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Legal challenges of the application of Espoo Convention in post-Soviet OVOS/expertiza systems

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Issues to be addressed

• Genesis of the problem
• Issues of concern
• Conclusions
• Suggestions for the future
Genesis – concept of Espoo Convention

- 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 expertise
  – 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 (zajavljenije) vs OVOS Report (otchiot)

• No clear „final decision”
Conclusions

• Conceptual discrepancy between OVOS/expertiza systems and requirements of the Espoo Convention (and also Aarhus Convention)

• Risk of repeated cases at the Implementation Committee

• Need for systemic approach
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