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Review of legislative aspects of environmental impact assessment of the Republic of Kazakhstan in relation to the implementation of the provisions of the Espoo Convention

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I. List of abbreviations

ZRK – laws of the Republic of Kazakhstan

Espoo Convention - Convention of the United Nations Economic Commission for Europe on Environmental Impact Assessment in a Transboundary Context (Espoo (Finland), February 25, 1991)

EIA – environmental impact assessment

Aarhus Convention – Convention of the United Nations Economic Commission for Europe on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, June 25, 1998)

Pre-EIA – preliminary environmental impact assessment

Review of the legislative aspects of the environmental impact assessment

II. Analysis of the existing legislation and of the current situation

I.1 Legal framework

a) Concept (if any) of dividing the legal matters between legislation and secondary legislation

The general approaches to the development of the legislation in Kazakhstan are defined by the provisions of the Constitution and by the Law № 480-V ЗPK on the legal acts dated April 6, 2016. In particular, the article 39 of the Constitution establishes that “Rights and freedoms of an individual and citizen may be limited only by laws and only to the extent necessary for protection of the constitutional system, defense of the public order, human rights and freedoms, health and morality of the population”. Accordingly, in the most cases the rights and the obligations of parties are defined by the laws whereas the regulations define only the order and the timeframes for their implementation. The compliance with this approach is being monitored through the process of making agreements on the laws and of the regulations by the bodies of justice.

In general, through the regulation of the order and of the timeframes for the EIA assessment can be set by resolutions of the Government or ministerial orders by approval of the following types of the derivative normative legal acts: technical order; standard for a state service; order of provision of a state service; rules; instruction. Rules and instructions present the major interest for this review. Rules define the order of the organization and of conducting a certain type of activity, e.g. as conducting the state ecological expertiza or public hearings. An instruction regulate more in details the implementation of the legislation in a certain area of public relations, e.g. EIA Moreover, the Law on Legal Acts provides an authorized body to develop and adopt by a non-normative legal act, according to which can be applied and/or implemented rights and obligations established by the legislation for individually identified persons, can be explained the norms contained in a normative legal act. Essentially, the second ground provides the development of the guidances on the application of the legislation at the level of the ministries, however, this is not yet a common practice in Kazakhstan. Such guidances are not legally-binding documents, but they may contain detailed recommendations on the application of certain legislative provisions, include examples of best practices and present variability and flexibility of the approaches for the implementation of the legislative requirements.

b) Legislation

The existing EIA legislation's frameworks in Kazakhstan are defined on the basis of the Environmental Code provisions and of the Law on Architectural, Town-planning and Construction Activity in the Republic of Kazakhstan dated July 16, 2011. The Environmental Code as a codified act of the environmental law was adopted on January 9, 2017. This act establishes the legislative requirements for the implementation of the environmental impact assessment (Chapter 6) and of the ecological expertise (Chapter 7). The provisions on the public participation in EIA are less systematized and incorporated in different chapters of the Environmental Code. In particular, as environmental rights of the public they are included into Articles 13 and 14 of Chapter 2 of the Environmental Code. At the same time Chapter 7 includes the special provisions on transparency of the state ecological expertise (Article 57), on public participation in decision-making processes related to environmental protection (Article 57-1) and on organization of public hearings (Article 57-2). Further, in Chapter 6 on EIA public participation is only mentioned as a requirement on the inclusion of the results of the outcomes of public opinion examination into EIA documentation (subparagraph 14 of the paragraph 1 of the Article 41).

The general requirements to the project designing, passing through the expertise and to obtaining of authorizations related to the projects are regulated by the Law on Architectural, Town-planning and Construction Activity in the Republic of Kazakhstan. The environmental legislation regulates only a part of the issues related to the EIA procedure and documentation, public participation and also to the ecological expertise.

c) Secondary legislation

The regulations representing the interest for this review can be divided into 3 parts: a) state ecological expertise and EIA; b) public participation in EIA and in the ecological expertise; c) general documents on project designing.

Table 1. Regulations on EIA, on the ecological expertise, on public participation and project designing

Name of the section	Approved by	Name and date of approval of a regulation
State ecological expertise and EIA	Ministry of Energy	Rules for the implementation of the state ecological expertise dated February 16, 2015
	Ministry of Environment	Distribution of the objects of the category I, which are subject of the state ecological expertise, between the authorized body in the area of environmental protection and its local departments dated July 23, 2009
	Ministry of Environment	Instruction on conducting environmental impact assessment dated July 28, 2007 (EIA Instruction)
	Ministry of Environment	Rules on conducting public hearings dated May 7, 2007
	Ministry of Energy	List of planned economic activities which are subject of the public hearings dated June 10, 2016

Public participation in the EIA and in the state ecological expertise	Ministry of Environment	Rules of the access to the environmental information related to the EIA procedure and to the decision-making procedure on the planned economical or any other activity dated from the 25th of July 2007
General documents on the projection	Ministry of National Economy	Rules on organization of the activity and implementation of the functions of a customer (developer) dated March 19, 2015
	Ministry of National Economy	Rules on organization of the construction and the passing through the authorization procedures for construction dated November 30, 2015
	Ministry of National Economy	Rules on conducting the complex non-departmental expertise of feasibility studies and design and planning estimates intended for the construction of new and changed (reconstruction, extension, technical reequipment, modernization and major maintenance) of the existing buildings and installations, of its complexes, of engineer and transport infrastructures independently from their source of finance dated April 1, 2015 (thereafter – Rules of the implementation of the complex non-departmental expertise)
	Ministry of National Economy	Rules of processing of expert conclusions on town-planning and construction projects (feasibility studies and design and planning estimates) dated April 2, 2015.

The issuance of the state ecological expertise conclusions for the objects from the II, III and IV categories are regulated by order of provision of the state service approved by the local executive bodies of the regions and the cities of Almaty and Astana, namely technical aspects of provision of this governmental service are regulated on the local level. It should also be noted that several regulations of the reorganized Ministry of Environment were not reapproved by the Ministry of Energy which is currently responsible for the environmental issues. Hence, the existing general regulations representing the interest for this Review are approved by the ministries, namely by the formerly existed Ministry of Environment and the currently existing Ministry of Energy and Ministry of National Economy.

d) Other (Guidance, Instructions, Policy documents etc.)

