

ECOCLUB'S POSITION

AS REGARDS THE AMENDMENTS TO THE EIA LEGISLATION

Environmental impact assessment is a tool designed to prevent potential negative impacts associated with the implementation of planned activities.

EIA in Ukraine is regulated by the EIA Law of 2017. After the adoption and implementation of the law, representatives of business, public and governmental agencies have faced certain problems (gaps) related to the law and the effectiveness of EIA over the 6 years of its use.

On February 1, 2023, the Verkhovna Rada registered the government's Draft Law No. 8410 "On Amendments to the Law of Ukraine "On Environmental Impact Assessment". According to Ecoclub, the mentioned draft law does not solve the main existing problems in this area and contains certain contradictions in terms of transparency, simplification of the procedure, public access, etc.

The current EIA law does not fully comply with the requirements of Directive 2011/92/EU. However, some of the proposed amendments further exacerbate the discrepancy. Obviously, such changes in the opposite direction will not go unnoticed by the public in Ukraine and the EU, as well as by the relevant EU authorities.

We do not see the expediency of adopting the Draft Law No. 8410 and believe that EIA needs to be reformed with due regard to the opinions and interests of the public, business and government agencies.

The Draft Law No. 8410 provides for the following changes:

- reduction of the period for public discussion of the notification of planned activities from 20 to 12 business days;
- notification about planned activities and announcement of the start of public discussion of the Environmental Impact Assessment Report will be filled in in a digital format directly in the Unified Register of Environmental Impact Assessment. The authorized body will no longer be able to reject these documents due to non-compliance with the approved form;
- cancellation of the requirement to publish a notice and announcement in the media. Instead, the draft law proposes to involve territorial communities to ensure proper public informing;
- the public will be able to register on the Register's website to receive targeted information about the publication of information and documentation;

- definition of an exhaustive list of grounds for refusal to issue an environmental impact assessment conclusion, as well as a shortened procedure for conducting an environmental impact assessment in case of elimination of the deficiencies that resulted in the refusal;
- It is proposed to determine the grounds on which the planned activity may be declared inadmissible.

Ecoclub believes that EIA in Ukraine needs to be reformed. In our opinion, the amended EIA should take into account the following aspects:

- International (European integration) level: compliance with EU accession requirements (Directive 2011/92/EU);
- National level: ensuring prevention and minimization of negative environmental impacts of economic activities;
- Green post-war recovery (build back better & greener).

It is important that EIA is effective and ensures the achievement of the goals and objectives assigned to this mechanism. Only coordinated work of business, the public, and the government will allow for effective implementation of the principles of sustainable development, including in the context of the European integration.

MAIN ISSUES AS REGARDS EIA IN UKRAINE

The existing problems with the effectiveness of the EIA Law can be grouped as follows:

1. As relating to the public:
 - poor level of public awareness and access to information;
 - incomplete consideration of public comments and suggestions in the process of forming a report or conclusion;
 - low level of responsibility for violation of environmental impact assessment requirements;
 - limited human, financial and expert resources of the relevant authorities, which are objectively unable to provide a qualified assessment of the environmental impact assessment report.
2. As relating to business entities:
 - search for competent report executors;
 - EIA report executors are not responsible for the information provided;

- low awareness of the need for EIA in the process of re-profiling or expansion of activities;
- low business interest in environmental protection activities;
- excessive requirements for low-risk projects;
- a complex and lengthy EIA procedure (from finding contractors, preparing all documentation, submitting it for review, verifying it to obtaining permits);
- money;
- time (delay in implementation).

3. As relating to authorities:

- insufficient rigour and effectiveness of sanctions provided for by law;
- insufficient coordination between different authorities;
- lack of mechanisms to control and monitor compliance with environmental impact assessment requirements.

These problems are not exhaustive, the list can be supplemented.

Therefore, do the Amendments to the Draft Law No. 8410 solve the main problems of EIA efficiency?

1. Limited access of the public to EIA information, including the EIA Register.

To obtain the necessary information, documentation on the EIA, one has to write a letter of request to the Ministry of Environment, wait for the request to be considered and receive the information. Regarding free access to information, under the circumstances of martial law and preservation of strategically important and valuable information, it is difficult to timely inform and provide full information in publicly available sources.

Is addressed.

According to Article 4, Part 2, all information related to EIA is made public by being posted on the website of the Unified Register (hereinafter referred to as the UR) on Environmental Impact Assessment, indicating the date of official publication of the document, targeted mailing in accordance with Paragraph 4 of Part 10 of this Article, as well as by being posted on the official websites of district state administrations and official websites and bulletin boards of local self-government bodies of territorial communities that may be affected by the planned activity.

As to Article 4, Part 3, all the necessary information shall be shared in at least three public places in the area where the planned activity is to be carried out and in all settlements that may be affected by the planned activity.

According to Article 4, Part 10, free access to the EIA Unified Register is provided, where registration files with all the necessary information are formed. And as per Article 7, Part 2,

the public has the right to submit any comments or suggestions through the electronic cabinet to the UR of EIA.

2. Poor level of informing business entities about the need to conduct the EIA procedure.

It is necessary not only at the initial stages of design and construction of industrial or other complexes that may have an impact on the environment, but also in the planned activities of extractive enterprises in the process of re-profiling or expanding their production activities in accordance with Article 2 of the EIA Law.

Is not addressed.

3. Lack of control of the quality of the EIA work.

The report presents the results of analyses done by the relevant accredited laboratories, but the control over sampling, reading and interpretation of analyses are carried out by the executor/co-executor of the Report, whose work is difficult to control.

Is not addressed.

