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Transboundary procedures

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Transboundary procedure in international law

- General obligation – in most treaties related to shared resources
- Details of transboundary procedure
 - Espoo Convention
 - SEA Protocol
 - Industrial Accidents Convention
 - *EIA Protocol to Teheran Convention*
 - *Guidelines on Transboundary EIA in Central Asia*
- Role
 - harmonization of national procedures
 - transboundary procedure
- EU law
 - EIA Directive
 - SEA Directive
 - IPPC/IED Directive
 - Seveso II Directive

Espoo Convention and SEA Protocol

- Espoo – project level
- SEA – strategic documents
- No Inquiry Commission in SEA protocol
- Transboundary procedure
 - Main focus of Espoo
 - Additional focus of SEA protocol
- Activities subject to transboundary procedure
 - Listed in Annex I plus possibility for other activities
 - No list – any strategic document

Synergies with other conventions

- UNECE Industrial Accidents Convention
- UNECE Aarhus Convention
- Conventions requesting EIA to be conducted
 - UNECE Water Convention
 - Convention on Biological Diversity of 1992 – art. 14 and Guidelines adopted by COP 6 in the Hague in 2002
 - Helsinki Convention (Baltic Sea)
 - Teheran Convention (Caspian Sea) – EIA Protocol

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

Definition of competent authority

- Under Art.1 (v) of the Espoo Convention
- „competent authority” means:
- *„national authority or authorities*
- *designated by a Party as responsible for performing the tasks covered by this Convention*
- *and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity”*

Implementation Committee

- “64. The provision in the Constitution to directly apply international agreements ... is considered by the Committee as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation. In particular, the national regulatory framework should clearly indicate:
 - (a) Which of the decisions for approving the activities should be considered the final decision for the purpose of satisfying the requirements of the Convention;
 - (b) Where in the decision-making process there is a place for a transboundary EIA procedure and who is responsible for carrying it out and by which means.”(decision IV/2, annex I).

Basic obligations

- General obligation
- Obligations as Party of origin
- Obligations as affected Party

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)

Obligations as Party of origin

- Related to national EIA procedure
- Related to initiating transboundary EIA procedure - notification
- Related to conducting transboundary EIA procedure in co-operation with the affected Party

Transboundary procedure

- Stage I initiation of the procedure
 - Notification
 - Confirmation from affected country
- Stage II – full procedure
 - Provision of information and documentation
 - Possibility for commenting (authorities and public)
 - Consultation
 - Final decision and Information about the decision
 - Post-project analysis (if applicable)

Initiation of the procedure

- „Normal” situation – procedure initiated by the Party of origin - - notification
- „Exceptional” situation – procedure initiated by the affected Party
 - In SEA Protocol and EIA and SEA directives – mandatory
 - In Espoo Convention – Inquiry procedure

Stage I - cd

- Screening
- Notification
- Response to notification
 - negative
 - lack of response or
 - response indicating no interest
 - positive response indicating interest in participating

Stage I

- Two possibilities
 - Art.3.7 - for activity listed in Appendix
 - alleged to have significant adverse transboundary impact
 - which was not notified
 - Art.2.5 - for activity not listed in Appendix I
 - alleged to have significant adverse transboundary impact
- Different legal character

Stage I - cd

- **Art.3.7 – activity from annex I**
 - need to clearly identify activity as listed in Appendix I
 - exchange of sufficient information
 - holding a discussion
 - possibility of referring the issue to an inquiry commission
- **Art.2.5 – activity not listed**
 - holding a discussion
 - criteria in Appendix III
 - agreement of both Parties needed

Notification

- **Timing (Art.3.1)**
 - as early as possible
 - no later than when informing its own public
 - before scoping (2nd amend - *Art 2.11*)
- **Target and form**
 - Points of contact
 - written form
 - Who notifies (Belarus/Ukraine)
- **Content (art. 3.2)**
 - format (ECE/MP/EIA/12)

Stage II

- Full transboundary EIA initiated as a result of:
 - request under Art.2.5 or Art 3.7
 - positive opinion of the Inquiry Commission
 - positive response to notification

Stage II - cd

- Information exchange (Art.3.5 and 6)
- Preparation of EIA documentation (Art.4 and App.II)
- Participation
 - public (Art.2.6, 3.8 and 4.2)
 - authorities (Art.4.2)
- Consultations (Art.5)
- Final decision (Art.6)
- Post-project analysis (Art.7)