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Организация по безопасности и  
сотрудничеству в Европе  
Офис программ в Астане

# Strengthening the legislation of the Republic of Kazakhstan in accordance with the UNECE Convention on Environmental Impact Assessment in a Transboundary Context

5 September 2018  
Astana, Kazakhstan

## Round Table Report



September 2018

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## **1. Background information**

### **1.1. SEA and EIA in Kazakhstan**

The Republic of Kazakhstan, as a Party to the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) since 2001, targets to introduce internationally sound institutional and legislative frameworks on environmental impact assessment (EIA) and strategic environmental assessment (SEA). Efficient implementation of the Espoo Convention and its Protocol on SEA in the country is seen as a valuable contribution to the on-going "green" economic reforms.

The establishment of viable SEA concept in Kazakhstan will help to identify the most sustainable and cost-effective strategic development alternatives for green economic growth on the way towards new foreign investments and improved environmental situation in the country and the human health. It is considered as a tool, which will help to strengthen the country's environmental governance through fostering transparency and consultation with relevant stakeholders and the public prior to the approval of policies, plans and programmes. In addition, the SEA in a transboundary context within the country is suggested to be employed to promote regional cooperation on environmental protection issues in the Central Asian region.

In this process the UNECE has been assisting Kazakhstan in the development of legislation and through support to practical steps towards the integration of SEA procedures in its planning and programming processes. Thus, the 2017-2020 workplan of the Espoo Convention and its Protocol on SEA envisages technical advice to Kazakhstan on improving legislation to implement the Protocol and the Convention. It is built on official letters of request of the Ministry of Energy of the Republic of Kazakhstan (Ministry) as of 30 March and 12 December 2017 that addressed the UNECE Secretariat to help initiate a legislative drafting process to assist Kazakhstan in amending its national legislation for the establishment of a national SEA scheme in line with the Protocol on SEA and the national EIA scheme in accordance with the Espoo Convention.

The assistance is currently carried out by the means of technical advice under the UNDP/UNECE/EC project on "Supporting Kazakhstan's Transition to a Green Economy Model" in several phases. During the inception phase the project allowed to assess the environmental impact assessment and strategic environmental assessment provisions in the existing national legislation vis-à-vis the Espoo Convention and the Protocol on SEA. The results of the assessment outlined that the national legislation and regulations contain elements of SEA and transboundary EIA procedures. However, to fully comply with the provisions of the Protocol and the Convention some changes and amendments to the existing legislation are needed.

### **1.2. Review and revision of the existing SEA and EIA legislation and procedures**

The SEA and EIA legal drafting activities are important elements of the project, aiming at national legislative enhancement with a focus on SEA and EIA in line with the Espoo Convention and its Protocol on SEA. The activities envisage the preparation of amendments to the Environmental Code of Kazakhstan, relevant laws and as required develop draft secondary legislation with a focus on EIA and SEA. The revision of the national regulatory and legislative frameworks with respect to transboundary EIA and SEA is also employed to identify the bottlenecks and bridge the existing gaps in the strategic planning and environmental protection domains. All in all, the SEA and EIA legal drafting activities will secure at the legislative level

the approach for effective protection of environment and human health and help prevent irreversible environmental consequences at the initial stage of strategic policy/program planning.

The Ministry of Energy of Kazakhstan has a central role in conducting the development of amendments through its national SEA and EIA working group, which is responsible for providing required inputs and participating in the analysis. The working group was established in January 2018, comprising from the representatives of the Ministry and other state agencies to amend the Environmental Code of Kazakhstan.

The drafting group under the above is expected to:

- (a) actively participate in the legal drafting process and all other SEA/EIA planned events;
- (b) guide the national and international experts in developing proposals for amending the legislation;
- (c) prepare necessary regulations; and provide written inputs and comments to the draft proposals.

### **1.3. First outcomes under the project**

Kazakhstan with a support of the UNECE and at the initiative of the Ministry is currently taking a breakthrough step forward to introduce modern EIA and SEA legal frameworks through an amendment of its existing legislation to better align it with the provisions of the Espoo Convention and its Protocol on SEA. This decision was stipulated in the National Concept for the revision of the Environmental Code of Kazakhstan of the Ministry that sets the framework for harmonization of environmental legislation of Kazakhstan vis-à-vis the international standards and requirements.

Following the official request, the team of international and national experts developed and presented a review and revision of the existing EIA and SEA legislation and procedures, including the draft amendments to the Environmental Code of Kazakhstan pertaining to EIA and SEA including in transboundary context, and the SEA amendments to the national sectorial legislation in full compliance with the Protocol on SEA.

The added value of the project is in the political will that has been generated with the help of the project based on findings of the SEA and EIA legal reviews that presented concrete proposals for appropriate legislative reforms, aiming at amending the Environmental Code and relevant sectoral legislation of Kazakhstan.

