

Russian Federation

How Well is Environmental Assessment Working in Russia?

A Pilot Study to Assess The Capacity of Russia's EA System

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Draft: May 27, 2003

ACKNOWLEDGMENTS

This report is the result of a joint effort of Russian and international experts, which was led by Konrad Von Ritter (Co-Team Leader, Environmental Management System) and Vladimir Tsirkinov (Co-Team Leader, Field Studies).

The report benefited from substantive contributions of a number of experts: Barry Sadler provided substantive input on the study approach and international experience. Significant input on the evolution and practical implementation of Russia's EA system was provided by the members of the Russian team: Marina Khotuleva, Sergei Vasiliev, Svetlana Golubeva, Irina Gorkina, Juri Maksimenko, Alexander Averchenkov, Ludmila Goncharenko, Sergei Bourtsev, Alexander Cherdantsev, Alexander Groushevski. They participated in an initial desk study to review evolution of EA and Environmental Management System, developing a methodology to assess the effectiveness of the Russia's EA system, in "on the ground assessment" of EA implementation at the federal and regional levels, and preparing extensive background working papers and in reviewing the draft report. Richard Cooke and Inesis Kiskis participated in part of the field work and reviewed the draft report. Valuable contributions were also provided by Aleg Cherp.

Conducting the pilot study and preparation of this report was aided significantly by the contributions made by experts from the regions of Russia in a series of field studies. We want to thank Alexander Vasianovich, Vladimir Smaga, Lubov Katkova, and Olga Soutyrina (Irkutsk oblast), Ludmila Peskovskaya, Valery Privalenko, Vladimir Khlobystov (Rostov oblast), Zinaida Zamiatina, Lubov Beldeeva (Altai Krai). The support provided by regional Committees of Natural resources, Administrations and regional Institutes is also acknowledged with thanks.

Background Papers on international EA experience were prepared by Doug Weinfield (USA), Karsten Sommer (Germany), Iara Verocai (Brazil), and Barry Sadler (Canada).

The authors are also grateful to the comments received from numerous Bank colleagues, including Ms. Jane Holt (sector manager), Charlotte Bingham, Stephen Lintner (peer reviewers), Arcadie Capcelea.

Marina Smetanina provided invaluable support by keeping the team organized. She also manages an electronic activity room which holds the relevant documents and background papers for this report.

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ACROMYNS

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| CCME | Canadian Council of Ministers of the Environment |
| CEE | Central and Eastern Europe |
| CEQ | Council on Environmental Quality |
| CNSR | Committee of Natural Resources |
| CPM | Core Performance Measures |
| DNR | Department of Natural Resources and Environmental Protection |
| EA | Environmental Assessment |
| EAM | Environmental Assessment Materials |
| EC | European Commission |
| EEC | European Economic Council |
| EIA | Environmental Impact Assessment |
| EIS | Environmental Impact Statement (?) |
| EMP | Environmental Management Plan |
| EMS | Environmental Management System |
| EPPA | EPA-State Performance Partnership Agreement |
| EARP | Environmental Assessment and Review Process |
| EPA | Environmental Protection Agency (?) |
| EU | European Union |
| FIAS | Foreign Investment Advisory Service, IFC, World Bank Group |
| FONSI | “Finding of No Significant Impact” |
| IA | Impact Assessment |
| LEP | Law on Environmental Protection |
| LEP | Law on Environmental Protection |
| LER | Law on Environmental Review |
| LER | Law on Environmental Review |
| MAC | Maximum Allowable Concentrations |
| MNR | Ministry of Natural Resources |
| NEPA | National Environmental Policy Act |
| NEPPS | National Environmental Performance Partnership System |
| NIS | New Independent States |
| NPAF | National Pollution Abatement Facility |
| OECD | Organization of Economic Cooperation and Development |
| OVOS | Assessment of Environmental Impacts/EIA |
| PER | Public Environmental Review |
| SCEP | State Committee for Environmental Protection |
| SE | Specialized State Enterprise |
| SEA | Strategic Environmental Assessment |
| SER | State Environmental Review |
| SI | Substantiation of Investments |
| SNiP | Construction Norms and Rules |
| SOF | Subject of Federation |
| SoW | Statement of Works |
| SP | Construction Rules |
| TOR | Terms of Reference |
| UNEP | United Nations Environment Programme |

Short Glossary Of Environmental Assessment Terms And Definitions

- *Environmental assessment* (EA) is a process of systematic analysis, evaluation and management of the potential environmental and social effects of a proposed activity prior to a decision being made. In Russia, it encompasses two sub-systems: Environmental Impact Assessment and State Environmental Review.
- *Environmental impact assessment* (EIA) is a process of identifying, predicting and evaluating the environmental, social and other relevant effects of proposed projects and physical activities and mitigating their adverse risks and consequences, taking into consideration public opinion, prior to a decision being made. In Russia, EIA is also known as OVOS, the Russian acronym for EIA Regulation, last updated in 2000.
- *Impact assessment* (IA) is the generic process of predicting the consequences of proposed actions and includes all of the category-specific designations listed below.
- *Mitigation* is a process of identifying and implementing measures to avoid, prevent, minimize, reduce, rectify, offset or compensate for adverse potential environmental and social impacts of a proposed action.
- *Public involvement* is a process of informing the people who are affected by or interested in a proposed action and soliciting their views and inputs in the assessment and decision-making processes. There are different levels of engagement of the public:
 - *Consultation* denotes an exchange of information with specific provision made to canvass the views of stakeholders on a proposal and its impacts.
 - *Participation* is a more interactive process of involving the public, in which stakeholders exercise a greater degree of influence and control over decision making by the proponent.
 - *Mediation* is a process of negotiation (or *alternative dispute resolution*) among stakeholders which is conducted with the assistance of an impartial third party (or mediator).
- *Region (al)* – The term region is used generically to refer to a subnational unit, such as Subjects of Federation in Russia, or states in the US and provinces in Canada.
- *State Environmental Review (SER)* is a process whereby the competent authority, i.e. the MNR, determines whether a proposed activity and documentation complies with environmental and legal requirements. In Russia, SER is defined and regulated through the Law on Environmental Protection (LEP) (2002) and the Law on Environmental Review (LER) (1995). . The latter concerns environmental review as a whole, both SER and PER. The term SER is also used to refer to the MNR units responsible for implementation of SER process.
- *Strategic environmental assessment* (SEA) is a process of systematic analysis, evaluation and management of the potential environmental and social effects of a proposed policy, plan or program or another strategic initiative prior to a decision being made.

EXECUTIVE SUMMARY

i. Russia's Environmental Assessment system became the focus of international attention when in May 2000 the Government abolished the former State Committee for Environmental Protection (SCEP) and merged environmental management, including the EA function, into the Ministry of Natural Resources (MNR). These developments gave rise to concerns whether Russia's EA system was still capable of ensuring the environmental soundness of new investments and programs. The World Bank decided to hold off on the signing of two operations until it received assurance from the Government that it had restored a working EA system. Management committed to report to the Board on the status of the EA capacity one year after one of the operations, the Coal and Forest Guarantee, had become effective.

ii. While substantial knowledge exists about Russia's EA legislation and regulation, only very little is known about the on-the-ground implementation capacity and effectiveness of Russia's EA system. One of the objectives of this study is to improve our knowledge in this area through a systematic assessment. A second objective is to propose a framework for undertaking such assessment for possible replication in other countries. The audience for this study is Bank management. An equally important audience is the Russian public and government. Although no formal request for this study has been received from the MNR (the responsible government body for EA), Russian experts and officials at both federal and regional level collaborated very actively in the preparation of this assessment. Hence there is the expectation that the report may serve as a platform for a dialogue between the Government and the Bank about environmental management. A third audience is EA experts interested in developing EA methodology and practice of EA implementation.

iii. For this assessment, the team developed a **preliminary framework** and pilot tested it at federal level and in three selected regions of Russia. For the assessment the team reviewed five major aspects of an EA system.

Five Major Aspects of EA System

- Ø **Context** – the constitutional, institutional, and economic context within which the EA system has evolved;
- Ø **Legal and Regulatory Framework** within which EA operates;
- Ø **Implementation** – actual implementation of the EA system, and the extent to which the processes actually follow the country's EA laws and regulations;
- Ø **Impact** – the value added of the EA system: its effects on decision making and project implementation ('benefits') and its burden on the regulated community ('costs');
- Ø **Institutional Capacity** of the responsible entities to maintain or improve the EA system, including their budget, quality of staff and facilities.

iv. For each of these five aspects, **an assessment tool has been developed (Annexes 1.1 to 1.5)**, consisting of guidelines for an overall assessment and a checklist with more

detailed criteria¹ to help in the evaluation. Benchmarks are being provided to assist with ranking the performance on a scale from 1 (low) to 5 (high). The framework, which is still very much work in progress, has been developed with a view to a generic application and cross-country comparison.

v. The following understanding of effectiveness underpins the approach, namely that (i) the primary (substantive) goal of EA is to provide sound information to decision-makers to reduce the environmental impact of proposed development actions, and, ultimately, to ensure development is environmentally sustainable; (2) the immediate (instrumental) goal of EA to ensure that a proposed activity complies with environmental legal and regulatory requirements; and (3) the effectiveness and performance of the EA system are determined by the extent to which these goals or surrogate measures are met, including the following aspects:

- Ø **Proportionality:** The scope of EA should be commensurate with the environmental impact of development actions.
- Ø **Equity.** The process should be transparent and applied equitably, without bias to any party.
- Ø **Efficiency:** The process should be undertaken within the minimum time and resources consistent with the required scope of assessment.
- Ø **Effectiveness.** The process should meet its mandated requirements and objectives, consistent with accepted international principles

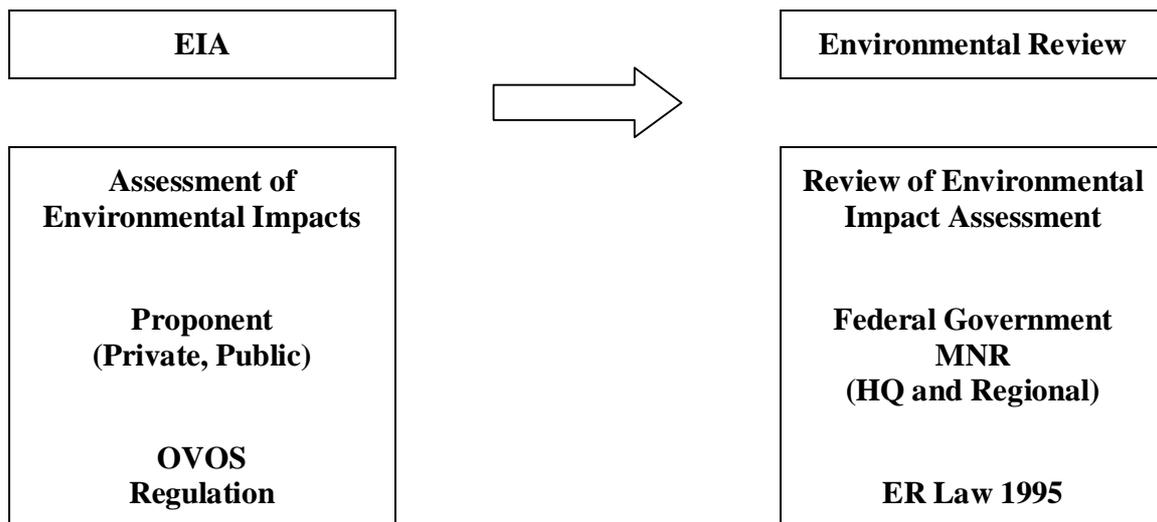
vi. The assessment faced a number of Russia specific challenges, including a rapid pace of institutional and regulatory changes in environmental management, unclear reforms that were initiated but not followed up (e.g. decentralization), and variations across regions. **In other word, this is an assessment of a system in transition.** The Russian experts in the team played a central role in capturing and analyzing the richness of these different ‘realities’ of EA in Russia. These represent a reservoir for good ideas and best practices that are being pilot tested by forward looking and courageous government officials throughout the country. As can be expected, the emerging picture is not one of a coherent blueprint model, but rather one of an evolving system in transition with multiple facets.

vii. **The Structure of the report** follows the proposed framework. Chapter 2 discusses the approach and methodology used for this assessment. Chapter 3 describes the context within which Russia’s environmental management system has evolved. Chapter 4 reviews the legal and regulatory framework for EA, while Chapter 5 assesses its implementation on-the-ground. Chapter 6 makes an effort to assess the impact of the EA system, followed by an analysis of the institutional capacity in Chapter 7. This completes the five elements of the assessment. In addition, chapter 8 reviews

¹ The criteria were developed using as a reference point, the following elements and characteristics of internationally accepted EA Systems: (1) Transparent screening of EA-related activities; (2) Scoping to focus on the major environmental impacts; (3) Identification and assessment of alternatives; (4) Open, participatory process; (5) Assessment of impacts and determination of their significance; (6) Mitigation and management planning; (7) Preparation of EA report and distribution to stakeholders; (8) Review of quality of EA report and outputs, (9) Incorporation of EA outputs into decision-making, and (10) Provision for monitoring, follow up and post-project analysis.

international experience on selected EA aspects, which have been identified as relevant for Russia. Chapter 9 offers recommendations for future development of Russia's EA system. Annex 1 contains details on the assessment tools and analysis used in this assessment. Reference materials are included in Annex 2.

Environmental Assessment System



viii. **Russia's EA system and its two sub-systems. Environmental Assessment (EA)** is being used in this report as the generic term to describe the entire process of systematic analysis and evaluation of environmental consequences of a proposed activity. Although the Russian EA process includes many elements found in other EA systems, it has distinctive features, notably, its two subsystems² – the Environmental Impact Assessment (EIA) and the State Environmental Review (SER). **Environmental impact assessment (EIA)** is the process by which the proponent identifies adverse environmental impacts, provides for public participation, assesses their consequences, and proposes mitigation measures; also referred to as OVOS³, the Russian acronym of the relevant regulation. Project documentation including environmental assessment materials (EAM) is subsequently submitted to the **State Environmental Review (SER)** which is a process whereby a specially authorized entity, the Ministry of Natural Resources (MNR), determines whether the proposed activity and documentation (including EAM) comply with environmental requirements and approve or reject the proposal.

ix. **The key actors** in the EA process are:

- Ø the **proponent/developer** of the proposed activity who invites (hires) a project designer and an EIA designer to prepare required project documents, including an EAM ;

² EA system is a part of a broader system of environmental protection which in turn includes two other important subsystems: environmental control and environmental monitoring.

³ Regulations on Environmental Impact Assessment (OVOS) of the Proposed Economic or Other Activity in the Russian Federation – approved May 16, 2000.

- Ø **the federal specially authorized entity** responsible for the State Environment Review of the documents, i.e. the Ministry of Natural Resources and its branch offices at the 'territorial level' (Subject of Federation); these regional offices report to the federal Ministry of Natural Resources and are distinct from the environmental offices of regional and local government (e.g. oblast, municipality, or district), which report to their respective regional or local authority.
- Ø **the regional government** (e.g. of an oblast), which will identify and agree technical conditions for the project operation, enter into a land site selection agreement with the proponent, and eventually will issue a project implementation permit; it occasionally also organizes public hearings.
- Ø **the public/community (non-legal entities)**, which may participate in certain aspects of the environment review.

x. **The three stages of** environmental assessment are (i) preparation of the Environmental Assessment Materials (EAM) by the proponent; (ii) review of the EAM by SER authority, either by in-house staff (for simple cases) or by a panel of independent experts who can come from academia, the private, or the public sector (for more complex cases). The number of experts can vary between 3 to over 20. In addition, the EAM may be reviewed through a parallel Public Environmental Review, if requested by the public; (iii) finally, approval of the SER conclusions by the SER authority. There are several interpretations of such a clause of the Law on Environmental Review. The most widely accepted is as follows: the authorized body has to approve the conclusions of the panel before they become binding for the proponent and other participants of decision-making process.

xi. **Summary Assessment of Russia's EA System.** The following table summarizes the scores for the five elements of Russia's EA system covered by this assessment. The scores are based on expert views.

| Key Aspects of EA System | Score |
|--------------------------------|-------|
| Context | 3 |
| Legal and Regulatory Framework | 4 |
| Implementation | 3 |
| Impact | 3 |
| Institutional Capacity | 3 – 2 |

Note: Scale from 1 (low, unsatisfactory) to 5 (high, excellent)

xii. **Summary Findings.** Russia's legal framework for EA is quite advanced but lacks specific guidelines and differentiation between projects with significant or less significant environmental impact. This leads to inefficiency, insufficient consultation with concerned parties, opportunities for corruption, and not enough emphasis on follow-up of significant environmental issues during project implementation. For example, the absence of a meaningful screening process means that in principle all projects are required to apply for a SER and prepare an EIA. This puts a disproportionate burden on small and medium size projects with no significant environmental impact. The sheer volume would overwhelm SER authorities which then make the proponent dependent on arbitrary case-by-case exemptions, a source for delays and possible corruption. The lack of specific guidelines also leaves implementation of formal provisions for public participation highly variable and creates a gap between regulatory requirements and implementation practice.

xiii. **A second key finding is the lack of integration of Russia's two EA sub-systems,** the upfront EIA to be prepared by the proponent, and the subsequent State Environment Review (SER) to be conducted only by the authorized federal agency (MNR and its federal offices in the regions). This hampers the effectiveness of EA implementation. Typical consequences are EIA reports which do not focus on the core environmental issues or do not meet the expectations of the SER because the SER is not required to, and normally does not review the TOR for the EIA. In practice, the EIA process has only limited impact on actual project decision making, except in selected cases of highly visible and internationally financed projects.

xiv. **A third finding is the declining institutional capacity** which has been brought about by the ongoing restructuring, the lack or misleading guidance from the center, and the shrinking of Russia's environmental management system, including the SER. The quality of environmental data on which EA relies and the follow up to ensure implementation of SER conclusions has been weakened. Furthermore, the already mentioned lack of transparent screening means that the remaining staff is often absorbed by relatively insignificant projects rather than concentrating on reviewing projects with potentially significant environmental impacts. Some Committees of Natural Protection⁴ welcome the large volume of relatively simple reviews for the additional fee income which helps finance under funded overhead costs. Some Regional governments have made up for the declining presence of federal environmental bodies by strengthening their local environmental units, but so far they have been prevented by law from engaging in SER. A new 2002 Law on Environmental Protection opens up the additional possibility of selective delegation of SER functions, but the legal situation is still uncertain and no concrete case has so far materialized.

Context

xv. By its constitution, environmental management in Russia is a shared responsibility of the federal and the 89 Subjects of Federation (subsequently called

⁴ In 2002 MNR units (Committees of Natural Resources – CNR) were reorganized to be MNR Head Offices of Natural Resources and Environmental Protection in respective SOFs.

regions). However, the State Environment Review has been an exclusive responsibility of the federal government and its branch offices in the regions, i.e. the State Environment Review Department at MNR's federal headquarters, the Departments of Natural Resources in seven Okrug centers (the recently created seven administrative regions covering multiple subjects of federation), and the Committees of Natural Resources at regional (Subject of Federation) level.

xvi. The roots of Russia's EA system can be traced back to the decision making process for 'economic' projects in the Soviet Union, largely characterized by an engineering approach that relied heavily on technical norms and construction standards, with subsequent review by independent experts ("expertise") to check the quality of the proposal and the project documentation.

xvii. The EA system evolved from these origins, influenced by three broader developments: (i) the transition towards a market economy and democracy and the related public sector reforms; (ii) increased public awareness for environmental risks and pressure on the Government to safeguard public health; and (iii) the international development of the EA system and Russia's commitment to international environmental conventions, such as Espoo for EIA in the transboundary context, which brought along also increased international scrutiny of Russia's environmental management.

xviii. The transition to a market economy and the emergence of private sector project proponents required a change in the EA system to reflect the separate roles of the private sector proponent and the public sector regulator. New environmental requirements, calling for the project proponent to prepare the EA and separating this role from the "reviewing state regulator", were codified in guidelines (OVOS) in the early 90's. Inter alia, the guidelines required a more transparent process with public participation. At the same time, the new State Environmental Review laws and regulations clarified and strengthened the public sector role. The SER was developed to be administered by a specially authorized federal state body, initially a Ministry of Environment that was subsequently downgraded to a State Committee for Environmental Protection in 1996.

xix. This system functioned as described above until May 2000 when the incoming new Government decided to abolish the SCEP and move its functions, including SER, into the Ministry of Natural Resources. There are two main explanations of this event, one is that abolition of SCEP was part of a broader government effort to reduce the number of ministries and independent authorities, another one argues that SCEP was eliminated because its policies were perceived as an obstacle to economic growth. The change created uncertainty about the future and political support for environmental management in as much as the MNR also has the responsibility for awarding licenses for exploiting natural resources. With the creation of the seven Okrugs, a new supra-regional administrative structure, each covering several regions, the MNR reduced the number of staff at its oblast level offices and closed most of its district and municipal offices.

xx. MNR management made attempts to restructure the SER by delegating its functions to a specially created federal state owned enterprise "Gosecoexpertiza". The Government emphasized the independence this organization would have from other MNR functions, such as licensing of natural resource use. Funding was to come from fee revenues. However, eventually, in 2001, this idea was abandoned since it did not conform

to legislation that was currently in force and its funding was not secured. Similar enterprises continue to exist in some regions. They are not formally authorized to conduct SER, but are being viewed as support to the authorized SER office.

xxi. Public interest in environmental matters was perhaps greatest in the late period of the Soviet Union and early stages of transition, possibly spurred by information that began to be more widely available concerning past environmental disasters. Indeed, environmental citizen groups were in the forefront of political reform. This public interest, and hence government's priority for supporting environment issues, seems to have started to decline in the second part of the 90's with greater attention attached to economic growth and measures needed to complete the transformation to a market economy. E.g. the first draft of the Government's Economic and Social Development Plan in 2000 did not even mention environmental goals although an environmental section was later added.

xxii. There was a brief resurgence of public, and international, protest when the SCEP was abolished in 2000. In response, MNR convoked a working group that comprised academics, experts and the public (MNR Order dated September 6, 2000, #326) to elaborate a new EA concept. This group considerably influenced the situation in EA field in late 2000 – early 2001. Working openly, involving all stakeholders and regional representatives they contributed greatly in cessation of SER system breaking down caused by SCEP abolishment. A series of documents on the critical OVOS and SER issues was the outcome of their efforts. The group failed to arrive at consensus with respect to the SER, with one group advocating to basically restore the SER system with only minor changes, and the other proposing more drastic changes, including changes in legislation. The MNR discontinued the Working Group. In the meantime, the number of SER cases had dropped nationwide by about 20% (or about 15,000 applications) and following the nomination of a new Minister of Natural Resource in 2001, SER staff at Headquarters shrunk to 15 from 33 before the reorganization.

xxiii. Unless there are further changes to reduce the overall number of environmental reviews subject to SER, and possibly to delegate SER responsibility for projects likely to have a minimum impact on the environment to regional authorities, the system will be weakened, as there is no sufficient staff remained to implement the system effectively under existing guidelines.

xxiv. Overall, the political and social context had been supportive for the emergence of an environmental management system, however more recently, the restructuring and weakening of the environmental management system had an adverse effect on the functioning of the EA system.

The Legal and Regulatory Framework

xxv. Russia's EA system has clear legal foundations: the Federal Environment Review Law of 1995, and the Regulations for Environmental Impact Assessment OVOS of 2000, as well as the more recent Law on Environmental Protection (2002). While efforts have been made under the recent Environmental Protection Law to integrate these two components, they remain separate processes, which are not well coordinated. For instance, MNR and its territorial offices, do not review or provide guidance on the EIA

TORs, a critical interface between EIA preparer and reviewer in most EA systems, to better match the EIA to the expectations of the reviewers.

xxvi. Most key elements of internationally accepted EA system are, at least in embryonic form, present in Russia's EA legislation and regulation. Over the last 10 years, new elements have been added, e.g. enabling language which allows regions to develop screening guidelines (to distinguish complex, medium, and simple projects). Similarly, the regulation provides opportunities for scoping, the process of focusing the EIA and the SER on the highest environmental priorities. As mentioned, stronger rules on public participation, information disclosure, and consideration of transboundary impacts were added.

xxvii. The true weakness of the legal framework is the lack of coherent implementation guidelines. Legislation leaves it to federal SER offices and their regional branches to develop such guidelines but only few have done so. E.g. Moscow City has an elaborate draft regulation for SER screening but which this has not yet been officially adopted. Altai Krai has adopted a somewhat simpler model of SER screening. Arkhangelsk Committee of Natural Resources has introduced case-by-case screening mechanism for SER. OVOS regulations introducing screening mechanism were drafted by Tomsk Oblast Administration, Vologda CNR and Arkhangelsk CNR. Many other regions have not developed such guidelines. In the absence of such guidelines, proponents depend on case-by-case decisions of officials which can add to preparation cost and time, creates uncertainty and invites corruption. The lack of clear implementation guidelines can be seen most strongly in the areas of screening and scoping, public disclosure and access to information, and strategic environmental assessments.

xxviii. In one important area, the EA legislation is not consistent: the new Law on Environmental Protection of 2002 (Article 9) allows for the delegation of certain SER responsibilities to regional governments (e.g. Oblast Administration, in contrast to the regional branch office of the federal government) under special agreement with the federal government. By contrast, the 1995 ER Law clearly stipulates that only the federal government can exercise the SER function and the new Law on Environmental Protection also explicitly refers to this ER Law as the relevant law to govern the SER process. This situation can be interpreted as the new law superseding the older ER Law and offering for the first time an opportunity for regional government participation in SER. So far, there has been no case of delegation of SER functions. And there has been profound concern expressed by a number of Russian experts that Article 9 is introducing further legal uncertainty in an anyway weakened system because it does not provide a clearly defined direct legal mandate for the regions, that regions are not ready to assume such additional ER responsibilities, and that tension will increase between Oblast and Federal authorities at the regional level.

xxix. Despite these deficiencies, Russia's legal and regulatory framework is assessed as 'good' (rating of 4) since it provides a generally supportive framework for EA, although it needs more refined guidelines and some more specificity to fill regulatory gaps.

Implementation of EA in Russia

xxx. **Compliance with EA regulations varies:** while there are indications that fewer cases are being submitted for SER review, those which are submitted typically comply with formal SER requirements. Compliance with EIA procedural requirements, which are less scrutinized by SER, is lower, particularly with regard to public participation and preparation of TOR. Only few of the cases submitted for SER approval had an EIA prepared in line with OVOS 2000 regulations. Proponents indicated that they were not familiar with these regulations and SER regional authorities are reluctant to enforce their implementation due to lack of clear guidance. It also should be noted that these requirements are unreasonably complex for small activities with no environmentally significant impact

xxxi. **The number of SERs conducted declined,** on average, by 30% between 1999 and 2001. While a decline in the number of SER does not necessarily point to a deterioration of the operational effectiveness of the system – it could even be desirable if it were the result of a well thought through and implemented screening policy - the conclusion of this assessment is that the decline reflects a worrisome combination of two negative trends: declining capacity within the SER **and** increased focus on cases with low environmental impact at the expense of coverage of cases with significant environmental impact. The trends clearly reflect the absence of effective procedures for screening and scoping.

xxxii. Regions have given different **reasons for not introducing an effective system** of differentiation: First, they contend, screening doesn't make much sense because the law does not give flexibility to simplify procedures, at least not for SER. For example, there is no provision to exempt small projects below certain thresholds from SER. So if screening is done, it is mostly for administrative purposes (determine the fee and number of experts). Second, SER authorities feel pressure from courts and Public Prosecutors to strictly implement the law, with a narrow interpretation, e.g. no exemptions from SER. Third, some regions welcome the large volume of relatively simple SER reviews because they generate fee income, do not cause much cost, and therefore can cross subsidize general overhead costs which are not adequately covered by the federal budget.

xxxiii. Another deficiency of the screening system is some **ambiguity in the division of responsibilities** between Federal and Regional level SER offices. The Law provides a long list of criteria (Art. 11 and 12 of the ER Law), but in practice the decision is not always clear. That makes some developers incur the extra cost of presenting cases both at the federal and at the regional level. Some proponents seem to prefer dealing with regional level offices which are known to take less time than the federal level office, because, on average, they involve fewer experts, (hence fewer questions raised).

xxxiv. **Scoping practice is not well developed either.** Rather than by conscious prioritization of environmental impacts, the scope of the EIA is driven by the desire to pass the SER review. Since the SER does not provide guidance on the TOR and scope of the EIA, proponents are left to guess what the SER expectations might be. This provides those EIA consultants with good contacts to the SER authority a rich market niche: proponents depend on their judgment as to what needs to be included in the EAM. Since the cost of the EIA is a function of its volume, consultants find themselves interested in

increasing the scope without necessarily adding value to the analysis. In fact, a review of sample EIAs⁵ found large data collections of ‘interesting but irrelevant’ data, often based on unreliable secondary data, which do not add, but rather detract from the analysis of major environmental impacts.

xxxv. **Limited access to information** is one of the key obstacles preventing effective public participation in the SER. The federal regulatory framework does not provide for the format and scope of the SER output information to be issued to the public. Hence, much depends on the attitude of the competent authority towards openness and transparency. Good practice includes notification of the public not only about the outcomes of SER, but also about significant upcoming and ongoing SERs. For instance, the Kemerovo Oblast gives the public access to a summary of SER applications. Whenever the application is of particular public interest, SER conclusions are published in mass media.

xxxvi. Fortunately, the diversity of Russia’s 89 regions is a fertile ground for pilot testing new approaches. There are, albeit isolated, best practice examples in Regions with proactive and dedicated government officials who have designed creative solutions to these problems, such as screening models for Moscow, the Altai Krai, and the Arkhangelsk Region which were partly implemented. They can serve as test cases to develop countrywide reforms.

xxxvii. Overall, EA implementation is rated lower (at 3) than legislation given that requirements are often not followed and opportunities provided by the law to enhance the effectiveness of the EA system are not being used. Finally, there are perverse incentives to load the system with environmentally insignificant cases to make up budget short falls.

Impact of the EA system

xxxviii. The EA system is designed to influence: (i) project preparation through EIA’s close linkage to the project development cycle; and (ii) project decision making through the veto role of the SER conclusion (no project can be financed or implemented without a positive SER conclusion).

xxxix. In practice, the **EIA process has only limited impact** on actual project decision making, except in selected cases of highly visible and internationally financed projects. The primary motivation of developers when undertaking an EIA is to obtain SER approval. The EIA is rarely perceived or used by the developer to improve the project, program, or plan, although there are such cases (see the main report). Factors which hamper the impact of the EIA are: (i) limited quality of data, analysis, and recommended activities; (ii) limited capacity to implement complicated EIA requirements particularly at the regions; (iii) delayed timing of EIA preparation, often after fundamental project decisions have been made and (iv) often negative attitude from proponents which see EIA as extra burden.

⁵ In accordance with the methodology environmental assessment materials (EAM) and SER Conclusions were subject to analysis.

xl. The SER process continues to command a high level of at least formal compliance and is widely used as a 'seal of approval'. Conclusions of the SER are typically reflected in the project design. The concern of Russian EA experts, which was confirmed by the sample review of SER cases, is the **declining substantive quality of SER conclusions**. They are becoming shorter, often focusing on procedural issues (incomplete documentation e.g.), and less on substantive recommendations. Two factors may contribute to this trend: unsatisfactory quality of EA materials submitted to the SER (weak data, lack of focus on environment priorities, etc), and declining capacity and number of SER professionals and experts to undertake in-depth reviews. . Here too, screening and scoping would leave more room for taking the time for good comments and follow-up.

xli. So far we looked at the EA impact on project design and documents. In addition, **the impact of EA conclusions on project and program implementation seems also to decline**. It is here where the drastic shrinking, some would say, collapse, of the Environmental Management system is felt strongest. The capacity to monitor and enforce EA conclusions through the Environmental Inspectorate, the enforcement arm of environmental management, has been seriously eroded as a result of the still ongoing reorganization at MNR and reductions in staff. This means fewer inspections of projects during construction and after completion to verify whether agreed mitigation measures are being implemented. It also means less incentive for the proponent to incur the additional costs which may be associated with mitigation measures. According to SER officials, the number of activities which are being implemented without a SER approval has increased. For example, in Tomsk Oblast this today represents the most frequent form of violation (80% of all violations related to EA, up from 20% in five years ago).

xlii. In assessing the impact of the EA system, we have so far looked at the potential environmental benefits which can be reaped if well thought through EA conclusions and mitigation measures are actually implemented. For a balanced assessment, it is also necessary to assess the potential cost of the EA system. Our assessment focuses on the cost proponents incur in terms of time and money to comply with the EA process. We did not consider the incremental cost of mitigation measures which require a different analysis (environmental expenditure review).

xliii. The impact on proponents, in terms of time and cost, is overall low to moderate, but varies greatly between different types of proponents.

Ø **Small and medium size projects** with no significant environmental risks are disproportionately burdened – the cost of the EIA and SER requirements are not commensurate with the potential benefits from avoided environmental damage. Again, this points to the lack of appropriate screening and scoping procedures. Evasion of EIA requirements or de facto exemption based on case by case decisions add to the uncertainty and transaction costs that small enterprises face. **If strictly enforced, EA requirement pose a barrier to entry and operation for this group of enterprises.**

Ø **Larger national enterprises** can afford to hire experienced consulting firms with good connections to the concerned authorities to manage on their behalf the EA process. Compliance with EA requirements becomes a manageable cost of doing

business. But evasion seem to be increasing, mostly to avoid time delays and possible scrutiny by public consultations.

