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Second working group meeting on the legislation harmonization of the Republic of Kazakhstan in line with the Espoo Convention and its Protocol on SEA

25-26 April 2018
Astana, Kazakhstan

Meeting Report



May 2018

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1. Background information

1.1. SEA and EIA in Kazakhstan

The Republic of Kazakhstan, as a Party to the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) since 2001, targets to introduce internationally sound institutional and legislative frameworks on environmental impact assessment (EIA) and strategic environmental assessment (SEA). Efficient implementation of the Espoo Convention and its Protocol on SEA in the country is seen as a valuable contribution to the on-going "green" economic reforms.

Under the on-going "green" economy reforms in Kazakhstan and, specifically, held in 2017 international specialized exhibition "Expo-2017: Future energy" in Astana, the SEA concept in the country is currently considered as an instrument to identify the most sustainable and cost-effective strategic development alternatives for green economic growth on the way towards new foreign investments and improved environmental situation in the country and the human health. It is considered as a tool, which will help to strengthen the country's environmental governance through fostering transparency and consultation with relevant stakeholders and the public prior to the approval of policies, plans and programmes. In addition, the SEA in a transboundary context within the country is suggested to be employed to promote regional cooperation on environmental matters in the Central Asian region.

In this process the UNECE has been assisting Kazakhstan in the development of legislation and through support to practical steps towards the integration of SEA procedures in its planning and programming processes. Thus, the 2017-2020 workplan of the Espoo Convention and its Protocol on SEA envisages technical advice to Kazakhstan on improving legislation to implement the Protocol and the Convention. It is built on official letter of request of the Ministry of Energy of the Republic of Kazakhstan (Ministry) as of 30 March and 12 December 2017 that addressed the UNECE Secretariat to help initiate a legislative drafting process to assist Kazakhstan in amending its national legislation for the establishment of a national SEA scheme in line with the Protocol on SEA and the national EIA scheme in accordance with the Espoo Convention.

The assistance is currently carried out by the means of technical advice under the UNDP/UNECE/EC project on "Supporting Kazakhstan's Transition to a Green Economy Model" in several phases. During the inception phase the project allowed to assess the environmental impact assessment and strategic environmental assessment provisions in the existing national legislation vis-à-vis the Convention and the Protocol. The results of the assessment outlined that the national legislation and regulations contain elements of SEA and transboundary EIA procedures. However, to fully comply with the provisions of the Protocol and the Convention some changes and amendments to the existing legislation are required.

1.2. Review and revision of the existing SEA and EIA legislation and procedures

The SEA and EIA legal drafting activities are important elements of the project, aiming at national legislative enhancement with a focus on SEA and EIA in line with the Espoo Convention and its Protocol on SEA. The activities envisage the preparation of amendments to the Environmental Code of Kazakhstan, relevant laws and as required develop draft secondary legislation with a focus on EIA and SEA. The revision of national regulatory and legislative frameworks with regard to transboundary EIA and SEA is also seen as an efficient tool for identifying the bottlenecks and bridging existing gaps. All in all, the SEA and EIA legal drafting activities will secure at the legislative level the approach for effective protection of environment

and human health and help prevent irreversible environmental consequences at the initial stage of strategic policy/program planning.

The Ministry of Energy of Kazakhstan has a central role in conducting the development of amendments through its national SEA and EIA working group, which is responsible for providing required inputs and participating in the analysis. The working group was established in January 2018, comprising from the representatives of the Ministry and other state agencies to amend the Environmental Code of Kazakhstan.

The drafting group under the above is expected to:

- (a) actively participate in the legal drafting process and all other SEA/EIA planned events;
- (b) guide the national and international experts in developing proposals for amending the legislation;
- (c) prepare necessary regulations; and provide written inputs and comments to the draft proposals.

2. Working group meeting on the legislation harmonization of the Republic of Kazakhstan in line with the Espoo Convention and its Protocol on SEA

The meeting took place on 25-26 April 2018 in Astana and was organized by the UNECE in close co-operation with the Ministry of Energy of Kazakhstan. The meeting was designed to support the SEA and EIA reforms through a revision and harmonization of the national legislation in line with the Espoo Convention and its Protocol on SEA and strengthen national capacity for establishing modern SEA and EIA national schemes.