## **2. Round Table on strengthening the legislation of the Republic of Kazakhstan in accordance with the UNECE Convention on environmental impact assessment in a transboundary context**

The round table took place on 5 September 2018 in Astana and was organized by the UNECE in close co-operation with the Ministry of Energy of Kazakhstan to present and discuss the EIA draft amendments to the Environmental Code of Kazakhstan and sectoral legislation that were developed recently with the UNECE support based on the recommendations of the UNECE Review of legislative aspects EIA of the Republic of Kazakhstan in relation to the implementation of the provisions of the Espoo Convention.

The Review itself examined the specific features of the EIA scheme in Kazakhstan and helped identify the loopholes in the national legislation. It also provided suggestions for bridging the gaps in the EIA legal domain to establish “methodological guidance” for the assessment of the negative effects of the planned activity and ensure the balance between the economic growth and the environmental and health protection in the process of planning at the level of project activity.

The round table was attended by some representatives of the Ministry, the members of the Working group on environmental legislation development of the Republic of Kazakhstan, responsible for EIA implementation, international and national legal experts, academia, and non-governmental organizations, which actively participated in the discussions on the EIA national system reform and contributed with specific recommendations.

Based on the outcomes of discussions, a team of experts is tasked to finalize the EIA draft amendments and present them to the Ministry in the form of “EIA Chapters, including in transboundary context” for the forthcoming legal drafting under the Environmental Code revision.

**For more information, please visit:**

<http://www.unece.org/environmental-policy/conventions/water/areas-of-work-of-the-convention/envwatercentralasia/supporting-kazakhstans-transition-towards-green-economy-model.html>

<http://energo.gov.kz/index.php?id=21857>

### **2.1 Objectives of the round table meeting**

The main objective of the Round table was to discuss the draft proposals of the EIA team experts targeting to harmonize the national legislation with the provisions of the Espoo Convention.

In particular, the participants of the Round table meeting were invited:

- to discuss the proposed EIA draft amendments to the Environmental Code of Kazakhstan as compared with the existing OVOS/expertise framework;
- to clarify remaining uncertainties and outstanding questions;
- to collect comments and participants’ opinion regarding the above;
- to identify further course of action and the scope of legislative EIA reform by considering the recommendations.

The event also aimed at enhanced inter-agency cooperation, improved awareness and capacity building of interested stakeholders on the EIA legal international standards and requirements.

## **2.2 Round table key outcome**

The Round table event promoted expert level consultations and better awareness on the international EIA legal standards and put forward proposals aiming at translating them into the national legal framework. The event resulted in specific recommendations on the EIA draft amendments to the Environmental Code finalization for the upcoming second-round consultations with the Government of Kazakhstan.

## **2.3 Participants**

Some 41 participants attended the event and were represented by the members of the Ministry's working group on the revision of the Environmental Code of the Republic of Kazakhstan, other experts of the Ministry, responsible for strategic planning and EIA implementation, representatives of private sector, international legal consultants and national legal experts.

Out of 41 participants 27 (66%) were represented by women and 14 (35%) - by men (please, refer to Annex 2).

## **2.4 International and national experts**

Mr. Jerzy Jendroska, key international expert on EIA and SEA legal drafting, Ms. Elena Laevskaya, international expert on EIA and SEA legal drafting and Ms. Leial Makhmetova, national expert on SEA and legal drafting were the main source of expertise and, therefore, acted as key speakers and expositors during the Round table discussions.

Theory was combined with the best practice's presentations about the EIA application in different countries to familiarize the participants with the lessons learnt and progress achieved. The EIA team experts led the discussions and contributed significantly to the elaboration of specific recommendations and follow up steps to be taken in Kazakhstan for the EIA appropriate legal drafting process.

## **2.5. Round table meeting design**

The Round table meeting agenda was designed to address the gaps and needs in the national environmental impact assessment framework. It allowed presentations and deliberate expert discussions on the prospects of enhancement of the national EIA scheme to comply with the requirements and provisions of the UNECE Espoo Convention.

Speaking precisely, the meeting agenda included the presentation of the EIA draft amendments to the Environmental Code of Kazakhstan (EnvCode) along with specific recommendations for further feedback and comments collection.

### 3. Round table meeting summary

The Round table was opened by Mr. Sabit Nurlybai, Vice Minister of Energy of the Republic of Kazakhstan and Mr. Colin McCullough, Political Officer, OSCE Programme Office in Astana. The Vice-Minister welcomed the participants and underlined in his speech that the revision of the conventional EIA system in accordance with the provisions of the Espoo Convention and the introduction of modern SEA procedure in Kazakhstan are effective tools for identifying cost-effective alternative strategic development options for green economic growth with opportunities for new foreign investments and improving the environmental situation and human health. The success of the SEA and EIA pilot project was stressed as crucial for possible duplication in other countries of Central Asia.

The OSCE representative paid utmost attention to the environmental security issues and the valuable role of the efficient EIA system can play to achieve safe and sustainable development in Kazakhstan and in the Central Asian region. According to Mr. McCullough proposed recommendations by the EIA team experts will stimulate and lay trustworthy long-term foundation for efficient co-operation in the Central Asian region in the sector of environmental assessment and environment protection.

