COUNTRY REPORT: ARMENIA
New EIA and SEA Legislation: Does It Bring Effective Solutions?

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This Country Report focuses on the new EIA legislation, namely *the Law of RA* «On environmental impact assessment and expertise» *(hereinafter EIA Law or law)* enacted in Armenia in August 2014 replacing the Law of RA «On Environmental Impact Expertise» (1998). It brings forward several novel legal processes into national environmental legislation and is thus worth scrutinizing. Bearing in mind the wide scope and interlinkages of EIA legislation, this report does not aim to cover all aspects, but is limited to consideration of the main features in the context of the principles of environmental law and the international obligations of Armenia.

The process of drafting has been more than transparent, with wide involvement of the public. In order to prepare the law, a draft working group had been established with its membership made up of representatives of different executive bodies, environmental NGOs, university specialists and individual experts. Afterwards, the law has been subject to several public hearings, initiated both by the Government and by the environmental NGO community.

Background for Elaboration of New EIA Law

The elaboration of new EIA legislation had already been underway for 10 years, and several drafts had been introduced during this period. The main driver for these attempts was the goal of approximation with EU legislation on EIA, and a need to meet the public participation requirements of *the UNECE Convention «On access to information, public participation in decision-making and access to justice in environmental matters», UNECE Convention "On*

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Environmental Impact Assessment in Transboundary Context" and its Protocol "On Strategic Environmental Assessment". However, no one of the previous drafts had been successful.

Among other factors, preparation of the draft of the current law was launched mainly in response to *the Decision IV/9a «On Compliance by Armenia with its obligations under the Convention»* of the Meeting of the Parties of the Aarhus Convention[1] (hereinafter Decision IV/9a). Decision IV/9a identifies a range of shortcomings with regard to public participation procedure under the previous law, and draws up corresponding recommendations to improve the national legal framework. These recommendations amount to the following:

• setting out in a clear manner the thresholds of activities subject to an EIA procedure, including public participation;

• ensuring early public notification in the decision-making procedure, when all options are open;

• setting out reasonable time frames for the public to consult and comment on project-related documentation;

• defining in a clear manner the responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedure; and

• designing a system of prompt notification to the public concerned of the final conclusion of environmental expertise[2] through the website of the Ministry of Nature Protection of RA.

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[1] ECE/MP.PP/2011/L.12.

[2] The development control systems in most former Soviet countries (including in Armenia) are largely based on an *environmental impact assessment/expertise mechanism* with environmental impact assessment preceding the State environmental expertise. Environmental impact assessment, however, should not be understood as an environmental impact assessment as it is used in EU legislation. The environmental impact assessment and expertise stages are closely interlinked and together constitute the system of environmental decision-making. The *expertise* is to review the statement of environmental impact assessment by the competent public authority and issue a positive or negative conclusion which has a permitting nature.

Conceptual Basis of the Law

Both the normative theory of law-making[3] and existing national legislation welcome the approach according to which elaboration of core legal acts should be preceded by the adoption of a conceptual document, crystallizing the main directions of future legal regulation. However, rather strict time frames for adoption of the law rendered this stage impossible, thus adding difficulties and reducing the efficiency of the drafting procedure.

Though a formal concept document was lacking, the main ambition of the Law was to address the recommendations of the Decision V/9a, and also establish new regulations in order to simplify the EIA procedure both in terms of the procedural content and time frames, which are covered below.

Design of State Environmental Expertise

The new *Law of the Republic of Armenia «On Environmental Impact Assessment and Expertise»* envisages two stages for the state environmental expertise, which replaces the unified regime under the previous law. The state environmental expertise consists of the initial (preliminary) stage and the main stage.

The initial stage is designed to assess the completeness of the initial assessment application, of the main characteristics of the strategic document, and the possible impact framework of planned activities, to identify the circle of participants during the process, and to elaborate the technical requirements for the EIA report to be submitted for the main stage, as and if necessary.

After examining the application at the initial stage, the public authority makes one of the following decisions:

1. Declare the strategic document or planned activity inadmissible based on their incompatibility with the requirements of the environmental legislation of RA.
2. Return the application to the developer to correct information, if needed, or to provide a complete package of documentation.

[3] Plott C (1967) 'A notion of equilibrium and its possibility under majority rule'. American Economic Review 95: 673-693.

3. Complete the initial stage and proceeding to the main stage of EIA for the proposed activity or to the development of a strategic document.
4. Issue a positive EIA conclusion for activities under category C.

The main stage of the assessment starts when the initiator submits the main EIA report, prepared in accordance with technical requirements provided by the Ministry of Nature Protection, and based on the characteristics of the proposed activity or strategic document. The main stage of EIA shall not exceed 60 working days for strategic documents and proposed activities under category A, and 40 working days for planned activities under category B. Such differentiation allows for flexibility, while the previous law established maximum duration of 180 days for all types of activities and strategic documents.