Ø **Large projects involving international financing** undertake the EA process primarily to satisfy requirements of the international lender or parent company, which happens to also include compliance with local regulations. The concern is less with the regular costs for EIA preparation and processing, which are comparable to international standards, but the 'hidden costs' which result from ambiguous regulations, dependency on arbitrary case-by-case exemptions, and processing delays due to insufficient capacity of SER authorities. Typically, the international company limits its involvement in this process by seeking a Russian partner to manage the EA process and to shoulder the hidden costs, although some have in the meantime established their own environment departments.

xliv. A business survey conducted by FIAS⁶ in 2001 (FIAS 2001) confirmed that environmental regulations pose generally a low to moderate obstacle to doing business. Environmental regulations were scored on average 2.5 on a scale of 5 (5 being a major obstacle) and ranked 23 out of 30 possible obstacles with considerable regional variations, possibly related to different level of environmental enforcement in those regions.

xlv. Overall assessment of EA impact is moderate (3). While the regulatory powers to impact decision making and implementation are considerable, the system is undermined by weak enforcement capacity and at times impractical requirements, which can impose a disproportional burden, particularly on small projects with no significant environmental impact.

Institutional Capacity to Implement the EA system

xlvi. Institutional capacity, in particular technical staff capacity, which traditionally has been a strong point of the system, has now become a weak link in Russia's EA system. There are clear and objective indications that Russia's institutional capacity to conduct State Environmental Reviews has declined. Total number of SER officials in Russia declined from about 700 in early 2000 to about 400 in 2002. In certain offices, staff has been reduced by of over 50%, while others have kept reductions as small as 20%.

xlvii. The caseload per SER employee has increased by 20% or more, in some regions even up to 300%. Reportedly, there are also longer delays in processing time, but evidence for this is sparse. An increase in caseloads per SER staff needs to be interpreted carefully: it could be driven by an 'inflation' in the number of SER cases with no significant environmental impact, i.e. the earlier mentioned lack of differentiation. This may actually not pose a serious constraint on the processing capacity of the office, other than distracting from significant EA cases. It could also be caused by a decline in staff number for a comparable workload. In this case one can find overburdened staff which will have to limit the scope of its review to a manageable level, more likely concentrating on easily verifiable formal requirements.

⁶ Foreign Investment Advisory Service of IFC, World Bank Group

xlvi. Working conditions are characterized by job insecurity and low payment for experts which put into question the ability of the SER system to attract and retain in the future the technical staff needed to sustain the system.

xlix. In addition to the SER proper, environmental management capacity, in general, has shrunk weakening the 'follow up part' of the EA system, particularly with regard to environmental control at the regional and district level, and reduced follow up to EA decisions.

1. Capacity and capacity building has suffered from the large scale reductions or moving around of technical staff. There are highlights, however: some regions, such as the Altai Krai, offer successful models for continuous staff training and development and bring together professionals from several regions to share practical experience.

li. Overall, institutional EA capacity is rated marginally satisfactory (2 to 3), considering the lack of policy direction, the decline in staff, its demotivation, and limited training opportunities. Without effective measures to attract and retain qualified staff and experts and making more effective use of existing capacities in regional offices through a re-defined labor division between different levels of government, the EA system is at risk of deteriorating into a purely perfunctory bureaucratic process and becoming irrelevant for decision making.

1.1

Federal and Regional Responsibilities – a need to re-define

lii. Hence, a particular challenge for Russia is to re-define the roles of federal and regional government in environmental management, in general, and EA, specifically, in order to effectively reverse the decline of environmental management capacity. This issue cannot be seen narrowly within the environment sector, but has to be understood in the broader context of the Government's policies of decentralization.

liii. By its Constitution, environmental management is a shared responsibility between the federal government and the 'Subjects of the Russian Federation.' In several areas, such as environmental control (inspection) the new Law on Environmental Protection, 2002 (Art 6) envisages a possibility to delegate specific powers to the environmental authorities of the Subject of Federation (SOF). Delegation of inspectorate functions has to be regulated by agreement between MNR and regional authorities. So far only Moscow has such agreement.

liv. By contrast, State Environmental Review has been the exclusive responsibility of the federal government. To that effect, the federal government has set up regional offices 'at the territorial level' in addition to the federal headquarter at MNR. Before the restructuring in 2000, such federal offices existed at Subject of Federation (e.g. Oblast) and District level. It is important to keep in mind the distinction between Federal Government offices at the territorial level (e.g. Oblast) and the Regional (e.g. Oblast) Government office. The first reports to federal MNR, the second reports to the Regional Government.

lv. In principle, such highly centralized system and vertically integrated system had several advantages. It provided for a uniform process throughout the country, where comparable standards would be applied, giving proponents certainty what to expect. It also tended to equalize the uneven implementation capacity of SOFs. It's clear legal codification has allowed the SER system to remain formally intact amidst large scale restructuring.

lvi. Russia's environmental management system is now in transition, and one of the marked results of the restructuring efforts is a greatly reduced federal presence at the SOF (territorial) level (see Chapter 7). Federal offices at the municipal and district level have been almost completely eliminated⁷ Federal offices at the territorial (oblast etc) level offices reduced staff, or were absorbed into newly established federal offices at the Okrug level with broader geographic coverage of several SOFs⁸. This is in line with the government's overall policy to downsize the federal government through the reduction of the number of supervisory and controlling functions.⁹

lvii. This transition has created an administrative vacuum at the regional and local level. Some SOF governments have stepped in to fill this vacuum by creating or expanding their SOF environmental authorities at oblast and municipal level. But SOFs have been so far prevented by law to undertake State Environment Review. The new Law on Environmental Protection now offers an opening to transfer a portion of powers in the field of SER to SOF governments on the basis of agreements between federal and SOF governmental bodies.

lviii. Views among Russian experts on this matter differ sharply. One group argues that the SER is the backbone of the environmental management system and that it derives its strength from its tight vertical integration. An important factor of SER efficiency is direct defining the responsibilities of the SER authority in legislation¹⁰ It further argues that this vertical integration, i.e. reporting to MNR, rather than to local and regional governments, gives the SER the necessary independence from local and regional interests and interference. A rushed delegation of SER authority to SOFs underpinned with no clear tenets carries a great risk of lowering quality standards and undermining the integrity of the system, since the capacity to implement SER is unclear, and definitely uneven across regions. In deed, it might be just a strategy to render the system ineffective. And given the overall small size of the EA system in terms of staff, re-establishing federal capacity is not too difficult.

lix. The opposing view is that delegation of SER functions to the SOF is in line with delegation of similar responsibilities in other areas of environmental management, such

⁷ In some Oblasts few inter-district committees has remained to serve the most problem districts.

⁸ Since June 2001 there are both Departments of Natural Resources (DNR) and Committees of Natural Resources (CNR) in Orkugs. It is CNRs not DNRs that are valid MNR units.

⁹ Deputy Minister, Ministry of Economic Development and Trade, Arkady Dvorkovich, was quoted in Russia Today on June 25, 2002, that the number of federal functionaries would decrease from 400,000 to 150,000-200,000 in 2-3 years.

¹⁰ Several experts asserted that ER Law (1995) effectiveness is caused by direct regulations it contains. On the contrary, Law on Environmental Protection (2002) contains mainly indirect regulations. As a rule, the latter do not work in Russia.

as enforcement. The reduced presence of the federal government at the regional and local level makes an effective implementation impossible and undermines the integrity of the system. Furthermore, the federal government is expected to further downsize, making a reversal of the current trend very unlikely. At least some regions possess the capacity and motivation to implement SER as part of their mandate to protect the environment within their territory.

lx. What all fractions seem to agree is that such re-definition needs to be undertaken on the basis of a well thought through strategy and clear legal foundations, developed in a consultative process between public and private stakeholders at the regional and federal level. Both are lacking right now.

International EA Practice – Relevant Experience

lxi. In addition to relevant best practice examples within its own borders, Russia can draw on a rich and diverse international experience with EA implementation in those areas which need strengthening.

lxii. When it comes to **defining roles of regional and federal authorities**, there is no single ‘correct’ model. Other large federal states face challenges similar to Russia’s – and have each chosen quite different approaches, depending on their political and legal tradition, and the concentration of power at the federal level. To provide a basis for comparison, this study reviewed examples of environmental management in three countries that also have Federal and state governments (Ritter and Capcelea 2002):

- Ø the US, where the federal government has pre-empted both legislative and implementation authority to a large extent, and then selectively delegates powers to the states based on performance agreements and with the right to take these powers back if states fail to perform satisfactorily; specifically with regard to EA, federal government has lead responsibility for implementing the federal National Environmental Policy Act (NEPA), and some regions (states) have adopted regional NEPAs.
- Ø Germany, where the federal government has pre-empted large areas of legislative powers, but the Laender have by default responsibility for implementation, except in few cases which call for a federal role (e.g. transboundary issues). On top of Germany’s own system, EU legislation has created rigorous legal framework to which member states have to adhere to, at times grudgingly, e.g. in the case of the EU’s Directives for Environmental Assessment.
- Ø By comparison, in Canada, regional authorities wield much larger power. They typically have developed their own environmental legislation, which can differ across regions. Canada therefore felt the need to establish the Canadian Council of Ministers of the Environment (CCME), a mechanism to harmonize legislation through building bottom up consensus. For the EA process, this group has developed a draft framework which establishes at least shared principles, including a commitment to notify each party on ongoing EA processes.

lxiii. While not developed specifically for the EA system, the **US Environmental State Performance Partnership Agreement** presents an interesting model for how strong federal authorities can devolve responsibility to regional governments in a selective way

and while maintaining some control. The key features of this model are its **outcome orientation** and the element of **accountability** it introduces in the federal – regional relationship. The federal government and state mutually agree on outcome indicators measuring environmental improvements, leaving states more flexibility in choosing strategies for achieving goals. By the same token, federal funding which previously was provided from a variety of sources for different programs, each with its own rules, can now be combined as a block grant, giving states more flexibility to allocate resources to high priority environmental issues. Participation in the National Environmental Performance Partnership System (NEPPS) is voluntary.

- lxiv. An evaluation after 5 years of implementation confirms the soundness of the concept, but also shows that obstacle of introducing a new management tool in government. Only few states had the necessary planning and management capacity to take full advantage of the flexibility provided by the model. These were typically the better performers, anyway. Also, the new performance based system was superimposed on the traditional activity based management system and did not fully replace it. As a result, states were disappointed that the federal government was not providing as much flexibility as expected. In turn, USEPA was caught between conflicting incentives to offer more flexibility to states, but at the same time to respond to tightened accountability requirements under the Government Reporting and Performance Act. Hence the model takes time to implement but can work well as a tool for selective delegation of powers to high performing regions.
- lxv. Relevant international experience can be found in other areas, too, for example, when it comes to screening. Again, it is evident that there is not one single ‘correct’ model:
- Ø The World Bank uses a classification system, backed by an illustrative list of projects that may be assigned into one of four categories.
 - Ø In EU member states, screening procedure is based on projects listed in Annex I and II of the EIA Directive (projects are defined by type and scale). EIA is mandatory and automatic for Annex I projects, typically large-scale schemes, such as power stations. Annex II listed projects require case-by-case screening to determine if they are likely to have a significant impact on the environment. EU member countries are required to develop criteria, such as size and location, to guide the screening process, based on minimum requirements established in Annex III of the EIA Directive (EU Directive 85/337/EEC and EU Directive 97/11/EC).
- lxvi. The US EA system makes provision for different levels of assessment as determined by screening. Certain actions are categorically excluded from EA requirement. Others require an intermediate level of analysis, an EA, to determine whether a full-blown Environmental Impact Study is needed or whether to issue a "Finding of No Significant Impact" (FONSI).

Recommendations

- lxvii. Recommendations focus on the three principal weaknesses in the Russian EA system which this assessment identified: (i) the lack of differentiation through screening and scoping in the early stage of an EA; (ii) the lack of integration of the EIA and SER

subsystems while conducting the EA; and (iii) the declining institutional capacity and lack of policy direction for the EA and Environmental Management System.

- lxviii. Measures to improve the EA system need to be in sync with the broader development agenda and tap into the dynamics generated by the three principal drivers behind EA evolution mentioned in the beginning: the transition and related public sector reforms, increased public environmental awareness, and international developments of the EA system combined with a keen interest of the international community in Russia's environment.
- lxix. **Recommendations** to strengthen Russia's EA system fall into three groups: (i) further **evolution and fine-tuning of the EA system** building on international and scattered domestic best practice; highest priority has the establishment of effective screening and scoping mechanisms; these measures can be taken within the existing legal framework and hence are implementable within the short term (1 year), these changes need to be developed in the context of the broader policy agenda of deregulation and simplification of Government control over business; and (ii) **systemic changes of Russia's EA system**; the most significant one to clearly define the respective roles of federal and regional authorities in line with the broader public sector reform of decentralization and increased accountability as well as clear division of responsibilities among all branches and levels of power; these changes may require revisions of laws to reduce legal uncertainties and the development of new legal instruments, such as the agreements between federal and regional governments, which will take time and thorough consultations. They can be expected to be implementable within the medium term (1 to 3 years); and (iii) **capacity building to maintain and modernize the EA system**, which should become an ongoing process. Pace and depth of these reforms will depend to large extent on political willingness to lead this process and, in turn, public pressure. In addition to the recommendations to the Government, there are also a number of suggestions for follow up actions through which the World Bank could support Russia further develop its EA system.
- lxx. **Four guiding principles**, distilled from many discussions with Russian experts, describe the future direction of Russia's EA system: (i) assured basic implementation capacity; (ii) efficiency and business friendliness; (iii) effectiveness, by focusing limited institutional, analytical, and financial resources on the most significant environmental impacts; and (iv) long term impact by evolving the EA system from a "do-no-harm" tool to a transparent instrument supporting sustainable development decision making.

Recommendation 1: Evolution And Fine Tuning Of The EA System (Short Term)

- Ø **Establish a Country Wide Process of Screening.** Develop an optimal screening mechanism building on the rich in-country experience, as well as international experience, through a process of active stakeholders involvement. Key steps could include an inventory of domestic best practice, an international workshop, development of federal framework guidelines, pilot implementation, strategies to remove perverse incentives, and an ex-post evaluation of the pilots. Screening for EIA and SER need to be harmonized as part of the process.
- Ø **Establish a Country Wide Process of Scoping and Strengthen integration of EIA and SER system.** Develop an optimal scoping mechanism through a

participative process, which would consider options such as review of EIA TORs by the SER for projects with significant environmental effects, or the right of proponents to get advice on the EIA scope from the SER authorities – both aimed at better integrating the SER and EIA.

- Ø Recommendation 2: *Initiate a dialogue between concerned stakeholders in the public and private sector (at the federal and regional level) to develop a strategy for re-defining the roles of federal and regional government in environmental management, including EA implementation, with the ultimate aim to strengthen implementation capacity (Short to Medium Term)***Develop a vision** for the future relationship and labor division between federal and regional level environmental governance, in line with overall public sector reforms and decentralization; consider in this context not only the SER functions but also EIA functions, to ensure that reforms lead to further harmonization, not discrepancies between the two subsystems;
- Ø **Hold an international workshop**, following initial internal discussions, to review international experience with environmental management in federal systems and implementation of EA functions by regional bodies, inter alia, on the basis of agreements between federal and regional governments;
- Ø **Identify few pilot regions to test implementation of Art. 9 of the Law on Environmental Protection.**

Recommendation 3: *Strengthen Capacity to Implement and Modernize EA System*

- Ø Develop a **strategy to maintain and increase technical capacity of existing EA staff and experts** and to ensure sustainable supply of highly trained experts. This could involve an international workshop with organizations involved in EA capacity building (UNEP, WBI, others) to identify available resources, development of programs for tertiary education and professional on the job training. Following international experience, this could also involve twinning between regions to benefit from Russian best practice. The task of equal importance is to raise the awareness and build-up the EA capacity of the other EA stakeholders: governments and self-governments, private business and the public.
- Ø In particular, develop in Russia the **capacity to assess, evaluate, and modernize the EA system through the creation of senior level working group** of policy makers and recognized experts, as well as private business and public representatives who would develop recommendations on future EA development. This group should have access to training in the latest EA techniques and to international exchange on best practices. Important topics for such group would include the practical implementation of Strategic Environmental Assessments, stronger integration of the social impacts in the EA process, and clearer rules on disclosure of information.

Suggested Follow Up Activities for the World Bank

- lxxi. As follow up to this study the Bank need to explore whether the Government is at all interested in reforming its environmental management system and if yes, whether it would seek Bank assistance. Possible Bank activities could include:

- Ø **Disseminate findings** of the translated study in Russia to government, including MNR, and interested regions and experts;
- Ø **For the fine-tuning of the EA system**, explore interest of Government, donors, or NGOs to hold an international workshop on EA development; offer to discuss results of EA study and help mobilize donor funding.
- Ø **For the strengthening of the Environmental Management system**, including devolution of EA functions to regions, explore Government interest for a dialogue in the context of public sector reform and decentralization and propose a symposium on “environmental federalism” to bring together Russian and international experience.
- Ø **Continue to improve our knowledge** of Russia’s environmental management through analytic work:
 - a *Review of the capacity of the Environmental Management System* in Russia. The present EA study looked only narrowly at EA relevant aspects of the EMS. However, a stable and operational EMS is not only prerequisite for a functioning EA system, but also vital for Russia as part of a modernized public sector to keep economic growth on an environmentally sustainable path and to comply with international obligations.
 - a *Review of the financing of environmental management in Russia*, to assess the uses and sources of funding available at federal and regional level, including fees, federal, and local budgets, particularly in view of a possible devolution of environmental management functions to regions.

1. INTRODUCTION

- 1.1 Russia's Environmental Assessment system became the focus of international attention in May 2000 when Russia abolished the former State Committee for Environmental Protection (SCEP) and merged the environmental management system, including the EA function into the Ministry of Natural Resources (MNR). The Bank decided to hold off on the signing of two operations, the Sustainable Forestry Pilot Project and the Coal and Forestry Guarantee Facility, until assurance could be obtained the restructured EA function remained operational. Based on the information provided by the Ministry in April 28, 2001, the Bank allowed the two operations to proceed with signing and committed to the Board to report on the status of EA capacity in Russia one year after the Coal and Forestry Guarantee Facility had become effective. Subsequently, there have been additional changes to the organization of the EA system, including cuts of budget and staff.
- 1.2 The numerous institutional and regulatory changes and the reduction in staff have given rise to concerns that the capacity at federal and a sub-national level has been so weakened that that the EA function is no longer properly implemented. Opinions on this matter differ greatly, ranging from a view that the core of the EA system is intact and functioning, to claims that the environmental management system is collapsing, and with it, the EA function. However, there was agreement that specific knowledge as to how Russia's EA system is currently functioning was quite limited.
- 1.3 The objective of this report is to help close this knowledge gap. The specific objective is to assess the 'on the ground' implementation capacity and effectiveness of Russia's EA system. Its initial audience is Bank management which needs a better understanding of the system both for purposes of reporting back to the Board and for taking decisions with respect to future projects. An equally important audience is the Russian public and government. While there has been no formal request from the concerned Ministry of Natural Resources for this study, Russian experts and officials at both federal and regional level very actively collaborated in the preparation of this assessment. Hence there is an expectation that the report could serve as a vehicle to initiate a dialogue between the Government and the Bank about environmental management in Russia.
- 1.4 Another possible audience is the environmental safeguard community at the Bank, headed by QUACU, which is interested in developing a generic methodology to assess a country's EA implementation capacity, particularly as it is possible that in the future responsibility for compliance control of the Bank's environmental safeguards may be devolved, in whole or in part, to Client Countries. Such devolution needs to be based on a solid understanding of the Client's EA implementation capacity.
- 1.5 The World Bank team jointly with the Russian experts developed a preliminary framework for such assessment and pilot tested it at federal level and in three selected regions of Russia. The team reviewed five major aspects of an EA system

deemed essential to understand the on-the-ground performance of an EA system. These are summarized in the following table.

Box 1.1. Five Major Aspects of EA System Assessment

- Ø **Context** – the constitutional, institutional, and economic context within which the EA system has evolved;
- Ø **Legal and Regulatory Framework** within which EA operates;
- Ø **Implementation** – actual implementation of the EA system, and the extent to which the processes actually follow the country’s EA laws and regulations;
- Ø **Impact** – the value added of the EA system: its effects on decision making and project implementation (‘benefits’) and its burden on the regulated community (‘costs’);
- Ø **Institutional Capacity** of the responsible entities to maintain or improve the EA system, including their budget, quality of staff and facilities.

- 1.6 For each of these five aspects, **an assessment tool was developed (Annexes 1.1 to 1.5)**, consisting of guidelines for an overall assessment and a checklist with more detailed criteria to help with the assessment. Benchmarks were also developed to assist with ranking the performance on a scale from 1 (low) to 5 (high). The framework, which is still very much work in progress, has been developed with a view to a generic application and cross-country comparison.
- 1.7 The assessment faced a number of Russia specific challenges, including: (i) the rapid pace of institutional and regulatory changes in environmental management; (ii) reforms that were initiated but done so without clear direction and have resulted in uneven implementation, such as the plan to give oblast (and other Subjects of Federation) authorities a greater role in environmental management; and (iii) variation across regions in how the EA function is being implemented, reflecting different interpretations of vague regulations, and different political realities. **In other word, this is an assessment of a system in transition.** The team of Russian experts which included some of the country’s leading specialists in the field of EA, played a central role in capturing and analyzing the richness of these different coexisting ‘realities’ of the EA system. These represent a reservoir for good ideas and best practices which are being pilot-tested by forward looking and courageous government officials throughout the country. As can be expected, the emerging picture is not one of a coherent blueprint model, but rather one of an evolving system in transition with multiple facets.

Structure of the Report

- 1.8 **The Structure of the report** follows the proposed framework. Chapter 2 discusses the approach and methodology used for this assessment. Chapter 3 describes the context within which Russia’s environmental management system has evolved. Chapter 4 reviews the legal and regulatory framework for EA, while Chapter 5 assesses its on-the-ground implementation. Chapter 6 makes an effort to assess the impact of the EA system, followed by an analysis of the institutional capacity in chapter 7. This completes the five elements of the assessment. In

addition, chapter 8 reviews international experience on selected EA aspects, which have been identified as relevant for Russia. Chapter 9 offers recommendations for future development of Russia's EA system. Annex 1 contains details on the assessment tools and analysis used in this assessment.

2. REVIEW FRAMEWORK AND METHODOLOGY

The purpose of this chapter is to describe the approach that was taken to evaluate the effectiveness of the Russian EA system. The chapter is organized into four main parts:

- Ø Overview of review concepts and approach;
- Ø Background considerations related to review of the Russian EA system;
- Ø Framework of evaluation principles, elements and criteria; and
- Ø Review tools and methodology.

OVERVIEW OF REVIEW CONCEPTS AND APPROACH

- 2.1 As far as possible, the framework and methodology used in this report are intended to correspond with international standards for ex post review of EA effectiveness and performance, recognizing these are still evolving and subject to debate. (e.g. Sadler, 1996; Sadler, 1998). In this regard, a secondary aim is to develop a robust framework that can be applied (with suitable modification) to review other EA systems and elements of work undertaken by the Bank and its clients. The primary purpose, as stated in the introduction, is to evaluate the status, effectiveness and prospects of the Russian EA system, with a view to identifying any changes that are necessary to improve performance.
- 2.2 For present purposes, an immediate test of process effectiveness is whether or not EA works as intended (which is a procedural test) and meets its purpose and objectives (which is a functional or operational test). In both cases, the test of effectiveness is specific to the EA system or process that is applied in Russia and toward the particular requirements and characteristics that are in force currently (see below). Additionally, evaluation can then compare the elements of the Russian EA system with those in place in leading countries or recognized internationally as good practice.
- 2.3 On this basis, recommendations can be made on two levels:
- Ø Measures to strengthen and improve the EA system within the existing mandate and arrangements; and
 - Ø Changes in the legal and institutional framework to overcome systemic problems. International experience can serve as a reference when designing such changes and help bringing Russia's EA system into line with internationally accepted standards.

BACKGROUND CONSIDERATIONS RELATED TO REVIEW OF THE EA SYSTEM IN RUSSIA

- 2.4 Although the Russian EA process includes many elements found in other EA systems, there are distinctive aspects, as described in Chapter 4. Notably, the EA System in Russia has a hierarchical structure, encompassing two distinct subsystems – State Environmental Review (SER) and Environmental Impact Assessment (EIA). These are defined in the glossary and can be compared to internationally accepted definitions of EA and its key elements.
- 2.5 While we distinguish between the SER and EIA subsystems to reflect their different legal structure and implementation practice, they are treated in this study as components of one EA system. This is a perspective which can also be found in recent Russian legislation (see Chapter 3). And such an integral view helps to identify the effect which gaps and weaknesses in one procedure have on the other subsystem.
- 2.6 Criteria and methodology were tested at both the national and regional levels, including the Rostov Oblast, Irkutsk Oblast, and Altai Krai. Following the ‘pilot testing’, a number of amendments were made to the review framework by the project team in order to better reflect aspects of Russian EA practice. On the basis of this experience, a practical tool kit for wider application was developed, which should be seen as a work in progress for further testing.

A FRAMEWORK FOR EA EFFECTIVENESS REVIEW

Guiding Principles and Premises

- 2.7 This review is based on several guiding principles, which reflect evolving international experience with ex post evaluation of EA effectiveness and performance (Sadler, 1998). When applied collectively, these help design and explain a practical approach and comprise:
- Ø Taking a systematic approach, placing the EA system in the overall process of decision-making;
 - Ø Specifying appropriate performance criteria and measures to evaluate effectiveness;
 - Ø Adopting a multiple perspective to take account of the views of key actors;
 - Ø Recognizing that judgments of success vary with participants and their experience;
 - Ø Cross referencing and corroborating views against other factual information sources;
 - Ø Focusing on problem solving not fault finding; and
 - Ø Identifying practical ways forward to build on process strengths.

2.8 In addition, the following understanding of effectiveness underpins the approach taken:

- Ø **The primary (substantive) goal of EA** is to provide sound information to decision makers to reduce the environmental impact of proposed development actions, and, ultimately, to ensure development is environmentally sustainable.
- Ø **The immediate (instrumental) goal of EA** to ensure that proposed activity complies with environmental, legal and regulatory requirements on the likely impacts of development proposals and options.
- Ø **The effectiveness and performance** of the EA system are determined by the extent to which these goals or surrogate measures are met, including:
 - **Proportionality:** The scope of EA should be commensurate with the environmental impact of development actions.
 - **Equity.** The process should be transparent and applied equitably, without bias to any party.
 - **Efficiency:** The process should be undertaken within the minimum time and resources consistent with the required scope of assessment.
 - **Effectiveness.** The process should meet its mandated requirements and objectives, consistent with accepted international principles.

2.9 **Scope of the Assessment.** When disaggregated, an EA system can be assessed by reference to its main operational elements. These encompass:

- Ø **Context** - The constitutional, institutional, and economic context within which the EA system has evolved, including constraints and incentives;
- Ø **Legal and Regulatory Framework** which defines the basic obligations and requirements within which EA operates;
- Ø **Implementation** – actual implementation of the EA system, and the extent to which the processes actually follow the country’s EA laws and regulations;
- Ø **Impact** – the value added of the EA system: its effects on decision making and project implementation (‘benefits’) and its burden on the regulated community (‘costs’);
- Ø **Institutional Capacity** of the responsible entities to maintain and improve the EA system, including their, skills, expertise, commitment, resources, efficiency and understanding of the situation.

2.10 For each of these five aspects, an assessment tool has been developed (Annexes 1.1 to 1.5), consisting of guidelines for an overall assessment and a checklist with more detailed criteria to help with the assessment. Benchmarks were provided to

assist with ranking the performance on a scale from 1 (low) to 5 (high). The framework, which is still very much work in progress, has been developed with a view to a generic application and cross country comparison.

2.11 The criteria were developed using as a reference point, the following elements and characteristics of internationally accepted EA Systems:

- Ø Adequate Coverage of the EA system (the scope of the EA system), to include activities, plans, and programs with which might have an impact on the environment;
- Ø Comprehensive Definition of 'Environment' (the breadth of the EA system) which encompasses effects on landscapes and eco-systems, culture, and social acceptability;
- Ø A Screening procedure to differentiate between activities with potentially severe environmental impact and those which likely have no environmental impact;
- Ø A Scoping procedure to focus the EA on the major environmental impacts;
- Ø Consideration of alternatives to the proposed activity;
- Ø Assessment of environmental impacts and, on that basis, preparation of environmental management plans;
- Ø Public participation and consultation in the EA process;
- Ø Disclosure of EA related information and EA findings;
- Ø Integration of EA outputs into decision-making; and
- Ø Provision for monitoring, follow up and post-project analysis.

2.12 A lack or inadequacy of any one of the elements above will reduce the integrity of the entire EA system, making it less operationally effective and possibly compromising the investment of public expenditures. This interpretation is based on lessons of international experience and supported by earlier Russian-based studies. Subsequently, the current review provided an opportunity to refine EA effectiveness criteria for possible application to other Bank projects and activities. These are outlined in the tool kit for good practice (Annex 1).

Review Methodology

2.13 A considerable body of information was collected in response to the framework of criteria and indicators described above. The main tools used for this purpose were specially developed forms, questionnaires and evaluation sheets. In this section, the main components of review methodology are briefly described. More detailed information on the review tools and protocols for applying them can be found in Annex 1.

Main Sources of Information

2.14 The review was based on the following sources of information:

- Ø Legal and regulatory documents related to the EA process;
- Ø Methodological documents and guidelines;
- Ø National and regional reports on the state of environment;
- Ø Information from competent bodies, including document processing information, data submitted on investment activity;
- Ø Earlier EA reviews;
- Ø Interviews with stakeholders (EA actors); and
- Ø Reviews of sample project documents and EA documents.

Tools and Methods Used

2.15 The following **tools and methods** were used in the review:

- Ø Surveys and interviews of EA System actors on the basis of the questionnaires specially prepared for this review (Annex 1);
- Ø Group discussions using a round table approach to identify the potential of the EA actors and major problems they experienced, for example ‘Environmental Review and EIA – Regional Practice’ and ‘Improving Investment Climate through EA’;
- Ø Analysis of the legal and regulatory framework of the federal and regional levels (based on the common criteria and effectiveness indicators);
- Ø Analysis of case studies; and
- Ø Analysis of methodological and information materials accessible on the regional and federal levels.

2.16 Three separate **questionnaires** were administered covering:

- Ø SER potential, distributed to SER officials;
- Ø EIA procedure distributed to developers, EIA consulting firms and SER experts; and
- Ø EA system distributed to regional and local governments, civil society groups and other parties who are non-professionally involved.

Stakeholder Engagement

2.17 The review process involved representatives of those groups and organizations that enjoy the rights or statutory prescribed responsibilities for environmental assessments. These groups included:

- Ø Investment proponents:
 - Project Developer;
 - Executors of environmental impact assessment process;
 - Investments, financial and credit organizations;
 - Other actors of investment activity;

- Ø Competent bodies in the area of environmental review
 - Department of State Environmental Review of the MNR of RF;
 - The units of Departments of Natural Resources (DNR) in 7 Okrugs, and Committees of Natural Resources (CNR), which are responsible for SER and EIA processes.
 - Contracted SER experts.

- Ø Executive authorities of constituent entities of the Russian Federation and local governments:
 - Administrations of constituent entities of the Russian Federation;
 - Administrations of various local governments.

- Ø The public:
 - Nongovernmental environmental organizations;
 - Local community and volunteers;
 - Academic community

3. THE CONTEXT FOR RUSSIA'S EA SYSTEM

| | |
|--------------------|---|
| Lead Questions | <ul style="list-style-type: none"> ü What is the political-institutional context within which environmental management and EA operate? What are the main constraints and opportunities? ü What priority is given to environmental sustainability in development? ü How open and supportive is society and government to public participation in decision making? |
| Summary Assessment | <p>By constitution, environmental management in Russia is a shared responsibility of the federal government and the 89 Subjects of Federation (subsequently called regions). The roots of Russia's EA system can be traced back to the decision making process for 'economic' projects in the Soviet Union, which was characterized by an engineering approach and independent expert reviews (expertise). The EA system evolved from these origins, influenced by three broader developments: (i) the transition towards a market economy and the related public sector reforms. (ii) increased public awareness for environmental; and (iii) Russia's integration into international environmental development and conventions.</p> <p>In May 2000, the State Committee for Environmental Protection was abolished and its functions were absorbed into the Ministry of Natural Resources. There are two main explanations of this event, one is that abolition of SCEP was part of a broader government effort to reduce the number of ministries and independent authorities, another one argues that SCEP was eliminated because its policies were perceived as an obstacle to economic growth. The change has created uncertainty about the future and political support for environmental management, has reduced federal presence at the regional level, and overall weakened the system and its main subsystems such as environmental inspectorate or pollution monitoring.</p> <p>Public interest in environmental matters declined in the late 90's after having played a pivotal role in the early transition phase. Environment appears to have become a lower government priority: e.g. the first draft of the Government's Economic and Social Development Plan in 2000 did not even mention environmental goals.</p> <p>Russia has been an active player in international environmental affairs and entered into international commitments through joining a number of conventions, including the Convention on EIA in a transboundary context (effective in 1997).</p> <p>Overall, the political and social context had been supportive for the emergence of an environmental management system, however more recently, the restructuring and weakening of the environmental management system had an adverse effect on the functioning of the EA system</p> |
| Proposed Rating | 3 |

DESCRIPTION OF RUSSIA'S POLITICAL SYSTEM

- 3.1 The Russian Federation is a federal state which has 89 constituent "Subjects of Federation", comprising oblasts, krais, and republics. It has a population of 146 million and covers an area of about 17,000,000 square kilometers. By constitution, environmental management is in principle a shared responsibility between federal and regional authorities, although the federal government can preempt regional authority where it sees a need for federal government intervention.
- 3.2 The roots of Russia's EA system can be traced back to the decision making process for 'economic' projects in the Soviet Union which was characterized by an engineering approach that relied heavily on technical norms and construction standards, with subsequent review by independent experts ('expertise') to check the quality of the proposal and the project documentation. The EA system evolved from these origins, influenced by three broader developments: (i) the transition towards a market economy and democracy and related reforms of the environmental management system; (ii) increased public awareness for environmental risks and pressure on the Government to safeguard public health; and (iii) the international development of the EA system and Russia's integration into international environmental commitments, such as Espoo, the Convention on Transboundary EIA (UNECE 1991), which brought along also increased international scrutiny of Russia's environmental management.
- 3.3 The **Russian Federation has been in transition** for the last decade from a centrally planned economy towards a market economy. The transition has changed the roles of the state and has led to numerous reforms of the public sector and its institutions, including Russia's environmental management system (EMS). Being an integral part of Russia's public sector, the EMS was not exempted from these changes. The following brief overview of the evolution of the EMS since its early beginnings in the Soviet Union puts these changes into perspective.
- 3.4 **The Early Phase (1950-1970):** EMS focuses on prevention of industrial pollution through the construction of environmental facilities. In accordance with the regulatory acts of that time, each business entity, irrespective of jurisdiction, was to have treatment facilities where needed to mitigate industrial effluents. But lack of the required financial resources resulted in a gap between the stated environmental provisions and capacity of the state. That period also signaled the advent of early sanitary standards for maximum allowable concentrations (MAC) of pollutants in water facilities and atmospheric air. MACs were developed within the Ministry of Health to enhance public health.
- 3.5 **Phase II (1970 –1990):** Environmental Targets were being integrated into the national planning process and the State Committee for Environmental Protection was created. Section 14 entitled "Nature Conservation" of the USSR Plan of Social and Economic Development included targets for abating pollution, such as the volume of raw waste water to be treated or the volume of polluting substances to be recovered from emissions. In practice, the stated nature conservation targets

were rarely achieved. Environmental protection had a low priority and environmental measures often were financed from residual budgets. Violations of environmental requirements were rarely prosecuted nor did it affect the reputation of the offending enterprise. A comprehensive set of standards was developed in different sectors amounting to over 800 norms incorporated in regulatory documents of the USSR State Committee for Construction, Ministry of Health, sectoral ministries and agencies. In 1989, the USSR State Committee for Environmental Protection was established to coordinate the environmental protection activities dispersed across the sectors. Increased access to information and rising public concern about environmental risks were a strong driver for strengthening of environmental management.