The meeting was moderated by Ms. Madina Ibrasheva, SEA and EIA pilot project Team Leader, who presented an agenda and brief information about the progress of the SEA/EIA activities in Kazakhstan achieved during relatively short period of project timeline. Ms. Ibrasheva expressed special thanks to the Ministry and the project co-organizers for the support and active involvement in the EIA and SEA legal drafting activities and in the pilot application of SEA with respect to the national Concept on fuel and energy complex, which is currently under the Ministry's revision.



*Picture 1. Welcoming remarks by Mr. Sabit Nurlybai, Vice Minister of Energy of Kazakhstan*

The first working session was led by Mr. Jerzy Jendrośka, key international expert on EIA and SEA legal drafting, who presented the Concept of EIA, the place in decision-making and the role of various actors. Mr. Jendrośka presented the peculiarities of environmental assessment approach in different countries with a comparison between the environmental assessment systems of the European and post-Soviet countries; provided an overview of the basis of international standards as, *inter alia*, stipulated in the Espoo Convention and the Aarhus Convention and underlined that both Conventions are binding for Kazakhstan that put respective obligations for the country for their proper implementation. The presented provisions underlined the need to consider the environmental consequences that may result from economic activity,

alternative ways of achieving the goal and holding wider consultations with the public for efficient and transparent decision-making. In addition, special attention was given to the right of the land purchase and introduction of architectural designing upon and in line with the decision taken under the European EIA model. A mandatory EIA list was mentioned in this regard as well as emission standards that are given in a different procedure by different competent authorities.

Proposed procedure for Kazakhstan was presented in two categories of project instead of existing four, as stipulated by the Annexes 1 of the Espoo Convention and the Aarhus Convention and known as projects that subject to mandatory EIA; the second category projects relates as the subject to screening. The differences between the European EIA and the Kazakhstani EIA systems were explained then in details.

Ms. Leila Makhmetova, national expert on EIA and SEA legal drafting presented the draft of the Chapter on EIA procedure and the Chapter on EIA in transboundary context. The following were proposed in the new version of the EnvCode regarding the EIA:

- to separate the EIA from the design/projected activities;
- to separate the EIA from the right on the land plot;
- to separate the emissions standards procedure;
- to reduce the list of activities subject to EIA.

Furthermore, special definitions pertaining to EIA and SEA were proposed and presented to be employed in line with the Espoo and the Aarhus Conventions in the new version of the EnvCode.

During the next session related to activities subject to EIA, categories of projects and the concept and role of screening Mr. Jerzy Jendroška referred to the Annexes 1 of the Espoo Convention and the Aarhus Convention, which enlist activities subject to mandatory EIA. However, according to international expert such list is much wider worldwide than stipulated in the Annexes, because the countries recognize that the mandatory list is not enough to assure proper quality of environment. An example of Poland list that is subject to full assessment and subject to screening was presented in this regard.

Ms. Leila Makhmetova continued the presentation by referring to the proposal for Kazakhstan to accommodate only two categories of activities, namely mandatory list that will be elaborated based on the above-mentioned Annexes of the Espoo and the Aarhus Conventions and the list of activities that are subject to screening. The second category is proposed to be elaborated based on the Annex 2 to the UNECE Protocol on SEA.

In the next session, devoted to the overview of stages of the EIA procedure, concept and role of scoping and electronic Single EIA Register, the key international expert shared information with the audience on possible duration of the first and second stages of the EIA procedure. According to international standards there should be 30 days given to public to make comments for the full EIA assessment. Besides, it was also noted that only in certain situations the post-project analysis as the third stage of the EIA can be applied. Then a recommendation was put forward to launch the electronic EIA and SEA systems in Kazakhstan to make the whole process transparent and to avoid plagiarism. Ms. Makhmetova in her turn explained how international standards with respect to two stages can be introduced and accommodated in the EIA legal system of Kazakhstan, including in transboundary context.

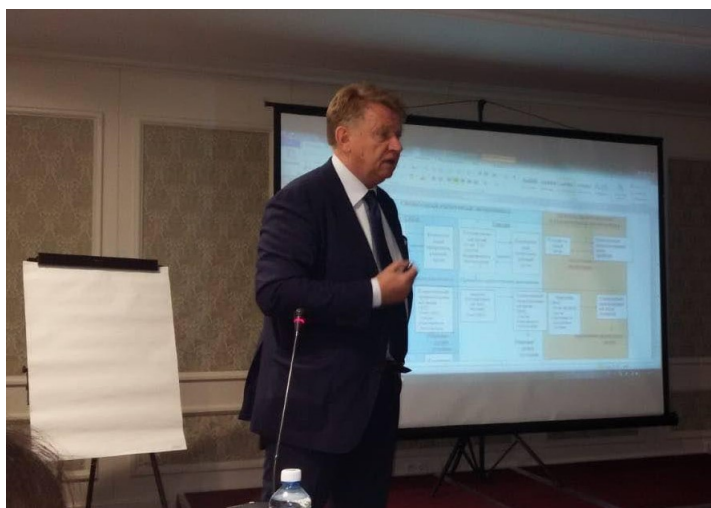
Ms. Azamat Alimbayev, Deputy Chair of the Committee of Ecological Monitoring and Control of the Ministry addressed the speakers with two issues pertaining to the purchase of land by the business companies before and after the EIA decision and associated risks as well as touched upon the issue of State Ecological Expertiza abolishment in Kazakhstan and the role of the competent authorities in the modern EIA system according to the Espoo Convention. Both speakers provided thorough explanations by stressing that the new EIA procedure in Kazakhstan will help reduce the risks and unnecessary costs for the land purchase in case if the EIA decision



would be negative. While the role of the competent authorities will be enhanced and extended to comply with the Espoo Convention requirements.

