



Challenges of Environmental Impact Assessment (EIA) Procedure for Transboundary Projects in the Black Sea Basin

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Abstract

Since the environmental damage from nature and human activities never respects the national borders and is very hard to define for the marine environment, in particular, the Environmental Impact Assessment (EIA) plays an important role in the assessment of its scope and consequences already at the earliest stage, involving political and economic aspects between the neighboring countries and preventing conflicts.

The legal tools for development of the EIA procedure in the Black Sea region differ from country to country. Apart from national EIA procedures, some countries in the region are the EU members, and therefore, applying provisions of the EIA-related Directives; some are Contracting Parties to the Espoo and Aarhus Conventions; also the Black Sea countries are members to Regional Environmental Conventions, i.e. Barcelona Convention and Bucharest Convention. The multitude of legal instruments available, overlapping and discrepancies in their application make it extremely important to create the synergy between the procedures and practices with a final aim to enforce the implementation of all the above mentioned legal instruments in the Black Sea basin. Also, one of the crucial elements is to facilitate the better interaction and cooperation between the bilateral and multilateral MEAs in the region considered and to unify the EIA-related documentation and guidelines. The objective of this paper is to present the legal analysis of the EIA legislation applicable and to give some recommendations to policy-makers on its successful implementation in the Black Sea region.

Keywords: Environmental Impact Assessment, EIA-related Directives, Bucharest Convention, large-scale transboundary projects, enforcement of the EIA-related legal instruments.

Introduction

The large-scale projects always involve a large number of stakeholders, which may trigger the environmental and socio-economic impact of the projects and even cause conflicts of local, national and regional nature. Thus, the transboundary EIAs are ensuring the compliance with the relevant legal provisions and constitute a viable tool to enhance the international cooperation, public participation and access to justice in the field of environment.

One of the definitions of EIA says that “EIA is the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made” (Principles of EIA best practice, January, 2009). Thus, the EIA is applied in order to ensure that environmental considerations are duly taken into account, to identify and assess the likely environmental impacts of the project; report on those

impacts and on measures to be taken to prevent, reduce or mitigate them; allow the public and other stakeholders to comment on the project and the EIA report; provide this information – the EIA report and the comments of the public and other stakeholders – to the decision-makers (Benefits and costs of EIA, October, 2007).

In order to promote the international cooperation in the sphere of transboundary EIA, the states negotiated and adopted the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). This Convention is considered to be an important tool of environmental procedural law and it was one of the first MEAs to specify the procedural rights and obligations of Parties with regard to transboundary impacts of proposed activities and to provide relevant procedures for their consideration (Benefits and costs of EIA, October, 2007).

Nevertheless, despite half of the Black Sea countries are parties to UNECE Espoo Convention

and all the Black Sea countries proclaim their intention to save the Black Sea environment, so far the Black Sea Commission failed to adopt the non-legally binding Guidelines on the implementation of the Espoo Convention' provisions for the Black Sea, let alone to widely implement the EIA legislation in the region, given the challenges described above.

Policy Framework Analysis

First, let's make an overview of the legal instruments related to EIA in the transboundary context in the countries of the Black Sea basin (see Table 1). One may see that a multitude of factors of political and economic nature influence the development of the EIA-related legislation in the Black Sea region. If initially the Espoo Convention was designed as just a perfect instrument of the so called "procedural environmental law", nowadays, due to its cross-cutting and transboundary nature it really becomes more and more politically and economically sound.

One of the challenges of the application of the Espoo Convention provisions is that, although the procedure is quite simple, there is always a space for misinterpretation of the Convention' provisions, especially in the transboundary context. Since the Contracting Parties to the Espoo Convention are given some discretion to apply its certain provisions, ambiguity is often causing problems when interpreting the terms "public", "significant impact", "competent authority" etc. It should always not only be a good will of the country to comply with its legal obligations to a maximum extent, but also a need to develop overall guidelines for each and every member state (MS). And even if the EU EIA system is not ideal, the EU managed to deliver concrete Directives and the EIA case-law, as well as to foresee an infringement procedure. This so called "regional EIA system" provides for better implementation of the Espoo Convention in EU MS which allows them not to be in non-compliance with Espoo Convention and, therefore, allowing EU to successfully fulfill its international environmental obligations in the EIA sphere.

