

**Report
of Ukraine under paragraph 7 of the Decision IV/9h of the Meeting of the
Parties to the Aarhus Convention**

According to paragraph 7 of the Decision IV/9h of the Meeting of the Parties to the Aarhus Convention Ukraine was obliged to fully implement measures requested by the Meeting of the Parties in its Decision II/5b and notify the secretariat of this fact. Performing this obligation Ukraine presents this report. The main issues related to public participation, which Ukraine had to address were:

1. time frames for public participation;
2. modalities of public consultation process;
3. requirements to take into account outcomes of public participation;
4. making information available in the context of article 6 of the Aarhus Convention.

In detail the abovementioned obligations were clarified in paragraph 10 of the attachment to the letter of Mr. Jan Kubis, the Executive Secretary of the UNECE to the Prime-Minister of Ukraine of 16 April 2009 № ECE/EHLM/194/2009/L (hereinafter – “the Letter”) (see Annex 1 to the present Report).

Aiming to implement the Decision III/6f of the Meeting of the Parties to the Aarhus Convention the Cabinet of Ministers of Ukraine approved the Action Plan by its Decree of 27 December 2008 № 1628-p. Bearing in mind that the adoption of the Law of Ukraine on Regulation of Urban Development Activities of 17 February 2011 № 3038-VI has significantly changed the environmental impact assessment (EIA) system of Ukraine the Action Plan had to be amended accordingly. Thus in order to create sound legal basis for public participation in decision-making regarding activities likely to cause a significant adverse environmental impact the Ministry of Ecology and Natural Resources of Ukraine decided to develop and submit for adoption by the Parliament of Ukraine the draft Law of Ukraine on Environmental Impact Assessment (hereinafter – “the Draft”) (see Annex 2 to the present Report). The Draft addresses all issues stemming from the Decision II/5b of the Meeting of the Parties to the Aarhus Convention.

1. Timeframes for public participation under the Aarhus Convention.

Paragraph 10 (f) of the Letter draws attention to «how the Government will prevent short-cutting in the decision-making procedure, i.e. parts of the EIA being provided for evaluation and approval by the decision making authority prior to any information being made publicly available».

This issue is addressed by the respective provisions of articles 5 (5), 6 (1), 7, 8, 10 (5), 10 (6), 9, 13 (1), 13 (2), 14, 15 (4), 18 (1) and 19 (1) of the Draft.

An economic agent is able to submit EIA materials to a state permitting authority applying for a permit only after (a) the Declaration of intent is published, (b) the Declaration of intent together with the EIA materials and the Environmental impact statement is added to the National Registry and (c) the public discussion (including public hearings) has taken place.

Apart from that paragraph 23 of the Procedure for Public Involvement in the Consideration of Issues on Making Decisions Likely to Cause Impact on the Environment, approved by the Decree of the Cabinet of Ministers of Ukraine of 29 June 2011 № 771 (hereinafter – “the Decree on Public Participation”) establishes that «On the stage of the development of the EIA materials for highly environmentally hazardous types of activity and objects public discussion commences on the date of publication of the Environmental impact statement. The duration of public discussion shall be not less than 30 days from the date of publication of the announcement on the undertaking of the state environmental expertiza. Public discussion shall be undertaken in 15 days after the date the public has been provided with the set of documents substantiating the EIA». Nevertheless, practical application of the Decree on Public Participation is inconsistent.

Paragraph 10 (d) of the Letter speaks of “setting specific timeframes for the public consultation process In particular:

- (i) The time for the public to study the information on project and to prepare to participate effectively; and
- (ii) The time for the public to prepare and submit comments”.

These requirements are accommodated in the relevant provisions of articles 12 (3); 13 (2) – 13 (4) and 15 (4) of the Draft.

Paragraph 10 (e) of the Letter requires “that sufficient time is available for the public officials to take any comments into account in a meaningful way ...”. Articles 16 (1), 16 (4), 16 (6) and 18 (1) (b) of the Draft reflect the above concept as appropriate. The above issue is also addressed in the draft Law of Ukraine on Reforming and Improving the Permitting System in the Sphere of Environmental Protection, Rational, Non-Exhaustive Use of Natural Resources and Environmental Safety, Decreasing the Regulatory Pressure on Economic Agents, which provides for the relevant extension of the timeframes of the permitting procedure.

2. Establishing modalities for public discussion procedure.

Public discussion of the EIA materials shall take the form of submitting proposals and comments (commenting) and public hearings (art 12(2) of the Draft). Public discussion in the form of submitting proposals and comments (commenting) commences with the publication of the Declaration of intent. Any person, not only the public concerned, has the right to submit comments during the entire period of public discussion.

An economic agent shall submit the Declaration of intent for all objects and types of economic activity, listed among the types of activity and objects which are highly environmentally hazardous regardless of their thresholds (capacity, length, output, etc.). This measure provides the public with the opportunity to be aware of the intent to undertake an activity and is aimed to prevent the so-called «salami slicing», when a project falling under the list of activities for which the EIA is mandatory, is divided into smaller parts falling outside of the mandatory EIA. The publication of the Declaration of intent makes the public authority and the public informed of the intent to undertake an activity which is highly environmentally hazardous. It also makes transparent (public) the process of defining the types of activity and objects which are highly environmentally hazardous for which the EIA is mandatory and for which it is not.

Article 8 of the Draft contains requirements for a Declaration of intent.

One of the modalities of public discussion is the possibility for the public to submit comments on Terms of Reference for the EIA report. Under article 10 (5) of the Draft during 15 business days from the date of publication of the Declaration of intent the public may submit comments to the regional state administration or, for a project of a national importance, to the Ministry of Ecology and Natural Resources of Ukraine as well as to the economic agent regarding the scope of works and studies to be conducted within the EIA. If the mentioned above comments have been submitted to state bodies, they shall transmit them to the economic agent within 20 days from the date of publication of the Declaration of intent.

The economic agent shall take the public comments into account in the course of elaborating and approving the Terms of Reference for the EIA report (article 10 (6) of the Draft).

The economic agent has the right to organize the public discussion of the Terms of Reference for the EIA report in order to take into account the public opinion on the scope of the planned works and studies of the types of environmental impact, in particular the reasoning for the need to perform impact assessment on certain elements or objects of the environment and the likely impacts on them. If the economic agent decides to organise the public discussion on the Terms of Reference the time schedule for it shall be not less than 30 business days (article 10 (9) of the Draft).

