



EaP GREEN PROGRAMME

Introduction

1. This report was prepared by the international expert Elena Laevskaya (hereinafter - the expert) in accordance with the terms of reference provided by UNECE. At the start of the report, it should be noted that the review was done through the lens of both the SEA Protocol and the EU SEA Directive.
2. The report starts with a review of existing and draft legislation in RM and continues with a focus on institutions and procedures currently in place. Both sections are descriptive. This exercise was necessary to understand the existing legislative, institutional and procedural elements relating to SEA so as to determine the needs of RM to fully meet the requirements of SEA. This is done in the following section “analysis: gaps and inconsistencies”. Based on the extensive study of all relevant elements in place, this section provides the conclusions of a comparison between the existing framework on SEA in RM vis-à-vis the provisions of the SEA Protocol. The final section sets out recommendations on how the RM can approximate its framework to the SEA Protocol.
3. The report is supplemented by two appendices. Appendix 1 presents a concordance table of the main provisions of the Protocol on SEA and the SEA Directive. The information can be used to inform the proposed changes and amendments to the legislation of the RM. Appendix 2 includes a proposal for a draft Law on SEA for RM, further to the analysis in the present report.
4. The report was prepared on the basis of desk review and analysis of the current RM legislation (draft legislation under preparation (as of 1 October 2013) was also examined), the information provided by a specialist of the Ministry of Environment of RM, Tatiana Plesco, the national expert Natalia Zamfir, as well as other experts and specialists of governmental bodies and NGOs during the expert’s working visit in Chisinau, 23-29 June 2013. A preliminary version of the report was presented and discussed at the roundtable meeting held in Chisinau on 3 September 2013. Suggestions and comments received during the discussion at the roundtable were taken into consideration during the preparation of the report.
5. The original of the report was in Russian, including an executive summary with the key findings and conclusions in English. The expert also prepared a translation of the full text in English (not the annexes).



EaP GREEN PROGRAMME

Review of existing and draft legislation relating to SEA

General context

6. The Republic of Moldova signed the Protocol on SEA to the UNECE Espoo Convention at the 5th Pan-European Conference of Environment Ministers “Environment for Europe” (Kiev, 2003). Until now, the RM has not ratified the Protocol. Moreover, the RM is a party to the Espoo Convention, as well as to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

7. There are indications of the intention of RM to ratify the Protocol on SEA and to transpose its provisions into national law. For example, the National Programme for Environmental Safety of the RM for 2007-2015 (developed as a follow up to a decision of the Supreme Security Council and approved by Government Decision No. 304, 17.03.2007), stipulates the development of the “Strategy for the implementation of SEA” as a measure to ensure environmental safety. The Strategy for the implementation of the Protocol on SEA in the RM was developed by a group of experts under the guidance of the MoE in 2006-2007, but it has not been approved by the Government yet, and its goals and objectives have thus not been achieved. Therefore, the anticipated ratification of the Protocol on SEA by the RM is timely.

8. Simultaneously, the RM makes active steps towards European integration, which is now the main principle of the country’s domestic and foreign policy. The European Parliament adopted a Resolution about the negotiations on 15 September 2011 in Strasbourg, setting out the principles and perspectives of the EU-Moldova Association. In the framework of this process, the RM adopted a Program of activities of the Government “European Integration: Freedom, Democracy, Welfare” for 2009-2013, which, among other things, includes a section on the “Protection of the environment”. The Programme takes into account the objectives of the previously adopted Government Decree No1345 24.11.2006 on the “Harmonization of national RM legislation with Community law” and its major direction is the harmonization of national RM legislation with the requirements of the European legislation, including the EU Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (hereinafter - the SEA Directive).



EaP GREEN PROGRAMME

9. In that context, it is deemed necessary to clarify the relationship between the Protocol on SEA, an international treaty to which the RM aspires to become Party, and the EU SEA Directive, part of the *acquis* prior to the integration of RM into the EU legal order. The Protocol on SEA and the EU SEA Directive are based on similar provisions (see Appendix 1). However, there are some important differences which in sum relate to the following:

- (a) The definition of the scope of the SEA (art. 3 of the SEA Directive, art. 4 of the Protocol on SEA). Specifically, The Protocol defines SEA as “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);
- (b) Unlike the Directive, in the context of the Protocol on SEA, the concept environment includes human health: the Protocol emphasizes the importance of environmental assessment of plans and programmes on health (art. 2, para. 6);
- (c) The SEA Directive refers to setting the framework for future development consent for all projects listed in Annexes I and II to the EIA Directive. The SEA Protocol refers to all projects listed in its Annex I, but it does not refer to all projects listed in its Annex II but only to those in Annex II that require an EIA under national legislation;
- (d) Compared to Annex III of the Protocol, the criteria for determining the likely significant environmental effects are more detailed in Annex II of the Directive, which also refers to the impact of Natura 2000 sites as one of the triggers for SEA, while there is no such a trigger under the Protocol;
- (e) The SEA Directive does not contain specific provisions on policies and legislation, whereas the Protocol (art. 13) establishes an approach in this regard;
- (f) The Protocol refers both to “the public” and “the public concerned”, while the Directive is much more in line with the approach in article 7 of the Aarhus Convention, as it refers to “the public” which should be identified for the purpose of participating in the SEA procedure.



EaP GREEN PROGRAMME

10. The Protocol on SEA provides for intersected elements/stages of SEA: plans/programmes that are subject to SEA and their screening, scoping of the SEA, the preparation of an environmental report, public participation, consultation with the state authorities, transboundary consultation, decision making, monitoring. It should be noted that these elements as a whole are characterizing the SEA process plan/programme.

11. Taking into account similarities and differences, it is hereby submitted that the harmonization of the legislation of RM with the principles of the SEA Directive, in the context of the integration process, can obviously promote implementation of the principles of the Protocol on SEA, the key for its ratification. Conversely, ratification and implementation of the Protocol will facilitate the process of EU integration of the RM.

Identifying plans and programmes – “screening”

12. The legislation of RM uses the terms “plan” or “program” in the context of a broader concept in terms of content, that is “policy”. In accordance with **Government Decision No33 11.01.2007 “On development of and uniform requirements for policy documents”**, policy documents include concepts, strategies, programmes and plans (see para. 5). Depending on their type, the Government Decision establishes the requirements for the content of policies, as well as the rules governing the process for their development, approval and subsequently monitoring of their implementation.

13. Specifically, the Decision (para. 19 of the Government Decision No. 33) defines the stages of developing a policy document, including, but not limited to:

- (a) Analyzing all possible policy options;
- (b) Carrying out consultations within the authority initiating the document (initiator) about the policy options and potential risks;
- (c) Carrying out extensive consultations and coordination with other authorities;
- (d) Establishing requirements for monitoring reports;
- (e) Approval of the act on the policy document;



EaP GREEN PROGRAMME

(f) Monitoring and evaluation on the implementation of the policy.

14. Policy documents (para. 27 of the Government Decision No. 33) must be accompanied by an analysis of the consequences of the possible implementation options, made before starting the process of implementation (ex-ante), including environmental effects. The Decision also provides for the need for public consultations with civil society, the results of which are systematized and used in refining the final document (para. 31). The report on monitoring the implementation of the policy documents should include, among other things, the environmental effects of the policy's fulfilment.

