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April 2018

Concept

of the comprehensive reform of the legal framework for environmental impact assessment (EIA) in Kazakhstan

Background

1. As indicated in the **Concept Note** regarding necessary amendments to the existing legislation in Kazakhstan to better align it with the international standards, in particular with the provisions of the UNECE Espoo Convention and its Protocol on Strategic Environmental Assessment (**Concept Note**) - the existing EIA scheme in Kazakhstan is based on traditional OVOS/expertise model which was developed for a centrally-planned economy and conceptually neither fits to modern market-based economy nor complies with the requirements of the Espoo Convention (General guidance on enhancing consistency between the Convention and environmental impact assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia (General Guidance on enhancing consistency).
2. The specific features of the EIA scheme in Kazakhstan was meant to be examined in the Review of the Kazakhstan legislation in relation to the implementation of the UNECE Espoo Convention (EIA Review) and on that basis some concrete proposals for a legislative reform regarding EIA were to be developed.
3. As it was agreed during the meeting with the representatives of the respective Kazakh authorities held on 16 February 2018 in Astana - the legislative reform regarding EIA was originally meant to be

limited to providing some necessary adjustments to the existing EIA framework based on the OVOS/expertise system in order to bring it into formal compliance with the Espoo Convention. These necessary adjustments were listed in the Concept Note.

4. However – the final EIA Review revealed that the existing EIA framework in Kazakhstan is not effective, not internally consistent and overly complicated therefore the whole EIA system should be reformed (EIA Review - page 20)
5. Furthermore the EIA review indicates that within the wider context of environmental law reform in Kazakhstan “it is considered of whether to exclude the issuance of the separate state ecological expertise conclusion on the projects of the proposed activity, which are subject to the EIA” and make it “a part of the complex non-departmental expertise” (EIA Review - page 21).
6. In this situation it was requested that the Project would prepare for Kazakhstan a concept of a totally new comprehensive EIA scheme based on the modern EIA system.

II. Basic features of a new EIA scheme as compared with the existing OVOS/expertise framework

1. Goals of a new scheme
 - a. Reducing regulatory burden on economic activities
 - b. Modernising and strengthening environmental control of economic development
 - c. Assuring compliance with international standards (in particular: Espoo Convention and Aarhus Convention)
 - d. Enhancing effective and transparent decision-making
 - e. Providing coherent and clear regulatory framework
2. Place in the development control
 - a. Current situation
 - i. Three stages (article 17 of the Code)
 - ii. At each stage:

-OVOS conducted by developer

- Ecological expertise conducted by authorities

iii. Positive conclusion of ecological expertise binding and required to issue a development consent authorizing implementation of the activity (art.51.2 of the Code)

b. New scheme

i. Basically only two stages of EIA procedure: scoping determination and EIA conclusion/decision

ii. OVOS and expertise merged into one EIA procedure conducted by authorities

iii. Positive EIA conclusion/decision binding and required to issue a development consent authorizing implementation of the activity

c. Modalities/alternative solutions

i. Name of the EIA conclusion/decision

ii. Relation to the stages in developing project documentation

3. Relation to pollution control

a. Current situation

i. Stages 2 and 3 of OVOS/expertise meant to establish emission standards (art.37.3 of the Code)

ii. Integrated pollution permit is considered to be established and merged into one procedure with the OVOS/expertise

b. New scheme

i. EIA conclusion/decision is separated from pollution control and integrated pollution permit

c. Modalities/alternative solutions

i. Procedural and organizational links may be envisaged between EIA conclusion/decision and integrated pollution permit

4. Role of environmental authorities

a. Current situation

- i. Issue expertise conclusion
- ii. Are not responsible for public participation
- iii. Are not responsible for taking due account of the results of EIA
- iv. Check formal compliance with environmental requirements but generally do not set precise environmental conditions for a project (activity) themselves

b. New scheme

- i. Issue EIA conclusion/decision
- ii. Are responsible for public participation
- iii. Are responsible for taking due account of the results of EIA
- iv. Not only check formal compliance with environmental requirements but also set precise environmental conditions for a project (activity) themselves

c. Modalities/alternative solutions

- i. Organization and structure of authorities responsible for conducting EIA procedure and issuing EIA conclusion/decision
- ii. Relations between authorities responsible for conducting EIA procedure and issuing EIA conclusion/decision with other environmental authorities

5. Role of developers and EIA consultants

a. Current situation

- i. Are responsible for preparation of OVOS documentation
- ii. Are responsible for public participation
- iii. Are responsible for taking due account of the results of EIA

iv. Licensing of EIA consultants

b. New scheme

- i. Are responsible for preparation of EIA documentation
- ii. Are not responsible for public participation
- iii. Are not responsible for taking due account of the results of EIA

c. Modalities/alternative solutions

- i. Involvement of developers and EIA consultants in organizing public participation
- ii. Responsibility of developers for covering the costs of EIA procedure
- iii. Accreditation of EIA consultants or general requirements regarding their qualifications