Ms. Elena Laevskaya, international expert on SEA and EIA legal drafting added that some elements of the State Ecological Expertiza will remain, however, the new EIA system will envisage greater role of the competent authorities at the levels of screening, scoping and making a final decision based on the full EIA assessment. A reference was made to the experience of Belarus, which list of activities subject to EIA is based on the sanitary list and criteria which, unfortunately, don't comply with the criteria of activities that are subject to EIA, stipulated under the Espoo Convention and the Aarhus Convention.

With respect to preliminary assessment, Declaration of Intent, procedure and role for Category I and Category II Projects Mr. Jendroška, *inter alia*, provided a definition of Declaration of Intent and explained the needs to be addressed in this document. The scoping was mentioned as an instrument to be applied under the above that should be thorough and focused on the main issues of concern to allow for effective concentration of recourses. Some specific examples and best practices were presented by the key international expert in this regard for the further consideration of Kazakhstani authorities and interested parties.



*Picture 2. Mr. Jerzy Jendroška, key international expert on EIA and SEA legal drafting presents the EIA approaches worldwide*

With respect to full assessment, the EIA Report and its quality, procedure topics the key international expert provided thorough explanations on the European best practices on preparation of the EIA report, requirements, description of activity, respective environment, the alternative, the impact on environment, methods and data, as well as mitigation measures to minimize the impact and non-technical summary. It was also noted that a Chapter on transboundary procedure is normally added if there is a transboundary impact. All reports in European practice must be written according to the scoping with suggestions on examination to be made and methodology applied. If the report doesn't attribute to undertaken early scoping it is sent back for necessary improvements. Furthermore, the competent authorities make a decision and appropriate justification and inform the public and other respective authorities. The decision is made to be publicly available through the electronic register. Accreditation of experts was highlighted as counterproductive and abolished in some European countries due to the quality of reports produced. Ms. Makhmetova contributed to the presentation by presenting detailed proposals for Kazakhstan based on international standards explained earlier by Mr. Jendroška.

The national expert among other issues stressed the importance of public involvement in comments provision with respect to the EIA report along with the relevant state authorities, members of the EIA special commission. The report according to Ms. Makhmetova can be stored no more than five years at the electronic Register and any interested party in the proposed

EIA amendments to the EnvCode according to the Law on the procedure for consideration of appeals can and has the right to present the comments for further consideration under the EIA procedure.

Ms. Laevskaya made an intervention by drawing participants attention to the fact that the modern EIA system starts the environmental assessment at earlier stage than the State Ecological Expertiza currently proposes. It helps to avoid some economic risks with respect to land plots purchase and make the process more transparent and enriched by involving the public already at the stage of scoping and at the later stage of the EIA full assessment. It was stressed that for the Declaration of Intent there is no need to prepare and present in-depth analysis on the environmental impact, instead the developer has to indicate the direction of impact that is expected.

The morning presentations stimulated viable discussions and opinions sharing on the EIA novels. The participants inquired additional information on the modern EIA approach, suggested by the experts, namely related to the emissions' standardization, the stage when a comprehensive environmental permit can be obtained and the duration of EIA procedure, which could hamper the small and medium-scale businesses in Kazakhstan if it would last too long.

In response Mr. Jendroška made a reference to 10-11 months at average of full EIA assessment, which counts the preparation of the EIA report. It was also mentioned that under the State Ecological Expertiza an EIA report should be produced first and then a decision is taken, which is not the case for the European countries since the invested funds, time and efforts of the businesses could be lost if the decision is not taken.



*Picture 3. Participants closely follow the presentation on the proposed EIA draft amendments to the Environmental Code of Kazakhstan*

It was also noted by the expert that emissions standardization, namely the pollution permit in the European countries is separated from the EIA and is done by separate agency as this assessment requires different skills and competence. Besides, the expert mentioned the case when there is a transboundary effect and for which early and efficient decision-making should be secured to comply with the requirements of the Espoo Convention, whereas, within the old EIA system the decision is taken sometimes too late and is costly. The explanations were supported by specific best practices cases of the European countries.

The afternoon session started with an overview of international standards on public participation, procedural elements and the role of authorities and developers. The proposals were presented in 11 parts, covering the party(ies) to exercise the right to comment and participate in the screening and scoping stages as specified in the Espoo Convention. The expert talked about the requirement for publication of information in the local mass media and at the web-site of national/regional authorities and in hard copies in the Russian and Kazakh languages. Indication

of contact information was mentioned as mandatory in this regard. Involvement of public according with the new EIA approach is seen as increased and at all levels of the EIA procedure.