15. National legislation allows to identify **some programmes that may potentially be subject to SEA:**

(a) **plans/programmes at the national level** in various areas of domestic and foreign policy (adopted by the Government or Parliament) - for example, the programs of economic and social development; national programmes, concepts and strategies (**Law on Government** No 64-II, 31.05.1990; **Law on the adoption of the Parliamentary Rules of Procedure** No 797-XIII of 02.04.1996);

(b) **targeted sectoral programmes** (in the fields of industry, agriculture, tourism, nuclear energy, telecommunications, etc.) (see also para. 64 of the present report);

(c) **plans/programmes at the level of administrative units** adopted by public authorities on the basis of relevant laws – urban/settlement development plans prepared by the respective administrative-territorial unit, as well as plans for provision of necessary facilities on site, the socio-economic development programmes (Law on Local Public Administration (No 436-XVI, 28.12.2006); Law on the Fundamentals of Locality Planning and Spatial Development (No 835-XIII, 17.05.1996).

(d) **spatial planning** is divided to: (i) the development plan of the country; (ii) regional territorial development plans, including: development plan within the zone; territorial development plan of the municipality of Chisinau; a district development plan; (iii) local spatial development plans, including: development plan of intercity and intervillage (intercommune)



EaP GREEN PROGRAMME

areas; spatial development plan of a municipality, a city or a village (commune) (art. 7); urban development plans are divided in: general urban plans; zonal urban plans, and detailed urban plans.

16. The legislation also highlights **plans/programmes for regional development** (developed by bodies for the implementation of regional development policy) - the National Strategy for Regional Development (approved by the Government), regional development strategies and programmes (**Law on regional development in the Republic of Moldova** (No 438-XVI, 28.12.2006).

17. Plans/programmes and other policies adopted/approved by the Government or the Parliament, as well as by authorities of the autonomous territorial entities with a special legal status and other local public authorities, are treated as laws and normative acts, in accordance with art. 10 of **the Law on Normative Acts of the Government and other central and local public administration** (No. 317-XV, 18.07.2003), the **Law on the Parliamentary Rules of Procedure**. More details on the procedures for the development, adoption of plans/programmes related to SEA, see section 4 of this report (Recommendations).

18. According to the RM legislation, some **elements of environmental assessment** applicable to activities that can have a significant impact on the environment are to be applied to plans and programmes.

19. The **Law on Environmental Protection** (No 1515-XII, 16.06.93) ensured mandatory environmental impact assessment (EIA)¹ and State environmental extertiza (SEE) for new facilities and activities that can have a significant impact on the environment. The EIA documentation is developed during the initial planning stage and is considered a mandatory part of the project and planning documents. The legislation establishes a list of facilities and activities for which it is required to develop the EIA documentation prior to their development. SEE is obligatory in respect of planning and design documentation for the facilities

¹ *Note for the English translation:* The term EIA is here used to reflect OVOS, which literally is translated as “assessment of the impact upon the environment”, but despite its name, should be distinguished from what is generally internationally understood as an EIA procedure.



and types of economic activities that affect or may affect the state of the environment and / or involve the use of natural resources.

20. In addition to projects on specific activities the Law on Environmental Protection (art. 23 (1)) requires an SEE for certain types of programmes: programmes and projects of economic and social development of the country, regions, districts, municipalities, cities and communes (villages); reconstruction of municipalities, towns, communes (villages); supply of heating, water, gas, electricity; sewerage development in human settlements; urban planning and territorial development. Approval of programmes and projects, their financing and implementation are allowed only if there is a positive SEE and its recommendations are observed (art. 23 (2)).

21. These provisions are detailed in the **Law on SEE and EIA** (Law No. 851, 29.05.1996) (art.6(2), which indicates that SEE is mandatorily applied to new **projects, programmes, plans, schemes, strategies and concepts**, relating to:

- Socio-economic development of the RM, its regions, districts, municipalities, cities and villages;
- Protection of nature in the whole country and for the individual territories;
- Reconstruction of the municipalities, cities and villages;
- Supply of heating, water, gas and electricity;
- Construction of sewerage systems in human settlements;
- Urban planning and territorial development of urban and rural settlements;
- Construction, expansion, renovation, technical upgrade, modernization, conversion, preservation, demolition or elimination of all economic and social activities, which can negatively impact on the environment, and which are likely to impact on the environment of neighbouring countries, stipulated in the Espoo Convention.

22. EIA procedure, upon MoE decision, should be mandatory for strategic documents for the development of the national economy, as well as other projects and activities, depending on the level of the expected impact on the environment (art. 16).



EaP GREEN PROGRAMME

Consultations with environmental and health authorities

23. **In accordance with the Regulations on the organization and conduct of the SEE (No 188, 10.09.2002) (SEE Instructions)**, SEE is undertaken by the MoE taking into consideration conclusions of the State Sanitary and Epidemiological Service and other bodies with functions of state supervision and control. SEE is required for the documentation on Urban Planning and Regional Planning and design documentation for the items and types of economic activities that affect or may affect the state of the environment and/or involve the use of natural resources (para. 1.3). According to art. 17 of the Law on SEE and EIA, the developer is required to submit for the SEE the EIA documentation. The SEE instructions define the list of facilities and activities that are subject to EIA and EIA is required prior to their design (in Appendix 5). However, the list presents a list of specific activities and does not include plans/programmes. Environmental authorities may, upon review of the proposed activity, decide that an OVOS must be conducted, irrespective of whether the activity is included in the list or not.

24. In the process of developing strategies, programmes, plans, laws, etc., **consultations with interested state authorities** are carried out through review [of documents] and issuance of findings by the MoE, as well as by other ministries and agencies in the form of approvals. The approval procedure concerning the draft normative acts are enshrined, in particular, in the **Law on Normative Acts of the Government and other central and local public administration**. art. 40 provides that the relevant authorities and institutions, to which the draft is submitted for approval, shall submit to the body that prepared the draft an opinion with motivated comments and suggestions. By decision of the body that prepared the draft, as well as the authority competent for its publication, the draft is subject to the financial, economic, **environmental** and other kinds of expertise. Organizations and citizens that are not directly involved in the preparation of the draft, as well as foreign specialists and international organizations can act as experts (art. 41 (2)).

25. The EIA documentation is developed in the early stages of planning and is considered a mandatory part of the planning and design documentation. The



EaP GREEN PROGRAMME

positive conclusion of the SEE (developed at the final stage) is the basis for the development of the section “Environmental Protection” of the planning and design documentation. The consolidated SEE conclusion is sent to the developer and is the basis for: the approval of documentation of programmes, projects, plans and schemes and the funding for their implementation after technical or general examination in accordance with the procedure established by the relevant regulations; the issuance by relevant MoE units and other public authorities of the permits to use natural resources.

Public participation

26. In general, the national legislation of the RM provides **for public participation in the development and adoption of plans/programmes** in the process of their development and adoption/approval of acts of Parliament, Government and other public authorities in the form of laws/normative acts.

27. In particular, **the Law on Environmental Protection** (art. 30), the State acknowledges the right of all individuals to a healthy environment and provides for the right to participate in the discussion of economic or other programmes dedicated in whole or in part to the protection of the environment and natural resources.