After the EIA report is ready the economic agent shall submit the Environmental impact statement to the regional state administration or to the Ministry of Ecology and Natural Resources of Ukraine, as appropriate. These bodies shall add it to the publicly available National Registry and within 5 business days shall publish the announcement on public discussion (article 14 (1) of the Draft). The time schedule for the public discussion commences on the date of publication of the above announcement (article 12 (3) of the Draft).

The public is entitled to submit any comments or proposals (article 13 (1) of the Draft). During the period of the public discussion responsible state bodies shall

provide for an opportunity for the public to study the EIA materials and make copies of them (article 13 (3) of the Draft).

In addition the responsible state bodies shall make public other information about the proposed activity they possess, except for the data, the disclosure of which could threaten state safety or rights and legal interests of other people (article 13 (3) of the Draft).

The responsible state bodies shall summarize the comments received during the public discussion in the Report on public discussion. Written comments received by the responsible bodies shall be attached to the Report on public discussion (article 13 (5) of the Draft).

The costs of the public discussion shall be borne by the economic agent (article 13(6) of the Draft).

According to article 15(1) of the Draft the Public Discussion Plan shall provide for at least one public hearings in the region likely to be affected by the proposed activity. In the case of a project of a national importance – i.e. where the proposed activity is likely to cause an impact on the territory of two or more regions; the proposed activity is likely to cause a transboundary impact; or the proposed activity is financed involving foreign credits given under the guarantees of the Cabinet of Ministers of Ukraine or where the project exceeds 100 million UAH – the Public Discussion Plan shall envisage at least one public hearings in the region likely to be affected by the proposed activity and one public hearings on the national level (article 15 (2) of the Draft).

Public hearings shall take place not earlier than 15 calendar days from the date when the EIA materials were made publicly accessible and the announcement on public hearings has been published (article 15(4) of the Draft).

The permitting body (state body who takes the final decision) shall publish the permitting document (permit) issued by it. The permitting document shall contain reasons and considerations on which it is based (article 18 (3) of the Draft).

3. Requirements to take the outcomes of public participation into account.

Under article 18 (1) of the Draft a permitting body shall consider and take due account of the outcomes of the environmental impact assessment. The outcomes of the environmental impact assessment shall include: a) EIA materials; b) the Report on public discussion; c) the Conclusion on EIA.

The public has the right to challenge the decision of the public authority if the decision infringes a right or protected interest of a person. Under article 19 (2) of the Draft the unreasoned failure to take into account or inappropriate taking into account of the public comments in the permitting document procedure shall be considered as one of the violations of the right to participate in the EIA procedure.

4. Making information available in the context of article 6 of the Aarhus Convention.

Paragraph 10 (a) of the Letter requires that “public authorities obtain environmental information relevant to their functions, including that on which they base their decisions ...”. In order to make the public authorities possess the information relevant to their functions (including on which they base their decisions), the Draft contains the provisions obliging an economic agent to submit the Declaration of intent, the Environmental impact statement, the EIA report, and the permitting document serving as the final decision, to the public authority in an electronic form. The latter shall add the above documents to the publicly accessible National Registry (see articles 5 (6), 7 (1), 9 (4), 11 (4), 11 (5), 16 (9), 24 (5), 27 (4) of the Draft).

In addition the Law of Ukraine on Access to Public Information of 13 January 2011 № 2939-VI in articles 1, 3 (1.2), 13, 14 (1.2), 15 (1.5), 18, 22 (1.1) and 22 (3) requires that public authorities keep track of the information they possess and disseminate it or provide upon request. The request for information can be rejected only if the public authority does not possess the requested information and pursuant to its competence foreseen by the law is not obliged to possess such information.

Paragraph 10 (b) of the Letter requires that the “information within the scope of article 4 of the Convention is provided regardless its volume ...”. Article 20 (4) of the Law of Ukraine on Access to Public Information of 13 January 2011 № 2939-VI addresses the issue of a request for a large volume of information and in connection to this gives the right to a public authority to extend the period for consideration of the request of up to 20 working days with the appropriate notification of such an extension within 5 days after receiving the request. Meanwhile neither the above provision nor any other provision of the mentioned law authorizes limitation of any kind of access to public information because of its volume.

In its paragraph 10 (c) the Letter requires that the legislation of Ukraine establishes “the detailed requirements for informing the public, as required under article 6, paragraph 2 of the Convention, about initiation of the procedure and possibility for the public to participate. In particular:

- (i) The required form of the public notice;
- (ii) The required contents of the public notice (as compared with the requirements specified in paragraph 2 (a) to (d) of article 6: and
- (iii) How, in case of projects having transboundary impact, the public concerned abroad is to be notified, in accordance with paragraph 2 (e) of article 6”.

The above concerns are addressed in the Draft in the following manner: requirements contained in subparagraph 10(c) (i) are reflected in articles 8 (2) and 11 (2) of the Draft; those of subparagraph 10(c) (ii) – in

articles 8 (1), 11 (1) and 14 (2) of the Draft; and subparagraph 10(c) (iii) are accommodated by relevant provisions of articles 6(3) and 23 of the Draft.

Paragraph 10 (g) of the Letter requires that the “public authorities do not limit the provision of information under article 6, paragraph 6, and article 4 of the Convention to publication of the environmental impact statement but include other relevant information to ensure more informed and effective public participation ...”. The above concern is accommodated in article 13 (4) of the Draft.

Paragraph 10 (h) of the Letter requires «that information that applicants are required to provide in the course of the public authorities’ decision-making on decisions under article 6 is generally not exempt from disclosure ... ». Article 20 (2) of the Law of Ukraine on information provides that “all information is open for disclose, except for the information classified as a secret information”. Moreover, under the Draft all of the documents submitted by an economic agent to a public authority within the EIA procedure shall be made publicly accessible including through the National Registry.

The requirements contained in paragraph 10 (i) of the Letter i.e. those on “the disclosure of EIA studies in their entirety as the rule (with possibility for exempting parts being an exception to the rule) ...” are addressed in articles 9 (4), 13 (3), 14 (2) (д), 15 (4) of the Draft.

Paragraph 10 (j) of the Letter provides “that texts of decisions, along with the reasons and consideration on which they are based, are publicly available ...”. This principle of the Aarhus Convention is properly reflected in articles 18 (3), 18 (4) and 28 of the Draft.