6. Activities covered

a. Current situation

- i. There are different lists of activities subject to OVOS, subject to ecological expertise and subject to public participation
- ii. The above lists are based on different criteria and are not clearly co-related
- iii. Existing situation does not allow for assuring compliance with the obligations under the Espoo and Aarhus Conventions
- iv. Existing situation does not allow for assuring a comprehensive and effective control

b. New scheme

- i. New list or lists of activities subject to EIA scheme is established
- ii. New list or lists of activities is fully compliant with the lists of activities under the Espoo and Aarhus

Conventions in terms of both range of activities covered and their classification

- c. Modalities/alternative solutions
 - i. Minimum list of activities (only Espoo and Aarhus lists) or also activities covered by Annex II to SEA Protocol
 - ii. Mandatory EIA for all activities on the list (Ukrainian approach) or two lists: one with mandatory EIA and one list with categories of projects subject to individual screening (most EU countries)

7. Scoping and EIA Report

- a. Current situation
 - i. No individual scoping
 - ii. Information to be included in EIA report not reflecting current state of the art
- b. New scheme
 - i. Individual scoping
 - ii. Information to be included in EIA report reflecting current state of the art
- c. Modalities/alternative solutions
 - i. Individual scoping always mandatory or only in certain circumstances

8. Public participation

- a. Current situation
 - i. No clear co-relation between list of activities covered by OVOS/expertise scheme and list of activities which require public participation
 - ii. The procedural requirements not always fully in line with the Aarhus Convention

- b. New scheme
 - i. Clear co-relation between list of activities covered by OVOS/expertise scheme and list of activities which require public participation
 - ii. Improved procedural requirements
- c. Modalities/alternative solutions
 - i. Public participation procedure included into the EIA scheme or reference to public participation procedure in a separate legal act

9. Transboundary procedure

- a. Current situation
 - i. No clear provisions on transboundary procedure
 - ii. Environmental authorities are aware of the activity at the late stage thus can submit notification to other country only long time after public participation (breach of Espoo Convention)
 - iii. No possibility for post-project monitoring
- b. New scheme
 - i. clear provisions on transboundary procedure
 - ii. Environmental authorities are aware of the activity at the early stage thus can submit notification to other country not later than informing domestic public (as required by Espoo Convention)
 - iii. No possibility for post-project monitoring
- c. Modalities/alternative solutions
 - i. Level of details regarding transboundary procedure

10. Decision

- a. Current situation
 - i. In practice only acceptance or not of environmental conditions proposed by the developer
 - ii. No clear requirements for taking in the expertise conclusion due account of the results of EIA

- iii. Environmental conditions quite often only very general
- iv. No clear requirements for justification (statement of reasons)

b. New scheme

- i. Active role of environmental in developing environmental conditions for implementing the project
- ii. Clear requirement for taking in the EIA conclusion/decision due account of the results of EIA
- iii. Environmental conditions more detailed
- iv. Clear requirements for justification (statement of reasons)

c. Modalities/alternative solutions

- i. Timing of issuing EIA conclusion/decision
- ii. Authorities responsible for issuing EIA conclusion/decision
- iii. Procedural aspects (involvement of experts, involvement of other specialized environmental authorities)

11. Post-project monitoring

a. Current situation

- i. Legal scheme for post-project monitoring abolished
- ii. Difficult to implement Espoo Convention (art.7)

b. New scheme

- i. Legal possibility for imposing post-project monitoring in certain situations
- ii. Compliance with Espoo Convention

c. Modalities/alternative solutions

- i. Situations where such obligation can be imposed

12. Electronic flow of documents
 - a. Current situation
 - i. No requirements regarding electronic flow of documents
 - ii. No registers of EIA procedures and decisions
 - iii. Lack of clear rules regarding public availability of EIA documents and decisions
 - iv. Non-compliance with Aarhus Convention
 - b. New scheme
 - i. Clear requirements regarding electronic flow of documents
 - ii. Central electronic register of EIA procedures and decisions established
 - iii. Clear rules regarding public availability of EIA documents and decisions
 - c. Modalities/alternative solutions
 - i. Ukrainian model (developers themselves submit documents to the register) or Croatian model (only authorities submit documents to the register)
13. Budgetary implications of the reform
 - a. increase in staff needed
 - b. enhanced skills needed
 - c. capacity building

III. Approach and timing

1. Within the current funding and time-line (by September 2018) the Project would be able to elaborate only the detailed concept of future EIA framework and perhaps draft the EIA provisions in the Code regulating only the general features of the new EIA framework

2. Separate funding and timelines (at least 6 months starting from September 2018) are needed to elaborate all the subsidiary legislation (podzakonnyje akty)