- 3.6 **Phase III (1990 to 2000):** A set of specialized environmental management bodies is being created at different levels of government. The State Committee for Environmental Protection established a federal government network of branch offices (Committees for Environmental Protection) in each Subject of Federation and initiated in parallel the setting up of oblast, city and district level offices under local government authority. The structure of the competent environmental bodies reflected the core environmental management functions, including: pollution monitoring, environmental review; control, and regulation and nature use. The State Committee was first elevated to Ministry level in the beginning of the 90's and then downgraded again to State Committee level in 1996. In 1999, the system of environmental control alone employed over 5 000 specialists. The Environmental Management System (EMS) reached out to the public at large through environmental education. The main principles of environmental management were laid down in the National Strategy for Environmental Protection and Sustainable Development of Russia (approved by Presidential Decree No. 236 dated February 4, 1994). Revenues from environmental funds supplemented budget resources to implement environmental priority measures and gave the system of environmental management a degree of self-sufficiency.
- 3.7 **Phase IV (2000 to current):** Restructuring of EMS, including the abolition of the State Committee for Environmental Protection and the merger of environmental functions with the with the Ministry of Natural Resources. On May 17, 2000, the State Committee for Environmental Protection was abolished and environmental functions were absorbed into the Ministry of Natural Resources. Federal Offices at the territorial (regional) level drastically reduced their employment (in certain offices up to 50% to 70%), municipal and district level federal environmental inspectorates were eliminated, much technical staff was dismissed, and much uncertainty created about the future of the system. Some regional governments took initiative and created local environmental offices to pick up some of the workload of the diminished federal offices. However this process is taking place without a proper strategy and legislative basis. Appearance of new environmental authorities at the Okrug level with unclear labor division regarding oblast and municipal offices, and transfer of important functions (monitoring, certification, audit, support of SER) to semi-commercial government enterprises attached to the MNR has added to the uncertainty, making it difficult for businesses to know which exactly is the competent government office.

- 3.8 **Public interest** in environmental matters was perhaps greatest in the late period of the Soviet Union and early stages of transition, when information about environmental disasters became more widely available and environmental citizen groups were in the forefront of political reform. This public interest, and hence government priority of environment, declined in the late 90's. In the early 90's, the Government reacted to increased public interest in environment with stronger legislation and institutions, and improved mechanisms for public participation. By contrast, in 2000, the first draft of the Government's Economic and Social Development Plan in 2000 did not even mention environmental goals (an environmental section was later added). There was a brief resurgence of public environmental protest when the SCEP was abolished in 2000, but the principal public environmental concern at national level is currently the risk of storing imported nuclear materials. Concerns at the regional level vary and reflect specific local conditions.

Evolution of Russia's EA System: Part of an International Trend

- 3.9 The international development of the EA system was carefully followed by Russian experts and selectively changes were made to the Russian EA system to adopt new features. This evolution of Russia's EA system follows a general pattern in the transition countries of Eastern Europe and the former Soviet Union which Cherp (Cherp 2001) has described in three stages:
- 3.10 Stage 1: **reforming the socialist environmental appraisals inherited from the USSR.** In most countries, this phase took place in the 80s, when EA procedures were established with independent expert reviews. EA outcomes were linked to a permitting system administered by newly created environmental agencies.
- 3.11 Stage 2: **Radical Reforms in CEE and gradual transformation of EA legislation in the NIS.** Most countries of Central and Eastern Europe which are potential EU accession countries accelerated EA reforms in the 90's to adapt to EU requirements. This meant introduction of strong elements of public participation, screening, and scoping. By contrast, in the NIS transformation was more gradual with neither the motivation nor the resources of accession countries available. Nonetheless, some new elements, such as public participation procedures were introduced, while the division into a separate EIA and SER was maintained, as well as an undifferentiated broad coverage of the EA system and reliance on pre-reform planning and design rules.
- 3.12 Stage 3: **Adjustment and Deepening of EA Practice.** During this advanced stage, the EA process is further deepened, e.g. by piloting strategic EA and incorporating the requirements of the Aarhus Convention on public access to environmental information (UNECE 1998). Advanced EU accession countries have entered this phase, responding to the evolving EU legislation while NIS countries have selectively adopted reform elements in legislative changes, e.g. for public participation, however, with implementation lagging behind.
- 3.13 A significant dimension of the EA evolution in the NIS is the transition from a relatively inflexible engineering standard based approach towards a more flexible approach that looks comprehensively at environmental risks and seeks, in a cost-

effective manner an optimal solution which reconciles commercial and environmental objectives. For example, strict Soviet construction regulations for gas stations require, largely inflexible, minimum distances to housing and other economic activities. By contrast, in an advanced EA system, the analysis would focus on risks (to population, ecosystem, etc) and propose solutions which, if appropriate, could vary the distances as long as there are adequate risk mitigating factors built into the proposal.

Evolution of Russia's Environmental Assessment (EA) System

- 3.14 Russia's EA evolution follows to some extent this general pattern. However, the more recent institutional changes appear to have slowed down this development. In more detail, the key milestones of Russia's EA system evolution can be summarized as follows:
- 3.15 **Stage 1 (1940 – 1990). Emergence of Environmental Standards and Expertise and Creation of the EA system.** Russia's EA system has its roots in the decision-making process for investment ('economic') projects of the Soviet Union. Elements of an EA system can be found in planning rules as early as 1949, for example, in the Resolution of the USSR Council of Ministers "On Measures to Control Pollution of Atmospheric Air and to Improve Sanitary and Hygienic Conditions in Settlements". Expert panels (expertise) existed in the Ministry of Construction (Gostroi), Planning (Gosplan) and many other agencies at federal and regional level to review the quality of planning documents and their compliance with laws and standards. Typically, activities needed a positive conclusion from the expert review process before getting permission to finance and implement the project or program
- 3.16 In 1985, the USSR State Committee for Construction approved Building Standards and Rules (SNIP 1.02.01-85) "On Composition, Preparation and Approval Procedures of Design/Costing Documents for Construction of Enterprises, Buildings and Structures" that made recommendations for a feasibility study with respect to the rational use of natural resources and for the development of an Environmental Management Plan, hence a precursor to the EIA.
- 3.17 Dissatisfaction with the effectiveness and enforcement of the scattered environmental requirements in several agencies led in 1988 to the creation of the Soviet State Committee for Environmental Protection and the new institution of the State Environmental Review (SER) by decree of the Council of Ministers¹¹. This SER was granted further power by the Decree on 'Urgent Measures to Improve the Environment' of 1989, which required that "no project financing or implementation shall be carried out without a positive conclusion of the SER".
- 3.18 In parallel, in 1988, the new State Committee on Environmental Protection issued instruction obliging project proponents to conduct an assessment of environmental impacts and to include the findings in the project documentation submitted to SER. These were the precursor to EIA regulations.

¹¹ Decree on the Radical Reform of Nature Protection of January 7, 1988.

- 3.19 **Stage 2 (1990 – 2000). Consolidation of the SER and Creation of OVOS as a separate component of the EA system.** The SER was made the cornerstone of Russia's EA system in the Law on Environmental Protection. Following the signing of the Convention on EIA in a Transboundary Context in 1992, the Government developed the EIA Regulation "On approval of Regulations on EIA in the Russian Federation" (#222 dated July 1994) which was confirmed by the Ministry of Justice but for lack of broad support, was not issued as a Decree of the Council of Ministers. The Regulation is also referred to by OVOS, its Russian acronym. The SER process was codified in the 1995 Law on SER and complemented by more specific implementation guidelines. New EIA/OVOS Regulations which treats EIA and SER as parts of one process were passed in 2000, a few days before abolition of SCEP.
- 3.20 **Stage 3 (2000 – current). Re-organization of the EA system as part of the Environmental Management Restructuring.** Following the dissolution of the State Committee for Environmental Protection in 2000, an effort was made by MNR management to restructure the SER by delegating its functions to a specially created federal state owned agency "Gosecoexpertiza". The Government emphasized the independence this organization would have from other MNR functions, such as licensing of natural resource use. Funding was to come from fee revenues. However, eventually, this idea was abandoned since it did not conform to the 1995 ER Law and its funding was not secured. Following intensive consultations, the MNR agreed that SER functions would rest with the Division of State Environmental Review within the State Environmental Protection Service (MNR Order dated 06.10.2000, # 363), the Statute of the Division was approved in MNR Order dated 30.10.2000, #454).
- 3.21 Yet another change in the management structure of the MNR headquarters took place in 2001 which resulted in the dissolution of State Environmental Review Division and the establishment of the Department for State Environmental Review and Norm Setting. The Department for State Environmental Review and Norm Setting is not any more part of the Environmental Protection Service, but reporting directly to the Minister in a pattern similar to the Human Resources and Accounting. The reporting line of the dedicated SER offices in the regional committees varies. Most often they report to Deputy Committee Chairman with responsibility for the State Environmental Protection Service.
- 3.22 Public concern over the abolishment of the SCEP and the weakening of the EA system in 2000 led MNR to convoke a working group, that comprised academics, experts and the public (Order dated September 6, 2000, #326) to elaborate a new EA concept. The group failed to arrive at consensus with respect to the SER. One group proposed a conservative option to restore the SER system with minor changes. The other proposed more drastic changes to improve the state environmental review process, including changes in relevant legislation. The new MNR administration that came to office in 2001 did not continue the Working Group.

4. LEGAL AND REGULATORY FRAMEWORK OF THE EA SYSTEM

| | |
|--------------------|--|
| Lead Questions | <ul style="list-style-type: none"> ü Does the EA system have clear legal foundations? ü Are the key elements of internationally accepted EA systems clearly defined in specific regulations? ü Is specific guidance provided on implementation? |
| Summary Assessment | <p>Russia's EA system has clear legal foundations: the State Environment Review Law of 1995, and the Regulations for Environmental Impact Assessment (OVOS 2000), as well as the more recent Law on Environmental Protection (2002). While efforts have been made under the recent Environmental Protection Law to integrate these two components, they remain separate processes, which are not well coordinated.</p> <p>Most key elements of internationally accepted EA system are, at least in embryonic form, present in Russia's EA legislation and regulation. Over the last 10 years, new elements have been added, e.g. providing the opportunity for screening and scoping, as well as stronger rules on public participation.</p> <p>The true weakness of the legal framework is the lack of coherent implementation guidelines. In the absence of such guidelines, proponents depend on case-by-case decisions of officials which can add to preparation cost and time and creates uncertainty and invites corruption. The lack of clear implementation guidelines can be seen most strongly in the areas of screening and scoping, public disclosure and access to information, and strategic environmental assessments.</p> <p>In one important area the EA legislation seems to be inconsistent: the new Law on Environmental Protection of 2002 (Article 9) allows for the delegation of certain SER responsibilities to regional governments including those on reviewing objects subject to compulsory SER at the regional level. Meanwhile, Law on Environmental Review of 1995 clearly reserves SER authority to the federal government only. A possible interpretation of this clause is that (i) there is a contradiction between these two regulations, and (ii) the new LEP supersede the older LER and offers an opening for regional governments participation in SER. and supersedes the older ER Law.</p> <p>Despite these deficiencies, Russia's legal and regulatory framework is assessed as satisfactory (rating of 4), which is generally a supportive framework for EA, with a need to be refined and to fill regulatory gaps.</p> |
| Proposed Rating | 4 |

LEGAL FOUNDATIONS FOR THE EA SYSTEM

- 4.1 This chapter reviews the laws and regulations which govern Russia's EA system. It includes a description of the principal legal documents and their linkage to other regulations governing project development and approval. It then analyzes the extent to which the key elements of internationally accepted EA systems are present in Russia's EA laws and regulations. The underlying methodology for this assessment is described in Annex 1.2. Actual on-the-ground implementation EA system will be reviewed in the next chapter.

Principal Elements of Russia's EA System: State Environment Review and OVOS

- 4.2 Russia's EA system consists of two subsystems – State Environmental Review (SER) and Environmental Impact Assessment (EIA) or OVOS, the Russian acronym for the EIA regulation. Conceptually, the processes are sequential: the EIA is the environmental assessment conducted by the proponent of an economic activity, which later on is being reviewed by the SER. In reality these subsystems are fairly independent. They are regulated by different regulatory acts, implemented by different EA actors, pursue different purposes and objectives, target different legal consequences. The key elements are:

- Ø **The Environmental Impact Assessment is conducted by the Proponent of an economic activity.** The proponent is guided by the need to apply for and get approval of SER, and less by an desire to improve project design.
- Ø **The State Environmental Review (SER)** is the central piece of Russia's Environmental Assessment system. It is conducted by a specially authorized state body (Ministry of Natural Resources) and its regional branches (offices at the 'territorial level'). A positive SER conclusion is a mandatory prerequisite for the implementation of a proposed development. As such, SER is one step in the government's approval process for projects and programs.
- Ø **Public Environmental Review (PER)** is a form of public participation in EA. In actual practice, it expresses public opinion and performs an independent analysis of a proposed development.

Environmental and EA Legislation

- 4.3 The following table provides an overview of the principal legislation and regulations governing Russia's EA system.

Table 4.1. Principal Environmental Assessment Laws and Regulations in the USSR and the Russian Federation 1985-2002

| Year | Title of Legal Act | Summary |
|--------|--|---|
| USSR | | |
| 1985 | Decree of the Supreme Soviet of 3 July "On the Implementation of Nature Protection and Natural Resource Use Legislation" | Directed the government to develop regulations for the mandatory SER of new technologies and materials as well as of infrastructure projects and modifications to industrial facilities. |
| 1985 | Instruction of the State Construction Committee on Developing Project Documentation for Constructing Industrial Establishments, Residential Buildings and Facilities, had been in force until 1995 | Required designers to incorporate " <i>the complex assessment of the adequacy of planned measures to use natural resources rationally and prevent negative impacts on the environment</i> " into project documentation |
| 1988 | Decree of the Central Committee of the Communist Party and the USSR Council of Ministers: On the Radical Perestroika (Reform) of Nature Protection | Entitled the newly created Nature Protection Committee to conduct SER of all planned activities (projects, plans, and programs) |
| 1989 | Decree # 827-1 of the USSR Supreme Soviet: On Immediate Measures of Environmental Improvement Instruction of the State Committee of Nature Protection on the Order of Conducting SER | Prohibited the implementation of activities that did not have a positive SER resolution. Required OVOS documentation to be submitted for SER |
| 1990 | OVOS Provisional Instruction (1990-1992) | Introduced the concept of OVOS as a process with distinct stages and documentation |
| Russia | | |
| 1991 | Law on the Protection of the Natural Environment of the Russian Federation | Legally defined ecological review and required it for all types of activities |
| 1992 | Guidelines on Conducting the Assessment of Environmental Impacts (OVOS) of economic developments (construction, reconstruction and conversion) at facility siting, feasibility studies and preparation of project documentation. | Described OVOS process in detail, considered as being in force till the late 1990s. It was crucial for formation of the EIA (OVOS) component of the EA system |
| 1993 | SER Regulations | Comprehensively described a SER and the responsibilities of different authorities |
| 1994 | Executive Order No. 222 of the Ministry of the Environment introducing: Regulations on Conducting the Assessment of Environmental Impacts (OVOS) in the Russian Federation (OVOS Regulations) | OVOS made mandatory for specific types of activities, partially, to comply with the Convention on Environmental Impact assessment in Transboundary Context (UNECE 1991) |
| 1995 | Instruction on the Order of Elaboration, Approval and the Content of Project Documentation for Construction of Buildings, Facilities and Enterprises. Construction Norms and Rules (SNIP 11-01-95) Order of the Elaboration, Approval and the Content on Substantiation of Investments into Construction of Buildings, Facilities and Enterprises. Construction Rules (SP 11-101-95). | Required incorporation of the EIA (OVOS) "volume" (section) in documents substantiating the proposed investment and the environmental protection volume in the project materials. Both documents should reflect the findings of environmental assessment. |

| Year | Title of Legal Act | Summary |
|------|--|--|
| 1995 | Federal Law on ER | Elaborated major principles of and detailed the responsibilities for SER and public ecological review (PER) (did not mention OVOS) |
| 1996 | Resolution of the Government N 698 "On the Approval of the Statute of Procedure for Conducting State Ecological Expertise" | Further elaborated the provisions of the Federal ER Law (did not mention OVOS) |
| 1997 | Ordinance N 280 of the SCEP "On the Approval of the Reglament of Conducting the State Environmental Assessment" | Established detailed procedures for SER, as conducted by Environmental Protection Committees (did not mention OVOS) |
| 1995 | SNiP 11-01-95 and SP 11-101-95 implementation guidelines | Clarified the content of the OVOS and environmental protection volumes of project documentation and outlined the process of preparing them and obtaining the necessary permits |
| 1996 | Construction Norms and Rules (SNiP) 11-02-96 Engineering Investigations for Construction. The Main Principles. | Required carrying out certain engineering studies during project design (including some environmental studies) |
| 1997 | SP 11-102-97 «Engineering and Ecological Investigations for Construction» | See above |
| 2000 | OVOS (revised) Regulation on Environmental Impact Assessment of Planned Economic and Other Activities | Established a universal procedure of environmental assessment of project and strategic activities |
| 2002 | Environment Protection Law (LEP 2002) | Refers for the first time to OVOS and confirms validity of Law on SER (1995). Art. 9 opens possibility for Subject of Federation Administration to participate in SER under special agreement. |

Source: World Bank (2002), updated for this study.

The New Law on Environmental Protection (LEP-2002)

4.4 The general principles of SER and EIA have always been included in the Law "On Environmental Protection". The newly adopted (January 2002) Federal Law "On Environmental Protection" (LEP-2002) which became effective recently and therefore evaluation of its impact on the regulatory framework and EA practice can only be tentative at this stage. The LEP-2002 is a framework law with few provisions directly related to implementation. However, it includes for the first time in an environmental law a direct reference to OVOS, thereby elevating the status of the EIA process. It also, opens up the additional possibility to enlarge the powers of SOF authorities in the SER process, on the basis of specific agreements with the Federal authorities (see below Article 9). This represents a significant departure from the Law on Environmental Review which clearly stipulates (Article 13) that only federal specially authorized bodies have the right to conduct the SER and creates legal uncertainties. This uncertainty needs to be resolved. So far, no Region has fully tested the new provision.

Law on Environmental Protection (2002)**Article 9. Delineation of Powers in the Field of Relations Connected with Environmental Protection between the Governmental Bodies of the Russian Federation and the Governmental Bodies of Russian Regions**

...Agreements between federal executive governmental bodies and executive governmental bodies of Russian regions on the transfer of a responsibilities in the field of relations connected with environmental protection, in particular, in the field of a state environmental expert review of the objects subject to compulsory state environmental expert review conducted on the level of Russian regions shall be concluded in compliance with the Constitution of the Russian Federation and federal laws.

Federal Law on SER (1995)**Article 13. Specially authorized state bodies in the field of environmental review**

....The specially authorized state bodies in the field of environmental protection shall be a federal body of the executive power specially authorized thereto by the Government of the Russian Federation and specially authorized in the field of natural environmental protection, and its territorial bodies, which shall have an exclusive right to conduct a state environmental review and shall perform relevant functions through their units specialized in the field of the organization and conduct of the state environmental review.

State Environmental Review: key laws and regulations

4.5 The main legal act for environmental review in Russia is the Federal Law “On Environmental Review” (SER Law 1995). Legislation defines SER as the verification of the conformity of a planned activity to environmental requirements and the determination of the acceptability of this activity, conducted in order to prevent potential negative environmental impacts and associated social, economic and other consequences.

Box 4.1. Principles of State Environmental Review (ER Law Article 13)

The process of Environmental Review is based on the following principles:

- Presumption of potential environmental danger of any economic and other activity;
- Mandatory requirement of positive SER conclusion on implementing the activity is made;
- Integrated character of assessing environmental impacts of proposed activities;
- Adequacy and comprehensiveness of the information submitted to environmental expert review;
- Independence of experts of environmental expert reviews, while they are performing their duties in the field of environmental review;
- Scientific soundness, objectivity and legality of conclusions of environmental reviews;
- Openness, participation of public organizations and consideration of public opinion;

Source: Law on Environmental Review of 23.11.1995 #174-FZ, Art. 13

4.6 SER is organized by a specially authorized (or competent) body of the federal government. As such, the SER Department of the Ministry of Natural Resources and its regional branches have the sole right and responsibility to organize and conduct SER. Depending on the scale and nature of the proposed activity, SER is conducted at the federal or regional level, as specified by Art. 11 and 12 of the

SER. The SER authority appoints an expert commission to undertake an independent review of the documentation submitted for review or decides to undertake the review in-house. The outcome of SER is a conclusion, which can be positive or negative. A positive conclusion is a necessary precondition to proceed with implementation of an activity.

- 4.7 The SER procedure is specified in detail by the **Order of Conducting SER** issued in 1997. The order defines the documents to be submitted to SER, the procedure of forming an expert commission and its operation, the division of responsibilities between experts and specially authorized authorities, and the format and the procedure for endorsing the SER conclusion.

Environmental impact assessment (OVOS) - key laws and regulations

- 4.8 The ER Law of 1995 requires that 'environmental impact assessment materials' should be submitted to SER [art. 14]. However, the SER does not explain the concept nor the procedures for preparing an 'environmental impact assessment'. These are explained in more detail in the framework 'EIA/OVOS Regulations' and the 'Instruction on Environmental Substantiation', which were issued by the State Committee for Environmental Protection, as well as in design and construction rules passed by the State Construction Committee (Gosstroj). These regulations are discussed below.

- 4.9 OVOS Regulations are the legal framework document regulating the environmental impact assessment. It defines EIA as:

“a process facilitating an environmentally sound decision with regard to a proposed economic or other activity by identifying potential adverse impacts, assessing environmental consequences, taking into consideration the public opinion, developing mitigation and preventive measures.”(Art. 1.1)

- 4.10 OVOS 2000 issued by the State Committee for Environmental Protection in 2000 replaces an earlier regulation issued by the Ministry of Environmental Protection in 1994. OVOS 2000 corrects inconsistencies and gaps of the 1994 EIA Regulations. According to analysis undertaken by Cherp and others (Cherp *et al.* 2001), the 2000 EIA Regulations introduced the following main innovations:

- It treats EIA carried out by the proponent, and SER as elements of a single national procedure of impact assessment; [Art 1.1.];
- It extends the area of application of the said impact assessment procedure on all types of project-related activities and potentially on strategic decisions (putting OVOS regulation in compliance with Federal Law on Environmental Review, 1995);
- It offers a detailed description of the impact assessment phases, established the rights and obligations of the proponent, government bodies, the public and other participants of every phase, in particular it has provided the phase of the Terms of Reference development;
- It provides a clearer procedure for public consultations in the area of impact assessment; and

- Establishes the obligations of the Proponent, including: (1) starting EIA as early as possible in the project cycle, (2) considering alternatives to the proposed activity, and (3) organizing public hearings or other forms of public participation.

4.11 **Design and Construction Rules by the State Construction Committee (Gosstroj).** Besides OVOS Regulations, there are a number of other regulations defining the responsibilities of proponents in the environmental assessment. Construction rules and guidelines issued by the Gosstroj are the most significant of these documents. The Construction Rules SP 101-11-95 define the requirements for the so-called 'Substantiation of Investments' (SI), which are prepared before the final project documentation and contain the main parameters of the planned activities. According to SP 101-11-95, the SI should include the section 'Assessment of Impacts on the Environment'. However, the Construction Rules do not provide specific requirements for the OVOS section, but instead refer to relevant regulations of environmental authorities. In practice, these 'relevant regulations' are the OVOS 2000 discussed above.

4.12 **OVOS Regulations at Subnational Level.** Regional Environmental Protection Committees have also started publishing guidelines, such as a general environmental assessment (OVOS) handbook published in Ekaterinburg with assistance from the US Agency for International Development and the "Instruction for OVOS of underground construction in Moscow".

Other Legislation with Reference to EA

4.13 SER and EIA requirements (environmental requirements) in Russia are based on many legal and regulatory acts. Among those are various Codes, laws, Presidential decrees, Government resolutions, orders issued by ministries and agencies, other regulatory acts. These documents address various requirements to a proposed development, potential impact on the environment, decision-making procedures and steps, methodology of calculations, and etc. Apart from the Federal Law «On Environmental Review», the mandatory nature of State Environmental Review is reflected in about 20 federal laws, most of which are listed below.

- The Water Code of the Russian Federation -1995 (Article 80 and 105).
- Forest Code of the Russian Federation (1997) – Article 65.
- Urban Development Code of the Russian Federation (2000) – Article 28
- Land Code of the Russian Federation (2001)
- On Wildlife (1995) – Article 20.
- On Continental Shelf of the Russian Federation. (1995) – Articles 31 and 34.
- On Use of Atomic Energy (1995) – Articles 10 and 28.
- On Land Reclamation (1996) – Article 23.
- On Safe Handling of Pesticides and Agrochemicals (1997) – Article 20.
- On Destruction of Chemical Weapons (1997) – Articles 7 and 12.

- On Exclusive Economic Zone of the Russian Federation (1998) – Article 27.
- On Industrial and Consumer Wastes (1998) – Articles 10 and 12.
- an Inland Sea Waters, Territorial Sea and Adjacent Zone of the Russian Federation (1998) – Article 34.
On Capital Investment Activities in the Russian Federation (2000) – Article 14.

- 4.14 **Sanctions.** The Code “On Administrative Offences” has provisions regarding environmental offences. It has a new article on the breach of the Federal Law «On Environmental Review». Article 8.4 “Violation of law on environmental review” of the Code stipulates the following violations are subject to administrative fines: non-compliance with legislation requirements on mandatory implementation of state environmental review or undertaking of activities which do not correspond to documentation which was approved by SER. If an offence is construed as a crime, the Penal Code of the RF will apply.
- 4.15 In addition to the already mentioned guidelines from Gosstroi, a number of guidelines for non-governmental organizations on participating in the state and public ecological review and OVOS processes have been produced. Two recent publications, CPPI (2001)) and Cherp et al. (2001) are intended to serve as guidance for environmental assessment training and practice.

EA Link to the Project Cycle

- 4.16 The key actors in the EA process are:

- Ø the **proponent/developer** of the proposed activity who will invite (hire) a project designer and an EIA designer to prepare required project documents, including EAM);
- Ø federal specially authorized entity responsible for the State Environment Review of the documents, that is the MNR and its branch offices at the ‘territorial level’ (Subject of Federation); these regional offices report to the federal Ministry of Natural Resources and are distinct from the environmental offices of regional and local government, which report to their respective regional or local authority.
- Ø the **government of a Subject of Federation** (or a local government), which will identify and agree technical conditions for the project operation, enter into a land site selection agreement with the proponent, and eventually will issue a project implementation permit; it occasionally also organizes public hearings.
- Ø the public/community (non-legal entities), which may participate in certain aspects of the environment review and EIA preparation, may be represented by non-legal entities.

- 4.17 **The three stages of** environmental assessment are (i) preparation of the Environmental Assessment Materials (EAM) by the proponent; (ii) review of the EAM by SER authority, either by in-house staff (for simple cases) or by an independent expert panel (for more complex cases) and, in addition, possibly also

through a Public Environmental Review; (iii) finally, approval of the SER conclusions by the SER authority.

- 4.18 **Preparation.** The preparation stage involves several steps. The required document structure, scope, format, as well as the schedule and rules for its review are regulated by the relevant requirements of the State Committee for Construction of Russia, the MNR of Russia, and other regulatory acts. The required 'supporting documents' are: (i) Declaration of Intent; (ii) Substantiation of Investment (SI); (iii) Construction Project Design Plan/Construction Project Design, plus five supplementary documents, including TOR for SI and Construction Project Design and a Technical Report on the results of the engineering studies.
- 4.19 As part of the project documentation, the proponent has to prepare Environmental Assessment Materials, which provide an assessment of the environmental impact of the proposed activity. EAM are meant to support preparation of project documentation at different stages. EAM include (i) Scope of Work (TOR); (ii) draft EA Materials as an input to the development of Investment Substantiation; and (iii) final EA Materials as input to the development of the Construction Project Design Plan/Construction Project Design. The EAM are submitted to the SER.
- 4.20 **Review.** Once the EAM are received, a SER official makes a first quick review of the application to determine its completeness and to assess the fees. Depending on the complexity, the SER will decide on the need for and the composition of an independent expert panel to review the compliance of the project documents with environmental requirements and other applicable laws.. The basis for the review is all the documents included in the EAM. Typically the review focuses on the Substantiation of the Investments Document and the Construction Project Design Plan/Construction Project Design. The number of panel experts can range from as low as 3 to over 20 for complex cases. In simple cases the SER will undertake the review in-house.
- 4.21 **Approval.** After completion of the review, the competent SER authorities approve the conclusions. The approval means that the conclusions conform to prescribed procedures and environmental requirements.

Table 4.2. EA and the Project Cycle: Key Steps and Actors

| Key Project Development Step | Proponent | Specially Authorized State Body (MNR) and SER Expert Panel | Public and Others |
|-------------------------------------|--|---|--|
| Preparation | Declaration of Intent Scope of Work (TOR for EIA) Substantiation of Investment EA Materials | | Public Participation Consultations with other Regulatory Bodies Public Hearings |
| Review | | Review of EAM by Independent Expert Panel or SER Expert SER Conclusion | PER |
| Approval | | Competent SER Authority approval of SER Conclusion | |

KEY FEATURES OF RUSSIAN EA LEGISLATION AND REGULATION

4.22 This section assesses key features of Russia's EA legislation and regulation. The summary table 4.3 provides a ranking for each of the relevant aspects. Annex 1.2 provides the guidelines based on which the various aspects have been ranked. Scores range from 5 (comprehensive and best practice) to 1 (incomplete and deficient). Given the distinct legal basis for SER and OVOS regulations, they have been presented in separate columns.

