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**Concept of EIA and SEA under the Espoo
Convention and other international
standards and approaches to legal and
institutional reforms in various countries**

*National environmental assessment systems and requirements of the Espoo
Convention and its Protocol on Strategic Environmental Assessment
Training Workshop to support legal drafting process in Uzbekistan*

**19-20 August 2019
Tashkent, Uzbekistan**

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Content

- Origins and concept of environmental assessment
- Environmental assessment in international law
- International standards and OVOS/expertiza
- Key features of European model of EIA

Origins and development of environmental assessment

- US National Environmental Policy Act of 1969
 - covers: plans, programs, policies, legislative proposals, concrete projects
 - key role of discussing alternatives
 - concept of tiering
- Currently in all developed environmental national frameworks
- International and supra-national (EU) framework in Europe
 - Harmonization of national procedures
 - Transboundary procedure

Concept of environmental assessment

- Preventive tool related to planned activities which may have significant impact on the environment
- Scope
 - Environmental impact assessment (EIA):
 - individual projects
 - Strategic environmental assessment (SEA):
 - plans and programs
 - *policies*
 - *Legislation*
 - Habitat/biodiversity assessment
 - EIA and SEA limited to impact on habitat

Role of environmental assessment

- collection of information
- consideration of alternatives
- integration of environmental concerns with economic, social etc concerns
- avoidance of irreversible effects
- procedural tool
 - advisory vs decisive role
 - specific situation in case of significant adverse effect on integrity of Natura 2000 site

Alternatives

- For the activity
 - For example: highways or railroads
- Within the activity
 - Locational (northern or southern bypass)
 - Technological (concrete or asphalt)
 - Mitigation measures (speed limit or noise screen)
- Variant „0”
- Variant „the most ecological”

Concept of „tiering”

- Transport policy (SEA)
 - highways or railroads
- National highway program (SEA)
 - locational alternatives
- Regional/local land use plan (SEA)
 - locational alternatives
- Stretches (EIA)
 - technological and mitigation alternatives

Procedural steps

- Screening and informing about its results
- Stages
 - scoping
 - submitting assessment documentation
 - **taking into account the results of assessment in the decision**
 - informing about the decision together with reasons
- Obligatory elements (at various stages)
 - consultation with environmental authorities
 - public participation
- Transboundary consultation (if applicable)

SEA and EIA

- Procedural similarities
- Scope of assessment
 - Physical impact in EIA vs achievement of environmental objectives in SEA
 - Larger scale and less precise data
- Role in the procedure: developers in EIA vs planning agencies in SEA (see General Guidance..)
- Legal framework
 - One law with separate schemes for EIA and SEA – **YES**
 - One scheme for EIA and SEA – **NO**

Environmental assessment documentation

- Different names (report, statement, study)
- Obligatory elements
 - Description of activity
 - Description of environment to be affected
 - Alternatives
 - Description of impact
 - Mitigation measures
 - Gaps in knowledge
 - Non-technical summary

Environmental assessment in international law - general principles

- General principles of international law
 - Trail Smelter case - arbitration tribunal award of 1941
 - Nagymaros-Gabcikovo case – ICJ verdict of 1997
 - Pulp Mill case - ICJ verdict of 2010
 - Nicaragua vs Costa Rica - ICJ verdict of 2015
- Rio Declaration on Environment and Development
 - Integration principle –Principle 4
 - Environmental Assessment –Principle 17
 - Responsibility for transboundary environmental damage - Principle 2
 - Transboundary procedure (Principles 18 and 19)

Environmental assessment in international law

- Application
 - mostly agreements concerning use of natural resources
- Convention on Biological Diversity of 1992 – art. 14 and Guidelines adopted by COP 6 in the Hague in 2002
- 2 specific agreements:
 - UNECE Convention on Transboundary EIA (Espoo) 1991
 - UNECE SEA Protocol of 2003
- Role
 - harmonization of national procedures
 - transboundary procedure

Development of legal framework applicable to UNECE Region

- EU EIA Directive 1985 – impact of projects
- UNECE Espoo Convention 1991 – transboundary impact of projects
- (Global) Convention on Biological Diversity 1992 – art. 14 and Guidelines adopted by COP 6 in the Hague in 2002
- EU Habitat Directive 1992 – impact of plans, programs and projects on protected habitats (Natura 2000 sites)
- UNECE Aarhus Convention 1998 – access to information, public participation in decision-making and access to justice in environmental matters
- EU SEA Directive 2001 – impact of plans and programs
- UNECE Kiev SEA Protocol 2003 - transboundary impact of plans and programs

Concept of EIA Directive and Espoo Convention

- Based on Western EIA concept
 - designed for market economy
 - assuming well established development control
- Procedural and process oriented
- Obligations put on authorities

