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Convention for the Protection of the Marine Environment  
and the Coastal Region of the Mediterranean and its Protocols

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**Agenda Item 5: Ministerial Session**

**Feasibility Study on the Application of Transboundary EIA/SEA in the Context of the Barcelona Convention and its Protocols**

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**DISCLAIMER:**

**This document constitutes an initial draft study, prepared by the expert for further review. The content presented herein is subject to further revisions, which will be undertaken following consultations with the Contracting Parties involved.**

## **List of Abbreviations/Acronyms**

<b>COP</b>	Conference of the Contracting Parties
<b>EIA</b>	Environmental Impact Assessment
<b>ICZM</b>	Integrated Coastal Zone Management
<b>UNEP MAP</b>	Mediterranean Action Plan of the United Nations Environment Programme
<b>MSP</b>	Marine/Maritime Spatial Planning
<b>PAP/RAC</b>	Priority Actions Programme Regional Activity Centre
<b>SEA</b>	Strategic Environmental Assessment
<b>SPA/BD</b>	Specially Protected Areas/Biological Diversity
<b>UNECE</b>	United Nations Economic Commission for Europe

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## Executive Summary

[to be completed]

## INTRODUCTION

### A. Mandate and aims

Following the assessment report prepared under the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (SEA Protocol) on identification of synergies and possible cooperation activities with other regional seas conventions<sup>1</sup>, including the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) and its Protocols, the Coordinating Unit for the Mediterranean Action Plan of the United Nations Environment Programme (UNEP MAP) decided to develop a Feasibility Study aimed at consider the introduction of the application of transboundary Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) in the whole Mediterranean Region.

The UNEP MAP - Priority Actions Programme Regional Activity Centre (PAP/RAC) contracted a consultant for providing expert services related to the preparation of such Feasibility Study on the application of transboundary EIA and SEA in the context of the Barcelona Convention and its Protocols.

The mandate includes an activity for enhancing information sharing and coordination to strengthen implementation of existing environmental assessment provisions in a context where several Mediterranean countries have no legal obligation to prepare SEA, with a view to support the Contracting Parties to the Barcelona Convention and its Protocols for the implementation of the Integrated Coastal Zone Management Protocol (ICZM Protocol) and the Marine/Maritime Spatial Planning (MSP) initiatives in the transboundary context.

The task foreseen includes also the organization of bilateral consultations, through UNEP MAP PAP/RAC, with the authorities and institutions in charge of EIA/SEA in the Mediterranean countries that are not bound by the Espoo Convention and its SEA Protocol, to share basic information on relevant issues and discuss the analysis of the related situation - in particular any new development compared to the 2019 analysis made by PAP/RAC - and to get their feedback on the proposed steps and measures.

A subsequent regional technical meeting will be scheduled to comment the working documents and share information on relevant items, to be summarized in consultation with the Parties in question. The meeting is expected to discuss a draft Feasibility study prepared by the consultant based on the inputs provided by UNEP/MAP and feedback gained from the bilateral meetings with Mediterranean countries, in particular those that are not parties to the Espoo Convention and its SEA Protocol - looking e.g. on how to address EIA/SEA approach/methodology in such countries and proposal of steps and measures towards the introduction of the transboundary EIA/SEA throughout the Mediterranean Region – and possible implementing activities to be put forward for consideration of the Conference of the Parties to the Barcelona Convention.

The design of the activity also aims to present a paper on strategic and legal basis at the 23rd Meeting of the Contracting Parties to the Barcelona Convention (COP 23 - Portorož, Slovenia, 4-8 December 2023) that will initiate a process to amend the legal framework of the Barcelona Convention by introducing the application of transboundary EIA/SEA in the Mediterranean region. The activity involves the following actions:

- a. Analysis of the Barcelona Convention legal and strategic framework, i.e. the Convention itself, the Protocols and all the strategic documents adopted by COP decisions in order to provide

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<sup>1</sup> The draft assessment report was prepared under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Protocol on Strategic Environmental Assessment (Kyiv Protocol). ECE/MP.EIA/WG.2/2022/INF.10, 25 October 2022.

foundation for the adoption of the transboundary EIA/SEA procedure by all Mediterranean countries. Provide rationale for the preparation of the feasibility study and explain its added value with regard to the 2019 analysis and guidelines.

- b. Analysis of the situation with regard to transboundary EIA/SEA in the Mediterranean countries that are not bound by the Espoo Convention and its SEA Protocol, in particular any new development compared to the 2019 analysis made by PAP/RAC.
- c. Draft steps and measures to be taken for the introduction of the transboundary EIA/SEA throughout the Mediterranean Region.
- d. Held bilateral consultations with the authorities and institutions in charge of EIA/SEA in the Mediterranean countries that are not bound by the Espoo Convention and its SEA Protocol to get their feedback on the proposed steps and measures.
- e. Draft the feasibility study based on the elements quoted in a) to e).
- f. Prepare documentation needed for the organization of the regional consultation meeting on the subject i.e. draft invitation letter including rationale and agenda, and assemble all information material supporting the study.
- g. Participate in the regional consultation meeting, present the study and draft the meeting report.
- h. Finalize the feasibility study taking into account the recommendations of the regional consultation meeting.

This study will be based on the work previously done with the two already cited study papers on the same topic, the “draft *guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States*” drafted under the work programme of the Mediterranean Action Plan Programme for 2018–2019<sup>2</sup>, and the “draft *assessment report on identification of synergies and possible cooperation activities in marine regions*” prepared under the UNECE Espoo Convention and its SEA Protocol, the results of which are duly taken into account, hoard and thesaurized in the present study.

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<sup>2</sup> The draft guidelines were prepared under the work programme of the Mediterranean Action Plan Programme for 2018–2019, ICZM Protocol. See:

[http://paprac.org/storage/app/media/Meetings/4\\_Draft%20Guidelines%20for%20transboundary%20EA.docx](http://paprac.org/storage/app/media/Meetings/4_Draft%20Guidelines%20for%20transboundary%20EA.docx)

## 1. Analyses of the legal and policy framework of the Barcelona Convention relevant for the adoption of the transboundary EIA/SEA procedure by all Mediterranean countries

The present chapter represents the draft analysis of the relevant legal and policy framework of the Barcelona Convention to draft a Feasibility Study for the adoption of the transboundary EIA/SEA procedure by all Mediterranean countries, addressing particularly aspects of the Mediterranean countries that are not bound by the Espoo Convention and its SEA Protocol.

In a world increasingly focused on sustainability and reduction of the ecological footprint, as technological innovation advances and energy demand increases, economic activities that may have significant impacts on the environment require not only their timely and proper planning, but also the application of effective preventive tools, such as environmental assessments, in order to enable their sustainable implementation, especially in a semi-enclosed basin and shared sea such as the Mediterranean.

Among the most developing economic activities are especially those related to energies, particularly from renewable energy sources, such as offshore wind power plants; marine energy plants derived from wave, sea currents, and tides; but still also those related to non-renewable energy sources, such as fossil fuels, and the related activities of gas and oil exploration, research, and extraction.

States bordering the Mediterranean, which are part of the international legal system and in particular of the so-called Barcelona Convention System, are therefore called upon to equip themselves with the instrument of transboundary environmental assessments according to internationally recognized standards.

### 1.1 International legal foundation for Environmental Assessments

As is well known, it was with the **Helsinki Final Act of 1975** that the concept of EIAs was born, with the provision of "legal and administrative measures for the protection of the environment, including procedures for the establishment of environmental impact assessments," instructing the United Nations Economic Commission for Europe (UNECE) to follow up on the concept of EIAs.

It is worth mentioning that the environmental assessments are based both on **the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration, 1972)**, as part of the United Nations Environment Program (UNEP), **Principle 21** which affirmed the responsibility of states to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction; and **Principle 7** which declares that States shall take all possible steps to prevent pollution of the seas; as well as on the **precautionary principle**, affirmed in the 1992 Rio Declaration, which states: "*In order to protect the environment, the precautionary approach should be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.*" (**Principle 15 to the 1992 Rio Declaration**).

