

Jerzy Jendrośka

Taking into account results of EIA into the final decision regarding the project

*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

- Concept of final decision
- Duty to „take due account” of environmental assessment
- Statement of reasons
- Obligation to inform about the decision and make it available

Concept of the final decision

- Final decision in EIA Directive (art. 8-9a)
 - the decision of the competent authority which entitles the developer to proceed with the project
 - Specificity of the multi-stage development control
- Final decision under SEA Protocol (art.11) – decision to adopt strategic document
 - Not necessarily taken by the planning authority (may be taken by the Parliament)

Final decision in Espoo

- **Content - Art.6.1**
 - due account taken of the outcome of the procedure
 - EIA documentation
 - comments from the public and authorities
 - consultations under Art.5
 - reasons and considerations on which the decision is based
- **Must be provided**
 - to the affected Party (Art.6.2)
 - its authorities and the public (ECE/MP.EIA/IC/2009/2, para. 27)

Final decision cd

- Parties are free to decide which of the multitude of decisions required within their regulatory framework should be considered final for the purpose of the Convention, their discretion in this respect is limited to those decisions that in real terms set the environmental conditions for implementing the activity” (ECE/MP.EIA/10, decision IV/2, annex I, para. 61)

Final decision cd

- „if the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the ‘final decision’ in the meaning of the Convention”
(ECE/MP.EIA/IC/2009/2, para. 21)

Final decision cd

- „concerned Parties should agree, at the latest during the EIA procedure, on the whether the final decision will be translated and, if so, whether the whole final decision or only specific parts;
- The final decision should always be submitted as a paper document but, if the affected Party so requests, the final decision should also be transmitted electronically” (ECE/MP.EIA/IC/2009/2, para. 26)

Decision in EIA Directive – 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

Concept of taking „due account”

- Taking due account
 - obligation to read and consider seriously
 - but not always to accept all comments
 - evidenced in Statement of Reasons (sometimes also in the merit of the decision)

Due account of what?

- Environmental assessment - meaning:
 - EIA/SEA report
 - Consultation with environmental/health authorities
 - Transboundary consultation
 - Public participation

Statement of reasons (art11.2 SEA Protocol)

- Must summarize:
 - how the environmental, including health, considerations have been integrated into the strategic document,
 - how the comments received during:
 - Consultation with environmental/health authorities
 - Transboundary consultation
 - Public participation
 - have been taken into account and
 - the reasons for adopting strategic document in the light of the reasonable alternatives considered

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

Obligation to inform about the decision

- Informing whom
 - Environmental/health authorities
 - Parties potentially affected
 - Public
- Informing about what
 - The decision being taken
 - Where it is made available

Obligation to inform about the decision - -cd

- Informing how:
 - the same way as informing about the procedure,
 - including means of notifying
 - the public or
 - affected Parties
- Informing when:
 - Promptly – without delay

Obligation to make the decision available

- Together with the statement of reasons
- By making it available:
 - online on the publicly accessible registers of decisions
 - In hard copies in places where it is easily available
- In case of transboundary procedure it means:
 - translating the decision
 - sending its copy to the potentially affected Parties