Apart from working on the Draft the Ministry of Ecology and Natural Resources of Ukraine undertook a number of additional measures aiming at strengthening implementation of the Aarhus Convention in Ukraine. One of the most important among them is the draft amendment to the Law of Ukraine on Regulation of Urban Development Activities which has been extensively discussed with other central executive bodies of Ukraine. The draft amendment primarily concentrates on articles 31 and 37 of the Law of Ukraine on Regulation of Urban Development Activities aiming at resolving the issue of a final decision in the field of construction activities and empowering permitting bodies to reject an application for a permit in case the outcomes of public discussion have not been taken into account. Moreover, the proposed draft amendment provides for the right of the Ministry of Ecology and Natural Resources to express its opinion on a proposed activity likely to cause a significant impact on the environment. Today the draft amendment is on the stage of interagency consent.

Another effort by the Ministry of Ecology and Natural Resources of Ukraine was the development of the draft amendment to the state construction norms “ДБН А.2.2-1-2003 on Composition and Content of the Environmental Impact Assessment Materials in the Process of Designing and Construction Enterprises, Buildings and Constructions. Main Provisions of the Designing”, approved by the State Committee

of Construction on 15 December 2003 № 214. The draft has been submitted for approval to the Ministry for Regional Development, Building and Housing of Ukraine.

The Ministry of Ecology and Natural Resources of Ukraine is confident that with the adoption of the Law of Ukraine on Environmental Impact Assessment and other abovementioned pieces of legislation Ukraine would be in position to report on comprehensive implementation of the Decisions II/5b, III/6f and IV/9h of the Meeting of the Parties to the Aarhus Convention and significant strengthen compliance with the Aarhus Convention by Ukraine.



**UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE**

The Executive Secretary

Under-Secretary-General

Ref.: ECE/EHLM/199/2009/L

16 April 2009

Madam,

I write to you at the request of the Compliance Committee of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) which recently met to consider Ukraine's compliance under the Convention.

As you are no doubt aware, at its third meeting held from 11 to 13 June 2008 in Riga, the Meeting of the Parties to the Aarhus Convention adopted decision III/6f on compliance by Ukraine with its obligations under the Convention (ECE/MP.PP/2008/2/Add.14). Through paragraph 5 of decision III/6f, the Meeting of the Parties decided to issue a caution to the Government of Ukraine, to become effective on 1 May 2009, unless the Government fully satisfied certain conditions set out in that paragraph and notified the secretariat of this fact by 1 January 2009. The successful fulfilment of the conditions was to be established by the Compliance Committee.

At its twenty-third meeting held in Geneva from 31 March to 3 April 2009, the Compliance Committee reviewed the steps taken by Ukraine to fulfil the conditions set out in paragraph 5 of decision III/6f. In particular, the Committee considered the Report and Action Plan submitted by Ukraine on 31 December 2008, the letter from Ukraine dated 27 March 2009 and the oral statements made by representatives of the Government of Ukraine on 3 April 2009. Further to its deliberations, the Committee has asked me to convey to you its findings, which are enclosed.

I would like to draw your particular attention to paragraphs 10, 13 to 15 of the Committee's findings. In light of the steps taken by Ukraine, the Committee found that Ukraine has fulfilled the conditions set out in paragraph 5 of decision III/6f of the Meeting of the Parties to the extent that the caution issued by the Meeting of the Parties through decision III/6f shall not become effective.

However, the Committee found that Ukraine is not yet fully in compliance with its obligations under the Aarhus Convention.

...

Her Excellency
Mrs. Yulia TYMOSHENKO
Prime Minister of Ukraine
Kiev, Ukraine



THE EXECUTIVE SECRETARY OF ECE

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The Committee therefore reserved its right to make further recommendations to the Meeting of the Parties, including to recommend to the Meeting to issue a new caution, if the Committee finds that its concerns relating to the points set out in paragraph 10 (a) to (i) have not been satisfactorily met.

On behalf of the UNECE, I would like to express the willingness of the secretariat to work with the Government of Ukraine to assist it in meeting its obligations under the Aarhus Convention.

Please accept, Madam, the assurances of my highest consideration.

A handwritten signature in blue ink, reading "J. Kubiš".

Ján Kubiš

**REPORT OF THE TWENTY-THIRD MEETING OF THE
AARHUS CONVENTION COMPLIANCE COMMITTEE**

Geneva, 31 March to 3 April 2009

FINDINGS

with regard to the measures taken by Ukraine to fulfill the conditions set out in paragraph 5(a) to (d) of decision III/6f of the Meeting of the Parties (ECE/MP.PP/2008/2/Add.14).

Adopted by the Aarhus Convention's Compliance Committee on 3 April 2009

Introduction

1. At its third meeting held from 11 to 13 June 2008 in Riga, the Meeting of the Parties to the Aarhus Convention adopted decision III/6f on compliance by Ukraine with its obligations under the Convention (ECE/MP.PP/2008/2/Add.14).
2. Through paragraph 5 of decision III/6f, the Meeting of the Parties decided to issue a caution to the Government of Ukraine, to become effective on 1 May 2009, unless the Government fully satisfied the conditions set out in paragraph 5 (a) to (d) and notified the secretariat of this fact by 1 January 2009.
3. The successful fulfillment of the conditions was to be established by the Committee.
4. By letter dated 31 December 2008, the Government of Ukraine provided a Report on fulfillment of the conditions of decision III/6f of the Meeting of the Parties and an Action Plan submitted pursuant to paragraph 5 of decision III/6f.
5. By letter dated 9 March 2009 from the secretariat of the Aarhus Convention, the Committee noted with appreciation the Report and Action Plan submitted by the Government of Ukraine on or about 31 December 2008. However, the Committee indicated that, having considered on a preliminary basis the information contained in the Report and the Action Plan provided by Ukraine, the Committee was not convinced that the conditions set out in paragraph 5 (a) to (d) of decision III/6f had been fulfilled. In particular, the Committee had some concerns with regard to the very general nature of the Action Plan and lack of clarity as to the specific step-by-step activities that the implementation of the Plan might involve.
6. Through the secretariat's letter of 9 March 2009, the Committee asked the Government of Ukraine to provide in advance of the 23rd meeting of the Committee, and at the latest by 27 March 2009, further clarification on the content of the Action Plan. Specifically, it requested the information listed in paragraphs (1) to (6) of the secretariat's letter.