Another key element is **public participation**, as affirmed in the **UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)** (adopted in Aarhus, Denmark, 25 June, 1998; in force since 30 October, 2001)<sup>i</sup>, which gives the public (individuals and associations representing them) the right to access information and participate in environmental decision-making, as well as to have a right of appeal if these rights are not respected.

There is an international legal foundation for a generic duty to carry out international legal requirements for environmental impact assessments (EIAs) and strategic environmental assessments (SEAs). Environmental impact assessments are recognized among the main

environmental planning and management tools, required by law in many countries around the world, including Mediterranean countries.

In fact, most Contracting Parties to the Barcelona Convention have already enacted domestic EAs laws, which contain detailed procedural obligations and provide important avenues for public participation.

In addition, it is important to consider for transboundary EAs that, under the international environmental law principle of nondiscrimination, states apply EAs without extraterritorial discrimination, taking into account extraterritorial effects just as they take domestic effects into account (J.H. Knox, *The American Journal of International Law* © 2002 Cambridge University).

The international legal framework for transboundary environmental assessments is provided by the Convention on Environmental Impact Assessment in a Transboundary Context adopted on 25 February 1991 in Espoo (Finland) and its Protocol on Strategic Environmental Assessment (SEA Protocol), adopted on 21 May 2003 in Kyiv (Ukraine). The Convention, after its first amendment in 2001, is also open for accession by UN member states that are not members of the United Nations Economic Commission for Europe-UNECE.

The Espoo Convention contains detailed definitions and procedures that countries are required to follow in the framework of mutual cooperation.

With these fundamental assumptions in mind, the analysis provides the identification of the main elements of coherence but also dissonance between the principles and rules on Transboundary Environmental Assessments postulated by the Espoo Convention and its SEA Protocol, the Barcelona System, and the Mediterranean countries that are not bound by the Espoo Convention and its SEA Protocol, respectively.

## 1.2. Analysis of the Barcelona System legal and strategic framework

In this section, are analysed the legal and policy framework of the Barcelona Convention, its Protocols, and the relevant strategic documents adopted by COP decisions in order to provide foundation for the adoption of the transboundary EIA/SEA procedures by all Mediterranean countries.

Updates and added value with regard to the 2019 analysis made by PAP/RAC will be highlighted where deemed appropriate.

As is well known, the 1995 Barcelona Convention has 22 Contracting Parties: Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, European Union, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syrian Arab Republic, Tunisia and Türkiye.

The Barcelona Convention has seven Protocols adopted in the framework of the Mediterranean Action Plan (MAP), which have been ratified by some (but not all) of the Contracting Parties to the Convention. Only the first five contain provisions that bear certain similarities with transboundary EIA/SEA procedures, with particular reference to those of the Espoo Convention and its SEA Protocol:

1. the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (**Land-Based Sources Protocol**) which was adopted in 1980 (22 Parties) and amended in 1996 (17 Parties);
2. the Protocol concerning Cooperation in Preventing Pollution from Ships and, in cases of Emergency, combating Pollution of the Mediterranean Sea (**Prevention and Emergency Protocol**) which was adopted in 2002 (17 Parties);
3. the Protocol on Integrated Coastal Zone Management in the Mediterranean (**ICZM Protocol**), which was adopted in 2008, has 12 Parties, including the European Union and 5 Member States in the Mediterranean Region;
4. the Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (**Offshore**



**Protocol**), which was adopted in 1994, has 8 Parties, including the European Union and 2 Mediterranean Member States;

5. the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (**SPA/BD Protocol**), which was adopted in 1995, has 17 Parties, including the European Union and 7 Mediterranean Member States;

6. the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (**Dumping Protocol**), which was adopted in 1976 and amended in 1995 (not yet into force), has 21 Parties, including the European Union and 8 Mediterranean Member States;

7. the Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (**Hazardous Wastes Protocol**), adopted in 1996, has 7 Parties, including 1 Mediterranean Member State of the European Union.

Referring to the aforementioned document prepared under the UNECE Espoo Convention and its SEA Protocol for detailed analysis of the consistency between the key provisions of these two international instruments with respect to the provisions contained in the Barcelona Convention and its relevant Protocols, the provisions of the Barcelona System that directly or indirectly (e.g., relevant provisions, decisions of the Conferences of the Parties, guidelines) involve transboundary environmental assessments are explained and evaluated in the following paragraphs, taking as a benchmark the main procedural requirements and related practices under the Espoo Convention and its SEA Protocol.

### 1.3. Environmental Assessments key procedural requirements

As well illustrated in the aforementioned study commissioned by the UNECE (see footnote 1), the transboundary environmental assessments are thus internationally recognized and their key procedural requirements are well-detailed in structured steps in the main reference instruments, which are summarized in Box 1 for the Espoo Convention and in Box 2 for the SEA Protocol and the good practice, tools and actions for their effective practical application<sup>3</sup>.

#### Box 1. Espoo Convention key procedural requirements

- a) **Environmental impact Assessment requirement:** a Party must establish an environmental impact assessment procedure within its national regulatory framework for proposed activities listed in appendix I of the Convention that are likely to cause significant adverse transboundary impact (article 2(2)).
- b) **Requirement to notify affected Parties** as early as possible about proposed appendix I activities that are likely to cause a significant adverse transboundary impact (articles 2(4) and 3)<sup>4</sup>. The requirement covers the minimum content of the notification and the procedure to be followed by the concerned Parties. A list of contact points for notification and a recommended format for notification were established to facilitate the practical application of the requirement<sup>5</sup>.
- c) **Environmental Impact Assessment Documentation:** Requirement to prepare environmental impact assessment documentation containing as a

<sup>3</sup> See the *Resource Manual to Support Application of the UNECE Protocol on Strategic Environmental Assessment*, from 2012, which does not constitute formal legal or other professional advice, but instead provides guidance to those applying the Protocol or supporting others in doing so. The Manual is available at: <https://unece.org/DAM/env/documents/2011/eia/ece.mp.eia.17.e.pdf> Additional information and guidance material available at: <https://unece.org/publications/environmental-assessment>

<sup>4</sup> If the concerned Parties so agree, also other activities that are likely to cause significant adverse transboundary impact can be treated as if they were listed in appendix I (Article 2(5)).

<sup>5</sup> Decisions I/3 and I/4 of the Meeting of the Parties.

minimum information listed in the appendix II of the Convention (on the proposed activity and its alternatives, the environment likely to be affected, the potential environmental impact, mitigation measures, data used, information gaps, a non-technical summary, and where appropriate outline for monitoring programmes) (article 4 and appendix II). Good practice recommendations include a scoping procedure with early participation of the affected Party or Parties; and translation, as a minimum, of the non-technical summary.

- d) **Requirement to consult affected Parties** on the basis of the environmental impact assessment documentation, to be undertaken without undue delay including on the potential transboundary impact from the proposed activity and measures to reduce or eliminate its impact (article 5).
- e) **Public participation requirement:** requirement for the concerned Parties to provide the public of the affected Party in the areas likely to be affected by the proposed activity with equivalent opportunity for participating in the transboundary procedure (commenting on the proposed activity and its likely effects based on the notification and the environmental impact assessment documentation) (articles 2(6), 3(8), 4(2)).
- f) **Requirements regarding the final decision on the proposed activity:** that must take due account of the outcome of the environmental impact assessment (including the related documentation and comments received thereon from the affected Party's public and, the outcomes of the consultations with its authorities); and be transmitted to the affected Party/Parties, along with reasons and considerations on which it was based (article 6).

In addition, according to article 8 of the Espoo Convention, Parties that expect to conduct transboundary assessments on a regular basis may also enter into **bilateral and multilateral agreements** or other arrangements, i.e. to exchange information on their respective legal systems and to agree in advance on various issues and practical procedural details (such as criteria for determining significance; modalities for consultation of authorities and public participation; translation and interpretation issues).