Mr. Jerzy Jendroška to explain the international standards on implementing relevant consultations with other authorities and experts, among other issues, indicated the need for close consultations with the health and the emergency authorities as well as the reasons, when the decision for economic activity is declined. The amendments to the national legislation were aligned with the European best practices as discussed by Mr. Jendroška with a suggestion to establish the EIA Expert Commission to check the quality of the EIA report and to make a final decision. The representative of the competent authority is proposed to chair the work of the Expert Commission.

Mr. Alimbayev took a floor and requested the experts to consider the implementation of the EIA by the local authorities as it is done in Poland to resolve the issue with the allocation of the land plots for economic activities and to ensure the proper implementation of the EIA decision at the local level as the decision done at the level of the Ministry is not necessarily obligatory for the local authorities. In addition, Mr. Alimbayev also stressed that if the EIA is primary in the EnvCode, then it should be primary in the Law of Kazakhstan on subsoil and subsoil use to avoid collusions in the future.

In the next session the key international expert also talked about the international standards and European practices with respect to the EIA decision, admissibility of the project, conditions and justification. Ms. Makhmetova in relation to the highlighted topics enlisted the suggestions for the EnvCode and underlined that the proposed changes with respect to the EIA decision should trigger the changes in respective Governmental Decree on permits.

In the session on post-project analysis and enforcement the post-project analysis was described as nonobligatory in the EIA scheme. Implementation of the post-project analysis is needed when there is no or insufficient data, methodology, inability to assess the particular issue. The post-project analysis stage according to expert can help the authorities to improve the process for future projects if similar projects would take place with the examined consequences that were not properly addressed. If there is a transboundary procedure a real effect must be monitored on the environment of another country with the help of the above-mentioned procedure. These norms were thoroughly specified in the proposed EIA Chapter of the EnvCode of Kazakhstan.

To bring more clarity to the issue Mr. Alimbayev addressed the experts with the request to specify in the proposed amendments the reasons for the post-project analysis and within what time-frame it can be implemented.

The final block of discussion touched upon the transboundary procedure and the role of various actors in this regard. Apart from explaining the key requirements under the Espoo Convention Mr. Jendroška draw participants attention to the fact that the competent authorities in Europe don't engage the Ministries of Foreign Affairs of other countries and all the deadlines for the EIA procedure normally stop until the other country replies, whereas, the entire Declaration of Intent has to be translated into the language of potential country under the impact. The transboundary consultations result in preparation and signature of the Protocol, which usually contains the request for post-project analysis and suggestions to be reflected in the final EIA decision.

The proposals for Kazakhstan were presented in a Chapter on transboundary procedure that reflects the key international requirements for implementation of transboundary consultations (including public consultations) for Kazakhstan as the country of origin and the country under the impact. In case if the neighbouring country is not a Party to the Espoo Convention the rules of international law must be applied, namely if the country implements activity that might have impact on the other country, it should in due term consult the other country.

As part of the concluding remarks Mr. Alimbayev requested the experts to look into the issue of EIA final assessment duration. According to the present national legislation it is up to 45 days, the new EIA scheme significantly extends the duration, which might hamper the development of small and medium-scale businesses in Kazakhstan.

Mr. Jendroška suggested to prepare and share with the Ministry the EIA duration graph for its further consideration, which will adequately fit the whole procedure and be in line with the Espoo Convention requirements on one hand and be acceptable by the country- on the other.

The event was finalized with a request to submit any further comments to the EIA draft amendments to the EnvCode within the two weeks period. The Ministry of Energy of Kazakhstan expressed a gratitude to the project for valuable contribution in advancing the EnvCode in the domains of EIA as part of activities, aiming at upgrading the legislation in line with the international requirements and standards.

#### **4. Bilateral Consultations and Steps Forward**

##### Consultations with Ms. Madina Zhunusbekova, Vice-Minister of National Economy of Kazakhstan

On 4 September 2018 at the request and initiative of the Ministry and in preparation to the round table meeting on strengthening the legislation of the Republic of Kazakhstan in accordance with the UNECE Convention on environmental impact assessment in a transboundary context the project held bilateral consultations with Ms. Madina Zhunusbekova, Vice-Minister of National Economy. The Vice-Minister Zhunusbekova at the meeting was accompanied by some four heads of departments that are focal points for strategic governance and environment protection issues.

The SEA experts' team was led by Mr. Jerzy Jendroška, key international expert on EIA and SEA legal drafting who introduced the Vice-Minister and the Ministry's experts to the SEA benefits for Kazakhstan and shared the SEA best practices including in legal drafting. In addition, the experts presented the views on the importance of compliance with the Espoo Convention and Protocol on SEA for Kazakhstan as a country that aims at the membership in the OECD.

The Vice-Minister expressed an interest and support to the SEA initiative in Kazakhstan, however, clearly indicated that the driving force is the Energy Ministry and deliberate consultations with other Ministries are needed to make a final decision with respect to the Protocol on SEA ratification and the SEA proper introduction at the national level.

The bilateral meeting resulted in an agreement to extend the co-operation in the very domain through an improved exchange of SEA best practices and active involvement of the Ministry of National Economy in the on-going activities of the project.