Table 4.3. Key Features of Russia's EA Legislation and Regulation

| Criteria | SER–Legislation | OVOS - Regulation | Proposed Ranking |
|--|---|--|-------------------------|
| Coverage (Scope of Application) of EA System | Coverage is broad, includes Policies, Plans, Programs, and Projects (Art 11,12) | Equally broad. Environmental Protection Law 2002 that documentation for any project or plan contain assessment of environmental impacts and is subject to SER. | 4 |

| | | | |
|---|---|---|-------|
| Comprehensiveness of Definition of environment (Breadth of EA) | Law on Environmental Protection of 2002 provides with a very broad definition of environment including components of natural environment as well as natural, quasi-natural and anthropogenic objects. Moreover, the definition of 'natural environment' is included. Article 4 specifies objects for safeguarding the environment including ecosystems and cultural heritage objects. | | 4 |
| | No specific definition of environment. However, the 2002 Law on Environmental Protection offers a broad definition, including ecosystems, biodiversity, and cultural heritage. | Focused on the impacts from pollution on land, air, and water. No specific requirements for coverage of social and cultural assets. | |
| Provision for Screening | No provision in the law for screening, but (1) federal and regional level of SER submission and (2) three categories (complex, medium, simple) provided in implementation guidelines | Regions have the right to develop simplified procedures for projects with no significant environmental impact, in coordination with federal authorities. | 2-3 |
| Provision for Scoping | No explicit provision for scoping. However, TOR for SER need to be prepared and could serve as scoping instrument. | No formal review by SER authorities of TOR (Scope of Work) for EIA. Public consultations provide opportunity to influence scope. | 2 |
| Consideration of Alternatives | No specific requirement. | Required, including "zero" alternative | 3 |
| Assessment of environmental impacts and preparation of environmental management plans | Impact Assessment required as part of Environmental Assessment Materials for SER. | Impact assessment and identification of mitigation measures required. No specific requirement for EMP, although key elements included in EIA requirements. | 4 |
| Provision for Strategic Environmental Assessments | Policies, Programs, Plans, draft laws, standards are subject to SER (Art. 11 and 12). No specific procedures to conduct SEA. | No specific provision for SEA. EIA procedures developed primarily for economic activities and investments though formally applicable for other activities | 3-4 |
| Public Participation and Consultations | Public Participation allowed; public representatives can be involved either in SER (as observers) or in parallel Public Environment Review process (Art 19, 20). The public has (limited) access to information. Consultations with other agencies mandatory. | Public participation required at specific EIA stages: Scope of Work, Draft and Final EA materials. Procedures for public communication, timing, and means of information disclosure exist. Consultations are mandatory. | 3 - 4 |
| Disclosure of Information and | Disclosure required only for results of SER. Can be | Disclosure of TOR, draft and final EA materials required | 3 |

| | | | |
|---|---|---|---|
| Results | restricted based on vaguely defined confidentiality clause (e.g. Art 24) | | |
| EA procedures are integrated into decision-making | A positive SER conclusion is necessary before planned activity can be implemented (Art 18.5). For pieces of legislation (e.g. bills) this requirement is not obligatory | EIA part of project preparation cycle. Each project documentation (substantiation of investment) needs to address environmental issues. | 4 |
| Provision for monitoring, follow up and post-project analysis exist | SER requires provision for environmental monitoring; State Environmental Protectorate responsible for compliance control and enforcement. (LER, Article 18.6). | Follow up provided by mandatory SER. | 4 |

Coverage of EA System

4.23 Russian legislation provides for a broad coverage of the EA system. According to the Environmental Protection law and the Environmental Review law, SER is mandatory for all *projects* as well as for *plans and programmes* of territorial or sectoral development, technical norms, draft legislation, etc. [SER, Art. 11,12]. Thus, SER is required for both project and strategic-level activities. Furthermore, a positive SER decision is required before the activity or plan can be implemented. Besides individual projects OVOS Regulations apply in principle also to activities at a strategic level (plans, programs, etc.). However, specific provisions of the Regulations are primarily applicable to project-type activities

Definition of Environment

4.24 The definition of 'environment' determines the 'breadth' of the EA system. The recent Environment Protection Law introduces a broad definition of environment, which covers not only land, water, air, but also natural resources, such as forests, and ecosystems, natural landscapes and biodiversity. The law also refers to cultural heritage. (Art. 4)

4.25 The ER Law prescribes to consider environmental as well as related social and economical consequences of a proposed activity. No specific definition of environment and environmental impacts can be found there; these notions are specified in the recent Environment Protection Law. The OVOS regulation focuses primarily on some particular aspects: namely the impacts from pollution on land, air, and water, and in addition which requires the developer to consider demands for land, waste generation, impact on demand for transport and other potential sources of pollution.

Screening

4.26 EA legislation has no clear guidelines for screening, although both for EIA and SER make some reference to it. However, the law leaves much discretion to the

competent authorities to develop specific implementation guidelines. This led to great variations among regions: few have developed guidelines, such as Moscow City or Altai, but most have not. Hence, in practical terms, Russia's EA system lacks an universally accepted process for screening.

- 4.27 **Screening for EIA.** The OVOS regulation 2000 tries to clarify EIA requirements, at least at the federal level. At the territorial level, territorial authorities can simplify procedure in coordination with Federal Government for non-significant impacts. Hence responsibility to develop practical implementation guidelines has been delegated to the territorial offices. (**Article 3.3.3 of OVOS 2000**).
- 4.28 OVOS regulation encouraged regional Committees of Natural Resources to draft OVOS screening regulations/guidelines and submit drafts for approval on the regional level. No regions did manage to adopt such documents yet. There are a few examples of regional OVOS regulation. In four cases this work was initiated by regional Committees of Natural Resources (Vologda, Arkhangelsk, St.-Petersburg, and Leningrad Oblast). In Tomsk Region the Oblast Administration initiated this work and suggested an advanced approach.

Box 4.2. Draft Regulation for Screening for EIA in Tomsk and Arkhangelsk

Draft Regulation of OVOS process in Tomsk suggested dividing all proposals into three categories, in accordance with the value of potential environmental impacts and public concerns. Clear procedures for each category and screening criteria are suggested. The draft regulation is in the beginning of approval process.

In the Arkhangelsk Oblast draft regulation suggested similar categories. Category A (high environmental impacts) is used for activities which have to be subject to federal level SER. Category B and C (lower environmental impacts) are activities to be reviewed by SER offices at the territorial level. The differentiation between categories B and C depends, among others on the extent of public interests. Procedures for B and C are simple and clearly defined. No suggestions are being made for changing Category A projects (federal level).

- 4.29 **SER regulation** mentions screening in terms of severity of the case (complex, average, simple) in the implementation manual ¹², not in the law. There are no clear guidelines or criteria for screening and SER authorities have large discretion how to apply the criteria case by case. Some regions have developed their own guidelines, e.g. Moscow, Tomsk and Altai.

Scoping

- 4.30 Scoping is the process of identifying the significant environmental impacts on which the environmental assessment needs to focus on. The OVOS regulation provides opportunity for scoping at the stage of preparing the Scope of Work (SoW). SoW, which can be compared to TOR for EIA should contain relevant

¹² (The *State Environmental Expert Review Manual* published by the State Committee for Environmental Protection in June 1997 (Order #280)).

information, including the proposed content of the EIA materials and the main methods used (Art. 3.1.2 OVOS 2000) The proponent should make the SoW available to the public and discuss it with interested parties. However, there is neither requirement for formal approval of the TOR, nor are these TOR reviewed or commented by the SER. Another opportunity for scoping is provided by the ER Law which requires the competent authority to prepare TOR for the Expert Commission.

Consideration of Alternatives

4.31 ER Law has no specific requirement to consider alternatives. OVOS guidelines do require a description of alternatives to the planned activity with regard to engineering, siting, and technology. Options should be within the limits of the developer's possibilities and include a 'no project option. Little guidance is provided on how to compare systematically the environmental impact of these options.

Requirement for Analyzing Environmental Impacts and Environmental Management Plans

4.32 Analysis of environmental impact and identification of mitigation measures are integral parts of OVOS requirements and SER regulation. OVOS Regulation requires that the project proponent (or the designer whom proponent may choose to hire) should consider the following in the process of the analysis and assessment of environmental impacts of the proposed activity and to include relevant information in the EA materials:

- Project description and possible alternatives;
- Baseline environmental conditions and anthropogenic pressure;
- Impact identification and evaluation of proposed activities;
- Mitigation and environmental protection measures;
- Evaluation of remaining environmental impacts;
- Comparison of alternatives, include the “zero,” or “no-project” alternative;
- Presentation of a monitoring program; and
- Recommendations for post-project analysis.

Strategic Environmental Assessment

4.33 The ER Law provides for a wide range of EA application to strategic documents and decisions, including, policies, regional and sectoral development plans, investment programs, as well as norms and draft laws (Article 11 and 12). There are no specific guidelines, however, on how SEAs should be conducted different from a project related EA. OVOS is more narrowly focused on economic investment activities but does not preclude an application to strategic developments, such as investment programs.

Public Participation and Consultation

4.34 Public participation is an integral part of Russia EA legislation. Generally, the more recent law on Environmental Protection 2002 and the OVOS 2000 regulations show a tendency towards greater openness and transparency than the

earlier 1995 ER Law. There are three types of public participation: (i) during preparation of the EIA regulated by OVOS 2000; (ii) during preparation of the SER, and (iii) through a parallel process, the Public Environmental Review (PER), both regulated by the ER Law.

- 4.35 **Participation in EIA.** OVOS regulation emphasizes the principle of openness and transparency. It counterbalances the provision in the Law on Environmental Review which allows for limitation of access to information on the basis of an ill defined state or commercial secret clause (for example Art 24). OVOS regulation requires the proponent to undertake public consultations at several stages of the EIA process, including: (i) discussion of Scope of Work, TOR with interested parties and concerned agencies; (ii) public discussion of draft EAM, announcement of public hearings in the mass media, and holding public hearings and (iii) public discussion of the final EIA materials to be submitted to the SER as a part of project documentation and information of the public how comments have been incorporated. Furthermore, SER regulations call for consideration of comments received from the public during the EIA in the SER conclusions. Public consultations are not required for all proposed projects, it is recommended to take into account the level of environmental risks, uncertainty factor and public interest to the case (Art. 4.7, OVOS 2000).
- 4.36 The ER Law (Art 19) gives citizens and public organizations certain rights in the SER process, including the right to receive regulatory and methodological documents for SER, to be updated on the SER outputs, and, if a parallel PER is conducted, participation of PER experts in SER process as observers. Citizens can also submit, “well-founded written proposals on environmental issues”. Public opinion expressed during the SER must be taken into consideration in preparing the SER conclusion. The law is rather vague in terms of the format and scope of the information to be issued to the interested public.
- 4.37 The ER law (Article 20) provides for the option to conduct a Public Environment Review (PER). PER can be conducted by NGOs, whose statutes allow them to be engaged in such activities. The outcome of a PER is a non-mandatory conclusion, which can become obligatory after being endorsed by the specially authorized authorities. Otherwise, the law implies the similarity between SER and PER procedures, though the roles of PER participants are defined in much less detail. PER applications can be rejected if the SER involves information considered a state or commercial secret, or if the NGO is not properly registered (Art. 24).
- 4.38 **Consultations**, in the context of Russia’s EA system, refers to coordination among responsible authorities. Article 14.1 of the ER Law stipulates that the proponent should present for SER all necessary documents, including “positive conclusions or documents of coordination with other state institutions, in cases when the proposed economic activities are in their sphere of authority and with local administrations.” How this type of coordination is achieved, however, is not stipulated in the EIA legislation, although it is stated that coordination should be according to “relevant laws of the Russian Federation”.

Disclosure of Information

4.39 The Law on Environmental Review (Art 19) gives the public the right to receive information on the results of the SER. However, the regulations is vague on format and scope of the information to be provided. The clause on confidentiality gives proponent broad powers to restrict the disclosure of EIS and SER conclusions. There is also no requirement to inform the public about the start or the progress of a SER. Compared to the SER, OVOS regulation provides the public broader access to information, including TOR, draft and final EA materials.

Monitoring, enforcement, and compliance

4.40 A positive SER conclusion is a “mandatory precondition for the financing and the implementation” of any activity subject to SER (LER, Art 18.5). This however does not ensure yet, that results of the SER are being taken into account in the project design and implementation. The ER Law has therefore clear instructions for follow up and compliance control:

- the project proponent must carry out all activities strictly in accordance with the requirements of the state review (ER Law Article 27);
- the EIA must include special provisions for environmental monitoring, to be carried out by the project owners (OVOS); and
- the State Environmental Inspectorates must conduct state inspections of project implementation (ER Law Article 18.6). For that purpose, SER conclusions must be sent to the concerned inspectorate.

5. IMPLEMENTATION OF THE EA SYSTEM

| | |
|--------------------|---|
| Lead Questions | <ul style="list-style-type: none"> Ø Does implementation take place in accordance with legal requirements and established guidelines? Ø What are the main strengths and weaknesses in that regard and how do they vary systemically and regionally? |
| Summary Assessment | <p>Compliance with EA regulations varies: while there are indications that fewer cases are being submitted for SER review, those which are submitted typically comply with formal SER requirements. Compliance with EIA requirements, which are less scrutinized by SER, is lower, particularly with regard to public participation and preparation of TOR. Only few of the cases submitted for SER approval had an EIA prepared in line with OVOS 2000 regulations. Proponents indicated that they are not familiar with these regulations and SER regional authorities are reluctant to enforce their implementation due to lack of clear guidance. In particular, SER authorities do not control implementation of OVOS Regulations.</p> <p>The number of SERs conducted has declined on average by 30% between 1999 and 2001. While a decline in the number of SER does not necessarily point to a deterioration of the system – it could even be desirable if the result of a well thought through and implemented screening policy - the conclusion of this assessment is that Russia shows a worrisome combination of two negative trends: a decline in overall numbers due to declining capacity and a shift towards increased focus on cases with low environmental impact at the expense of coverage of cases with significant environmental impact in the absence of effective procedures for screening and scoping.</p> <p>The system has two major underlying shortcomings: (i) no differentiated EA procedures for activities with different degree of environmental risks, size, and complexity, and (ii) Insufficient integration of EIA preparation and its Review (SER). As a result, the proponent is unsure whether the EIA will eventually meet SER requirements and may develop an unnecessarily broad EIAs without focusing in-depth on priority environmental concerns.</p> <p>There exist isolated best practice examples in Russia, e.g. the screening model for Moscow, proposed screening mechanisms for the Altai Krai, Arkhangesk and Tomsk Regions that are under development. These initiatives can serve as reference to improve EA implementation throughout the country.</p> <p>Overall, EA implementation is rated lower (at 3) than legislation given that requirements are often not followed and opportunities provided by the law to enhance the effectiveness of the EA system are not being used. Finally, there are perverse incentives to load the system with environmentally insignificant cases to make up budget short falls</p> |
| Proposed Rating | 3 |

- 5.1 This chapter focuses on an evaluation of the on-the-ground implementation of the EA system. It follows the same structure used in the previous chapter to assess the key features of Russia's EA system, except for the assessment of the impact of EA on decision-making which will be dealt with in the following chapter 6.
- 5.2 The approach underlying this assessment is described in Annex 1.3. This assessment relies on field work in several regions, including Irkutsk, Rostov, Altai, roundtables with experts and other stakeholders and in-depth evaluation of sample EA cases. It also uses previous reviews undertaken by Russian and international experts, including a review of 100 EIAs by NPAF¹³. The picture which emerged from the field work reveals a rich diversity of realities, which coexist in Russia. Any evaluation is therefore a result of multiple, and not always consistent expert judgments.

TRENDS IN NUMBER OF SERs CONDUCTED

Table 5.1 Number Of SER Conducted At The Federal Level And Selected Regions

| # | SER Unit | Number of SERs by years and types of SER initiatives (see Note a)) | | | | | | | | | | | |
|---|--------------------|--|-----|------|------|-----|------|------|-----|-----|--------|-------------------------|------|
| | | 1999 | | | 2000 | | | 2001 | | | Total: | | |
| | | 1 | 2 | 3 | 1 | 2 | 3 | 1 | 2 | 3 | 1999 | 2000 | 2001 |
| 1 | Federal MNR | | | | | | | | | | 568 | 430 | 198 |
| 2 | Rostov Oblast CNR | 135 | 513 | 1199 | 72 | 387 | 1534 | 78 | 353 | 895 | 1847 | 1993 | 1326 |
| 3 | Irkutsk Oblast CNR | 3 | 144 | 378 | 5 | 182 | 96 | 3 | 120 | 97 | 525 | 283 | 220 |
| 4 | Altai Krai CNR | 106 | 157 | 205 | 230 | 125 | 890 | 156 | 226 | 109 | 468 | 1245 (599) see b) | 491 |

Note: a) SER Projects: 1 – Urban development documents; 2 – Pre-design and Design Documents; 3 – Other documents.

b) without Draft Standards and Permits for operating enterprises

- 5.3 **Federal Level.** The number of SER decreased by about 60% over the last three years from 568 to about 200. This decline needs to be seen in the context of the ongoing MNR restructuring, weakening of the SER capacity, and efforts to reduce SER workload at the federal level
- 5.4 **Regional Level.** The number of SERs declined in two out of the three regions. It experienced a sharp peak in one region and returned to its previous level in the third region. The category of 'other type of SER' experienced the greatest fluctuation. This category includes documents such as licenses, draft norms,

¹³ See Annex 1.3 for a summary of results.

policies and programs, other than standard project EIAs/Design Paper and urban development projects.

- 5.5 Different policies of the regions with regard to screening and scoping is one of the factors explaining the variations between regions and over the year; e.g. the peak in Altai in 2000 is explained by the decision to subject environmental discharge and emission standards for existing operations to SER, a practice which was stopped by MNR in the following year.
- 5.6 A large number of SERs does not necessarily mean an effective EA system. To the contrary, many Russian experts involved in this assessment concluded that there are too many SER conducted for projects with insignificant environmental impact, while not all projects with significant impacts are submitted to SER. Hence a decline in the overall number of SER, if the result of a well thought through and implemented screening policy could in fact increase the effectiveness of the system. However, with few exceptions, regions are lacking practical policies towards the reduction of the number of SERs. These, and other aspects, of the EA system are further explored in the following section.

ASSESSMENT OF KEY ELEMENTS OF THE EA SYSTEM

Table 5.2. Summary of Assessment of Key EA Elements¹⁴

| Criteria | State Environment Review | OVOS – Environmental Impact Assessment | Proposed Ranking |
|--|---|---|------------------|
| Coverage (Scope of Application) of EA System is adequate | Coverage by SER differs greatly between regions. Overall, there is a decline in the number of SER since 1999. However, there are indications that the number of SER cases with insignificant environmental impact is rising, which further diverts resources from significant projects. Number of cases of projects implemented without SER conclusions has risen, pointing to a weakening of overall environmental management | Coverage by EIA differs greatly. There is evidence that few projects fully comply with EIA requirements. In part, this is the result of unreasonable EIA requirements, in particular for small projects, and disused opportunities to simplify EIA procedure at regional level. | 3 |
| Definition of environment is comprehensive (Breadth of EA) | There is a tendency to expand the interpretation of environment, further supported by recent Law on Environmental Protection. However, so far little evidence that SER has increased attention to issues such as global biodiversity, ecosystems, or cultural heritage. | Few EIA, mostly related to internationally financed projects, reflect comprehensive definition of environment, as a rule, driven by the EA requirements of the funding organization and less by Russian requirements. | 3 |

¹⁴ See Annex 1.3 “Checklist” for Scoring Benchmarks

| Criteria | State Environment Review | OVOS – Environmental Impact Assessment | Proposed Ranking |
|---|--|---|------------------|
| Screening | In practice, Russia does not have differentiated SER processes for cases with different environmental impact. This results in lack of focus of SER resources on cases with significant environmental impact and can put unreasonable burden on proponents of activities with insignificant impact. Fee revenue is one incentive for SER authorities not to screen out cases with insignificant impact. | All projects that SER is required for are subject to EIA. There is no screening mechanism for EIA, despite the fact that OVOS 2000 gives Regions the right to develop such mechanism. One of the few exceptions is Moscow which has prepared a well thought through approach. | 2 |
| Scoping | TOR for expert panel are being regularly prepared, but used mostly for administrative purposes (number of experts, costs, etc). No review and formal approval of the EIA TOR by the SER. | TOR for EIA occasionally prepared and very rarely publicly discussed. | 2 |
| Alternatives are being Considered | SER looks for project alternatives in the EA Materials but would not reject a project because it did not elaborate alternatives. | Alternatives are considered for larger projects, less so for smaller projects. Quality of the identification and analysis of alternatives often less than satisfactory. Resistance to question fundamental project decisions, such as siting, already agreed with Authorities | 3 |
| Assessment of environmental impacts and preparation of mitigation plans | SER regularly focuses review on environmental impacts and mitigation measures. | EIA typically exhaustive in describing available baseline data and direct impact, e.g. from pollution, but much less detailed in describing cumulative and indirect impacts. Mitigation plans are often deficient and do not specify responsibilities, costs, although required by regulation. | 3 |
| Strategic Environmental Assessments | As a rule, strategic documents or laws are not subjected to SER. Lack of clear guidance and experience for conducting SEAs. | EIA procedures are not designed for SEA. | 2 |
| Public Participation and Consultations | Public Participation in SER and PER takes place. Limitations are occasional restricted access to information and lack of communication on ongoing SER. | Public Participation in EIA occurs occasionally, but rarely in full compliance with regulations. Requirements for public participation too burdensome for small projects with insignificant impacts. | 2 - 3 |

| Criteria | State Environment Review | OVOS – Environmental Impact Assessment | Proposed Ranking |
|---------------------------------------|--|--|------------------|
| Disclosure of Information and Results | EA related documents are released upon request. There are no defined requirements on the volume of EA information. In practice, this reflects the ability of a particular unit of a specially authorized body to hold public dialogue. No public announcement of the start of a SER (not required by law). | EIA rarely published. Those accessible to the public in many cases do not have a summary for non-technical audience. | 2 – 3 |

Coverage and Definition of Environment

- 5.7 Russia's EA legislation provides for a broad coverage of EA processes to a wide range of draft laws and norms, plans, programs, and projects. The interpretation of this broad definition has varied over time. Several factors have contributed to an extension of actual coverage during the second half of the 90s, which has led to a marked increase of the SER case load. With the simultaneous contraction of the SER institutional capacity, this expansion led to an occasional overload of the SER system and subsequent corrective measures to reduce again the workload to a manageable level.
- 5.8 Other than economic development, there are two additional drivers behind the **expansion of coverage**, and hence SER workload:
- a) **Expanding interpretation and changes of SER regulation.** The tendency to expand SER coverage has been existed for a while reflecting public views and ideas. Regional environmental authorities attempted to incorporate the review of emission and discharge permits for operating enterprises into the SER mechanism. This effort resulted from intention to involve free-lance experts for environmental auditing of operating facilities. This tendency has been mostly evident for Irkutsk CNR. (See Order No.3 of the CNR, dated January 6, 1998). The CNR specified the list of documents that are subject to SER in the region to include draft emission, discharge and waste production and disposal standards for operating enterprises. In 1998, the CNR reviewed 211 proposals for operating enterprises (including projects for reconstruction and upgrading and draft operational standards). The 2001 letter of the first Deputy Minister of MNR of Russia declared the SER of draft emission and discharge standards illegal (No AP-61/860). In addition, in 2000 the number of SER cases in Altai Krai more than doubled from 500 to over 1200, because it had started to review draft emission and discharge standards. This practice was later stopped by the federal MNR and the caseload returned to slightly below 500 in 2001. A similar practice could be found in Tver Oblast, which subjected over 10,000 cases per year to SER, including draft environmental standards [permits] for operating enterprises.
 - b) **A strict interpretation of EA requirements by the Public Prosecutor's Office** which demand SER reviews where such reviews were previously not required.

They rely on a strict interpretation of the Federal Law provision: “ and other activities which have an impact on environment. For example, in 2001 Rostov experienced a dramatic increase of health care related SERs, following an order by the Prosecutor’s Office that all health care facilities need to obtain a SER approval.

- 5.9 At the same time, there are indications that projects, some of them with significant environmental impact, are not subjected to SER. There do not exist exact numbers of cases when SER was avoided. But Tomsk Oblast Committee for Environmental Protection undertook a survey and found that between 1999 and 2002, the number of violations of projects implemented without applying for SER had significantly increased. Local experts see the downsizing of the environmental control offices as the principal factor behind this trend.
- 5.10 While it is generally believed, that internationally financed projects of large corporation generally adhere to SER requirements, there is evidence, that this is not always true. See Box 5.1

Box 5.1. Foreign Investors and Russian EA System

Surveys among international project proponents generally provide the impression that private sector, investors, and developers support and understand the principles of environmental review and the main provisions of EIA.

However, there is also evidence of noncompliance with SER and EIA requirements by project proponents and executive authorities in some background materials.¹⁵ A different picture emerges from these documents which show that investors and project proponents complain when SER intensified scrutiny and enforcement of regulations following the LEP and LER provisions. Some proponents proposed to reduce SER capacity, presumably to reduce what they perceive as an obstacle to doing business.

There is anecdotal evidence of foreign companies ignoring the EIA and SER procedures.

For example, in 2002 the MNR of Russia received the SER application package for the construction of a car manufacturer facility with participation of a large international company. The proponent of the project applied for SER after the actual construction of the project had started. The application was not accompanied by EIA outputs, materials of the public consultations were missing, and the public was not made aware of the proposed project. It took some effort from the experts and repeated discussions of the issue to make sure that the EIA materials were prepared. The project designers – representatives of the company – tried to explain the lack of the EIA materials by referring to a precedence with projects initiated by Russian companies. Also they tried unsuccessfully to ask for special treatment as a foreign company.

Screening

- 5.11 While regulation provides for the possibility of screening and gives competent bodies discretion to apply screening, in practice only few exercise this discretion. This has important consequences for EA system: it has led to an overload of the SER in certain regions, and put unreasonable burden on proponents of activities with minimal impacts, in particular small and medium size projects. This is in addition to the effect of an ever expanding interpretation of SER coverage mentioned above, which has led to increases in the number of SER cases presented to the competent authorities.
- 5.12 **Screening for EIA.** Since formally every SER requires some ‘environmental assessment materials’ (art 14 ER Law), some form of EA is necessary for all proposed projects. Since SER approval is for many proponents the principal objective for undertaking an EIA, proponents opt for undertaking a comprehensive EIA to meet the sometimes arbitrarily broad requirements of SER experts. Furthermore, the price for EIA preparation is negotiated between the proponent and the EIA consultant, and in part depends on the thickness of the EIA. This gives consultants an incentive to add superfluous information.

¹⁵ References for critical background information on the EA system can be found in the following documents: resolutions and panel recommendations of the All-Russian Conventions of Conservationists (1995 and 2000); the final documents of the Meeting on Environmental Violations (May 26-27, 1996); the documents of the scientific workshop “Regulatory Legal and Methodological Provision of Environmental Activities”; the explanatory note to the new draft federal law “On Environmental Review” (1997); the materials of the SER compliance investigation carried out by the General Prosecutor’s Office (1998); the materials of the Parliamentary Hearings (1999).

- 5.13 The lack of guidelines on assessing environmental impacts of proposed developments, on EIA scoping, legal documents on SER screening has made regional SER authorities to resolve the problems arising independently. One should mention Moscow case where mechanisms of EIA screening for proposed activities and classifying supporting documents have systematically been implemented. Moscow CNR developed a draft regulation on the “Environmental Classification of Economic and Other Activities, Project and Pre-Project Documentation” (Vasiliev 1996). The proposed regulation offers a model for screening of proposed activities which may pose environmental risks. The type of the activity, significance of environmental impacts, public concerns associated, and operational stage is considered within the EIA process. EIA participants are to prove the choice of adequate provisions for public participation and the form of state control: making an agreement with a specially authorized body, obtaining a permission from a specially authorized body of conducting SER. The list of SER objects was substantially limited. A group of activities that require no special review or approval was distinguished (Vasiliev 1998, Vasiliev 2001).
Members of the MNR Working Group (2001) revised approaches presented in the proposal and used them for their own work.
- 5.14 Such clearly developed screening guidelines provide the proponent good guidance on the volume, cost, and duration of the environmental assessment and greatly reduce the uncertainty if screening decisions depend solely on the case-by case decision of the competent authority.
- 5.15 Another regional EIA regulation was developed by the Tomsk Regional Administration that distinguished three categories of projects: (I) projects with large potential environmental impacts (screened out on the basis of a check-list and criteria suggested in the draft regulation); (ii) projects with low environmental impacts (regional SER level projects not covered under (i)); and (iii) projects which have caused great public concern (identified during the first stage of EIA, preliminary assessment or discussion of TOR). The similar EIA regulation was developed by the Arkhangelsk Region CNR; it has been under approval.
- 5.16 **Screening for SER.** Two parallel developments can be observed: an expansion of SER coverage and number of reviews, in part driven by uncertainty about which project should be exempted and a desire to increase SER related revenues, and the introduction of screening guidelines in selected regions, such as Arkhangelsk, leading to a reduction in the number of environmental reviews.
- 5.17 Rostov Oblast follows a strict interpretation of SER Art. 12 which explicitly excludes any qualification by project size¹⁶. Hence all projects undergo a SER, including those which likely have no significant environmental impact. A limited form of screening is applied to those projects submitted for SER: the SER expert who receives the EAM package screens the proposals by complexity into simple,

¹⁶ The following is subject to SER: “... Feasibility studies and drafts of projects for construction, ..expansion,.. and other economic objects of economic activity, irrespective of their estimated cost ..and form of ownership.” ([emphasis added]

medium, and complex, as provided by the SER regulation. The environmental authorities consider this a routine procedure to help determine the processing time, cost, number of inspectors per panel, number of working sessions. However, this procedure is not being used to determine whether there is at all a need for a SER or to apply a simplified process for projects without significant environmental impact. The authorities in Rostov point out that the law does not offer any alternatives to the SER process, or alternative SER procedures, and therefore do not see a need to elaborate specific screening guidelines. A reduction in the volume of SERs would also reduce the revenues from the SER process which help finance the overheads for the SER process, which are not fully covered by the budget allocation.

- 5.18 Tver Oblast is another example for an unqualified broad application of SER. The SER is conducted by a Specialized State Enterprise (SE), which has been established and contracted by the competent body, i.e. the CNR. SE reviews more than 10,000 cases per year, compared to about 500 in Altai and 250 in Irkutsk, regions with bigger area, population and size of economy. Most of the cases are small-sized project with insignificant environmental impact.
- 5.19 Fear of investigation by the State Prosecutor's office, as mentioned above, is another reason why SER offices hesitate to exercise discretion in exempting cases from SER. These entities often act on the basis of a strict interpretation of the Federal Law which says "and other activities which have an impact on environment" and discourage any deviation from comprehensive SER coverage. Hence, faced with a trade off between creating an unnecessary burden on proponents and the SER system or being accused of not complying with the law, authorities prefer to keep every project to the highest possible standard.
- 5.20 Possibly related to such fears, experts at the federal level have observed a trend that regional offices pass cases up to the higher level federal authorities instead of handling them locally, thereby running the risk of overburdening the federal system.
- 5.21 By contrast, Altai Krai has attached great importance to develop screening guidelines and to implement them. Following the Federal 'Decree 280 of the State Committee for Environmental Protection on the Order of Conducting the SER' (1997), Altai Krai adopted a new procedure to screen SER cases into the three types (simple, middle complexity and complex) and suggested a list of criteria for classification of SER cases into these three categories. The procedure is fully consistent with the Federal Order (1997). Cases are being handled differently according to their complexity, with regard to processing time and number of experts in the panel. In addition to streamlining the operation of the authority, clear guidelines have added transparency to the EA process and helped proponent to better plan the duration of the process. A simple screening model was developed for Arkhangelsk following case-by-case approach. The SER authority establishes an expert panel that reviews every case and determines whether the project is subject to SER and ranks it (simple, middle complexity and complex project, in accordance with the Order of Conducting the SER). One of the evident

drawbacks to be pointed out is lack of specific guidelines (this model acts on the basis of the Order of Arkhangelsk CNR of 2000).

Scoping

- 5.22 Both SER and OVOS regulations provide some opportunity for scoping through the requirement for preparing TORs for the Expert Panel and TORs (or Statement of Works, SoW) for the EIA (the Order of Conducting the SER of 1997 and OVOS Regulation of 2000). However this opportunity is rarely used for shaping and focusing the EIA or the review, and more often is used for formal purposes only, such as to determine the size of the expert panel.
- 5.23 The lack of integration between the OVOS and the SER system is most obvious in the fact that the draft EIA TOR are not being reviewed by the SER authority since the SER process only starts once the EA Materials have been submitted. Moreover, SER authorities do not take account of EIA TOR (if it is developed) during SER process though OVOS Regulation points out that EIA TOR is a part of EAM. As a result, the proponent does not receive guidance on the required scope of the EIA and have low motivation to think of it. Some proponent, and their consultants, chose to broaden the scope of the EIA, to be on the safe side. Consultants may have a self-interest to inflate the scope of the work and to increase the cost to the proponent. Alternatively, some consultants do not manage to convince the proponent who aims at getting formal approval of the project not its improving of the need for some investigations essential for the project.
- 5.24 However, a broad scope does not ensure that significant aspects are well covered. To the contrary, a review of sample EIAs found a voluminous collection of interesting, but irrelevant environmental data. This may also be a reflection of the academic tradition of EIA consultants and SER experts, and a lack of experience with prioritizing environmental concerns with a view to identify the most critical mitigation measures. Methods for prioritization, using e.g. economic valuation methods, is still new in Russia and not yet formally codified. Experts therefore risk to expose them to criticism by academic experts, when they try to use such methods.
- 5.25 According to OVOS regulation, the EIA TOR is to be prepared at the stage of notification and preliminary assessment, on the basis of e.g. the Declaration of Intent or at the stage of SI development and to be discussed with concerned stakeholders. Based on available evidence, only few TORs were prepared in accordance with these rules. Only in few cases was the Proponent able to use this provision to improve the project and relations with the stakeholders.
- 5.26 For example, in Samara Oblast, TOR for the EIA of a Highway Project was prepared timely during the development of investment substantiation based on the preliminary EIA. The TOR focused on the key environmental challenges identified in the preliminary EIA. The TOR were discussed with the stakeholders and gained their support, including an endorsement by the Samara Oblast CNR.

Consideration of Alternatives

- 5.27 Analysis of Project Alternatives provides an opportunity to address and eliminate environmental concerns through improved project design in contrast to just mitigating environmental impacts through environmental management measures such as pollution abatement. But EIA legislation remains rather vague how such systematic development and comparison of project options (engineering, siting, technological solutions) should be undertaken to attain environmental improvements. Alternatives were considered for some major projects, but not so for smaller projects. In the majority of smaller applications, such approach is justifiable.
- 5.28 In practice, the review¹⁷ by the National Pollution Abatement Facility (NPAF), the entity managing a World Bank financed credit line for environmental investments found that most of the proponents were not capable of a systematic analysis of project options. Too often they limited such an analysis to options which support the project proposal rather than undertaking an in-depth analysis of the project proposal from the point of view of enhancing the environment. As a rule, analysis of the proposed project options included a rather superficial comparison of the environmental situation with and without the proposed project on a given territory or a comparison of environmental impacts of two or three project or siting options. Commonly, such analysis is carried out to meet formal requirements or to substantiate the decision, which has already been made. There are exceptional cases where an in-depth analysis was undertaken, typically projects involving international partners or national high profile cases.
- 5.29 The NPAF review noted several reasons why the identification and analysis of options in EIAs is less than satisfactory, including: (i) careful consideration of alternatives adds time and cost to the EA process, which developer are hesitant to incur, in particular given and that (ii) EIA TOR often ignore or are silent on the requirement for considering project alternatives. Also, (iii) the project proponent may not wish to undertake a fundamental analysis of options, which could put into question some fundamental aspects of the proposed project, such as choice of technology, location, production capacity, which have already been endorsed through regional or sectoral development plans.