Currently there are no official guidance documents and policies concerning the environment impact assessment in Kazakhstan. The EIA Instruction is a legal normative act, i.e. mostly it has the same legally-binding force as the rules. The distinction is that instructions, as a rule, contain more detailed provisions describing a certain process whereas rules provide more basic provisions regulating the procedure and the sequence of activities.

1.2 The concept of the EIA

a. Who is responsible for EIA

The concept of EIA in Kazakhstan is based on the principle that, according to the paragraph 1 of the article 42, its organization and implementation is a responsibility of the developer (initiator) of a planned activity.

b. Role of developers in EIA generally

According to the Environmental Code and to the EIA Instruction the major role of a developer (initiator) of a planned activity regarding the EIA is:

- 1) Identification of a specialized organization for the conducting EIA and the preparation of the EIA documentation;
- 2) Organization of the public discussions on the prepared EIA materials;
- 3) Presentation of the prepared EIA materials for the environmental expertise;
- 4) Financing of the costs for the EIA and public discussion of its materials.

c. Relationship to ecological expertise

In Kazakhstan EIA materials are subject to the review by the state ecological expertise, conducted by the national authority - Committee of Environmental Regulation and Control of Ministry of Energy and of its territorial departments (regional, of cities of Almaty and Astana) or by offices of natural resources and regulation of nature use of the local executive bodies of regions, cities of Almaty and Astana. The Committee of Environmental Regulation and Control is responsible for the state ecological expertise of the EIA materials for the objects from the category I (according to the sanitary classification). Offices of natural resources and regulation of nature use of the local executive bodies conduct the state ecological expertise for objects from the categories II, III, IV (according to the sanitary classification).

Possible negative effects of the planned economic or other activities on the environment and on the health of the population are considered and can be limited as a result of the state ecological expertise. Furthermore, the state ecological expertise considers the reaching the balance between the economical growth and the protection of the environment as well as the prevention of the potential harm for the third parties during the future activity. Thus, by comparison to standard permits the national environmental expertise in Kazakhstan is not limited to the checking of the formal legislative requirements and of compliance of the submitted documents to the set legislative requirements. However, there is no methodological guidance for the assessment of the negative effects of the planned activity and for ensuring the balance between the economical growth and of the environmental protection in the process of planning. Thus, the state ecological expertise is usually limited to the review of the content of the submitted EIA materials on consistency with the formal legislative requirements.

In accordance with the results of the conducted state ecological expertise of the EIA materials, a conclusion shall be made, which can be positive or negative. The positive conclusion considers the project, which is subject to the EIA, as acceptable and opens the door for taking further decisions on the implementation of the planned activity. The negative conclusion means the necessity of further elaboration of the EIA materials for re-submission to the expertise or abandonment of the planned activity.

d. Relationship to other forms of expertise (construction, sanitary, etc.)

In general, the complex non-departmental expertise is conducted on projects of the proposed economic activity. Currently the basic approach to the regulation of the business activity is the simplification of the authorization procedures and the implementation of a single window system while the state ecological expertise is recognized as a formal part of the complex non-departmental expertise. Its results are drawn up as a separate document – the conclusion of the state ecological expertise. However, according to the amendments to

the Environmental Code dated December 27, 2017, it is expected that the separate conclusion on the state ecological expertise won't be issued starting from the second half of 2018. For this reason, the term of "ecological expertise of projects" was introduced in Article 45 as an attempt to exclude the issuance of the conclusion of the state ecological expertise separately from the conclusion of the complex non-departmental expertise. However, the requirement to issue the separate conclusion of the state ecological expertise remains together with the conclusion of the complex non-departmental expertise.

In addition to the state ecological expertise, according to the Rules on conducting the complex non-departmental expertise the issuance of separate conclusions of the sanitary epidemiological expertise by the Committee of Public Health of Ministry of Health and its territorial departments is also envisaged. The expertise of the project documentation of the proposed economic activity on other aspects, e.g. on compliance with the construction norms, the requirements on energy efficiency, the fire safety, etc. are a part of the conclusion of the complex non-departmental expertise.

1.3 Definitions

a. Consistency generally with the definitions in art. 1 of the Espoo Convention

The terms, which are defined in Article 1 of the Convention on Environment Impact Assessment in Transboundary Context, are not integrated consistently into the environmental legislation of Kazakhstan. Only one of them was defined in the Environmental Code, namely the term of the "environment impact assessment", whereas the definition of the term "impact" is provided in the EIA Instruction. Regarding the term "proposed activity", it is important to note that 2 terms - "intended activity" and "proposed activity" - are applied in the environmental legislation. Clear difference between these 2 terms is not provided and they are not legally defined. The term "transboundary impact" is applied in the legislation of Kazakhstan but it is still not defined. At the same time the term of "summary" is not used neither in the Environmental Code nor in the EIA Instruction and, accordingly, there is no requirement for the compilation of the technical and non-technical summary of the EIA documentation.

b. Approaches to definitions (if applicable) of "impact" - consistency with definition in art. 1 (vii) of the Espoo Convention, in particular including human health, cultural heritage, socio-economic conditions

The term "environment impact assessment" was defined by Article 35 of the Environmental Code as "a procedure under which potential consequences of economic and other activities on the environment and human health are estimated, measures to prevent adverse effects (destruction, degradation, damage and depletion of natural ecological systems and natural resources), environmental health, taking into account the requirements of the environmental legislation of the Republic of Kazakhstan shall be developed". Considering the reference to the national procedure made in the Espoo Convention and the broad approach to the definition of this term under the legislation of Kazakhstan, it seems that the definition is compatible with the definition provided by subparagraph vi) Article 1 of the Espoo Convention. However, despite the convergences between the definitions of these terms in the national legislation and in the Espoo Convention, there are conceptual divergences in the application of this procedure. In Kazakhstan EIA is a duty of the developer (initiator) of the proposed activity on its designing for passing the state ecological expertise

whereas according to the Espoo Convention it is the procedure to be conducted by public authorities.