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

Key conceptual differences

- Legal character of environmental assessment
 - Procedural (intl standard)
 - Substantive (OVOS/expertiza)
- Responsibility
 - Authority competent to make a decision (intl standard)
 - Developer
- Conducted 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)

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

UNECE Espoo Convention and EU EIA Directive

- Both regulate the project level
 - 1 list of activities (projects) in Espoo
 - 2 lists of projects in EIA Directive
- Espoo Convention focused on transboundary procedure (EIA national procedure only in Art.2)
- EIA Directive focused on national EIA procedures (transboundary procedure only in Art.7)

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

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

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

SEA Protocol

- Adopted in 2003 in Kiev to cover strategic decisions (plans, programs and policies)
- Content
 - mostly about national framework
 - transboundary procedure in Article 10
- Status
 - Parties - 26 (including EU)
 - in force since July 2010

Aarhus Convention

- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
 - 1998 - adopted and signed in Aarhus (Denmark)
- Maastricht Recommendations on Public Participation 2014
- Aarhus Convention Implementation Guide 2000 and 2013
 - Available online and in hard copies
 - C-182/10 Solvay and Others and C-279/12

EIA Directive

- EIA Directive 85/337
- Amended by
 - Directive 97/11 of 1997
 - Public participation Directive 2003/35
 - Directive 2009/31/EC
- Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification)
 - amended by Directive 2014/52/EU
- Main EU legal instrument to implement
 - Espoo Convention
 - art.6 and 9.2 of the Aarhus Convention

Basic requirements art.2

- Projects likely to have significant effects on the environment are subject to
 - development consent
 - EIA procedure **before** development consent is granted
 - EIA can not be after consent! - C-215/06 (EC vs Ireland)
- EIA procedure is followed strictly
 - need for EIA to be interpreted broadly and strictly - C-72/95 (Kraaijeveld)
- EC Guidance materials

Projects subject to assessment – art.4

- Environmental assessment is required for projects likely to have significant effects on the environment
- Projects subject to EIA Directive are listed in Annex I and Annex II
 - Projects listed in Annex I – by definition are likely to have significant effects on the environment and therefore always require assessment
 - Projects listed in Annex II – Member States must determine (using screening methods and criteria listed in Annex III) if a project belonging to a category of projects listed in Annex II is likely to have significant effects on the environment and therefore assessment is needed

EIA Directive - procedural steps

- Screening for projects in Annex II – art.4.2 and Annex III
- Scoping – art.5.2
- Preparation of EIA documentaton – art.5.3 and Annex IV
- Consultation with environmental authorities – art.6.1
- Public participation – art.6,2- 6.6
- Transboundary procedure – art.7
- Decision and informing thereof – art. 8 -9a
- Post-project monitoring – art.8a.4
- Access to justice – art.11

Screening of Annex II projects

- Screening methods
 - Case-by case
 - Tresholds/criteria
 - mixed
- Screening criteria (Annex III)
 - Characteristics of projects
 - Location of projects
 - Characteristics of impact

Documents used

- Information provided by developer –Annex IIa
- In many EU countries more information is required
- In most countries the same document is used also for scoping
- Names
 - Screening Report (in many countries)
 - Project Information Chart (in Poland – Karta Informacyjna Projektu – KIP)

Annex IIa

- 1. A description of the project, including in particular:
 - (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;
 - (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
- 2. A description of the aspects of the environment likely to be significantly affected by the project.
- 3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:
 - (a) the expected residues and emissions and the production of waste, where relevant;
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.
- The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.

Procedural requirements

- Selection criteria (Annex III) must be used
- Consultations with
 - Environmental authorities (always)
 - Health authorities (in some EU countries)
- Public participation (in some EU countries)
- Screening determination („screening decision”)
 - issued by competent authority
 - within up to 90 days
- Statement of reasons required



Scoping

- In EIA Directive –
 - necessary only if the developer so requests (art.5.2)
 - environmental authorities must be consulted
- In some Member States – mandatory element of EIA procedure
- For Annex II projects often combined with screening

Documents used

- No formal requirements in EIA Directive regarding document to be provided by the developer for scoping
- In most countries for scoping the same document is used as for screening
- Names
 - Scoping Report (in many countries)
 - Project Information Sheet/Chart (in Poland – Karta Informacyjna Projektu – KIP)

Procedural requirements

- Consultations with
 - Environmental authorities (always)
 - Health authorities (in some EU countries)
- Public participation (in most EU countries)
- Transboundary procedure (Espoo)
- Scoping determination -usually called „scoping opinion” or „EIA programme”
- Statement of reasons required
- TOR for EIA consultants