Consideration of Environmental Impacts and Environmental Measures

- 5.30 One of the main goals of EIA is to identify and assess potential environmental impacts of the proposed project. A reliable baseline description is the foundation for a good analysis. The majority of the EIAs in the NPAF review scored satisfactorily with regard to describing and analyzing baseline data and information. In fact, many EIAs spend too much effort on collecting 'interesting but irrelevant' data, another consequence of the lack of proper scoping .
- 5.31 Another important condition for a good EIA is a complete description of all relevant environmental impacts, including indirect and cumulative ones. Few EIAs provide a good detail on the way the project or projects might contribute to

¹⁷ See Annex 1.3 Reference Material

cumulative environmental impacts. Proponents have little motivation to undertake such complex analysis, given the additional cost and time of such analysis and the uncertainty whether SER would actually demand such comprehensive analysis. Typically, the EIA TOR are not specific on this point. Last not least, there is little technical support for such complex analysis.

- 5.32 The limited scope of project options and baseline analysis also affects the quality of the proposed environmental measures, which should detail the concrete actions to be undertaken by the proponent to mitigate undesired environmental impacts. These measures were often not sufficiently detailed, or occasionally even missing. E.g. it is common that these plans do not indicate responsible persons and costs, although the EIA regulation specifically asks for at least a preliminary list of such mitigation measures.
- 5.33 Stakeholders pointed out that it is difficult to propose specific measures at an early EIA preparation stage because project details are being developed during the subsequent design phase. There is also a widely held view among proponents, that there is no need to develop additional environmental measures in the EIA, beyond those included in the Section “Environmental Protection” of the Design Plan/Design of the Construction Project. However, the scope of these measures is typically limited to impacts covered by construction regulations.

Strategic Environmental Assessment

- 5.34 Formally, the scope for SEA is very broad in Russia, including policies, plans, programs, and draft legislation. Since there is no special procedure or legislation on how to conduct a strategic environmental assessment, its application depends largely on the interpretation of the competent authority and government. It is fair to assume that only a small fraction of such documents is actually submitted to the SER.
- 5.35 In substance, Russia has undertaken a number of reviews which could be classified as SEA, such as the Regional Environmental Action Plans for Upper Volga or Sverdlovsk Oblast, the Master Plan of the City of Moscow and a number of Sectoral Environmental Action Plans, e.g. for the chemical industry. However, these reviews were not driven by SER regulations and not subject to SER. In terms of public consultations, the above mentioned strategy documents would have met SER requirements.

Public Participation and Consultation

- 5.36 The EA regulation provides ample opportunities for public participation through three different processes: public participation during preparation of the EIA under the OVOS 2000 regulation, public participation in the SER, and participation through a parallel process, the Public Environmental Review (PER). But in spite of this formal encouragement of public participation, practical implementation of this critical aspect of the EA system varies greatly and often seems to fall short of what is envisioned by the law.

- 5.37 **Public Participation in the preparation of EIA.** EIA often do not fully comply with public participation requirements. However, there are examples when proponents involved the public. Cherp et al. (2001) cites the case of a multi-story car park where public hearings at an early stage of design revealed that the most significant problem was the inconvenient location of the driveway leading to the car park. At this early stage, the design could be adjusted without difficulty and public hearings prevented a potential conflict which could have delayed implementation of the project at a later stage.
- 5.38 The above mentioned NPAF review found that a majority of cases did not meet minimum requirements of public participation: they either lacked any form of public involvement or had only a perfunctory involvement which was not reflected in the EIA (Averchenko et al. 1998). There are three underlying issues: (i) the attitude of many project proponents, and, occasionally, also of the authorities, that public participation is an obstacle which delays project preparation. (ii) EIA consultants lack experience with organizing effective public involvement. These companies often have a strong engineering and science background but a weak when it comes to social science skills. (iii) A lack of clear guidelines which differentiate public participation requirements by project size. For many small projects with insignificant environmental impacts, the required public participation would impose an unreasonable burden. Finally, (iv) public participation depends on public interest and the existence of involved citizens. Interest of the public is typically focused on few high profile projects, but not on a systematic review of all EIA presented.
- 5.39 **Public Participation in SER** varies greatly across regions, depending on the degree of openness of regional authorities. A good example is Rostov Oblast Committee of Natural Resources which regularly allows the public to participate in SER panels, including if no parallel PER is conducted. In addition, some of the regions [examples] maintain an old practice to include representatives from the community into the state panel, based on a strict interpretation of the principles of openness and transparency included in the previous law on environmental protection LEP (1991). This good practice was given up in many places, when the PER was introduced with the 1995 ER Law, and the presence of public observers was limited to participation in PER.
- 5.40 **Public Participation through the Public Environmental Review (PER).** While the PER provides for a structured participation of the public in the EA process, it is frequently seen as rather weak instruments for public involvement, or even as a legacy of the USSR that serves the purpose of channeling and limiting the impact of public involvement. One of the limitations introduced through the Law is that the conclusions of the PER carry weight only to the extent that they are being reviewed and approved by the specially authorized SER body. While the PER conclusions are regularly considered by the SER, approval of the PER conclusion by the SER is extremely rare. One of the few examples is the Chita Oblast, Gold Mining Project (see below). The impact of PERs on project decisions varies. Box 5.2 highlights three examples with significantly different outcomes.

Box 5.2. Examples for Public Environmental Reviews

1.1 **The Nuclear Power Station Project in Rostov** provoked significant opposition from the public in Rostov Oblast and adjacent regions. The PER took several years and went through several phases. Eventually, the SER approved the project, contrary to the recommendation of the PER. This was widely perceived as a 'defeat' by the civil groups involved in the PER and contributed to a low or even cynical view of the PER process among these groups. It was the only case of PER undertaken in Rostov oblast.

In 1998, Kostroma Oblast conducted PER for a Solid Waste Recycling Facility. Results of this were incorporated into decision making by the Kostroma Administration and when conducting SER. This and subsequent public hearings resulted in rejecting the project. Instead a comprehensive Solid Waste Management Program was established including partial screening of the waste, recycling of valuable components and disposal of the rest of the waste in a disposal site.

In Chita oblast a small-scale project of gold mining was planning an expansion of its activity. The public had great concerns because: (1) the location would have clashed with a proposed national park and (2) the site was a cultural heritage site for traditional Buryat Lamas meditation. The Buryat community gave vocal testimony of the cultural significance of this sacred place. A PER was initiated by the local Administration and a Chita regional NGO. It was conducted in the very short

5.41 As the above example show, public participation through SER, PER, and the EIA is often the only vehicle for public participation in important development decisions. Hence public interest is not necessarily limited or even focused on environmental issues. Public interest is strongest when there is widespread opposition to a proposed development. Public consultation has been used to a lesser extent to discuss project details and to improve project design.

Disclosure of Information

5.42 **Access to SER Information.** Limited access to information is one of the key obstacles preventing effective public participation in the SER. The federal regulatory framework does not provide for the format and scope of the SER output information to be issued to the public. Hence, much depends on the attitude of the competent authority towards openness and transparency. Good practice includes notification of the public not only about the outcomes of SER, but also about significant upcoming and ongoing SERs. For instance, the Kemerovo Oblast gives a summary of SER applications. Whenever the application is of particular public interest, SER conclusions are published in mass media.

5.43 Other regions inform the public only within the limits of the SER conclusion, without access to the full underlying documentation and content of the SER conclusion. This greatly limits transparency and an effective public participation. The Federal Government started in 2000 publishing the summary of SER findings and conclusions on a web-site but in 2001 this practice was stopped. Other regions, like the Nizhny Novgorod Oblast which used to publish some SER

conclusions for vital projects on a web-site for legal and regulatory documents¹⁸, stopped this practice in 1999.

- 5.44 **Documenting EIA outputs.** A frequent shortcoming is the lack of an EIA summary for the non-technical public which is required by OVOS 2000 (Art. 5.1). Typically, EIA outputs are not published, although in principle they should be discussed with stakeholders and the public. Exceptions exist, including some internationally financed projects.

¹⁸ The website name used to be [www.inforis.ru].

6. IMPACT OF THE EA SYSTEM

| | |
|--------------------|---|
| Lead Questions | <ul style="list-style-type: none"> ü Are the EA recommendations reflected in decision making and implementation? ü Is the burden imposed by the EA system on the regulated community acceptable and commensurate with the benefits? |
| Summary Assessment | <p>The EA system is designed to influence (i) project preparation through EIA's close linkage to the project development cycle and (ii) project decision making through the veto role of the SER conclusion (no project can be financed or implemented without a positive SER conclusion).</p> <p>In practice, the EIA process has a limited impact on actual project decision making, except in selected cases of highly visible and internationally financed projects. The primary motivation of developers when undertaking an EIA is to obtain SER approval. The EIA is rarely perceived or used by the developer to improve the project, program, or plan. Factors which hamper the impact of the EIA are: (i) limited quality of data, analysis, and recommended activities; and (ii) timing of EIA preparation, often after fundamental project decisions have been made.</p> <p>The SER process continues to command a high level of formal compliance and is widely used as a 'seal of approval'. Conclusions of the SER are as a rule reflected in the project design. However, there are indications that the quality of the SER conclusions is declining. SER's quality control of EIA is focused on compliance with formal requirements and inflexible standards. Two factors contribute to this trend: limited quality and lack of focus on environment priorities of the EA materials, and declining capacity and number of SER professionals and experts to undertake in-depth reviews.</p> <p>The impact on proponents, in terms of time and cost, is overall moderate but varies greatly. Small and medium size projects with no significant environmental risks are disproportionately burdened – the cost of the EIA and SER requirements are not commensurate with the potential benefits from avoided environmental damage. This points again to the lack of appropriate screening and scoping procedures.</p> <p>Larger national enterprises can afford to hire experienced consulting firms with good connections to the concerned authorities to manage on their behalf the EA process. Compliance with EA requirements becomes a manageable cost of doing business. But evasion seem to be increasing, mostly to avoid time delays and possible scrutiny by public consultations.</p> <p>Large projects involving international financing undertake the EA process primarily to satisfy requirements of the international lender or parent company, which includes compliance with local regulations. The concern is less with the regular costs for EIA preparation and processing, which are comparable to international standards, but the 'hidden costs' which result from ambiguous regulations, dependency on arbitrary case-by-case exemptions, and processing delays due to insufficient capacity of SER authorities. Typically, the international company limits its involvement in this process by seeking a Russian partner to manage the EA process and to shoulder the hidden costs.</p> <p>Overall assessment of EA impact is moderate (3). While the regulatory powers to impact decision making and implementation are considerable, the system is undermined by weak enforcement capacity and at times impractical requirements, which can impose a disproportional burden, particularly on small projects with no significant environmental impact.</p> |
| Proposed Rating | 3 |

- 6.1 This chapter attempts to assess the impact of the EA system. This is probably the most complex part of the overall assessment. Ideally, the question is: “to what extent has the EA system achieved its stated objective? And at what cost?” If we state the identity of SER and EA objectives stated objective of Russia’s EA system is: “

“to establish whether a planned economic and other activities meet environmental requirements and determine whether it is acceptable to put into effect an object of an environmental review with the purpose of preventing the possible negative impact of such an activity on the natural environment, resulting in social, economic, and other consequences brought about by the implementation of an object of an environmental review.” (ER Law Article 1).

- 6.2 Again, ideally, the question is: “what is the value added of the EA system?” Have negative impacts been prevented as a result of the application of EA? There is little or no information available on the ‘with’ and ‘without’ EA system situation which would allow this question to be answered in a comprehensive way. Therefore, this assessment adopted indirect or proxy measures for this purpose. The first measure relates to the quality of the EA: “... does the EA system address the most significant environmental issues?” This issue was partially addressed in the previous chapter. The finding was that Russia’s EA system focuses too much on environmentally insignificant activities because of a lack of effective screening and scoping procedure. The second measure relates to the coverage of the EA system: “are most activities with significant environmental impacts covered by the EA system?”. The answer to that question was no; there are indications that the number of projects which go ahead without an EA is increasing, at least in certain regions.
- 6.3 In this chapter, we ask in addition, whether EA outputs are reflected in the planning decisions and design of those activities, which have undergone an EA. And further, whether EA outputs are reflected in the actual implementation of such activities.
- 6.4 The above four measures give an approximation of the ‘benefits’ of the EA system. These are largely intangibles (Kjoerven and Lindhjem 2002). No attempt to value in monetary terms has been made. To approximate the ‘costs’ of the system, we look at the burden the EA system imposes on the regulated community.
- 6.5 The findings in this chapter are based on field work, interviews, and business surveys.

INTEGRATION OF EA OUTPUT IN DECISION MAKING: QUALITY CONTROL

- 6.6 Conceptually, the EA process is designed to have a significant impact on decision making. The SER process has evolved from, and remains integral part of, the traditional project decision making process. The EIA is designed to be an integral

part of the project documentation and to feed into preliminary and final project design. A detailed description of these interlinkages is provided in the tables of Annex 1 (tables on the EA and Project Cycle). In addition, SER has been given broad coverage and a strong legal authority, which gives it the power to veto and stop any process which is deemed to be incompatible with environmental requirements. Finally, both SER and EIA are designed as vehicles to bring in the views of the public into the decision making process.

- 6.7 In practice, however, the EA process has a rather limited impact on actual decision making, except in selected cases of highly visible and internationally financed projects. The prevailing view emerging from the field work is that the process meets formal SER requirements in most cases, but on the substantive side does not meet its stated objective, which is to facilitate environmentally sound decision making. The EIA process is perceived largely as a formality, which is a necessary step to obtain SER approval. Only rarely is the EIA perceived or used by the developer to improve the project, program, or plan.
- 6.8 **Limited quality and relevance of the environmental analysis and proposed measures.** The lack of effective scoping and lack of SER oversight at the time of preparing the TOR for EIA make developer spend resources and efforts on analysis which is often of little relevance to decision making. Furthermore, the quality of environmental data on which the analysis builds, typically baseline data, has become questionable, with the wide spread collapse of the environmental monitoring system. Generating or obtaining more accurate environmental information would require collecting primary data and increase the cost to the proponent.
- 6.9 **Availability of EA recommendations after project decisions have been taken.** Key project decisions are being taken early in the process. E.g. the selection of sites often results from agreements between developers and local governments at the inception stage of a new project. There is little motivation for the developer to take another look at such fundamental decisions. It is also not unusual that the EIA is prepared as a formality to meet SER requirements **after** the Investment substantiation, or even after completion of feasibility study, is more or less completed. At best, the EIA then confirms project design decisions and improves on the environmental mitigation measures.
- 6.10 **SER's quality control of the EIA is focused on compliance with formal requirements and inflexible measurable standards.** The SER focuses in its review of the EIA materials on compliance with environmental requirements and completeness of documentation submitted by the proponent. Compliance with environmental requirement is often narrowly and mechanistically understood as meeting environmental standards. This reduces willingness to consider innovations, e.g. through cleaner technology, which would justify adjustment of standards. Aspects not regulated by specific environmental norms, such as e.g. conservation of eco-systems, are likely to be left out or treated only superficially. Missing documentation, however, could be cause for rejection.

- 6.11 The conclusions from the SER process for investment proposals are, by design, yes/no decisions. This provides helpful clarity in the decision making process. Consistent with this approach, the SER uses majority vote to reach a SER conclusion. However, at the same time, this approach limits the SER's ability to advise and guide the subsequent project design process. A stronger reflection of trade-offs, and representation of minority views, could give valuable guidance to the developer and influence project design. Thinking in terms of trade-offs between costs and environmental risks is essential for a private sector investor – however, is incompatible with the engineering approach based on rigid standards, which most technical experts have been trained in.
- 6.12 **Decline in the comprehensiveness of SER during recent years.** The quality of and effort put forward by the proponent in preparing EIAs is reflective of the response capacity of the regulatory authorities, i.e. MNR. With a decline of MNR's SER capacity, it is likely that EIA quality and efforts will decline, too. The field study and review of sample EIAs from the last four years gave some indications for declining comprehensiveness of the SER: (i) a general decrease in the length and substance of the decision documents, and (ii) critical comments in the conclusion are increasingly devoted to procedural matters, not environmental key issues.
- 6.13 SER has shown little interest in controlling the compliance with **EIA procedures**, such as proper involvement of the public in EIA preparation. Non-observation of such requirements, which are clearly spelled out in OVOS 2000, rarely leads to a SER rejection. The motivation of the proponent to comply, with these sometimes cumbersome EIA requirements, is therefore low. It also has to be noted that these requirements are often inappropriate and impractical for smaller and medium size projects.

INTEGRATION OF EA OUTPUT INTO PROJECT-IMPLEMENTATION: FOLLOW UP MONITORING AND ENFORCEMENT.

- 6.14 The SER process is designed to ensure implementation of EA results during project and program implementation (ER Law Articles 18.5 and 18.6). Explicitly, SER conclusions have to be sent to the Environmental Inspectorate for follow up inspections.
- 6.15 In practice, however, the impact of the EA system on-the-ground at the stage of project and program implementation seems to be declining. Two factors contribute to this trend: (i) first, it appears that the number of activities which are being implemented without a SER approval has increased in several oblasts, and in Tomsk Oblast it today represents the most frequent form of violation (80% of all violations related to EA, up from 20% in five years ago); and (ii) second, the system of monitoring and enforcement through the Environmental Inspectorate has been seriously weakened during the ongoing re-organization of Russia's environmental management system. This means fewer inspections of projects during construction and after completion to verify whether agreed mitigation measures are being implemented and less incentive for the proponent to incur the additional costs which may be associated with mitigation measures.

IMPACT ON REGULATED COMMUNITY

- 6.16 The EA process imposes costs on the regulated community in terms of time and expenditures. An overall assessment of the EA effectiveness need to take these costs into account. Information was gathered directly from proponents through interviews and business surveys, as well as regulatory documents on fees for EA procedures. The limited data available only allow for a qualitative assessment, but not a quantitative analysis of these costs.

Duration and Cost of EA Process

- 6.17 **Duration.** Time between inception of the EIA process with declaration of intent to submission of EA materials for SER can range from 2 to 12 months. Time for the SER from initiation to conclusions typically last about 6 months for complex SER, and 2 to 6 months for medium complex and simple projects.¹⁹
- 6.18 **Costs.** Proponents distinguish between three types of costs: (i) costs of preparing EIA and other project documentation, typically for consulting fees and facilitation of public consultations; (ii) official costs which are regulated by law for expenditures such as fees, costs of experts, documentation; and (iii) additional 'hidden' costs which are not regulated by law. **Cost of EIA** varies between few thousand up to several million dollars, depending on the size of project and the scope of the study
- 6.19 **Official rates of fees** are stipulated in the Order of Conducting SER. They include costs for experts and overheads. In the sample regions costs ranged from US\$15 to US\$5000 and have to be paid upfront, at the beginning of the SER. While labor costs for experts are fixed by regulation, overhead costs can be adjusted. The charge for overhead costs has increased from 33% of total fees in the early 90's to about 90-125% today, most likely to compensate for declining federal budget. This further increases the burden on smaller proponents.
- 6.20 Of much greater concern to the proponents are the "**hidden costs**" which result from uncertainty and vagueness in the regulations and inadequate processing capacity of the regulatory authorities. The following ones were mentioned most frequently by the companies interviewed for this assessment:
- **Lack of clear guidelines**, e.g. for the scope of the EIA, leading proponents and consultants to include unnecessary data and analysis with little importance for the SER nor project design;
 - **Conflicting requirements**, e.g. between OVOS and Construction Regulations; which lead to protracted discussion between agencies, delays in the approval process and require adjustment in project design to accommodate the needs of the respective agencies;

¹⁹ For international reference: a World Bank study on Strategic Environmental Assessments indicates a time range from few days to 3 years and cost range (cost as percentage of Project) of 0.1 to 4%. (WB SEA 2002 p. 25)

- **Changing requirements**, between the time EIA is prepared and SER is conducted; which requires duplication of efforts;
- **Impractical requirements** due to lack of differentiation between different types of projects. E.g. the EIA requirements for public consultations are not always appropriate for small and medium size projects; as mentioned, only few regions have established simplified procedures for smaller projects. Proponents then depend on case-by-case exemptions by individual inspectors or have to live with the risk of being technically out of compliance;
- **Weak institutional capacity and understaffing of the SER** authorities, which results in increased time spent on processing and delays in decision-making.
- **Ill-defined labor division and coordination of federal and regional SER** offices, leading some proponents to submit SER applications at both federal and regional level, adding extra costs. This trend is reinforced by regional staff increasingly sending SER cases to higher level authorities at federal level for decision making, because they do not feel technically and staff wise sufficiently equipped to address additional cases. They often are returned because the federal system would otherwise be overloaded.

6.21 Uncertainty creates costs for the proponent in different ways. Instead of following statutory requirements, proponents need to negotiate each step with individual officials of the SER authorities, which is time consuming. Requirements vary between different offices and regions (in case of larger projects) and add to project costs for having to adjust project designs accordingly. It also encourages clientilism, when a SER applicant is sent to a 'friendly company' to get the EIA or an additional expert statement done. Local governments use gaps in environmental legislation to suggest investors to channel financial resources for EA preparation to local companies and academic institutions.

Relative Burden on Proponent

6.22 **Has the cost of the EA process, both official and unofficial, become a serious obstacle for doing business in Russia?** A business survey conducted by FIAS (FIAS 2001) in 2001 indicates that environmental regulations pose a low to moderate obstacle to doing business. Environmental regulations were scored on average 2.5 on a scale of 5 (5 being a major obstacle) and ranked 23 out of 30 possible obstacles. The numbers indicate variations between regions, which should be interpreted with caution. E.g. Tomsk Oblast with the highest share of firms (20%) rating environmental regulations as a major or serious obstacle. It is known that since 2000 the specially authorized body has dramatically changed its policy in the field of SER screening. Nowadays it promotes expanding SER coverage firstly by making small projects with likely insignificant impacts subject to review. At the same time, this region is known among EA experts as a positive model for having developed an effective local SER regulation, with good follow

up and monitoring of EA implementation²⁰. The low rating in other oblasts does not necessarily indicate an efficient and business friendly EA system, but more likely, based on the findings in this assessment, points to a weakened system which poses bureaucratic, but manageable, obstacles.

| 6.23 | Subject of Federation | 6.24 | Scored (5 = serious obstacle) | 6.25 | Mentioned as major or serious obstacle by % of firms | 6.26 | Mentioned as moderate obstacle by % of firms |
|------|-----------------------|------|-------------------------------|------|--|------|--|
| 6.27 | St. Petersburg | 6.28 | 2.2 | 6.29 | 6 % | 6.30 | 14% |
| 6.31 | Leningrad Oblast | 6.32 | 2.5 | 6.33 | 13% | 6.34 | 24% |
| 6.35 | Novgorod Oblast | 6.36 | 2.3 | 6.37 | 10% | 6.38 | 21% |
| 6.39 | Tomsk Oblast | 6.40 | 2.7 | 6.41 | 19% | 6.42 | 32% |

6.43 **Source:** FIAS (2001); approximate figures read from graphs

6.44 **The burden of the EA process affects different groups of proponents differently.** Estimates of the overall cost of the EA process as a percentage of the project costs vary enormously, ranging from as low as 1% to over 30%.²¹ Proponents can be grouped in three categories:

6.45 **Small and medium size projects** with no significant projects are face often prohibitive costs if they were to fully comply with EIA and SER regulation. The cost of EIA preparation could even exceed the project cost. In the absence of formal screening rules, SMEs often reach informal agreements with local officials for exemptions or do not apply for SER in the first place. If strictly enforced, EA requirement pose a barrier to entry and operation for this group of enterprises.

6.46 **Large projects** not involving international financing are mostly concerned with lack of clear regulations and the associated delays in processing documents. These proponents can afford to hire experienced consulting firms, which may have 'friendly relations' with the government offices and then manage the process on behalf of the proponent. The EA process typically does not present a significant barrier to entry, but is considered as necessary cost of doing business. Nonetheless, there are companies which try to avoid the entire process.

²⁰ Tomsk Oblast, e.g., developed the statistics of EA related violations, quoted earlier in this report.

²¹ This information is based on interviews in Rostov, Irkutsk, and Altai.

6.47 **Large projects involving international financing** complain that they are being subjected to stricter requirements than Russian companies. At the same time, these requirements are similar to those imposed by the international parent company or lending organization and hence do not represent an unusual burden. Meeting the EA requirements of the lender is the principal motivation of the proponent, and compliance with Russian laws is part of these requirements. These proponents are mostly concerned about delays in the process, and less so with the cost, which in absolute terms can be as high as US\$20 million for an oil exploration EIA. These international proponents will typically limit their exposure by seeking a Russian partner to manage the EA process and to shoulder, where necessary, the hidden costs. Although this seems to be the rule, there is anecdotal evidence of foreign companies ignoring the EIA and SER. A car manufacturing facility involving a large Russian and US company applied for SER only after construction had started without proper EIA and public consultation. Another example is a large drink manufacturer who constructed a manufacturing facility without a SER based on an agreement with the local Government, which itself had failed to follow SER guidelines.

7. INSTITUTIONAL CAPACITY

| | |
|--------------------|--|
| Lead Questions | <ul style="list-style-type: none"> ü Is the EA processing capacity adequate to handle regular workload? ü Is staff involved in preparation of EA process adequate in number and qualification? |
| Summary Assessment | <p>Institutional capacity, in particular technical staff capacity, which traditionally has been a strong point of the system, has now become a weak link in Russia's EA system. There are clear and objective indications that Russia's institutional capacity to conduct State Environmental Reviews has declined. Staff reductions of over 50% are not unusual, although there are exceptions where reductions were as small as 20%.</p> <p>The caseload per SER employee has increased by 20% or more, in some regions even up to 300%. Reportedly, there are also longer delays in processing time, but evidence for this is sparse. An increase in caseloads per SER staff needs to be interpreted carefully: it could be driven by an 'inflation' in the number of SER cases with no significant environmental impact, i.e. the earlier mentioned lack of differentiation. This may actually not pose a serious constraint on the processing capacity of the office, other than distracting from significant EA cases. It could also be caused by a decline in staff number for a comparable workload. In this case one can find overburdened staff which will have to limit the scope of its review to a manageable level, more likely concentrating on easily verifiable formal requirements.</p> <p>Working conditions are characterized by job insecurity and low payment for experts which put into question the ability of the SER system to attract and retain in the future the technical staff needed to sustain the system.</p> <p>In addition to the SER proper, environmental management capacity, in general, has shrunk weakening the 'support' and 'follow up part' of the EA system. particularly with regard to environmental control at the regional and district level, and reduced follow up to EA decisions. In few regions, Oblasts have set up and strengthened their own environmental offices and partially compensated for the reduction in federal presence. But as mentioned, regions are not allowed, so far, to undertake SER and environmental control.</p> <p>Capacity and capacity building has suffered from the large scale reductions or moving around of technical staff. There are highlights, however: some regions, such as Altai Krai, offer successful models of survival including continuous staff training and development and bring together professionals from several regions to share practical experience.</p> <p>Overall, institutional EA capacity is rated marginally satisfactory (3-2). Without effective measures to attract and retain qualified staff and experts and making more effective use of existing capacities in regional offices through a re-defined labor division between different levels of government, the EA system is at risk of deteriorating into a purely perfunctory bureaucratic process and becoming irrelevant for decision making.</p> |
| Proposed Rating | 3 - 2 |

INTRODUCTION – CHALLENGES

- 7.1 This chapter assesses the institutional capacity of Russia's EA system. This has become a highly contentious question since the reorganization of the environmental management system in 2000. Critics argue that the environmental management system is being undermined, if not dismantled, through reduction in staff numbers at federal MNR offices, both at federal and territorial level. The opposing view is that the system had been overstaffed, and that with appropriate prioritization and outsourcing of technical and clerical work, the system will become leaner and more efficient.
- 7.2 The assessment of institutional capacity is made difficult by a number of factors.
- a) Capacity is adequate if institutional resources are sufficient to handle the workload. This could be described as supply and demand for institutional capacity. It is therefore not enough to only look at the supply side: availability of staff, facilities, budgets. One also needs to review the demand side: is the workload justified to achieve the overall objective of the EA system?
 - b) Quality is an important factor, but hard to measure. It is not sufficient just to undertake a head count, but ideally should also measure the quality of the work done. (see previous chapters, impact, e.g.).
 - c) The capacity of the EA system depends on supporting services from institutions not directly identified as the competent body. Hence it is not enough to only assess the capacity of the SER authority, but also of related services, such as the Environmental Inspectorate responsible for following up on implementation.

Institutional Resources

- 7.3 **Declining Number of SER Staff.** The number of SER staff has declined throughout the country dramatically, reducing staff at federal and selected regional offices to less than half of its pre-reorganization numbers in 1999 (see table 7.1). On the other hand, some regions, such as Altai, have managed to avoid significant cuts in staff and feel adequately prepared to cope with the SER workload.

Table 7.1. Changes in Number of SER Staff at Federal Level and Selected Regions

| 7.4 | | 7.5 | 1999/2000 before Reorganizati on | 7.6 | 2001/2002 | 7.7 | Change |
|------|-------------|------|---|------|-----------|------|--------|
| 7.8 | Federal SER | 7.9 | 33 | 7.10 | 15 | 7.11 | - 54% |
| 7.12 | Rostov SER | 7.13 | 29 | 7.14 | 8 | 7.15 | - 72% |
| 7.16 | Irkutsk SER | 7.17 | 18 | 7.18 | 6 (a) | 7.19 | - 66% |
| 7.20 | Altai SER | 7.21 | 10 | 7.22 | 8 | 7.23 | - 20% |

Notes:

(a) as of January 2002. An additional 4 staff in a technical-information support division created in the Federal Entity "Irkutsk Territoria Achieve of Geological Review" dealing with land issues.

- 7.24 **Quality of Staff and Staff Development.** Staff morale has plummeted in most of the SER offices covered by this assessment. The massive firing, relocation of environmental staff to other branches of the MNR, reduced status as a subordinate unit in a Committee of Natural Resources, and constant changes in management, regulations and institutional set up, have all contributed to create uncertainty and fear among staff, and limited the willingness to take decisions. There are exceptions: Altai Krai has managed to keep its SER staff largely intact and is continuously working on staff development and training through exchange of experience and national workshops for EA practitioners, as recently as April 2002.
- 7.25 **Experts.** The SER system heavily relies on availability of qualified experts to staff the expert panels. The number of experts per panel varies – it can reach 20 or even more for a complex SER managed at federal level, and includes typically 3 to 5 for less complex cases handled at regional level. Generally, there is no shortage of qualified experts. SER offices reported rosters of up to 250 experts, of whom between 20 and 50 are being used regularly for SER. Low payment for experts is becoming a constraint to attract the best-qualified experts. One estimate puts payments in the range of 300 to 700 Rubles per case (US\$10 to 20) for SER related work. Experts may be still willing to work for SER for the technical experience they gain and for lack of better remunerated full time jobs. But it will be increasingly difficult to find experts with full time occupations in the private sector, and who would be most current on new technologies and developments, to participate in regular SER.
- 7.26 **Budgets.** SER funding from the federal budget has shrunk over the last 3 years, but the decline was buffered by earmarked revenues from SER fee income. This income amounted to an estimated Rubles 40 to 45 million in 2001 (or US\$ 1.3 to 1.5 million. SER fees are an important contribution to maintain an adequate level

of SER unit operation²², for example, to pay for office supplies and consumables (paper, cartridges, some equipment, and very often benzene) which are not provided for in the budget. Beyond that, SER fee income cross-subsidizes the general operation of the regional CNR and DNR offices whose budgets are also cut. Several of these offices therefore encourage the expansion of SER coverage to projects with no significant environmental impact, since these generate revenues and incur low cost for expert review. Clearly, this creates an unjustified burden for such smaller projects and distracts SER resources away from priority tasks.

- 7.27 **Support Services.** The EA system depends on Environmental Control for follow up monitoring and enforcement. Capacity of Environmental control has been probably been weakened even more than the SER. The Irkutsk network of federal environmental protection offices at territorial and district level declined from 264 employees, including 131 professional expert staff, before the reorganization to 45 employees in 2002. The district level environmental inspectorates have been largely eliminated. Some regional administrations, such as Rostov Oblast, made up for this decline in federally funded environmental administration by building up strong oblast funded environmental offices. However, these oblast offices are not authorized to undertake SER, a function which so far has been reserved for the federal offices.

Capacity of SER to handle Workload

- 7.28 **Ratios: SER reviews per SER Officer.** The Workload per SER employee increased in all the regions and slightly decreased at the federal level. The decrease at the regions is a result of a combination of declining number of cases and even stronger decline in staff. At the federal level, the number of cases declined faster than staff. As is to be expected, there is marked difference in the caseload between all regions and the federal headquarter, which deals with the most complex and time consuming SER cases. The variation between the regions reflects the different policies as to what is to be covered by SER. As described in previous chapter, the overall number of SER has declined, although unevenly, and with temporary spikes reflecting administrative decisions to expand the application of SERs to activities which so far had not been covered. The following table compares the average workload of full time inspectors at federal headquarter and regional offices.

²² By Law on Environmental Review the proponents have to pay for reviewing the proposal. The cost is defined by the Order of Financing approved by MNR; it varies between 4,000 and 10,000 rubles in Irkutsk Region and between 4,000 and 7,000 in Rostov Region. Thirty to seventy percent of this amount falls into expert fees. The rest is for covering technical, information and research costs.