Undoubtedly, the benefits of EIA are obvious and cannot be measured by figures. Nevertheless, something which still can be measured is the cost of environmental EIA. Since the development of EIA is a legal requirement in most of the countries (either

parties to Espoo Convention or EU Member States, or both), the procedure is obligatory and, in most of the cases, requiring many resources and much time (normally 0.5% of overall costs, from which 60-90 % is to develop an EIA report).

At the moment, a number of regional environmental agreements contain the EIA provisions. For the purpose of this paper and since Turkey is also a party to this MEA, the author considered as an example the particular Barcelona Convention. The aim of incorporation of EIA provisions is to develop and to promote EIA in a transboundary context in order "to attain the greatest similarity in standards and methods related to the implementation of environmental impact assessment" (UNECE, 2012). Needless to say that this common methodology could be further used by various Regional Sea Conventions, *inter alia*, the Bucharest Convention, giving a chance to unify the procedures and to avoid misinterpretation related to ambiguity of some of these MEAs' provisions.

The Barcelona Convention includes the three "EIA-related tiers": provisions of "Environmental Impact Assessment procedure" itself reflected in its Article 4 "General Obligations" traditionally providing application of the transboundary EIA for projects with likely significant impact on environment of the Mediterranean Sea (although without concrete list of such activities) and in the Annex IV "Environmental Impact Assessment" guiding the parties to it on the list of documentation to be provided in regards to the projected activity; provisions on "transboundary context" described in the Article 4 "General Obligations", Article 11 and Article 26 regarding the transboundary pollution issues and "public participation" provisions reflected in Article 15 "Public Information and Participation" (Transboundary EIA provisions and initiatives, www.unece.org). The comparative table of the EIA-related provisions of Bucharest and Barcelona Conventions is provided in the Table 2. It is absolutely clear that Bucharest Convention has only some references to the transboundary EIA as such (it is being mentioned only in two Protocols to the Convention - the Black Sea Biodiversity and Landscape Conservation Protocol and Protocol on the Protection of the Marine Environment of the Black Sea from Land-Based Sources and Activities (2009)), in particular, failing to provide any guidance to the private companies, developers of large-scale

Table 1. Overview of the legal instruments related to EIA in the transboundary context in the countries of the Black Sea basin

	BG	GE	RO	RU	TR	UA
Bucharest Convention	√	√	√	√	√	√
Barcelona Convention	-	-	-	-	√	-
Espoo Convention	√	-	√	-	-	√
Aarhus Convention	√	√	√	-	-	√
EU Directives	√	-	√	-	-	-

Table 2. Comparative analysis of the EIA-related provisions in Bucharest and Barcelona Conventions*

Provisions relating to:	Convention for the Protection of the Mediterranean Sea against pollution, Barcelona, 9 February 1976 (Barcelona Convention)	Convention on the protection of the Black Sea against pollution, Bucharest, 21 April 1992 (Bucharest Convention)
Environmental Impact Assessment	<p><i>Article 4 General Obligations</i></p> <p>1. The Contracting Parties shall individually or jointly take all appropriate measures in accordance with the provisions of this Convention and those Protocols in force to which they are party to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area so as to contribute towards its sustainable development.</p> <p>2. The Contracting Parties pledge themselves to take appropriate measures to implement the Mediterranean Action Plan and, further, to pursue the protection of the marine environment and the natural resources of the Mediterranean Sea Area as an integral part of the development process, meeting the needs of present and future generations in an equitable manner. For the purpose of implementing the objectives of sustainable development the Contracting Parties shall take fully into account the recommendations of the Mediterranean Commission on Sustainable Development established within the framework of the Mediterranean Action Plan.</p> <p>3. In order to protect the environment and contribute to the sustainable development of the Mediterranean Sea Area, the Contracting Parties shall:</p> <p>(a) apply, in accordance with their capabilities, the precautionary principle, by virtue of which where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;</p> <p>(b) apply the polluter pays principle, by virtue of which the costs of pollution prevention, control and reduction measures are to be borne by the polluter, with due regard to the public interest;</p> <p>(c) undertake environmental impact assessment for proposed activities that are likely to cause a significant adverse impact on the marine environment and are subject to an authorization by competent national authorities;</p> <p>(d) promote cooperation between and among States in environmental impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction, on the basis of notification, exchange of information and consultation;</p>	<p><i>Article XV Scientific and technical cooperation and monitoring</i></p> <p>1. The Contracting Parties shall cooperate in conducting scientific research aimed at protecting and preserving the marine environment of the Black Sea and shall undertake, where appropriate, joint programmes of scientific research, and exchange relevant scientific data and information.</p> <p>2. The Contracting Parties shall cooperate in conducting studies aimed at developing ways and means for the assessment of the nature and extent of pollution and of its effect on the ecological system in the water column and sediments, detecting pollutes areas, examining and assessing risks and finding remedies, and in particular, they shall develop alternative methods of treatment, disposal, elimination or utilization of harmful substances.</p> <p>3. The Contracting Parties shall cooperate through the Commission in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment of the Black Sea.</p> <p>4. The Contracting Parties shall, inter alia, establish through the Commission and, where appropriate, in cooperation with international organizations they consider to be competent, complementary or joint monitoring programmes covering all sources of pollution and shall establish a pollution monitoring system for the Black Sea including, as appropriate, programmes as bilateral or multilateral level for observing, measuring, evaluating and analyzing the risks or effects of pollution of the marine environment of the Black Sea.</p> <p>5. When the Contracting Parties have reasonable grounds for believing that activities under their jurisdiction or control may cause substantial pollution or significant and harmful changes to the marine environment of the Black Sea, they shall, before commencing such activities, assess their potential effects on the basis of all relevant information and monitoring data and shall communicate the results of such assessments to the Commission.</p>