##### Meeting with Mr. Sabit Nurlybai, Vice Minister of Energy of the Republic of Kazakhstan

On 6 September 2018 SEA pilot project team met with Mr. Sabit Nurlybai, Vice Minister of Energy of the Republic of Kazakhstan with the aim to present the interim pilot project results, to think of and discuss the prerequisites for successful finalization of the project and the SEA /EIA plans for the future.

The Vice-Minister Nurlybai was accompanied by ten representatives of various departments of the Energy Ministry on climate change, gas industry, information and monitoring, green economy, strategic planning, etc. and addressed the project partners with a request to extend the

support beyond the project closure to sustain better SEA and EIA capacity building and awareness raising for enhanced good governance and green economy reform in the country.

The Vice-Minister stressed the importance of a success of the SEA/EIA project of Kazakhstan for the whole Central Asian region as a prerequisite for better regional cooperation that can offer internationally sound and legally binding platform for dialogue and improved public participation in the decision-making across the borders.

Specifically, the Vice-Minister put forward the request to international community, including the UNECE and the OSCE to help:

(for November-December 2018)

- finalize the EIA legal drafting by preparing the EIA amendments to the secondary legislation of Kazakhstan;
- finalize the SEA procedure for the Concept in full compliance with the Protocol on SEA under the next possible project upon the availability of the pre-final version of the Concept.

(2019)

- finalize the SEA and EIA amendments through an extensive consultation with interested parties and public hearings in the Parliament of Kazakhstan;
- conduct another pilot application of the SEA with respect to the state and regional programmes of development;
- in early 2019 implement the study tour to one or two European countries for the representatives of various Ministries of Kazakhstan, members of the Working Group on Environmental Code revision to learn the SEA and EIA best practices before the adoption of the revised EnvCode;
- establish a Training Hub on Environmental Assessment in Astana based on the Energy Ministry's Resource Centre for the Central Asian countries and other countries of the Eurasian region with a launch of Training of Trainers Programme under the umbrella of the Silk Road Initiative;
- run the extensive trainings on the SEA and the EIA for officials and practitioners at the Ministry's Training Hub with participation of the UNECE leading experts.



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## Round table

### Strengthening the legislation of the Republic of Kazakhstan in accordance with the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Astana, 5 September 2018)

**9.00-09.30 Welcoming tea/coffee. Registration of participants**

**9.30-9.40 Opening remarks**

*Mr. Sabit Nurlybai*, Vice Minister of Energy of the Republic of Kazakhstan

*Mr. Colin McCullough*, Political Officer, OSCE Programme Office in Astana

**9:40 – 9:45** Presentation of the agenda. Brief information about the project status on SEA and EIA in Kazakhstan

*Ms. Madina Ibrasheva*, UNECE Team Leader, SEA and EIA project in Kazakhstan

**9.45 -10.30** Concept of EIA, place in decision-making and role of various actors: draft proposals in the light of the Espoo Convention requirements, other international standards and experience in other countries

*Mr. Jerzy Jendrośka*, key international expert on EIA and SEA legal drafting

*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

#### Questions and discussion

**10.30-11.00** Activities subject to EIA, categories of projects, concept and role of screening: draft proposals in the light of international standards and experience in other countries

*Mr. Jerzy Jendrośka*, key international expert on EIA and SEA legal drafting

*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

#### Questions and discussion

**11.00-11.30** Stages of EIA procedure, concept and role of scoping, electronic Single EIA Register: draft proposals in the light of international standards and experience in other countries

*Mr. Jerzy Jendroška*, key international expert on EIA and SEA legal drafting  
*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

**Questions and discussion**

**11.30-12.15** Preliminary assessment, Declaration of Intent, procedure and role for Category I and Category II Projects: draft proposals in the light of international standards and experience in other countries

*Mr. Jerzy Jendroška*, key international expert on EIA and SEA legal drafting  
*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

**Questions and discussion**

**12.15-13.00** Full assessment, EIA Report and its quality, procedure: draft proposals in the light of international standards and experience in other countries

*Mr. Jerzy Jendroška*, key international expert on EIA and SEA legal drafting  
*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

**Questions and discussion**

**13.00-14.00 Lunch**

**14.00-15.00** Public participation, procedural elements, role of authorities and developers: draft proposals in the light of international standards and experience in other countries

*Mr. Jerzy Jendroška*, key international expert on EIA and SEA legal drafting  
*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

**Questions and discussion**

**15.00-15.30** Consultations with other authorities and experts: draft proposals in the light of international standards and experience in other countries

*Mr. Jerzy Jendroška*, key international expert on EIA and SEA legal drafting  
*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

**Questions and discussion**

**15.30-16.00 Coffee break**

**16.00 -17.00** EIA Decision, admissibility of the project, conditions, justification: draft proposals in the light of international standards and experience in other countries

*Mr. Jerzy Jendroška*, key international expert on EIA and SEA legal drafting  
*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

**Questions and discussion**

**17.00-17.15** Post-project analysis and enforcement: draft proposals in the light of international standards and experience in other countries

