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## ENVIRONMENTAL IMPACT ASSESSMENT UNDER BULGARIAN ENVIRONMENTAL LAW

### INTRODUCTION

The necessity of legal regulation of environmental impact assessment (EIA) and public participation in environmental decisionmaking related to it in Bulgaria is determined by two reasons. The first of them is related to the rapid development of scientific and technical progress in our century, which brought to the increase the ways and scope of antropogenic impact on the environment. The ecological consequences from this impact are various, they usually manifest themselves at a later moment, and in some cases they can be irreversible. Science throughout the world has not come to know every process and phenomenon in nature, that is why the role of EIA is extremely important. The second reason is related to the recent historical stage of the political and economic development of the Republic of Bulgaria. It is marked by democratization of society and transition to a free market economy. Changes in Bulgarian legislation, connected with it increase the role of EIA as an important legal instrument to maintain a reasonable balance between economic and ecological interests of society. The deterioration of the quality of the environment on a national, regional and worldwide scale concern the vital interests of every citizen and of mankind as a whole. That is why effective implementation of legal regulation related to EIA and public participation in environmental decisionmaking connected with it will help the state authorities and the decisionmakers to pursue a flexible ecological policy that is appropriate for the natural conditions and the techno-economic capacities of each country.

#### 1. EIA AS A LEGAL TERM

Up to 1991 Bulgarian environmental legislation used the term 'ecological expertise' as a synonym of EIA. This term was perceived from the environmental legislation of former Soviet Union. Now in accordance with the wish of Bulgaria gradually to harmonize its environmental legislation with the Law of European Union, in the Environmental Protection Act (EPA), 1991<sup>1</sup> the more correct term – EIA was perceived.

Many authors and experts from international organisations have shown some characteristics of EIA without complete definition of this term. For example, W. Kennedy shows that the EIA is inseparable part from the existing system of planning and control on the projects of development<sup>2</sup> but J. Warford and Z. Partow consider that the EIA

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<sup>1</sup> „State Gazette of the Republic of Bulgaria” (SG), No. 86/1991, as amended.

<sup>2</sup> W. K e n n e d y, *The Directive on environmental impact assessment*, „Environmental Policy and Law” 1982, No. 8, p. 85.

must be implemented in all projects with significant impact on the environment<sup>3</sup>. The word 'significant' concerning the impact on the environment has been used for example in the U.S. National Environmental Policy Act, 1969 and in the Council Directive 85/337/EEC of 27.06.1985 on the assessment of the effects of certain public and private projects on the environment<sup>4</sup>. The interpretation of this 'significance' belongs to the competent authority of the respective country. Another scientist – D. Bonine considers that the EIA is necessary for the sustainable development of the national economy<sup>5</sup>. This concept is included in some documents of United Nations Environment Program (UNEP)<sup>6</sup>. Some experts from the Economic Commission for Europe of the United Nations (ECE) point out that the EIA is procedure in which must be determined and foreseen the impact of proposed activities on the environment, human health and behaviour<sup>7</sup>.

Generally, the basic aim of EIA is for the eventual harmful consequences on the quality of the environment and human health to be foreseen. All of them will probably be caused by the realization of the proposed project or activity and will serve to supply the decisionmakers with the necessary information about them. In my opinion, EIA has the following characteristics:

1. it is a **procedure** aiming to guarantee ecological compatibility of the proposed project or activity with the requirements for quality of the environment;
2. it is **state-organized procedure**. Its initiator is usually legal person, State or Local Authority;
3. it is an important legal tool for environmental protection with mainly a **preventative character**;
4. it has the function to **quarantee the realization of the basic right of the Bulgarian citizen of favourable and healthy environment**, proclaimed in art. 55 of the Constitution of the Republic of Bulgaria, 1991.

In accordance with the above mentioned, it is possible to give the following definition of EIA as a legal term: '**EIA is a procedure regulated by law, organized and carried out by the competent authority for the assessment of the consequences from antropogenic impact on the environment in relation to the realization of project activities**'.