The event addressed the members of the Ministry's working group on the development of the national environmental legislation, responsible for the strategic planning and the EIA implementation and other interested parties. Held discussions were based on the findings and recommendations of the SEA and EIA legal reviews undertaken vis-a-vis the provisions of the Espoo Convention and its Protocol on SEA. Both reviews provide concrete proposals for appropriate legislative reforms, aiming at amending the Environmental Code of Kazakhstan and relevant sectoral legislation.

The meeting also accommodated the presentation of the first SEA draft amendments to the Environmental Code of Kazakhstan and sectorial legislation, prepared by the national and international consultants, followed by expert discussions and first comments.

It was the second in the sequence of working group meetings, organized by the UNECE in close partnership with the Ministry of Energy of Kazakhstan and financial support from the OSCE Programme Office in Astana under the joint UNDP/UNECE/EU project on "Supporting Kazakhstan's transition to a Green Economy model".

For more information, please visit:

<http://www.unece.org/environmental-policy/conventions/water/areas-of-work-of-the-convention/envwatercentralasia/supporting-kazakhstans-transition-towards-green-economy-model.html>

<http://energo.gov.kz/index.php?id=19096>

2.1 Objectives of the working group meeting

The main objective of the Working group meeting was to discuss the draft concept for harmonizing the national legislation, namely the Environmental Code of Kazakhstan and relevant secondary legislation with the provisions of the Espoo Convention and its Protocol on SEA.

In particular, the participants of the Working group meeting were invited:

Concerning EIA (25 April 2018):

- to discuss the recommendations on basic features of a new EIA scheme in need as compared with the existing OVOS/expertise framework;
- to collect comments and participants' opinion regarding the above;
- to identify further course of action and the scope of legislative EIA reform by considering the recommendations.

Concerning SEA (26 April 2018):

- to present and discuss the SEA draft amendments of the Environmental Code of Kazakhstan and sectoral legislation;
- to clarify remaining uncertainties and outstanding questions;
- to develop further recommendations and confirm the planning regarding the legislative drafting on SEA.

The event also aimed at enhanced inter-agency cooperation, improved awareness of interested stakeholders on the EIA and the SEA legal international standards in line with the Espoo Convention and its Protocol on SEA.

2.2 Outcomes

The Working group meeting promoted expert level consultations and better awareness on the international SEA and EIA legal standards for translating them into the national legal framework and resulted in two major outcomes:

- a) recommendations to finalize the SEA draft amendments to the Environmental Code and relevant sectoral legislation concerning the SEA;
- b) recommendations on the further course of action regarding the EIA national system reform.

2.3 Participants

Some 49 participants attended the event and were represented by the members of the Ministry's working group on the revision of the Environmental Code of the Republic of Kazakhstan, other experts of the Ministry, responsible for strategic planning and EIA implementation, international legal consultants and national legal experts.

Out of 49 participants 30 (61%) were represented by men and 19 (38%) – by women (please, refer to Annex 2).

2.4 International and national experts

Mr. Jerzy Jendroska, key international expert on EIA and SEA legal drafting, Ms. Elena Laevskaya, international expert on EIA and SEA legal drafting and Ms. Leial Makhmetova, national expert on SEA and legal drafting were the main source of expertise and, therefore, acted as key speakers during the Working group meeting.

Theory was combined with the best practices presentations about the EIA and the SEA application in different countries to familiarize the participants with the lessons learnt and progress achieved. International consultants led the discussions and contributed significantly to the elaboration of specific recommendations and follow up steps to be taken in Kazakhstan for the EIA and the SEA appropriate legal drafting process.

2.5. Working group meeting design

The Working group meeting agenda was designed to address the gaps and needs in the national

strategic environmental assessment and environmental impact assessment systems. It allowed presentations and deliberate expert discussions on the prospects of SEA procedure introduction and enhancement of the national EIA scheme to comply with the requirements and provisions of the UNECE Espoo Convention and its Protocol on SEA.

Speaking precisely, the meeting agenda included the presentation of the SEA draft amendments to the Environmental Code of Kazakhstan (EnvCode), the Concept of the comprehensive reform of the legal framework for EIA in Kazakhstan with specific recommendations for further feedback and comments.

