

This document is prepared to inform our partners and all stakeholders about the need for EIA reform and the Ecoclub's vision of what EIA should be in Ukraine

Issues

Environmental Impact Assessment (EIA) is the main tool for public participation in decision-making that may threaten the environment and human health. However, appeals against EIA decisions, public dissatisfaction, protests and lawsuits are precedents that show that the approach to the implementation of the EIA procedure in Ukraine has the following shortcomings:

From the public:

- limited public access to information and participation in the EIA procedure (limited access to the EIA register; information on post-project monitoring is not displayed; representatives of the authorized bodies do not always have time to process public requests, respond to them, and provide relevant information);
- low level of responsibility for violation of environmental impact assessment requirements.

From business entities:

- difficult search process for competent report executors;
- EIA report executors are not responsible for the information provided;
- excessive requirements for low-risk projects;
- increase in time and money costs.

From the government:

- Insufficient rigor and effectiveness of sanctions provided by law;
- lack of mechanisms to monitor compliance with environmental impact assessment requirements;
- low institutional capacity: limited human, financial, and expert resources of the relevant authorities, which cannot objectively provide a qualified assessment of the EIA report.

General:

- the procedure is limited during wartime (in particular, it is canceled for the territories affected by hostilities, during the liquidation of the consequences of war, there are no physical public discussions, some activities are canceled for EIA);
- inadequate quality of EIA reports and lack of accountability.

Facts confirming the existence of the problem

According to the [Analytical Report](#) prepared by the European Commission on Ukraine's application for membership in the European Union, *Ukraine is at an early stage of preparation in the area of environment and climate change*. As for the integration of the European Green Deal into all areas of legislation, additional measures are needed to ensure its successful implementation.

It is necessary to ensure compliance with the legislation in this area. In particular: *"the implementation of legislation on environmental impact assessment needs addressing as procedural irregularities and uneven*



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enforcement have been reported in the national and transboundary contexts. The Directive on environment liability should be transposed and access to environmental information and participation in decision-making on environment applied effectively and consistently”.

According to the [Recovery Plan of Ukraine](#) there are the following risks to achieving the goals: cancellation of EIA for certain projects during the period of post-war recovery.

The government has defined the following tasks to achieve the EIA goal:

- Improving the procedure for environmental impact assessment (EIA) during wartime
- Digitalization of the environmental sector. Implementation of IT systems, including environmental monitoring, updating the EIA register.

The proposals of the Ministry of Environment for the recovery plan state that post-war recovery and economic development will require strong and effective environmental impact assessment procedures. It is necessary to:

- create and implement a new, more functional EIA registry;
- integrate it into the Single Portal of Public Services «Diia»;
- provide opportunities for the public to submit proposals and comments on documentation during the EIA procedure through the Diia application;
- simplify the procedure for public discussions.

The public's proposal is to prepare an optimal scenario for EIA reform, a draft law based on a new approach to EIA that will be a compromise for all stakeholders.

Therefore, in our opinion, the real state of affairs, including the new amendments to the EIA Law [cannot solve](#) the main problems, which are not fixed at the national level, and only international organizations identify this as a [problem](#) and consider a complaint about non-compliance with public participation in EIA.

This is demonstrated by the cases considered by the Committee for the Compliance with the Aarhus Convention https://unece.org/env/pp/cc/acc.c.2014.118_ukraine (at the request of an NGO EPL) and https://unece.org/env/pp/cc/acc.c.2022.191_ukraine (at the request of an NGO Ecoclub).

The [Digest 2/2023](#) «Monitoring and Assessment of the EU-Ukraine AA implementation and EU acquis alignment progress, February – March» points out at some aspects regarding Draft Law "On Amendments to the Law of Ukraine "On Environmental Impact Assessment". For example, it will simplify the EIA procedures, in particular, the format for submitting comments and proposals from the public, according to the Explanatory Note. *However, more than 40 NGOs are worried about the restriction of their rights to participate in the EIA* and have appealed to the Government, the Ministry of Environmental Protection and Natural Resources, and MPs to amend the proposed changes. The main concern is the reduction of the public discussion of EIAs from 20 to 12 working days, changes in the ways of informing the public about EIAs and providing public access to EIAs and their reports.

Thus, representatives of the environmental movement, supported by members of Working Group 3 "Environment, Climate Change and Energy Security" of the Ukrainian National Platform of the Eastern



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Partnership Civil Society Forum (UNP EaP CSF) and Working Group 5 "Energy, Transport, Environment and Climate Change" of the Ukrainian Side of the EU-Ukraine Civil Society Platform (US CSP), also point to inappropriate changes to the law, which are inadmissible for [narrowing environmental rights](#).

Representatives of the [European Business Association](#) expressed their concerns about changes to the EIA Law that could deprive them of the right to implement investment projects and about the uncertainty of the changes.

[DiXi Group](#) experts also point out the imperfection of EIA, including "the lack of standards and criteria for determining the materiality of environmental impact from extractive activities".