Generally, EIA is connected with the following major issues: pointing out the environmental problems, arising from the realization of project activities and the alternatives for solving them, including investigation of environmental components,

<sup>3</sup> J. Warford, Z. Patrow, *The World Bank and environment: first annual report*, Fiscal 1990, Washington 1990 (The World Bank), p. 62.

<sup>4</sup> „Official Journal of the European Communities” (OJ), L 175/5.07.1985, as amended.

<sup>5</sup> D. Bonine, *Environmental impact assessment: principles developed*, „Environmental Policy and Law” 1987, No. 1, p. 5.

<sup>6</sup> UNEP. Policy guidelines for the control of environmental pollution in urban areas of developing countries. Nairobi, 1987; UNEP. Principles of EIA, 1987, „Environmental Policy and Law” 1987, No. 1, p. 36–37; UNEP. Legal elements suggested for inclusion in the draft principles and guidelines concerning environmental impact assessment (UNEP/WG.107/2 of 13.04.1984), 24 p.

<sup>7</sup> *Economic Commission for Europe. Post-project analysis in environmental impact assessment*, New York 1990, p. 6.

forecasting of the impact on the environment and evaluation of its 'significance'<sup>8</sup>; comparison of alternatives; generalization of the results in environmental impact statement (EIS) after taking into account the opinion of the public and interested state and local authorities and organizations.

## 2. PROCEDURE OF EIA UNDER THE BULGARIAN ENVIRONMENTAL LAW

The procedure of EIA is regulated in following regulations: EPA, 1991; Regulation No. 1/1995 on EIA, approved by Ministry of Environment (now – Ministry of Environment and Waters (MEW)), Ministry of Territorial Development and Building (now – Ministry of Regional Development and Housing), Ministry of Health and Ministry of Agriculture and Food Industry (now – Ministry of Agriculture, Forests and Agrarian Reform)<sup>9</sup>; Regulation No. 2/1995 for certification of the professional competence of experts, carrying out EIA, approved by Ministry of Environment<sup>10</sup>; Town and Country Planning Act, 1973<sup>11</sup>, *etc.*

According to art. 19 of EPA, all kinds of activities of natural and legal persons, state and local authorities may be **subject of EIA**. It means that the scope of EIA is not strictly limited. But there are four kinds of objects to an obligatory EIA which are shown as follows:

1. projects following a list according to the Annex (art. 20, sec. 1, item 1 of EPA);
2. national and regional programs for development, town and country development plans, urban development plans and their amendments (art. 20, sec. 1, item 2 of EPA);
3. expansion and/or reconstruction projects with a change in production activity of the facility in cases when this activity is within the range of the Annex under item 1 (art. 20, sec. 1, item 3 of EPA);
4. facilities for new construction by foreign and Bulgarian natural and legal persons in case of restitution, privatization or investments, but until the moment of restitution, privatization or investment (paragraph 9, sec. 2 of Transitional and Concluding Provisions of EPA).

The list of the projects under Annex to EPA is not comprehensive, because EIA may also be carried out on the basis of proposals of concerned natural or legal persons addressed to the competent authorities designated in art. 27 of EPA (i.e. MEW, its regional inspectorate or local authority) which shall express their opinion on the proposal within 30 days from its submission (art. 20, sec. 3 of EPA). Besides, EIA of operating facilities shall be carried out periodically as prescribed by the competent authorities and EIA of large polluting facilities shall be made at least once every five years (art. 20, sec. 4 of EPA).

<sup>8</sup> Concerning the determination of this 'significance' see recommendations of ECE, [in:] *Economic Commission for Europe. Policies and systems of environmental impact assessments*, New York 1991, p. 23–44 (ECE/ENVWA/15).

<sup>9</sup> SG, No. 73/1995.

<sup>10</sup> SG, No. 73/1995, as amended.

<sup>11</sup> SG, No. 29/1973, as amended.