3. Working group meeting summary

The working group meeting was opened by Mr. Azamat Alimbayev, Deputy Chair of the Committee of Ecological Monitoring and Control (Committee) of the Ministry of Energy of Kazakhstan and Mr. Rati Japaridze, Economic and Environmental Officer of the OSCE Programme Office in Astana. Both gentlemen welcomed the participants and underlined the importance of the momentum to suggest concrete proposals for the environmental legislation improvement to secure safe and sustainable development with environmental concerns. Mr. Alimbayev also stressed the need to introduce modern EIA and SEA systems that would accommodate and reflect the national peculiarities.

The meeting was moderated by Ms. Madina Ibrasheva, SEA and EIA pilot project Team Leader, who presented an agenda and brief information about the progress of the SEA/EIA activities.

The half-day session was led by Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting, who presented the Concept of EIA, international obligations and the role of EIA legislative reform. The presentation was built on the Concept of comprehensive reform of the legal framework for EIA in Kazakhstan (Concept). The Concept was developed by the key international expert with recommendations to the attention of the Ministry of Energy of Kazakhstan to decide if the country is interested to introduce a full-pledged EIA system that is based on the modern principles of environmental impact assessments and successfully employed in most countries in the world. During the session a comparative analysis was presented based on the graphs on the modern EIA system and specific EIA procedural elements in Kazakhstan.

The key international expert also talked about the way to introduce modern comprehensive EIA system that meets the requirements of the UNECE Espoo and Aarhus Conventions, to which Kazakhstan is a Party. Specifically, Mr. Jendrośka highlighted international obligations and legislative proposals regarding the activities subject to the EIA; scoping and EIA report; public participation; obligation to take due account of the EIA and the role of “Ecological expertiza” conclusion as a final decision. Post-project analysis and its role in EIA according to the Espoo Convention was highlighted as important ones to measure the likely impacts.



Picture 1. Presentation of the modern EIA scheme by Mr. Jerzy Jendrośka,

In the presentations the theory was combined with a reference to specific best practices examples and detailed explanations on how modern EIA system works in other countries and contributes to cleaner environment in the economic activity. The experience of Ukraine of transition to modern EIA system was enlisted to the attention of auditoria as a success story due to similarity in the post-Soviet system heritage, namely the post-Soviet style of environmental assessment system, known as “Expertiza” with a limited role.

After the presentations the participants addressed several questions related to mandatory and voluntary list of activities that are subject to EIA and the practicalities of the scoping implementation according to the Espoo Convention. In this regard Mr. Jendroška stressed the role of screening procedure to reduce the overregulation burden of “Expertiza” system and to help prevent from harmful projects as they are not being properly assessed under the current EIA procedure. Special attention was also given to the role of national authorities in the EIA decision-making according to the provisions of the Espoo Convention.

The participants also inquired additional information on the scoping criteria of the EIA in countries that are in compliance with the Espoo Convention. In response a thorough explanation was provided by the expert regarding what scoping is designed for and what issues it should address.

Another question related to the timeline for the entire EIA procedure in light of the present national policy, aiming at reduction of burden for small and medium-scale businesses. In response 3 months period was indicated by Mr. Jerzy Jendroška as a minimum for the EIA implementation by stressing that the EIA duration largely depends on the timing for public to make comments. It was also mentioned that the lifetime of the EIA is also limited and, if new standards and conditions are applied, the EIA has to undergo the revision. Furthermore, the availability of technical documentation in electronic format and hard copy to the respective national authorities were highly recommended by the key international expert to make the EIA procedure more transparent and, therefore, efficient, allowing for consideration of wider comments that were not collected otherwise.

The second day of the working group meeting was entirely devoted to establishing modern SEA national scheme. The meeting was opened by Ms. Aliya Shalabekova, Head of Green Economy Department of the Ministry of Energy of Kazakhstan. Ms. Shalabekova expressed a support to the work, implemented under the pilot project on SEA and EIA in Kazakhstan and a hope for successful finalization of the SEA draft amendments to the EnvCode and sectorial legislation of Kazakhstan.



Picture 2. Ms. Elena Laevskaya presents the concept of SEA and its role in decision-making

The defined agenda of the day was built on introductory presentations by international experts with the reference to best practices cases worldwide and the SEA draft law that was recently developed by national and international experts of the project. The meeting was designed and tasked to collect the first feedback on the SEA draft law from the members of the Ministry’s working group on the EnvCode revision and other interested parties.

