

Jerzy Jendrośka

**Concept of SEA, UNECE SEA Protocol and
other international standards**

*Towards Modern Strategic Environmental
Assessment (SEA) in Uzbekistan*

27 August 2018
Tashkent, Uzbekistan

Jerzy Jendrośka Ph.D

- Managing Partner at Jendroska Jerzmański Bar and Partners. Environmental Lawyers
- Professor (Adjunct) and Director, Postgraduate European Environmental Law Studies, Opole University
- Member of the Permanent Court of Arbitrage in the Hague (2001-2016)
- Member of the Implementation Committee of the Espoo Convention (2004-2017)
- Member of the Compliance Committee of the Aarhus Convention (since 2005)
- Member of the State Environmental Council in Poland (since 2014)
- Member of National EIA/SEA Commission in Poland (1992-2006)
- Drafter of EIA/SEA legislation in Poland
- Legal consultant for drafting EIA/SEA legislation in Balkan, Eastern Europe, Caucasus and Central Asia countries

Content

- Origins and concept of Strategic Environmental Assessment
- Development of international/EU legal framework
- Scope of application
- Key procedural steps

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

Concept of SEA

- Internationally recognised tool for integrating environmental and health concerns into strategic planning and decision-making.

Promotes

- sustainable development
- transition to a green economy
- accountability of planning and decision-making
- transparency

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

Concept of „tiering”

- Transport policy (SEA)
 - highways or railroads
- National highway program (SEA)
 - locational alternatives (general routes)
- Regional/local land use plan (SEA)
 - locational alternatives (precise routing)
- Sections of highway (EIA)
 - technological and mitigation alternatives

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..)
- Applies to
 - Public authorities
 - Developers (both private and publicly owned)

Development of legal framework applicable to UNECE Region

- EU EIA Directive 1985 – impact of projects
- UNECE Espoo Convention 1991 – transboundary impact of projects
- (Global) Convention on Biological Diversity 1992 – art. 14 and Guidelines adopted by COP 6 in the Hague in 2002
- EU Habitat Directive 1992 – impact of plans, programs and projects on protected habitats (Natura 2000 sites)
- UNECE Aarhus Convention 1998 – access to information, public participation in decision-making and access to justice in environmental matters
- EU SEA Directive 2001 – impact of plans and programs
- UNECE Kiev SEA Protocol 2003 - transboundary impact of plans and programs

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 - 26 (including EU)
 - in force since July 2010

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
 - only for projects
 - responsibility of developer
 - Expertiza(s) - responsibility of various agencies

SEA and traditional OVOS/expertiza system: key issues

- What is SEA
- Who is responsible for SEA
- Role of SEA Report
- Scoping
- Who must take „due account” of the results of SEA
- SEA and expertiza

Definition of SEA in SEA Protocol

- “Strategic environmental assessment” 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.

Definition of SEA in Belarus

Expertiza Law of 2016

- Стратегическая экологическая оценка — определение при разработке проектов государственных, региональных и отраслевых стратегий, программ (далее — программы), градостроительных проектов возможных воздействий на окружающую среду (в том числе трансграничных) и изменений окружающей среды, которые могут наступить при реализации программ, градостроительных проектов с учетом внесения в них изменений и (или)

Definition of SEA in the Code of Environmental Assessment in Georgia

- Strategic Environmental Assessment (SEA) – a procedure to examine, on the basis of appropriate studies and research, a potential impact of strategic documents envisaged by this Code, on the environmental and human health. SEA process includes scoping, preparation of a strategic environmental assessment report, carrying out of public participation and consultations and making a reasoned conclusion from examination of their results, taking them and any other information into account during adoption/approval of strategic documents.

Definition of SEA Report

- Defined in SEA Directive but not defined in SEA Protocol
- Relation to definition of SEA
- Concept of SEA
- Relation to
 - Public participation
 - Transboundary procedure (Case under IC Espoo Lithuania vs Belarus)

Definition of SEA Report in SEA Directive

- 'environmental report' shall mean the part of the plan or programme documentation containing the information required in Article 5 and Annex I;

Definition of SEA Report in Belarus Expertiza Law of 2016

- 12. Экологический доклад по стратегической экологической оценке — документ, содержащий сведения о результатах проведенной стратегической экологической оценки, необходимых мероприятиях по уменьшению и (или) предотвращению возможных воздействий на окружающую среду (в том числе трансграничных) и об изменениях окружающей среды, которые могут наступить при реализации программ

Definition of SEA Report in the Code of Environmental Assessment in Georgia

- Strategic environmental assessment report (SEA Report) – a document prepared by the planning authority and/or the consultant during the strategic environmental assessment process containing the information required by this Code.

SEA Directive - procedure

- Screening –art. 3.5-7
- Scoping – art.5.4
- Environmental report – art.5 and Annex III
- Consultation with environmental authorities – art.6
- Public participation – art. 6
- Transboundary procedure (if applicable) – art.7
- Decision-making and informing thereof– art. 8 and 9
- Monitoring – art. 10

Number of SEA procedures yearly

- Full SEA procedures
 - about 1500 yearly in Finland
 - about 400-500 yearly in UK and France
 - about 270 yearly in Austria
- Screening procedures
 - in Salzburg region (Austria) - about 300 yearly!

EU guidance and reports

- <http://ec.europa.eu/environment/eia/sea-support.htm>
- **REPORT FROM THE COMMISSION**
- **On the application and effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC)**

Brussels, 14.9.2009 COM(2009) 469 final