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Introduction to the international legal framework of environmental assessment and conceptual differences between SEA and OVOS/expertise systems

Developing legislative framework for the environmental
impact assessment and strategic environmental assessment
in line with the UNECE Espoo Convention and its Protocol
on SEA in Belarus

Day 2 Training workshop
20 September 2016

Content

- Origins and concept of environmental assessment
- Concept of tiering and alternatives
- Environmental assessment in international law
- Espoo Convention
- SEA Protocol
- Conceptual differences with OVOS/expertise systems

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 ecran)
- Wariant „0”
- Wariant „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

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

Espoo convention - status and developments

- Adopted and signed in Espoo in 1991
 - entered into force 10 September 1997
 - status: 45 Parties
- First amendment - MOP II
 - definition of the public
 - open to non-UNECE countries
- Second amendment - MOP III
 - scoping
 - extended list of activities on Appendix I
 - review of compliance

When transboundary EIA is required?

- Espoo Convention requires transboundary EIA for
 - proposed activity
 - which may have impact
 - significant
 - adverse
 - transboundary
- Prior to a decision to authorize or undertake a proposed activity

General obligation

- Article 2.1 requires
- „*The Parties shall,*
- *either individually or jointly,*
- *take all appropriate and effective measures*
- *to prevent, reduce and control*
- *significant adverse transboundary environmental impact from proposed activities*”

Espoo obligations and sovereign rights

- „initiation of the transboundary procedure under the Convention does not prevent the Party of origin from undertaking such proposed activities after having carried out the transboundary procedure, provided that due account is taken of the transboundary procedure’s outcome in the final decision”
(EIA/IC/S/1, para 56 - ECE/MP.EIA/10)

Compliance mechanisms

- Review of compliance
 - reporting
 - compliance procedure
- Inquiry procedure
- Dispute settlements

Review of compliance

- Legal basis
 - MOP Decisions
 - Article 14bis (added in 2004 by MOP III)
- Implementation Committee
- Reporting system
- Compliance procedure

SEA Protocol

- Adopted in 2003 in Kiev to cover strategic decisions (plans, programs and policies)
- Content
 - mostly about national framework
 - transboundary procedure in Article 10
- Status
 - Parties - 30 (including EU)
 - in force since July 2010

UNECE SEA Protocol and EU SEA Directive

- Health issues in SEA Protocol
 - Substantive part of assessment
 - Role of health authorities
- Natura 2000 in SEA Directive
 - Not mentioned in the SEA Protocol
 - Impact on biodiversity required by art. 14 CBD
- Relation to projects subject to EIA

SEA and co-related legal instruments

- SEA and EIA
 - UNECE Espoo Convention
 - EU EIA Directive
- SEA and Habitat Assessment
 - Convention on Biological Diversity of 1992 – art. 14 and Guidelines adopted by COP 6 in the Hague in 2002
 - EU Habitat Directive
- SEA and Industrial Accidents
 - UNECE Convention on the Transboundary Effects of Industrial Accidents
 - EU Seveso III Directive

Obligations as Party of origin

- Related to national SEA procedure
 - Establishing a national SEA procedure in line with the SEA Protocol
 - Conducting SEA in practice in line with the SEA Protocol
- Related transboundary SEA procedure
 - notification
 - conducting transboundary SEA procedure in co-operation with the affected Party

Conceptual differences with OVOS/expertise systems

- Genesis of the problem
- Key conceptual differences
- Other differences

Genesis – concept of Espoo and Aarhus Conventions

- 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

Key conceptual differences common for EIA and SEA

- Legal character of environmental assessment
 - Procedural (international standard)
 - Substantive (OVOS/expertiza)
- Done by
 - Authority competent to make a decision /adopt plan
 - Technical experts – EIA/SEA consultants (OVOS/expertiza)
- Role of EIA/SEA report in the assessment
 - One of the elements of the assessment
 - Document summarising results of assessment (OVOS/expertiza)

Other differences

- Concept of environmental assessment
 - approach to assessment (only compliance with clear standards)
 - lack of individual scoping
- Differences specific for strategic documents
 - scope of documents covered
 - role of expertise conclusions