Table 7.2. Changes in SER Caseload per Full-Time SER Employee between 1999 and 2001

| | 1999 | | | 2001 | | |
|---------|---------|-----------|-----------|----------|-----------|------------|
| | No. SER | No. Staff | SER/Staff | No. SER | No. Staff | SER/Staff |
| Federal | 568 | 7.29 33 | 7.30 17 | Est. 200 | 7.31 15 | 13 |
| Rostov | 1847 | 7.32 29 | 7.33 63 | 1326 | 7.34 8 | 165 |
| Irkutsk | 525 | 7.35 18 | 7.36 30 | 220 | 7.37 6 | 36 |
| Altai | 468 | 7.38 10 | 7.39 46 | 491 | 7.40 8 | 61 |

7.41 **Time needed for processing.** An increase in the time needed to complete a process could be another indicator for an overloaded system. A number of proponents indicated that indeed processing time had increased recently. There is however no systematic information on delays in processing. Table 7.3 provides indicative processing times based on expert estimates, which notes possible delays in upstream processing of SER applications by some days. The minimum time for a standard medium complex SER process is 2 months. Further delays can occur, in case of decisions which require coordination with other entities, for which SER staff has little capacity and motivation.

Table 7.3. Approximate Processing Time for a Standard SER at Regional Level (Simple to Medium Level of Complexity, Regional Level)

| Step | Target Time | Remark |
|---|------------------|--|
| Consideration of the application | 7 | due to the downsizing it takes not less than 10-12 days |
| Invoicing the Applicant for State Environmental Review | 3-5 | |
| Request for Completion of EA Materials package, as appropriate | 30 days | often the Applicant may request an extension of up to 2-3 months |
| Establishing the Expert Panel | 1 week | up to 30 days |
| Conducting the State Environmental Review Proper | 1-3 months | |
| Issuing approval for the conclusion of State Environmental Review | up to 10 days | |
| Overall Time | Minimum 2 months | |

8. SELECTED ASPECTS OF INTERNATIONAL EA PRACTICE

- 8.1 The purpose of this chapter is to draw attention to ‘internationally accepted’ standards for EA arrangements and process implementation, which may warrant consideration when considering how to strengthen Russia’s EA system. In that regard, information is provided on EA procedures under the World Bank and the European Commission EIA Directive (97/11/EC), which is a supra-national framework law that is binding on member states (and accession countries). Also, other European countries and transitional states increasingly subscribe to the provisions and requirements of the Directive. In addition, international EIA-related frameworks, including the UNECE (Espoo) *Convention on Environmental Impact Assessment in a Transboundary Context* (adopted 1991; entered into force 1997) and the UNECE (Aarhus) *Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters* (adopted 1998; entered into force in 2001), establish specific legal regimes for specific aspects and areas of EA practice. Their provisions and requirements may be adapted to a ‘made in Russia’ approach. Finally, the EA systems established by other OECD countries will be referred to, particularly those established by federal states, such as Canada and the United States of America.
- 8.2 This chapter has two parts. It first reviews selected aspects of international EA processes. It focuses attention on three major issues of EA procedure, which are identified in previous chapters as weak points in the Russian EA system.
- 8.3 Initial phase of assessment, reflecting the critical role of screening and scoping procedure in establishing the basis for an effective EA process
- 8.4 Decision-making phase of assessment, focusing on the relationship to and requirements for approval and condition-setting
- 8.5 Implementation and follow up phase of assessment, comprising the provision for supervision, monitoring, auditing and ex-post review.
- 8.6 The second part reviews international experience with organizing environmental management in a federal system, in particular with regard to power sharing and cooperation between federal and regional authorities.

INTERNATIONAL EXPERIENCE WITH SELECTED EA PROCEDURES

Initial Assessment

- 8.7 Earlier chapters have identified limitations related to the implementation of both the screening and scoping phases of EA in the Russian system. Under the rating scheme used in Table 5.2, both are graded at the lower end of the scale. Recognizing that initial assessment is the keystone for an effective EA process,

screening and scoping need to be strengthened significantly. The following aspects of international experience may be relevant.

Screening

- 8.8 As indicated in Annex 8.1, Russia's regulations for screening are not well developed, particularly as they relate to clear differentiation of a proposal and determining whether or not EIA and Series required and, if so, at what level of analysis. International experience indicates an explicit screening procedure is necessary to bring early focus and certainty to the implementation of EIA, ensuring that it neither entails excessive review nor overlooks proposals that warrant examination. Also, screening ensures that proposals likely to have few or no impacts are not subject to the EA process (this is an area where Russian practice differs significantly from that elsewhere, in that many small projects are reviewed).
- 8.9 Internationally, different models for screening are in use. For example, the World Bank uses a classification system, backed by an illustrative list of projects that may be assigned into one of four categories. Category A projects are likely to have significant and irreversible impacts and require full EA, Category B projects also have potentially adverse impacts but require a lower level EA, and Category C project have minimal impacts and do not require further EA (Category F is used when financial intermediaries invest in subprojects with possible adverse environmental effects).
- 8.10 In EU member states, screening procedure is based on projects listed in Annex I and II of the EIA Directive (projects are defined by type and scale). EIA is mandatory and automatic for Annex I projects, typically large-scale schemes, such as power stations. Annex II listed projects require case-by-case screening to determine if they are likely to have a significant impact on the environment. EU member countries are required to develop criteria, such as size and location, to guide the screening process, based on minimum requirements established in Annex III of the EIA Directive (EU Directive 85/337/EEC, EU Directive 97/11/EC), including characteristics, location, and potential impact of the project. In addition, the EC has developed general guidelines for screening (EC 2001).
- 8.11 The US EA system makes provision for different levels of assessment as determined by screening. Under NEPA, there is essentially a two-tier approach, comprising what in the US is called environmental assessment and the preparation of an environmental impact statement (EIS or full EA in Bank terms). Certain actions are categorically excluded from EA requirement. For actions which are neither categorically excluded from NEPA, nor are clearly required to have an EIS, an intermediate level of analysis, an EA, need to be prepared. Based on the EA, the agency determines whether an EIS needs to be prepared or issues a "Finding of No Significant Impact" (FONSI), which means no further NEPA document has to be prepared.
- 8.12 In Canada, there are four levels of EA, comprising extended screening, comprehensive study (for listed projects), review by an independent EA panel (for complex and controversial projects) and review by an independent mediator (for

projects that meet certain criteria, although none have so far undergone this process).

Scoping

- 8.13 The Russian EA regulation provides a general framework for scoping, rather than a prescribed procedure. EIA terms of reference (TOR) or SoW are prepared only occasionally and in the SER process, TOR are mainly used for administrative purposes (see Annex 1(?)). International experience indicates the critical importance of early and effective scoping to identify the issues that are likely to be of most importance and eliminate those that are of little or lesser concern.
- 8.14 An open, systematic and transparent scoping procedure should be followed, resulting in TOR that focus the detailed assessment process on the most significant environmental aspects. Public involvement and input is an integral part of sound scoping procedure. Under the US NEPA system, scoping in accordance with these principles is long standing. Early guidance in the 1978 Regulations emphasizes the importance of customizing the scoping process to each proposal.
- 8.15 The initial EIA Directive made no provision for scoping but in the amended Directive (97/11/EC) the competent authority must provide guidance on the scope of the assessment when requested to do so by the proponent. In this case, the authority must consult with others in accordance with arrangements made by each member state. As a result, “scoping” practice within the EU varies from country to country, with certain EU member states having gone beyond the minimum procedure. In the Netherlands, for example, the independent EIA Commission provides advice and input on the scope of all EIAs undertaken.
- 8.16 World Bank procedure for scoping requires that the EA takes into account the nature, scale, and potential impacts on the natural environment, human health and safety, social, and transboundary and global environmental aspects of activities. Natural and social aspects should be considered in an integrated way and requirements mandated under other World Bank policies have to be taken into account (*e.g.* concerning involuntary resettlement). The World Bank regularly discusses the scope of the EA with the Client Country and reviews draft terms of reference for the EA, ensuring public participation and interagency coordination.

Assessment and Decision-making

- 8.17 By design, Russia’s EA system is closely linked to project development (through OVOS) and decision making (through SER). In practice, the EIA process has a limited impact on actual project decision making, except in selected cases of highly visible and internationally financed projects.
- 8.18 The EIA Directive imposes certain basic obligations on decision making by the competent authority responsible for a proposal. Article 8 requires that the results of consultations and information gathered during EIA “...must be taken into consideration in the development consent procedure”. Article 9 requires the competent authority to inform the public of the reasons for a decision to grant or refuse a development consent.

- 8.19 NEPA regulations require agencies to ‘adopt procedures to ensure that decisions are made in accordance with the Act’. These include requiring that the decision maker shall consider the alternatives described’ in the EIS. Each agency also has to ‘prepare a concise public record of decision’ in cases requiring an EIS. Mitigation and other conditions identified in the EIS or committed as part of the decision ‘shall be implemented by the lead agency’.
- 8.20 The Canadian EA Act states that ‘no power shall be exercised until assessment is complete’. It also prescribes the courses of action for the decision of a responsible authority following screening, comprehensive study and mediation and panel review. In all cases, the responsible authority must ensure implementation of mitigation measures.

Monitoring, enforcement, and compliance

- 8.21 Regulation with regard to monitoring, enforcement, and compliance is comparable to international practice. The EA regulatory framework includes provision for environmental monitoring to be carried out by the proponent and for post-project analysis and SER findings are sent to the State Environmental Inspectorates to ascertain their implementation.
- 8.22 The EIA Directive contains no requirements for carrying out monitoring or other follow-up activities. Article 7 of the Espoo Convention provides for post project analysis to be carried out at the request of a concerned party²³. This includes:
- Monitoring compliance with the conditions set out in the approval of the project and the effectiveness of mitigation measures;
 - Review of an impact for proper management and in order to cope with uncertainty;
 - Verification of past predictions in order to transfer experience to future activities of the same type.

Table 8.1: International Practice of EA Process and Procedures With Possible Relevance to Russia’s EA System

| | |
|-----------|---|
| Screening | In the EIA Directive, screening is based on listed projects in Annex 1 and II. Annex 1 lists the types and size thresholds of projects that are likely to cause significant environmental effects and are subject to EIA automatically. Similar provision is made in the Espoo Convention for trans-boundary impacts. Annex II of the EIA Directive lists projects that must be determined on this basis or by thresholds and criteria set by Member States” (Article 4(2)(b)). When screening is carried out by either (or both) a case-by-case or threshold-based approach, the selection criteria set out in Annex III of the EIA Directive shall be taken into account. The criteria are: characteristics of projects (e.g. use of natural resources, waste and pollution); location of projects (e.g. in relation to environmentally sensitive areas); and characteristics of potential impacts (e.g. magnitude, scope, complexity). Similar criteria are used in the Espoo Convention |
|-----------|---|

²³ According to Espoo Convention concerned parties include: (i) states who signed the Convention, a state being a sources of impact (where the proposed activity will be implemented) and a state that may be affected by consequences of proposed activity.

| | |
|---|--|
| | <p>(Appendix II).</p> <p>Some countries and international lending agencies, use screening to differentiate projects in terms of the type or level of EIA required, e.g. Canada (screening report, comprehensive study, panel review and mediation), USA (categorical exclusion, environmental assessment, preparation of an environmental impact assessment if needed) and World Bank (Category A or full EA, Category B or modified EA, Category C – no further assessment).</p> |
| Scoping | <p>Under the EIA Directive, scoping is not a mandatory procedure. But competent authorities must give an opinion on the EA content if requested by the developer. In these circumstances, the authority is obligated to consult with other authorities “likely to be concerned by the project by reason of their specific environmental responsibilities” (Article 6(1)). Each member state is responsible for designating those to be consulted and the arrangements for doing so. Under NEPA, federal agencies are required to use the scoping process ‘for an early identification of what are and what are not the real issues’. Part 1501.7 of the Regulations describe the procedure to be followed, including the requirements for inviting the participation of affected and interested parties and holding an early scoping meeting.</p> |
| Consideration of Alternatives | <p>The EIA Directive requires the developer to include at least ‘an outline of the main alternatives studied... and an indication of the reasons for his choice, taking into account the environmental effects’.</p> <p>NEPA regulations require the agency to present the environmental impacts of the proposal and the alternatives in comparative form. For this purpose, the agency shall ‘rigorously evaluate all reasonable alternatives’, ‘devote substantial treatment to each alternative’ and ‘identify the preferred alternative(s)’. This applies to all cases subject to NEPA review, e.g. federally funded investments or private sector projects requiring a federal permit.</p> |
| Assessment of environmental impacts and... | <p>The EIA Directive requires that an EIA “shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project”. The factors to be taken into account include: human beings, fauna and flora: soil, water, air, climate and landscape; material assets and cultural heritage; and the interaction of these factors. Also relevant is the content of documentation as stated in Article 5(1) and elaborated in Annex IV of the Directive.</p> <p>NEPA regulations, inter alia, require agencies to: prepare analytic EISs; properly define the proposal subject to assessment; use an interdisciplinary approach; succinctly describe the affected environment; include discussion of direct and indirect effects and possible conflicts of the proposed action with other plans and policies; and insure the professional and scientific integrity of analyses.</p> <p>The Canadian Environmental Assessment Act prescribes the factors that must be considered in different levels of assessment. In addition to environmental effects, comprehensive studies and panel reviews must include the effect on sustainable use of natural resources.</p> |
| ... preparation of Environmental Management Plans | <p>Article 5(1) of the EIA Directive requires the developer to provide “a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects”. The Espoo Convention includes a similar requirement to provide “a description of mitigation measures to keep adverse environmental impact to a minimum” (Appendix II). NEPA regulations require agencies to ‘include appropriate mitigation measures not already included in the proposed action or alternatives’ (1502.14(e)). Mitigation is defined as: avoidance of impact by not taking an action or certain parts of an action; minimizing the impact by scaling back the project; rectifying impacts by rehabilitation or restoration; reducing the impact over life cycle of a project by operational or maintenance changes; and compensating for the impact, for example by offsets elsewhere (1508.20).</p> <p>Concerning the format for the EA Report and environmental management plan,</p> |

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| | <p>Article 5(1) places an obligation on member states to “adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV”. Article 7 of the EIA Directive describes the content and transmission of information to another member state if a project has significant trans-boundary effects. This is consistent with Article 4 of Espoo, and Appendix II describes the minimum content of EIA documentation for this purpose.</p> <p>NEPA regulations describe the recommended format and content of an EIS and require, inter alia, that the text ‘shall be written in plain language’ and ‘shall normally be less than 150 pages’.</p> <p>The World Bank’s guidelines provide a sample outline for a project-specific EIA report, which is annexed to Operational Policy 4.01.</p> |
| Public Participation and Consultation | <p>The EIA Directive has a number of requirements relating to public involvement. Article 6 (1), inter alia, requires that Member States shall designate the authorities to be consulted and comment on the information supplied by a developer and on the request for development consent. Article 6 (2) requires that Member States shall also ensure that the request for consent and the information gathered in accordance with Article 5 (see section 3.7.1) “are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion...”. Article 7, in line with the Espoo Convention, requires Member States to ensure that, in the case of trans-boundary impacts, the information is made available to the public concerned in the territory affected and the public is given the opportunity to comment before a decision is made.</p> <p>The Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters establishes places important obligations on signatory countries with regard to public involvement in official decision making, in general and EIA and related procedures. Specifically, Article 6 of the Convention refers to public participation in decisions on specific activities. In general terms, the provisions are far more extensive than those contained in the EIA Directive and provide a basis for guidance on EIA good practice.</p> |
| Disclosure of Information and Results | <p>EU Directive Article 6 (2) requires that Member States shall also ensure that the request for consent and the information gathered in accordance with Article 5 (see above section) “are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion”. Article 7 is consistent with Espoo and requires Member States to ensure that, in the case of trans-boundary impacts, the information is made available to the public concerned in the territory affected and the public is given the opportunity to comment before a decision is made.</p> <p>NEPA regulations require that an EIS and any supporting documents are made available to the public. After preparing a draft EIS and before preparing a final EIS, the agency shall “request comments from the public, affirmatively soliciting comments from those who may be interested or affected”. (1503.1(4)).</p> |
| Integration into Decision-making | <p>The EIA Directive imposes certain basic obligations on decision making by the competent authority responsible for a proposal. Article 8 requires that the results of consultations and information gathered during EIA “...must be taken into consideration in the development consent procedure”. Article 9 requires the competent authority when granting or refusing a development consent shall make available the following information: ‘the content of the decision and any conditions attached thereto; the main reasons and considerations on which the decision is based; a description where necessary of the main measures to avoid, reduce and, if possible, offset the major adverse effects’.</p> <p>Part 1505 of NEPA Regulations cover agency decision-making. These describe agency decision-making procedures that shall be adopted (1505.1); requirements for record of decisions (1505.2); and for implementing the decision (1505.3). The record of decision, inter alia, shall state: what the decision was, the alternatives</p> |

| | |
|---|---|
| | considered in reaching a decision and whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not'. In implementing the decision, the lead agency shall 'include appropriate conditions in grants, permits and other approvals'. |
| Provision for Monitoring, Follow Up and Post Project Analysis | Article 7 of the Espoo Convention provides for post project analysis to be carried out at the request of a concerned party. The parties concerned determine whether and to what extent a post project analysis shall be undertaken pursuant to the Espoo Convention. Any post-project analysis undertaken shall include the surveillance of the activity and the determination of any adverse transboundary impact. In Article 9, the Convention also refers to specific research programs, including monitoring the implementation of decisions. |

INTERNATIONAL EXPERIENCE WITH ENVIRONMENTAL MANAGEMENT IN FEDERAL SYSTEMS

Russia's Environmental Management In Transition

- 8.23 By its Constitution, environmental management is a shared responsibility between the federal government and the 'Subjects of the Russian Federation.' In several areas, such as environmental control (inspection) the new Law on Environmental Protection, 2002 (Art 6) envisages a possibility to delegate specific powers to the environmental authorities of the Subject of Federation (SOF). Delegation of inspectorate functions has to be regulated by agreement or other document between MNR and regional authorities. So far only Moscow has such agreement.
- 8.24 By contrast, State Environmental Review is the exclusive responsibility of the federal government. To that effect, the federal government has set up regional offices 'at the territorial level' in addition to the federal headquarters at MNR. Before restructuring environmental management, such federal offices existed at Subject of Federation (e.g. Oblast) and District level. It is important to keep in mind the distinction between Federal Government offices at the territorial level (e.g. Oblast) and the Regional (e.g. Oblast) Government office. The first reports to federal MNR, the second reports to the Regional Government. This is similar to the 10 regional US EPA offices (federal government), each of them covering several states, which coexist with the State EPA offices.
- 8.25 In principle, such highly centralized system and vertically integrated system had several advantages. It provided for a uniform process throughout the country, where comparable standards would be applied, giving proponents certainty what to expect. It also tended to equalize the uneven implementation capacity of SOFs. It's clear legal codification has allowed the SER system to remain formally intact amidst large scale restructuring.
- 8.26 Russia's environmental management system is now in transition, and one of the marked results of the restructuring efforts is a greatly reduced federal presence at the SOF (territorial) level (see Chapter 7). Federal offices at the municipal and district level have been completely eliminated. Federal offices at the territorial (oblast etc) level offices reduced staff, or were absorbed into newly established federal offices at the Okrug level with broader geographic coverage of several

SOFs. This is in line with the government's overall policy to downsize the federal government through the reduction of the number of supervisory and controlling functions

- 8.27 This transition has created an administrative vacuum at the regional and local level. Some SOF governments have stepped in to fill this vacuum by creating or expanding their SOF environmental authorities at oblast and municipal level. But SOFs have been so far prevented by law to undertake State Environment Review.
- 8.28 The new Law on Environmental Protection now offers an opening to transfer a portion of powers in the field of SER to SOF governments on the basis of agreements between federal and SOF governmental bodies.
- 8.29 Views among Russian experts on this matter differ sharply. One group argues that the SER is a backbone of the environmental management system and that it derives its strength from its tight vertical integration. It further argues that this vertical integration, i.e. reporting to MNR, rather than to local and regional governments, gives the SER the necessary independence from local and regional interests and interference. It proposes to first stabilize the overall environmental management system and build implementation capacity at the regional level, and only once such stability has been achieved to reconsider the issue of SER delegation to SOF governments. A rushed delegation of SER authority to SOFs carries a great risk of lowering quality standards and undermining the integrity of the system. In deed, it might be just a strategy to render the system ineffective.
- 8.30 The opposing view is that delegation of SER functions to the SOF is in line with delegation of similar responsibilities in other areas of environmental management. Furthermore, the reduced presence of the federal government at the regional and local level makes an effective implementation impossible and undermines the integrity of the system. SOFs (at least some) possess the capacity and motivation to implement SER as part of their mandate to protect the environment within their territory.
- 8.31 What all fractions seem to agree is that such re-definition needs to be undertaken on the basis of a well thought through strategy and clear legal foundations, developed in a consultative process between public and private stakeholders at the regional and federal level. Both are lacking right now.

International Experience with Environmental Federalism

- 8.32 Other federal states have faced similar questions in terms of optimal allocation of responsibilities between federal and regional authorities. The following section describes international experience with environmental federalism for a small sample of federal countries including the US, Canada, and Germany. This sample represents a mixture of different population densities, industrial, and natural resource based economies. The focus is on cooperative arrangements between federal and regional government for a more effective environmental management. It provides practical examples for agreements between Federal and regional authorities, which are alluded at in Art. 9 of the new Law on Environmental

Protection. The section draws on papers²⁴ which have been prepared as background for this study.

8.33 Federal – regional relationships differ enormously between countries as a result of their different history and legal traditions. One indicator for these differences in the field of environmental management is the degree to which the federal government has pre-empted provincial authority over environmental legislation and management. The three countries can be characterized as follows:

- in the US, the federal government has pre-empted both legislative and implementation powers to the largest extent, in response to public pressure to address urgent pollution issues and a lack of initiative by states to create the necessary legislative and implementation capacity; it then delegated selectively powers to the states based on performance agreements and with the right to take these powers back if States fail to perform satisfactorily;
- in Germany, the federal government has pre-empted large areas of legislative powers, but has only on an exceptional basis taken away implementation responsibility from the Laenders. More importantly, EU legislation has pre-empted environmental legislation in its member states, or developed clear framework legislation to which national legislation has to adhere. Implementation is left to individual member states; and
- By comparison, in Canada, federal authorities have preempted legislative powers of the provinces to a much more limited extent and often, the primary purpose of federal legislation is to enable and facilitate legislation and implementation at the provincial level.

The United States –Controlled Devolution Of Federal Authority To States

8.34 **Laws and Regulations.** The US National Environmental Policy Act (NEPA) regulates environmental assessment (EA) and/or environmental impact statement (EIS) at the federal level. In addition to NEPA, there are parallel state level laws for 15 states. When federal and state agencies (or multiple federal agencies) are jointly acting as the lead agencies, they negotiate the responsibility between them on a case-by-case basis.

8.35 NEPA is simultaneously broad and narrow. It is broad, in that it requires the federal government, in conducting activities on its own or where it plays a considerable role, to determine whether those activities significantly impact human health or the environment, and if there is a significant impact, to conduct a comprehensive EIS. However, NEPA is narrow in that these laws do not apply to independent activities by private parties. But to the extent that private projects require a federal permit, such as for air or water emission, the federal government can still invoke the EA process.

8.36 **The U.S. EA/EIS Process.** The purpose of NEPA is to ensure that when federal agencies make decisions on activities they will fund or control, they give

²⁴ See Ritter (2000), Sadler (2002), Sommer (2002), Weinfield (2002)

environmental considerations equal weight with other considerations. This is generally done by conducting an Environmental Assessment (EA), and if required by the EA, an Environmental Impact Statement (EIS).

- 8.37 NEPA is administered by the federal **Council on Environmental Quality (CEQ)** which develops overall EA/EIS guidance, and acts in the case of disputes between agencies, but does not handle routine operations, such as EA/EIS administration or review. When more than one federal agency is involved in an action, the regulations provide for the responsibilities of a "lead agency" and "cooperating agencies," and for referral to CEQ of disagreements among federal agencies on how to proceed with certain decisions.
- 8.38 **US EPA**, the Environmental Protection Agency of the federal government conducts a review of an EA/EIS, independently of whether a state agency or a federal agency takes the lead in preparing it. Depending on the case, the regional U.S. EPA offices participate in the EA/EIS review process.
- 8.39 **State level involvement.** Federal and state agencies generally work out their respective EA/EIS roles on a case-by-case basis. While the responsibility for preparing a (federal) EIS rests with the lead federal agency, this responsibility is frequently **delegated to the states**, most often when the EA focuses on an action which is primarily implemented at the state level. The federal agency will typically continue providing guidance and evaluation. The State level agencies have exclusive responsibility for those EA/EIS which are implemented under the State's own NEPA.

Environment Performance Partnership Agreements

- 8.40 Although not specifically developed for, and limited to managing the EA system, the Environmental State Performance Partnership Agreements are an interesting model for devolving responsibility to regional governments in a system where legislative and implementation powers are concentrated at the federal level.
- 8.41 In 1995, the USEPA and the Environment Council of States agreed on a new framework for organizing federal – state relations in environmental management: **the National Environment Performance Partnership System (NEPPS)**. The key feature of the NEPPS is its orientation towards outcomes: the federal government and state mutually agree on outcome indicators measuring environmental improvements, leaving states more flexibility in choosing strategies for achieving goals. By the same token, federal funding which previously was provided from a variety of sources for different programs, each with its own rules, can now be combined as a block grant, giving states more flexibility to allocate resources to high priority environmental issues. Participation in the NEPPS is voluntary.

Table 8.2: Federal Oversight – New Concepts Embodied in The NEPPS

| | Before NEPPS | With NEPPS |
|-----------------|--|---|
| Accountability | Activity Based 8.42 Program Outputs, e.g. number of inspections | Results Based Program Outcomes, e.g. improved environment quality |
| Federal Funding | Activity/Federal Program Specific Categorical Grants | Combination Multi-Program and Sources Block Grant, e.g. Performance Partnership Grants |
| Scope | Media Specific Federally Funded Programs Only | Multi Media Federal and State Programs |

8.43 The centerpiece of the NEPPS is the EPA-State Performance Partnership Agreement (EPPA), which US EPA signs with those states which have a satisfactory implementation record. Typical elements of an EPPA include: (i) environmental protection goals; (ii) media and program specific targets and measures, e.g. for air, water, waste; (iii) participation and compliance assurance; and (iv) roles and responsibilities of federal and state partners, including reporting by the state and grant funding by the federal government.

8.44 The EPPA format is still evolving and differs from state to state. The early EPPAs were generally limited to 1 year. This turned out to be inefficient given the intensive preparation needed to formulate in a participative way the goals and objectives for the EPPA. More recent examples, such as the 2000 – 2001 EPPA for Connecticut and 2001 – 2002 EPPA for Colorado²⁵, cover a 2-year time horizon.

8.45 **Assessment of NEPPS.** Has the NEPPS achieved its stated objectives of improved federal – state relationship and improved cost effectiveness through more flexible allocation of scarce resources to priority issues? Two recent evaluations (Herb et al 2000; Paddock and Keiner 2000) confirm that the principles of the NEPPS are sound but that the system has not developed to its full potential for a number of reasons:

- The new performance based system was superimposed on the traditional activity based management system and did not fully replace it. As a result, states were disappointed that USEPA was not providing as much flexibility as expected. In turn, USEPA was caught between conflicting incentives to offer more flexibility to states but at the same time to respond to tightened

²⁵ See respective websites for full text: Colorado EPPA: <http://www.cdphe.state.co.us/oe/oeppahom.asp> and Connecticut EPPA: <http://www.dep.state.ct.us/deao/ppa/ppa.pdf>

accountability requirements under the Government Reporting and Performance Act.

- NEPPS enjoyed more support with USEPA Regional Office Managers, who are in most direct contact with states, and less from USEPA headquarter Management and Federal Program managers, who possibly felt reduced in their influence;
- Only a few states made significant progress in strategic planning and multi-media goal setting. These were the states which generally are more effective in planning. No definite methodological guidance from the federal government was made available to other states.
- Appropriate measurement of environmental outcomes remains a methodological and practical challenge. USEPA and states have started to obtain information on environmental outcomes and health benefits achieved from state program implementation. Core Performance Measures (CPM) was developed by EPA but is not yet universally accepted.²⁶ No full substitute for 'second best' input indicators, such as number of inspections and enforcement actions taken, have yet been found for measuring performance.
- States made little use of the flexibility provided by the Performance Partnership Block Grants.

8.46 **In summary**, the lessons learnt from the first 5 years of experience are that there is broad agreement on the soundness of the EPPA concept, but its full implementation is taking more time than originally expected. NEPPS have been most effective where: (i) the EPPA had become the centerpiece and ruling document for environmental management in the state; (ii) the EPPA became integrated with the state planning and budget process; and (iii) federal funding from multiple sources had actually been consolidated and was managed as one budget. So far these combined conditions exist only in a few states. At the level of the federal government, continued high level support by senior management will be needed to complete the shift from an activity and media oriented management and oversight style towards a truly performance based management style.

Canada's EA system – Building Consensus Bottom Up

8.47 Canada is a federal state in which responsibility for environmental assessment and management is divided between the federal and provincial/territorial (subsequently called regional) governments. All Canadian regions have well-established EA systems, with the regions being the first to establish EA legislation (the *Ontario Environmental Assessment Act* of 1975), before the federal government followed with the Federal Environmental Assessment and Review Process (EARP) of 1984, and the *Canadian Environmental Assessment Act* (proclaimed 1995). Even municipalities (e.g. Ottawa) have developed their own EA regulation.

²⁶ See ECOS Website <http://www.sso.org/ecos/projects/CPMs/cpm.htm> for a list of CPMs.

- 8.48 The regional level EA legislation is not fully consistent with federal regulations. While the main elements and procedure are similar, its statutes contain specific requirements which do not necessarily mirror those in the federal Act. For example, some regions make provision for different types of assessment. Conflicts over EA requirements have triggered a strong interest in process harmonization between federal and regional levels. Harmonization is being pursued in two ways: through the Canadian Council of Ministers of the Environment (CCME) and through bilateral agreements.
- 8.49 **The Canadian Council of Ministers of the Environment (CCME)** is an instrument to build consensus from bottom up in a federal state where the regions wield large power. The CCME is organized as a non-profit institution and is funded by the federal government (1/3) and the regions (pro-rated according to population). The Council is comprised of environment ministers from the federal, provincial and regional governments. These 14 ministers normally meet twice a year to discuss national environmental priorities and to set the environment policy agenda for matters which are of national, intergovernmental and international concern. Specifically with regard to harmonization of the EA system, the result so far has been a draft framework which establishes the following shared principles:
- Ø recognition that the federal and provincial processes are consistent in intent and principle;
 - Ø acknowledgement of the need for clear rules that are consistently applied, eliminate unnecessary duplication and are sensitive to proponent needs and concerns for a timely and fair process;
 - Ø statement of eighteen principles and items to be included in bilateral accords and issue specific agreements; and
 - Ø commitment to establish a "single window" for communication and coordination of matters affecting each party's EA process.
- 8.50 The CCME has no compulsory powers, only persuasion. The formula used for expressing consensus is: "Having heard and understood all views expressed, a solution has been proposed, and while I do not hold that this proposal is optimal, I believe it will work and I will support it." Hence CCME depends on the motivation of its members to find solutions. As such, it is vulnerable to having to settle for minimal, common denominator solutions. Nevertheless, CCME has demonstrated creative flexibility to accommodate political dissent. For example, the province of Quebec was unwilling to sign an Environmental Harmonization Accord (2000), as a matter of principle, and this had to be clearly stated in all official documents. However, at the same time, Quebec is an active member of the CCME and is committed to implement and enforce through state legislation the consensus solution reached by the Council.
- 8.51 The second approach is through **bilateral agreements** between the federal and provincial governments. The first bilateral agreement on process harmonization, the Canada-Alberta Agreement for Environmental Assessment Cooperation, was

signed in August 1993. It is based on the principles set out in the CCME Draft Framework and provides for the establishment of subsidiary agreements on a range of specific issues. Federal and provincial officials consider the agreement to represent an important step toward EA cooperation. It includes two important subsidiary protocols on joint panel reviews with concise guidelines for the appointment of members by both governments; and designated notification procedures that both parties will follow with respect to projects potentially subject to joint EA.

Germany's EA System – Operating in the Supra-national EU Framework

8.52 As member of the European Union (EU), Germany's environmental management is largely determined by EU-wide legislation. Germany itself has a federal system and the federal and the Laender (subsequently called regions) level share the legislative power on environmental issues. However, the regulatory EA framework is dominated by federal legislation. Federal legislation, in turn, has to comply with EU legislation.

8.53

8.54 The principal three EU directives related to EA are:

- Ø Directive 1985/337/EEC of the European Parliament and the Council of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (EIA Directive);
- Ø Directive 1997/11/EC of the European Parliament and the Council of 3 March 1997 (Amendment of the EIA Directive - EIA II Directive); and
- Ø Directive 2001/42/EC of the European Parliament and the Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment (Strategical Environmental Impact Assessment – SEA Directive).

8.55 **The German Environmental Impact Assessment Act (EIAA) of 1990** is the implementation of the European EA Directive of 1985. Although the EIA-Directive had to be implemented into national law until June 1988, Germany's Environmental Impact Assessment Act was not set into force until February 1990. The amended EIA Directive of 1997 had to be transformed into national law by March 1999. However, the new German Environmental Impact Assessment Act which reflected the new EU directive, was passed only on 27 July 2001. The delayed implementation is an indication for the difficulty of harmonizing legislation in EU member countries and for the resistance of national legislature to EU initiatives in the environment field.

8.56 Looking at the EU as a 'federal' system, the EU represents a third model of federal – regional relationship, in which the "federal" authority elaborates a mandatory legal framework to which the "regions" have to adhere by adapting their own legislation. This respects the sovereign nature of the EU member states which maintain full responsibility for implementation. Within Germany, the regions carry out most EA work, unless federal leadership is called for, e.g. if transboundary and inter-regional issues are involved.