In addition, the Unified State Register of Court Decisions registered more than 800 cases on environmental impact assessment in 2023 alone.

And judicial dishonesty has been mentioned in a number of publications. In particular, the Ecoclub also had to sue to cancel the EIA conclusion of the Kronospan plant:

https://ecoclubrivne.org/victory_in_supreme_court/

https://ecoclubrivne.org/supreme_court_eia/

And for public criticism, they received a lawsuit from Kronospan:

<https://ecoclubrivne.org/slapp/>

In Klevan, lawsuits have been going on for years against the Kolor S.I.M. company, which, according to residents, is toxicizing them with fumes. This year, the company received an EIA conclusion on the possibility of expanding its activities despite the categorical disagreement of the local community:

<https://www.rp.rv.ua/3259548726-%D1%83-%D0%BA%D0%BB%D0%B5%D0%B2%D0%B0%D0%BD%D1%96-%D0%BF%D1%96%D0%B4%D0%BF%D1%80%D0%B8%D1%94%D0%BC%D1%81%D1%82%D0%B2%D0%BE-%D0%BA%D0%BE%D0%BB%D0%BE%D1%80-%D1%81-%D1%96-%D0%BC-%D0%BF%D1%80.html>

And despite the scientists' criticisms, a Turkish company was allowed to build a windmill on Borzhava:

https://tvoemisto.tv/ua/exclusive/zberegty_ne_mozhna_buduvaty_chomu_budivnytstvo_na_borzhavi_znovu_rozglyadayut_v_sudi_113897.html

<http://epi.org.ua/announces/skasuvannya-vysnovku-z-otsinky-vplyvu-na-dovkillya-kejs-borzhavy/>

https://m.facebook.com/8aa.court/photos/a.244204693037880/811431642981846/?locale=he_IL

There are many such cases of non-compliance with environmental legislation in Ukraine. It raises serious concerns about the right of Ukrainian citizens to protect their health and the environment. The courts are the only way to challenge violations of EIA legislation, but this can take years and does not always bring the expected results.

Proposed solution:

The **objective** of this paper is to highlight the need for quality EIA reform in Ukraine and to further develop an effective solution.

The main prerequisites for the reform are that the EIA system in Ukraine should comply with the basic principles of transparency and fairness of Directive 2011/92/EU, be efficient, ensure public participation, and be business-friendly. In particular, it is necessary to find approaches to EIA reforms that will ensure speedy processing of low-risk projects and not miss risks for facilities that potentially pose a significant threat to the environment and public health.

To address the above shortcomings/problems, it is necessary to ensure

- assignment of responsibility for the prepared EIA report to the executors;
- free access to post-project monitoring materials, as well as to up-to-date data on monitoring observations, in the EIA register;
- institutional capacity, openness and accessibility of: inspectors, controlling bodies, accredited certified contractors, analyzing laboratories, etc;
- qualified staffing in sufficient numbers in the structural units of the UCA and UTO dealing with EIA issues, depending on the workload and the number of EIA conclusions prepared. Continuous professional development of staff through courses (related to environmental protection, sustainable development, best available technologies), etc;
- introduction of screening at early stages to identify low-risk projects (construction of residential buildings, laying of heating mains, river cleaning, coastal protection, etc.) and decision-making on such projects by local governments, landowners and land users without conducting a standard EIA procedure. It is promising to establish a different procedure for taking into account environmental prerequisites for low-risk sites.

Possible areas for reforming environmental impact assessment legislation in Ukraine

Below are alternative solutions to the EIA reform

1. A separate EIA authority

The essence of the change. Establishment of independent authority under the Ministry of Environmental Protection and Natural Resources of Ukraine that will review all EIA reports and provide binding conclusions. This authority should work closely with local municipalities and consult with scientific and governmental experts.

This body can be created in various ways:

- creation of institution from scratch
- consolidation of existing experts according to a previously developed institutional framework, reorganization of the EIA department.

Advantages:

- more objective assessment of reports due to higher expertise and less influence of local players;
- personal responsibility for expert opinions;
- more efficient use of the state budget due to fewer civil servants involved in EIA procedures.

Shortcomings:

- creation of a new institution may take a long time.
- the newly created body should be completely independent. Threats of corruption.

2. Providing the status of territorial EIA bodies to local self-government bodies

The essence of the change: EIAs for business entities (2 categories) are carried out in municipalities, not by the departments of ecology at regional state administrations.

Advantages:

- locals are involved in the process.
 - city and village mayors, local council members are elected by the community and must take into account the opinion of local residents.
 - investors are more likely to develop projects that will develop local communities.
 - EIA reports are likely to have clear, non-technical summaries and be more responsive to local conditions.

Shortcomings:

- manipulation of economic indicators (promises to open a school, kindergarten);
- lack of relevant specialists in local governments;
- inequality of influence (e.g., an industrial giant and a small community);
- lack of staff to organize the EIA procedure;
- there may be a situation where a neighboring community that does not make a decision will suffer (emissions will affect another city, discharges into the river);
- less chance of sharing experience with other communities.