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Concept of EIA, international obligations
and role of EIA Review

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Espoo convention - status and developments

- Adopted and signed in Espoo in 1991
 - entered into force 10 September 1997
 - status: 44 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

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

Obligations related to national EIA procedure

- Establishing proper framework for national EIA procedure
- Conducting in practice national EIA procedure

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).

Proper framework for national EIA procedure - I

- Article 2.2 and 2.3 requires to establish national EIA procedure before a decision to authorise or undertake any activity
 - listed in Appendix I, and
 - other activity if so agreed under Article 2.5
- Such national EIA procedure shall permit
 - public participation
 - preparation of EIA documentation described in Appendix II

Proper framework for national EIA procedure - II

- Within such procedure the opportunity to participate provided for the public of the affected Party must be equivalent to that provided to its own public (Article 2.6)
- Such national EIA procedure shall be so constructed to permit conducting transboundary EIA procedure and taking due account of its results (Article 6.1)

Conducting national EIA procedure in practice - I

- Party of origin must ensure that before taking a decision to authorise or undertake any activity
 - listed in Appendix I, and
 - other activity if so agreed under Article 2.5
- a national EIA is conducted in a way that allows to identify whether such activity is likely to cause a significant transboundary impact

Conducting national EIA procedure in practice II

- In case such activity is likely to cause a significant transboundary impact
- appropriate arrangements are made to ensure that
 - potentially affected Party is duly notified
 - if potentially affected Party so wishes - transboundary EIA is conducted
 - in the final decision due account is taken of the results of transboundary EIA

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

Key practical features in EU countries

- Individual screening (usually)
- Individual scoping (usually)
- Nature of EIA Report
- Active role of competent authorities in providing individual conditions
- Statement of reasons
- Elaborated documentation and procedures at each stage

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

EIA and traditional OVOS/expertiza system: key issues

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

Key conceptual differences

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

Definition of EIA in UNEP Goals and Principles

- EIA means an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development.

Definition of EIA in Espoo Convention

- Under Art.1 (v) of the Espoo Convention
- „environmental impact assessment” means:
 - *„national procedure*
 - *for evaluating the likely impact*
 - *of a proposed activity on the environment”*

Definition of EIA in EU EIA Directive

- “environmental impact assessment” means a process consisting of:
 - (i) the preparation of an environmental impact assessment report by the developer...
 - (ii) the carrying out of consultations
 - (iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer..., and any relevant information received through the consultations...;
 - (iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and
 - (v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.

Definition of EIA in Belarus law on ecological expertiza of 2009

- "Environmental Impact Assessment" means identification of possible environmental impact of expected changes in the environment due to implementing proposed project decisions during the development of project documentation as well as prediction of its state in the future in order to take decisions concerning possibility or impossibility of project decision implementation;

Definition of EIA in Belarus law on ecological expertiza of 2016

- 7. Оценка воздействия на окружающую среду - определение при разработке предпроектной (предынвестиционной), проектной документации возможного воздействия на окружающую среду при реализации проектных решений, предполагаемых изменений окружающей среды, прогнозирование ее состояния в будущем в целях принятия решения о возможности или невозможности реализации проектных решений, а также определение необходимых мероприятий по охране окружающей среды и рациональному использованию природных ресурсов.

Definition of EIA in art.35 of Environmental Code in Kazakhstan

Оценка воздействия на окружающую среду — процедура, в рамках которой оцениваются возможные последствия хозяйственной и иной деятельности для окружающей среды и здоровья человека, разрабатываются меры по предотвращению неблагоприятных последствий (уничтожения, деградации, повреждения и истощения естественных экологических систем и природных ресурсов), оздоровлению окружающей среды с учетом требований экологического законодательства Республики Казахстан.