7. By letter dated 27 March 2009, the Government of Ukraine responded to the secretariat's letter of 9 March 2009.

I. CONSIDERATIONS AND EVALUATIONS

8. The Committee notes with appreciation the steps taken by Ukraine to fulfill the conditions set out in paragraph 5 (a) to (d) of decision III/6f of the Meeting of the Parties. In particular, the Committee welcomes the Report and Action Plan submitted by the Government of Ukraine on 31 December 2008, including:
 - (a) The draft laws and draft rulings of the Cabinet of Ministers specified in the Action Plan to resolve the problems identified by the Committee in its findings and recommendations (ECE/MP.PP/C.1/2005/2/Add.3), in accordance with paragraph 5 (a) of decision III/6f;
 - (b) The capacity-building activities specified in the Action Plan, including training of the judiciary and of public officials involved in environmental decision-making, in accordance with paragraph 5 (b) of decision III/6f;
 - (c) The public consultations on the the Action Plan specified in the Report, in accordance with paragraph 5 (c) of decision III/6f; and
 - (d) The transposition of the Action Plan through the Ruling of the Cabinet of Ministers of Ukraine dated 27 December 2008 #1628-p, in accordance with paragraph 5 (d) of decision III/6f.
9. The Committee also notes with appreciation the letter from the Government of Ukraine sent on 27 March 2009 in response to the Committee's letter of 9 March 2009, which provides some additional clarity regarding the specific activities envisaged in the Action Plan.
10. The Committee notes that the Ministry of Environment Protection is to draft legislation to fulfil the Ruling of the Cabinet of Ministers dated 27 December 2008 #1628-p. The Government of Ukraine has not advised however, specifically how it intends to address a number of the Committee's concerns set out in the secretariat's letter of 9 March 2009. In particular, the Committee would like to review, at the earliest appropriate opportunity, the draft legislation on the following points:
 - (a) The proposed wording requiring that public authorities obtain environmental information relevant to their functions, including that on which they base their decisions (paragraph 2 (a) of the secretariat's letter of 9 March 2009).
 - (b) The proposed wording requiring that information within the scope of article 4 of the Convention is provided regardless of its volume (paragraph 2 (b) of the secretariat's letter of 9 March 2009).
 - (c) The proposed wording concerning the detailed requirements for informing the public, as required under article 6, paragraph 2 of the Convention, about the

initiation of the procedure and possibilities for the public to participate. In particular:

- (i) The required form of the public notice;
 - (ii) The required contents of the public notice (as compared with the requirements specified in paragraph 2 (a) to (d) of article 6); and
 - (iii) How, in case of projects having transboundary impact, the public concerned abroad is to be notified, in accordance with paragraph 2 (e) of article 6.
- (d) The proposed wording setting specific timeframes for the public consultation process (paragraph 2(c) of the letter of 9 March 2009). In particular:
- (i) The time for the public study the information on projects and to prepare to participate effectively; and
 - (ii) The time for the public to prepare and submit comments.
- (e) The proposed wording requiring that sufficient time is available for the public officials to take any comments into account in a meaningful way (paragraph 2(d) of the letter of 9 March 2009).
- (f) How the Government will prevent short-cutting in the decision-making procedure, i.e. parts of the Environmental Impact Assessment (EIA) being provided for evaluation and approval by the decision-making authority prior to any information being made publicly available (paragraph 2(e) of the letter of 9 March 2009).
- (g) The proposed wording requiring that public authorities do not limit the provision of information under article 6, paragraph 6, and article 4 of the Convention to publication of the environmental impact statement but include other relevant information to ensure more informed and effective public participation (paragraph 2(f) of the letter of 9 March 2009).
- (h) The proposed wording clarifying that information that applicants are required to provide in the course of the public authorities' decision-making on decisions under article 6 is generally not exempt from disclosure (paragraph 2(g) of the letter of 9 March 2009).
- (i) The proposed wording requiring disclosure of EIA studies in their entirety as the rule (with the possibility for exempting parts being an exception to the rule) (paragraph 2(g) of the letter of 9 March 2009).
- (j) The proposed wording requiring that texts of decisions, along with the reasons and considerations on which they are based, are publicly available (paragraph 2(h) of the letter of 9 March 2009).
11. The Committee urges the Government of the Ukraine to address the specific points set out in paragraph 10 (a) to (i) above.
12. The Committee expresses its willingness to continue to work with the Government of the Ukraine to guide it in its ongoing efforts to reach full compliance with its obligations under the Aarhus Convention.

II. FINDINGS

13. In light of the above, the Committee finds that Ukraine has fulfilled the conditions set out in paragraph 5 (a) to (d) of decision III/6f of the Meeting of the Parties to the extent that the caution issued by the Meeting of the Parties through decision III/6f shall not become effective.
14. However, the Committee finds that Ukraine is not yet fully in compliance with its obligations under the Aarhus Convention.
15. The Committee therefore reserves its right to make further recommendations to the Meeting of the Parties, including to recommend to the Meeting to issue a new caution, if the Committee finds that its concerns relating to the points set out in paragraph 10(a) to (i) have not been satisfactorily met.

Law of Ukraine
“ON ENVIRONMENTAL IMPACT ASSESSMENT”

Chapter I. General provisions

Article 1. Definitions

In the present Law the definitions below shall be used in the following meaning:

Single registry – a single publicly accessible national registry containing Declarations of intent, Environmental impact statements, environmental impact assessment materials, transboundary environmental impact assessment materials, Reports on public discussion, Conclusions on environmental impact assessment, and Decisions of the Joint Council on transboundary environmental impact assessment, mentioned in the present Law.

Environmental impact assessment – procedure, which precedes a document of a permitting character in the field of economic activity and is aimed at identifying and assessing a likely environmental impact of an environmentally hazardous economic activity.

Environmentally hazardous economic activity – objects and types of a proposed economic activity likely to cause a significant adverse impact on the environment (highly environmentally hazardous types of activity and objects), as well as objects and types of proposed economic activity likely to cause an adverse impact on the environment taking into account the nature of such an activity, its size (scale) and location, other factors.

The public concerned – natural persons and their associations likely to be affected by an environmentally hazardous economic activity taking into account, *inter alia*, their place of residence (location) or having expressed their interest to participate in the environmental impact assessment. Citizen associations performing statutory activities in the field of environmental protection shall be considered as the public concerned regardless of their location and status.

Proposed economic activity – means an activity of construction, expansion, reconstruction, technical re-equipment of objects, other interventions into the environment and landscapes, including extraction of mineral resources or any major change to an activity including revision or renewal of conditions of undertaking an activity subject to a decision of a state authority or a permit.

The state of origin procedure – transboundary impact assessment of an environmentally hazardous economic activity to be undertaken on the territory of Ukraine.

Transboundary impact – any impact, not exclusively of a global nature, within the territory under the jurisdiction of a state caused by a proposed economic activity,

the physical origin of which is situated wholly or in part within the territory under the jurisdiction of another state; for the purposes of this definition impact means any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors.

State of origin – the state under whose jurisdiction an economic activity likely to cause transboundary impact will be undertaken.