The presentations and further discussions on the SEA draft law were launched with a video on general introduction to SEA with detailed explanations on the SEA benefits and the role of the UNECE Protocol on SEA.

Demonstrated video was followed by presentations of Ms. Elena Laevskaya, international expert on SEA and EIA legal drafting, who addressed the audience with detailed explanations on the SEA concept, its role in decision-making in mitigating the impact on environment and human health, the planning documents that are subject to SEA according to the Protocol on SEA, the role of environmental and health authorities and the obligation to take due account of SEA in the strategic document. The topics of due monitoring and transboundary procedures under the SEA were stipulated as important elements of SEA procedure to ensure environmental and health projection sustainability at the strategic level including in transboundary context.

During the presentations Ms. Laevskaya stressed that the SEA as an efficient instrument of “green” economy and, thus, possible accession of Kazakhstan to the UNECE Protocol on SEA can be a significant step forward in transition to sustainable economic development with environmental concerns. All the elements of the SEA procedure are important and contribute, if implemented accurately, to efficient decision-making.

Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting noted that the legislation of Kazakhstan has partly the elements of inter-agency coordination of the documents of strategic nature. Nevertheless, this process sometimes is one-sided and misses the elements of environment and health protection, therefore, the SEA procedure is highly recommended to be applied at the national level to mitigate associated risks. According to the national expert the requirement of early application of SEA, *inter alia*, also helps to contribute to better governance with a focus to clean environment and health protection.



Picture 3. Questions from the private sector representative regarding the SEA obligations

One of the questions raised related to differences between the SEA and the EIA procedures and concerned the obligations for the private sector under the SEA. In response Ms. Elena Laevskaya provided clear explanations on the differences regarding two unlike procedures and assured that if SEA is introduced in line with international standards, the private sector companies would be in better situation since alternative scenarios regarding environment and health protection would be taken into consideration at strategic level from the very beginning and contribute to better optimization of the strategic documents. It was also underlined that in spite of the fact that these two procedures are different, they are interrelated with each other since proper implementation of SEA would eventually lead to efficient EIA.

Furthermore, a reference was made to the UNECE publication on “Protocol on SEA: Facts and Benefits” for more information and better understanding of the SEA elements of procedure and eventual benefits.

In the next session, devoted to the overview of the legislative reform related to SEA, namely, proposed changes in the EnvCode and in the sectoral legislation, Ms. Elena Laevskaya called upon the participants to actively contribute to discussions with comments regarding the SEA draft law after the presentation under each element of SEA procedure is delivered.

A separate Chapter on the SEA was proposed for introduction in the EnvCode. The draft SEA law according to international expert comprises from the draft amendments to the EnvCode and sectoral legislation of Kazakhstan. Subordinate laws might be subject to amendment according to the expert; however, the decision was suggested to be taken upon the finalization of the SEA law.

Ms. Leila Makhmetova briefly presented the SEA draft law to the attention of auditoria, namely the SEA definition, stressed the component on public participation and consultations with national authorities in case of transboundary effect as well as enlisted the rest of the SEA elements stipulated in the draft law in line with the UNECE Protocol on SEA. Moreover, the national expert highlighted the importance of correct identification of documents in the national legislation that should be obligatory subject to SEA under the implementation of respective national authorities.



Picture 4. Participants closely follow the presentation on the national SEA draft law

In the next sessions Ms. Laevskaya thoroughly described the planning documents that are subject to SEA vis-à-vis the international requirements, the scoping and SEA report, the public participation, the role of environmental and health authorities, the obligation to take due account of SEA in the strategic document, the monitoring and its role in SEA and the transboundary procedure under the SEA. The international expert referred to respective provisions of the UNECE Protocol on SEA and the UNECE Aarhus Convention, followed by presentation of concrete cases by Mr. Jerzy Jendrośka to make the presented material clear to participants.

Ms. Leila Makhmetova contributed to presentations by referring to aspects of the SEA draft law, which are currently under question and to be considered with final decision by the Ministry of Energy and its Working Group on the EnvCode revision. Specifically, the national expert underlined the importance of SEA implementation to ensure transparent and efficient decision-making that includes the elements of public accountability and strategic documents' development with close involvement of environmental and health protection authorities. The latter will have to decide, according to expert, on the needs for the SEA implementation. Furthermore, the criteria for selecting the document for the SEA, i.e. screening, were elaborated and proposed within the SEA draft law respectively for the EnvCode.