EIA documentation – art. 5 and Annex IV

- EIA report (misleading name before 20014– „information to be provided by the developer”)
- Quality control – art. 5.3
- Details in art.5.3 and Annex IV
 - a description of the project (site, design and size of the project);
 - a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
 - the data required to identify and assess the main effects which the project is likely to have on the environment;
 - a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen,taking into account the effects of the project on the environment
 - a non-technical summary

Consultations – art.6 and 7

- With environmental authorities
- With the public (concerned)- public participation
- Transboundary procedure
 - Notification
 - Provision of information and possibility to comment (including for the foreign public)
 - Inter-governmental consultations

Consultation with environmental authorities – art.6.1

- Authorities likely to be concerned by reason of their specific environmental responsibilities or local and regional competences
- „are given an opportunity to express their opinion,, - thus not necessarily do have to express such an opinion
- Opinion on both
 - The project
 - EIA documentation
- Detailed arrangements to be made by Member States, including reasonable time-frames

Public participation – art.6.2-6.6, art.8 and art.9.1

- Meant to implement art.6 of the Aarhus Convention
- Relation with transboundary procedure in the context of non-discrimination clause in the Aarhus Convention (art.3.9)
- Elements of the procedure
 - Informing (notifying) the public– art. 6.2 and 6.5
 - Making available relevant information – art. 6.3
 - Possibility to submit comments and opinions– art. 6.4 and 6.5
 - Taking into consideration the results of public participation – art. 8
 - Informing the public on the decision and its availability (together with the reasons and considerations on which the decision is based) – art. 9.1

Informing the public

- Form
 - public notices or by other appropriate means such as electronic media where available,
 - bill posting within a certain radius
 - publication in local newspapers
- Detailed content of the notification
- Relation to art. 6 Aarhus Convention
 - public vs public concerned
 - timely, effective and adequate manner of informing

General principles – early participation and reasonable timeframes

- Early participation –
 - when all options are open
 - before decision is taken
- Reasonable timeframes -change of approach
 - (original Directive) „appropriate time limits for the various stages of the procedure in order to ensure that **a decision is taken within a reasonable period**”
 - (current version after Aarhus) „Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.
- Different phases

Transboundary procedure – art.7

- Espoo Convention approach and methodology applies
- 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)
 - Inter-governmental consultations
 - Final decision and Information about the decision
 - Under Espoo also post-project analysis (if applicable)
- Practical arrangements needed to be establish
 - Ad hoc
 - In bilateral agreements

Decision – art.8 – 9a

- Reasoned conclusion (validity- art.8a.6.)
- Due account taken of the
 - EIA report
 - Consultation with environmental authorities
 - Transboundary consultation
 - Public participation
- Need for statement of reasons
- Need to inform and make decision available to
 - the public and authorities concerned
 - affected Parties

Access to justice

- Added in 2003 to implement art.9.2 of the Aarhus Convention
- Possibility to challenge substantive or procedural legality of decisions, acts or omissions
- For those
 - Having a sufficient interest, or
 - Maintaining impairment of rights
- Including NGOs
- Problematic issues
 - Screening
 - Standing for NGOs
 - Standing and scope of review in countries with system based on protection of subjective rights

EIA - practice in EU

- Full EIAs yearly – appr 20 000-25 000
 - In Poland – about 5000 yearly
- Average duration – 11,6 months
- Average costs – 1% of project costs (41 000 Euro per EIA average)
- Responsibility for conducting EIA procedure
 - In big/medium countries – local and regional authorities with general competence
 - In smaller countries – environmental authorities

Role of the UNECE EIA/SEA Reviews

- Evaluate existing national frameworks from the point of view of compatibility with international standards
- Assist countries in
 - Complying with international standards
 - Improving internal coherence
 - Enhancing effectiveness
- Recommendations
- First step towards reform (Review – Concept – Drafting)

Legislative EIA/SEA reforms in EaP Green countries

- Armenia – attempt to combine modern EIA/SEA with expertiza, compliance with international standards not fully achieved but reform still pending
- Azerbaijan - attempt to combine modern EIA/SEA with expertiza, compliance with international standards not fully achieved but reform still pending
- Belarus – attempt to combine modern EIA/SEA with expertiza, compliance with international standards not fully achieved
- Georgia – modern EIA/SEA schemes introduced, compliance with international standards achieved
- Moldova - modern EIA/SEA schemes introduced, almost full compliance with international standards achieved
- Ukraine - modern EIA/SEA schemes introduced compliance with international standards achieved

Legislative reforms in other CA countries

- Kazakhstan
 - UNECE Reviews completed
 - Political decision to introduce modern EIA and SEA schemes
 - Draft legislative changes prepared
- Uzbekistan
 - UNECE Reviews completed
- Kirgistan
 - no UNECE Reviews as yet
- Turkmenistan
 - no UNECE Reviews as yet