Affected state – the state likely to be affected by the transboundary impact of an economic activity.

Concerned state – the state which expressed interest to participate in a transboundary environmental impact assessment.

Authorised central body – the central state executive body in the field of ecology and natural resources.

Authorised territorial body – regional, in the cities of Kyiv and Sevastopol state administration, the Republican Committee of the Autonomous Republic of the Crimea on Environmental Protection.

Article 2. Legislation in the field of environmental impact assessment

Relations in the field of environmental impact assessment shall be regulated by the Constitution of Ukraine, the Law of Ukraine “On environmental protection”, the present Law, Ukraine’s international treaties, other legal instruments of Ukraine.

Article 3. Scope of application of environmental impact assessment

1. An environmentally hazardous economic activity shall be subject to environmental impact assessment before a document of a permitting character for such an activity is obtained.

The list of highly environmentally hazardous types of activity and objects as well as the list of types of activity and objects likely to cause an adverse impact on the environment shall be established by the Cabinet of Ministers of Ukraine. Such the lists may provide for thresholds for certain types of an environmentally hazardous economic activity (capacity, length, area, output, etc.).

2. Transboundary environmental impact assessment shall be a special type of environmental impact assessment.

3. Environmental impact assessment shall be an indispensable precondition for obtaining a document of a permitting character for the environmentally hazardous economic activity. Impact assessment shall be undertaken for each object for which a document of a permitting character is issued.

Article 4. Principles of environmental impact assessment

Environmental impact assessment shall be based on the principles of legitimacy, scientific reasonableness, comprehensiveness, independence, transparency, public participation and long-term prediction.

Chapter II. Environmental impact assessment procedure

Section 1. General requirements

Article 5. Stages and basic requirements

1. Environmental impact assessment shall consist of the following stages:
 - a) ascertainment of the need for environmental impact assessment;
 - b) development of environmental impact assessment materials;
 - c) issuance of a Conclusion on environmental impact assessment.

Transboundary environmental impact assessment shall be undertaken in accordance with the procedure foreseen by Chapter IV of the present Law.

2. Permitting body shall take due account of the outcomes of environmental impact assessment when making decision to issue or reject a document of a permitting character for the environmentally hazardous economic activity.

3. In a case where the authorised central body is a permitting body, its functions in the field of environmental impact assessment shall not be executed by units and officials performing permitting functions for the environmentally hazardous economic activity.

4. A decision on taking into account of the outcomes of transboundary environmental impact assessment shall be mandatory for execution by the economic agent, permitting bodies, the authorised central body and the authorised territorial body.

5. Public participation shall be ensured through timely, adequate and effective informing and ensuring opportunities to provide comments at early stages of environmental impact assessment.

6. The authorised central body shall maintain the publicly accessible Single Registry. The procedure for maintaining the Single Registry shall be established by the Cabinet of Ministers of Ukraine.

Section 2. The need to undertake environmental impact assessment

Article 6. Ascertainment of the need for environmental impact assessment

1. At the beginning stage of a project designing the economic agent shall inform the authorised territorial body of the intent to undertake the environmentally hazardous economic activity by submitting the Declaration of intent (in a written and electronic forms) following the location of the proposed economic activity.

The Declaration of intent shall be submitted for all highly environmentally hazardous types of activity and objects regardless of their thresholds (capacity, length, area, output, etc.).

2. The economic agent shall have the right to a free of charge consultation from the authorised territorial body following the location of the proposed economic activity regarding the need to undertake environmental impact assessment for the proposed economic activity.

3. The authorised territorial body shall forward the Declaration of intent to the authorised central body if:

- the proposed economic activity is likely to cause a transboundary impact;
- the proposed economic activity is likely to cause an impact on the territory of two or more regions or outside of the Autonomous Republic of the Crimea;
- the proposed economic activity will be financed involving foreign credits given under the guarantees of the Cabinet of Ministers of Ukraine or where the estimate project costs exceed 100 million UAH.

The authorised territorial body shall within 5 business days from the date of receipt of the Declaration of intent inform the economic agent in writing regarding the fact of forwarding of the Declaration of intent to the authorised central body.

Article 7. Publishing of the Declaration of intent

1. The authorised territorial body shall within 5 business days from the date of receipt of the Declaration of intent ensure its publishing and shall add it to the Single Registry.

In cases foreseen by paragraph 3 of article 6 of the present Law the authorised central body shall within 10 business days from the date of receipt of the Declaration of intent ensure its publishing.

2. The Declaration of intent shall be published by posting it at the official website of the respective body on the Internet and by publishing it in the printed mass media. Also the Declaration of intent may additionally be placed on information boards or published in another way, which guarantees informing citizens of the relevant administrative-territorial unit or relevant territorial community, which are affected or likely to be affected by the proposed economic activity and other stakeholders.

3. In identifying the printed mass media for the publication of the Declaration of intent preference shall be given to the official printed mass media, and it shall be ensured that such the printed mass media is used whose area of distribution covers the administrative-territorial units likely to be affected by the proposed economic activity.

In cases foreseen by paragraph 3 of article 6 of the present Law the authorised central body shall be using the publishing in the official printed mass media.

4. Publishing of the Declaration of intent shall be executed by the state-owned undertakings, which belong to the sphere of management of the authorised territorial body and, in cases foreseen by paragraph 3 of article 6 of the present Law, to the sphere of management of the authorised central body at the cost of the economic agent.

Article 8. Content of the Declaration of intent

1. The Declaration of intent shall contain information on:

- economic agent;
- proposed economic activity, its nature, alternatives;
- location of the proposed economic activity, alternatives;
- socio-economic impact of the proposed economic activity;
- needs in resources in the process of undertaking of the proposed economic activity;
- transportation supply of the proposed economic activity;
- general technical characteristics, including parameters of the proposed economic activity (capacity, length, area, output, etc.);
- environmental and other limitations for the proposed economic activity in alternatives;
- needed environmental-engineering training and protection of the territory in alternatives;
- sphere, sources and types of possible impacts on the environment;
- foreseen environmental impact assessment procedure and possibilities for public participation;
- belonging of the proposed economic activity to the list of highly environmentally hazardous types of activity and objects or to the list of types of activity and objects likely to cause an adverse impact on the environment;
- undertaking of and procedure for public discussion of the terms of reference (in case the economic agent has decided to undertake public discussion of the terms of reference);
- existence of grounds for the transboundary environmental impact assessment;
- type of a possible document of a permitting character;
- the state body whose competence includes the adoption of a document of a permitting character;
- environmental information in possession of the respective state executive body which is relevant to the proposed economic activity.