28. Opportunities for public participation are further stipulated in the **Law on SEE and EIA** (Chapter III “Public Ecological Expertise” art. 9-12 Section VI. “Participation in the EIA of associations of citizens and public associations (NGOs)”).

29. Public participation is required at different stages of development, approval of the plan/programme. Thus, in accordance with art. 49 **of the Law on the adoption of the Parliamentary Rules of Procedure**, the responsible standing committee of the Parliament ensures carrying out public consultations with stakeholders on the draft legislation and legislative proposals by organizing **public debates and hearings, other consultation procedures established by the legislation on transparency in decision-making**. To ensure the transparency of the decision-making process, the responsible standing committee ensures that all recommendations received during the public



EaP GREEN PROGRAMME

consultation are published on the web-site of the Parliament. Furthermore, in accordance with art. 48(2), draft legislation, legislative proposals and other documents should be posted on the web-site of the Parliament no later than in five working days from the date of their inclusion to the legislative procedure.

30. **The Law on Legislative Acts** (№ 780-XV, 27.12. 2001) also supports the need for public consultation of draft legislative acts (art. 21). Draft legislation, in its final version, should be accompanied, among other things, by a set of recommendations received during the public consultation (art. 23).

31. The **Law on Government** refers to the principle of transparency of the process to develop and adopt decrees, orders, ordinances (art. 2) as a basic principle of government activity. According to art. 25, the Government ensures transparency of its activities. For this purpose the Government on its own initiative or on the initiative of citizens, associations established in accordance with the law, other stakeholders, shall carry out public consultations on the draft regulations of the Government, which may have economic, environmental and social effects. The Government places on the official web-page the transcript of public meetings and other acts relating to the activities of the executive body.

32. The **Law on Normative Acts of the Government and other central and local public administration** provides that a draft normative act before being submitted for approval by the competent authority should be subject, among other things, to the public consultation (art. 38), which is to be carried out in accordance with the **Law on transparency in decision-making** (No 239-XVI, 13.11. 2008).

33. The **Law on transparency in decision-making**, sets the standards for transparency of decision-making within the central and local public authorities, other public authorities; and regulates the relations of these bodies with the citizens, associations established in accordance with the law, and other stakeholders in the participation of those parties in the decision-making process.

34. In order to implement the provisions of the **Law on transparency in decision-making**, the Government adopted a special Decision no. 96 of 16.02.2010, approving the **Regulation on the procedures to ensure the**



EaP GREEN PROGRAMME

transparency of decision-making process, and introduced changes in the **Regulation on the placing of information on the official Internet websites of public authorities** (approved by Governmental Decision No 668, 19.06.2006 “On the official Internet websites of public authorities”). According to the Regulation the central administrative bodies must approve their internal rules for informing, consulting and participating in the development and decision-making process, and having a coordinator of public consultation. It should be noted that this Government Decision applies to the State Chancellery, ministries and other central administrative authorities, local public authorities, legal entities of public and private law, managing public financial resources and using such funds. The Decision is used for development and decision-making, draft legislative acts, normative acts, administrative provisions, which may have economic, environmental and social effects.

35. **The Law on Local Public Administration** provides for the principle of open public authorities meetings (art. 17). Citizens, associations created in accordance with the law and other interested parties have the right to: participate in decision-making at any stage of the procedure; get acquainted with the draft decisions and agenda of meetings of the local council and the mayor’s office; provide local public authorities on own behalf or on behalf of a community group with recommendations on the draft decisions. According to the Law, local public authorities, the civil servants of the respective administrative-territorial units are also required to take all possible measures to ensure the effective participation of citizens, their associations and other stakeholders in decision-making, including through: adequate and timely information about the discussed by the local council issues; receiving and timely consideration of all recommendations, referrals, letters sent by citizens to representative authorities during the development of their draft decisions or activity programmes; publishing of programmes, strategies, agendas for meetings on various media.

36. **The Regulation on public participation in development and decision-making on environmental issues** (Government Decree No 72, 25.01.2000) establishes principles on public participation in development of national projects and programmes for socio-economic development of RM, which involves the use of natural resources, and/or have significant impact on environment. In particular, it is mandatory to subject to **public environmental expertise** the



EaP GREEN PROGRAMME

following: a) draft laws and other normative acts, instructions and guidance documents, regulations and standards relating to the environment and/or regulating activity that is potentially hazardous to the environment, natural resources and environmental protection; b) draft international conventions and concession agreements providing for the use of natural resources of the RM; c) **new projects, programmes, plans and schemes: the socio-economic development of the RM, its particular areas, counties, municipalities, towns, villages; nature protection in the whole country and for the individual territories; the reconstruction of municipalities, towns, villages, supply of heating, water, gas, electric power, construction of sewerage systems of settlements; urban planning and territorial development of urban and rural settlements.**

37. In accordance with the **Law on the Fundamentals of Urban and Territorial Development**, consultation with the population is conducted before approving all kinds of plans for city planning and regional planning, with the exception of the territorial development plan of the country and detailed urban plans that do not affect the territory of common use (art. 27). Making announcements in premises of the local public administration and providing the draft documentation for review and public comment are mandatory. Responsibility for carrying out public consultation in this case lies with the respective local public authorities.

38. Public consultation in the process of approval of plans and programmes in the field of urban development are stipulated in the **Regulation on public consultation in the development and approval of documentation on land and urban management** (Government Decree No 951, 14.10.1997).

Draft legislation under preparation

39. The expert also examined the **draft Law on Environmental Impact Assessment (hereinafter – draft Law on EIA)**, prepared on the basis of Directive 2011/92/EU of the European Parliament and of Council of 13 December 2011 on the assessment of effects of certain public and private projects on the environment (codification) (hereinafter – EIA Directive). The



EaP GREEN PROGRAMME

draft Law on EIA focuses on procedures and principles to assess the effects of some public and private projects or activities that may have a significant environmental impact in RM or neighbouring states. Thus, the draft law does not cover the regulation of SEA in view of the provisions of the Protocol on SEA and the SEA Directive.

40. At the same time, the importance of the draft Law on EIA is noted here, as the SEA Directive in art. 3, para. 2 defines the scope of SEA with reference to the projects listed in Annexes I and II of the EIA Directive. The draft Law on EIA, including its two Annexes, corresponds to the EIA Directive. The adoption of the draft Law on EIA will provide for a clear definition of the scope of SEA with reference to art. 2 and 4 of the Protocol on SEA and art. 2, 3 SEA Directive.

41. The **draft Law on Environmental Protection**, developed about three years ago in the context of the process of harmonization of RM legislation with the EU legislation, was also here examined. The draft law underlines the concept of SEA, as defined in the Protocol on SEA and the SEA Directive. In its art. 10 to 16, the draft Law defines the SEA objective, the scope of application, the SEA procedure, the responsibility for the carrying out of an SEA, the tasks of the central public authority for environmental protection in SEA. The draft Law is currently being finalized based on comments, so it is not possible to conclude that it corresponds to the provisions of the Protocol on SEA and the SEA Directive.

42. Finally, during the discussions with the experts of the Ministry of Regional Development and Construction, the expert was informed of the **draft Code on urban planning and construction**. If adopted, the Code may supersede provisions of the existing laws regulating the principles of territorial and urban development, the quality of construction, the building permit, etc. The draft does not contain any references to SEA.