Definition of EIA in the Code of Environmental Assessment in Georgia

- *- a procedure to examine, on the basis of appropriate studies and research, a potential environmental impact of a proposed project, which may have significant environmental impact.... EIA process includes scoping, preparation of an environmental impact assessment report, carrying out public participation and consultations with the competent authorities and making a reasoned conclusion from examination of their results, taking them and any other information into account in issuing Environmental Decision envisaged by this Code and/or in issuing a relevant authorizing administrative legal act envisaged by the existing legislation, which entitles to proceed with the project*

Who is responsible for EIA in Belarus law law on ecological expertiza of 2016

- 3. Оценка воздействия на окружающую среду **проводится заказчиками, проектными организациями, имеющими в своем штате специалистов**, прошедших подготовку по проведению оценки воздействия на окружающую среду и соответствующих требованиям, установленным Советом Министров Республики Беларусь.
- 4. Результаты проведения оценки воздействия на окружающую среду отражаются в отчете об оценке воздействия на окружающую среду, составленном в соответствии с требованиями, установленными Советом Министров Республики Беларусь.

Definition of EIA Report in Belarus law on ecological expertiza of 2009

- "Report on environmental impact assessment" means a component of project documentation on planned economic and other activity (hereinafter, unless otherwise specified, - project documentation), **containing information with respect to the findings of Environmental Impact Assessment** and measures required to mitigate and/or prevent predicted changes in the environment;

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

- *EIA Report - a document prepared by the developer and/or for the developer by the consultant having relevant qualification during the environmental impact assessment process and containing the information required by this Code.*

Issues of concern

- Scope of activities covered
- Scope of assessment
- Regulatory control
- Public participation
- Transboundary procedure
- Final decision

Activities covered

- Theoretically broad regulatory control and extensive list of activities which require expertiza
 - more activities covered than Espoo Appendix I
- Usually only activities where construction is involved
 - no deforestation (or afforestation)
 - no intensive rearing of poultry or pigs

Scope of assessment

- no individual scoping (usually)
- no clear requirement for
 - „identification of gaps in knowledge and uncertainties”
 - locational alternatives
- limited scope of alternatives assessed in practice

Regulatory control

- Two separate processes
 - OVOS
 - expertiza
- Separate control at expertiza stage
 - environmental, sanitary etc
 - in some countries - integrated expertiza
- Clear „competent authority”
 - responsible for the entire procedure
 - for „final decision”

Public participation

- **OVOS stage**
 - responsibility of the developer
 - clear procedures for notification and hearings
 - availability of EIA documentation
 - in practice: rather propaganda or real participation
- **Expertiza**
 - role of non-mandatory „public expertiza”
 - public consultation in practice
 - clear requirement to take into account public comments

Final decision

- Clear-cut final decision
 - who takes it?
 - in which legal form?
- Substance of final decision
 - conditions for authorisation in final OVOS Report?
 - reasons and considerations
- Clear requirement to take into account outcomes of EIA
- Requirement to announce it

Art.36.4 of Environmental Code in Kazakhstan

- 4. Заказчик (инициатор) и разработчик проектов обязаны учитывать результаты проведенной оценки воздействия на окружающую среду и обеспечивать принятие такого варианта, который наносит наименьший вред окружающей среде и здоровью человека.

Transboundary procedure

- Screening
 - no precise screening mechanism
 - authorities involved late in the procedure
- No clear transboundary procedure
 - when Party of origin (who and when notifies?)
 - when affected Party (who is responsible?)
 - Espoo convention applied directly?
- No individual scoping
- OVOS Statement (zajavlenije) vs OVOS Report (otchiot)
- No clear „final decision”

Consequences

- Conceptual discrepancy between OVOS/expertiza systems and requirements of the Espoo Convention and Aarhus Convention)
- Risk of repeated cases at the Espoo Implementation Committee and Aarhus Compliance Committee
- Need for systemic approach

Conclusions

- Directions regarding legislative reform
 - Relation to expertiza
 - Scope
 - Form
 - Legislative technique
- Must-have list to comply with international standards under Espoo