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**EIA: procedural elements**

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# Goals of a new scheme

- a. Reducing regulatory burden on economic activities
- b. Modernizing 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

# 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)

# Place in the development control

- 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

# Relation to pollution control

- a. Current situation
  - i. Stages 2 and 3 of OVOS/expertise meant to establish emission standards (art.37.3 of teh 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

# 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

# Role of environmental authorities

- 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

# 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



# 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 correlated
  - 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

# Activities covered

- 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)

# 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

# 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

# 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. Possibility for post-project monitoring
- c. Modalities/alternative solutions
  - i. Level of details regarding transboundary procedure

# 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)

# 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

# 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)



# Budgetary implications of the reform

- a. increase in staff needed
- b. enhanced skills needed
- c. capacity building