As regards the definition of “impact” by subparagraph 1) of paragraph 4 of the EIA Instruction it is formulated on the basis of the definition used in the Espoo Convention (subparagraph vii of Article 1). However, the major deficiency of the Kazakh definition is the absence of the direct reference to water as a component of the environment as it is not included in the definition of the EIA Instruction.

The definition of “EIA report” is not used in the Kazakh legislation, it is replaced by the term “EIA documentation” without providing its definition. The EIA Instruction envisages that the EIA materials are compiled into a document, so it implies the report as a part of the EIA documentation whereas the materials on public participation are considered as a separate document.

I.4 Activities subject to EIA

a. Are all 11 activities listed in Appendix I to Espoo and in Annex I to Aarhus subject to EIA and public participation

In general, the application of different approaches to the definition of the types of activities for the purposes of conducting the state ecological expertise, the EIA and the public hearings leads to a very convoluted and non-transparent situation in relation to the question which objects require the EIA and public hearings. Not all types of the activities, included in the Appendix I of the Espoo Convention and Annex I of the Aarhus Convention, are subjects to the environment impact assessment or public hearings because of the differences of the approaches to the determination of the objects and the application of thresholds.

The list of the proposed activities of the EIA Instruction (Annex I) is clearly not in compliance with the international obligations of Kazakhstan under the Espoo Convention and under the Aarhus Convention. It does not cover all the activities included in the annexes of these conventions. For example, in comparison with the Espoo Convention regarding the offshore hydrocarbon production, major storage facilities for petroleum, petrochemical and chemical products the Kazakh list sets the thresholds for those activities. Further, compared to the Espoo Convention, deforestation of large areas is fully excluded from the Kazakh list of the EIA objects. The inconsistency of the list of the proposed activities of the EIA Instruction with the Aarhus Convention can be showed by concrete examples of crude oil refineries and thermal power stations. In both cases the Kazakh legislation applies the thresholds of the production capacities from the Espoo Convention which are considerably higher than the ones from the Aarhus Convention. 500 and more tonnes per day for the crude oil refineries and 300 MWt tonnes or more per day for the thermal power plants, whereas in the Annex I of the Aarhus Convention the threshold for the crude oil refineries is not set and for the thermal power plants the threshold is established as 50 MWt or more.

The list of the types of the economic activities that are subjects to public hearings of June 10, 2016 is closer to the list of the Aarhus Convention's Annex I. However, it is considerably modified and reformatted, so it is difficult to compare it with the Annex I of the Aarhus Convention and it hinders the compliance with its requirements.

b. One or more lists of activities, criteria for assigning into each category

Currently there are 3 different types of the lists of the proposed activities: the list for the state ecological expertise (sanitary classification of the industrial facilities); the list of the EIA Instruction; the list of the economic activities that are subjects to public hearings. The broadest list of the types of proposed activities is included in the list of the subjects to the state ecological expertise, but it is completely incompatible and inconsistent with the lists of the proposed activities of the annexes of the Espoo Convention and of the Aarhus Convention. The list of the activities for conducting the state ecological expertise is based on the sanitary classification of the industrial facilities and sizes of sanitary protection zones prescribed for them. It is broader than the lists of the activities for conducting the EIA and public hearings because not all the objects of the state ecological expertise are the objects of the environment impact assessment. On practice, firstly, it is determined whether a certain type of activity is the subject to the state ecological expertise or not, then it is necessary to determine whether it requires conducting the environment impact assessment or not and, finally, it should be determined whether the EIA procedure requires public participation in the form of the public hearings or in the form of the public survey.

For the determination of the EIA, the lists of the proposed activity are established and they are included in the Annexes 1 and 2 of the EIA Instruction. The list of the Annex 2 is envisaged for the screening. However, the categories of the activities which are the subjects to the EIA and of the categories I-IV of the state ecological expertise, are different and hardly compatible one with other. It can be explained by the fact that the sanitary classification of the industrial facilities is considered more conventional and understandable for the Kazakh developers. Nevertheless, on practice the environment impact assessment is being conducted on the types of activities, determined according to the sanitary classification and not on the objects of the environment impact assessment. For example, in the public communication examined by the Aarhus Convention Compliance Committee (ACCC/C/20133/88) the environmental impact assessment was conducted on the ski resort “Kok Zhailyau”. At the same time, according to the EIA Instruction, the objects of the environment impact assessment are “ski slopes, lifts, cable cars and installations connected to them”.

c. Approach to changes, updates and extensions – including extension of lifetime

According to paragraph 13 of the Annex 2 of the EIA Instruction, “any changes or extensions of the projects, included in the list of this Annex, which already approved, executed or in the process of implementation and can have significant negative environmental effects” may be a subject to the EIA. It means that the screening should be conducted for these changes, updates and extensions of the activity with the application of the legally established criteria and thresholds in order to determine of whether it is necessary or not to conduct the environment impact assessment upon them. The decision can be made in the framework of the mandatory procedure of the state ecological expertise on such changes, updates and extensions. However, as it will be shown latter, the existing Kazakh legislation does not provide the legislative basis for the application of this kind of screening, including in case of the changes, of the updates and of the extensions of the activities for the determination of the necessity of an additional environmental impact assessment.

1.5 Development control for the above projects

a. What are the decision-making procedures (planning permission, construction permit, etc.)

The general scheme of taking decisions on the development and on the implementation of the projects in Kazakhstan includes the following stages: (i) obtaining land; (ii) agreement on the

project's outlines; (iii) designing a project; (iv) the execution of the building and construction works.