2. The format of the Declaration of intent shall be established by the Cabinet of Ministers of Ukraine.

3. Simultaneously with the Declaration of intent the economic agent may request from the competent bodies the underlying reference data and additional information necessary for the identification of the area of potential adverse impact and the terms of reference for the development of environmental impact assessment materials.

Section 3. Environmental impact assessment materials

Article 9. Development of environmental impact assessment materials

1. Development of environmental impact assessment materials shall be undertaken by the economic agent and shall commence with the approval of the terms of reference for the development of environmental impact assessment materials, including the scope of work and research on assessing impacts on the environment.

2. Environmental impact assessment materials shall thoroughly discuss the outcome of the impact assessment on the natural, social, including people's life, and man-caused environment and provide reasoning for admissibility of the proposed economic activity. Environmental impact assessment materials shall cover identification, prognosis and assessment of an adverse impact of the proposed economic activity and substantiation of economic, technical, organisational, sanitary, environmental and other measures to ensure environmental and peoples' health safety in decision-making on undertaking of the environmentally hazardous economic activity.

3. The economic agent shall submit the environmental impact assessment materials (in a written and electronic forms) following the location of the proposed economic activity to the authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, to the authorised central body.

4. The authorised territorial body or the authorised central body shall add the environmental impact assessment materials to the Single Registry and publish them at its official web-page on the Internet.

Article 10. Terms of reference for environmental impact assessment

1. The authorised territorial body shall have the right to formulate proposals to the terms of reference for the development of the environmental impact assessment materials, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall have the right to formulate such proposals. The mentioned bodies shall have the right to formulate respective proposals within 20 business days from the date of publishing of the Declaration of intent.

2. At the request of the economic agent the authorized territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall be obliged to formulate comments and proposals to the terms of reference for the development of the environmental impact assessment materials. The mentioned bodies shall forward such comments and proposals within 30 business

days from the moment of receiving the terms of reference for the development of the environmental impact assessment materials.

3. The authorized central body, aiming at formulating proposals to the terms of reference for the development of the environmental impact assessment materials, shall have the right to request from other state executive bodies and institutions their proposals to the terms of reference for the development of the environmental impact assessment materials. The state executive bodies or institutions shall submit such proposals within 10 business days from the date of the request from the authorized central body. The absence of response within the indicated time schedule shall mean the absence of proposals to the terms of reference for the development of the environmental impact assessment materials.

4. Aiming at submitting well-founded comments and proposals the respective state executive bodies and institutions shall have the right to request the terms of reference for the development of the environmental impact assessment materials from the authorised central body. The obligation of the referred state executive bodies and institutions to submit comments and proposals shall appear from the moment of receiving the mentioned terms of reference for the development of the environmental impact assessment materials.

5. Within 15 business days from the date of the official publishing of the Declaration of intent the public may submit comments and proposals on the scope of work and research on assessing impacts on the environment to the authorized territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, to the authorised central body, as well as to the economic agent. In case of receiving comments and proposals from the public the respective authorized body shall inform the economic agent of them within the time schedule established in paragraph 1 of this article.

6. When compiling and approving the terms of reference the economic agent shall take into account comments and proposals from the authorized territorial body, the authorized central body and from the public.

7. If no comments and proposals have been forwarded to the economic agent within the time schedule established in this article of the Law, it shall be considered that such proposals do not exist.

8. The economic agent shall have the right to a free of charge consultation from the authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, from the authorised central body on the issue of the scope of work and research on assessing impacts on the environment.

9. The economic agent may undertake public discussion of the terms of reference aiming at taking into account public opinion on the scope of planned work and research on assessing impacts on the environment, in particular, substantiation of the need to assess individual elements and objects of the environment and possible impacts on them. The economic agent shall inform of the decision to undertake public discussion of the terms of reference and its procedure in the

Declaration of intent. Should the economic agent take such a decision the timeframe for public discussion shall be no less than 30 business days.

Article 11. Environmental impact statement

1. Environmental impact statement shall be a legal document regarding the essence of environmental impacts and guarantees of implementation of environmental protection measures on ensuring environmental safety for the entire period of the environmentally hazardous economic activity, by the economic agent, contain summary outcomes of environmental impact assessment and information on ensuring public participation in environmental impact assessment, including:

1) information on the proposed economic activity, its purpose and methods of undertaking, including a description of physical characteristics of the environmentally hazardous economic activity, requirements for the usage of a plot of land in the course of construction of a respective object and undertaking of the proposed economic activity; a description of the main features of manufacturing, in particular the nature and peculiarities of materials planned to be used;

2) assessment of types and volume of possible discharges into water bodies, air emissions, pollution of lands, noise, vibration, light, heat, radiation and other factors, which cause or likely to cause environmental impact at the result of undertaking of the environmentally hazardous economic activity;

3) quantitative and qualitative indicators of environmental risk and safety assessment of the environmentally hazardous economic activity for people's life;

4) measures undertaken to inform and take into account comments and proposals from the public;

5) a description of reasonable alternatives to the environmentally hazardous economic activity, including the no-action alternative stating main reasons for choosing the respective alternative and taking into account the environmental effects;

6) a description of the environment likely to be significantly affected by the proposed economic activity, including, *inter alia*, population, flora, fauna, soil, air, water, climate, material assets including architectural and archeological heritage, landscapes and the interaction among these factors;

7) a description of the potential significant environmental impacts of the proposed economic activity at the result of: undertaking of the environmentally hazardous economic activity; use of natural resources; emissions and discharges of pollutants; generation of wastes; methods used to assess these impacts;

8) a description of measures to mitigate, prevent, reduce and, if possible, eliminate the significant adverse environmental impact;

9) a non-technical summary, including a visual presentation as appropriate (maps, graphs, etc.);

10) environmental information in possession of the respective state executive body which is relevant to the environmentally hazardous economic activity;

11) information on any difficulties (technical shortcomings or gaps in knowledge) encountered by the economic agent in compiling the required information.

2. Requirements for the content and format of the Environmental impact statement shall be established by the Cabinet of Ministers of Ukraine.

3. Environmental impact statement shall be signed by the economic agent copies of which shall be submitted for further control to the executive bodies of village, town, and city radas and to the authorised territorial body following the location of the proposed economic activity.

4. The authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall add the Environmental impact statement to the Single Registry.

5. All environmental impact assessment materials shall be considered public information from the moment of registration of the Environmental impact statement.