* Transboundary EIA provisions and initiatives in selected Regional and Multilateral Environmental Agreements

http://www.unece.org/env/eia/documents/links_between_conventions/Transboundary%20EIA%20Review%20-%20Shortened.pdf (accessed February 1, 2012)

transboundary projects, on the procedure applied for the proposed activity and legal consequences of such activity in the Black Sea basin. Though the majority measures recommended in the main BSC document, the Black Sea Strategic Action Plan (BS-SAP 2009), considered the precautionary principle: “preventative measures are to be taken when there are reasonable grounds for concern that an activity may increase the risk of presenting hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea” (URL 2).

Due to the obvious need to develop more detailed procedures for EIA in the transboundary context for the Black Sea basin, the Black Sea Commission requested the support of the UNECE

Secretariat to the Espoo Convention in the elaboration of a first draft of such procedures. Such a document was prepared by the Espoo Secretariat, further adjusted by Advisory Group on Integrated Coastal Zone Management (AG ICZM) and Advisory Group on Control of Pollution from Land Based Sources (AG LBS) under the Commission on the Protection of the Black Sea Against Pollution (UNECE 1991; Draft Recommendations on environmental impact assessment, Black Sea Commission, January 2011), but, unfortunately was never adopted by the Black Sea Commission.

Apart from the amendments to the text of the Convention, another reasonable way to incorporate the provisions of the Espoo Convention into the Regional Environmental Conventions is to conclude

Table 2. (Continued)*

Provisions relating to:	Convention for the Protection of the Mediterranean Sea against pollution, Barcelona, 9 February 1976 (Barcelona Convention)	Convention on the protection of the Black Sea against pollution, Bucharest, 21 April 1992 (Bucharest Convention)
Transboundary context	<p><i>Article 4 General Obligations</i></p> <p>3.(c) undertake environmental impact assessment for proposed activities that are likely to cause a significant adverse impact on the marine environment and are subject to an authorization by competent national authorities;</p> <p>(d) promote cooperation between and among States in environmental impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction, on the basis of notification, exchange of information and consultation;</p> <p><i>Article 11 Pollution Resulting From The Transboundary Movements of Hazardous Wastes and Their Disposal</i></p> <p>The Contracting Parties shall take all appropriate measures to prevent, abate and to the fullest possible extent eliminate pollution of the environment which can be caused by transboundary movements and disposal of hazardous wastes, and to reduce to a minimum, and if possible eliminate, such transboundary movements.</p>	
Public participation	<p><i>Article 15 Public Information And Participation</i></p> <p>1. The Contracting Parties shall ensure that their competent authorities shall give to the public appropriate access to information on the environmental state in the field of application of the Convention and the Protocols, on activities or measures adversely affecting or likely to affect it and on activities carried out or measures taken in accordance with the Convention and the Protocols.</p> <p>2. The Contracting Parties shall ensure that the opportunity is given to the public to participate in decision-making processes relevant to the field of application of the Convention and the Protocols, as appropriate.</p> <p>3. The provision of paragraph 1 of this Article shall not prejudice the right of Contracting Parties to refuse, in accordance with their legal systems and applicable international regulations, to provide access to such information on the ground of confidentiality, public security or investigation proceedings, stating the reasons for such a refusal.</p>	<p><i>Article 9</i></p> <p>The Contracting Parties shall cooperate in exchanging information relevant to Articles 5, 6, 7 and 8. Each Contracting Party shall inform the other Contracting Parties which may potentially be affected, in case of suspicions that dumping in contravention of the provisions of this Protocol has occurred or is about to occur.</p>