EaP GREEN PROGRAMME

Focus on institutions and procedures relating to SEA

Planning process: key public authorities

43. The **key public authorities** involved in the **planning process** in the RM are: the Parliament, the Government, the separate ministries, local public authorities, authorities of the Autonomous Territorial Unit of Gagauzia.

44. **The Parliament**, among other things, approves the main directions of domestic and foreign policy of the country (art. 66 of the Constitution) by adopting organic and ordinary laws (art. 72 of the Constitution).

45. **The Government** ensures implementation of domestic and foreign policy of the country and performs overall management of the public administration (art. 96 of the Constitution). The competence of the Government is defined by the **Law on Government** (No. 64-XII, 31.05.90). The Government ensures implementation of domestic and foreign policy. In particular, the Government develops and submits to the Parliament draft regulations on economic and social development programmes; organises the development and implementation of national programmes, concept papers and strategies; develops investment programmes, programmes for the repair and maintenance of public roads, etc. **The State Chancellery** (art. 31 of the Law on Government) ensures methodological and organisational support for the system of planning, design and implementation of public policies at the level of ministries and other central administration authorities, prepares draft regulations, ordinances and orders, and monitors their implementation.

46. The central sectoral agencies of the government are the **ministries**. They implement the policy, decisions and orders of the Government, exercise control over their areas of responsibility and are accountable for their actions (art. 107 of the Constitution).

47. In particular, the following entities are involved in the development of plans/programmes that can be targeted by the SEA: the Ministry of Economy, Ministry of Regional Development and Construction, Ministry of Agriculture



EaP GREEN PROGRAMME

and Food Industry, Ministry of Transport and Road Infrastructure, Ministry of Environment, Ministry of Health, as well as the “Moldsilva” Agency and the Tourism Agency.

48. The **Ministry of Economy** acts on the basis of the **Regulation on the organisation and functioning of the Ministry of Economy** (Government Decision No. 690. 13.11.2009). The functions of the Ministry are to ensure compliance of economic policies with the provisions of national policy papers and to monitor their implementation.

49. The MoE, in accordance with the Regulation on the organisation and functioning of the Ministry of Environment (Government Decision No. 847, 18.12.2009), through the development, promotion and implementation of state policy in the field of environmental protection and rational use of natural resources, waste management, use and protection of underground resources, hydro-technical amelioration, water management, water supply and sewage systems, regulation of nuclear and radiation activities, state environmental control, hydrometeorology and monitoring of environmental quality. In that respect, the MoE develops, promotes and coordinates implementation of governmental policy and policy papers in the above fields; coordinates and participates, according to its competence, in the development of forecasts and national and sectoral policy papers relating to the socio-economic development of the country. The central office of the MoE includes a Directorate for Policy Analysis, Monitoring and Evaluation.

50. It should be here noted that under the aforementioned Regulation, the MoE coordinates **strategic environmental assessment** of policy papers with potential impact on the environment, in accordance with international treaties and national legislation (art. 8). MoE has the right to carry out state environmental assessment and to coordinate EIA and SEA.

51. **The Ministry of Agriculture and Food Industry** (Government Decision No. 793, 02.11.2009) develops and implements policies on the development of agro-food markets, including environmentally safe products, enhancement of food security and policy impact assessments.



EaP GREEN PROGRAMME

52. “**Moldsilva**” is the agency implementing the state policy in the field of forest management.

53. The **Ministry of Health**, based on the **Regulation on the organisation and functioning of the Ministry of Health** (Government Decision No. 777, 27.11.2009), among other things, develops public policies and public strategies on healthcare, develops proposals for the Government’s programme of activity and drafts laws and regulations in the field of healthcare, provides its opinion on draft laws and regulations, in accordance with law. In particular, the Ministry, performs the analysis, monitoring and evaluation of policies, assesses their social, economic, financial and other impacts, and **assesses the health risks**, depending on the social, economic, behavioural, biological and environmental factors that may impact the health status (paras. 6.1 and 6.2). Concerning risk management, the Ministry ensures identification, assessment and communication of health risks, management of these risks, forecast and reduction of the negative impact of the identified risks on public health; it develops cross-sector partnerships to integrate the health impact assessment into all relevant national policies in line with the Recommendations of the European Commission’s(“Health in All Policies”²)to maximize health outcomes (para 6.19) etc.

54. The central office of the Ministry of Health includes a Directorate for Policy Analysis, Monitoring and Evaluation and national public health centres (based on the former sanitary and epidemiological stations). These centres established scientific units for surveillance of the risk factors.

55. **The Ministry of Construction and Regional Development**, on the basis of the Regulation on its organisation and functioning (Government Decision No. 662, 10.11.2009), develops and promotes policy papers in the areas of land use and planning, architecture, design works, urban planning, construction, production of building materials, housing and regional development and brings them in line with the standards of the European Community. In particular, it ensures development, monitoring, and amendment of the **National Land Use**

² http://ec.europa.eu/health/health_policies/policy/index_en.htm.



EaP GREEN PROGRAMME

Plan on the basis of the synthesis of regional and local policies and plans, contributes to its implementation; coordinates the **general and zonal urban plans**, develops and monitors the **National Regional Development Strategy**; provides the methodological regulation of the development of regional development strategies and operational plans; together with the regional development councils, coordinates and monitors the development of regional development policies and programmes.

56. Types of urban planning documents are developed and approved within the following timeframe: a) general urban plans - every 4 years; b) local urban planning regulations - every 5 years (art. 74 of the Law on Fundamentals of Urban Development and Land Use Planning). The responsibility for development and approval of documents on urban planning and land use planning is borne by: the Government – for the country’s land use plan; the Government or relevant local public authorities – for regional land use plans; relevant local public authorities – for local land use plans, urban development plans and urban planning regulations.

57. Land use plans include a section on environmental protection. However, this section includes a list of measures for environmental protection, rather than an impact assessment of a plan/programme. It also includes a section on healthcare, such as statistical data about medical institutions, (however, it does not include the health impact assessment of a plan/programme), and there are no clear requirements for inclusion of cross-border issues.

58. Urban planning and land use planning documents are prepared by design companies with relevant licenses. The Government and local public authorities organise tenders for development of feasibility studies and documents on urban planning and land use planning. As estimated by national experts, around 200 design companies can prepare project designs, but they differ in their resources and technical capacities.

59. **Local public administration**, that is public administration in the administrative-territorial units, deals with major issues of local importance (art. 109 of the Constitution). Local councils and mayors act as autonomous authorities and manage public affairs in villages and towns (art. 112 of the



EaP GREEN PROGRAMME

Constitution). Public authorities in the administrative-territorial units act on the basis of the **Law on Local Public Administration**. In particular, public authorities approve **urban development plans** of communities, which are part of the respective administrative-territorial unit, as well as land use plans; approve studies, forecasts and programmes on among others socio-economic development (art. 14).

60. **The National Coordination Council for Regional Development** develops, monitors and evaluates the implementation of the **National Regional Development Strategy** and the **Single Programming Document (approved by the Government)**; makes **decisions on the annual action plan** of the Single Programming Document, based on operational plans; coordinates the development of regional development policies and programmes, and monitors this process in conjunction with the regional development councils; evaluates the implementation of regional development strategies in accordance with the **Law on Regional Development of the Republic of Moldova**.

