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Procedures for consultations with public authorities and public participation

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

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Content

• Consultations with public authorities
  – Competent authority vs consulted authority
  – Consultations in EIA
  – Consultations in SEA

• Public participation
  – Role in EIA/SEA and relation to Aarhus
  – Public and public concerned
  – Public participation in EIA
  – Public participation in SEA
Competent authority vs consulted authority

• Competent authority – authority competent to take decision
  – In SEA – authority responsible for adopting strategic document (planning authority)
  – In EIA – authority competent to authorise the project (usually with general competence)

• Consulted authority
  – Types (Environmental authorities and Health authorities)
  – Fixed or consulted ad hoc
  – May have different roles in EIA and SEA!
Competent authority and EIA

• Competent authority responsible for conducting EIA procedure, including public participation

• Delegation of tasks
  – Specialised bodies
  – Local authorities

• Role of developers

• Compare General Guidance...
Consultations in EIA

• Place in EIA procedure
  – Screening
  – Scoping
  – Views regarding
    • Environmental acceptability of the project
    • Quality of EIA Report
  – Post-project analysis

• Role
  – Decision-making vs co-decision-making vs consultative role
Consultation with environmental authorities – EIA Directive art.6.1

• Authorities likely to be concerned by reason of their specific environmental responsibilities or local and regional competences

• „are given an opportunity to express their opinion„ - thus not necessarily do have to express such an opinion

• Opinion on both
  – The project
  – EIA documentation

• Detailed arrangements to be made by Member States, including reasonable time-frames
Consultation with other authorities in SEA

• 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 in EIA/SEA

• Mandatory element in EIA/SEA
• Synergy with Aarhus Convention
  – EIA and art. 6
  – SEA and art. 7
• Public participation and access to justice
Public and public concerned

• Definitions from Aarhus – now included to other conventions

• Public
  – One or more
  – Natural or legal persons
  – in accordance with national legislation or practice, their associations, organisations or groups

• Public concerned
  – Affected or likely to be affected, or
  – Having an interest
  – Including NGOs:
    • Promoting environmental protection
    • Meeting any requirements under national law
Public participation in EIA

- Meant to implement art.6 of the Aarhus Convention
- Relation with transboundary procedure in the context of non-discrimination clause in the Aarhus Convention (art.3.9)
- Elements of the procedure
  - Informing (notifying) the public
  - Making available relevant information
  - Possibility to submit comments and opinions
  - Taking into consideration the results of public participation
  - Informing the public on the decision and its availability (together with the reasons and considerations on which the decision is based)
Notifying the public in EIA Directive

• Form
  – public notices or by other appropriate means such as electronic media where available,
  – bill posting within a certain radius
  – publication in local newspapers
• Detailed content of the notification
• Relation to art. 6 Aarhus Convention
  – public vs public concerned
  – timely, effective and adequate manner of informing
Mandatory form of notifying the public in Poland and Estonia

• Public notice
  – webpage - (in Public Information Bulletin)
  – notice board in the seat of competent authority
  – notice in the vicinity of project (bus stop, church, local shop etc)
  – press (local or national)

• Individual notification (letter) - to immediate neighbours
General principles – early participation and reasonable timeframes

• Early participation –
  – when all options are open
  – before decision is taken

• Reasonable timeframes - change of approach
  – (original EIA Directive) „appropriate time limits for the various stages of the procedure in order to ensure that a decision is taken within a reasonable period”
  – (EIA Directive after Aarhus) „Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.

• Different phases
Public participation in SEA

• Mandatory element of SEA
• Public participation in SEA stages – experience in EU:
  – sometimes at screening
  – often in scoping (could be combined with commenting on outline/concept for strategic document)
  – always: commenting on SEA Report and the draft strategic document
Public participation – key elements

• Relation to article 7 of Aarhus Convention
• Requirement for “early in the decision-making when all options are possible”
• Public vs public concerned
• Identification of the public which should participate
• Key role of informing the public effectively (not only webpage!)
• Time-frames for public participation
  • Belgium and Italy - 60 days
  • Spain, the Netherlands and Latvia - 40-45 days
  • Other countries - usually 30 days