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Place of EIA and SEA in development  
control and the role of authorities and  
other actors

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

- Origins and concept of environmental assessment
- Concept of tiering and alternatives
- Environmental assessment in international law
- Approaches to development control and place of SEA/EIA in decision-making
- Role of public authorities and other actors

# Origins and development of environmental assessment

- US National Environmental Policy Act of 1969
  - covers: plans, programs, policies, legislative proposals, concrete projects
  - key role of discussing alternatives
  - concept of tiering
- Currently in all developed environmental national frameworks
- International and supra-national (EU) framework in Europe
  - Harmonization of national procedures
  - Transboundary procedure

# Concept of environmental assessment

- Preventive tool related to planned activities which may have significant impact on the environment
- Scope
  - Environmental impact assessment (EIA):
    - individual projects
  - Strategic environmental assessment (SEA):
    - plans and programs
    - *policies*
    - *Legislation*
  - Habitat/biodiversity assessment
    - EIA and SEA limited to impact on habitat

# Role of environmental assessment

- collection of information
- consideration of alternatives
- integration of environmental concerns with economic, social etc concerns
- avoidance of irreversible effects
- procedural tool
  - advisory vs decisive role
  - specific situation in case of significant adverse effect on integrity of Natura 2000 site

# Alternatives

- For the activity
  - For example: highways or railroads
- Within the activity
  - Locational (northern or southern bypass)
  - Technological (concrete or asphalt)
  - Mitigation measures (speed limit or noise screen)
- Variant „0”
- Variant „the most ecological”

# Concept of „tiering”

- Transport policy (SEA)
  - highways or railroads
- National highway program (SEA)
  - locational alternatives
- Regional/local land use plan (SEA)
  - locational alternatives
- Stretches (EIA)
  - technological and mitigation alternatives

# Procedural steps

- Screening and informing about its results
- Stages
  - scoping
  - submitting assessment documentation
  - **taking into account the results of assessment in the decision**
  - informing about the decision together with reasons
- Obligatory elements (at various stages)
  - consultation with environmental authorities
  - public participation
- Transboundary consultation (if applicable)



# SEA and EIA

- Procedural similarities
- Scope of assessment
  - Physical impact in EIA vs achievement of environmental objectives in SEA
  - Larger scale and less precise data
- Role in the procedure: developers in EIA vs planning agencies in SEA (see General Guidance..)
- Legal framework
  - One law with separate schemes for EIA and SEA – **YES**
  - One scheme for EIA and SEA – **NO**

# Environmental assessment documentation

- Different names (report, statement, study)
- Obligatory elements
  - Description of activity
  - Description of environment to be affected
  - Alternatives
  - Description of impact
  - Mitigation measures
  - Gaps in knowledge
  - Non-technical summary

# Environmental assessment in international law - general principles

- General principles of international law
  - Trail Smelter case - arbitration tribunal
  - Nagymaros-Gabcikovo case – ICJ
  - Pulp Mill case - ICJ
- Rio Declaration on Environment and Development
  - Integration principle – Principle 4
  - Environmental Assessment – Principle 17
  - Responsibility for transboundary environmental damage - Principle 2
    - Transboundary procedure (Principles 18 and 19)

# Environmental assessment in international law

- Application
  - mostly agreements concerning use of natural resources
- 2 specific agreements:
  - Convention on Transboundary EIA (Espoo) 1991
  - SEA Protocol of 2003
- Role
  - harmonization of national procedures
  - transboundary procedure

# Teheran Convention

- Article 13. Environmental Emergencies
  - 2. For the purpose of undertaking preventive measures and setting up preparedness measures, the Contracting Party of origin shall identify hazardous activities within its jurisdiction, capable of causing environmental emergencies, and shall ensure that other contracting Parties are notified of any such proposed or existing activities. The Contracting Parties shall agree to carry out environmental impact assessment of hazardous activities, and to implement risk-reducing measures.
- Article 17. Environmental Impact Assessment
  - 1. Each Contracting Party shall take all appropriate measures to introduce and apply procedures of environmental impact assessment of any planned activity, that are likely to cause significant adverse effect on the marine environment of the Caspian Sea.

# Development of legal framework in Europe

- EIA Directive 1985 – impact of projects
- Espoo Convention 1991 – transboundary impact of projects
- Habitat Directive 1992 – impact of plans, programs and projects on protected habitats (Natura 2000 sites)
- SEA Directive 2001 – impact of plans and programs
- Kiev SEA Protocol 2003 - transboundary impact of plans and programs

# Development control

- Strategic decisions (SEA)
  - Policies
  - Programs
  - Plans
- Individual decisions permitting specific activities/projects in specific location (EIA)

# EIA and development control procedures in EU - typical examples

- Integration into existing development consent procedures
  - Zoning/siting decisions and building/construction permits
  - Examples: Britain, Germany, Poland (before 2009)
- Special procedures
  - Environmental (EIA) decisions
  - Examples : Bulgaria, Czech Republic, Hungary, Romania, Slovakia, Lithuania, Poland (since 2009)



# Development control procedures for specific projects - typical structure in EU

- EIA decision
- Siting decision/planning permission
- Construction/building permit
- Pollution control (IPPC) permit and/or resource use decisions (e.g. water permit, mining license, nuclear permit)
- Cases
  - multiple decision-making (C-416/10, Križan)
  - main and implementing decision - C-201/02 (Delena Wells)
  - need for repeating EIA - Crystal Palace/White City (C-508/03), Barker (C-290/03)

# Decision-making and role of public authorities

- Strategic decisions (SEA)
  - Planning authority – competent to adopt strategic document
  - Environmental/health authorities
- Specific projects (EIA)
  - Competent authority – to grant development consent
  - Environmental/health authorities

# Developer and competent authority in EIA

- (b) „developer” in EIA
  - the applicant for authorisation for a private project or the public authority which initiates a project
- (f) "competent authority,, - authority or authorities
  - which the Member States designate as responsible for performing the duties arising from this Directive (EIA Directive)
  - entrusted by a Party with decision-making powers regarding a proposed activity (Espoo Convention)
  - Usually: local or regional authorities with general competence for urban development/construction, sometimes: specialised authorities for energy, resource use, occasionally specialised environmental authorities

# Development consent -

- Definition (art. 1.2 (c) EIA Directive) - development consent' means
  - the decision of the competent authority or authorities which entitles the developer to proceed with the project
- Development consent =
  - „final decision” (Espoo)
  - „decision on whether to permit proposed activities” (Aarhus)
- Must be:
  - Binding (Case 96/81 Commission v. Netherlands)
  - No tacit agreement -C-360/87 and C-230/00 (EC vs Belgium)

# Development consent decision – art.8 – 9a

## EIA Directive

- Reasoned conclusion (validity- art.8a.6.)
- Due account taken of the results of assessment
  - EIA report
  - Consultation with environmental authorities
  - Transboundary consultation
  - Public participation
- Need for statement of reasons
- Need to inform and make decision available to
  - the public and authorities concerned
  - affected Parties