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Virtual Roundtable

on the Development of Secondary Legislation on EIA and SEA in Azerbaijan
**Draft Regulation on EIA in Azerbaijan in light of UNECE Espoo
Convention and other applicable international
standards: findings and recommendations of the Review**
Dr. Jerzy Jendroška

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- Former Secretary of the UNECE Aarhus Convention
- Member of the Permanent Court of Arbitrage in the Hague (2001-2016)
- Member of the Implementation Committee of the Espoo Convention (2004-2017)
- Member of the Compliance Committee of the Aarhus Convention (since 2005)
- Member of the State Environmental Council in Poland (since 2014)
- Member of National EIA/SEA Commission in Poland (1992-2006)
- Drafter of EIA/SEA/Aarhus legislation in Poland
- Legal consultant for drafting EIA/SEA/Aarhus legislation in Balkan, Eastern Europe, Caucasus and Central Asia countries

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Content

- International obligations
- Concept and role of EIA
- Activities subject to EIA
- Scoping
- EIA Report
- Public participation
- Transboundary procedure
- Final decision

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International obligations

- 1991 UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)
- 1998 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
- 2003 Convention for the Protection of Marine Environment of the Caspian Sea (Teheran Convention)
 - and its 2018 Protocol on EIA in Transboundary Context
- EIA is general obligation under international law – verdict of the International Court of Justice in Pulp Mill case of 2010

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Concept of EIA under Espoo and Aarhus Conventions

EIA is a procedure conducted by competent authority

- before authorising an activity which may have significant impact on the environment
- with the involvement of
 - other relevant authorities
 - the public
 - project proponents
 - EIA consultants hired by project proponents and other experts

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Concept of EIA under Espoo and Aarhus Conventions - cd

- Designed for market economy and rule of law
- Assuming well established development control and efficient administrative framework
- Procedural and process oriented
- Most obligations put on authorities
- Transparent and participatory

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Key practical features of EIA in the developed countries

- Individual screening (usually)
- Individual scoping (usually)
- Responsibility for EIA Report
 - competent authorities (US model)
 - project proponents (EU model)
- Active role of competent authorities
 - conducting public participation
 - designing individual conditions
 - providing statement of reasons
- Elaborated documentation and procedures at each stage

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Concept of OVOS/expertiza system

- Traditions of OVOS/expertiza systems in Eastern Europe, the Caucasus and Central Asia
 - Designed for centrally planned state-owned economy in communist system
 - Most obligations put on project proponents
 - Substance oriented
- Two separate legal regimes
 - OVOS - responsibility of project proponents
 - Expertiza(s) - responsibility of various agencies

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Activities subject to EIA

- Activities which may have significant impact on the environment
- Approaches
 - Individual screening based on criteria (US model)
 - Mandatory list (old OVOS/expertiza system)
 - Mixed (EU and also Georgia, Kazakhstan)
 - Mandatory list, and
 - List of activities subject to individual screening based on criteria

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Scoping - procedure

- EIA procedure initiated by project proponent (para 2.2)
- Documents immediately put by Agency on its web-page
- Commenting by
 - Environment and Health Ministries (para 2.11),
 - relevant local authorities (para 2.21)
 - the public (para 3.6)
- No time-frames for commenting - in other countries usually 2 weeks
- The information on the project includes info on possible transboundary impact which triggers transboundary procedure (para 3.4.4 and 5.4, 5,5)
- The scoping document approved by the Agency is immediately made available to the public on webpages of the Agency and project proponent.
- Public is immediately informed (by project proponent?) in mass-media (para 3.10)

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Scoping document

- Determines content, scope and methods of assessment (art. 4.4 of the EIA Law)
- Determines in particular
 - Alternatives to be examined in EIA Report (para 4.7)
 - Tools for informing the public (para 3.5.6) – whether they assure effectively informing the public concerned as determined in para 2.16 in compliance with art.6.2 of Aarhus Convention
 - Proposed time and venue of public hearing (para 6.5.6)
 - Expertise and experience required from experts preparing EIA Report (para 3.5.5)