*Mr. Jerzy Jendrośka*, key international expert on EIA and SEA legal drafting

*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

**Questions and discussion**

**17.15-18.00** Transboundary procedure, role of various actors: draft proposals in the light of international standards and experience in other countries

*Mr. Jerzy Jendrośka*, key international expert on EIA and SEA legal drafting

*Ms. Leila Makhmetova*, national expert on EIA and SEA legal drafting

**Questions and discussion**

**18.00-18.15** Final discussion and follow-up



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Start Date: Wednesday, August 05, 2018

End Date: August 05, 2018

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## Concept

of the comprehensive reform of the legal framework for environmental impact assessment (EIA) in Kazakhstan

### Background

1. As indicated in the **Concept Note** regarding necessary amendments to the existing legislation in Kazakhstan to better align it with the international standards, in particular with the provisions of the UNECE Espoo Convention and its Protocol on Strategic Environmental Assessment (**Concept Note**) - the existing EIA scheme in Kazakhstan is based on traditional OVOS/expertise model which was developed for a centrally-planned economy and conceptually neither fits to modern market-based economy nor complies with the requirements of the Espoo Convention (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 (General Guidance on enhancing consistency).
2. The specific features of the EIA scheme in Kazakhstan was meant to be examined in the Review of the Kazakhstan legislation in relation to the implementation of the UNECE Espoo Convention (EIA Review) and on that basis some concrete proposals for a legislative reform regarding EIA were to be developed.
3. As it was agreed during the meeting with the representatives of the respective Kazakh authorities held on 16 February 2018 in Astana - the legislative reform regarding EIA was originally meant to be limited to providing some necessary adjustments to the existing EIA framework based on the OVOS/expertise system in order to bring it into formal compliance with the Espoo Convention. These necessary adjustments were listed in the Concept Note.
4. However – the final EIA Review revealed that the existing EIA framework in Kazakhstan is not effective, not internally consistent and overly complicated therefore the whole EIA system should be reformed (EIA Review - page 20)
5. Furthermore, the EIA review indicates that within the wider context of environmental law reform in Kazakhstan “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” and make it “a part of the complex non-departmental expertise” (EIA Review - page 21).
6. In this situation it was requested that the Project would prepare for Kazakhstan a concept of a totally new comprehensive EIA scheme based on the modern EIA system.

### II. Basic features of a new EIA scheme as compared with the existing OVOS/expertise framework

1. Goals of a new scheme
  - a. Reducing regulatory burden on economic activities
  - b. Modernizing and strengthening environmental control of economic development
  - c. Assuring compliance with international standards (in particular: Espoo Convention and Aarhus Convention)
  - d. Enhancing effective and transparent decision-making

- e. Providing coherent and clear regulatory framework
2. Place in the development control
    - a. Current situation
      - i. Three stages (article 17 of the Code)
      - ii. At each stage:
        - OVOS conducted by developer
        - Ecological expertise conducted by authorities
      - iii. Positive conclusion of ecological expertise binding and required to issue a development consent authorizing implementation of the activity (art.51.2 of the Code)
    - b. New scheme
      - i. Basically, only two stages of EIA procedure: scoping determination and EIA conclusion/decision
      - ii. OVOS and expertise merged into one EIA procedure conducted by authorities
      - iii. Positive EIA conclusion/decision binding and required to issue a development consent authorizing implementation of the activity
    - c. Modalities/alternative solutions
      - i. Name of the EIA conclusion/decision
      - ii. Relation to the stages in developing project documentation
  3. Relation to pollution control
    - a. Current situation
      - i. Stages 2 and 3 of OVOS/expertise meant to establish emission standards (art.37.3 of the Code)
      - ii. Integrated pollution permit is considered to be established and merged into one procedure with the OVOS/expertise
    - b. New scheme
      - i. EIA conclusion/decision is separated from pollution control and integrated pollution permit
    - c. Modalities/alternative solutions
      - i. Procedural and organizational links may be envisaged between EIA conclusion/decision and integrated pollution permit
  4. Role of environmental authorities
    - a. Current situation
      - i. Issue expertise conclusion
      - ii. Are not responsible for public participation
      - iii. Are not responsible for taking due account of the results of EIA
      - iv. Check formal compliance with environmental requirements but generally do not set precise environmental conditions for a project (activity) themselves
    - b. New scheme
      - i. Issue EIA conclusion/decision
      - ii. Are responsible for public participation