61. **The Regional Development Councils** are competent functional structures at the level of each region undergoing development, established to coordinate and promote the objectives of regional development policies at local level. In particular, a Regional Council is responsible for the approval of the regional development strategy and action plan, it assesses the impact of the implementation of regional projects and programmes, and the achievement of regional development objectives.

62. **The Regional Development Agency**, among other things, designs regional development policies, plans, programmes and projects; monitors and evaluates the implementation of regional development policies, plans, programmes and projects.

63. **Other aspects on the competence** of governmental agencies in the field of planning in relation to SEA are specified in the codes on natural resources and special laws. Accordingly:



EaP GREEN PROGRAMME

(a) The **Land Code** (No. 828-XII, 25.12.1991) defines the competence of the Parliament, the Government, rural (commune) and urban councils.

(b) The **Code on Underground Resources** (No. 3-XVI, 02.02.2009) specifies in art. 9 the competences of the Government to ensure the implementation of governmental policy on the use and protection of underground resources, to make decisions on the transfer for industrial development of mineral deposits of national importance, the local public authorities are involved in the development of programmes of reproduction and rational use of mineral resources at local level, state programmes for geological study of subsurface resources and reproduction of mineral resources (Art. 12). The schemes of integrated use and protection of water resources are developed based on the Regulation on the procedure for the development and approval of schemes of integrated use and protection of water resources and submitted to the MoE for state environmental expertise. The developed and coordinated schemes should be approved by the Government.

(c) The **Law on Water** (No. 272, 23.12.2011), provides for the management of the use and protection of water resources by the Government, local public authorities and the specially authorized central public administration authorities.

(d) The **Forest Code** (No. 887-XIII, 21.06.1996) (art. 7), provides that the Parliament defines the main directions of the state policy in the field of sustainable development, utilization, conservation, protection of forests and reforestation.

(e) The **Law on fish stock, fishing industry and fish farming** (No. 149-XVI, 08.06.2006) (art. 8) provides that the Ministry of Agriculture develops and ensures the implementation of the strategy for development of fish farming in fish farms. Local public authorities organise the development and implementation of local programmes and ensure implementation of works for ecological rehabilitation of fishery water bodies and restoration of aquatic resources (art. 9).



EaP GREEN PROGRAMME

(f) The **Law on the organisation and implementation of tourism** (No. 352-XVI, 24.11.2006) (art. 4), provides that the Government defines the state policy on tourism and approves the strategy and national programmes in this area; the Ministry of Culture and Tourism develops national tourism policies and programmes and submits them for approval to the Government (art. 6).

Procedures for preparation of plans/programmes

64. Plans/programmes, other policies adopted/approved by the Government, and the governments of autonomous territorial entities with a special legal status and other local public authorities of the first and second levels are regarded as normative acts in accordance with art. 10 of the **Law on normative acts of the Government and other central and local public administration** (see also above). Accordingly, they are subject to rules for the preparation of regulations established by this Law and other legislative acts of the RM.

65. Draft regulations are prepared by the bodies authorized to prepare them on own initiative or at the request of the Parliament, the President or the Government. The following public authorities have the right to initiate the drafting of regulations, in accordance with the functions and activities of their area of expertise: ministries, departments and other agencies under the jurisdiction of the Government, the independent public authorities and institutions, sectoral authorities subordinate to the ministries or departments or acting by them - through relevant ministries or departments, authorities of the autonomous territorial entities with a special legal status and other local public administration of the first and second levels.

66. Ministries, departments and other bodies/authorities involved in the drafting of regulations: a) appoint experts to work on the project; b) prepare proposals on matters within their jurisdiction; c) present to the body preparing the project any the necessary materials and studies. If, during the preparation of the draft regulation, new circumstances arise or if the project is prepared on own initiative, the ministry, department or other institution that prepares the project is



EaP GREEN PROGRAMME

to determine the range of stakeholders in the relevant issue from within ministries, departments, agencies and other parties, and involve them in the preparation of project.

67. Central public administration authorities, authorities of the autonomous territorial entities with a special legal status and other local public authorities delegate the drafting of the normative act to one of its divisions or create a working group of experts from various departments. Specialists from various fields as well as scientific institutions, scientists and representatives of interested parties may be involved in the drafting of a legislative act, or, individual specialists, special commissions, academic institutions, scientists, including foreign ones, can be hired on a contractual basis. In the preparation of a draft legislative act, the participation of legal staff is mandatory. The public authority responsible for development of normative acts may delegate the preparation of alternative projects to several bodies and organizations on a contractual or competitive basis (art. 30).

68. Prior to the submission for adoption by the competent authority, the draft of the normative act is subject to mandatory approval by the agencies and institutions directly involved in the new act, by other affected bodies and agencies, by the bodies that must be consulted with, according to their competence. The endorsement of the draft normative act is synchronized, as a rule, with the public consultation process. Consultation on the draft with stakeholders is to be conducted in accordance with the Law on transparency in decision making and with the procedures established by the Government (art. 38).

69. Relevant authorities and institutions to which the draft of normative act is submitted for approval, send the conclusion with comments and suggestions, the edited version of the draft (if necessary) to the agency that has prepared the draft, or to the Government (in case the draft received for approval came from the Government and did not specify otherwise); or they report that they have no comments or suggestions (art. 40). According to art. 41 of the Law on normative acts of the Government and other central and local public administration, by decision of the agency that prepared the draft, as well as the authority responsible for its publication, the draft is subject to the financial, economic,



EaP GREEN PROGRAMME

environmental and other kinds of expertise. The experts can be organizations and citizens that were not directly involved in the preparation of the project, as well as foreign experts and international organizations.

70. Funding for the development of a plan/programme is obtained from the state or local budget, depending on the level of the normative act. In particular, the environmental fund can serve as a source of funding for development for plans and programmes in the environmental area. In accordance with the **Regulations on the Environmental Fund** (Government Decree № 988, 21.09.1998), priority areas for funding are activities on the implementation of national programmes and action plans in the field of environmental protection, the implementation of international commitments made by signature of international treaties, as well as efforts to reduce air emissions, discharges into water and waste volume.

71. Financing for the development of documentation for Urban Planning and Regional Planning is carried out by the Government or relevant authorities of the local public administration. Elaboration of plans for the development of the country's territory, and its technical feasibility studies, are financed by the state budget. The elaboration of regional plans for territory development and accompanying technical studies, are financed from the state budget or from the respective local budgets.

Analysis: gaps and inconsistencies

72. The present section looks at the **legislative, institutional and procedural elements** of the RM, as described above, in relation to the provisions of the SEA Protocol, with a view to identifying gaps and inconsistencies that can be addressed. The analysis, shows that the RM has in place a number of elements, which to some extent are inherent in SEA: environmental assessment of certain plans/programmes during the EIA and SEE; public participation at various stages of development/approval of plans/programmes; consultations with interested state bodies (including MoE and the Ministry of Health) in the process of developing the plan/programme; publication of the plan/programme after its approval; the monitoring steps during the execution of the plan/programme. However, EIA and SER applicable to certain plans and programs, including



EaP GREEN PROGRAMME

these individual elements, cannot be deemed to reflect the SEA process as a whole, according to the Convention and the Directive. This is further explained below.