Summary

8.57 In summary, international experience provides for several models of federal – regional relationship in environmental management. An important determinant is the level of authority concentrated at the federal level to start with (high in the US and EU, medium in Germany, and low in Canada). Given Russia's high concentration of EA authority at the federal level and a greatly diverse capacity in the regions, a flexible model based on performance agreements with individual regions appears attractive. It would allow to pilot a new approach with regions that have demonstrated implementation capacity and political will and gradually transfer a matured model to other regions, as they become ready to assume additional responsibility.

8.58

9. RECOMMENDATIONS

- 9.1 The assessment has identified a number of weaknesses in the Russian EA system. The three most significant ones are: (i) the lack of differentiation through screening and scoping in the early stage of an EA. (ii) the lack of integration of the EIA and SER subsystems while conducting the EA; and (iii) the declining institutional capacity of the EA and Environmental Management System to ensure compliance with the conclusions of the EA process. These issues are interrelated: lack of differentiation and integration cause inefficient use of scarce resources and unnecessarily, from an environmental point of view, overload the system. A lack in capacity limits the SER's ability to actively review and guide the EIA preparation process.
- 9.2 These issues cannot be addressed in isolation of the environmental management system, but need to be in sync with the broader development agenda. We identified three developments: the transition of the public sector, increased public environmental awareness, and international development of the EA system, which have shaped the evolution of the EA system. They are likely to continue shaping the future development of Russia's EA system.
- 9.3 Recommendations to address these issues fall into two groups:
- 9.4 **further evolution and fine-tuning of the EA system;** international developments of the EA system and domestic best practice serve as reference point; highest priority has the establishment of effective screening and scoping mechanisms. These changes can be implemented within the existing legal framework in the near term (about 1 year).
- 9.5 **systemic changes of Russia's EA system;** the most significant one will be a redefinition of the respective roles of federal and regional authorities in implementing the EA system, in order to reverse the decline in institutional capacity and to ensure the long-term sustainability of the EA system. This redefinition will have to take place in the context of the broader public sector reform with its emphasis on decentralization, increased accountability, deregulation and simplification of Government control over private business. These changes require the development of new legal instruments, e.g. as federal – regional government agreements, and can be implemented in the short to medium term (1 to 3 years).
- 9.6 The pace and depth of these reforms will be a question of political willingness and, in turn, public pressure for environmental improvements. For example, reforms will require sufficient allocation of budget resources. Awareness raising and galvanizing environmental issues, such as the disposal of nuclear waste, will play a significant role in determining the intensity of public involvement.

Objectives for Improving Russian System

- 9.7 The following goals have been distilled from the discussions with Russian experts to provide a vision towards which the Russian EA system may wish to strive.
- (a) Assured Basic Implementation Capacity: Ensure the continued capacity to implement the EA system in accordance with the legal framework, in particular at the level of regions.
 - (b) Efficiency and Business Friendliness: Make the EA system more business friendly, specifically by reducing transaction costs through enhanced transparency, without compromising environmental quality;
 - (c) Effectiveness, by focusing limited institutional, analytical, and financial resources on the most significant environmental impacts.
 - (d) Long Term Impact: Evolve EA system from a “do-no-harm” tool to an instrument supporting sustainable development decision making.

Recommendation 1: Evolution And Fine-tuning Of The EA System

- Ø **Establish a Country – Wide Process of Screening and Scoping.** Building on the rich in-country experience, as well as international experience, which has been discussed in Chapters 5 and 8, we recommend:
- To make an inventory of screening procedures already used in Russia; making use of the existing network of Russian experts in government, NGO, private sector, and academe;
 - To hold an international workshop where Russian and international experts discuss different models of screening and appropriate implementation regulations. It also should address the question in what form public and private activities should be treated differently. Such workshop could be prepared as a joint NGO-Government initiative;
 - Task the federal government and expert group to develop a framework regulation and implementation guidelines, which would set clear boundaries but also give regions some flexibility to adjust regulations to local needs (e.g. different thresholds for minimum size of project); attention need to be paid to make sure that screening for EIA and SER is being harmonized as part of the process.
 - Develop an ex-post evaluation system to check the quality of the screening decisions; also develop a set of ‘consequences’ in case that deficient quality is detected, such as compulsory training for staff or increased oversight by federal level authorities; and.
 - Design strategies to remove disincentives or obstacles to a broader application of screening, including, clear enough regulations which protect officials from the accusation of having acted arbitrarily; and core funding of overhead costs.

- Ø **Scoping. Establish a Country Wide Process of Scoping and Strengthen integration of EIA and SER system.** Develop an optimal scoping mechanism through a participative process, which would consider options such as review of EIA TORs by the SER for projects with significant environmental effects, or the right of proponents to get advice on the EIA scope from the SER authorities – both aimed at better integrating the SER and EIA.

Recommendation 2: Initiate a dialogue between concerned stakeholders in the public and private sector at federal and regional level to develop a strategy for re-defining the roles of federal and regional government in environmental management, including EA implementation, with the ultimate aim to strengthen implementation capacity (Short to Medium Term)

- Ø **Develop a vision** for the future relationship and labor division between federal and regional level environmental governance, in line with overall public sector reforms and decentralization; consider in this context not only the SER functions but also EIA functions, to ensure that reforms lead to further harmonization, not discrepancies between the two subsystems;
- Ø **Hold an international workshop**, following initial internal discussions, to review international experience with environmental management in federal systems and implementation of EA functions by regional bodies, inter alia, on the basis of agreements between federal and regional governments;
- Ø **Identify few pilot regions to test implementation of Art. 9 of the Law on Environmental Protection; and**

Recommendation 3: *Strengthen Capacity to Implement and Modernize EA System*

- Ø **Develop a strategy to maintain and increase technical capacity of existing EA staff and experts** and to ensure sustainable supply of highly trained experts. This could involve an international workshop with organizations involved in EA capacity building (UNEP, WBI, others) to identify available resources, development of programs for tertiary education and professional on the job training. Following international experience, this could also involve twinning between regions to benefit from Russian best practice. The task of equal importance is to raise the awareness and build-up the EA capacity of the other EA stakeholders: governments and self-governments, private business and the public.
- Ø **Strengthen the capacity to assess, evaluate, and modernize the EA system through the creation of senior level working group of policy makers and recognized experts, as well as private business and public representatives**, who would develop recommendations on future EA development. This group should have access to training in the latest EA techniques and to international exchange on best practices. Important topics for such group would include the practical implementation of Strategic Environmental Assessments, stronger integration of the social impacts in the EA process, and clearer rules on disclosure of information.

Suggested Follow Up Activities for the World Bank

9.8 A first follow up to this study is to explore the interest of the Government in reforming its environmental management system and in possible Bank assistance. Bank activities could include:

- **Disseminate findings** of the translated study in Russia to interested stakeholders in government, including MNR, regions and experts;
- **For the fine-tuning of the EA system**, explore interest of Government, donors, or NGOs to hold an international workshop on EA development; offer to discuss results of EA study and help mobilize donor funding.
- **For the strengthening of the Environmental Management system**, including redefining the federal-regional labor division for EA functions, explore Government interest for a dialogue in the context of public sector reform and decentralization and propose a symposium on “environmental federalism” to bring together Russian and international experience.
- **Continue to improve our knowledge of Russia’s environmental management through analytic work**

a Review of the capacity of the Environmental Management System in Russia. The present EA study looked only narrowly at EA relevant aspects of the EMS. However, a stable and operational EMS is not only prerequisite for a functioning EA system, but also vital for Russia as part of a modernized public sector to keep economic growth on an environmentally sustainable path and to comply with international obligations.

A review of the financing of environmental management in Russia, to assess the uses and sources of funding available at federal and regional level, including fees, federal, and local budgets, particularly in view of a possible devolution of environmental management functions to regions.

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ANNEX 1. TOOLS FOR EA ASSESSMENT

ANNEX 1.1. TOOLS FOR ASSESSMENT OF POLITICAL, ECONOMICAL, AND SOCIAL CONTEXT

Purpose

Understand the broader context within which the EA system operates.

Lead Questions

- ü What is the political-institutional context within which environmental management and EA operate?
- ü What are the main constraints and opportunities, generally and with regard to the priority given to environmental sustainability in development?
- ü How open and supportive are society and governance to public participation in decision making?

Guidelines for Assessment (Ranking)

| Rank (1 = low) | Guidelines for Ranking |
|-------------------|--|
| 1 | The political and institutional context within which EA operates is hostile to environmental objectives. Environmental sustainability has a very low priority for Government and society. It is not included as a goal in the constitution, nor in the general development strategies. Public participation in decision making is discouraged. Public opinion is manipulated through strictly government-controlled media. |
| 2 | |

| | |
|---|---|
| 3 | <p>The political and institutional context within which EA operates is tolerant of environmental objectives. Environmental sustainability is one of the stated priorities for Government and society and is included as a goal in the constitution or in general development strategies. In practice, however, environmental sustainability objectives carry little weight compared to economic development goals.</p> <p>Public participation in decision making is formally encouraged. Independent private media exist but government still exercises substantial control over media and public opinion.</p> |
| 4 | |
| 5 | <p>The political and institutional context within which EA operates is supportive of environmental objectives. Environmental sustainability is anchored as a constitutional goal.</p> <p>Environmental sustainability is regularly considered as an important objective when setting development priorities and formulating development strategies.</p> <p>Government welcomes public participation in decision making; civil society is free to organize itself and actively participates in national and local decision making, supported by a wide range of information sources from government and independent and competitive media.</p> |

Checklist

| Nr. | Criteria/ Checkpoints | References, Benchmarks | Observations on Russia |
|---|--|------------------------|---|
| What is the political-institutional context for Environmental Management and EA? | | | |
| | What are the political system and the labor division between central and local administration? | | Federal system. Environment is shared responsibility between federal and regional government. |
| | What are milestones in evolution of the Environmental Management and EA System? | | 1989 Council of Minister Decision creating the State Committee of Environmental Protection. 1995 Law on State Environmental Review, and 2000 OVOS EIA Regulations. 2000 Merger of environmental functions into the MNR |

| | | | |
|---|---|---|---|
| Relative Priority of Environmental Sustainability in Economic Development and Society? | | | |
| | Institutionally: at what level are environmental decisions being made? | e.g. Inter-ministerial council, Ministry, Committee, | Ministry of Natural Resources |
| | Development Priorities: are environmental objectives prominently represented in core economic strategies | | Environment has low priority in development strategy |
| How open is society and governance to public participation in decision making? | | | |
| | Media: do independent and competing media exist and are they allowed to operate with little interference? | | Independent Media exist. Government control increasing. |
| | Are civil interest groups free to organize themselves and express their views? | e.g. Aarhus Convention principles endorsed and implemented? | Yes, within limits (e.g. high sensitivity if nuclear/military issues are being touched) |

ANNEX 1.2. TOOLS FOR ASSESSMENT OF LEGAL AND REGULATORY FRAMEWORK

Purpose

Assess the legal and regulatory framework within which EA is operating.

Lead Questions

- ü Does the EA system have clear legal foundations?
- ü Are the key elements of internationally accepted EA system clearly defined in specific regulations with guidelines for implementation?

Guidelines for Assessment (Ranking)

| Rank (1 = low) | Guidelines for Ranking |
|-------------------|--|
| 1 | EA system has no legal foundation (except possibly for some secondary regulations) |
| 2 | |
| 3 | EA system has legal foundations. Implementation guidelines exist, but are incomplete and not consistent. |
| 4 | |
| 5 | EA system has legal foundations and implementation guidelines are clear, complete, and coherent. |

Checklist

| Nr. | Criteria/Questions for Clarification | References, Benchmarks, Guidelines for Rating | SER | EIA (OVOS 2000) | Ranking |
|---|--|---|---|--|----------|
| Does the EA system have clear legal foundations? | | | | | |
| | Is the EA defined in national legislation | <p>1 – EA is not defined at level of Legislation</p> <p>5 – EA defined at level of legislation</p> | Defined in Law on State Environment Review (1995) | Defined in new Law on Environmental Protection (2002) and in OVOS Regulation (2000) | 5 |
| Are the key elements of a ‘typical’ EA system included in the laws and implementation regulations? | | | | | |
| | Coverage (Scope of Application) of EA System | <p>1 – EA system, by Regulation, covers only a small fraction of projects, allows for major exemptions and loopholes and does not cover plans or strategies at all.</p> <p>3 – EA system, by Regulation, covers a significant segment of projects and occasionally also plans but provides room for exemptions and loopholes.</p> <p>5 – EA system, by Regulation, covers any project or plan with potential environmental impact</p> | Coverage is broad, includes Policies, Plans, Programs, and Projects (Art 11,12) | Equally broad. Environmental Protection Law 2002 that documentation for any project or plan contain assessment of environmental impacts and is subject to SER. | 4 |

| Nr. | Criteria/Questions for Clarification | References, Benchmarks, Guidelines for Rating | SER | EIA (OVOS 2000) | Ranking |
|-----|--|--|---|---|----------|
| | Comprehensiveness of Definition of environment (Breadth of EA) | <p>1 – EA legislation provides a very narrow definition, focusing mainly on environmental effects of pollution of air, water, and land.</p> <p>3 – EA legislation defines environment fairly broad, including direct environmental impacts plus aspects of biodiversity and landscapes.</p> <p>5 – EA legislation provides for a comprehensive definition, which encompasses effects on landscapes and eco-systems, culture, and social acceptability.</p> | <p>Law on Environmental Protection of 2002 provides with a very broad definition of environment including components of natural environment as well as natural, quasi-natural and anthropogenic objects. Moreover, the definition of ‘natural environment’ is included.</p> <p>Article 4 specifies objects for safeguarding the environment including ecosystems and cultural heritage objects.</p> | | |
| | | | <p>No specific definition of environment. However, the 2002 Law on Environmental Protection offers a broad definition, including ecosystems, biodiversity, and cultural heritage.</p> | <p>Focused on the impacts from pollution on land, air, and water. No specific requirements for coverage of social and cultural assets.</p> | 4 |
| | Provision for Screening | <p>1 – Regulation has not provision for screening</p> <p>3 – Regulation provides option for screening, but without implementation guidelines</p> <p>5 – Regulation provides for screening, with clearly defined mandatory</p> | <p>No provision in the law for screening, but (1) federal and regional level of SER submission and (2) three categories (complex, medium, simple) provided in implementation guidelines</p> | <p>Regions have the right to develop simplified procedures for projects with no significant environmental impact, in coordination with federal authorities.</p> | 2 |

| Nr. | Criteria/Questions for Clarification | References, Benchmarks, Guidelines for Rating | SER | EIA (OVOS 2000) | Ranking |
|-----|---|---|--|---|----------|
| | | guidelines | | | |
| | Provision for Scoping | <p>1 – Regulation has no provision for scoping.</p> <p>3 – Regulation has provision for scoping, but no clear implementation guidelines</p> <p>5 – Regulation provides for scoping with clearly defined mandatory guidelines</p> | No explicit provision for scoping. However, TOR for SER need to be prepared and could serve as scoping instrument. | The preparation of EIA TOR and its discussion with the public is required. No formal review by SER authorities of TOR (Scope of Work) for EIA. Public consultations provide opportunity to influence scope. | 2 |
| | Consideration of Alternatives | <p>1 – Regulation has no requirement for considering Alternatives</p> <p>3 – Regulation requires consideration of at least a ‘zero – project ‘ alternative;</p> <p>5 – Regulation requires consideration of alternatives within the power of the proponent with regard to, at least, location, design, choice of technology</p> | No specific requirement. | Required, including “zero” alternative | 3 |
| | Assessment of environmental impacts and preparation of environmental management | <p>1 – No requirement for assessing environmental impacts and mitigation measures as part of project documentation</p> <p>3 – Regulation requires assessment of</p> | Impact Assessment required as part of Environmental Assessment Materials for SER. | . As a rule, EIA provides comprehensive data on background conditions and direct impacts | 4 |

| Nr. | Criteria/Questions for Clarification | References, Benchmarks, Guidelines for Rating | SER | EIA (OVOS 2000) | Ranking |
|-----|---|---|--|---|--------------|
| | plans | <p>environmental impacts but provides broad discretion to make exemptions.</p> <p>5 – Regulation requires assessment of environmental impacts and preparation of mitigation plans</p> | | <p>(e.g. contamination). At the same time it is less elaborated in assessing cumulative and indirect effects. No specific requirement for Environmental Management Plan (EMP) with proposed mitigation measures is required. However, it is usually insufficient, unclear in terms of costs and division of responsibilities.</p> | |
| | Provision for Strategic Environmental Assessments | <p>1 – No provision for Strategic Environmental Assessment</p> <p>3 – Regulation provides for Strategic Environmental Assessment without clear guidance when to apply</p> <p>5 – Regulation provides for SEA with clear implementation guidelines</p> | Policies, Programs, Plans, draft laws, standards are subject to SER (Art. 11 and 12). No specific procedures to conduct SEA. | No specific provision for SEA. EIA procedures developed primarily for economic activities and investments. | 3 |
| | Public Participation and | 1 – Regulation does not provide for Public Participation in EA process. | Public Participation allowed; public representatives can be | Public participation required at specific EIA stages: Scope of | 3 - 4 |

| Nr. | Criteria/Questions for Clarification | References, Benchmarks, Guidelines for Rating | SER | EIA (OVOS 2000) | Ranking |
|-----|---|---|--|--|----------|
| | Consultations | <p>3 – Regulation provides for Public Participation at specific points of the EA process. However, consideration of public opinion in final decision is not mandatory.</p> <p>5 – Regulation makes Public Participation a central piece of the EA process. Clear guidelines exist regarding the form of public participation and the incorporation of results into decision making.</p> | involved either through in SER (as observers) or in parallel Public Environment Review process (Art 19, 20). The Public can raise substantiated proposals for project improvement Consultations with other agencies mandatory. | Work, Draft and Final EA materials. Procedures for public communication, timing, and means of information disclosure exist. Consultations are mandatory. | |
| | Disclosure of Information and Results | <p>1 – There is no requirement for public disclosure of EA related documents.</p> <p>3 – EA related documents and results can be released upon request, but broad discretion is given to authorities to restrict disclosure based on confidentiality clause.</p> <p>5 – Public disclosure of EA documents is required as a principle. Results of EA process need to be publicly disseminated.</p> | Disclosure required only for results of SER. Can be restricted based on vaguely defined confidentiality clause (e.g. Art 24) | Disclosure of TOR, draft and final EA materials required | 3 |
| | EA procedures are integrated into decision- | 1 – EA procedures not integrated with decision making | A positive SER conclusion is necessary before planned activity | EIA part of project preparation cycle. Each project | 4 |

| Nr. | Criteria/Questions for Clarification | References, Benchmarks, Guidelines for Rating | SER | EIA (OVOS 2000) | Ranking |
|-----|---|---|--|---|----------|
| | making | <p>3 – EA procedures integrated with decision making – EA results have recommendatory character.</p> <p>5 – EA procedures fully integrated with decision making – EA approval mandatory</p> | can be implemented (Art 18. 5) | documentation (substantiation of investment) needs to address environmental issues. | |
| | Provision for monitoring, follow up and post-project analysis exist | <p>1 – No provision for follow up, monitoring or post-project analysis.</p> <p>3 – Provision exist, but vague implementation guidelines.</p> <p>5 – Follow up and post-project monitoring is mandatory and specific guidelines exist.</p> | SER requires provision for environmental monitoring; State Environmental Protectorate responsible for compliance control and enforcement. (SERL Article 18.6). | Follow up provided by mandatory SER. | 4 |

Useful References

EU Guidelines for Screening <http://europa.eu.int/comm/environment/eia/eia-guidelines/g-screening-full-text.pdf>

EU EA legislation and regulation:

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31985L0337&model=guichett and
EU 97/11 Amendment

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31997L0011&model=guichett

ANNEX 1.3. TOOLS FOR ASSESSMENT OF EA IMPLEMENTATION

Purpose

Assess whether appropriate procedures are followed and degree of compliance with EA requirements by all stakeholders; and

Lead Questions

- Ø Does implementation take place in accordance with legal requirements and established guidelines?
- Ø What are the main strengths and weaknesses in that regard and how do they vary systemically and regionally?

Guidelines for Assessment (Ranking)

| Rank (1 = low) | Guidelines for Ranking |
|-------------------|---|
| 1 | EA implementation does not comply with regulations in most cases. |
| 2 | |
| 3 | EA implementation follows regulations in most cases. But key features of EA system only partially implemented, with wide variations across different jurisdictions. Public participation takes place regularly, but is hampered by practical restrictions of access to information. |
| 4 | |
| 5 | EA implementation follows established regulations in most cases. Key features of EA system fully implemented Consistent application across jurisdictions. Public participation is encouraged through active communication and access to information. |

Checklist

| Nr. | Criteria/Questions for Clarification | References, Benchmarks, Guidelines for Rating | State Environment Review | OVOS – Environmental Impact Assessment | Proposed Ranking |
|---|--|---|--|---|------------------|
| How well are the key aspects of the EA system implemented? | | | | | |
| | Coverage (Scope of Application) of EA System is adequate | <p>1 – EA system covers only a small fraction of projects, allows for major exemptions and loopholes and does not cover plans or strategies at all.</p> <p>3 – EA system covers a significant segment of projects and occasionally also plans but provides room for exemptions and loopholes.</p> <p>5 – EA system covers any project or plan with potential environmental impact</p> | <p>Coverage by SER differs greatly between regions.</p> <p>Overall, there is a decline in the number of SER since 1999.</p> <p>However, there are indications that the number of SER cases with insignificant environmental impact is rising, which further diverts resources from significant projects.</p> <p>Number of cases of projects implemented without SER conclusions has risen, pointing to a weakening of overall environmental management</p> | <p>Coverage by EIA differs greatly.</p> <p>There is evidence that few projects fully comply with EIA requirements.</p> <p>In part, this is the result of unreasonable EIA requirements, in particular for small projects.</p> | 3 |
| | Definition of environment is comprehensive (Breadth of | 1 – Authorities interpret environment very narrowly, focusing mainly on environmental effects of pollution of air, water, and | There is a tendency to expand the interpretation of environment, further supported by recent Law on Environmental Protection. | Few EIA, mostly related to internationally financed projects; reflect comprehensive definition of environment, as a rule, | 3 |

| | | | | | |
|--|-----------|---|---|---|----------|
| | EA) | <p>land.</p> <p>3 – Authorities interpret environment fairly broad, including direct environmental impacts plus aspects of biodiversity and landscapes.</p> <p>5 – Authorities use a comprehensive definition of environment, which encompasses effects on landscapes and eco-systems, culture, and social acceptability.</p> | <p>However, so far little evidence that SER has increased attention to issues such as global biodiversity, ecosystems, or cultural heritage.</p> | <p>driven by the EA requirements of the funding organization and less by Russian requirements.</p> | |
| | Screening | <p>1 – Screening opportunities provided by regulation are not being used.</p> <p>3 – Screening is used, however without clear guidelines</p> <p>5 – Screening is used with clearly defined guidelines</p> | <p>In practice, Russia does not have differentiated SER processes for cases with different environmental impact. This results in lack of focus of SER resources on cases with significant environmental impact and can put unreasonable burden on proponents of activities with insignificant impact. Fee revenue is one incentive for SER authorities not to screen out cases with insignificant impact.</p> | <p>There is no screening mechanism for EIA, despite the fact that OVOS 2000 gives Regions the right to develop such mechanism.</p> <p>One of the few exceptions is Moscow and Arkhangelsk which has prepared a well thought through approach.</p> | 2 |
| | Scoping | <p>1 – Scoping opportunities provided by regulation are</p> | <p>TOR for expert panel are being regularly prepared, but used</p> | <p>TOR for EIA occasionally prepared and rarely publicly</p> | 2 |

| | | | | | |
|--|---|---|--|---|----------|
| | | <p>not being used.</p> <p>3 – Scoping is used, however without clear guidelines. TOR for EIA are prepared, but rarely reviewed for substance.</p> <p>5 – Scoping is used with clearly defined guidelines; TORs for EIA are prepared and reviewed for substance.</p> | <p>mostly for administrative purposes (number of experts, costs, etc).</p> <p>No review and formal approval of the EIA TOR by the SER.</p> | discussed. | |
| | Alternatives are being Considered | <p>1 – Alternatives are not considered.</p> <p>3 – Alternatives are occasionally considered; EA without alternatives is still acceptable.</p> <p>5 – Reasonable number of alternatives is regularly considered. Lack of alternatives is reason for rejection.</p> | SER looks for project alternatives in the EA Materials but would not reject a project because it did not elaborate alternatives. | <p>Alternatives are considered for larger projects, less so for smaller projects.</p> <p>Quality of the identification and analysis of alternatives often less than satisfactory.</p> <p>Resistance to question fundamental project decisions, such as sitting, already agreed with Authorities</p> | 3 |
| | Assessment of environmental impacts and preparation of mitigation | <p>1 – Environmental impacts are only partially identified and mitigation plans are inadequate.</p> <p>3 – Environmental impacts</p> | SER regularly focuses review on environmental impacts and mitigation measures. | EIA typically exhaustive in describing baseline data and direct impact, e.g. from pollution, but less detailed in describing cumulative and indirect impacts. | 3 |

| | | | | | |
|--|--|--|---|--|--------------|
| | plans | <p>are well identified. Regulation requires assessment of environmental impacts but provides broad discretion to make exemptions.</p> <p>5 – Direct, indirect, and cumulative environmental impacts considered and appropriate mitigation plans prepared</p> | | Mitigation plans are often deficient and do not specify responsibilities, costs, although required by regulation. | |
| | Strategic Environmental Assessments | <p>1 – Strategic Environmental Assessment provided for by regulation is rarely applied.</p> <p>3 – Strategic Environmental Assessment occasionally applied. Practical application varies for lack of clear guidance.</p> <p>5 – SEA procedures regularly applied in accordance with regulations.</p> | No systematic review of strategic documents or laws for lack of clear guidance. | EIA procedures are not designed for SEA. | 2 - 3 |
| | Public Participation and Consultations | <p>1 – Public Participation in EA process is rare and typically does not influence decisions.</p> <p>3 – Public participates in EA</p> | <p>Public Participation in SER and PER takes place.</p> <p>Limitations are occasional restricted access to information and lack of communication on</p> | <p>Public Participation in EIA occurs occasionally, but rarely in full compliance with regulations.</p> <p>Requirements for public</p> | 2 - 3 |

| | | | | | |
|--|---------------------------------------|---|--|--|--------------|
| | | <p>process regularly in accordance with regulations and occasionally influences final decision.</p> <p>5 – Public Participation is encouraged through timely notification and appropriate forms of consultations. Input from public participation is regularly taken into account in decision making.</p> | ongoing SER. | participation too burdensome for small projects with insignificant impacts. | |
| | Disclosure of Information and Results | <p>1 – EA related documents and information on ongoing EA processes are rarely released to the public, in part with reference to existing confidentiality rules.</p> <p>3 – EA related documents and results are being released upon request.</p> <p>5 – EA related documents are regularly disclosed. Results are clearly communicated. Efforts are being made to keep the public informed about ongoing EA processes.</p> | <p>EA related documents are released upon request, with occasional restrictions based on an ill-defined state and commercial secret clause.</p> <p>No public announcement of the start of a SER (not required by law).</p> | <p>EIA rarely published.</p> <p>Those accessible to the public in many cases do not have a summary for non-technical audience.</p> | 2 – 3 |

Questionnaires

Sample Questionnaire for Stakeholders (Local Government, Civic Groups)

Questionnaire Assessment of EA Implementation – Perspective of Stakeholders (Civic Groups, Local Government)

The World Bank has initiated a review of the Environmental Assessment effectiveness in the Russian Federation. In the context of Russia Environmental Assessment (EA) means the process of environmental impact assessment of a proposed economic activity and environmental review of the supporting documents for the proposed economic and other activities. The purpose of this review is to focus on the EA system operation at the regional and local levels.

The Questionnaire is intended for regional and local governments, civil society groups, and other parties whose involvement in the EA process is not professionally bound.

Your replies to the Questionnaire will be highly appreciated. If any of the questions appear difficult to reply, please ignore them.

We look forward for your cooperation.

Processing of investment projects.

- q Is there a Declaration of Intention requirement in your region? _____
- o If yes, which authority requires it? _____

 - o If no, what document notifies the Administration regarding the proposed activity?

 - o Is this document accessible to the public? _____
 - o Notification arrangements for other stakeholders?

- q Has your region ever practiced discussing TORs for EIA? _____
- o If yes, what was the format of this discussion? _____

 - o was the discussion useful/useless for: _____

§ the identification of important aspects (environmental, social, economic) subject to EIA?

§ an early identification of stakeholders, prevention of potential conflicts between the investor and stakeholders?

§ decision-making on the local or regional level? _____

○ If there were no discussions, do you see any opportunity to make such a discussion practical (regarding the above points)?

q Does your structure/organization use any of EA documents in the course of its activity? If yes, name these documents (project documents, EIA outputs or their executive summary, SER conclusion, PER conclusions, public hearings outputs, other). Which project phases involve these documents (decision to implement the project, post-project monitoring, other)?

q How effective are public hearings (as viewed by your organization, or through your experience)?

q What other forms of public consultations were used in your region? Your idea of criteria to assess effectiveness of public consultations?

q Role of the Administration (local, regional) in arranging public consultations?

q Your view on the effectiveness of SER (ER and EIA) in contribution to decision making (improves, no effect, degrades). Give your reasoning.

q Any history of public environmental reviews in your region? If yes, what were the results? Weighting of SER results in decision-making?

Long-term territorial development

q Does your city (region) have a development plan (long-term, mid-term)?

o If yes, did it go through the SER process? Did it go through EIA? _____

o Does this plan facilitate decision-making for individual investment projects, including the SER phase?

q Is there an opportunity to group small-sized facilities (gas stations, car washes, parkings), which are commonly not covered by the Master Plan, into a single siting plan to be covered by SER process?

ANNEX 1.4. TOOLS FOR ASSESSMENT OF EA IMPACT

Purpose

Assess whether the stated objective of the EA system is being achieved and to determine the “value added” of the EA system.

Lead Questions

- ü Are the EA recommendations reflected in decision making and implementation?
- ü Is the burden imposed by the EA system on the regulated community acceptable and commensurate with the benefits?

Guidelines for Overall Assessment (Ranking)

| Rank (1 = low) | Guidelines for Ranking |
|-------------------|--|
| 1 | EA system does not achieve its stated objective. Among others, results are regularly ignored and not reflected in decisions making or implementation |
| 2 | |
| 3 | EA system achieves its stated objective partially. EA results occasionally reflected in decision making and implementation. |
| 4 | |
| 5 | EA system fully achieves its stated objective. EA results regularly reflected in decision making and implementation. |

Checklist

| Nr. | Criteria/ Questions for Clarification | References, Benchmarks, Guidelines for Rating | State Environment Review | OVOS – Environmental Impact Assessment | Proposed Ranking |
|---|--|---|--|---|---------------------|
| What is the impact of the EA system? | | | | | |
| | EA outputs are integrated into decision-making | <p>1 – In practice, weak or no link between EA process and project or plan decision making.</p> <p>3 – EA process is integral part of project cycle, EA outputs are generally reflected in decision making, but coverage of EA system is limited.</p> <p>5 – EA process is integral part of decision making and EA system covers most relevant development decisions.</p> | <p>Formal link to decision making is strong.</p> <p>In practice, compliance with SER conclusions remains high. But SER increasingly concentrates on compliance with formal requirements (e.g. documentation, environmental standards) and less on environmental outcomes. This is in part due to declining institutional capacity.</p> | <p>Formal link to project development is strong.</p> <p>In practice, the EIA process has a limited impact on actual project decision making, except in selected cases of highly visible and internationally financed projects. Reasons include: primary goal of EIA preparer is SER approval not improved project design; the EIA is based on unreliable secondary data, and EIA outputs are often prepared only after critical project decisions have been made.</p> | 3 |
| | EA outputs are implemented | 1 – EA outputs are often not implemented. And there is no monitoring and enforcement. | Formally, SER results are submitted to Environmental Inspectorate for follow up | The EIA includes proposals for mitigation measures and their monitoring. | 3 - 2 |

| Nr. | Criteria/ Questions for Clarification | References, Benchmarks, Guidelines for Rating | State Environment Review | OVOS – Environmental Impact Assessment | Proposed Ranking |
|---|---|--|--|--|---------------------|
| What is the impact of the EA system? | | | | | |
| | And monitored, and enforced by competent authority | <p>3 –EA outputs are regularly implemented and occasionally monitored and enforced by competent authority</p> <p>5 – EA outputs are regularly implemented and regularly monitored and enforced.</p> | <p>monitoring.</p> <p>Environmental inspectorates have been weakened in recent MNR restructuring.</p> <p>Evidence from at least one oblast points to rising number of projects starting implementation without SER approval.</p> | But as for SER conclusions, follow up by Environmental Inspectorates weakened (see SER). | |
| | Burden imposed by EA on proponents is commensurate with the likely environmental impact | <p>1 – Burden imposed is in most cases disproportionately high compared to the likely environmental impact</p> <p>3 – Burden imposed is mostly commensurate but disproportionately high for certain groups</p> <p>5 – Burden imposed is commensurate in most cases</p> | <p>Cost of EA as % of Project Cost varies greatly.</p> <p>For small and medium size projects without significant environmental impact the EA burden is disproportional.</p> <p>Larger and international projects consider, on average, environmental regulations a moderate obstacles and are primarily concerned about hidden costs and delays.</p> | As for SER | 2 (SME) – 4 |

Sample Questionnaires

Organization Abbreviated Name
04/11/02 Oil Company

QUESTIONNAIRE No. 1.2.
STATE ENVIRONMENTAL REVIEW POTENTIAL – Perspective of a Developer

The World Bank has initiated a review of the Environmental Assessment effectiveness in the Russian Federation. In the context of Russia Environmental Assessment (EA) means the process of environmental impact assessment of a proposed economic activity and environmental review of the supporting documents for the proposed economic and other activities. The purpose of this review is to focus on the EA system operation at the regional and local levels. The Questionnaire is intended for those involved in the investment activities (consulting firms, developers, others).