4. There are no updated registers of EIA report executors.

The problem of finding and selecting a contractor according to their competence, cost of work, etc.

Is not addressed.

5. There is no approved template for the EIA report.

There are guidelines for writing a report, but they do not regulate its format, in particular, the presence of necessary limiting parameters, information on taking into account public comments and suggestions, inclusion of prescriptions in the report, etc., which makes it difficult to write, submit, and read it comprehensively.

Is not addressed.

6. Excessive requirements for low-impact projects.

There are two categories of planned activities and facilities that may have a significant impact on the environment and are subject to environmental impact assessment, but the procedure for them is the same which significantly complicates and slows down the planning process for low-impact facilities, and sometimes does not fully limit the environmental impact as regards highly polluting facilities. There is no classification of such facilities according to the degree of environmental impact, which is why many business entities are not interested in undergoing this procedure that affects the quality and informativeness of the documentation provided.

Is not addressed.

7. Limited ability to conduct environmental monitoring due to martial law in Ukraine.

Access to combat zones, mined natural and industrial sites that require environmental impact assessment is difficult. To inspect objects near forests, among forest plantations, it is necessary to obtain permission from local regulatory authorities.

Is not addressed.

According to Article 17, no environmental impact assessment is required in the areas affected by military operations.

8. Lack of clear regulation as regards the necessity or inexpediency of conducting post-project monitoring by business entities.

There is no procedure for assigning the need for post-project monitoring to a business entity. In some cases, post-project monitoring activities do not carry the informative value necessary for environmental monitoring. The business entity is responsible for the implementation of this procedure and the quality of monitoring depends only on it. There is no proper control over such measures.

Is not addressed.

The need for post-project monitoring can be further determined only through additional consultations with independent experts.

9. Lack of responsibility of the EIA Report executor.

A customer, a business entity, is responsible for submitting the report.

Is not addressed.

10. Controlling bodies for compliance with environmental requirements are ineffective or inactive.

The main supervisory authority is the Ministry of Ecology whose main role in this area is to grant/deny permits for planned activities. The reduction of the structures of the State Environmental Inspectorate makes it impossible to physically exercise environmental control. Moreover, the lack of tools for controlling planned activities in terms of environmental impact assessment is not stipulated in the legislation.

Is not addressed.

11. Lack of possibility to conduct an independent examination of the main polluting parameters.

Public/independent experts do not have access to the territory of a business entity for independent sampling and examination.

Is not addressed.

12. Limited human, financial, and expert resources of the relevant authorities, which are objectively unable to provide a qualified assessment of the environmental impact assessment report.

There is a direct dependence of a business entity concerned on the content of the EIA report prepared at its request. In turn, the authorized bodies responsible for evaluating such documentation do not always have a full range of available and reliable information which affects their formation of specific EIA conclusions.

Is partially addressed.

According to Article 2, Clause 6, during the EIA process, an authorized central or territorial body shall hold consultations to receive comments and suggestions.

As to Article 2, paragraph 6, during the environmental impact assessment, an authorized territorial body or an authorized central body shall hold consultations with other executive authorities and local self-government bodies in accordance with their competence on environmental issues in order to receive comments and proposals as regards the assessment of the impact of a planned activity on the environment.

In accordance with Article 9, Part 3, when preparing an environmental impact assessment conclusion, an authorized territorial body or an authorized central body shall consider and take into account an environmental impact assessment report, a public discussion report, as well as comments and proposals received during consultations, which are given in the narrative part of the EIA conclusion.

13. The authorized territorial bodies do not represent the interests of the territorial communities that will be affected by the relevant activities.

Is partially addressed.

As per Article 2, Paragraph 6, during the EIA process, local self-government bodies and executive authorities may provide consultations for EIA in accordance with their competence.

14. Environmental and natural resources departments are not independent when it comes to their activities, as they are part of local executive authorities.

Is not addressed.

15. Cancellation of the EIA until the post-war reconstruction, which can lead to catastrophic consequences. There are no criteria for post-war reconstruction measures and their duration.

Is not addressed.

16. Authorized territorial bodies have limited opportunities for professional analysis of environmental impact assessment reports on all issues within their competence.

Is partially addressed.

According to Article 2, Part 6, authorized territorial bodies have the opportunity to consult with experts from other authorities and local self-government bodies in accordance with their competence.

Additionally, the Draft Law No. 8410 creates obstacles to the effective EIA procedure.

A) Restriction of access to information. It will not be necessary to ensure that business entities publish information in print media and post information related to EIA on notice boards. They will only have to provide copies upon request (Article 4, Part 9).

B) Reduction of time frames (for reviewing information, providing comments and discussion by the public). Thus, within 12 working days (instead of 20 as it used to be) from the date of entering the information into the Unified Register of Environmental Impact Assessment, the public may provide an authorized territorial body with comments and suggestions on the planned activities, the scope of research and the level of detail of information to be included in the environmental impact assessment report.

According to Article 7, Part 6, public discussion of the planned activity after submission of the environmental impact assessment report begins from **the date of entry of information into the Unified Register of Environmental Impact Assessment and lasts 25 working days (instead of 25-30 working days as it used to be).**

C) Complication of communication and the possibility of public participation in the EIA process.

According to Article 7, Part 5, if less than ten people have registered to participate in public hearings, public hearings are not scheduled.

Overall, it can be summarized that the amendments to the EIA Law do not solve the main existing problems in this area and contain certain contradictions in terms of transparency, simplification of the procedure, public access, etc. NGO Ecoclub does not see the expediency of adopting the Draft Law No. 8410 and believes that EIA in Ukraine needs to be reformed.