### **Box 2. SEA Protocol key procedural requirements**

- a) **Strategic Environmental Assessment requirement:** a Party must establish a strategic environmental assessment procedure within its national regulatory framework for plans and programmes referred to in article 4 paragraphs 2, 3 and 4 of the Protocol, which are likely to have significant environmental effects (articles 3(1) and 3(4), in accordance with the procedure set out in articles 5–10).
- b) **Requirement to prepare the environmental report:** requirement to identify, describe and evaluate the likely significant environmental effects of implementing the plan or programme and its reasonable alternatives (article 7(2) and Annex IV).

- c) **Requirement to notify countries likely to be affected:** the Party of origin has to notify the affected Party if it considers that implementation of the proposed plan or programme is likely to have significant transboundary environmental effects, or if so requested by another Party likely to be significantly affected (article 10).
- d) **Requirement to consult countries likely to be affected:** should transboundary effects be likely, the Protocol provides for transboundary consultations, which follow if desired and indicated by the affected Party (article 10).
- e) **Public participation requirement.** The Protocol requires that there are early, timely and effective opportunities for public participation, providing the opportunity for the public concerned (which has to be identified, including relevant NGOs) to express their opinion on the draft plan or programme and the environmental report, within a reasonable time frame (article 8 and Annex V; in case of transboundary impacts, article 10(4)).
- f) **Requirement regarding the final decision,** ensuring that the comments and objections of the public concerned and the environmental and health authorities - including, as relevant, in likely affected Parties - are taken into account in the final decision, and that they are informed accordingly, and that the plan or programme is made available to them together with a statement summarizing how the environmental considerations have been integrated into it, how the comments received have been taken into account and the reasons for adopting it in the light of the reasonable alternatives considered (article 11).

### 1.3.1. Environmental Impact Assessment requirements in the Barcelona System

The Barcelona Convention and its Protocols **expressly include provisions that require the Contracting Parties to “undertake environmental impact assessment for proposed activities that are likely to cause a significant adverse impact on the marine environment”, referring to the geographical area of the whole maritime waters of the Mediterranean Sea** (Barcelona Convention, Article 1), **including the transboundary aspects.**

To verify what has been implemented at the national level, it can be considered the national implementation reports submitted by the Contracting Parties through the reporting system (Article 26 of the Barcelona Convention). For the biennium 2018/2019 that could be assessed, the Parties stated environmental impact assessment laws and regulations were in place, thereby activities or projects which are likely to cause a significant adverse impact on the marine environment are subject to an environmental impact assessment.

The Barcelona Convention and its Protocols compared to the above mentioned framework present a simplified and, in multiple respects, non-exhaustive framework, requesting the Contracting Parties to undertake environmental impact assessments, but without entering into the details of the process and its distinct stages, in particular, unlike the Espoo Convention, not specifying the list of activities subject to environmental impact assessment obligations. The relevant/related requirements of the Barcelona Convention for its Parties are to:

- (a) implement the precautionary principle and the polluter pays principle (Article 4.3.a and b);
- (b) undertake environmental impact assessment for proposed activities that are likely to cause significant adverse impact on the marine environment (Article 4.3.c);
- (c) promote cooperation on the basis of notification, exchange of information and consultation in case of transboundary Environmental Impact Assessment (Article 4.3.d);
- (d) use best available techniques (BAT) and best environmental practices (BEP) (Article 4.4.b);

- (e) monitor the pollution of the marine environment and its coastal areas (Article 12); and
- (f) ensure public information and participation (Article 15).

In addition, the below mentioned five Protocols to the Barcelona Convention require their Contracting Parties to undertake an environmental impact assessment procedure, tailoring it to the needs of the specific sector being regulated. It should be again noted that, unlike the Espoo Convention, they do not specify the list of activities and/or projects which require environmental impact assessment.

- In particular the environmental impact assessment procedure requirement for pollution prevention is emphasized in the **recital** of the **Land-Based Sources Protocol**, which states that the Contracting Parties have agreed the content of the Protocol “Applying the precautionary principle and the polluter pays principle, undertaking environmental impact assessment and utilizing the best available techniques and the best environmental practice, including clean production technologies, as provided for in article 4 of the Convention”; and similarly in the **recital** of the **Prevention and Emergency Protocol**, which states that the Contracting Parties have agreed the content of the Protocol: “Applying the precautionary principle, the polluter pays principle and the method of environmental impact assessment, and utilizing the best available techniques and the best environmental practices, as provided for in Article 4 of the Convention”.
- The Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (**Special Protected Areas Protocol**), **Article 17**<sup>6</sup> requires that Parties shall evaluate the possible impact, including the cumulative impacts, of planning process leading to decisions that could significantly affect protected areas and species and their habitats.
- The **Offshore Protocol** in **Article 5 (1) (a)**<sup>7</sup> requires each Contracting Party to prescribe that for authorisation or renewal of an authorisation the competent authority may require that an environmental impact assessment be prepared (in accordance with Annex IV to the Protocol).
- The **Integrated Coastal Zone Management Protocol** is strongly imbued with elements characterising environmental assessments, starting with the general principles (**Article 6**), which also include that of a preliminary assessment for the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones; **Article 19 (1)** then requires the Parties to ensure that the process of environmental impact assessment for projects likely to have significant environmental effects on the coastal zones, and in particular on their ecosystems, take into consideration the specific sensitivity of the environment and the interrelationships between the marine and terrestrial

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<sup>6</sup> Article 17 of the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol), titled “Environmental Impact Assessment”, requires that: “In the planning process leading to decisions on industrial and other projects and activities that could significantly affect protected areas and species and their habitats, the Parties shall evaluate and take into consideration the possible direct or indirect, immediate or long-term, impact, including the cumulative impact of the projects and activities being contemplated.”

<sup>7</sup> The Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf (Offshore Protocol) in its Article 5 on Requirements for authorizations, in point (1) (a) requires each Contracting Party to “prescribe that any application for authorisation or for the renewal of an authorisation is subject to the submission of the project by the candidate operator to the competent authority and that any such application must include, in particular, the following: (a) A survey concerning the effects of the proposed activities on the environment; the competent authority may, in the light of the nature, scope, duration and technical methods employed in the activities and of the characteristics of the area, require that an environmental impact assessment be prepared in accordance with Annex IV to this Protocol”. Article 21 on Specially protected Areas, requires the Contracting Parties that “For the protection of the areas defined in the Protocol concerning Mediterranean Specially Protected Areas and any other area established by a Party and in furtherance of the goals stated therein, the Parties shall take special measures in conformity with international law, either individually or through multilateral or bilateral cooperation, to prevent, abate, combat and control pollution arising from activities in these areas. In addition to the measures referred to in the Protocol concerning Mediterranean Specially Protected Areas for the granting of authorization, such measures may include, inter alia: (a) Special restrictions or conditions when granting authorizations for such areas: [i] The preparation and evaluation of environmental impact assessments; [ii] The elaboration of special provisions in such areas concerning monitoring, removal of installations and prohibition of any discharge.

parts of the coastal zone, as well as the cumulative impacts on the coastal zones and their carrying capacities<sup>8</sup>.

It should be also noted that the informal **Guidelines for the Conduct of Environmental Impact Assessment under the Offshore Protocol**<sup>9</sup> were adopted by the Contracting Parties to the Barcelona Convention and its Protocols at their 22nd Meeting (2021) with **Decision IG.25/15** committing to provide advice on the EIA process and suggest methods and tools for identifying and assessing impacts, effects and risk to the environment. The guidance clarifies the terminology, recommends basic stages of good environmental impact assessment practice (screening, scoping, baseline data collection, assessment of impacts, assessment of appropriate mitigation options, decision-making, monitoring, etc.) but does not address transboundary aspects of any such assessments. It also provides only an informal guidance and recognizes that relevant environment impact assessment provisions existing in Contracting Parties' legislation and or regulatory systems prevail.

#### 1.3.1.1. EIA transboundary procedure requirements

Based on the axiom that the Espoo Convention and its SEA Protocol are the international reference instruments for the implementation of proper application of transboundary environmental assessments in the Mediterranean countries, it is considered useful to report in the present and following paragraphs the detailed UNECE analysis of the consistency between what is provided for by these instruments with respect to the Barcelona system, in order to then be able to identify in a punctual way which aspects need special consideration and therefore be included in the following proposals.