Table 2. Stages of development and of realization of the projects, of control and of taking decisions on them

Stage of development and of realization	Form for taking the final decision and for the control	Authorities making the decision
Obtaining land rights	Document establishing the right on the use of land	Local executive bodies
Development of the project's outlines	Agreement on the project's outlines	Office (unit) of architecture and town-planning of a local executive body
Project development	Expert conclusions on the project documentation	Bodies of the complex non-departmental expertise; including the state ecological and sanitary and epidemiological expertises
Construction	Inspection control	Committee on Construction, Housing and Municipal Services and Land Management

b. Place of EIA in decision-making procedures

The environment impact assessment is conducted at the stage of the project development for types of activities. It is implemented in 2 stages.

- Preliminary environmental impact assessment (Pre-EIA);
- Environmental impact assessment (EIA).

At the stage of the Pre-EIA the environmental impact assessment is conducted on the feasibility study of the proposed activity and on the Pre-EIA materials. On the next level the environment impact is assessed on the basis of the review of the project (design and planning estimates) documentation and of the EIA materials. According to the results of the review, at each stage a separate conclusion of the state ecological expertise is issued.

The conclusion of the state ecological expertise is essentially the final decision on environmental aspects of the proposed activity. For a long time in Kazakhstan lawsuits of representatives of the public challenging conclusions of the state ecological expertise null and void, were recognized as admissible by the courts, but decisions were always made in favor of decision-makers and developers (initiators) of the proposed activities. Most judges have considered that conclusions of the state ecological expertise are not permits but only expert opinions and therefore, they cannot be challenged through the court. To this effect the Environmental Code has been amended by the Law dated April 25, 2016. Now, paragraph 7 of Article 51 of the Environmental Code provide explicitly a possibility to challenge conclusions of the state ecological expertise through the judicial review procedure.

c. When (at which stage/ at which of the decision-making procedures/decisions in the development control the environmental authorities would for the first time be involved and what information about the project they would get?

As a rule, environmental protection authorities engage in decision-making on projects at the stage when projects are passing the review of the state ecological expertise. If a proposed activity is passing through the environment impact assessment, they receive the pre-project and project documentation, including the EIA documentation. Considering that public hearings on the environment impact assessment are held prior to the submission of Pre-EIA and EIA documentation for review of the state ecological expertise, they can be involved at the stage of public discussion of the proposed economic activity organized by the developer (initiator).

In the case of the local executive bodies, offices of natural resources management and regulation of nature use are involved at the stage of making agreements on the time and the place for conducting of the public hearings. In other words, taking into account that the local executive bodies should agree on the issues related to the public participation procedure, they are involved in the process a little bit earlier, namely when the preparation of the pre-project and project documentation, including the environment impact assessment, is almost done. Moreover, the local executive body should ensure public access to the environmental information related to the procedure of the environment impact assessment of the proposed activity. For example, for the project of the proposed economic activity related to tourism it can be the offices on tourism management, or for the ones related to the roads construction – the offices on automobile roads and for those related to energy installations - the offices on energy and so on.

1.6 Screening

Screening is envisaged by the EIA Instruction, however, neither the procedure for screening, nor the criteria based on which it should be implemented are not legally defined. The Annex 2 of the EIA Instruction contains the list of the activities, which are supposed to be subject to the screening, in other words, an individual determination of projects requiring the environment impact assessment. It is mentioned in the title of this list that it should be implemented with the application of the thresholds (a set of criteria) as defined by regulations. Screening should be conducted by the same authorities of the state ecological expertise.

1.7 Scoping

The scoping in the environment impact assessment is not provided by the legislation. It should be mentioned that, according to the requirements of the Law on Architectural, Town-planning and Construction Activity in the Republic of Kazakhstan, the preparation of the feasibility study and of the project documentation should be done in accordance the project work assignment approved by the developer (initiator) of the proposed activity. The project work assignment may include the same conditions and requirements in relation to conducting the environment impact assessment. At the same time this issue is not fixed by the legislation and decisions are made at the discretion of developer (initiator) of the proposed activity. Agreements and authorizations on this issue by public authorities are not required.

1.8 EIA Report

- a. *Are requirements regarding content of EIA Report compliant with Appendix II of the Espoo Convention, including:*
 - i. *description of locational, technological and the no-action (0) alternatives.*
 - ii. *socio-economic conditions*

Article 41 of the Environmental Code lists the requirements for the content of the EIA documentation. This list contains 18 points and includes:

- description of the current state of elements of the environment before the realization of the activity;
- requirements to the siting for the period of the construction and of the exploitation;
- socio-economic conditions for the realization of the proposed activity;
- analysis of the applied technology on its consistency with the best available technologies and with the specific technical standards and also for its compliance with the technical regulations and environmental requirements to the technologies, technics and equipment;
- information on alternatives and indication of the major reasons for choosing of a project option.

In general, by comparison to the requirements of the Espoo Convention, the requirements in Kazakhstan are less focused on the examination of alternatives, of gaps in knowledge and uncertainties during the conducting of the EIA. The consideration of the no-action alternative as one of the possible alternatives is only mentioned in the EIA Instruction. Thus, not all of the developers of the EIA are considering the no-action alternative. There are no requirements in the legislation of Kazakhstan on the post project analysis and preparation of the non-technical resume. Consequently, there is no full consistency of the requirements of the Kazakh legislation on the EIA documentation with the requirements of Espoo Convention's II Annex.

b. Measures to assure quality of EIA reports

In general, in Kazakhstan the state ecological expertise is considered as a mean of assurance of the quality of the EIA documentation. At the same time there are no clear requirements for its developers. For the implementation of the environmental impact assessment and for the preparation of the EIA documentation the initiator of the proposed activity or the developer usually hire specialized expert organizations. In the case of the EIA of the objects from the category I (according to the sanitary classification of industrial facilities), the engaged organizations should have a license on the environmental project designing issued by the Committee of Environmental Regulation and Control of Ministry of Energy. For the objects from the categories II, III and IV these licenses are not required. Consequently, in the majority of cases there are no established legal requirements regarding the experts recruited to make the EIA study.

c. Role of EIA report in the EIA (is it meant as a document "summarising EIA" or as one of the documents in EIA – see definitions)

The EIA documentation is essentially considered as a document compiling and summarizing the results of the whole EIA process. Particularly, the documents on the account of the public opinion, usually the minutes of the public hearings and the conclusions based on the results of the public hearings dedicated to the discussion of the environmental aspects of the proposed activity, are considered as a part of the EIA documentation. The EIA documentation serves to the environmental protection authorities as a ground to make a decision on the proposed activity formulated as conclusions of the state ecological expertise.