**Triggering EIA** is a right of the investor or initiator of the activities (art. 21, sec. 1 of EPA). He has to prepare EIS and he is to pay for the work (art. 23, sec. 1 and 2 of EPA). In practice, the draft EIS is prepared by competent experts under contract with the investor or initiator of the project activities. The EPA includes three requirements to these experts. They must be independent, and they must be persons who:

1. are professionally competent (art. 21, sec. 1, item 1 of EPA);
2. have stated that they have no direct interest in the realization of the facility or activity and have not taken part in the designing process (art. 21, sec. 1, item 2 of EPA);
3. in giving their opinion shall be guided by the requirements of art. 2 of this Act and the existing in the country norms and standards for admissible environmental pollution (art. 21, sec. 2 of EPA).

In my point of view, EIS means series of documents, providing for the purpose of EIA, the information specified in art. 23, sec. 1 of EPA, as follows:

1. annotation of the project;
2. description of the environment which shall be the subject of impact;
3. a forecast about the expected impact;
4. presentation of the possible ways for the project implementation;
5. a list of the parties that may be affected by the impact of the facility on the environment;
6. other elements in the estimation of the Minister of Environment and Waters;
7. conclusion of the experts who have made the assessment.

**The role of the Public in relation to its participation in EIA decisionmaking process** is very important and it is regulated in art. 23 bis of EPA. According to art. 23 bis, sec. 1 of EPA, all natural and legal persons concerned and also representatives of local authorities shall have the right to take part in the discussion of the results from EIA, organized by the competent authority (usually MEW or its regional inspectorate in coordination with respective local authority). They must be informed by the competent authority through the mass media or in another appropriate way not later than one month before the discussion (art. 23 bis, sec. 2 of EPA). The Public does not have the right to make the final decision, but their opinion can be taken into account by the decisionmaking authority. That is why, public participation in EIA decisionmaking process has only a consultative function.

The final stage of EIA decisionmaking process is **making the final (ultimate) decision**. It is regulated in art. 23 ter of EPA, art. 13–16 of Regulation No. 1/1995 on EIA and in art. 6 of Town and Country Planning Act. After the discussion under art. 23 bis of EPA the investor or initiator of the activities approves EIS and gives his opinion and conclusions (final EIS) taking or not taking into account the opinion of the Public. He presents all documents to MEW or to its regional inspectorate (it depends on the kind and the scope of the respective activity as a criterion in the Annex to the EPA) which have the right to make a general overview of this documentation and after that to make the final (ultimate) decision concerning the project or operating facilities in accordance with EIA's requirements. This decision for projects and activities which have not been started shall be valid for one year (art. 23 ter, sec. 4 of EPA). The competent authority shall render its decision not later than three months after the

conclusion of the procedure under art. 23 bis of EPA (art. 23 ter, sec. 1 of EPA) and it shall be announced through the mass media or in another appropriate way within 14 days after its rendering (art. 23 ter, sec. 2 of EPA). If this final (ultimate) decision is negative, the competent authority shall prohibit or stop the activities or implementation of projects. It also can do that in cases when the obligatory EIA has not been made (art. 23 quater of EPA). Concerned parties may appeal the decision before the respective district court pursuant to the Administrative Procedure Act, 1979<sup>12</sup> within 14 days after its announcement for local projects and within 30 days after its announcement for projects with a national significance (art. 23 ter, sec. 3 of EPA).

### 3. LIABILITY FOR INFRINGEMENT OF EIA REQUIREMENTS

There are different kinds of liability in this field which will be briefly shown below.

#### 3.1. Administrative liability

It is regulated in art. 32, sec. 1–3 and art. 33 of EPA. According to art. 32 of EPA, a natural person guilty of an offence under this Act that does not constitute a crime shall be liable to a fine from 50 000 to 3 500 000 Levs (sec. 1); the fine for repeat offenders or for officials shall be from 100 000 to 7 000 000 Levs (sec. 2); obviously insignificant violations shall be liable to a fine not exceeding 50 000 Levs (sec. 3). According to art. 33 of EPA, an independent EIA expert guilty of an offence under art. 21, sec. 2 of EPA, shall be liable to a fine from 50 000 to 500 000 Levs, if he is not liable to a more severe penalty.

