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Existing dilemmas regarding legislative reform of EIA and SEA schemes in countries with Environmental Expertiza and OVOS system

Implementing the Espoo Convention and its Protocol
on SEA in national legislation in Azerbaijan

2 March, 2015

Baku, Azerbaijan



Content

- Genesis of the problem
- Issues of concern
- Conclusions regarding the traditional model
- Approaches to legislative reform in different countries
- Suggestions for the future

Genesis – concept of Espoo and Aarhus Conventions

- Based on Western EIA concept
 - designed for market economy
 - assuming well established development control
- Procedural and process oriented
- Obligations put on authorities

Genesis – concept of OVOS/expertiza

- Traditions of OVOS/expertiza systems in Eastern Europe, the Caucasus and Central Asia
 - Designed for centrally planned economy
 - Substance oriented
- Two separate legal regimes
 - OVOS - responsibility of developer
 - Expertiza(s) - responsibility of various agencies

Issues of concern

- Scope of activities covered
- Scope of assessment
- Regulatory control
- Public participation
- Final decision
- Implementation of Espoo Convention

Activities covered

- Theoretically broad regulatory control and extensive list of activities which require expertiza
 - more activities covered than Espoo Appendix I
- Usually only activities where construction is involved
 - no deforestation (or afforestation)
 - no intensive rearing of poultry or pigs

Scope of assessment

- no individual scoping (usually)
- no clear requirement for
 - „identification of gaps in knowledge and uncertainties”
 - locational alternatives
- limited scope of alternatives assessed in practice

Regulatory control

- Two separate processes
 - OVOS
 - expertiza
- Separate control at expertiza stage
 - environmental, sanitary etc
 - in some countries - integrated expertiza
- No single „competent authority”
 - responsible for the entire procedure
 - for „final decision”

Public participation

- **OVOS stage**
 - responsibility of the developer
 - no clear procedures for notification and hearings
 - limited availability of EIA documentation
 - in practice rather propaganda than participation
- **Expertiza**
 - only non-mandatory „public expertiza”
 - no public consultation in practice
 - no clear requirement to take into account outcomes of

Final decision

- No clear-cut final decision
 - who takes it?
 - in which legal form?
- Substance of final decision –
 - conditions for authorisation in final OVOS Report?
 - no reasons and considerations
- No clear requirement to take into account outcomes of OVOS
- No requirement to announce it

Transboundary procedure

- Screening
 - no precise screening mechanism
 - authorities involved late in the procedure
- No clear transboundary procedure
 - when Party of origin (who and when notifies?)
 - when affected Party (who is responsible?)
 - Espoo convention applied directly?
- No scoping
- OVOS Statement (zajavlenije) vs OVOS Report (otchiot)
- No clear „final decision”

Conclusions

- Conceptual discrepancy between OVOS/expertiza systems and requirements of the Espoo Convention and Aarhus Convention)
- Risk of repeated cases at the Espoo Implementation Committee and Aarhus Compliance Committee
- Need for systemic approach

Approaches to legislative reform in different countries

- Approaches
 - Abolishment of expertiza and work towards totally new EIA/SEA system
 - Combination of modern EIA/SEA with expertiza
- Legislative techniques
 - One new law on EIA/SEA and expertiza
 - Separate laws on EIA and SEA
 - Amendments to existing laws

Suggestions

- Screening mechanism
 - list of projects for mandatory Espoo notification
- Environmental authorities involved in OVOS
 - declaration of intent
 - individual scoping
 - public participation
- EIA documentation

Suggestions -cd

- Clear indication what is „final decision”
- Clear designation of competent authorities
 - for contacts under Espoo Convention
 - for issuing final decision
- Procedures (who does what!)
 - as Party of origin
 - as affected Party

General Guidance

- General Guidance on enhancing consistency between the Convention and environmental impact assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia, which was adopted by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/2014/2).