* *Transboundary EIA provisions and initiatives in selected Regional and Multilateral Environmental Agreements*

http://www.unece.org/env/eia/documents/links_between_conventions/Transboundary%20EIA%20Review%20-%20Shortened.pdf (accessed February 1, 2012)

specific regional agreements. *Inter alia*, the Article 8 of the Espoo Convention “Bilateral and Multilateral Co-operation” states that “*the Parties may continue existing or enter into new bilateral or multilateral agreements or other arrangements in order to implement their obligations under this Convention. Such agreements or other arrangements may be based on the elements listed in Appendix VI*” (UNECE, 2012). The Guidance on the Practical Application of the Espoo Convention, adopted in June 2004, notes that there are many issues that can be agreed upon in advance by Parties that expect to have transboundary assessments on a regular basis. The Convention provides a legal basis for agreements (Article 2, para. 2, and Article 8). These agreements are not a precondition for the application or ratification of the Convention, but should be seen as a way of achieving effective application (URL 4).

As an example of successful regional agreement can be considered a Multilateral agreement among the countries of South-East Europe for implementation of the Convention signed in Bucharest in 2007.

In the light of all the abovementioned, an

essential issue of ensuring the proper implementation of the EIA-related MEAs is enforcement of its provisions and the so called “non-compliance procedure”. It should be noted that the Conventional environmental law (including Aarhus Convention, Espoo Convention as well as “regional” Barcelona Convention) is to some extent milder than, for instance, EU infringement procedure and European Court of Justice (ECJ) mechanisms. In the meantime, the compliance procedures can be described as of “*cooperative, non-confrontational and non-judicial nature...seeking amicable solutions to problems... arising in connection with the application and implementation of environmental agreements*” (UNEP Training Manual, 2006). So, instead of confrontation, appear the “dispute avoidance” and “dispute settlement” practices aimed at ensuring the better compliance with international obligations of MS. In opposition, based on the ECJ EIA case-law and European Commission’ infringement practice, the EU is tending to develop even more stringent mechanism of compliance with its EIA-related instruments. Since two of six Black Sea countries (Romania and

Bulgaria) are the members to the EU, keeping in mind the willingness of EU to become a party to Bucharest Convention (which, in case of EU' accession will constitute a so called "mixed agreement" for the EU), the EU experience in the development and application of the EIA-related legislation will be also considered in this paper.

The European Union has one of the most sophisticated EIA legislation which can only be compared with the one in USA and Canada (Birnie, Patricia W. *International Law and the environment*, 2009). That was probably the reason why in 2003 the European Commission reported that "Environmental impact assessment is one of the four sectors of Community environmental law where Member States have the worst implementation record. The others are nature, waste and water" (European Commission, 2003).

The so called EIA Directive is considered to be the main instrument of EIA legislation in the EU. This Directive has been classified as "non-sectoral EC environmental law" instrument having very general and cross-cutting nature (Seerden *et al.*, 2002). Some authors consider the EIA Directive as a "new environmental instrument" since its procedural regulation foresees the private actors' participation, in opposition to the "traditional command-and-control policies" (like Directive on Drinking Water, Directive on Large Combustion Plants; "new" directives: IPPC Directive, Water Framework Directive, etc.) requiring a kind of "incentive for public and private actors to cooperate in order to share or shift the costs" (Coping with Accession to the European Union... A. Borzel, 2009).

The peculiarities of the EIA system in the European Union can be described as follows. EIA in the EU is based on the precautionary and prevention principles, although, as it was mentioned before, these principles differ in terms of their legal weight (Seerden *et al.*, 2002), at the same time, the EIA itself allows multidisciplinary and integrated approach, giving a base for them to be combined when carrying out the EIA procedure. EIA promotes the provisions of public participation concept borrowed from the Aarhus Convention being, at the same time, part and parcel of implementation of Habitats and WFD Directives as sectoral environmental EU Directives. Infringement procedure of European Commission and ECJ case-law developed a unique regional mechanism for dispute settlement which is considerably different from the one set by Espoo or Aarhus Conventions.

Another challenge for application of EIA for large-scale project is a so called "salami-slicing". It occurs when the Member State or the developer artificially breaks up the big project for two or more smaller project aimed at avoiding the development of the EIA.

Nevertheless, there is still a need to ensure that all the arrangements with affected MS are practical and will not cause any misinterpretations or conflicts.

However, the new Member States report that there are difficulties and obstacles in carrying out these transboundary consultations, namely differences in time-frames for developing the EIA, language barriers and who will bear the costs for translation etc. (Report from the Commission...: How successful are the Member States in implementing the EIA Directive? June 2003).

The discrepancies in implementation of EIA procedure in EU caused by a high level of discretion of MS lead to the necessity to apply more and more Commission' infringement procedures and ECJ practice, let alone to adapt it to current challenges such as climate change or health assessment. Since the enforcement process is to a large extent sophisticated, costly and time-consuming, there are currently debates on the European level on the further amendments of the EIA Directives and EIA-related legislation.

Since the EIA Directive can be considered as the main element of EIA regulation in the EU, it provides the framework for current infringement mechanisms and a base for bringing the cases before the ECJ in order to get clarification and assistance in interpretation and, hence, ensuring the better transposition and application of the Directive.

For the ECJ, typical environmental subject-matters have been constitutional and institutional questions (competence, legal base, etc concerning the enactment of secondary legislation), administrative procedures (environmental impact assessment, access to information), waste, nature conservation (wild birds and natural habitats, see further below) and pollution (water, air, etc) (Rosas, 2006).

Thus, the analysis made in this paper shows that the EU EIA legislation due to the high level of discretion of MS in interpreting the EIA-related Directives becomes more and more dependant on the ECJ jurisprudence. Keeping in mind that the court judgments impose additional costs on businesses and public administrations and also cannot ensure the availability of the overall guide-lines for EIA developers and MS, some further amendments to the EIA legislation should be made on the EU level. Such innovations could also ensure that all the recent ECJ rulings and judgments, as well as all current and future environmental challenges are duly taken into account in the new EIA legislation.

For the purpose of this Article, the author considered the *Bulgarian experience* in the application of both, provisions of EIA-related EU Directives and Bucharest Convention. Needless to say, *Romania* follows the same path in the implementation of EIA-related EU Directives and provisions of Espoo Convention.

The Bulgarian EIA legislation is harmonized with EU Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (the EIA Directive), as amended by directives 97/11/EC, 2003/35/EC and 2009/31/EC,

and with the Espoo Convention, the EU Habitats Directive (92/43/EEC) and the Directive on Integrated Pollution Prevention and Control (IPPC, 2008/1/EC). The framework for EIA procedure was laid down by the new Environmental Protection Act (EPA) adopted in 2002 and amended in 2005. For the purpose of specific provisions, the regulations of the Council of Ministers were passed in 2003 (last amendment in 2010). The 2010 amendments include the following changes: deletion of requirements for the registration of experts; increase in the amount of time for evaluating the quality of the EIA (from 14 days to 30 days); mandatory involvement of the health authorities in the EIA procedure. According to the Ministry of Environment and Water of Bulgaria, current experience in Bulgaria indicates good coordination of EIA/SEA and appropriate assessment, as the two procedures are integrated into one. Experience also shows that the timely and proper involvement of relevant authorities, such as health authorities (mandatory) and river basin directorates, improves the quality of the EIA/SEA outputs. Consultation and public participation have been strengthened "by introducing an open scoping procedure where the public is included in the consultation of the scoping procedure" and the obligatory involvement of the health authorities in the screening process. However, civil society organizations may benefit from additional support in obtaining better skills for proper public participation within the given EIA and SEA legislation framework (European Commission, 2011).

The environmental concerns for the Crude Oil Pipeline Burgas (BG) – Alexandroupolis (GR) project, as the one requiring the development of the transboundary EIA, included the limited alternatives to this route due to the existing infrastructure; conflicts with the protection of Natura 2000 sites and a risk of polluting the Black Sea. This project has fallen under the scope of EU EIA Directive and Espoo Convention and in 2002 both national and transboundary EIAs were carried out. Meanwhile, the relations with Russian Federation were regulated by bilateral and multilateral agreements. Currently there is no officially submitted information on the actual development of the project (URL 1).

Talking about the non-EU experience it should be mentioned that quite complicated situation with the adoption of EIA procedure faces *the Russian Federation*. On 25 February, 1991 the Soviet Union had signed the Espoo Convention and in December 1991, after the collapse of the Soviet Union, the Russian Federation became the signatory of the Espoo Convention, which means that the country has to act in the good spirit of the Espoo Convention. So far the Russian Federation didn't become a party to the Convention by finalizing the process of its ratification, further steps should be taken, including a *political decision* on the launch of the accession

process to the Espoo Convention and, if it is taken, firstly, the establishment of the *legal framework* for the transposition of the articles of the Espoo Convention into the national legislation should take place and, secondly, the state *support to the public participation process* by launching capacity building programs for environmental and other civil society NGOs. Implementation of all these elements seem to be a real challenge to the Russian Government due to a large number of neighbors (the Russian Federation has border with 22 countries), a large number of regional and local administrations across the country and great cultural variety for the proper public participation. Despite of the absence of legal obligations taken in the Environmental Impact Assessment in a Transboundary Context, the Russian Federation is an active participant in the thematic and sub-regional group work under the Espoo Convention. The Russian Federation has not yet signed any bilateral agreements nor became party to any of the multilateral agreements that comprise a component of transboundary environment impact assessment.

Despite the challenges mentioned above, there is a recent experience of the Russian Federation on the application of the provisions of Espoo Convention and working together with the EU member states. The Nord Stream project (the Russian-German gas pipeline project) is the first time when the Russian Federation operates as a Party of Origin (Peterson, and Lahtvee, 2007). Hopefully this experience would encourage the Russian Federation to take further steps in developing capacities for transboundary EIA and to support the adoption of the Guidelines for the Black Sea basin within its membership in Bucharest Convention.

Another scandalous Project between the Russian Federation and Turkey, both non-parties to Espoo Convention, used to be a Blue Stream (the Black Sea Gas Pipeline Project) finalized in 2005 foreseeing the construction of a 1,250 km long gas pipeline from Russia (Izobilnoye) to Turkey (Ankara) partially under the Black Sea. The concerns related to the implementation of the Project had to do with some technical risks, potential impacts related to destruction of the gas pipeline, political risks, but also the inadequacy of the EIA procedure provided. This inadequacy was reflected in the following: failure to undergo the state ecological review as per Article 11.7 of the Federal Law of the Russian Federation "On the ecological review" questioning the legality of the Agreement concluded in 1997 on gas export from Russia to Turkey; the lack of the transboundary EIA for the Blue Stream Project involving all six Black Sea countries (except the segments of the Russian and Turkish 12-mile territorial waters, the segment of the international waters is 340 km long or 87% of the entire marine segment); alternatives were not adequately considered in project design; lack of proper compensation for population and tourist

activities; lack of relevant consultations and public participation (URL 3). Nevertheless, the assessments of environmental risk contained in the EIA documentation and differentiated by phases of the Project indicated that “no changes in the environmental situation resulting from the impact of pipeline construction and operation are expected in the assessment categories considered” (Grishin, 2005).

Turkey has never accessed the Espoo Convention. Despite this, the first EIAs in Turkey were started in 1993 in accordance with the by-law on EIA (European Commission Regional Report, 2011). After 17 years of implementation and four updates of the relevant legislation, EIA practice is considered to be well developed according to interviews with stakeholders. Most of the requirements of the EIA Directive are transposed in the currently applicable Turkish regulations. The only missing provision is that of transboundary EIA. According to the Ministry of Environment and Urbanization of Turkey, the intention is to transpose Article 7 only by accession to the EU. To date, there has been no transboundary EIA notification from the Turkish side as Party (Country) of Origin. However, as an intermediary solution suggested by the EU, further efforts have been focused on developing bilateral agreements with the neighboring countries, Greece and Bulgaria (European Commission Regional Report, 2011).