Section 4. Public discussion

Article 12. General provisions

1. Public discussion shall be undertaken with the aim to identify, collect and take into account comments and proposals of the public on the environmentally hazardous economic activity, which is a subject to environmental impact assessment.

2. Public discussion of the environmental impact assessment materials shall take the form of public hearings and written commenting (comments and proposals). Public discussion may provide for several public hearings.

3. Public discussion of the environmental impact assessment materials shall commence from the moment of publishing of the Announcement on the commencement of public discussion of environmental impact assessment materials (hereinafter – “Announcement”).

Article 13. Requirements for public discussion

1. The authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall approve the Public Discussion Plan.

During the public discussion of the environmentally hazardous economic activity the public shall have the right to submit any comments and proposals, which to its view are related to the environmentally hazardous economic activity. Comments and

proposals may be submitted during the entire period, established in paragraph 2 of this article, irrespective of whether public hearings or other forms of public discussion are undertaken.

2. Public discussion of the environmental impact assessment materials shall last not less than 30 and not more than 45 calendar days from the moment of publishing of the Announcement.

3. Public access to the environmental impact assessment materials shall be ensured by placing them for examination in locations, accessible to the public in the area falling under the impact of the environmentally hazardous economic activity. The mentioned materials may be placed for examination in the premises of the respective local authorities and local self-governance bodies, the economic agent, other popular places as well as on the Internet.

The authorised central body and the authorised territorial body shall ensure the possibility for the public to examine the environmental impact assessment materials free of charge during the entire period of public discussion.

The public shall be provided with the possibility to make copies and excerpts from the provided materials as well as the possibility to study information at its placement.

4. The authorised central body and the authorised territorial body shall also make public other information regarding the proposed economic activity available to them, except for the cases when dissemination of such information would be prejudicial to national security or would violate the rights of other people.

5. The authorised central body and the authorised territorial body shall summarize comments and proposals received in a Report on public discussion. The Report on public discussion shall be supplemented with minutes of public hearings and written comments and proposal received. The Report on public discussion shall be considered public information. Requirements for the content and format of the Report on public discussion shall be established by the authorised central body.

6. Public discussion shall be organised and performed by the state-owned undertakings, which belong to the sphere of management of the authorised territorial body and, in cases foreseen by paragraph 3 of article 6 of the present Law, to the sphere of management of the authorised central body at the cost of the economic agent.

7. The authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall prepare the Report on public discussion, which shall include:

a) information regarding publishing in the mass media of the Declaration of intent and on the public discussion, written and other documents of public communications, the list of materials submitted for public examination, minutes of

public hearings, the list of issues, comments and proposals from the public, reasoned responses;

b) summarised decisions regarding the taken into account part of public comments and proposals and the reasoning on the disregarded part (in the form of a table indicating the proposal and information on taking it into account);

c) a conclusion of the public ecological expertiza (if undertaken).

8. A copy of the Report on public discussion shall be kept by the authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, by the authorised central body, which at the request from the public shall ensure free access to it for examination.

Article 14. Announcement on the commencement of public discussion of environmental impact assessment materials

1. The state-owned undertakings, which belong to the sphere of management of the authorised territorial body and, in cases foreseen by paragraph 3 of article 6 of the present Law, to the sphere of management of the authorised central body, shall publish the Announcement within 5 business days from the moment of registration of the Environmental impact statement at the cost of the economic agent.

The draft Announcement shall be developed by the economic agent.

The Announcement shall be published in the official printed mass media and on the Internet. In identifying the official printed mass media for the publication of the Announcement it shall be ensured that such the printed mass media is used whose area of distribution covers the administrative-territorial units likely to be affected by the proposed economic activity.

2. The Announcement shall contain information on:

- a) the environmentally hazardous economic activity (short description);
- b) the economic agent;
- c) the authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body, ensuring public discussion;
- d) the respective permitting procedure and a permitting body to consider the outcomes of environmental impact assessment;
- e) the timeframes and procedure for public discussion of the environmental impact assessment materials, including information on the time and venue of any envisaged public hearing; the state body from which relevant information can be obtained; place where the relevant information has been deposited for examination by the public; an indication of the relevant body to which comments and proposals

can be submitted and of the time schedule for transmittal of questions, comments and proposals; available environmental information relevant to the proposed economic activity; the place and time where the public can examine the Report on environmental impact assessment.

Article 15. Requirements for public hearings

1. The Public Discussion Plan shall provide for at least one public hearing on the territory of the region affected or likely to be affected by the environmentally hazardous economic activity. Undertaking of this hearing shall be ensured by the authorised territorial body.

2. In cases foreseen by paragraph 3 of article 6 of the present Law the Public Discussion Plan shall provide for at least one public hearing on the territory of each affected region, undertaking of which shall be ensured by the authorised territorial body of the respective region, as well as at least one public hearing on the national level, undertaking of which shall be ensured by the authorised central body.

3. The body responsible for undertaking public hearings shall ensure free of charge access to the environmental impact assessment materials and collect written comments and proposals from the public.

Minutes of public hearings shall contain all comments and proposals submitted during the hearings.

4. Public hearings shall be undertaken not earlier than in 15 calendar days from the date when the public has been provided with access to the environmental impact assessment materials and to other documents for examination and review as well as the publishing of the Announcement.

5. The venue and time of public hearings shall be determined in view of the area of the likely impact of the environmentally hazardous economic activity and the documentation submitted for discussion taking into account the possibility to ensure presence of all potential stakeholders.

6. Public hearings shall commence with the statement of the economic agent. The statement should reflect the following issues:

- a) essence of the environmentally hazardous economic activity;
- b) possible adverse impact on the environment;
- c) measures to prevent and / or mitigate such impact;
- d) summary of public comments and proposals, received before the public hearing commenced;
- e) other information regarding the environmentally hazardous economic activity.

7. During public hearings the public shall be provided with the possibility to express freely (orally and in a written form) its views, comments and proposals regarding the issues put forward for discussion.

8. All participants of the hearings shall enjoy equal conditions to express their views and submit proposals and comments.

9. The course of public hearings shall be recorded using stenographic or audiovisual methods.

10. The economic agent shall be obliged to answer questions from the public either orally during the public discussion and to reflect them in the minutes or in a written form after the hearing is over.

11. The course and results of public hearings shall be reflected in the minutes to be signed by the chairman and the secretary, elected during the public hearings by its participants.

12. The case of absence of comments and proposals from the public or non-attendance of the public hearings by members of the public, the authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall reflect in the respective act.