1.9 Public participation

a. Who is responsible for public participation?

The legislation of Kazakhstan lays the responsibility for the organizations of the public hearings in the EIA on the developer (initiator) of the proposed activity and the local executive bodies. The major responsibility is taken by the developer (initiator) of the proposed activity, while the local executive bodies according to the Rules on conducting public hearings should agree on the method

of information, the time and the location of the public hearings, the list of the public concerned and the person responsible for the organization of the public hearings. Further, the local executive body also ensures the access to the environmental information related to the EIA procedure of the proposed activity.

b. At which stages the public is involved and how?

The public should participate at both stages of the EIA (Pre-EIA and EIA). For each stage the public shall be notified separately about the public hearings and have the right to participate. The legislation requires the necessity to use the effective means of information such as the announcements in the mass media, the information leaflets, the information on the stands and the written submissions. On practice the public is usually informed by the publications in the mass media and on Internet (the web-sites) of the local executive bodies.

In Kazakhstan the public participation in the EIA is carried out in 2 forms: public hearings and surveys which aim is to take into account the opinion of the public concerned. The requirements to the organization of the both forms are set by the Rules on conducting public hearings dated May 7, 2007. The list of the types of the proposed activities, which are subject to the public hearings approved by Order of Ministry of Energy dated June 10, 2016.

c. How the public concerned is identified and notified

The Rules on conducting public hearings defines the “public concerned” as the “public, which affected or likely to be affected by the decision-making process related to the environment, or having an interest in this process”. Nevertheless, the legislation does not regulate the approaches and the criteria for its determination, requiring only that the list of the public concerned should be agreed with the local executive body.

In the case of conducting public hearings the public notification should be made not later than 20 working days before the public hearings. In the case of the public participation in the form of survey the time limits are not established. However, the dates of the beginning and of the end of the survey should be indicated in the text of the announcement.

It is necessary to take into account that the issues related to the public participation in Kazakhstan were considered by the Aarhus Convention Compliance Committee on the basis of communications by representatives of the public. It concerns the communications ACCC/C/2004/2 submitted in 2004, ACCC/C/2011/59 submitted in 2011 and ACCC/C/2013/88 submitted in 2013. They were focused on the following aspects of the non-compliance with the Aarhus Convention in Kazakhstan

- The incompleteness of the public notification on the beginning of decision-making process and the public participation procedure (non-compliance with paragraph 2 of Article 6 of the Convention);
- The non-compliance with the timing of the notification of the public about the beginning of the decision-making process (non-compliance with paragraph 2 of Article 6 of the Convention);
- The failure to provide sufficient time for the preparation and effective public participation in the decision-making process (non-compliance with paragraph 3 of Article 6 of the Convention);
- The limitation of the submission of comments by the public only to the EIA report at the stage of state ecological expertise (non-compliance with the paragraph 7 of the article 6 of the Convention);

- The lack of clear requirements on taking due account of the outcomes of the public participation in the decision-making process (non-compliance with paragraph 8 of Article 6 of the Convention);
- The lack of proper procedures for informing of the public promptly on the conclusions of the ecological expertise and of the appropriate mechanisms enabling public access to these decisions (non-compliance with paragraph 9 of Article 6 of the Convention).

The Ministry of Energy works on the solving the non-compliance issues but the recommendations of the Aarhus Convention Compliance Committee have not been still implemented.

1.10 Role of environmental authorities

a. Which environmental authorities are involved in EIA

Essentially, only the state ecological expertise and local executive bodies ensuring the public participation are involved in EIA. The representatives of other public authorities can take part in the public hearings, but, in fact, only in the status of representatives of the public (they do not have any additional rights in this process). The Rules on conducting public hearings indicates as participants of the public hearings are other public authorities with competencies in the discussed decisions, along with the local executive bodies and representatives of the Committee of Environmental Regulation and Control (for the objects from the category I). Further, according to paragraph 2 of Article 42 of the Environmental Code, the Committee of Environmental Regulation and Control observe the compliance with the requirements of the methodological guidance documents on conducting the EIA.

Kazakhstan is Party to the UNECE Convention on the Transboundary Effects of Industrial Accidents. The designated authority responsible for the implementation of this Convention is the Committee on Emergency Situations of Ministry of Internal Affairs. Considering that Guidance on land-use planning, the siting of hazardous activities and related safety aspects is still not adopted and not available in Russian, it is difficult to expect that it could had be applied by Committee on Emergency Situations.

b. At which stage they are involved?

In the case of the EIA, the bodies of the state ecological expertise are involved in the decision-making process at the moment of the submission to them of the pre-project and project documentation, including the EIA documentation. The local executive bodies are officially involved in the EIA at the moment of finalization of the EIA and of the planning of the organization of the public participation.

1.11 Role of the health organs

a. Are they involved?

The involvement of the bodies of the public health in the EIA is not explicitly provided by the legislation. It is mostly related to the fact that they organize their own sanitary epidemiological expertise of the proposed activity at the stage of the project development. There is no legal requirement on the examination and making agreements on the EIA documentation by the health authorities.

b. At which stage are the health organs involved?

The sanitary epidemiological expertise is conducted at the stage of the complex non-departmental expertise of the project.

1.12 Procedure of the transboundary environmental impact assessment

- a. *Are there some detailed provisions on the procedure of the transboundary EIA in the national legislation or only a reference to the application of the Espoo Convention should be made?*

Article 43 of the Environmental Code “Features of the impact assessment on the environment of objects with transboundary impacts” contains only a general reference to the international agreements ratified by the Republic of Kazakhstan and a similar reference is also included in the EIA Instruction. The key international agreement for Kazakhstan in this case is the Espoo Convention.

