UNECE SEA Protocol and EU SEA Directive: legal requirements and experience with practical application

Draft Law on Strategic Environmental Assessment in the Republic of Moldova and its pilot application to urban plans and programmes

Roundtable

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Content

• Origins and concept of Strategic Environmental Assessment
• Development of international/EU legal framework
• SEA Directive and SEA Protocol
• National legal frameworks for SEA
• Scope of application
• Key procedural steps
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
  – Transbondary 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 ecran)

• Wariant „0”

• Wariant „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
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 EIA – **NO**
Procedural steps

- Screening and informing about its results
- Stages
  - scoping
  - submitting assessment documentation
  - taking into account information gathered
  - informing about the decision together with reasons
- Obligatory elements (at various stages)
  - consultation with environmental authorities
  - public participation
- Transboundary consultation (if applicable)
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
  – Nagymaros-Gabcikovo case – ICJ
  – Pulp Mill case - ICJ

• 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)
Development of legal framework in Europe

- EIA Directive 1985 – impact of projects
- Espoo Convention 1991 – transboundary impact of projects
- Habitat Directive 1992 – impact of plans, programs and projects on protected habitats (Natura 2000 sites)
- SEA Directive 2001 – impact of plans and programs
- Kiev SEA Protocol 2003 - transboundary impact of plans and programs
UNECE SEA Protocol and EU SEA Directive

• Health issues in SEA Protocol
  – Substantive part of assessment
  – Role of health authorities

• Natura 2000 in SEA Directive
  – Not mentioned in the SEA Protocol
  – Impact on biodiversity required by art. 14 CBD

• Relation to projects subject to EIA
SEA Directive – scope of application

• Plans and programs (names irrelevant)
  • 1) In certain areas
     – if set the framework for future development consent of projects listed in Annexes I and II to EIA Directive
  • 2) Any plan/program – if has impact on Natura 2000 site
  • 3) Any other plans and programs with significant environmental effect – to be determined by member State
SEA Directive - procedure

- Screening – art. 3.5-7
- Scoping – art. 5.4
- Environmental report – art. 5 and Annex III
- Consultation with environmental authorities – art. 6
- Public participation – art. 6
- Transboundary procedure (if applicable) – art. 7
- Decision-making and informing thereof – art. 8 and 9
- Monitoring – art. 10
- No access to justice requirement
Number of SEA procedures yearly

• Full SEA procedures
  • about 1500 yearly in Finland
  • about 400-500 yearly in UK and France
  • about 270 yearly in Austria

• Screening procedures
  – in Salzburg region (Austria) - about 300 yearly!

EaP GREEN Partnership for Environment and Growth
Environmental authorities

• Role in
  – Screening (their opinion often binding )
  – Scoping (their opinion often binding )
  – Consultation (their opinion usually not binding – unless negative impact on Natura 2000 sites )

• Central authorities for plans and programs at central level and regional authorities for all other plans and programs

• In some countries environmental authorities determined by law, in some countries – ad hoc

• Time-frames - between 10 and 45 days
Public participation in SEA

- Usually at least twice during the procedure (in scoping and consulting the report)
- Time-frames for public participation
  - Belgium and Italy - 60 days
  - Spain, the Netherlands and Latvia - 40-45 days
  - Other countries - usually 30 days
National legal framework

• Always in the act of Parliament and not in secondary legislation
• Legal technique
  – Only „main” act - not effective
  – „Main” act and cross-references in sectoral acts (SEA procedure added to sectoral procedure) - sufficient
  – Procedural details also in sectoral acts (SEA procedure build into the sectoral procedure) – most effective
Legislative technique: possible approaches

- SEA procedure only in one law (special SEA law or general environmental law) - NO
- SEA procedure in one law and references to SEA procedure in all laws envisaging preparation of plans, programs etc – YES
- SEA procedure build in into all laws envisaging preparation of plans, programs etc – YES (but difficult)
- Pros and cons of the above approaches
Types of SEA law and sectoral laws

• Types of the „main” act
  – General environmental protection law
  – Special EIA/SEA law
  – Special SEA law

• Types of sectoral legislation
  – Land use planning law, energy law, highway law, regional development law, forest law, waste law
Scope of application – sectors of economy covered

- Agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning, land use
- Other sectors – for example: recultivation of former military basis, nature protection
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
Scope of application – „set the framework”

- „which set the framework for future development consent for projects”
  - with regard to location, nature, size, operating conditions, or allocating resources (Annex III.2)
- Directly or indirectly (by influencing other plans - Annex III.3)
- Development consent - „final decision” Espoo
- Lists of projects - those which require EIA
  - Annex I (based on Espoo)
  - Annex II (based on EIA Directive)
Field of application: 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

• Projects
  – Different approach in SEA Directive and SEA Protocol
  – Relation to screening in EIA scheme
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)
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

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

• Early at planning proces (at the stage of blueprint or outline/concept for strategic document)

• Role of
  – environmental and health authorities
  – planning authorities
  – SEA consultants
  – the public

• Procedure – scoping meeting

• Scoping „decision”
Environmental report and quality control

• Key elements of SEA report
• Role of scoping
• Quality control: pros and cons of different approaches and relation to public tendering
  – Accreditation of SEA consultants
  – EIA/SEA Commissions
  – independent review
  – general requirements in legislation
Consultation with other authorities

- Environmental and health authorities clearly identified at each applicable stage (for example: Environment Ministry, Regional Sanitary Inspectorate etc)
- Decision-making vs co-decision-making vs consultative role
- Role in screening and scoping vs role in adopting the final strategic document
- Role of Foreign Ministry in case of transboundary procedure
Public participation

- Relation to article 7 of Aarhus Convention
- Public vs public concerned
- Identification of the public which should participate
- Key role of informing the public effectively (not only webpage!)
Public participation

• Requirement for “early in the decision-making when all options are possible”
• Stages – experience in EU
  – sometimes at screening
  – often in scoping (could be combined with commenting on outline/concept for strategic document)
  – Mandatory commenting on SEA Report and the strategic document
Time-frames needed

• Using terms familiar for given administrative tradition (months or week or days – calendar days or working days)

• Should be clearly set for involvement of environmental/health authorities and the public, where applicable in:
  – Screening and scoping
  – Comments of SEA Report and the strategic plan
Time frames not needed

• No time-frame for
  – The entire SEA procedure
  – Transboundary procedure (set individually in notification)
Decision and monitoring

• Decision – adopting a strategic document according to national legislation
• Statement of reason needed
• Informing
  – Environmental/health authorities
  – The public
  – Transboundary partners
• Monitoring – included
  – In strategic document or
  – In decision adopting the document
EU guidance and reports

• http://ec.europa.eu/environment/eia/sea-support.htm

• REPORT FROM THE COMMISSION

• On the application and effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC)