

Proposals of NGO Ecoclub to improve the Concept Note defining the scope of deviations from the rules of environmental impact assessment (EIA) and strategic environmental assessment (SEA) and its implementation

On 18 September 2024, the Ministry of Environmental Protection and Natural Resources of Ukraine published the final version of *the Concept Note defining the scope of deviations from the rules of environmental impact assessment (EIA) and strategic environmental assessment (SEA)*.

Ecoclub has carefully read the *Concept Note defining the scope of deviations from the rules of environmental impact assessment and strategic environmental assessment* (hereinafter referred to as the Concept Note) and must state that most of the comments previously submitted by Ecoclub have not been taken into account.

Implementation of the reform in the current version of the Concept Note may slow down the process of European integration due to incorrect interpretation of European rules and the mechanism of reform implementation. Since the current version of the Concept allows for violations:

- Aarhus Convention (implementation of the reform in the current version does not provide for public participation in decision-making and access to information that contradicts the Aarhus Convention).
- Espoo Convention (if an EIA is not carried out, no decision on possible transboundary impacts will be made).
- Directive 2011/92/EU (even in cases of derogations, the public must be informed, and another form of assessment must be provided).

We consider it necessary to make the following changes and additions:

1. Regarding the project ‘Construction of the Kakhovka Hydroelectric Power Plant. Reconstruction after the destruction of Kakhovka HPP and ensuring sustainable operation of Dnipro HPP during the reconstruction period’.

In accordance with Part 6 of the Resolution of the Cabinet of Ministers of Ukraine dated 18 July 2023 No. 730 ‘On the Implementation of the Pilot Project *‘Construction of the Kakhovka Hydroelectric Power Station on the Dnipro River. Reconstruction after the destruction of Kakhovka HPP and ensuring the sustainable operation of Dnipro HPP during the reconstruction period’* (hereinafter referred to as Resolution No. 730), the reconstruction after the destruction of Kakhovka HPP and ensuring the sustainable operation of Dnipro HPP during the reconstruction period (hereinafter referred to as the Project) is not subject to EIA during the implementation of Stage 1. The second stage of the Project should begin after the de-occupation of the Kakhovka HPP site and will require consideration of the EIA.

However, at the first stage of the Project, it is planned to build a retaining structure in the lower reaches of the Dnipro HPP, which will further negate the EIA, as the environmental

impact will be implemented without preliminary studies to assess negative impacts and consider public opinion.

At the same time, it should be emphasised that in accordance with the Convention on Environmental Impact Assessment in a Transboundary Context, the ‘Large Dams and Reservoirs’ are subject to transboundary environmental impact assessment in accordance with Annex 1, but with the decision to deviate from the EIA within the Project, all possible affected parties will not be informed in this matter, as the Ministry of Environment will not have the materials to determine the possible significant adverse transboundary impact, as provided for in Article 14(2) of the Law of Ukraine On Environmental Impact Assessment.

Accordingly, we propose to consider the possibility of conducting an EIA for part of the first stage of the Project, namely the construction of a retaining structure in the lower reaches of the Dnipro HPP, despite the provisions of CMU Resolution No. 730.

2. Provide explanations for each specific case of deviations.

For example, the section ‘Description of objects and explanation of why they are included in the scope of derogation in each specific case’ contains rather general wording on what can be considered a derogation. It does not specify the areas in which derogations are possible, even though derogations as such are not possible in the construction of certain facilities (e.g. nuclear power plants) in respect of which international obligations exist. There is no specification of the activities within which derogations will be made and no clear circumstances for obtaining a derogation.

Thus, we suggest:

- ***detail and describe each individual area in which it is possible to deviate;***
- ***provide a clear list of activities within which a derogation is possible and the conditions for such a derogation, with justification for the need for derogations for each activity separately;***
- ***to introduce numbering, in particular, in the section ‘Justification of the scope of deviations’ with specifics, as otherwise, the list is not clearly defined and specific, and section 2.2 is not meaningful and exhaustive;***
- ***Provide a specific list of derogations indicating under which paragraphs of the second and third parts of Article 3 ‘Scope of Environmental Impact Assessment’ of the Law of Ukraine ‘On Environmental Impact Assessment’ the derogation will be possible.***

3. To specify the scope of the derogations in relation to nature conservation areas of national and international importance.

The Concept Note does not regulate the possibility of derogations in relation to nature protection zones, despite the fact that certain activities, defined by law, may be carried out in such zones, which potentially require an EIA.

At the same time, clear emphasis and regulated regulation in the context of EIA in protected areas should be the key in the Concept Note in terms of protecting the interests of the state and citizens.