##### (i) Notification of and consultation

**Article 4(3)(d)** of the **Barcelona Convention** requires the Contracting Parties to *"promote cooperation between and among States in environmental impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction, on the basis of notification, exchange of information and consultation"*.

The **Integrated Coastal Zone Management Protocol** in its Article 29 (Transboundary environmental assessment) refers to these provisions and requires the Parties to cooperate by means of notification, exchange of information and consultation in assessing the environmental impacts of such plans, programmes and projects, before authorizing or approving plans, programmes and projects that are likely to have a significant adverse effect on the coastal zones of other Parties. It also stipulates that the Parties may, where appropriate, enter into bilateral or multilateral agreements for the effective implementation of this Article.

It is also worth noting that the cited **Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States**, drafted under the **Integrated Coastal Zone**

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<sup>8</sup> Protocol on Integrated Coastal Zone Management in the Mediterranean (ICZM Protocol), Article 6 titled "General Principles of Integrated Coastal Zone Management", requires that "In implementing this Protocol, the Parties shall be guided by the following principles of integrated coastal zone management: (i) Preliminary assessments shall be made of the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones." Article 19 (1) titled "Environmental Assessment", requires that: "Taking into account the fragility of coastal zones, the Parties shall ensure that the process and related studies of environmental impact assessment for public and private projects likely to have significant environmental effects on the coastal zones, and in particular on their ecosystems, take into consideration the specific sensitivity of the environment and the interrelationships between the marine and terrestrial parts of the coastal zone. The environmental assessments should take into consideration the cumulative impacts on the coastal zones, paying due attention, inter alia, to their carrying capacities."

<sup>9</sup> See [https://wedocs.unep.org/bitstream/handle/20.500.11822/37137/21ig25\\_27\\_2515\\_eng.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/37137/21ig25_27_2515_eng.pdf)

**Management Protocol**, contain recommendations for the implementation of transboundary procedures that are coherent with the provisions of the Espoo Convention and the Protocol on Strategic Environmental Assessment. These guidelines have been used so far for training purposes.

**Box 2: Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean states under the Integrated Coastal Zone Management Protocol**

The Guidelines recommend that the Parties to the Barcelona Convention:

- Take on board land-sea interactions in environmental assessments (including transboundary ones), in particular interactions and impacts that can alter the equilibrium of marine and terrestrial areas due to natural processes, as well as mutual impacts of maritime activities on land and terrestrial activities on sea; and
- Adopt guidelines on the procedures for notification, exchange of information and consultation at all stages, as appropriate.

They also refer to the Espoo Convention and its Protocol and the relevant European Union Directives for strategic environmental assessment and environmental impact assessment. and specify basic requirements and good practice recommendations for:

- Notification procedures
- Exchange of information
- Consultations

In addition, the guidelines formulate the following general good practice recommendations for transboundary assessments under the Barcelona Convention:

- (a) Parties should set up adequate arrangements (outlining responsibilities and decision-making steps) to ensure an appropriate governance framework is in place to support smooth transboundary consultations and completion of procedures.
- (b) Close collaboration is necessary between the countries taking part in transboundary procedures, preferably through setting up coordination bodies. Points of contact (if not already appointed under pertinent international instruments) should be used to establish coordination bodies composed of relevant national authorities (e.g., competent authorities supervising environmental assessment processes; designated Espoo Convention and/or its Protocol contact points; Barcelona Convention and/or Integrated Coastal Zone Management Protocol Focal Points) in the concerned (affected and countries of origin) countries.
- (c) Bilateral or multilateral agreements are strongly encouraged, especially for the countries where the existing development plans and commitments indicate multiple transboundary assessments could be expected in the future, as well as for sub-regions or clusters of countries with similar geographic, natural, or cultural characteristics.

(d) To enhance the efficiency and effectiveness of transboundary procedures, it is useful to determine significance of impacts before the country of origin notifies the affected country. Bilateral or multilateral cooperation could be used to agree on such criteria among concerned countries, or possibly on a sub-regional level. In defining these criteria, the sensitivity of the coastal zone and objectives for achieving Good Environmental Status in the Mediterranean should be considered. Moreover, precautionary and prevention principles should apply.

The **Offshore Protocol (Article 21 (1)(b))**, requires Contracting Parties to take special measures for the granting of authorization for the protection of the Mediterranean Specially Protected Areas defined in the **Special Protected Areas Protocol**, that may include, *inter alia*, “the preparation and evaluation of environmental impact assessments” and “intensified exchange of information among operators, the competent authorities, Parties and the Organization regarding matters which may affect such areas”.

Considering the above it may be concluded that Article 4(3)(d) of the **Barcelona Convention** requires the Contracting Parties to promote cooperation in environmental impact assessment procedures through notification, exchange of information and consultation in a manner which is broadly coherent with the requirements of article 2(4) of the Espoo Convention. It nevertheless does not define specific arrangements for such notification in sufficient detail as stipulated by the article 3 of the Espoo Convention.

With regards to transboundary consultations, Article 4(3)(d) of the **Barcelona Convention** provides also for the exchange of information and consultation, but it does not specify these requirements in sufficient detail to facilitate effective consultations in a manner that would be consistent with the Espoo Convention’s requirements for transboundary consultations laid down in its article 2(11) and article 3(3) and article 5. Nevertheless, the **Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States** elaborated within the framework of the **Integrated Coastal Zone Management Protocol** could be used on a voluntary basis to facilitate this process.

(ii) EIA documentation

The **Barcelona Convention** does not provide any indication of the preparation and contents of the environmental assessment documentation under the environmental impact assessment processes.

Nevertheless, the details of the environmental impact assessment process are partly addressed by the **Offshore Protocol** in its Annex IV (see Box 2) which stipulates the basic contents of such an environmental impact assessment. It should be noted that item 1(i) of Annex IV requires environmental impact assessment to contain “an indication of whether the environment of any other State is likely to be affected by the proposed activities”. In addition, Article 23(1) requires the Parties to “cooperate, either directly or through the Organisation or other competent international organisations, in order to: (d) Formulate and adopt guidelines in accordance with international practices and procedures to ensure observance of the provisions of Annex VI”. This requirement is further taken up by item 2 of Annex IV that requires Each Party to “promulgate standards taking into account the international rules, standards and recommended practices and procedures, adopted in accordance with Article 23 of the Protocol, by which environmental impact assessments are to be evaluated”.



**Box 3: Annex IV<sup>10</sup> of the Offshore Protocol to the Barcelona Convention**

1. Each Party shall require that the environmental impact assessment contains at least the following:

- (a) A description of the geographical boundaries of the area within which the activities are to be carried out, including safety zones where applicable, with particular regard to the environmental sensitivity of areas likely to be affected. Safety zones, where applicable, shall cover areas within a distance of 500 metres around installations and be established in conformity the provisions of general international law and technical requirements;
- (b) A description of the initial state of the environment of the area (baseline scenario) and the likely evolution of the state in a “no-project scenario”, on the basis of available information and scientific knowledge;
- (c) An indication of the nature, aims, scope and duration of the proposed activities, including description of reasonable alternatives and an indication of the main reasons for selecting the chosen option supported by a comparison of environmental effects;
- (d) A description of the methods, installations and other means to be used, possible alternatives to such methods and means;
- (e) A description of the foreseeable direct or indirect short and long-term and cumulative effects of the proposed activities on the environment, including fauna, flora, soil, air, water, climate and the ecological balance, including possible transboundary impacts. This description shall include an estimate by type and quantity of expected discharges and emissions (pollutants, water, air, noise, vibration, heat, light, radiation) produced during the construction and operation phases, as well as demolition and decommissioning works, where relevant;
- (f) A statement setting out the measures proposed for reducing to the minimum the risk of damage to the environment as a result of carrying out the proposed activities, including possible alternatives to such measures;
- (g) An indication of the measures to be taken for the protection of the environment in order to avoid, prevent, reduce and if possible offset pollution and any other likely pollution and other pollution and other adverse effects during and after the proposed activities;
- (h) A reference to the methodology used for the environmental impact assessment;
- (i) An indication of whether the environment of any other State is likely to be affected by the proposed activities.