- b. *Are the national bodies informed about the planned activity at the early stage (not earlier than its own) and do they have any practical tools for the identification of the potential transboundary impacts (article 3.1. of the Espoo Convention)*

The requirements on the notification of the national authorities by the concerned Party, as well as the definition of the potential transboundary impacts, are not set by the national legislation

- c. *What is the mechanism for the definition of the transboundary impact? Based on which information and on which data?*

These aspects are not regulated by the national legislation.

- d. *At which stage of the national procedures/decisions the transboundary procedure is implemented and when is it finished?*

These aspects are not regulated by the national legislation.

- e. *Is there any legislatively established mechanisms assuring that the results of the consultations with the foreign national authorities, according to the article 5 of the Espoo Convention, were obligatory for the consideration by the national organizations taking the final decision (article 6.1 of the Espoo Convention)?*

The mechanism is not legally defined at the national level.

- f. *Is there a legal mechanism assuring that results of consultations with foreign authorities under article 5 of the Espoo Convention are binding upon authorities issuing final decision (art. 6.1 of the Espoo Convention)*

The mechanism is not legally defined at the national level.

1.13 Taking into account results of EIA

- a. *Is there a clear legal requirement to take into account the results of EIA?*

According to paragraph 4 of Article 36 of the Environmental Code, the initiator and the developer of the projects are obliged to take into account the results of the conducted EIA and to assure the choice of the option which is less harmful for the environment and for the human health.

The legislation of Kazakhstan does not contain any requirements on the taking into account of the EIA results beyond the state ecological expertise. These requirements regarding the conclusions of the environmental expertise on the EIA documentation are set by Article 51 of the Environmental Code. The construction project, which has not obtained positive conclusions of the complex non-departmental expertise, including the results of the state ecological expertise, cannot be authorized and implemented. Furthermore, it is prohibited for the banks and for the other financial organizations to finance the realization of the economic or any other activity subject to the EIA without positive conclusion of the state environmental expertise. In case of the judicial review of cases on challenging the conclusions of the environmental expertise the judge can examine the EIA documentation as presented for the public hearings and for the review by the state ecological expertise body.

It should be noted that the Law dated July 16, 2001, No. 242 on Architectural, Town-planning and Construction Activity in the Republic of Kazakhstan, providing the legal framework for conducting the complex non-departmental expertise, does not include any references to the EIA. Accordingly, the consideration of the EIA results is foreseen for the procedure of the state ecological expertise, but not for the procedure of the complex non-departmental expertise. This can be another evidence that in relation to environmental aspects of the proposed economic activity and the public participation the final decision is the conclusion of the state ecological expertise.

In general, clearly defined legal requirement to take into account the results of the EIA is still missing, because in the decision-making process public authorities are considering the positive conclusion of the state ecological expertise but not the EIA results.

b. If yes – who is obliged to take into account the results of EIA

The results of the EIA should be take into account by the authorities conducting the state ecological expertise of the relevant projects of the proposed economic activity.

1.14 Final decision

a. What is considered the final decision (by law or in practice) for the purpose of the Espoo and Aarhus Conventions?

It is not fixed in the legislation which decision is considered as the final for the purposes of the Espoo and Aarhus conventions. On practice, the final decision regarding the environmental aspects of the project is the conclusion of the state ecological expertise. For the purposes of challenging in the courts of alleged non-compliance with the Aarhus Convention's requirements in relation to the EIA, the conclusions of the state ecological expertise are considered as the final decision.

The template for the conclusion of the state ecological expertise is provided by the Rules on conducting the state ecological expertise. It requires the inclusion of factors of environmental impact of an object on the elements of the environment (air, surface and underground waters, land resources, flora and fauna, subsoil), the brief description of physical effects, the possibility and probability of accidents and environmental risks. The approved template of the state ecological expertise does not provide the breakdown of the information into categories on the types of the activities which were subject to the EIA.

The conclusion of the state ecological expertise should include the conclusions on the admissibility non-admissibility of the realization of the proposed activity. However, the existing legislation does provide detailed regulation on the statement of reasons and considerations in the conclusion of the

state environmental expertise on which authorization or non-authorization of the proposed activity is based.

According to the requirement of paragraph 3 of Article 57 of the Environmental Code the developer (initiator) of the proposed activity is obliged to forward a copy of the conclusion of the state ecological expertise during 5 working days to the office of natural resources and nature regulation of the local executive body. In its turn, the office of natural resources and nature regulation should publish it on Internet (the web-site).

b. What is the final decision authorising in fact the developer to initiate the project (to start construction and/or operation)

The final decision for the construction is the positive conclusion of the complex non-departmental expertise. The putting into service is executed based on the completion certificate of the constructed object, however the admission board is necessarily composed of the representatives of the projector, of the employer and of the contractor. Consequently, from the perspective of the national authorities to take the decision, as well regarding the beginning of the construction as regarding the putting it into service, the final decision is the positive conclusion of the complex non-departmental expertise.

c. Is there a clarity what is the final decision in relation to each activity covered

In Kazakhstan the unified rules are applied for the project development and the authorization of the construction, so there are no misunderstanding about what is considered as the final decision in every separate case. However, it is still not clear what is the final decision for the purposes of the Aarhus and Espoo conventions. Considering that the environmental aspects of the proposed economic activity with the public participation are discussed in the frameworks of the passing through the procedure of the state ecological expertise, so the final decision for the public is the conclusion of the state ecological expertise. At the same time for the construction of the object and for its consecutive putting into operation the final decision is the conclusion of the complex non-departmental expertise.

d. Are the conditions attached – how?