One of the participants inquired about the necessity to implement the SEA for the regulatory legal acts. Ms. Laevskaya responded that at the initial stage of SEA introduction in Kazakhstan it might be a bit early, however, at a later stage, when the country would become more experienced in the SEA domain, this issue can be raised and decided steadily.

Mr. Jerzy Jendrośka also contributed to the discussions by adding that the SEA in other countries are quite rarely implemented for legal acts. Most plans and programmes there are approved in the form of legal acts, however, that doesn't mean that they are legislation. It was also noted by the expert about the difference with the consultation procedure in Kazakhstan, which lacks the SEA report and, therefore, increases the risks for environment and health degradation once the programmes/plans are approved without the socio-environmental considerations.

Another difference between the SEA and the EIA according to the key international expert is embedded in the need to conduct the field visits and information collection on the spot for the EIA. While for the SEA it is seen rather as a desk research, supported by the proposal of authorities for document to be used to set the environmental goals and needs to be considered for strategic document. Field visits in this regard are not considered as obligatory.

With regard to the scoping stage Mr. Leila Makhmetova reported that a separate article within the SEA draft law with specific norms and procedure for its implementation was introduced in compliance with the provisions of the Protocol on SEA. It was also noted that the SEA report has to fully correspond to the scoping report and should include the description of environmental and health risks that may result from the strategic document implementation. Appropriate modern technique and knowledge should be applied for the SEA report preparation. Besides, two alternative definitions for the SEA report were proposed by the team of experts for further consideration.

During the session on public participation the experts noted that the UNECE Protocol on SEA doesn't oblige to fix unified time-frames for the inspection of relevant documents, submission and consideration of comments, etc. Instead the Protocol was named as flexible legally binding instrument that sets conditions and time-frames to be decided by the country in line with the international standards and national peculiarities. Besides, it was also noted that Kazakhstan as a party to the Aarhus Convention has certain legal base to accommodate appropriate public involvement and participation. Nevertheless, further improvements are needed as stipulated and described in the SEA draft law.

There was also a comment from the auditoria related to the right of all parties to express their opinions, indicated in the SEA draft law, which is a repetition to the provision of Constitution of Kazakhstan that stipulates the same definition. Instead, it was rather proposed to stress in the SEA draft law that the national authorities are obliged to collect and consider every and each comment being received from "any" parties apart from "interested" ones.

In the session on the role of environmental and health authorities Mr. Jerzy Jendrośka stressed that the Government has to suggest the authorities that would need to be involved in the process of SEA and to be clearly indicated in written so that the planning authority knows to whom to send respective documentation. Besides a group of specialized experts have to be recruited for the development of scoping and SEA report since the environmental and health protection authorities might not have needed expertise.

Under the topic on monitoring and its role in SEA Ms. Makhmetova presented the monitoring procedure for Kazakhstan that focuses on environmental consequences as suggested in the SEA draft law, according to which the responsibility for the implementation of monitoring possible environmental and health related consequences are fully with the planning authority. Among other issues, it was underlined that the monitoring procedure will have to be determined by respective subordinate act and developed with due account of available best practices in specific domain. Besides, international experts also noted that if the monitoring would spot negative consequences for environment and health, the planning authority would be necessitated to revise and adjust the strategic document respectively.

The final block of discussion touched upon the transboundary procedure. In this regard Ms. Laevskaya suggested to approach the issue for Kazakhstan as Party of origin and affected Party.

In this regard timely notification and relevant information provision in the national language to potentially affected States were highlighted as crucial in the SEA draft law. The issue who sends the notification and what notification should contain were underlined in the speech as important.

During this session Mr. Jendroška stressed that although Kazakhstan is not yet a Party to the UNECE Protocol on SEA it is not obligated, however, recommended to develop the transboundary procedure scheme in the national legislation to be ready to address the transboundary consequences effectively when the neighboring countries would join the Protocol. Besides, the recommendations on the SEA transboundary procedures should be closely coordinated with the EIA transboundary procedure. Therefore, the provisions of the SEA draft law regarding transboundary procedures will be elaborated after the decision on the EIA reform is taken.