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<sup>10</sup> Annex IV was amended in 2021 by the COP 22 Decision IG.25/7 “Amendments to the Annexes to the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil”  
[https://wedocs.unep.org/bitstream/handle/20.500.11822/37129/21ig25\\_27\\_2507\\_eng.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/37129/21ig25_27_2507_eng.pdf)



It may be concluded that while the Barcelona Convention does not define the contents of the environmental impact assessment, the Offshore Protocol, Annex IV is almost fully consistent with the Appendix II of the Espoo Convention that specifies the content of the environmental impact assessment documentation.

(iii) Public participation

**Article 15(1)(2)** of the **Barcelona Convention** requires the Contracting Parties to “ensure that their competent authorities shall give to the public appropriate access to information on the environmental state” and “on activities or measures adversely affecting or likely to affect it”; and that the participation of the public in relevant decision-making processes is ensured.

The **Special Protected Areas Protocol**, in **Article 19(2)** titled “Publicity, information, public awareness and education” requires that the Parties shall endeavor to promote the participation of their public and their conservation organizations in environmental impact assessments processes.

The **Integrated Coastal Zone Management Protocol**, listing the general principles in **Article 6 (d)**, requests Parties to implement the Protocol guided by the principle, among others, of “(d) appropriate governance allowing adequate and timely participation in a transparent decision-making process by local populations and stakeholders in civil society concerned with coastal zones”. Moreover, **Article 14**, which is dedicated to “Participation”, states that the Parties shall ensure appropriate participation in the phases of the formulation of coastal and marine strategies, plans and programmes or projects, providing information in an adequate, timely and effective manner, and ensuring the availability to any stakeholder of mediation or conciliation procedures and a right of administrative or legal recourse.

It may be concluded that the Barcelona Convention and two Protocols foresee public participation requirements in a manner which is broadly coherent with the requirements of the Espoo Convention. Nevertheless, again, they do not give the same level of detail as stipulated by the Espoo Convention, articles 2(2), 2(6), 3(8) and 4(2).

The requirement of ensuring public participation and consultation in decision-making processes and in the environmental impact assessment process for proposed activities that are likely to cause damage to the marine environment and its coastal areas in the Barcelona Convention, can be also referred to the implementation arrangements included into the national implementation reports submitted by the Contracting Parties through the reporting system, according to which all reporting Contracting Parties on the biennium 2018/2019 reported having put in place the legal and regulatory measures needed to ensure public participation and consultation. This has been mainly achieved through general laws protecting the environment, public participation and access to information laws, and/or Environmental Impact Assessment and Strategic Environmental Assessment laws; and in particular thanks to the available mechanisms for public participation and consultation under the relevant domestic legislation.

(v) Final decision

The Barcelona Convention does not include any requirement regarding the final decision on the proposed activity or its transmission to the affected Parties that would be similar to those under the Espoo Convention (article 6).

Only, the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf (**Offshore Protocol**), in its Article 25, requires the Contracting Parties to “inform one another directly or through the Organization of measures taken, of results achieved and, if the case arises, of difficulties encountered in the

*application of the Protocol*". However, this general requirement does not specifically refer to environmental impact assessment processes.

### **1.3.2. Strategic Environmental Assessment requirements in the Barcelona System**

In the present and following paragraphs are reported the detailed UNECE analysis of the consistency between what is provided for by the SEA Protocol with respect to the Barcelona system, in order to then be able to identify in a punctual way which aspects need special consideration and therefore be included in the following proposals.

The **Barcelona Convention** and **six out of seven of its Protocols** (other than the general principles and requirements specified in the chapter on environmental impact assessments, which are referenced here) do not request the Contracting Parties to undertake strategic environmental assessment.

The following analysis focuses on the Protocol on Integrated Coastal Zone Management in the Mediterranean, the only one that contain provisions that bear certain similarities with those of the Protocol on Strategic Environmental Assessment.

However, the **Integrated Coastal Zone Management Protocol** to the Barcelona Convention requires Contracting Parties to undertake a strategic environmental assessment procedure, tailoring it to the needs of the specific sector being regulated. In particular, **Article 6** on general principles also includes one to establish a preliminary assessment for the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones; and then **Article 19(2)** requires the Parties to formulate, as appropriate, a strategic environmental assessment of plans and programmes affecting the coastal zone, taking into consideration the specific sensitivity of the environment and the interrelationships between the marine and terrestrial parts of the coastal zone, as well as the cumulative impacts on the coastal zones and their carrying capacities.

It is also worth mentioning the **Common Regional Framework for the implementation of the Integrated Coastal Zone Management in the Mediterranean**, adopted by Decision IG.23/7 in 2017<sup>11</sup>, which is the strategic instrument meant to facilitate the implementation of the Integrated Coastal Zone Management Protocol; as well as the **Conceptual Framework for Marine Spatial Planning in the Mediterranean**, adopted with the same Decision. They foresee the application of strategic environmental assessment to support the implementation of Integrated Coastal Zone Management principles (Article 6 of the Integrated Coastal Zone Management Protocol), including the need to take into account all elements of natural and cultural systems in an integrated manner; the application of the ecosystems approach to spatial planning on the preparation of policies and strategies; the timely participation in decision-making, ensuring that economic activities minimize the use of natural resources and take into account the needs of future generations.

It should be also noted that the **already cited Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States**<sup>12</sup> drafted under the **Integrated Coastal Zone Management Protocol**, contain recommendations for the implementation of transboundary procedures that are coherent with the provisions of the Protocol on Strategic Environmental Assessment. As already clarified, these guidelines have been used solely for training purposes to date.

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<sup>11</sup> The Common Regional Framework for the implementation of the Integrated Coastal Zone Management in the Mediterranean was adopted by Decision IG.23/7, COP 20, Tirana, Albania, December 2017.

<sup>12</sup> See the draft *Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States*, Chapter 4, pg 8.

Considering these binding and non-binding provisions, it may be argued that the Protocol on Integrated Coastal Zone Management to the Barcelona Convention includes provisions that require the Contracting Parties to undertake environmental assessments, including the strategic environmental assessment of plans and programmes affecting the coastal zone, referring to the geographical area of the whole maritime waters of the Mediterranean Sea (Barcelona Convention, Article 1), including the transboundary aspects. However, it does not specify the exact plans and programmes to which it applies in such a clear and binding manner as stipulated in the Protocol on SEA.

The national reports submitted by the Contracting Parties through the reporting system (Article 26 of the Barcelona Convention), on the biennium 2018/2019 indicated that Strategic Environmental Assessment laws and regulations were in place, thereby activities or projects which are likely to cause a significant adverse impact on the marine environment are subject to a Strategic Environmental Assessment.

Nevertheless, strategic environmental assessments are predominantly used in the European Union member states and candidate countries, even though their importance is recognized by all the Contracting Parties. As highlighted in the Guidelines, *"available reports/relevant documents do not, however, focus on transboundary aspects; therefore, limited information is available on how the Mediterranean countries cooperate on notification, exchange of information and consultations in assessing transboundary impacts of projects, plans or programmes"*.

#### 1.3.2.1. **Maritime Spatial Planning**

A separate chapter deserves the theme of **Maritime Spatial Planning (MSP)**, since it is likely to have significant effects on the environment and thus subject to Strategic Environmental Assessments. Therefore, SEA is an integral part of the MSP process as an essential tool for strategic consideration of environmental effects in the preparation and adoption of "programs" and maritime spatial plans, providing an assessment of plan alternatives and mitigation measures. In addition, SEA is an operational application of the ecosystem-based approach, as it frames the assessment of significant effects on species and habitats important for conservation.

