

PROPOSALS OF NGO ECOCLUB

ON THE CONCEPT NOTE *DEFINING THE SCOPE OF DEVIATIONS FROM THE RULES OF ENVIRONMENTAL IMPACT ASSESSMENT (EIA) AND STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)*

EIA and SEA are important instruments for public participation in decision-making processes concerning environmental issues. They help to prevent potential negative impacts on the environment and public health, while taking into account public opinion. Given the situation in the country, the forced temporary introduction of deviations from the EIA and SEA procedures is necessary. However, not all restrictions on public access to environmental information and participation in decision-making processes are urgent and necessary.

This Concept Note describes only 2 specific projects and the rest is about general areas of coverage. However, Reform 6 requires concrete projects.

I. Remarks concerning the Contents of the Sections

Section 2.1. "Description of the Objects and Explanation of Why They Are Included in the Scope of Deviations in Each Specific Case"

This section lacks specific explanations of the deviation for each case. Additionally, there is no clear list of specific projects for which EIA derogations are foreseen, such as:

- **Activities Related to "State Energy Security":**
 - There is no clear definition of which projects fall under the "scope of deviations." What exactly is meant by "state energy security"? Does this category include, for example, the construction, reconstruction, or completion of hydroelectric power plants (HPPs), thermal power plants (TPPs), or nuclear power plants (NPPs)?
- **Restoration of Individual Structures of Buildings and Facilities to Eliminate the Consequences of Emergencies and Restore the Functioning of Facilities Designed to Ensure the Vital Activity of the Population, Without Changing Their Geometric Dimensions:**
 - This point has to provide details regarding which buildings and structures it applies to, for example, residential or industrial facilities.

We consider it unacceptable to exempt the following projects from the Environmental Impact Assessment (EIA):

Implementation of the Experimental Project “Construction of the Kakhovka Hydroelectric Complex on the Dnipro River. Reconstruction After the Destruction of the Kakhovka Hydroelectric Power Plant and Ensuring the Sustainable Operation of the Dnipro Hydroelectric Power Plant During the Reconstruction Period”;

- Activities Related to the Placement of the National Military Memorial Cemetery.

In these cases, access to environmental information for the public and public participation in the decision-making process will be restricted.

Section 2.2: “Justification for the Scope of Derogations”

This section only justifies two projects: “Construction of the Kakhovka Hydroelectric Complex on the Dnipro River. Reconstruction After the Destruction of the Kakhovka Hydroelectric Power Plant and Ensuring the Sustainable Operation of the Dnipro Hydroelectric Power Plant During the Reconstruction Period” and the construction of the National Military Memorial Cemetery.

However, the section does not provide any details concerning other activities and projects that are part of the scope of derogations. Therefore, the list is not clearly defined and specific, making Section 2 neither substantive nor comprehensive.

Section 2.3: “Time Limits for Granted Derogations”

Derogations will be in effect throughout the period of martial law. The end date of martial law in Ukraine is unknown and could extend for years or even decades. It is advisable to specify clear timeframes, for example, one year with the possibility of an extension.

Section 3.1: “Description of Objects and Explanation of Why They Are Included in the Scope of Derogations from SEA Rules”

We insist on the mandatory conduct of (SEAs) for the following state planning documents:

- **Regional Comprehensive Recovery Program;**
- **Comprehensive Recovery Program for a Territorial Community (or its part).**

According to the European Commission’s recommendations, both EIA and SEA should be fully incorporated into all recovery and reconstruction programs.

Section 3.3: “Time Limits for Granted Derogations”

The derogations from SEA rules for comprehensive recovery programs, recovery plans, and development plans do not have a specific time limit. The period of validity for such state planning documents is considered to be the recovery period. We recommend specifying concrete timeframes, for example, 2 years with the possibility of extension.

II. Recommendations Regarding the Content of the Concept Note

- Consideration of Potential Transboundary Environmental Impacts

The document does not address planned activities that could potentially have negative transboundary environmental impacts. We propose stating that such projects should not be subject to derogations from assessment (EIA) rules.

- Activities on Nature Reserves

In cases where activities are planned within nature reserve territories, specify that these projects are not subject to derogations from EIA rules and must undergo mandatory EIA.

- Specific List of Derogations

Provide a detailed list of derogations, specifically outlining which provisions of the second and third parts of Article 3, "Scope of Environmental Impact Assessment," of the Ukrainian Law on Environmental Impact Assessment, will not be subject to EIA.

- Clarification of Annex 2 Content

The information in Annex 2 contains inconsistencies. Annex 2 is titled "Criteria for determining the expansion and change of activities and facilities that are not subject to environmental impact assessment."

On page 5, it is written that Annex 2 does not relate to the scope of EIA waivers, but is used to determine the need for an EIA in case of changes and expansion of current activities. We believe that this Annex has no place in this concept note if it is not subject to derogations from the EIA and SEA.

If the Ministry considers that the projects listed in Annex 2 are not subject to EIA, it will need to provide justification for each project listed in the table, explaining why it does not require EIA.

III. Recommendations Regarding the Need for Alternative Procedures

In the event of a series of derogations from EIA and SEA during the state of war in Ukraine and during the reconstruction period, we recommend developing and implementing an alternative mechanism for this period that will ensure:

1. Environmental and Health Impact Assessments

Conduct studies to assess the impact of the aforementioned activities on the environment and the health of local populations, and develop measures to prevent and minimize negative consequences.

2. Public Access to Environmental Information

Ensure public access to information related to environmental impacts.

3. Public Participation in Decision-Making Processes

Facilitate public participation in decision-making processes concerning environmental matters, in accordance with the Aarhus Convention.