Your replies to the Questionnaire will be highly appreciated. If any of the questions appear difficult to reply, please ignore them. We look forward for your cooperation.

| # | Questions | Replies |
|---|---|---|
| 1 | 2 | 3 |
| 1 | Do your firm ever apply for SER or it is only involved in the design/assess of a project EIA? | Developer |
| 2 | Is SER burden important to you? If yes, which factors are most relevant to you: 1. cost; 2. time; 3. other (name them) | Mostly – time + organizational arrangements to support contacts with the Committee and to pull through the project (if not, SER will take as long as it should) |
| 3 | Is categorizing SER procedures by complexity (low, moderate, high) important to you? If yes, your view on complexity criteria? Which categorization criteria appear reasonable to you? | It is important that as Criterion one can indicate environmental hazard of the project (such approach allows for quantitative indicators). |

| # | Questions | Replies |
|---|--|--|
| 1 | 2 | 3 |
| | | |
| 4 | Do you have any contacts with a specially authorized state authority before applying for SER? | Yes generally project parameters are coordinated informally |
| 5 | <p>Your view on the SER Authority requirements to the documents submitted for SER by using the following terms:</p> <ul style="list-style-type: none"> • are they clear? • adequate in scope? • consistent with other requirements and policies? • adequacy of methodological support? <p>Your comments and proposals are welcome.</p> | Despite the fact that SER is to be better regulated there appears to be a dependence on personal attitude of experts. It is doubtfully that there is a consistency in application of requirements. Methodological support is nit adequate. |
| 6 | <p>Are you aware of any court appeals regarding SER conclusions? If yes, who initiated them -</p> <ul style="list-style-type: none"> q Developer (Applicant)? q the Public? q Government agencies? <p>What was the outcome of such appeals?</p> | It doesn't seem so. Any issues are addressed in working order. |
| 7 | <p>Should the number of development projects subject to SER be limited in some way? (not necessary/not needed/other)?</p> <p>Your view on possible reasonable approaches to address the issue.</p> | Definitely, yes (by categories of environmental safety). We need to simplify approach to smaller environmentally insignificant projects. |
| 8 | Which phases of the project design process should be subject to SER? | The earlier, the better to avoid unnecessary expenses at a later stage. But the earlier stage should involve a simplified SER. |

| # | Questions | Replies |
|----|--|---|
| 1 | 2 | 3 |
| | <p>Possible replies:</p> <ul style="list-style-type: none"> q investment substantiation; q pre-project and project documentation preparation; q all the phases q other | |
| 9 | Were there any public environmental reviews (PER)? If yes, what were the outputs? Your personal observations regarding the way this system operated. | Not yet, but there were public hearings |
| 10 | Frequency of public participation in SER process ²⁷ (average percentage)? Did public participation in SER have any effect on SER conclusion? If yes, how (improved, expanded independence, other) | N/a |
| 11 | Number of SER regulatory requirements developed after the year 2000 restructuring in the regions that you are familiar with? | N/a |
| 12 | <p>Do you think that:</p> <ul style="list-style-type: none"> • SER process should recognize the nature of the proposal and phases of proposal/project preparation? • There should be uniform requirements for SER application package? | Yes, it is possible by introducing project categorization |

²⁷ If this information is available, which SER-related documents are most frequented by the public

| # | Questions | Replies |
|----|--|--|
| 1 | 2 | 3 |
| 13 | <ul style="list-style-type: none"> □ There is independence in SER process and results of experts involved on the regional level? • | Generally experts appear to be influenced by regional administrations or businesses |
| 14 | Is SER involved in developing environmental quality standards? If not, what is the frequency of SER for these regulatory requirements (draft regulatory documents)? | N/a |
| 15 | <p>Effectiveness of EIA in contribution to decision making?</p> <p>Possible replies:</p> <ol style="list-style-type: none"> 1. Decision making incorporates all the EIA outputs; 2. Decision making incorporates only part of the EIA outputs; 3. EIA confirms the original proposal; 4. Completely inconsistent 5. Other | Generally -1, sometimes - 2 |
| 16 | Does the SER Service monitor compliance with the EIA Regulation? | Hard to say, generally – yes |
| 17 | What is your idea of SER effectiveness criteria? | Duration of SER process . Effectiveness from a point of view of investor’s cost with regard to project preparation (preventive identification of bottlenecks). Lack of conflicts with the public on vital project decisions (SER should be final point). |

ANNEX 1.5. TOOLS FOR ASSESSMENT OF EA INSTITUTIONAL CAPACITY

Purpose

Assess whether the institutional capacity is adequate to implement the EA system as designed and whether it is a barrier to further improvement of the EA system.

Lead Questions

- ü Is the EA processing capacity adequate to handle regular workload?
- ü Is staff involved in preparation of EA process adequate in number and qualification?
- ü Are facilities and resources to support EA implementation sufficient?

Guidelines for Overall Assessment (Ranking)

| Rank (1 = low) | Guidelines for Ranking |
|-------------------|--|
| 1 | EA capacity inadequate. Insufficient number of qualified staff. Can't handle regular workload |
| 2 | |
| 3 | EA capacity adequate to handle regular workload. Limited capacity to develop or improve system (e.g. extend application of Strategic Env. Assessments) |
| 4 | |
| 5 | EA capacity fully adequate. Qualified staff with capacity to develop and innovate EA system. |

Checklist

| Nr. | Criteria/ Questions for Clarification | References, Benchmarks, Guidelines for Rating | State Environment Review | OVOS – Environmental Impact Assessment | Proposed Ranking |
|--|--|--|---|---|---------------------|
| What is the institutional capacity of the EA system? | | | | | |
| | Staff | 1 – inadequate (number, qualification) 3 – on average adequate but localized shortages 5 – as a rule adequate | Staff reductions over last 3 yrs in many SER offices (20 to 50% not unusual) Qualification generally strong in engineering; limited on modern methods (SEA, risk based analysis etc) | | 2 |
| | Capacity Building | 1 – no capacity bldg 3 – occasional capacity bldg 5 – regular capacity built on the job and specialized training | Currently capacity rather declining (shrinking staff, low salaries). No regular CB efforts (exception: a few regions do have CB) | | 2 |
| | Support Services (e.g. enforcement agencies) | 1 – low capacity to support EA 3 – generally adequate, occasional shortcoming | Capacity has declined – monitoring data input to analysis and Inspectorate follow up | | 2 |

| Nr. | Criteria/ Questions for Clarification | References, Benchmarks, Guidelines for Rating | State Environment Review | OVOS – Environmental Impact Assessment | Proposed Ranking |
|-----|--|---|---|---|---------------------|
| | | 5 – fully adequate | both decimated. | | |
| | Budgets | 1 – budget inadequate to cover basic operational cost 3 – budget covers basic staff cost, inadequate facilities and overhead budgets 5 – budget fully adequate to cover EA operations | Budgets cover basic salary costs, but only part of overhead. Dependency on additional earmarked fee revenues. | | 3 |
| | | | | | |

Questionnaires

Organization Abbreviated Name
ER Division of the Committee of Natural Resources

QUESTIONNAIRE No. 1.1.
STATE ENVIRONMENTAL REVIEW POTENTIAL

The World Bank has initiated a review of the Environmental Assessment effectiveness in the Russian Federation. In the context of Russia Environmental Assessment (EA) means the process of environmental impact assessment of a proposed economic activity and environmental review of the supporting documents for the proposed economic and other activities. The purpose of this review is to focus on the EA system operation at the regional and local levels. The Questionnaire is intended for representatives of a SER Service.

Your replies to the Questionnaire will be highly appreciated. If any of the questions appear difficult to reply, please ignore them.

We look forward for your cooperation.

| # | Questions | Replies |
|---|--|---|
| 1 | 2 | 3 |
| 1 | SER Service status within a territorial committee (at a constituent entity level) <ul style="list-style-type: none">• after May, 2000• after July, 2001 | Dedicated division responsible for the organization and carrying out of SER |
| 2 | Staffing <ul style="list-style-type: none">• after May, 2000• after July, 2001 | 10 staff 8 staff |
| 3 | Higher body for SER Service or Government Body with a SER Service | The SER Division is part of the State Environmental Service headed by the CNR Deputy Chairman |
| 4 | Number of expert reviews for your region (of a constituent entity of RF): | |

| # | Questions | Replies | | |
|---|---|---|------------------------------|-----------------|
| 1 | 2 | 3 | | |
| | 1999 - 2000 - 2001- | 468 Reviews 1294 Reviews, including 695 draft norms for discharges, emissions and waste disposal and 599 reviews of proposed activities 549 reviews | | |
| 5 | Number of expert reviews for your region by types of documentation: • 1999 - • 2000 - • 2001- | Draft TES 274 | License materials 112 | Other 82 |
| 6 | Number of positive/negative expert review conclusions throughout these years | 1999 74\8 2000 2001 | 231\43 | 104\8 |
| 7 | Number of SER applications rejected and returned to Developer to be improved (due to incompleteness of accompanying documents, lack of “no objections”, inadequate formats, etc.) | Unqualified materials are not accepted for SER or accepted provided the lacking materials will be supplemented | | |
| 8 | Who applies for SER regarding: • draft legal and regulatory acts; • urban development documents; • pre-project and project documents for development projects. | The Krai Administration Design Development Institutes Developer (Investor) Designer | | |

| # | Questions | Replies |
|----|---|---|
| 1 | 2 | 3 |
| 9 | <p>Is categorizing SER procedures by complexity (low, moderate, high) important to you? If yes, your view on complexity criteria? Please, fill out Table 2 below.</p> | <p>Scoping Procedures are provided for in the “Regulations for the Carrying out of State Environmental Review in the Altai Kari”</p> |
| 10 | <p>Do you prepare TOR for SER? If yes, how formal it is? Possible replies:</p> <ul style="list-style-type: none"> □ the standard TOR is adjusted and then gets approved for a given SER; □ analysis of key impacts serves as the basis for a detailed development for the TOR. <p>Other</p> | <p>Every part time expert receives TOR as per standard format; for simple reviews TOR development is pretty much a formality.</p> <p>TOR format is standard but it varies with reviews or sections</p> |
| 11 | <p>Longest/shortest SER processing time by years: 1999 - 2000 - 2001 .</p> | <p>Processing time by years is the same amounting to: for simple reviews – from 3 to 30 days; for moderate complexity reviews – from 14 to 45 days; for complex reviews – from 30 to 60 days</p> |
| 12 | <p>Percentage of overheads in cost estimates for SER</p> <p>1999 - 2000 - 2001-</p> | <p>50% 100% 99,7%</p> |
| 13 | <p>Average age of SER experts: in 1999 - in 2002 -</p> | <p>45-50 years</p> |

| # | Questions | Replies |
|----|---|--|
| 1 | 2 | 3 |
| 14 | Average number of experts per SER: 1999 - 2000 - 2001- | for simple reviews – 3 experts; for moderate complexity reviews – 4 experts; for complex reviews – 6 experts |
| 15 | Number of persons invited as experts by years: 1999 - 2000 - 2001- | 73 persons 60 persons 57 persons |
| 16 | Are SER conclusions ever published (access to the public)? If yes, what is the procedure? If not, how is the public made aware of SER conclusions? | No SER conclusions were published in mass media. Mass media received SER related information upon request |
| 17 | Number of SERs made public (out of total number of SERs): • in mass media; • in Internet) ²⁸ ; • in reviews | 2-3 reviews per year no 7-10 reviews to annual report |
| 18 | Number of SERs brought to court, total: 1999 - 2000 - 2001 - including: by developer (by years): | No court action |

²⁸ If available, present this information by years

| # | Questions | Replies |
|----|---|---|
| 1 | 2 | 3 |
| | by civil society organizations (by years): by citizens (by years): | |
| 19 | Number of projects/activities taken to court by government bodies or civil society organizations for being implemented with no SER or with a negative SER Report: <ul style="list-style-type: none"> • 1999 - • 2000 - • 2001- What is the effect? | No court action |
| 20 | What happened with SER negative projects? Possible replies: A) No project option; B) Project is modified and applies for SER again; C) Project goes ahead despite negative SER. | Modified and applied for SER again |
| 21 | Should the number of development projects subject to SER be limited in some way? Any reasonable approaches to address the issue? | All proposed developed projects should apply for SER, but scoping principle should be followed. |
| 22 | Which phases of the project design process should be subject to SER? Possible replies: <ul style="list-style-type: none"> q investment substantiation; q pre-project and project documentation preparation; q all the phases | Site selection process should involve SER screening |

| # | Questions | Replies |
|----|--|---|
| 1 | 2 | 3 |
| | q other | |
| 23 | Were there any public environmental reviews (PER) in your regions? If yes, how many? History of formal approval of PER reports? If yes, what was the procedure? What was the effect of the PER conclusion on the SER one? | No public environmental reviews |
| 24 | Frequency of public participation in SER process ²⁹ (average percentage)? Did public participation in SER have any effect on SER conclusion? If yes, how (improved, expanded independence, other) | No public participation |
| 25 | Number of SER regulatory requirements developed after the year 2000 restructuring (at all SER levels)? | No regulatory documents. Approved "Regulations on SER Division of the Altai Krai CNR " |
| 26 | Do you think that: <ul style="list-style-type: none"> • SER process should recognize the nature of the proposal and stages for proposal/project preparation? • There should be uniform requirements for SER application package? | Simple SER should follow simplified procedures Requirements should be uniform |
| 27 | <ul style="list-style-type: none"> • There is independence in SER process and results of experts involved? | In general, yes |
| 28 | <ul style="list-style-type: none"> • A SER Service is involved in building EIA regulatory | Not involved |

²⁹ If this information is available, which SER-related documents are most frequented by the public

| # | Questions | Replies |
|----|--|--|
| 1 | 2 | 3 |
| | base in a constituent entity of RF? If yes, how. | |
| 29 | Is SER involved in developing environmental quality standards? If not, what is the frequency of SER for these regulatory requirements (draft regulatory documents)? | Not involved |
| 30 | Effectiveness of EIA in contribution to decision making? Possible replies: 6. Decision making incorporates all the EIA outputs; 7. Decision making incorporates only part of the EIA outputs; 8. EIA confirms the original proposal; 9. Completely inconsistent 10. Other | EIA results are followed by environmental and technological mitigation plan |
| 31 | Does your SER Service ever take part in the review and “go ahead” process for the EIA TOR? | Yes, participate in complex reviews with potentially high impacts on the environment |
| 32 | Does a territorial body of MNR (its specialized organizations) consider intermediary EIA findings (before they are presented in a final SER Report)? Possible replies: 1. No, because this is not a legal requirement. 2. Yes, at the Developer request (indicate the performing structure) 3. Yes, on a Service own initiative (indicate the way and | No such cases (for 1999-2000) |

| # | Questions | Replies |
|----|--|---|
| 1 | 2 | 3 |
| | means) | |
| 33 | Does the SER Service monitor compliance with the EIA Regulation? Does the Public Prosecutor's Office want it to be complied with? | Mandatory for complex activities with potentially high impact on the environment |
| 34 | Are there any arrangements in your region to assess the SER Effectiveness? If yes, what are the effectiveness criteria? If no, what is your idea of such criteria? | <ol style="list-style-type: none"> 1. By confirming the rated environmental impact indicators through instrument control; 2. Lack of complaints from the public 3. Effective supervision over construction, commissioning of the projects with due consideration of the SER conclusions should ensure the effectiveness of SER |

Table 2. Categorization of Activities Subject to SER on the Regional Level

| | 1999 | | | 2000 | | | 2001 | | |
|---|------|----------|------|------|----------|------|------|----------|------|
| | Low | Moderate | High | Low | Moderate | High | Low | Moderate | High |
| Draft regulatory documents | - | - | 1 | - | - | - | - | - | - |
| Pre-plan documents (including urban planning documents) | 1 | 2 | 2 | 2 | - | - | - | - | - |
| Substantiation of investments to construction | - | - | - | - | - | - | - | - | - |
| Design plan/Design of construction (reconstruction) project | 105 | 155 | 14 | 228 | 125 | 5 | 156 | 226 | 27 |

What was the basis (criteria, expert evaluation, other approaches) for classifying activities subject to SER?

Classification of SER objects is based on the "Regulations on State Environmental Review in the Altai Krai"

Which activities account for the bulk of SER analysis? If possible, do a one or two-year analysis and give the percentage of the most common activities, possibly by SER complexity categories (low, high, moderate).

Main Areas of SER

| Materials | 2001 | 2000 | 1999 |
|---|------|------|------|
| Industrial facilities projects | 93 | 54 | 73 |
| Gas pipeline projects | 20 | 31 | 10 |
| Projects to converge boiler houses to gas fuel | 17 | 5 | 13 |
| Filling stations projects, oil depots | 83 | 77 | 67 |
| Agricultural processing projects | 46 | 57 | 34 |
| Road and pedestrian crossing projects | 31 | 21 | 27 |
| Land improvement projects | 17 | 14 | 15 |
| Housing and communal projects | 119 | 37 | 15 |
| Drafts and substantiation materials for mineral resources extraction licenses | 21 | 11 | 10 |
| Drafts and substantiation materials for underground water extraction licenses | 45 | 77 | 65 |
| Drafts and substantiation materials for surface water extraction licenses | 7 | 26 | 44 |

Organization Abbreviated Name
ER Division of the Committee of Natural Resources

**LIST OF SER MATERIALS AND DOCUMENTS, WHICH THE WORLD BANK
MISSION MIGHT WISH TO REVIEW
(INDICATE IF UNAVAILABLE)**

1. EA Regional Regulation including provisions for the settlement of ER related disputes - – attached “Regulations for the Carrying out of State Environmental Review in the Altai Kari”, approved March 30, 2000
2. Regulatory acts on SER screening. – N/A.
3. Regional Regulation on procedures for commissioning facilities and structures - no.
4. Model cost estimate for a SER process – attached "Regulations for Costing of and Payment for State Environmental Review in the Altai Kari", approved November 25,1999
5. Regional procedures of a SER Process - in the " Regulations for the Carrying out of State Environmental Review in the Altai Kray".
6. TOR for a dedicated SER Service – attached " Regulations SER Division of the Altai Kray CNR".
7. Staffing schedule for a SER Service. Total - 8 persons, including:
 - head – 1,
 - deputy head – 1,
 - leading specialists – 6.
8. Database of SER experts – 112 part time experts from design development institutes, higher educational establishments, organizations, offices and enterprises.
9. Orders and other documents for training and development of experts – order are available with the Human Resources
10. TOR for SER Council – the Council is temporary inoperative.
11. Minutes of SER Committee, SER Council – attached are 2 SER committee minutes.
12. Regional Methodological Guidelines for SER Service experts and members of SER Expert Committees – regional documentation was not developed.
13. Regulation for reviewing public ER outputs ЭЭ – N/A.
14. List of SER Reports, with titles of reviews processed (1999; 2001; 2002) .) – the List includes about 1500 conclusions, with some activities attached.
15. SER Reports with approval orders, conclusions of Public ER – N/A.
16. Outputs of SER Services audit carried out by the prosecutor’s office and SER-related court decisions – attached one "Report of the Prosecutor’s Office of the Altai Kray #7-13y-2000 dated November 03, 2000
17. Petitions of citizens, civil society organizations to state environmental bodies regarding SER – no petitions of citizens for 1999-2001.
18. Regulation for disclosure by environmental bodies of information for the preparation of SER Reports. – N/A.
19. Requirements to applicants, procedures and scope of SER Report information to be issued.– The Developer or Designer receives SER conclusions.
20. Case studies of inspections carried out by the MNR State Control Inspectorate to monitor the implementation of SER recommendations and conclusions – No information with regard to inspections.
21. Samples of accompanying materials of MNR regarding SER conclusions.

ANNEX 2. REFERENCE MATERIAL

NPAF EVALUATION OF EIA

The following is a summary of an informal review of about 100 EIAs undertaken by the National Pollution Abatement Facility (NPAF) under the Environmental Management Project. It is prepared before the recent changes in OVOS regulation; hence some of the findings are superseded by recent developments. Also, the sample of projects is highly selective, geared towards environmental projects with possible pollution abatement impact. It is included here because it represents one of the few sources for an assessment of EIA quality.

The Summary was prepared by NPAF staff and has not been edited.

CPPI Review of EIA and SER Implementation

Assessment of the existing EIA Practice

Effectiveness of the EIA depends on its contribution to the decision making process. EIA is considered effective if the relevant project solutions contribute to the enhancement of the environment in the given project area, facilitate sound use of natural resources and safeguard social values. These results can be validated to the full extent only after the project has been implemented. At the same time, it is important to assess the effect of EIA as a procedure on the preparation of the project identifying its potential limitations and flaws. This Review studies effectiveness of EIA at the project preparation and implementation phases across the whole range of the CPPI projects (60) and EIA practice in the regions (40 projects)* (table 4).

Table 4

EIA Quality

| EIA components | Assessment of EIA quality as % of 100 EIA conducted | | | |
|-------------------------------------|---|--------------|------|-----------|
| | Unsatisfactory | Satisfactory | Good | Excellent |
| Environmental Impact Assessment | 22 | 22 | 30 | 26 |
| Analysis of legal requirements | 80 | 8 | 8 | 4 |
| Assessment of Project Options | 21 | 44 | 32 | 3 |
| Public consultations | 84 | 11 | 4 | 1 |
| Mitigation plans | 42 | 20 | 31 | 7 |
| Program of environmental monitoring | 38 | 15 | 31 | 16 |

The following criteria were applied to assess the EIA quality:

- Ø **excellent** – EIA procedure is comparable with the best international practice;
- Ø **good** – EIA fully meets the Russian legislation requirements;
- Ø **satisfactory** – EIA meets formal requirements of the legislation, but in fact the EIA outputs are not needed by the designers, with conflicting information and data not verified.
- Ø **unsatisfactory** – EIA does not meet the minimum requirements

The Table assesses the bulk of the EIA aspects as unsatisfactory (45 percent), with only 10 percent of the project valued as excellent. Let us view the current EIA practice by the main aspects specified by the regulatory documents.

Identification and analysis of environmental impacts. One of the main goals of EIA is to identify and assess potential environmental impacts of the proposed project. This not done, EIA will have a very limited value or no value at all. But if EIA is properly organized the proposed project could benefit from the EIA outputs even if there are not alternative project options. A precondition for reliable assessment is a good description of the baseline environmental situation on the project area and analysis of the baseline condition of the environmental components to be affected in the course of the project implementation. The majority of the EIA outputs under review were good at describing and analyzing baseline data and information. It should also be noted that many investigators focus too much on the collection of the baseline data including in some cases interesting but irrelevant data.

Another important condition for a good EIA is a complete description of all environmental impacts including cumulative and indirect ones.

At the same time, not many investigators give a good detail to the consideration of such impacts. The analysis showed that most of the EIA investigations reflect the impacts of a specific project rather than a general environmental effect or the way the project or projects might contribute to cumulative environmental impacts. Few of the EIA under review have quantitative characteristics of the environmental impacts of the proposed project in economic terms. The reason of the weak focus on the cumulative and indirect impacts could be:

- Ø lack of methodological support for such investigations;
- Ø superficial consideration of these aspects during the preparation of TOR for EIA;
- Ø uncertainty whether there is a need for such outputs as compared with the need for direct environmental impacts analysis;
- Ø cost burden of such investigation given the need for additional expenditure.

Analysis of Legislative Requirements Related to the Project is carried out for the formalities sake and is replicated in many similar projects if one consultant implements these. In many cases, this analysis is limited to the recital of laws, sometimes, regulatory documents of the State Committee for Construction of Russia. As a rule, the EIA Developer ignores regional and local requirements.

Analysis of Project Alternatives is more action-oriented than the direct goal of mitigating environmental impacts through environmental management measures. But EIA legislation is rather vague regarding systematic comparison of the proposed project options (engineering, siting, technological solutions) to attain the stated environmental effect.

Though EIA process involves discussion of project alternatives, most of the proponents are still incapable of a systematic analysis of the project options. Too often they limit such an analysis to general considerations regarding options to support the project proposal rather than undertaking an in-depth analysis of the project proposal from the point of view of enhancing the environment.

As a rule, analysis of the proposed project options includes a rather superficial comparison of the environmental situation with and without the proposed project on a given territory or a comparison of environmental impacts of two or three project or siting options. Commonly, such analysis is carried out to meet formal requirements or to substantiate the decision, which has already been made. But there are cases of an in-depth analysis. For example, to exclude the discharge of industrial effluent into Lake Baikal, the “Establishment of Closed Water Supply System at the Baikal Paper Mills Project” involved the proposed project option analysis*:

- Ø a no project option;
- Ø re-engineering of the main technological processes while maintaining the current system of water treatment;
- Ø establishment of the closed system of industrial water supply, construction of independent domestic water treatment facilities on the basis of the re-engineered enterprise.

The last option was viewed as the one with the most significant environmental benefits. It will establish the system of closed water supply, re-engineering and improvement of the main technological processes, liquidation of the bleaching department. This option fully meets the philosophy of win-win investment projects.

Some of the EIA outputs may seem not illuminative enough regarding the option analysis, as is the reality. Some of the options may have been studied by the Proponent at an earlier sectoral or regional planning phase. The consultant or project designer might have been aware on such a comprehensive economic and environmental analysis prior to the EIA without reflecting this fact in the EIA outputs or supporting documents.

* The third and second project options reviewed technical and technological alternatives.

Major issues in the selection of the options. Development of a project through an in-depth analysis of options is undoubtedly a more time-consuming process than focusing on the prevention or mitigation of adverse environmental impacts through environmental facilities. Inadequate application of the principle of project option analysis appears to be caused by the following:

- (1) TOR for EIA ignores the need for consideration of alternative project proposals. The EIA procedure involves only a no project option analysis;
- (2) Consideration of project options extends the proposed project preparation time, which could be viewed by the Designer as a serious constrain. In this case he decides against the approach associated with the consideration of project options in order to have time to be incorporated in the arrangements of the financing institutions (investors) in the belief that the main project decisions have already been taken.
- (3) Option analysis may be politically sensitive, as some fundamental issues related to the specifics of the proposed project – selection of the technology, sitting, project parameters – may have already been approved in the regional or sectoral development plans. Pressure of certain actors to avoid such an analysis at the project preparation phase may play against the final decision of the project designer.
- (4) The regulatory documents of the MNR and State Committee for Construction lack requirements for the option analysis of the proposed development projects.
- (5) An in-depth option analysis including cost/benefit analysis requires good expertise of experts involved in EIA. Many consultative firms lack such expertise.
- (6) There are no methodologies for option analysis (for example, scoping, screening, etc.)

Of particular importance are reasons 2 and 3. Most of EIAs are done at the project preparation phase, where major project and sitting decisions have already been made. The options applicable to EIA are “yes/no” replies to a rather limited number of technological, and engineering solutions. To certain extent, the issues raised in items 1, 2, and 3 could be addressed through the sectoral or regional development plans. This will allow addressing environmental concerns at earlier phases of the proposed project preparation, where the main technological solutions are not yet in place. The CPPI experience shows that running EIA at the phase of these programs preparation may serve as an effective tool for an efficient and realistic option analysis.

Public hearings. Public and community consultations are viewed by the EIA regulatory documents of the MNR as a key to the identification of environmental consequences of the proposed project and to the development of mitigation measures. The regulatory documents recommend consultations with the local community and nongovernmental organizations, at least, at two EIA phases – consideration of alternatives and development of EMPs. Regulatory documents encourage public consultations for the projects that: (1) may have a health impact on man; (2) are socially oriented; (3) may cause public outcry.

In some cases information in mass media is interpreted as public consultations. There is no evidence of communicating with the public.

Unfortunately, the history of public hearings is very limited, though the importance of public participation in the project preparation has always been emphasized. The analysis of the public hearings identified some important phases in the decision-making process, where such hearings turned out to be very useful:

- Ø *EIA scoping*. This involves a dialogue with the community and nongovernmental organizations to identify and discuss key environmental problems in the project affected area and to prepare the relevant TOR for EIA;
- Ø *EIA implementation*. Many Designers do public hearings irrespective of the design process phase.
- Ø *Draft EIS consideration*.
- Ø *post EIA implementation*. The public gains access to the EIA final outputs only when these apply for SER as part of the SER application package. Consultation at this stage may result in new important information related to the proposed project.

Why Public Hearings are still Controversial? Efficient arrangements for public consultations as a tool to make the public part of the decision-making process goes far beyond EIA and concern a wide scope of decision making processes. The main reasons of this controversy are as follows:

- (a) most local governments lack the experience in a participatory process;
- (b) many EIA consultants lack experience in involving the public in the identification of potential environmental impacts of the proposed project;
- (c) many interested actors view public consultations as an obstacle to the implementation of specific project decisions.

Implementation of the requirements for mandatory public consultations is possible only on the basis of such democratic communication channels as lobbying, campaigning and etc. This will provide interested grass-root groups and nongovernmental organizations to influence the decision making process with regard to investment projects.

Mitigation plans and programs of environmental monitoring. Analysis of the Project environmental measures showed lack of such measures or programs of environmental monitoring or if they were in place their quality was poor. This confirms the view that is shared by many stakeholders, that a development project does not require any additional environmental measures except those included in the Section “Environmental Protection” of the Design Plan/Design of the Construction Project. That is why in practice such plans are not sufficiently detailed. It is not uncommon that these plans do not indicate responsible persons and cost of implementation of certain activities. The usual excuse here is that it is hard to make specific plans by the date of SER application as many project details are developed during the preparation of the working design. But the provision is still in place saying the mitigation plans submitted as part of the EIA outputs

shall at least including a preliminary list of mitigation measures, projected deadlines and responsible persons, as well as costs.

Documenting EIA outputs is carried out in accordance with a very simple procedure that replicates the aspects under review. The summary of non-technical aspects is very brief or is given in the Explanatory Note to the supporting documents. In this case, the Summary is not included in the EIA outputs. Whether the stakeholders have access to the said documentation is not clear. In actual practice, EIA outputs are not published.

3.1.3. Assessment of the Current SER Practice

The Competent SER Body carries out project screening and differentiation at the application stage. But formally there is no SER screening. SER is done for all the applications including those with negligible environmental aspects. No SER is carried out for projects that have not applied for SER, while in practice, the mechanism of enforcing SER application of potentially hazardous projects is not effective. There is extensive evidence of projects implemented without SER application.

A positive conclusion of SER shows that the proposed project meets the environmental requirements of the Russian legislation.*

Table 4 shows that most project decisions meet the legislation requirements, as positive SER conclusions in the Rostov and Irkutsk Oblasts account for over 80 percent.

Table 4

RESULT OF SERs CARRIED OUT BY REGIONAL MNR BODIES IN 1999-2000

| MNR Territorial Body | Positive SER Conclusion | | | Negative SER Conclusion | | | Returned due to noncompliance | | |
|---|-------------------------|------|------|-------------------------|------|------|-------------------------------|------|------|
| | 1999 | 2000 | 2001 | 1999 | 2000 | 2001 | 1999 | 2000 | 2001 |
| Federal SER Service | | | | | | | | | |
| SER Service in Southern Federal Okrug DNR | 1704 | 1943 | 1304 | 143 | 50 | 22 | 27 | 25 | 36 |
| SER Service in CNR of Irkutsk Oblast | 557 | 304 | 252 | 37 | 24 | 20 | 192 | 185 | 24 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

The Russian legislation has a provision for differentiating SER-subject activities into simple, average and complex activities (SER Procedures, 1995). SER differentiation is done by a full time SER Service inspector, who receives the application package. This provision could be viewed as an element of an underdeveloped differentiation approach. A review of this approach could be carried out drawing on both regional and national practice. Some regions apply differentiation, drawing on the current provision

* The notion of legislation requirements does not include procedural requirements.

(Arkhangelsk Oblast, 2000-2002, Tomsk Oblast, 2000). Other regions view this provision as a purely routine aspect to arrange the operation of the Expert Pane. Thus, the SER Service in the DNR of the Southern Federal Okrug does not view differentiation as an important element and does not wish to develop it. The SER-subject initiatives are differentiation by complexity in order to establish the composition of the Expert Panel, organize its work and financing. But the level of complexity is not even reflected in the register. Analysis of compliance with the SER and EIA requirements showed that most of SER applications obtain positive conclusions though the EIA outputs are ranked as low quality.

3.2. Methodology for assessing effectiveness of EA system implementation

To assess the effectiveness of EA system on the federal and regional levels, a methodology was developed based on the general notion of “effectiveness” and a specific understanding of each corresponding element (characteristic). This involved expert valuation and other supplementary techniques to assess:

Adequacy of EA support:

- Ø regulatory and information;
- Ø procedural;
- Ø staffing;
- Ø financial and physical.

Compliance with EA regulatory requirements:

- Ø federal;
- Ø regional;
- Ø international.

EA implementation results:

- Ø quality of EA outputs (SER conclusions and EIA outputs);
- Ø incorporation of SER and EIA recommendations in decision-making;
- Ø influence of EA on project decisions.

The reviewers developed criteria of EA effectiveness and performance indicators for each EA element (Table 3-5)*

- Ø differentiation approach of the EA process;
- Ø adequacy of resources to implement regulatory requirements to EA;
- Ø transparency (including consistency) of procedures and provisions regulating the EA process;
- Ø consideration of project options;
- Ø access to the stakeholders, public participation;
- Ø transparency of the established procedures to all stakeholders and willingness to follow them;
- Ø strategic approach to incorporate environmental factor at earliest possible phase of project preparation phase;
- Ø incorporation of EA into the decision-making process with regard to a proposed project or any other proposed activity;
- Ø compliance with the EA instructions during the project implementation.

The criteria of effectiveness served as the basis for the development of performance indicators to allow for the assessment of EIA and SER effectiveness. These also served as the basis for the development of questionnaire schedules, questionnaires, themes for the Round Tables to assess individual EA elements.

* Specified in the Conceptual Note to the Evaluation of EA Potential in Russia and discussed at the Working Meeting.