

Jerzy Jendrośka

# Place of EIA in development control and role of authorities and other actors

*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**

# Content

- Approaches to development control and place of SEA/EIA in decision-making
- Role of public authorities and other actors

# Development control

- Strategic decisions (SEA)
  - Policies
  - Programs
  - Plans
- Individual decisions permitting specific activities/projects in specific location (EIA)

# EIA and development control procedures in EU - typical examples

- Integration into existing development consent procedures
  - Zoning/siting decisions and building/construction permits
  - Examples: Britain, Germany, Poland (before 2009)
- Special procedures
  - Environmental (EIA) decisions
  - Examples : Bulgaria, Czech Republic, Hungary, Romania, Slovakia, Lithuania, Poland (since 2009)

# Development control procedures for specific projects - typical structure in EU

- EIA decision
- Siting decision/planning permission
- Construction/building permit
- Pollution control (IPPC) permit and/or resource use decisions (e.g. water permit, mining license, nuclear permit)

# Decision-making and role of public authorities

- Strategic decisions (SEA)
  - Planning authority – competent to adopt strategic document
  - Environmental/health authorities
- Specific projects (EIA)
  - Competent authority – to grant development consent
  - Environmental/health authorities

# Developer and competent authority in EIA

- (b) „developer” in EIA
  - the applicant for authorisation for a private project or the public authority which initiates a project
- (f) "competent authority,, - authority or authorities
  - which the Member States designate as responsible for performing the duties arising from this Directive (EIA Directive)
  - entrusted by a Party with decision-making powers regarding a proposed activity (Espoo Convention)
  - Usually: local or regional authorities with general competence for urban development/construction, sometimes: specialised authorities for energy, resource use, occasionally specialised environmental authorities

# Development consent -

- Definition (art. 1.2 (c) EIA Directive) - development consent' means
  - the decision of the competent authority or authorities which entitles the developer to proceed with the project
- Development consent =
  - „final decision” (Espoo)
  - „decision on whether to permit proposed activities” (Aarhus)
- Must be:
  - Binding (Case 96/81 Commission v. Netherlands)
  - No tacit agreement -C-360/87 and C-230/00 (EC vs Belgium)



# Competent authority - Art.1 (v) of the Espoo Convention

„competent authority” means:

- *„national authority or authorities designated by a Party as responsible for performing the tasks covered by this Convention*
- *and/or*
- *the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity”*

# Competent authority – art. 1.2 (f) of EIA Directive

- (f) "competent authority,, - authority or authorities
  - which the Member States designate as responsible for performing the duties arising from this Directive (EIA Directive)
  - Conflict of interests must be taken into account in case of authorities being promoters of the project!
  - In practice
    - usually: local or regional authorities with general competence for regional planning/urban development/construction,
    - sometimes: specialised authorities for energy, resource use,
    - occasionally: specialised environmental authorities

# Developer - art. 1.2 (b) of EIA Directive

- (b) „developer”
  - the applicant for authorisation for a private project or the public authority which initiates a project

# Roles in EIA – practice in EU

- Competent authorities for decision-making
  - In big countries – usually local or regional authorities
  - In small countries – usually central environmental authorities
- Competent authorities for transboundary procedure
  - usually central environmental authorities
- Consulting environmental/health authorities
- EIA Consultants
- Public
  - Natural persons
  - NGOs
- Developers

# Obligations of competent authorities

- Verification of EIA documentation
- Issuing screening/scoping determination
- Organising public participation
- Making consultations with other authorities
- Taking due account of the results of EIA procedure
- Issuing decision, including
  - precise conditions
  - detailed justification

# Obligations of developers

- EIA documentation
  - finding proper consultants and paying for preparing documentation
- Payment of
  - administrative fees
  - Expenses related to public participation
- Notification of the public (in some countries)
- Organising public participation venue (in some countries)
- Specific obligations in case of transboundary procedure (translation etc)

# Environmental control procedures for specific projects - typical structure in EU

- Development control
  - EIA decision
  - Siting decision/planning permission
  - Construction/building permit
- Pollution control
  - Integrated permit (IPPC) – big installations
  - Sectoral permits (air, waste, noise etc)
- Resource use decisions (e.g. water permit, mining license, nuclear permit)

# 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



# Procedural elements – consultations with authorities

- Mandatory consultations with environmental authorities likely to be concerned by reason of their specific environmental responsibilities or local and regional competences (EIA Directive)
  - see examples from Uk and Poland below
- Health authorities (consulted in some EU countries)
  - health authorities depending on the type of projects

# Environmental authorities consulted in EIA – UK (EIA Regulation 2017)

- Natural England;
- Environment Agency;
- Marine Management Organisation
- Other bodies having specific environmental responsibilities
  - for example Health and Safety Executive – for projects located in the „consultation area” of major hazard site for industrial accidents (Seveso III Directive)

# Environmental authorities consulted in EIA – Poland (EIA Act as amended 2017)

- Regional Environmental Directorate
- Health authorities
- Authorities responsible for issuing integrated environmental permit (IPPC- integrated pollution prevention and control)
- Authorities responsible for issuing water permits