As is well known, the European Union - which together with 8 Mediterranean Member States is part of the Barcelona System - has adopted two specific directives on the subject: the **Maritime Spatial Planning-MSP Directive** (Directive 2014/89/EU of 23 July 2014 establishing a framework for maritime spatial planning), and the **Strategic Environmental Assessment (SEA) Directive** (Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment) which sets out a procedure that must be undertaken when assessing a plan or programme to which the procedure applies.

Within the framework of the Barcelona Convention, the Contracting Parties have adopted specific decisions and declaration on the subject, which have further strengthened and implemented the provisions of the Convention and its Protocols.

In particular, after the **Tirana Ministerial Declaration of 19 December 2017** (UNEP(DEPI)/MED IG.23), which welcomed and agreed to further develop the two key instruments of Common Regional Framework for Integrated Coastal Zone Management and the Conceptual Framework for Marine Spatial Planning<sup>13</sup>, it is worth mentioning the **Naples Ministerial Declaration of 4**

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<sup>13</sup> Tirana Ministerial Declaration of 19 December 2017 (UNEP(DEPI)/MED IG.23, where we can read that the COP: *"Welcome the work done on the development of the Common Regional Framework for Integrated Coastal Zone Management and the Conceptual Framework for Marine Spatial Planning and agree to further develop those two key instruments with a view to ensuring and promoting the sustainable use of coastal and marine resources, achieving Good Environmental Status in the Mediterranean and contributing to its sustainable development through enhanced planning and management approaches"*.

**December 2019** (UNEP/MED IG.24/22), in which, in its point 10, the crucial role in the Mediterranean of the MSP is reaffirmed and recognized together with the ICZM in promoting sustainable and synergistic use of marine-coastal areas, together with research and innovation<sup>14</sup>.

Thus, the Contracting Parties recognize, support and promote the adoption and application of the MSP, as a planning tool that implies and includes the Strategic Environmental Assessment as an element inherent in its process, as the drafting of maritime space management plans simultaneously request the implementation of the Strategic Environmental Assessment procedure.

Concept that are strongly reconfirmed by COP 22, with **Decision IG.25/1** - UNEP/MAP Medium-Term Strategy 2022-2027, in particular within Programme 4: towards the sustainable use of coastal and marine resources including circular and blue economy.

### 1.3.2.2. SEA transboundary procedure requirements

#### (i) Notification of and consultation

The **Barcelona Convention** and **six out of seven of its Protocols** do not provide any indication of the notification and consultation requirements under the strategic environmental assessment procedure.

Only the **Protocol on Integrated Coastal Zone Management**, in its Article 29 (Transboundary Environmental Assessment), refers to these provisions and requires the Parties, before authorizing or approving plans and programmes that are likely to have a significant adverse effect on the coastal zones of other Parties, to cooperate by means of notification, exchange of information and consultation in assessing the environmental impacts of such plans and programmes. To this end, the Parties are called to cooperate in the formulation and adoption of appropriate guidelines for the determination of procedures for notification, exchange of information and consultation at all stages of the process.

The Parties are also called, where appropriate, to enter into bilateral or multilateral agreements for the effective implementation of the provisions of the Protocol.

It is also worth noting that the cited **Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States** contain specific recommendations on notification (see Box 4) and consultation (see Box 5).

**Box 4: Excerpts from Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States drafted under the Integrated Coastal Zone Management Protocol**

The guidelines cover the following aspects on notification procedures.

#### **6.2 BASIC REQUIREMENTS**

The country of origin should notify the affected country/countries as early as possible, but no later than when informing its own public. Notification is necessary unless significant adverse transboundary impacts of the considered plan or programme can be excluded with certainty. Timely notifications are important in order to engage the affected country from the early stages of the process and to enable a possibility to capture the most relevant and up-to-date information that may be needed for the assessments.

<sup>14</sup> UNEP/MED IG.24/22, Naples Ministerial Declaration, point 10. “*We reaffirm that effective Integrated Coastal Zone Management (ICZM) and Marine Spatial Planning (MSP) in the Mediterranean, in conjunction with sustainable consumption and production approaches, are crucial to promote sustainable and synergic uses of marine and coastal areas and resources, together with research and innovation*”.

Potentially affected countries have the right to request notification (if the country of origin fails to notify them). This right should not be limited to cases of mandatory strategic environmental assessment (as stipulated in the applicable regulations) but should also apply to cases where screening is conducted to determine the need for the assessment. If there is any doubt as to the absence of significant adverse environmental effects, obligation to notify/the right to request notification must be observed and the assessment procedures be carried out.

As a minimum, notification should contain:

- Information on the draft plan/programme, including any available information about possible transboundary impacts.
- Information about the nature of the decision to be taken/decision-making procedures.
- Period within which the notified country can confirm its intention to participate in the decision-making.

Notification should be sent to the responsible (competent) authority for the strategic environmental assessment procedure, which may coincide with official points of contact for the Protocol on Strategic Environmental Assessment (in the Parties to UNECE agreements). Barcelona Convention and/or Integrated Coastal Zone Management Protocol Focal Points (as appropriate) should be informed of the notification, and for the Barcelona Convention Contracting Parties that have not ratified the UNECE agreements, they may act as a principal recipient of the notification together with nationally designated competent authorities.

Notification should be translated into the language used in the affected country; alternatively, English, French, Arabic or other languages shared by the concerned countries could be used. The language of notification and of any subsequent exchange of information should be agreed among the concerned countries at the onset of the process (or through the applicable bilateral or multilateral agreements). A cost-effective approach should be applied: language barriers should not hinder effectiveness of the transboundary procedures (i.e., all the key information in all the assessment steps subject to transboundary cooperation should be translated) whereas translation costs should be kept as low as possible.

The affected countries should respond to the notification in a timely manner, to state their intention to participate in the transboundary procedure or to decline participation. Providing a timely negative response is important for the country of origin to proceed with national procedures without delay. Absence of a timely response may be understood as a lack of interest to take part in the transboundary procedure.

The competent authority of the country of origin may send a request to the competent authority of the affected country to provide reasonably obtainable information relating to the potentially affected environment, once the affected country has confirmed its participation. The affected country should provide such information promptly.

#### **GOOD PRACTICE RECOMMENDATIONS**

- (a) Informal pre-notification contacts (if formal arrangements are not in place) are highly recommended.

- (b) It is preferred that affected countries are notified before scoping takes place.
- (c) The country of origin may start preliminary consultations (unless bilateral/multilateral agreements on administrative arrangements are already in place), with the affected countries that have responded positively to the notification, to plan and agree on the next steps, including, *inter alia*: provision of relevant documentation; definition of the time, form and number of consultations; identification of the persons responsible and their contact information. In this process, it is helpful to share among concerned countries concise information on the national strategic environmental assessment procedures, including on the key steps for consultation and decision-making, and on minimum public consultation time period requirements.
- (d) At the request of the country of origin, the potentially affected country may also provide information on the socioeconomic (in addition to the environmental) situation in the areas that may be affected by a significant adverse transboundary impact.
- (e) The setting up of a dedicated webpage with information on the strategic environmental assessment process, highlighting key bodies that need to be involved/contacted for transboundary consultations, including NGOs, is recommended.
- (f) The list of points of contact for notification (including Protocol on Strategic Environmental Assessment points of contact and national competent authorities in the countries that are not Parties to UNECE agreements) should be kept on the Barcelona Convention website/in the MAP Info-system.

**Box 5: Excerpts from Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States** drafted under the **Integrated Coastal Zone Management Protocol**

The guidelines cover the following aspects on consultation procedures.

**6.4 BASIC REQUIREMENTS**

Through their competent authorities, countries participating in the transboundary environmental assessments need to jointly ensure that a possibility for effective participation of the relevant authorities and the public is provided in the procedure. Important questions to be agreed upon in order to ensure effective consultations include (but are not limited to): distribution of tasks and responsibilities among concerned countries; ways and means to disseminate information and ensure its accessibility; what constitutes a reasonable timeframe to allow for submission of comments; how to inform the public and authorities of the affected country; and what are the appropriate means and timeframes to provide for public participation.