General remarks

73. The legislation of RM does not make a fundamental distinction between strategic initiatives (plans/programmes) and initiatives at the project level. For both types of initiatives uniform procedures for environmental assessment are established (uniform requirements at the stages of EIA and SEE). In accordance with the legislation, it is presumed that, like project-specific economic projects, new projects, programmes, plans, schemes, strategies and concepts of socio-economic development of the whole country, its individual areas, districts, municipalities, towns, villages, receive an environmental permit (i.e. positive SEE conclusion) before their adoption or approval by the relevant legislative or executive authority. Before the SEE, by decision of the MoE, an EIA procedure is mandatorily applied to strategic documents for the development of the national economy. At the same time, plans and programmes are not listed in the list of facilities and activities for which development of EIA documentation is required prior to their design through the SEE Instructions (see their annex 5). This list includes only specific activities. The EIA documentation is the basis for the development of the section “Environmental Protection”, as a part of project documentation, which, however, does not include an analysis of potential effects of the plan/programme and other initiatives for the environment

74. Environmental assessment under SEE is limited to checking the compliance of an activity with environmental, construction and other rules and norms, as well as planning rules, as established by laws and other regulations. However, as in the evaluation of the SEE Instructions shows that, the specifications, standards, etc., which are currently used were developed during the Soviet Union period and can hardly be considered optimal in the context of the science and technology development today. There is no statutory differentiated approach to the assessment of environmental effects (both in content and in terms of the procedure) and to activities of varying complexity and scale of environmental impact.



EaP GREEN PROGRAMME

Field of application of the Protocol on SEA (including screening)

75. Among the documents (plans and programmes) that should be subjected to SEA in accordance with the Protocol on SEA (art. 4) and the SEA Directive (art.3), EIA and SEE procedures are conducted or required only for initiatives, directly aimed at economic development of the country and (or) the region. In addition, the provisions of the Protocol on SEA (art. 5) and the SEA Directive (art. 3) are not addressed in the current RM legislation as it does not provide for preliminary assessment (screening) of a plan/programme (if it can cause significant environmental impact, including health effects on the population).

Scoping

76. The legislation of the RM has no indication to the procedures for defining the content (the scope, the content of environmental report) of environmental assessment of plans/programmes and any modifications of them in accordance with the Protocol on SEA (art. 6 and 7) and the SEA Directive (art. 5). As noted earlier, the Law on SEE and EIA establishes the possibility of applying an EIA for “strategic documents for the development of the national economy” through a decision of the MoE (art. 16). Theoretically, such a decision should be accompanied by the Statement on the impact on the environment (SIE). Analysis of the main requirements for the content of the SIE suggests that this information does not comply with the provisions of art. 7 of the Protocol on SEA, taking into account Annex IV to the Protocol and art. 5 of SEA Directive.

Public participation

77. It should be noted that RM legislation in various laws and regulations provides for public participation in the process of development and adoption/approval of plans/programmes (see paras. 24-37 above) on the basis of the principle of “transparency of decision-making” laid down and developed in the law and the fact that the Republic of Moldova is a Party to the Aarhus Convention. However, since SEA procedures can currently not be considered as carried out in accordance with the Protocol and the Directive, there may be some problems with the implementation of the mandatory provisions of the



EaP GREEN PROGRAMME

Protocol on SEA in terms of public participation, which may be summarized as follows:

- Early, timely and effective opportunities for public participation in the SEA of plans/programmes, when all options are open, are ensured (art. 8, para. 1);
- The draft plan/programme and the environmental report is made available to the public in a timely manner (art. 8, para. 2);
- The public concerned, including relevant NGOs, is identified (art. 8.3);
- The public concerned, is given the opportunity to comment on the draft plan/programme and on the environmental report within a reasonable time (art. 8, para. 4, art. 10, para. 4.)
- Detailed arrangements for informing the public and consulting the public concerned are determined and made public (art. 8, para. 5), taking into account to the extent appropriate the elements listed in Annex V of the Protocol on SEA. (In the SEA Directive there is no analogue of Annex V to the Protocol on SEA).
- The views expressed by the public concerned are taken into account when deciding on the adoption of a plan/programme (art. 11, para. 1).

Consultations with Environmental and Health Authorities

78. The RM legislation does not adequately address art. 9 of the Protocol on SEA. The legislation governing the procedure for development of a plan/programme provides for the need to coordinate the draft plan/programme (not mandatory) with the relevant government agencies (including the MoE and the Ministry of Health), but this coordination is required “before the approval” of the plan/programme, that is at the final stage of adopting the decision, which is not in line with art. 9, para. 3 of the Protocol. It should be noted that RM legislation highlights the need for “consulting the scenarios of policies (including plans/programmes – expert’s note) under the institution initiator [...] and institutions involved vertically” in the beginning of the plan/programme development and “extensive consultations and coordination of the document” (Government Decision No. 33, para 19 e) and g), respectively) before the statement. These rather general statements in the application of the law are implemented in the coordination of the plan/programme among concerned government agencies, including the MoE and the Ministry of Health, at the final



EaP GREEN PROGRAMME

stage of its development. Accordingly, the “coordination” as a stage of current decision-making process does not fully comply with the requirements of the Protocol on SEA on consultations with environmental and health authorities, which must take place at several stages of the SEA process (similar provisions are contained in art. 6 of SEA Directive), in particular with respect to the following:

- In the identification of significant potential effects (screening), if it is required to determine the need of SEA (art. 5, para. 2);
- In the determination of the scope (art. 6, para. 2);
- In the discussion of the environmental report (art. 9, para. 3)

Transboundary consultations

79. RM legislation regulates matters relating to transboundary consultations concerning a draft plan/programme in general. It provides that where the environmental impact of the planned facilities and activities is of a transboundary nature, the EIA procedure is applied according to the Espoo Convention (EIA-related provisions). It is obvious that such general reference does not sufficiently meet the requirement for transboundary procedures, according to the Protocol on SEA (art. 10) and the SEA Directive (art. 7).

Decision

80. When a plan/programme is adopted, RM legislation does not provide for a duty to inform the public, the authorities and other stakeholders, referred in art. 9 – 10, about how the environmental, including health, considerations have been integrated into the plan/programme, how the comments have been taken into account, and the reasons for adopting it in the light of the reasonable alternatives considered. In that respect, RM legislation does not meet the requirements set by art. 11 of the Protocol on SEA.

Monitoring

81. RM legislation provides for “monitoring and evaluation of implementation of the policy document” as a stage of policy (including the plan/programme) development (Decision on the development rules and uniform



requirements for the policy documents). The monitoring report should, inter alia, include the implementation impact (economic, legal, social, environmental, etc.). However, the legislation does not contain a duty to bring the results of the monitoring to the attention of the MoE and the Ministry of Health and the public, as required by art. 12, para. 2 of the Protocol on SEA.

Recommendations

82. On the basis of the research and analysis carried out, the present section aims to provide for recommendations on supplementary legislation and amendments to the RM legislation and other draft normative acts to meet the requirements of the Protocol on SEA.

