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EIA elements in light of practical
experience in UNECE Region

Major legislative dilemmas for Implementing
the Espoo Convention and its Protocol on SEA in
the UNECE region and ways to address them in
national legislation

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Content

- List of activities
- Approaches to screening
- Scoping methods
- EIA Report

Activities

- Different names
 - Activities – Espoo Convention
 - Specific activities – Aarhus Convention
 - Projects – SEA Protocol and EIA Directive
- Lists of activities
 - 1 list (Espoo and Aarhus)
 - 2 lists (EIA Directive and SEA Protocol)

Definition of project

- Definition (art. 1.2.(a):
 - the execution of construction works or of other installations or schemes,
 - other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources
- Broad definition of „construction”
 - modernisation of existing road (C-142/07 CODA)
 - demolition works (C-50/09, Commission v. Ireland,)
- Other interventions - for example: afforestation or deforestation, storage of scrap iron, intensive fish farming
- Project = „proposed activity” under Aarhus and Espoo Conventions
- Changes and extension of lifetime

Projects subject to assessment – art.4

- Environmental assessment is required for projects likely to have significant effects on the environment
- Projects subject to EIA Directive are listed in Annex I and Annex II
 - Projects listed in Annex I – by definition are likely to have significant effects on the environment and therefore always require assessment
 - Projects listed in Annex II – Member States must determine (using screening methods and criteria listed in Annex III) if a project belonging to a category of projects listed in Annex II is likely to have significant effects on the environment and therefore assessment is needed

Espoo – Rivne case (EIA/IC/CI/4)

- The Committee considered that there could be many reasons why Parties to the Convention would decide that the final decision on a proposed activity should be issued only for a limited period of time. Among the reasons, the Committee could identify:
 - The risks associated with such proposed activity;
 - The changes in the state of the environment;
 - The changes in the density of population;
 - The possible effects on human health;
 - The advancement of scientific knowledge as well as relevant developments in the regulatory framework
 - The development of the state of art in relation to mitigation measures.
- Clearly then, when the limited period of time expired, the Party of origin would have to re-evaluate such reasons and make the decision to extend the initial period of time or not.

Espoo – Rivne case (EIA/IC/CI/4)

- On the basis of the above, it was the view of the Committee that the decision to authorize a proposed activity subject to the Convention, according to the national procedure, only for a limited period of time meant that any subsequent decision to extend that limited period of time, whether in the form of a new license or amendment or renewal of the existing one, would, under the Convention, be another decision of a competent authority to authorize or undertake a proposed activity, triggering obligations under the Convention. In that context it becomes less relevant whether it is a new activity or a major change to an activity.

Screening of Annex II projects

- Screening methods
 - Case-by case
 - Tresholds/criteria
 - mixed
- Screening criteria (Annex III)
 - Characteristics of projects
 - Location of projects
 - Characteristics of impact
- Screening determination („screening decision”)
 - Based on information provided by developer –Annex IIa
 - Determination – up to 90 days

Screening – approaches in different countries

- 1 list for mandatory EIA
- 2 lists
 - 1 list for mandatory EIA
 - 1 list for project subject to individual screening
- More categories
- No list – only individual screening

Scoping

- In EIA Directive –
 - necessary only if the developer so requests (art.5.2)
 - environmental authorities must be consulted
- In many Member States – mandatory element of EIA procedure
- For Annex II projects often combined with screening
- Procedural consequences
 - public participation provided (Aarhus)
 - transboundary procedure (Espoo)
 - TOR for EIA consultants

EIA documentation – art. 5 and Annex IV

- EIA report (misleading name before 20014– „information to be provided by the developer”)
- Quality control – art. 5.3
- Details in art.5.3 and Annex IV
 - a description of the project (site, design and size of the project);
 - a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
 - the data required to identify and assess the main effects which the project is likely to have on the environment;
 - a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen,taking into account the effects of the project on the environment
 - a non-technical summary

Quality control

- Approaches in different countries:
 - System of grading EIA/SEA reports by environmental authorities
 - Designation by authorities
 - Accreditation of EIA/SEA consultants
 - EIA/SEA Commissions
 - independent review
 - general requirements in legislation as to qualifications of EIA/SEA consultants
- Pros and cons of different approaches and relation to public tendering