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EIA Report

- EIA Report shall be prepared by experts having expertise and experience as determined by the Agency , taking into account the specificity of the activity, in the approved scoping document (para 3.5.5)
- Shall cover alternatives as discussed with the Agency and approved in the scoping document (para 4.7)
- Information on public hearings and discussions shall cover all public comments provided before submitting the report and evidence that the public concerned was informed properly in accordance with the scoping document
- Non-technical summary (para 4.4) shall include a short summary of each of the items listed in paras 4.3. and 4.4

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Public participation - determination of public concerned

- Determination of the public concerned which should participate (paras 2.15, 2.16, 2.21 and 2.23) must be interpreted in line with
 - Definition of the public concerned (art.2.5 of Aarhus Convention)
 - Non-discrimination regarding nationality etc (art. 3.9 of Aarhus Convention)
- The Agency approves the proposals of the project proponent regarding the methods of informing the public (para 3.5.6) taking into account:
 - Results of the determination of the public concerned which should participate,
 - Obligation to ensure that the public concerned is informed in „an adequate, timely and effective manner” (art.6.2 of Aarhus Convention)

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Public participation – obligation to inform

- Obligation to inform the public about
 - Initiation of the procedure (art. 12.1.4 of EIA law and para 3.6)
 - Public hearings (paras 2.18 and 2.23)
 - Scoping document (para 3.10)
 - Results of EIA (art. 12.1.4 of EIA law) which in line with Aarhus Convention shall mean expertiza conclusions and final decision permitting the activity
- Methods of informing the public
 - By Agency in its webpage
 - In mass media - by project proponent in accordance with the scoping document

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Public participation – public comments and access to documents

- All relevant documents shall be made publicly available during and after the EIA procedure at the Agency webpage (paras 3.10 and 4.13 and art.,6.6 and art.5.1 of Aarhus Convention)
- Written comments may be sent to the Agency and to the project proponent and must be taken into account (para 2.22)
- Time-frames for inspecting documents and submitting comments must be reasonable (art.6.3 of Aarhus Convention)
- Public comments do not need to be motivated and may relate to:
 - Scope of assessment
 - Quality of EIA Report
 - Admissibility or not admissibility of the proposed activity
 - Conditions to be imposed on the proposed activity

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Public participation – public hearings

- Public hearing at the scoping stage – only voluntarily
- Public hearing after submission of the EIA Report is mandatory, except cases involving state secret or other data protected by law (para 2.23)
- Mandatory public hearing
 - Time and venue approved by the Agency , after consultation with the relevant local authority, in the scoping document
 - Must be announced publicly at least 7 business days in advance (paras 2.17 and 2.18)
 - Must be chaired by a representative of relevant local authority (para 2.19) with the participation of Agency and other authorities
 - Open to everyone (2.17)

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Transboundary procedure - initiation

- Criteria for assessing significant transboundary impact (para 5.9) shall be interpreted in light of Appendix III to Espoo Convention)
- Notification must be sent „no later than when informing its own public” (art. 3.1 of Espoo Convention and para 5.8) – practical consequences
- In case of transboundary procedure the time-frames are extended (para 4.9)

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Transboundary procedure - results

- Results of transboundary procedure shall be reflected in:
 - scoping document (para 5.5)
 - expertiza conclusions and final decision permitting the activity (paras 4.13 and 4.14)
- Expertiza conclusions and final decision permitting the activity, together with reasons and considerations on which it is based – must be translated by project proponent and duly submitted to the affected country (para 7.5)

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Final decision

- Expertiza conclusions is binding for final decision permitting the activity (para 4.14)
- Both expertiza conclusions and final decision permitting the activity must be accompanied by justification (statement of reasons and considerations on which it is based)
- Final decision permitting the activity shall be:
 - Submitted to the Agency
 - Announced to the public and made publicly available

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