According to paragraph 6 of the Rules on processing of expert conclusions on town-planning and construction projects (feasibility studies and design and planning estimates), dated April 2, 2015, the positive conclusion of the complex non-departmental expertise contains the summary recommendations in which such conditions may be included.

e. Is there a requirement for justification (statement of reasons and considerations on which it is based (art. 6.9 of the Aarhus Convention + art. 6 of the Espoo Convention))

According to the paragraph 6 of the Rules on processing of expert conclusions on town-planning and construction projects (feasibility studies and design and planning estimates), dated April 2, 2015, such conclusions should be included into the positive conclusion of the complex non-departmental expertise. However, it is unlikely that such a soft and general provision may be considered as sufficient for the implementation of Article 6.9 of the Aarhus Convention and Article 6 of the Espoo convention.

f. Is there a requirement for that texts of decisions, along with the reasons and considerations on which they are based, are publicly available

There is no such requirement for the conclusions of the complex non-departmental expertise. Regarding the conclusion of the state ecological expertise according to the requirement of paragraph 3 of Article 57 of the Environmental Code, the developer of the proposed activity should submit its copy to the office of natural resources and nature regulation of the local executive body. In its turn office of natural resources and nature regulation should publish this conclusion on Internet (the web-site).

I.15 Post-project analysis

a. Does the legal framework envisage post-project analysis (monitoring)?

The existing legislation does not envisage the stage of the post-project analysis in the EIA.

b. Who is responsible for the post-project analysis?

This responsibility is not established by the existing legislation.

I.16 Experience

a. Average number of procedures yearly

The most updated data on the conclusions made by the state ecological expertise are provided in the 2016 National State of the Environment report. However, these data do not allow to assess the total number of conclusions of the state ecological expertise on the proposed activity which had been subject of the EIA.

The transboundary procedure of environmental impact assessment was implemented only once for the project on the Andash gold and copper mining facility. The Party of origin in that case was Kyrgyzstan and the concerned Party was Kazakhstan. This procedure was implemented during the period from May 2006 to June 2007, the public hearings on the project took place in March 2007.

Table 3. Number of the issued conclusions of the state ecological expertise, 2014-2016

Number of conclusions of the state ecological expertise	Years		
	2014	2015	2016
Committee of Environmental Regulation and Control of the Ministry of Energy	5797	4905	5216
Offices of natural resources and regulation of nature use of local executive bodies	17557	14411	14362
Total	23354	19316	19578

b. Average number of transboundary procedures yearly

The 2016 National State of the Environment report does not contain any data on the implementation of the transboundary EIA in Kazakhstan.

c. Any comments on the effectiveness of the system, loopholes?

It should be noted that during the past years in the Kazakh legislation the number of the EIA stages has decreased, requirements on conducting of the public hearings on EIA have been regulated and limited. These measures were taken in order to reduce administrative burdens on enterprises. At the same time the number of the issued conclusions of the state environmental expertise and the

frequency of the appearance of the announcements on conducting the public hearings on the projects of the proposed activity, which are subject of the EIA, remain high. Meanwhile the EIA of a large number of projects without the full public participation, the post-project analysis and also their implementation by organizations, whose effectiveness as expert organizations is not controlled, does not make sense from the perspective of the risks assessment of the prevention of negative environmental effects. Thus, the whole EIA system, not its separate stages and the level of the public participation in the EIA should be reformed to bring it into compliance with the Espoo and Aarhus Conventions' requirements.

At this moment the further process of the simplification of permitting procedures related to the consideration of environmental aspects of the proposed activity is in progress. In particular, it is considered of whether to exclude the issuance of the separate state ecological expertise conclusion on the projects of the proposed activity, which are subject to the EIA. In this case the ecological expertise would become a part of the complex non-departmental expertise. Meanwhile the complex non-departmental expertise is based on the provisions of the Law on Architectural, Town-planning and Construction Activity with much less developed provisions on the public participation in comparison with the Environmental Code. Therefore, it may lead to the further deterioration of the conditions for the implementation of the requirements on the public participation of the Aarhus and Espoo conventions.

III. Conclusions and findings

The review of the legal framework for the conducting EIA in Kazakhstan enables to make the following conclusions.

II.1 In Kazakhstan a detailed legal framework for the conducting EIA of the proposed activity on the basis of the provisions of the Environmental Code, which includes the Rules on conducting the state ecological expertise, the EIA Instruction and a number of regulations on public participation.

II. 2. The EIA is embedded in the general system of the justification of the investments, of the project designing and the passing the expertise and obtaining of the permits on the projects of proposed activity. It is regulated on the basis of the provisions of the Law on Architectural, Town-planning and Construction Activity in the Republic of Kazakhstan and of a number of regulations adopted by Ministry of the National Economy for the implementation of the law.

II.3. The implementation of the Espoo and Aarhus conventions was executed in Kazakhstan through the submission of amendments to the legislation and through the adjustments of the previously established system of project designing to the requirements of the international law. As a result, many approaches to the legal regulation as well as the established procedures (rules) of the national legislation remain inconsistent with the international obligations under the Espoo and Aarhus conventions.

II.4. The amendments to the existing legislation made during last years to reduce administrative burdens on enterprises in relation to the EIA and the deregulation of the activity of specialized expert organizations, have led to the further compromise of the EIA system's integrity and, essentially, to the limitation of the EIA to the stage of designing the pre-project and project documentation for the implementation of the proposed activity.