The concerned countries should ensure that the public of the country of origin and of the affected country is informed and provided with opportunities for commenting on or objecting to the proposed project, plan or programme. The concerned countries are responsible for distributing the strategic environmental assessment documentation to the authorities and public in areas likely to be affected and for submitting

any comments to the competent authority in the country of origin. The comments should be submitted within a reasonable timeframe and before the final decision is made.

Concerned countries should ensure that the public in the areas likely to be affected is informed in a timely, adequate and effective manner, has access to the assessment documentation and an opportunity to provide comments, in writing or during public hearings. The following requirements should be met to guarantee effective public hearings (which are usually the main form of public consultations):

- An agreement between concerned countries is needed on whether public hearings should be held in the country of origin, in the affected country or in both. The country of origin can hold public hearings on the territory of the affected country on the basis of bilateral and multilateral agreements or ad hoc arrangements. Another option is to organize public hearings in the country of origin.
- Translation/interpretation needs to be provided whenever necessary.
- The relevant authorities, project proponents or plan/programme developers and teams tasked with preparation of environmental assessment documentation should all be present.

Outcomes of the consultations, including oral and written comments and agreements reached, should be noted properly for the purpose of taking them into account in the final decision-making by the country of origin.

The country of origin ensures that comments received from the public and the outcomes of the consultations among the authorities are duly taken into account in the final decision on the proposed plan or programme.

#### **GOOD PRACTICE RECOMMENDATIONS**

- (a) Timely and effective transboundary consultations should preferably be supported through bilateral or multilateral agreements, potentially also at sub-regional level.
- (b) Prior knowledge of different consultation procedures in the concerned countries may support the design of an effective consultation program.
- (c) The country of origin should initiate early consultations with the affected country to allow enough time to the latter to identify effective tools (including media) to engage the public and for the appropriate format of information to be provided.
- (g) Active involvement of the public should be encouraged by providing clear time-frames for public consultations, appropriate announcements/dissemination of information, and provision of good quality/sufficient level of information in an appropriate format. In preparing public consultation schedules, information on national/public holidays and events that could influence consultations should be taken into account.

Considering the above it may be concluded that, while the Barcelona Convention does not provide any requirement, the **Protocol on Integrated Coastal Zone Management to the Barcelona Convention** requires the Contracting Parties to promote cooperation in strategic environmental assessment procedures through notification, exchange of information and consultation in a manner which is broadly coherent with the requirements of the Protocol on Strategic Environmental Assessment without

nevertheless defining the content and the specific arrangements for such notification at the level of detail stipulated in its article 10(1) and 10(2).

Nevertheless, the Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean States, elaborated within the framework of the **Integrated Coastal Zone Management Protocol**, contain more detailed provisions that could be used in a voluntary basis to facilitate this process.

(ii) Environmental Report

The **Barcelona Convention** and its **Protocols** do not provide any indication of the preparation and contents of the environmental report under the strategic environmental assessment processes.

(iii) Public participation

**Article 15(1)(2)** of the **Barcelona Convention** requires the Contracting Parties to “*ensure that their competent authorities shall give to the public appropriate access to information on the environmental state*” and “*on activities or measures adversely affecting or likely to affect it*”; and that the participation of the public in relevant decision-making processes is ensured.

Nonetheless, the **Barcelona Convention** and **six out of seven of its Protocols** do not provide any indication on a specific approach to public participation under the strategic environmental assessment process.

Only the **Protocol on Integrated Coastal Zone Management**, listing the general principles in **Article 6(d)**, requests Parties to implement the Protocol guided by the principle, among others, of “*appropriate governance allowing adequate and timely participation in a transparent decision-making process by local populations and stakeholders in civil society concerned with coastal zones*”. Moreover, **Article 14**, which is dedicated to “Participation”, states that the Parties shall ensure appropriate participation in the phases of the formulation of coastal and marine strategies, plans and programmes, providing information in an adequate, timely and effective manner, and ensuring the availability to any stakeholder of mediation or conciliation procedures and a right of administrative or legal recourse.

It may be concluded that the Barcelona Convention and one out of its seven Protocols foresee public participation requirements in a manner which is broadly coherent with the Protocol on Strategic Environmental Assessment. Nevertheless, they do not give the same level of details as stipulated by the Protocol on Strategic Environmental Assessment, article 8, Annex V and article 10(4).

(iv) Final decision

The **Barcelona Convention** and its Protocols do not include any requirement regarding the final decision or its transmission to the affected Parties that would be similar to those under article 11 of the Protocol on Strategic Environmental Assessment.

#### **1.4. Mediterranean countries not bound by the Espoo Convention and its SEA Protocol**

In this section, are analysed the particular aspects with regard to transboundary EIA/SEA in the Mediterranean countries that are not bound by the Espoo Convention and its SEA Protocol.

The analysis then considers those countries that although they are parties to the Barcelona Convention, are not parties to the Espoo Convention and its SEA Protocol, nor to the European Union, where the directives and regulations on EIA and SEA apply, with forecasts and thus obligations also regarding transboundary aspects.

It should be noted that the EIA/SEA environmental assessment regulations in countries outside the area of application of the European Union and UNECE instruments as a rule do not contain provisions on how the procedures should be conducted in case of transboundary impacts<sup>15</sup>.

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<sup>15</sup> Guidelines for environmental assessment in a transboundary context on the procedures for notification, exchange of information and consultation among the Mediterranean states under the Integrated Coastal Zone Management Protocol.



#### **1.4.1. Mediterranean countries that are not bound by the Espoo Convention**

The 1991 **Espoo Convention on Environmental Impact Assessment in a Transboundary Context**, in force since 1997, applies to (currently) 45<sup>16</sup> Parties, including the European Union. All but 10 Mediterranean States (Algeria, Egypt, Israel, Lebanon, Libya, Monaco, Morocco, Syrian Arab Republic, Tunisia, and Türkiye) are currently Parties to the Espoo Convention.

Considering the international legal framework of the environmental impact assessment between countries, we have already seen that the Espoo Convention contains the procedure for a wide range of proposed activities across the economic sectors that are likely to cause significant adverse transboundary impact. It requires to provide a “prior and timely notification and relevant information to potentially affected States” and to “consult with those States at an early stage and in good faith” on such planned activities.

The European Union, of which eight contracting parties to the Barcelona Convention are members, including France and Greece, has adopted legislation on environmental assessments, and in particular: the Environmental Impact Assessment Directive 85/337/EEC of 27 June 1985, amended several times (see Directives 97/11/EC, 2003/35/EC, 2009/31/EC, 2011/92/EU, 2014/52/EU), which is aligned with the Espoo Convention; and the Strategic Environmental Assessment Directive 2001/42/EC of 27 June 2001, which is aligned with the Protocol on Strategic Environmental Assessment.

#### **1.4.2. Mediterranean countries that are not bound by the SEA Protocol**

In force since 2010, the **Protocol on Strategic Environmental Assessment**<sup>17</sup> requires its contracting Parties to evaluate the environmental consequences of their official draft plans and programmes for a wide range of proposed activities across the economic sectors which are likely to have significant environmental, including health, effects (article 4).

The Protocol applies to (currently) 33<sup>18</sup> Parties, including the European Union. All but 12 Mediterranean States (Algeria, Egypt, France<sup>19</sup>, Greece<sup>20</sup>, Israel, Lebanon, Libya, Monaco, Morocco, Syrian Arab Republic, Tunisia and Türkiye) are currently Parties to the SEA Protocol.

It seems useful, for the purposes of this study, to recall the need to strengthen the application of the transboundary SEA also with regard to the implementation of MSP.

### **1.1.**

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<sup>16</sup> Up to date information on the status of ratification of the Convention is available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-4&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&clang=en)

<sup>17</sup> The full text of the key provisions of the Protocol on Strategic Environmental Assessment is presented in table 1, sheet 2, in annex I to the present document.

<sup>18</sup> Up to date information on the status of ratification of the Convention is available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-4-b&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4-b&chapter=27&clang=en)

<sup>19</sup> Signed May 21, 2003, not yet ratified.

<sup>20</sup> Signed May 21, 2003, not yet ratified.

