

COMMON POSITION

Regarding the inconsistency with the government's initiative to narrow the scope of the EIA and SEA (within the framework of the concept note) of the Ukraine Facility plan, in particular, Reform 6. Publication of a concept note defining the scope of deviations from the rules of environmental impact assessment (EIA) and strategic environmental assessment (SEA).

The Ministry of Environmental Protection and Natural Resources of Ukraine [published](#) the Draft Concept Note on its website in May 2024. From the date of publication, the public had one month to submit comments and suggestions on the Draft until May 30, 2024.

While studying the document, we found a number of shortcomings and inconsistencies. We have found out that the context of the note contradicts the goals of this reform: *"Ensure cross-sectoral implementation of environmental and climate measures by implementing EIA and SEA rules in all projects, programs, and strategies, except for clearly defined temporary derogations."*

This Concept Note does not fully identify specific projects, nor are they numbered or clearly defined. Consequently, various types of activities may fall under the derogations from EIA. We believe that the concept should detail the exemptions that will apply during martial law, describe and justify not only existing projects but also those that will fall under its scope in the future.

We believe that these points in the Draft Concept Note are not justified, in particular:

► **1. The authority responsible for determining the scope of deviations** from EIA and SEA regulations has been identified as the Verkhovna Rada of Ukraine. The Verkhovna Rada is the legislative body in Ukraine, not a specialized environmental authority that regulates such activities. In our opinion, the Verkhovna Rada's decision-making regarding deviations from EIA and SEA for specific projects removes individual accountability for these decisions. We emphasize that such decisions should be made by a competent environmental authority, with personal expert responsibility for each decision.

In addition, the procedure for adopting a decision on deviations from the EIA and SEA rules by the parliament of Ukraine should not cancel the rules of the Aarhus Convention and Directive 2011/92/EU. We believe that it is unacceptable to adopt any act without an impact assessment and public information and participation.

► **2. Description of Projects and Explanation of Why They Are Included in the Scope of Deviations in Each Specific Case.** This requirement is not met, as the Concept Note does not describe specific projects; they are neither exhaustive nor clearly defined.

Regarding deviations from the EIA rules. Deviations from the EIA requirements for these projects cannot be considered a legitimate compromise between the state authorities and the public, and it is not clear on what grounds they should be adopted without due consideration of public opinion. We consider the cancellation of EIAs for the following projects unacceptable:

1. The implementation of the experimental project "Construction of the Kakhovka Hydropower Complex on the Dnipro River. Reconstruction after the destruction of the Kakhovka HPP and ensuring the stable operation of the Dnipro HPP during the reconstruction period".
2. Activities related to the establishment of the National Military Memorial Cemetery.

In the Scope of Deviations from SEA Rules. We insist on the mandatory implementation of SEA for

the following state planning documents:

1. The comprehensive regional recovery program.
2. The comprehensive recovery program for the territorial community (or its part).

We believe this contradicts the European Commission's recommendations, which state that EIA and SEA should be transposed into all recovery and reconstruction programs.

► **3. Justification of the Scope of Deviations.**

This requirement has been met only for 2 specific projects: the Construction of the Kakhovka Hydropower Complex and the establishment of a National military memorial cemetery. Otherwise, the list is not clearly defined and specific, and Section 2 is neither substantial nor exhaustive.

Furthermore, the document includes Appendix 2, which is not related to deviations from EIA and SEA but lists projects that have started the EIA procedure and are presented as examples of deviations from EIA rules.

► **4. Time limits for the derogations granted - These are not specific or clear.**

Deviations from the EIA rules will be valid for the next period:

- during martial law;
- during martial law and during the reconstruction period within 90 calendar days after the termination or cancellation of martial law in Ukraine;
- one-time.

Deviations will be in effect for the duration of martial law, which could last years or decades. When martial law in Ukraine will end is unknown.

The deviations from SEA rules concerning comprehensive recovery programs, restoration and development plans do not have specific time limits. The validity period of such state planning documents will be considered the recovery period, which also lacks clear boundaries.

Regarding the Content of the Concept Note:

- The document does not account for planned activities that could potentially have a negative transboundary impact on the environment.
- The document does not consider planned activities intended to be carried out in protected natural areas.
- There is no specific list of deviations, particularly which sections of the [second](#) and [third](#) parts of Article 3 "Scope of Environmental Impact Assessment" of the Law of Ukraine on Environmental Impact Assessment will not be subject to EIA.
- The concept note should also consider, explain and justify future projects, not just describe existing ones.

If a series of deviations from EIA and SEA are established during martial law and the recovery period in Ukraine, it is necessary to ensure:

1. Conducting impact assessments of the above-mentioned activities on the environment and local population health and developing measures to prevent and minimize negative consequences.
2. Access to information related to environmental impact for the public.
3. Public participation in decision-making processes concerning environmental matters (according to the Aarhus Convention).

Therefore, we request that this government initiative be recognized as not compliant with the principles of Reform 6 of the Ukraine Facility and prevent the implementation of this project in its current form.

We call on the the Ministry of Environmental Protection and Natural Resources of Ukraine to review the concept of its development for the requirements described in Reform 6 (Environment and Climate Section) of the Ukraine Plan 2024-2027 (Ukraine Facility). And the President of Ukraine to prevent the adoption of the concept note, the current version of which is available to the public (dated 05.2024).

THE POSITION WAS SUPPORTED:

- **NGO Ecoclub**
- **NGO Centre for Environmental Initiatives “Ecoaction” (or Ecodiya)**
- **NGO Plato**
- **NGO Environmental Humanitarian Association Green World**
- **NGO Ecoltava**
- **NGO SaveDnipro**
- **NGOs of Working Group 3 of the Ukrainian National Platform of the Eastern Partnership Civil Society Forum**
- **NGOs of Working Group 5 of the EU-Ukraine Civil Society Platform**