- iii. Are responsible for taking due account of the results of EIA
      - iv. Not only check formal compliance with environmental requirements but also set precise environmental conditions for a project (activity) themselves
    - c. Modalities/alternative solutions
      - i. Organization and structure of authorities responsible for conducting EIA procedure and issuing EIA conclusion/decision
      - ii. Relations between authorities responsible for conducting EIA procedure and issuing EIA conclusion/decision with other environmental authorities
5. Role of developers and EIA consultants
- a. Current situation
    - i. Are responsible for preparation of OVOS documentation
    - ii. Are responsible for public participation
    - iii. Are responsible for taking due account of the results of EIA
    - iv. Licensing of EIA consultants
  - b. New scheme
    - i. Are responsible for preparation of EIA documentation
    - ii. Are not responsible for public participation
    - iii. Are not responsible for taking due account of the results of EIA
  - c. Modalities/alternative solutions
    - i. Involvement of developers and EIA consultants in organizing public participation
    - ii. Responsibility of developers for covering the costs of EIA procedure
    - iii. Accreditation of EIA consultants or general requirements regarding their qualifications
6. Activities covered
- a. Current situation
    - i. There are different lists of activities subject to OVOS, subject to ecological expertise and subject to public participation
    - ii. The above lists are based on different criteria and are not clearly co-related
    - iii. Existing situation does not allow for assuring compliance with the obligations under the Espoo and Aarhus Conventions
    - iv. Existing situation does not allow for assuring a comprehensive and effective control
  - b. New scheme
    - i. New list or lists of activities subject to EIA scheme is established
    - ii. New list or lists of activities is fully compliant with the lists of activities under the Espoo and Aarhus Conventions in terms of both range of activities covered and their classification
  - c. Modalities/alternative solutions
    - i. Minimum list of activities (only Espoo and Aarhus lists) or also activities covered by Annex II to SEA Protocol

- ii. Mandatory EIA for all activities on the list (Ukrainian approach) or two lists: one with mandatory EIA and one list with categories of projects subject to individual screening (most EU countries)

## 7. Scoping and EIA Report

- a. Current situation
  - i. No individual scoping
  - ii. Information to be included in EIA report not reflecting current state of the art
- b. New scheme
  - i. Individual scoping
  - ii. Information to be included in EIA report reflecting current state of the art
- c. Modalities/alternative solutions
  - i. Individual scoping always mandatory or only in certain circumstances

## 8. Public participation

- a. Current situation
  - i. No clear co-relation between list of activities covered by OVOS/expertise scheme and list of activities which require public participation
  - ii. The procedural requirements not always fully in line with the Aarhus Convention
- b. New scheme
  - i. Clear co-relation between list of activities covered by OVOS/expertise scheme and list of activities which require public participation
  - ii. Improved procedural requirements
- c. Modalities/alternative solutions
  - i. Public participation procedure included into the EIA scheme or reference to public participation procedure in a separate legal act

## 9. Transboundary procedure

- a. Current situation
  - i. No clear provisions on transboundary procedure
  - ii. Environmental authorities are aware of the activity at the late stage thus can submit notification to other country only long time after public participation (breach of Espoo Convention)
  - iii. No possibility for post-project monitoring
- b. New scheme
  - i. clear provisions on transboundary procedure
  - ii. Environmental authorities are aware of the activity at the early stage thus can submit notification to other country not later than informing domestic public (as required by Espoo Convention)
  - iii. Possibility for post-project monitoring
- c. Modalities/alternative solutions
  - i. Level of details regarding transboundary procedure

## 10. Decision

- a. Current situation
  - i. In practice only acceptance or not of environmental conditions proposed by the developer
  - ii. No clear requirements for taking in the expertise conclusion due account of the results of EIA
  - iii. Environmental conditions quite often only very general
  - iv. No clear requirements for justification (statement of reasons)
- b. New scheme
  - i. Active role of environmental in developing environmental conditions for implementing the project
  - ii. Clear requirement for taking in the EIA conclusion/decision due account of the results of EIA
  - iii. Environmental conditions more detailed
  - iv. Clear requirements for justification (statement of reasons)
- c. Modalities/alternative solutions
  - i. Timing of issuing EIA conclusion/decision
  - ii. Authorities responsible for issuing EIA conclusion/decision
  - iii. Procedural aspects (involvement of experts, involvement of other specialized environmental authorities)

#### 11. Post-project monitoring

- a. Current situation
  - i. Legal scheme for post-project monitoring abolished
  - ii. Difficult to implement Espoo Convention (art.7)
- b. New scheme
  - i. Legal possibility for imposing post-project monitoring in certain situations
  - ii. Compliance with Espoo Convention
- c. Modalities/alternative solutions
  - i. Situations where such obligation can be imposed

#### 12. Electronic flow of documents

- a. Current situation
  - i. No requirements regarding electronic flow of documents
  - ii. No registers of EIA procedures and decisions
  - iii. Lack of clear rules regarding public availability of EIA documents and decisions
  - iv. Non-compliance with Aarhus Convention
- b. New scheme
  - i. Clear requirements regarding electronic flow of documents
  - ii. Central electronic register of EIA procedures and decisions established
  - iii. Clear rules regarding public availability of EIA documents and decisions
- c. Modalities/alternative solutions
  - i. Ukrainian model (developers themselves submit documents to the register) or Croatian model (only authorities submit documents to the register)

#### 13. Budgetary implications of the reform

- a. increase in staff needed

- b. enhanced skills needed
- c. capacity building

### **III. Approach and timing**

1. Within the current funding and time-line (by September 2018) the Project would be able to elaborate only the detailed concept of future EIA framework and perhaps draft the EIA provisions in the Code regulating only the general features of the new EIA framework
2. Separate funding and timelines (at least 6 months starting from September 2018) are needed to elaborate all the subsidiary legislation (podzakonnyje akty)