83. The findings of the above research and analysis, may be summarized as follows:

- The planning process for documents, which may be subject to SEA, is developed in the RM relatively well, and the legal and regulatory framework allows to distinguish different stages of the process and decision-making, and also to define the rights and obligations of the institutions/actors of SEA;

- The institutional structures are in place in RM to provide for the actors to be involved in an SEA procedure under the SEA Protocol, such as: the relevant public authorities or plans/programmes developers; governmental decision-makers to approve a plan/programme - Parliament, Government, local and regional authorities, MoE, Ministry of Health and other concerned governmental bodies; NGOs; experts and expert institutions able to participate in/carry out an SEA;

- A large number of plans/programmes are adopted that are subject to the Protocol on SEA (art. 2, para. 5, art. 4) and the SEA Directive (art. 2, para. 3). On the basis of applicable legislation, they are adopted/approved at the level of Parliament and Government, or at the level of local authorities. A specific feature of these plans/programmes is that they are treated in the RM legal



EaP GREEN PROGRAMME

system as normative acts (acts of Parliament, legislative acts, etc), and hence, their development and adoption falls within the legislative requirements applicable to normative acts. This is important because in transposing the provisions of the Protocol on SEA and SEA Directive into the RM legislation, it is necessary to develop not only the specific rules/acts governing the SEA, but also to ensure the existence of certain provisions on SEA in the existing legislation governing the planning process, including the process of developing and adopting normative acts.

A new law on SEA

84. In designing the legal framework on SEA in the RM, one should consider that it is important to keep the principles of the Protocol on SEA and the SEA Directive so as to ensure the establishment of effective SEA procedures in planning processes.

85. In the context of legislative reforms in RM with respect to SEA, in order to harmonize it to EU legislation, it would be optimal to develop and adopt a special Law on SEA. A draft is proposed in Appendix 2 of the present report. In addition, existing legislation should be supplemented or amended, to ensure proper alignment to SEA requirements in the process of planning and developing/approving policies (see para. 87 below). Taking into account the envisaged adoption of the Law on the Protection of the Environment, containing the general provisions of the SEA, and the EIA Law reflecting the approach in this area of the Espoo Convention and EU legislation (at the time of the preparation of the present report, the drafts for both were under discussion), the development and adoption of a draft Law of the SEA will ensure that environmental assessment processes are carried out for individual projects and plans/programmes in the light of modern and efficient methodologies.

86. When defining the field of application concerning plans and programmes in the draft Law on SEA (art. 5), it is necessary to reflect one of the main differences of the Protocol on SEA (art. 4) and SEA Directive (art.3). The SEA Directive defines the scope of SEA with reference to the EIA requirements (art. 3, para. 2), the Protocol on SEA in art.4, para. 2, also declares the relationship with the EIA legislation. The draft Law on EIA was developed taking into



EaP GREEN PROGRAMME

account the EIA Directive. The adoption of the draft Law on EIA will give possibility to provide the scope of SEA with the reference to mentioned articles of Protocol on SEA and SEA Directive.

87. In addition, the SEA Directive (art.3 para. 2 (b)) indicates that an SEA should be carried out for all plans and programmes, which, in view of likely effect of protected sites, have been determined to require an assessment pursuant to art.6 or 7 of the Habitats Directive (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended). With a view to transposing the Habitats Directive, the Law on environmental network (5.04.2007) (which among others takes into account the Natura 2000 approach), and the National programme on national environmental network for the period of 2011-2018 (No. 593, 1.08. 2011) have been adopted. The Law on environmental network bans various activities on the territory of environmental corridors. To implement the provision of the SEA Directive (art.3 para 2 (b)) it is necessary to include in the draft Law on SEA a provision that the SEA procedure is binding for plans and programmes that may have a negative impact on the ecological network elements.

Proposed amendments to the existing legislative/regulatory framework

88. Additional recommendations for improving the legislation of RM in connection with the implementation of the SEA include:

– In the **Law on Environmental Protection**:

- Add a separate part on “Strategic Environmental Assessment” that provides for the SEA concept, the institutions/agents, plans/programmes/activities, its principles, as well as specific reference to the Law on SEA;
- In art. 8, add “approves the Method of establishing the monitoring over the impact of the plan, programme on the environment and public health; requirements for the form and content of information (report) on public consultations during a strategic environmental assessment”;
- In art. 9-10, add “participate in the strategic environmental assessment”;



EaP GREEN PROGRAMME

- In art. 15, add “participate in the strategic environmental assessment”;
- In art. 16, add “participates in the strategic environmental assessment”;
- In art. 30 to add “... the right to participate in the strategic environmental assessment”.

– In the **Law on environmental expertiza and environmental impact assessment**:

- In art. 6, para. 2, – sub-paragraph a), after the words “and environmental protection”, to add “except those subject to strategic environmental assessment”;
- In art. 6, para. 2, – sub-paragraph c), after the words “villages”, to add “except those to be subject to strategic environmental assessment”;
- In art. 6, para. 2, – sub-paragraph c), after the words “rural settlements”, to add “except those subject to strategic environmental assessment”;
- To delete art. 2, para. 16.

– In the **Law on normative acts of the Government and other central and local public administration bodies**:

- In art. 41, to change the title of the article to “Expertise and strategic environmental assessment”;
- In art. 41, to add a paragraph (5), as follows: “In the cases provided by the Law on strategic environmental assessment, a strategic environmental assessment of the normative act shall be carried out”.

– In the **Law on the Parliamentary Rules of Procedure**, in art. 47 to add the para. 6-1 – “In the cases provided by the Law on Strategic Environmental Assessment, a strategic environmental assessment of the legislation act shall be carried out”.

– In Government decision No. 33, “**On the rules of development and uniform requirements for the policy documents**”, to add a para. 20-1 “In the



cases provided by the Law "On the Strategic Environmental Assessment" the policy documents shall be subject to strategic environmental assessment”.

– In the **Regulation on the Environmental Fund**, to supplement paras. 10 and 12, “the resources of local environmental funds and the National Environment Fund can be used to: finance strategic environmental assessment”.

– In the **Regulations on the organization and functioning of the Ministry of Health** in para. 6 to add sub-paragraph 5-1: “participates in the strategic environmental assessment”.

Relationship of the proposed new SEA procedure to the existing SEE

89. It is the opinion of the expert that since SEA and SEE are different in content and objectives, the implementation of SEA should not lead to a simultaneous rejection of the SEE as a whole. It is proposed that, during the initial period of SEA implementation in the RM, it is appropriate to preserve the SEE and, in consultation with the MoE, to use its findings in discussions concerning the SEA Environmental Report.

Institutional changes

90. Implementation of SEA in practice will require a number of institutional changes, as follows:

– to establish in state environmental agencies and healthcare institutions (including at the local level) departments, or to appoint officials, responsible for the implementation of the SEA.

– In the environmental agencies, the SEA may be accomplished based on structural units conducting SEE and management analysis, monitoring and evaluation of MoE policies. In the healthcare institutions the SEA may involve the unit of analysis, monitoring and evaluation of policies (Ministry of Health) or the national centres of public health.



EaP GREEN PROGRAMME

– To establish divisions in specialized research institutions responsible for the methodological support of SEA;

–To enhance professional competence of specialists from governmental bodies involved in the SEA process, through workshops, training sessions, involving national and international experts, as well as through specialized training courses and internships.

Further steps to become Party to the Protocol on SEA

91. As mentioned above, the RM is Signatory to the Protocol on SEA since 2003 (see also art. 23 of the Protocol). For the RM to become Party, the further step of ratification, adoption or approval of the Protocol on SEA depends on the national procedures in place for the ratification, adoption or approval of international treaties.