#### 3.2. Compulsory administrative measures

They are regulated in art. 23 quater of EPA, above mentioned.

#### 3.3. Civil liability

According to art. 29 of EPA, the persons found guilty of harming others by pollution or damage to the environment shall be bound to remedy the damage. The compensation may not be less than the sum required to repair the damages caused.

#### 3.4. Special ecology law liability

It is regulated in art. 34 of EPA in relation to the infringement of art. 23 ter of this Act and its subject is legal person. According to art. 34, sec. 1 of EPA, a imposed fine is from 250 000 to 10 000 000 Levs. According to art. 34, sec. 2 of EPA, fines from 1 000 000 to 25 000 000 Levs shall be imposed when: 1. the offence is repeated; 2. the offence is so substantial that has brought to irreversible harm to the environment and human health; 3. the activities have been prohibited by a court decision. According to art. 34, sec. 3 of EPA, in insignificant cases under sec. 1. the fine shall be from 50 000 to 150 000 Levs. In accordance with the Bulgarian legal theory, the legal persons could not be subject to administrative Liability that is why in cases of imposing of fines on

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<sup>12</sup> SG, No. 90/1979, as amended.

them they can be subject of another kind of liability – so called ‘special ecology law liability’<sup>13</sup>.

### 3.5. Penal liability

Indirect applicability has art. 353 bis of Penal Code, 1968<sup>14</sup>. According to this provision, an official person who, in the sphere of his official responsibilities conceals or announces false information about the state of the environment and its components – air, water, soil, marine areas – and from this result not insignificant damages to the environment, life and human health, shall be liable to imprisonment of up to five years and to a fine from 100 000 to 1 000 000 Levs. This article of Penal Code is applicable in cases of EIA only if these kinds of unlawful activity are carried out during this procedure, i.e. they must be related to EIA. In principle, art. 353 bis of Penal Code is dedicated to the penal law protection of the right of the Bulgarian citizen to information on the state of the environment<sup>15</sup>.

## CONCLUSIONS

The existing Bulgarian legislation on EIA is new and the general legal regulation is contained in EPA, 1991. Due to the short period of time for implementation of this Act it is not possible for a more profound analysis to be carried out. That is why, I will make only some brief theoretical conclusions.

1. EIA is very important legal tool for the setting-up of sustainable development – one reasonable balance between ecological and economic interests.

2. EIA must be an inseparable part of the environmental decisionmaking process. It should be on the basis of a precisely made Strategy for environmental protection in Bulgaria. This Strategy must be a ground for the State environmental policy as well as for the environmental legislation.

3. EIA requires a multidisciplinary ecological scientific approach for efficiency in preparing EIS and final (ultimate) decision.

4. EIA should be applicable to the transfer of technology and to foreign investment policy in Bulgaria.

5. EIA has important meaning in cases of transboundary environmental pollution, i.e. cross-border impacts of some activities. That is why, Bulgaria have ratified the Convention on EIA in transboundary context (Espo, Finland, 1991) with Act of 16 III 1995<sup>16</sup> including Declaration to art. 15, sec. 2 of this convention concerning the settlement of disputes. It is not into force yet.

6. EIA is one of the most important legal tools for the protection of the environment as a whole.

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<sup>13</sup> G. Penchev, *Firms as a subject of financial liability for water pollution in the Republic of Bulgaria*, „Problems of the Law of the Sea” 1991, vol. 28, p. 29–30 (in Bulg.). See also art. 6 and 7 of Administrative Offences and Punishments Act, 1969 (SG, No. 92/1969, as amended).

<sup>14</sup> SG, No. 26/1968, as amended.

<sup>15</sup> G. Penchev, *Right to information on the state of the environment in the Republic of Bulgaria*, „Jurispress” 1995, 171 pp. (in Bulg.).

<sup>16</sup> SG, No. 28/1995.