

Jerzy Jendrośka

Strategic documents subject to SEA and screening

*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*

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SEA Protocol – field of application

- Policies and Legislation – art. 13
- Plans and programs (names irrelevant)- art.4
- Art..4.2 - mandatory SEA for all plans and programs in sectors indicated in art.4.2 which set the framework for future development consent of projects listed in Annexes I and II
 - Except for (art.4.4)
 - Minor modifications
 - Plans and programs which determine the small area at local level which are subject to screening
- Art..4.3 - also any other plans and programs with **significant environmental effect** – to be determined by Parties
- Screening needed for plans and programs subject to art.4.3 and 4.4

Field of application: documents covered

- Name in domestic law is irrelevant!
- SEA required for documents which could be called differently (plans, programs, policies, strategies, concepts, conditions etc)
- Could be called collectively „strategic documents” unless in domestic law
 - already some documents are called as such (example of Moldova)
 - there is another collective term to capture all

Field of application – sectors of economy covered

- Art..4.2 – mandatory SEA for : agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning, land use
- Art. 4.3 - other sectors – for example: recultivation of former military basis, nature protection plans, air or noise protection programs,

Field of application: examples

- Yearly investment plan of the Transport Ministry - DK
- Forrest management plans (including private forrests) - FR
- Plans for encouraging investments (Hungary)
- Urban renovation programs (Poland)

Scope of application - practice

- Plans and programs subject to SEA listed (special list under „main” act or indicated in sectoral laws) plus individual screening based on Annex III criteria
- Plans and programs may have various names: concepts, strategies, policies, conditions etc – not name but content is important

Art.4.2 - setting the framework for projects

- Setting the framework
 - directly: for example binding requirements regarding location, seize, nature etc of projects
 - indirectly: binding requirements for lower level strategic documents
- „Setting the framework” vs „”listing”
- Projects
 - Different approach in SEA Directive and SEA Protocol
 - Relation to screening in EIA scheme

Art.4.4

- Minor modifications –
 - extremely important in practice
 - clear reference suggested to be included
- Small areas at local level
 - Difficult to be implemented
 - Inclusive approach suggested

Exemptions – art. 4.5

- Understanding of
 - Serving national defence
 - Civil emergencies
 - Financial or budgetary documents
- Understanding of „sole purpose of” vs „relating to”

Field of application: exemptions

- National defence and civil emergencies
 - „sole purpose”
 - Examples
- Financial or budget
 - Strict sense
 - exemption can be used only for those subject to special rules regarding budget
 - Exemption can not be used for documents providing financial means for planned therein activities

Screening – article 5.1 of SEA Protocol

- Each Party shall determine whether plans and programmes referred to in article 4, paragraphs 3 and 4, are likely to have significant environmental, including health, effects either through
 - a case-by-case examination or
 - by specifying types of plans and programmes or
 - By combining both approaches.

For this purpose each Party shall in all cases take into account the criteria set out in annex III.

Screening – art.5

- Application
 - Not
 - Documents form art. 4.2
 - Yes
 - Documents form art. 4.3 and 4.4
- Role of Annex III

Screening - cd

- Caution: definition of SEA does not include screening!
- Categorical vs case-by-case screening: pros and cons
- Procedure – role of environmental and health authorities

Screening – cd

- Method
 - Positive vs negative screening
 - Pros and cons
- Procedural requirements
 - Screening document
 - Who participates
 - Who decides
- Screening decision
 - Form and legal nature
 - Public availability
- Timing

Public availability of screening determination – art. 5.4 of SEA

Protocol

- Each Party shall ensure timely public availability of the conclusions pursuant to paragraph 1, including the reasons for not requiring a strategic environmental assessment, whether by public notices or by other appropriate means, such as electronic media.