92. In accordance with art. 4 **of the Law on International Treaties of the Republic of Moldova** (No. 595, 24.09.1999), RM expresses its consent to be bound by an international treaty by signature followed by any other means of formal confirmation of consent (exchange of instruments constituting the treaty, ratification, adoption, approval) or by accession. Thus, by signing the Protocol on SEA, RM expressed its intention to be bound by the Protocol on SEA. According to art. 11 of the Law, the Parliament decides on the ratification, adoption, approval or accession to international treaties concluded on behalf of the RM (including the Protocol on SEA). Art. 11, para. 2, of the Law stipulates that, if an international agreement, which is submitted to RM Parliament for consideration, requires the adoption of new laws or changes to existing laws, the draft law on the ratification, adoption, approval or and the draft legislation to amend the legislation should be submitted simultaneously.

93. Since, as noted in Section 4 (Recommendations) of this report, in order to implement SEA it is required to adopt a new Law on SEA and proceed with amendments and supplementary legislation to the existing one, the draft law of ratification, adoption, approval of the Protocol on SEA and the draft legislation to amend the legislation should be presented simultaneously.



EaP GREEN PROGRAMME

94. In accordance with art. 12 of the Law on International Treaties, the ratification, adoption, approval of the Protocol on SEA should be carried out by the Parliament of the RM through an organic law. On the basis of art. 14 of the Law, the Protocol on SEA is to be submitted to the Parliament by written request of the President of the RM. Since the Protocol on SEA does not contain the authentic text in the official language of RM, the Parliament should be given for consideration the authentic text of the agreement in a foreign language (one of the three authentic languages of the Protocol) and its official translation into the national language, endorsed by the Ministry of Foreign Affairs and European Integration (art. 14). Upon approval by the Parliament, the President of the RM signs the ratification instrument, the instrument of adoption, approval of the Protocol on SEA, which is sealed with the state seal and also signed by the Minister of Foreign Affairs and European Integration of RM.



EaP GREEN PROGRAMME

Annex - List of legislation

1. Constitution of Moldova Republic, 29.07.1994 // Monitorul Oficial Nr. 1, 12.08.1994.
2. Law on Government, No 64-II, 31.05.1990 // Monitorul Oficial Nr. 131-133/1018, 26.09.2002, Вести No 8/191, 1990.
3. Land Code, No. 828-XII, 25.12.1991 // Monitorul Oficial Nr. 107/817, 04.09.2001.
4. Law on Environmental Protection, No 1515-XII, 16.06.93 // Monitorul Oficial Nr. 10/283, 30.10.1993.
5. Law on the adoption of the Parliamentary Rules of Procedure, No 797-XIII, 02.04.1996 // Monitorul Oficial Nr. 50/237, 07.04.2007.
6. Law on Ecological Expertise and Environmental Impact Assessment, No. 851- XIII, 29.05.1996 // Monitorul Oficial Nr. 52-53/494, 08.08.1996.
7. Forest Code, No. 887-XIII, 21.06.1996 // Monitorul Oficial Nr. 4-5/36, 16.01.1997.
8. Law on the Fundamentals of Locality Planning and Spatial Development, No 835-XIII, 17.05.1996 // Monitorul Oficial Nr. 1-2/2, 02.01.1997.
9. Law on International Treaties of the Republic of Moldova, Nr. 595, 24.09.1999 // Monitorul Oficial No. 24, 02.03.2000.
10. Law on Legislative Acts , № 780-XV, 27.12.2001 // Monitorul Oficial Nr. 36-38, 14.03.2002.r.
11. Law on Normative Acts of the Government and other central and local public administration, No. 317-XV, 18.07.2003 // Monitorul Oficial Nr. 208-210/783, 03.10.2003.



EaP GREEN PROGRAMME

12. Law on Local Public Administration, No 436-XVI, 28.12.2006 // Monitorul Oficial Nr. 32-35/116, 09.03.2007.
13. Law on regional development in the Republic of Moldova, No 438-XVI, 28.12.2006 // Monitorul Oficial Nr. 21-24/68, 16.02.2007.
14. Law on fish stock, fishing industry and fish farming, No. 149-XVI, 08.06.2006 // Monitorul Oficial Nr. 126-130/597, 11.08.2006.
15. Law on the organisation and implementation of tourism, No. 352-XVI, 24.11.2006 // Monitorul Oficial Nr. 14-17/40, 16.02.2007.
16. Law on transparency in decision-making, No 239-XVI, 13.11. 2008 // Monitorul Oficial Nr. 215-217/798, 05.12.2008.
17. The Code on Underground Resources, No. 3-XVI, 02.02.2009 // Monitorul Oficial Nr. 75-77/197, 17.04.2009.
18. Law on Water, No. 272, 23.12.2011// Monitorul Oficial Nr. 81, 26.04.2012, art. № : 264.
19. Regulation on public consultation in the development and approval of documentation on land and urban management, Government Decree No 951, 14.10.1997 // Monitorul Oficial Nr. 076, 20.11.1997.
20. Regulations on the Environmental Fund, Government Decree № 988, 21.09.1998 // Monitorul Oficial Nr. 92-93/962, 08.10.1998.
21. The Regulation on public participation in development and decision-making on environmental issues, Government Decree No. 72, 25.01.2000 // Monitorul Oficial Nr. 12-13/152, 03.02.2000.
22. Regulations on the organization and conduct of the State Ecological Expertise, No. 188, 10.09.2002 // Monitorul Oficial Nr. 14-17/25, 07.02.2003.
23. Harmonization of national RM legislation with Community law. Government Decision No.1345, 24.11.2006 // Monitorul Oficial Nr. 189-192/1470, 15.12.2006.



EaP GREEN PROGRAMME

24. National Programme for Environmental Safety of the RM for 2007-2015, Government Decision No. 304, 17.03.2007 // Monitorul Oficial Nr. 43-46, 30.03.2007.
25. On development of and uniform requirements for policy documents, Government Decision No.33, 11.01.2007 // Monitorul Oficial Nr. 6-9/44, 19.01.2007.
26. Regulation on the organisation and functioning of the Ministry of Economy, Government Decision No. 690, 13.11.2009 // Monitorul Oficial Nr. 166-168/768, 20.11.2009.
27. Regulation on the organisation and functioning of the Ministry of Environment, Government Decision No. 847, 18.12.2009 // Мониторул Официал N 189-190/925 от 22.12.2009.
28. Regulation on the organisation and functioning of the Ministry of Agriculture and Food Industry, Government Decision No. 793, 02.11.2009 // Monitorul Oficial Nr. 174-176/875, 04.12.2009.
29. Regulation on the organisation and functioning of the Ministry of Health, Government Decision No. 777, 27.11.2009 // Monitorul Oficial Nr 173/855, 01.12.2009.
30. Regulation on the organisation and functioning of the Ministry of Construction and Regional Development, Government Decision No. 662, 10.11.2009 // Monitorul Oficial Nr. 163-164/730, 13.11.2009.
31. Regulation on the procedures to ensure the transparency of decision-making process, Government Decision No. 96 of 16.02.2010 // Monitorul Oficial Nr. 30-31, 26.02.10, art.161.