Thresholds for Activities Subject to EIA

In terms of public participation, the ambit of the Aarhus Convention is not limited, and goes beyond the EIA procedure. The idea is that Annex I of *the Aarhus Convention* provides minimum requirements and thresholds for a range of activities for which the Parties need to provide public participation procedures. At the same time, the Convention welcomes Parties' initiative to establish wider possibilities for public participation. Projecting this general framework onto Armenian legal practice, a negative trend is visible, since the new law has narrowed down the list of activities subject to EIA. And since full-scale public participation under national legislation is provided only within the EIA procedure, the current regulation appears to be inconsistent with the Annex I of the Aarhus Convention.

Compared with the previous legal regime, the new law brought forward a completely different approach, classifying the activities into 3 categories (A, B, C) based on descending scale and impact on the environment (thresholds are set out). This classification will enable differentiation of the time frames of the EIA procedure, and introduces rather basic requirements for activities with lower impact.

Design of SEA System

Traditionally, the legal framework for strategic environmental assessment is regulated within the same law as the EIA. This approach is followed also for the new law, since several legal regimes are shared by both. Furthermore, this time the law gives clear-cut definitions of several key concepts, such as *conceptual document, plan, program* and *policy.*

Without any prejudice to this model *per se* - bringing the two close institutions under the same umbrella - it should be mentioned that such an approach would require differentiated regulation taking into consideration the peculiarities of the subjects of EIA and SEA, i.e. type of activity and strategic document accordingly.

Disregarding the actual differences of EIA and SEA created a situation where a range of questions may arise:

- Since there is not a list of strategic documents (sectoral and intersectoral classification) in the law subject to SEA, identification as to whether the document should undergo SEA becomes problematic, especially when it relates not to the environment directly, but involves certain environmental aspects.
- Unlike the activities subject to EIA which have certain geography of impact, and hence the public concerned can be identified, documents subject to SEA generally cover issues touching the interests of the wider population, where geographical criteria do not have a decisive role. Therefore, additional rules are required to fix such an uncertainty.
- Given the scope, volume and content of strategic documents, time-frames for public participation procedures (7 working days) may not seem reasonable. Therefore, some kind of differentiation should have been applied.

Public Participation Procedure

Compared with the previous law, which fully incorporated the public participation procedure, the new one follows another approach, creating a dualism in that the main provisions are set out in the law, and detailed regulation is to be established on the sub-law level. Though the law is already enacted, the Governmental decree on public participation regulation is not yet approved, which means that currently the public participation procedure is legally incomplete.

As far as the new design of the public participation procedure, derived from the recommendations of Decision IV/9a, this report will focus on those elements which have consequences for the recommendations above.

As for the requirement of early public notification, the problem is solved, since the law ensures involvement of the public at an early stage, when the developer submits the application to the Ministry of Nature Protection of RA. The time frame for public notification is

at least 7 working days, which meets the Aarhus requirements. However, the time-frame between public notice and public hearings (which is again minimum 7 working days) might not be feasible, since no distinction is made based on the scale and scope of the proposed activities. Moreover, in some circumstances 7 working days may be too short for getting acquainted with voluminous documentation and preparing well-reasoned feedback.

The recommendation regarding distribution of responsibilities among different actors in the public participation procedure is essential, as it may have a direct bearing on the quality and impact of the public participation. Allocating certain responsibilities to the public authority, local authority and the developer, the new law does not identify a particular actor, but mentions them collectively where again it is unclear who is responsible for what. For example, the public authority and the local authority should ensure notification of the public, however, concrete elements of the notification process are not attributed to either, which limits accountability and the possibility of liability for a failure to notify properly.

In order to ensure that the final EIA decision is publicly available, the law establishes a clear requirement to publish it on the official website of the Ministry of Nature Protection of RA within 7 days after the decision is taken.

Conclusion

Analyzing the approaches applied within the new legal regime, it is clear that it is a step forward when compared with the previous law, at least in terms of a newer, more progressive ideology. However, some reservation is warranted. Certain elements of the legal regulation are incomplete, and require further elaboration. It is apparent that after only 2 months of application, several changes have already been introduced to the Law with regard to the design of EIA stages. Concerning the SEA system within the Law, results of expert evaluation initiated by the Secretariat of *the UNECE Convention «On Environmental Impact Assessment in Transboundary Context»* have demonstrated inconsistency of the SEA institution with the main conditions of the Kiev Protocol “On Strategical Environmental Assessment”, pointing out flawed regulation, without due evaluation of the SEA purpose and its subject.