Accordingly, we propose to provide clear regulation of the question of whether protected areas fall within the scope of the derogation 6.

4. Define clear terms for the validity of the derogations.

Clause 2.3. of the Concept Note contains a reference to the period during which derogations are possible, which is tied to the martial law.

At the same time, it is obvious that not all projects or activities requiring an EIA are directly affected by martial law and require appropriate simplifications in the context of environmental control. In addition, linking the possibility of derogation to the unlimited period ‘martial law period’ is not correct, as this does not actually define the time limits for the simplifications.

In view of the above, we offer the following:

- provide specific time limits for derogations under martial law (e.g., one year, with the possibility of further review and extension, if appropriate);*
- specify the mandatory re-approval of the list of activities for which the EIA will be derogated from with each extension of the martial law period, considering the real need for derogation in a particular area or project at the time of the martial law extension.*

5. Specify the procedure for deciding on deviations from the EIA and SEA for each specific project and the participation of the responsible authorities.

Paragraph 2.4. of the Concept Note stipulates that decisions on derogations in the field of EIA are made not by individuals or experts, but at the highest level of government, which ensures a balanced approach to management decision-making, taking into account the security situation and the legal regime of martial law.

At the same time, the Concept Note does not describe the mechanism for making the above decision and the clear nature and sequence of the stages of implementation of such a mechanism.

For example, paragraph 7 of the Concept Note states that decisions on derogations are made exclusively by the highest executive body and the legislative body of Ukraine. There is no specification as to whether such a decision is made by one body and then by another, which body should make the decision first, or whether it is made simultaneously.

Clause 13 of the Concept Note stipulates that draft decisions providing for the application of derogations from the EIA and SEA rules are to be prepared and submitted to the Government only by the Ministry of Environmental Protection and Natural Resources upon submission by the authorised central executive body, provided that the application of the derogation is forced, justified and meets three specific criteria (ensuring defence capability, restoration of critical infrastructure and elimination of the consequences of an emergency). There is no procedure for assessing the need for derogation by the central executive body.

Accordingly, we propose to describe the decision-making procedure (detailing each stage - from the proposal to cancel the EIA for a project to the consideration of the proposal

by the Ministry of Environmental Protection and Natural Resources and the final decision by the legislative and/or executive body) using the following algorithm:

- the business entity submits an application for the need to implement the project without undergoing an EIA and SEA (within the provisions of the Concept Note) to the Ministry of Environmental Protection and Natural Resources;

- the business entity informs the public (place this application on the open online resources of local authorities in the territories where the activity will be carried out, on notice boards and on the website of the Ministry of Environmental Protection and Natural Resources);

- The Ministry of Environmental Protection and Natural Resources considers each project for the possibility of not going through the EIA or SEA procedure and issues an opinion on each decision, taking into account public opinion on the possibility of not going through the permitting procedure;

- The Ministry of Environmental Protection and Natural Resources is preparing a conclusion that there is no need for a transboundary environmental impact assessment of the project;

- The Ministry of Environmental Protection and Natural Resources prepares a submission on the possibility of not passing the draft EIA or SEA to the Cabinet of Ministers of Ukraine or the Verkhovna Rada of Ukraine.

6. Supplement the Concept Note with provisions on taking into account the interests of the public when derogating.

The most important task of the state, both in times of peace and martial law, is to ensure the safety of life and health of citizens. In this regard, even if there is a critical need to implement a certain project during martial law, the task of the relevant Ministry should be to protect citizens in the context of environmental impact on their health, which is possible only if the public is involved in making relevant decisions.

In this regard, we suggest that the Concept Note should stipulate that in the event of a series of derogations, the EIA and SEA should be ensured during martial law in Ukraine and during reconstruction:

conducting studies to assess the impact of the above activities on the environment and the health of the local population and developing measures to prevent and minimise negative consequences;

public access to information related to environmental impact;

public participation in decision-making processes on environmental issues (in accordance with the provisions of the Aarhus Convention).

We hope that the above proposals will be taken into account in the final version of the Concept Note, as they are aimed at increasing the level of regulation and transparency of the document. Additionally, please inform us about the status of consideration of the



41 Stepana Bandery St., office 95,
Rivne, Ukraine, 33014
[e-mail:office@ecoclubrivne.org](mailto:office@ecoclubrivne.org)
www.ecoclubrivne.org

proposals within the timeframe established by the Law of Ukraine ‘On Access to Public Information’ by sending a response to the e-mail address of the NGO Ecoclub: office@ecoclubrivne.org.

We would like to emphasise that NGO Ecoclub is always ready to communicate on proposals and initiatives within the framework of environmental legislation and will be happy to join relevant public discussions and initiative groups.