The last day of the working group meeting was finalized with a request to submit any further comments to the SEA draft law within the two weeks period. The Ministry of Energy of Kazakhstan expressed a gratitude to the project for valuable contribution in advancing the EnvCode in the domains of SEA and EIA as part of activities, aiming at upgrading the legislation in line with the OECD standards and norms.

4. Conclusions and recommendations

The working group meeting resulted in the following conclusions and recommendations:

1. The draft EIA amendments to the EnvCode should be drafted in full compliance with the provisions of the UNECE Espoo Convention in relation to the:
 - list of activities that are subject to EIA and should be fully compliant with the Espoo Convention's requirements;
 - public authorities, which should be involved in the procedure early and not later than the public in order, inter alia, to learn about potential transboundary consequences and initiate transboundary procedure if necessary;
 - public participation by introducing some regulations in the EnvCode;
 - transboundary procedure that are totally absent in the national legislation and its main elements should be introduced in the EnvCode (a separate Chapter on transboundary procedure might be needed);
 - final decision that needs to ensure that there is a clear indication of decision to be taken by competent authority to prevent possible harm to environment, statement of reasons and justifications should be attached to it;
 - post-project analysis, which should impose the developer to undertake the post-project analysis in case if its needed.
2. The EIA-related amendments are needed to the EnvCode, sectorial and subordinate legislation.
3. The definition of the Scoping stage recommended to be presented in the SEA draft law.
4. Due to the fact that the SEA is a new topic for Kazakhstan an awareness campaign should be continuously implemented to explain the SEA benefits and opportunities the Protocol on SEA offers.
5. It was proposed to extend the project results to wider public using the Ministry's website and other means.

6. The second draft amendments with a focus on the SEA will be finalized for presentation at the 3rd Working group meeting on legal drafting.

5. Steps Forward

On 27 April 2018 the Ministry of Energy of Kazakhstan implemented a Working group meeting on EnvCode revision with a focus on SEA and EIA headed by Mr. Akhmetzhan Primkulov, Chair of the Committee of Ecological Regulations and Control of the Ministry of Energy of Kazakhstan. The international experts of the pilot project participated in the event with brief presentations on the modern EIA and SEA systems and specific EIA procedural elements in Kazakhstan. The experts presented their views on the importance of compliance with the Espoo Convention and Protocol on SEA for Kazakhstan as a country that aims at the membership in the OECD.

The proposed changes in the national legislation were highly assessed by the Chair of the Committee along with the approach for the EIA reform, suggested by the key international expert. However, any precise recommendation on the further course of action regarding the EIA reform was not clearly indicated.

Upon the end of the Working group meeting a bilateral follow up discussion was held with the representatives of the Committee of Ecological Regulations and Control. During this working level meeting Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting stressed one more time that any amendments to the existing EIA framework in Kazakhstan without substantial revision of the EIA system is seen inefficient, since with such approach the compliance with the provision of the Espoo Convention won't be secured.

Thus, two alternative scenarios were proposed for the further course of action (referred as in the Concept of comprehensive reform of the legal framework for EIA in Kazakhstan, prepared by Mr. Jerzy Jendrośka):

Alternative 1 - the Project may prepare a generic “must-have” list of features to be met by a new framework for EIA/expertise (whatever framework it is) in order to assure compliance with the Espoo Convention and other applicable international standards (Aarhus Convention).

Alternative 2 – the Project may attempt to prepare a concept of a totally new comprehensive EIA scheme based on the modern EIA system (like it was done recently in Ukraine, Moldova or Georgia). Such a scheme would envisage:

- Abolishment of the existing OVOS/ecological expertise system (at least in the context of EIA)
- Possibility of introducing individual screening for less harmful activities/projects
- Streamlined procedures by using individual scoping
- Reduced role of developers and consultants (project organizations) in assuring public participation and designing the environmental conditions for activities/projects
- Much more active role of environmental authorities (the Committee) in assuring public participation and designing the environmental conditions for activities/projects

In case Alternative 1 is selected – the project could prepare a draft “must-have” list to be discussed at the 3rd Working Group meeting on EIA and SEA legal drafting.

In case Alternative 2 is selected – the project could eventually prepare only draft amendments to the EnvCode while the necessary changes in the subsidiary legislation would need much more time and to be done under a separately project. The EIA draft amendments then will be presented at the 3rd Working Group meeting on EIA and SEA legal drafting.

It was agreed that the Committee would take a time to decide on the alternative to choose until 15 June 2018 and inform the project respectively for the further course of action.