Considering **Ukrainian situation with EIA**, the question is: *Pacta sunt servanda* or else? Having inherited from the Soviet Union quite a sophisticated EIA procedure, Ukraine has still failed to comply with its obligations under Espoo Convention. From the year 2004 till now, it managed to become a unique subject of Espoo' Inquiry Commission work, to be considered at a number of Meetings of Espoo' Implementation Committee and to receive two times the cautions to the Government for non-compliance at Meetings of Parties to the Espoo Convention. Nevertheless, the intention of Ukraine to approximate its environmental legislation with the European *acquis* was reflected in every single document in frames of EU-Ukraine cooperation. It seems to be clear that if Ukraine fully incorporates the EU EIA-related Directives, it will help it to overcome the non-compliance with Espoo Convention. But the question here is the following: is Ukraine ready to ensure the proper legislative changes in a very short period in order not to become once a “victim” of Commission' infringement procedure or, finally, under ECJ judgments? To avoid further misunderstanding and legal gaps in the national legislation, the minimum requirement for Ukraine in the nearest future must be to include the Espoo Convention into the list of international conventions and organizations and put further amendments to the Charter documents establishing Ministry of Environmental Protection of Ukraine and the Regulations on the Intergovernmental Coordination Council on the Implementation of the

Espoo Convention in Ukraine.

Conclusions

Based on the analysis of the EIA-related legal provisions in the countries of Black Sea basin, keeping in mind the experience of similar Regional Seas Conventions and EU practice on the transboundary EIA, the following conclusions and recommendations can be developed:

1. There is no doubt that UNECE Espoo Convention is one of the most powerful instruments of International Environmental Procedural Law, it establishes the clear procedure of EIA and brings about the process of increasing “legalization” of environmental decision-making, public participation and, to some extent, access to environmental justice. Undoubtedly, this is vital element for the implementation of large-scale projects across the borders, since they always involve a large number of stakeholders and imply political and economical aspects.

2. The Espoo Convention is a framework Convention, and, therefore, this gives a certain level of discretion and ambiguity regarding the interpretation of its provisions by its Member States. This, in its turn, provokes inadequate transposition of its provisions into the variety of the national legal systems.

3. These discrepancies and gaps could be eliminated by proper incorporation of EIA-related provisions into the Regional Environmental Conventions and MEAs (*inter alia*, by developing relevant Guidelines and Recommendations for the EIA procedure). The Bucharest Convention should not be an exemption, especially taking into account that three of the Black Sea countries (Georgia, Russian Federation and Turkey) from six are not yet the Parties to the Espoo Convention, but, nevertheless, apply the EIA procedure on the national level.

4. European Union contributed to the development of the EIA concept by developing its EIA-related legislation and promoting the sophisticated system of infringement procedures and ECJ practice, thus, helping its Member States to avoid non-compliance with provisions of the Espoo Convention and other related legal instruments. Here the experience of Bulgaria and Romania, as EU Black Sea member states is of particular importance.

5. The common approach in order to facilitate the enforcement of the EIA-related legal instruments in the Black Sea region may include not only the adoption of Guidelines and Recommendations on the implementation of the EIA-related Conventions and EU EIA-related legislation in the framework of Bucharest Convention, but also the development of the separate bilateral and multilateral agreements between the countries of the Black Sea basin aimed at preservation of the Black Sea environment and

ensuring the proper public participation. Thus, the adoption of the EIA-related Guidelines and signature of relevant bilateral and multilateral agreements by the Black Sea riparian countries – parties to Bucharest Convention - could significantly enforce the implementation of the Espoo Convention' provisions and harmonization with the EU environmental *acquis* by Georgia, Russian Federation, Turkey and Ukraine; harmonize the EIA procedures in the region with EIA-related EU Directives for Bulgaria and Romania, as well as to motivate Georgia, Turkey and the Russian Federation to finalize their attempts to become parties to the Espoo Convention. In its turn, the better compliance and further enforcement of EIA-related provisions in the Black Sea countries could strengthen the application of environmentally friendly approaches in the Black Sea region, ensuring that better environmental standards and best practices are put in place.

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