

EaPGREEN

Partnership for Environment and Growth



This project is
funded by the EU

SEA PROTOCL AND ITS PROVISIONS TO BE INTEGRATED IN THE LAW ON EIA AND EXPERTISE

DR. ELENA
LAEVSKAYA

EU SEA DIRECTIVE AND ITS IMPLEMENTATION PRACTICE/LESSONS FROM PROGRESSIVE AND REGRESSIVE EXPERIENCES

DR. GOR
MOVSISYAN

INTERNATIONAL LEGAL EXPERTS TO THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE



General information

- Armenia has made considerable efforts towards implementation of Protocol on SEA (**Strategy on the introduction of the Protocol on SEA (2006), RA Law on EIA and expertise (2014)**)

- Reviews:

- Review of legislation of Armenia in the light of implementing the provisions of Protocol on SEA (October, 2014),
- Assessment of RA Law draft on EIA and expertise vis-à-vis the Espoo Convention (May 2014)

- Conceptual approaches towards the improvement of Armenian legislation on EIA and expertise (March 2015)

- Additional information

- Overview of legislative and administrative reforms for the purpose of implementing SEA in the countries of Eastern Europe and Caucasus (2015)
- General Guidance for Developing SEA Framework(2015)

SEA according to Protocol on SEA

SEA means

- the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme (art. 2)

EIA and SEA

Similarity of the procedure (assessment), but many differences, in particular, :

Objects (private and public projects concerning a specific type of activities – EIA, plans and programs/strategical documents - SEA)

The role in the procedure (the developers of the projects concerning a specific type of activities-EIA, state authorities/organizations– SEA)

The scale of the assessment (physical impacts on the environment– EIA, reaching the goals of environmental protection –SEA)

The scale of impact (macro level - SEA, micro level, as a rule, local – EIA)

The level of analysis (scale is greater, media-specific data are lesser – SEA, the scale is smaller – EIA) and etc.

Principle for legal regulation

A law having as different structural parts for EIA and SEA-**Yes**

A law with an identical scheme for SEA and EIA – No

SEA	EIA
Applied to	
strategic documents(plans, <u>programmes, strategies</u>)	specific activities (concrete individual projects)
Should be carried out by	
<p>by public authorities responsible for preparation of a strategic document</p> <p>NB! does not apply to strategic documents prepared by private persons or companies.</p>	individual persons, private companies or public bodies responsible for developing infrastructure projects
Subject to	
no additional permits by other governmental institutions	permits of competent governmental public authority

The elements of SEA

- **Preliminary assessment** (in relation to some plans/programs) (Art. 5 Screening)
- **Defining the scope of SEA** (the information to be included in the environmental report) (Art. 6 Scoping)
- **Preparation of environmental report** (assessing the possible significant environmental effects of plans and programs and their alternatives) (Art. 7 Environmental Report)
- **Public Participation** (at the different stages of SEA) (Art. 8 Public participation)
- **Consultations with environmental and health authorities** (in the course of different phases of SEA) (Art. 9, Consultation)
- **Transboundary consultations** (plans/programs that are likely to have significant transboundary impact) (Art. 10)
- **Consideration of findings and conclusions of the SEA procedure in the process of decision-making** (Art. 11)
- **Monitoring of implementation of plans and programs** (with due consideration of its environmental consequences) with a purpose of taking actions to improve the implementation (Art. 12,)

Contentions aspects of the RA Law on EIA and expertise

- The definitions of the Law (not always matching the definitions given in the EIA Convention and Protocol on SEA)
- A unified procedure for two distinct schemes EIA and SEA (not always possible to objectively reflect the stages of SEA procedure)
- An ambitious approach – according to the EIA Law all fundamental documents shall pass SEA (this is not what is required by the Protocol on SEA)
- Not always the role of health authorities is reflected in the process of SEA
- Some stages of SEA are missing (i.e., preliminary assessment, monitoring)
- Public participation (need to be during different phases)

Possible solutions

- To revise and clarify certain definitions,
- Structurally separate the procedures of EIA, SEA and expertise in the EIA Law or develop separate legal framework (currently they are regulated by the 3rd and 4th Chapters of the EIA Law)
- Relevant provisions should be developed taking into consideration the principles of EIA Convention and its SEA Protocol

Concerning the part on SEA

- Specify the objects of SEA (subjects – public authorities, general definition ``strategic documents``, sectors, relation to EIA projects, consideration of the concept of ``small areas at local level`` and ``minor modifications``, exceptions)
- Preliminary assessment and other phases of SEA, including monitoring
- The role of health authorities and the public
- The role of environmental authorities – expertise
- If objects, subjects and principles will be defined by the Law then the procedure can be laid down in the bylaw

Possible solutions

- After breaking the Law down into the part devoted to EIA, SEA, expertise, it is recommended to clarify the formulations of provisions of other Chapters of the EIA Law (Chapter 2 to consider the role of health authorities, Chapter 5 does not require thorough reconsideration, Chapter 6 needs revision to include more more detailed provisions having in regard the obligations arising from the Aarhus Convention)
- Only after the amendment of the EIA Law it is feasible to develop bylaws and amendments of other relevant legal acts. In case SEA will be mainly regulated by a Governmental decision then the development of the bylaw shall be a parallel process.

The EU SEA DIRECTIVE and its implementation practice/lessons from EU progressive and regressive experience

The EU SEA DIRECTIVE

- Principles of the Directive 2001/42/EC
- The process of transposition into the national legal orders
- Assessment of the Effectiveness of the Directive by the EU Commission;
 - ✓ Impact of the SEA on the planning process
 - ✓ Impact of SEA on the content of the plans and programs
 - ✓ Benefits of SEA
 - ✓ Opportunities for improvement

SEA in German PRACTICE

- The similarities of administrative legal procedures of Armenia and Germany
- Process and procedures
- Fields of common application of SEA
- The achievements and the challenges
- Impact on the quality of the policy choice: how is measured and what has been the impact
- What can be learned, and what should not be learned...

SEA in Dutch PRACTICE

- Fields of common application
- The achievements and the challenges
- Impact on the quality of the policy choice: how is measured and what has been the impact
- What can be learned, and what should not be learned...