II.5. The most significant conceptual inconsistencies with the provisions of the Espoo and Aarhus Convention are the following aspects of the Kazakh EIA legislation and of the state ecological expertise:

- 1) delegation of the responsibility for the conducting the EIA from the public authorities the developer (initiator) of the proposed activity (paragraphs 2,6,9,10 of Article 6 of the Aarhus Convention refer explicitly to public authorities);
- 2) application of the sanitary classification of the industrial facilities on the determination of the objects of the state ecological expertise which is incompatible with Annex I of the Aarhus Convention and Appendix I of the Espoo Convention serving as the basis on which are defined the types of the proposed activity that are subject of the EIA and of the transboundary EIA;
- 3) absence of a legally established procedure of the implementation of the screening as defined by the requirements of the paragraph 1b) of Article 6 of the Aarhus Convention and of paragraph 5 of Article 3 of the Espoo Convention and intended for the determination of additional types of activity which can have a significant impact on the environment;
- 4) absence of a legally established procedure for the transboundary EIA as required by paragraph 6 of Article 2 and paragraph 5 of Article 3 of the Espoo Convention;
- 5) absence of clearly defined provisions to the identification of the public concerned as required by paragraph 5 of Article 6 of the Aarhus Convention;
- 6) absence of regulation for due account to be taken of the outcomes of public participation in decision-making and the indication of reasons and considerations on which the decision is based as required by paragraph 9 of Article 6 of the Aarhus Convention and by paragraphs 1 and 2 of Article 6 of the Espoo Convention

- 7) absence of the stage of the post-project analysis envisaged by Article 7 of the Espoo Convention

II.6 It should be noted that there is no system of requirements in Kazakhstan to experts involved in the EIA studies, which could assure the necessary level of their qualification, experience and professionalism, and, furthermore, there is a lack of basic requirements to them on conducting the EIA. Such a system of requirements and the instrument of scoping are envisaged in accordance with international practice of implementation of the EIA, including the transboundary EIA.

II.7 It should also be mentioned that currently there are no official non-legally binding methodological guidance which could clarify possible approaches to the implementation of the EIA, including the transboundary EIA, how to implement certain requirements on conducting the EIA as well as providing examples of good practice.

IV. Proposals

As general approaches to the bringing the legal framework for the implementation of the EIA in accordance with the provisions of the Espoo and Aarhus conventions, it is suggested the following.

III.1 To revise the provisions of Articles 6 and 7 of the Environmental Code on the EIA and the state ecological expertise with a view to bring them into compliance with the international obligations of Kazakhstan under Articles 6 and 7 of the Aarhus and Espoo conventions.

III.2 During the revision of the provisions of Chapters 6 and 7 of the existing Environmental Code and other acts it is suggested to pay particular attention to the ensuring of the consistency of the national legislation with the requirements concerning the coverage of the types of the proposed activity subject to the EIA, the application of the instrument of screening for the determination of additional types of activity, the ensuring of public participation and due account to be taken of the outcomes of public participation in the final decision, the competencies of a developer (initiator) of proposed activity and bodies of the state ecological expertise, the post-project analysis stage, the legally established procedure for the transboundary EIA. It is also important to ensure the full consistency with the provisions of the Aarhus Convention and the Espoo Convention of the applied definitions, the public notification on the beginning of the decision making process and the requirements to the EIA documentation.

III.3 To develop and adopt regulations and procedures enabling to integrate the instruments of screening and of scoping into the EIA procedure as well as to ensure the application of the transboundary EIA.

III.4 To consider possibilities to develop by the national environmental authority of a package of guidance documents on various aspects of the EIA requiring the application of the flexible approaches to their implementation. In particular, them may cover the issues of screening, scoping, identification of the public concerned and the application of a survey as a form of public participation in the EIA.

III.5 To integrate into the legislation the requirement on compliance with mandatory standards of qualification, experience and professionalism of the experts involved in the EIA study.

III. 6 To consider possibilities to restore the integrity of the EIA system with the integration of its elements at the early stages of the decision-making process, ensuring of a more full-fledged participation of the environmental and health authorities in the EIA procedure, including the transboundary one.

V. List of legal normative acts

1. Constitution of the Republic of Kazakhstan, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
2. Code of the Republic of Kazakhstan dated January 9, 2007, No. 212 “Environmental Code”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
3. Law of the Republic of Kazakhstan dated April 6, 2016, No. 480-V ZRK “On Legal Acts”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
4. Law of the Republic of Kazakhstan dated July 16, 2001, No. 242 “On Architectural, Town-planning and Construction Activity in the Republic of Kazakhstan”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
5. Order of Acting Minister of National Economy of the Republic of Kazakhstan dated June 10, 2016, No. 240 “On approval of the List of planned economic activities which are subject of the public hearings”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
6. Order of Minister of National Economy of the Republic of Kazakhstan dated November 30, 2015, No. 750 “On approval of the Rules on organization of the construction and the passing through the authorization procedures for construction”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
7. Order of Minister of National Economy of the Republic of Kazakhstan dated April 2, 2015 No. 305 “On approval of the Rules of processing of expert conclusions on town-planning and construction projects (feasibility studies and design and planning estimates)”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
8. Order of Minister of National Economy of the Republic of Kazakhstan dated April 1, 2015, No. 299 “On approval of the Rules on conducting the complex non-departmental expertise of feasibility studies and design and planning estimates intended for the construction of new and changed (reconstruction, extension, technical reequipment, modernization and major maintenance) of the existing buildings and installations, of its complexes, of engineer and transport infrastructures independently from their source of finance”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
9. Order of Minister of National Economy of the Republic of Kazakhstan dated March 19, 2015, No. 229 “On approval of the Rules on organization of the activity and implementation of the functions of a customer (developer), Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
10. Order of Minister of Energy of the Republic of Kazakhstan dated February 16, 2015, No. 10 “On approval of the Rules on conducting of the state ecological expertise”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;
11. Order of Minister of Environment of the Republic of Kazakhstan dated July 23, 2009, No. 143-p “On approval of the Distribution of the objects of the category I, which are subject of the state ecological expertise, between the authorized body in the area of environmental protection

and its local departments”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;

12. Order of Minister of Environment of the Republic of Kazakhstan dated July 25, 2007, No. 238-p “On approval of the Rules of the access to the environmental information related to the EIA procedure and to the decision-making procedure on the planned economical or any other activity, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;

13. Order of Minister of Environment of the Republic of Kazakhstan dated June 28, 2007, No. 204-p “On approval of the Instruction on conducting environmental impact assessment”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”;

14. Order of Minister of Environment of the Republic of Kazakhstan dated May 7, 2007, No. 135-p “On approval of the Rules on conducting public hearings”, Information and Legal System of Legal and Normative Acts of the Republic of Kazakhstan “Adilet”.