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Working group meeting on the legislation harmonization of the Republic of Kazakhstan in line with the Espoo Convention and its Protocol on SEA

Agenda

(Astana, 25-26 April 2018)

Wednesday, 25 April

14:00 – 14:10

Welcoming speeches

Mr. Azamat Alimbayev, Deputy Chair of the Committee of Ecological Regulations and Control, Ministry of Energy of Kazakhstan

Mr. Rati Japaridze, Economic and Environmental Officer, OSCE Programme Office in Astana

14:10 – 14:20

Introducing the agenda and brief summary of the current status of the SEA/EIA project

Ms. Madina Ibrasheva, SEA/EIA Team Leader

14:20 – 15:00

Concept of EIA, international obligations and role of EIA legislative reform

Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting

Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting

Questions and discussion

15:00 – 15:30

Activities subject to the EIA: international obligations and legislative proposals

Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting

Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting

Questions and discussion

- 15:30 – 16:00** **Scoping and EIA Report: international obligations and legislative proposals**
- Mr. Jerzy Jendrośka*, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting
- Questions and discussion**
- 16:00 - 16:30** **Coffee break**
- 16:30 – 17:15** **Public participation: international obligations and legislative proposals**
- Mr. Jerzy Jendrośka*, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting
- Questions and discussion**
- 17:15 – 18:00** **Obligation to take due account of the EIA and the role of “Ecological expertiza” conclusion as final decision: international obligations and legislative proposals**
- Mr. Jerzy Jendrośka*, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting
- Questions and discussion**
- 18:00 – 18:30** **Post-project analysis and its role in EIA: international obligations and legislative proposals**
- Mr. Jerzy Jendrośka*, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting
- Questions and discussion**
- 18:30** **End of the first day of meeting**

Thursday, 26 April

- 9:00 – 9:15** *Ms. Aliya Shalabekova*, Head of Green Economy Department, Ministry of Energy of Kazakhstan
- 9:15 – 10:00** **Concept of SEA and its role in decision-making**
Video and presentations:

Ms. Elena Laevskaya, international expert on SEA and EIA legal drafting
Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting

Questions and discussion

10:00 – 10.45

Overview of the legislative reform related to SEA: proposed changes in the Environmental Code and in the sectoral legislation

Ms. Elena Laevskaya, international expert on SEA and EIA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting

Questions and discussion

10.45 - 11.15

Coffee break

11:15 – 12:15

Planning documents subject to SEA: international obligations and legislative proposals

Ms. Elena Laevskaya, international expert on SEA and EIA legal drafting
Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting

Questions and discussion

12:15 – 13:00

Scoping and SEA Report: international obligations and legislative proposals

Ms. Elena Laevskaya, international expert on SEA and EIA legal drafting
Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting

Questions and discussion

13:00 – 14:00

Lunch

14:00 - 15:00

Public participation: international obligations and legislative proposals

Ms. Elena Laevskaya, international expert on SEA and EIA legal drafting
Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting

Questions and discussion

- 15:00 – 15:45** **Role of environmental and health authorities: international obligations and legislative proposals**
- Ms. Elena Laevskaya*, international expert on SEA and EIA legal drafting
Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting
- Questions and discussion**
- 15:45 – 16:15** **Coffee break**
- 16:15 - 16:45** **Obligation to take due account of SEA in the strategic document: international obligations and legislative proposals**
- Ms. Elena Laevskaya*, international expert on SEA and EIA legal drafting
Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting
- Questions and discussion**
- 16:45 – 17:15** **Monitoring and its role in SEA: international obligations and legislative proposals**
- Ms. Elena Laevskaya*, international expert on SEA and EIA legal drafting
Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting
- Questions and discussion**
- 17.15 – 18.00** **Transboundary procedure: international obligations and legislative proposals**
- Ms. Elena Laevskaya*, international expert on SEA and EIA legal drafting
Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting
Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting
- Questions and discussion**
- 18:00** **End of the meeting**

Working group meeting on the legislation harmonization of the Republic of Kazakhstan in line with the Espoo Convention and its Protocol

LIST OF PARTICIPANTS

**Start Date: Wednesday, April 25 2018
26, 2018**

End Date: April

**Participants: 30
participants: 19**

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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. 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
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. 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)