

Jerzy Jendroska, Dmytro Skrylnikov
General Guidance

on resolving a possible systemic inconsistency between the
Espoo Convention and the environmental assessment within
the framework of State ecological expertise (OVOS/expertiza)
in Eastern Europe, the Caucasus and Central Asia

**Working Group on Environmental Impact
Assessment and Strategic Environmental
Assessment**

Second meeting ,Geneva, 27–30 May 2013

Issues to be addressed

- Guidance project
 - Background and legal basis
 - Purpose
 - Methodology
- Description of the situation
 - Genezis
 - OVOS/expertiza system
 - Specific issues of concern
- Recommendations
 - General recommendations
 - Specific recommendations
- Elements for bilateral agreements

Background and legal basis

- Background
 - Cases at the Implementation Committee (IC)
 - Respective opinions of IC
- Legal basis
 - Report of IC to MOP
 - MOP decision IV/2 (review of compliance), annex II1, para. 24)

Purpose

- To **assist** Parties to the Convention in Eastern Europe, the Caucasus and Central-Asia in their compliance with their obligations related to
 - Designing the legal framework
 - Practical application of transboundary procedure

Methodology

- Recommendations based on
 - Opinions of IC (and also Aarhus ACC)
 - Decisions of MOP
 - Comments
- Methodology
 - Initial meeting – October 2012
 - Distribution of short questionnaire
 - Draft Guidance subject to wide commenting

Genesis – concept of Espoo

- Based on Western EIA concept
 - designed for market economy
 - assuming well established development control
- Procedural and process oriented
- Obligations put on authorities

Genesis – concept of OVOS/expertiza

- Traditions of OVOS/expertiza systems in Eastern Europe, the Caucasus and Central Asia
 - Designed for centrally planned economy
 - Substance oriented
- Two separate legal regimes
 - OVOS - responsibility of developer
 - Expertiza(s) - responsibility of various agencies

Issues of concern

- Activities covered
- Scope of assessment
- Regulatory control
- Public participation
- Final decision
- Implementation of transboundary procedure under the Espoo Convention

Activities covered

- Theoretically broad regulatory control and extensive list of activities which require expertiza
 - more activities covered than Espoo Appendix I
- Usually only activities where construction is involved
 - no deforestation (or afforestation)
 - no intensive rearing of poultry or pigs

Scope of assessment

- no individual scoping (usually)
- no clear requirement for
 - „identification of gaps in knowledge and uncertainties”
 - locational alternatives
- limited scope of alternatives assessed in practice

Regulatory control

- Two separate processes
 - OVOS
 - expertiza
- Separate control at expertiza stage
 - environmental, sanitary etc
 - in some countries - integrated expertiza
- No single „competent authority”
 - responsible for the entire procedure
 - for „final decision”

Public participation

- OVOS stage

- responsibility of the developer
- no clear procedures for notification and hearings
- limited availability of EIA documentation
- in practice rather propaganda than participation

- Expertiza

- only non-mandatory „public expertiza”
- no public consultation in practice
- no clear requirement to take into account **outcomes of**

Final decision

- No clear-cut final decision
 - who takes it?
 - in which legal form?
- Substance of final decision –
 - conditions for authorisation in final OVOS Report?
 - no reasons and considerations
 - No clear requirement to take into account outcomes of OVOS
- No requirement to announce it

Transboundary procedure

- Screening
 - no precise screening mechanism
 - authorities involved late in the procedure
- No clear transboundary procedure
 - when Party of origin (who and when notifies?)
 - when affected Party (who is responsible?)
 - Espoo convention applied directly?
- No scoping
- OVOS Statement (zajavlenije) vs OVOS Report (otchiot)
- No clear „final decision”

Conclusions

- Conceptual discrepancy between OVOS/expertiza systems and requirements of the Espoo Convention and Aarhus Convention)
- Risk of repeated cases at the Espoo Implementation Committee and Aarhus Compliance Committee
- Need for systemic approach

General Recommendations

- Need for a national framework
- Modalities for the legal framework and legal technique
 - Changes in existing OVOS/expertiza system
 - EIA law based on Western model
 - New model
- Principles

Specific recommendations

- Activities covered
- Scope of assessment
- Public participation
- Final decision
- Implementation of transboundary procedure under the Espoo Convention

Recommendations for bilateral agreements

- Need for careful identification of the systems involved
 - OVOS/expertiza or Western model
 - scoping
- Key elements
 - Notification
 - Language and translation
 - Public participation
 - Consultation under article 5
 - Final decision

Key recommendations

- Screening mechanism
 - list of projects for mandatory Espoo notification
- Environmental authorities involved in OVOS
 - declaration of intent
 - individual scoping
 - public participation
- EIA documentation

Key recommendations - cd

- Clear indication what is „final decision”
- Clear designation of competent authorities
 - for contacts under Espoo Convention
 - for issuing final decision
- Procedures (who does what!)
 - as Party of origin
 - as affected Party