## 2. Other international legal tools

### 2.2. The UNCLOS BBNJ Agreement

In order to better understand the evolution of the law also on the subject of environmental assessments, it is considered appropriate to make mention of the most recent legal tools adopted in the international forum.

Among these, due consideration should be given to the recent Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (the BBNJ Agreement), adopted in New York on 19 June 2023.

Its Part IV (Articles 27-39) is dedicated to environmental impact assessments (EIAs), establishing processes, thresholds, and other requirements, ensuring that EIAs are conducted and reported by parties.

The EIA envisaged in the BBNJ covers ocean areas outside national jurisdiction, strengthening the assessment and management of human activities.

In fact, it establishes innovative baseline requirements for the assessment and management of human activities, such as proposed geoengineering, deep-sea aquaculture, floating energy installations, etc., which are subject to detailed public notice and consultation provisions and will have to be managed to avoid, mitigate or prevent significant adverse impacts on the marine environment.

In addition, with regard to existing activities, the requirements under the BBNJ Agreement will help reform and strengthen the management of activities such as fishing, mining, shipping, and other activities that may result in significant impacts on the ocean.

Another point to note is that among the Mediterranean countries that are not parties to the Espoo Convention and its SEA Protocol (i.e. Algeria, Egypt, France, Greece, Israel, Lebanon, Libya, Monaco, Morocco, Syrian Arab Republic, Tunisia and Türkiye), some of them have already signed the BBNJ Treaty (France, Greece, Monaco and Morocco), with its part on environmental assessments, as shown in the following table.

Mediterranean Countries (parties to the Barcelona Convention) having signed BBNJ Treaty	Date of signature
Croatia	20 Sep 2023
Cyprus	20 Sep 2023
European Union	20 Sep 2023
<b>France</b>	20 Sep 2023
<b>Greece</b>	21 Sep 2023
Italy	22 Sep 2023
Malta	20 Sep 2023

<b>Monaco</b>	20 Sep 2023
<b>Morocco</b>	21 Sep 2023
Slovenia	20 Sep 2023
Spain	20 Sep 2023

According to international law, countries that have not yet ratified the international agreement, having signed it, are nevertheless required not to carry out actions that are clearly contrary to the content of the Agreement, including the provisions on environmental assessments.

### **3. Consultation phase**

In this Chapter are reported and analysed the findings and conclusions of the bilateral consultation phase with the Mediterranean countries that are not bound by the Espoo Convention and its SEA Protocol, and the regional meeting organised with the representatives and Focal Points of the Barcelona Convention Contracting Parties.

#### **3.2. Bilateral consultation with the Mediterranean countries that are not bound by the Espoo Convention and its SEA Protocol**

[TO BE COMPLETED]

#### **3.3. Legal analysis of the countries not Parties to the Espoo Convention and its SEA Protocol**

The legal analysis will focused on the 10 Mediterranean States that are currently not Parties to the Espoo Convention (Algeria, Egypt, Israel, Lebanon, Libya, Monaco, Morocco, Syrian Arab Republic, Tunisia, and Türkiye); as well as on the 12 Mediterranean States that are currently not Parties to the SEA Protocol (Algeria, Egypt, France<sup>21</sup>, Greece<sup>22</sup>, Israel, Lebanon, Libya, Monaco, Morocco, Syrian Arab Republic, Tunisia and Türkiye).

[TO BE COMPLETED FOLLOWING THE CONSULTATIONS AND VALIDATIONS BY THE COUNTRIES]

#### **3.4. Regional meeting with the Contracting Parties of the Barcelona Convention**

In order to finalize the Feasibility Study, a regional consultation meeting on the subject is scheduled to be held to present the study and collect recommendations.

[TO BE COMPLETED]

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<sup>21</sup> Signed May 21, 2003, not yet ratified.

<sup>22</sup> Signed May 21, 2003, not yet ratified.

#### **4. Proposals for the adoption of the transboundary EIA/SEA procedures by all Mediterranean countries**

##### **4.2. Justification, methodology and key findings**

The analysis of the legal and policy framework of the Barcelona System provides the basis for the drafting of the Feasibility Study, enabling the identification of the main elements of coherence but also dissonance between the principles and rules on Transboundary Environmental Assessments provided by the Espoo Convention and its SEA Protocol, and the Barcelona System, respectively, with a particular focus to the Mediterranean countries that are not bound by the Espoo Convention and its SEA Protocol.

Given that the European Union law - containing Directives on EIA (85/337/EEC of 27 June 1985, and further amendments) and SEA (2001/42/EC of 27 June 2001) that requires the assessment of maritime spatial plans prepared on the basis of Directive 2014/89/EU establishing a framework for maritime spatial planning - must be included in the national legislation of each EU Member State, EU that is also part of the Barcelona System; and referring to BC Decision IG.23/7 "Implementation of the Integrated Coastal Zone Management Protocol: Annotated Structure of ... Conceptual Framework for Marine Spatial Planning", in particular the strategic environmental assessment assume a role of an important tool for implementing the ecosystem-based approach in maritime spatial planning in the Mediterranean.

From the above analysis, it can be inferred that the contracting parties to the Barcelona Convention and its Protocols are called upon to recognize and apply the instrument of environmental assessments, now in the dual configuration of EIAs and SEAs, in the transboundary context as well.

In particular, considering the results of the analysis of the political and legal framework and related available instruments, comprising guidelines, analysed in Chapter 1, including aspects of the Mediterranean countries that are not parties to the Espoo Convention and its SEA Protocol, and based on the findings and conclusions of the national legal analysis (bilateral consultation phase and the regional meeting) described in Chapter 2, this chapter presents some proposals for the adoption of the transboundary EIA/SEA procedures by all Mediterranean countries, taking into account the recommendations of the regional consultation meeting, addressing comments made by UNEP/MAP.

##### **4.3. Proposals for the adoption of the transboundary EIA/SEA procedures**

The Barcelona Convention and its Protocols, as seen in the previous chapters, currently do not go beyond providing in principle for the application of environmental assessments, without providing detailed guidance on the process to be followed, in a homogeneous and coordinated manner, by all Contracting Parties. They may will provide not only by adopting the appropriate necessary legislation at the national level, but also by adhering to the existing international conventions on the subject, in particular the Espoo Convention, with its SEA Protocol, which has a rich system of tools to support implementation, such as guidelines, good practices, thematic working groups and periodic seminars; or, even in addition, enriching and supplementing the Barcelona Convention System by adopting a specific binding legal instrument providing for and regulating transboundary EIA and SEA, to be added to the protocols of the Barcelona Convention with a new Protocol specifically dedicated to transboundary EIA and SEA.

The following outlines the Draft steps and measures to be taken for the introduction and adoption of transboundary EIA/SEA procedures throughout the Mediterranean region. This is a preliminary and indicative list of options developed in the framework of the study and which will be revisited and adjusted as needed, following consultation with Contracting Parties.

Options, even in combination among them, to be done through:

1. Invitation of the CPs that had not yet done so to adhere to the relevant international instrument, i.e., the Espoo Convention and its SEA Protocol, providing for a Mediterranean linkage mechanism within the Barcelona System;

2. Updates the Guidelines that refer to the existing legal and policy framework for the application and implementation of the transboundary EIA and SEA procedures by all Mediterranean countries under the Barcelona System.
3. Amendment of the existing Barcelona Convention to include a dedicated article to introduce the transboundary EIA and SEA procedures.
4. Amendment of the existing Protocols of the Barcelona Convention to include a separate Title/Chapter containing articles dedicated to the transboundary EIA and SEA procedures.
5. A dedicated separate Protocol on Transboundary EIA and SEA procedures. Adoption of a specific Protocol on transboundary EIA and SEA, reflecting the procedures and degree of detail provided by the Espoo Convention and its SEA Protocol, adapted as necessary to the characteristics of the Mediterranean.
6. Implementation of transboundary CAMP projects on transboundary EIA/SEA.

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<sup>i</sup> See the text at text at: <https://unece.org/environment-policy/public-participation/aarhus-convention/text>