Section 5. Conclusion on environmental impact assessment

Article 16. Issuance of a Conclusion on environmental impact assessment

1. The authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall issue a Conclusion regarding the quality, completeness and scientific reasonableness of the environmental impact assessment materials, measures to reduce or eliminate likely impacts, compliance with requirements of environmental legislation as well as admissibility of the environmentally hazardous economic activity (hereinafter – “the Conclusion on environmental impact assessment”).

The Conclusion on environmental impact assessment shall be of a non-binding character.

2. In order to obtain the Conclusion on environmental impact assessment the economic agent shall submit the environmental impact assessment materials, including the Environmental impact statement. The list of documents to be submitted in order to obtain the Conclusion on environmental impact assessment shall be established by the Cabinet of Ministers of Ukraine.

3. In preparing the Conclusion on environmental impact assessment the authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall take into account comments and proposals, received during public discussion of the environmental impact assessment materials.

4. The Conclusion on environmental impact assessment shall be issued not later than in 45 calendar days from the date of submission of the environmental impact assessment materials by the economic agent. The Conclusion on environmental impact assessment shall be supplemented with the Report on public discussion

(with annexes). The procedure for issuing the Conclusion on environmental impact assessment shall be approved by the authorised central body.

5. The Conclusion on environmental impact assessment shall be issued free of charge.

6. The authorized central body, aiming at issuing the Conclusion on environmental impact assessment, shall have the right to request from other state executive bodies and institutions their comments and proposals to the environmental impact assessment materials. The state executive bodies or institutions shall submit such comments and proposals within 15 days from the date of the request from the authorized central body. The absence of response within the indicated time schedule shall mean the absence of comments and proposals to the environmental impact assessment materials.

7. Aiming at submitting well-founded comments and proposals the respective state executive bodies and institutions shall have the right to request the environmental impact assessment materials from the authorised central body. The obligation of the referred state executive bodies and institutions to submit comments and proposals shall appear from the moment of receiving the environmental impact assessment materials.

8. The authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall ensure the possibility for the public to examine the text of the Conclusion on environmental impact assessment (including the possibility to make copies of it or excerpts from it).

9. The authorised territorial body, and, in cases foreseen by paragraph 3 of article 6 of the present Law, the authorised central body shall add the Conclusion on environmental impact assessment to the Single Registry, as well as publish it at its official web-page on the Internet.

10. The procedure for issuing and publishing the Conclusion on environmental impact assessment shall be approved by the authorised central body.

Article 17 Corrections of the project and environmental impact assessment materials

On the basis of the outcomes of public discussion and taking into account the Conclusion on environmental impact assessment the economic agent shall have the right to introduce corrections to the project documentation and the environmental impact assessment materials.

Chapter III. Taking into account of the outcomes of environmental impact assessment

Article 18. Mandatory nature of the obligation to take the outcomes of environmental impact assessment into account

1. A permitting body shall be obliged to consider and take due account of the outcomes of environmental impact assessment. The outcomes of environmental impact assessment shall include:

- a) environmental impact assessment materials;
- б) a Report on public discussion;
- в) a Conclusion on environmental impact assessment.

2. The permitting body may decide that the outcomes of environmental impact assessment provide grounds for rejection of a document of a permitting character.

3. The permitting body shall publish the document of a permitting character adopted (issued) by it. This document of a permitting character shall contain reasons and considerations on which the permitting body has based its decisions.

4. The permitting body shall ensure the possibility to examine the documents of a permitting character and the outcomes of impact assessment during the whole period of undertaking of the respective economic activity.

Article 19. Challenging acts and omissions of public executive authorities in the course of environmental impact assessment

1. The public shall have the right to challenge in a court procedure the outcomes of environmental impact assessment, acts or omissions of the public executive authorities in the course of environmental impact assessment in cases when:

- a) such acts or omissions have led to the violation of their rights or protected by law interests;
- b) such acts or omissions have caused or likely to cause a significant adverse impact on the environment;
- c) such acts or omissions have led or likely to lead to the abatement of effectiveness of guarantees of environmental and other rights of a person, who has filed the law-suit, or other people;
- d) as the result of such a violation the general public interest has been damaged or is likely to be damaged.

2. The groundless disregard or improper taking into account of comments and proposals from the public in the course of adoption of a document of a permitting character shall be considered a violation of the right to participate in the environmental impact assessment procedure.

3. In hearing the case referred to in paragraph 1 of this article the court, where the interests of protection of the rights or protected by law interests, interests of environmental protection or the general public interest so require, shall have the right to rule obliging the state body to establish certain conditions, change the decision, take certain steps or change the parameters of the project.

Chapter IV. Transboundary environmental impact assessment

Section 1. General requirements

Article 20. Compulsory character of transboundary environmental impact assessment

1. Environmentally hazardous economic activity likely to cause a significant adverse transboundary environmental impact shall be subject to transboundary environmental impact assessment procedure before such an activity commences. Construction, putting into operation of objects of the environmentally hazardous economic activity, with respect to which the transboundary environmental impact assessment procedure has commenced, shall be prohibited until such a procedure is completed.
2. Transboundary environmental impact assessment shall be undertaken on the basis of the decision of the authorised central body.
3. Depending on the location of the environmentally hazardous economic activity the transboundary environmental impact assessment shall be undertaken pursuant to:
 - a) the state of origin procedure – with respect to the proposed economic activity which is to be undertaken on the territory of Ukraine;
 - b) the affected state procedure – with respect to the proposed economic activity which is to be undertaken on the territory of a foreign state.
4. The decision on taking into account of the outcomes of transboundary environmental impact assessment shall be mandatory for execution on the territory of Ukraine.

Section 2. The state of origin procedure

Article 21. General requirements for the state of origin procedure

The state of origin procedure shall consist of the following stages:

- a) making decision regarding the transboundary environmental impact assessment;
- b) notification of the affected states;
- c) development of the transboundary impact assessment materials;
- d) public discussion;
- e) consultations with the concerned state(s);
- f) taking into account of the outcomes of transboundary impact assessment of the environmentally hazardous economic activity;
- g) provision of the final decision to the concerned states.

Article 22. Decision regarding the transboundary environmental impact assessment

1. Transboundary impact assessment shall be undertaken on the basis of the decision of the authorised central body to be made on the grounds of:
 - a) any information regarding the environmentally hazardous economic activity which is possessed by the authorised central body;

b) communication from a foreign state(s) requesting the transboundary impact assessment on the grounds foreseen by the Convention on environmental impact assessment in a transboundary context (Espoo Convention).

2. The authorised central body may adopt a decision regarding the transboundary impact assessment at any stage of project designing or permitting procedures. The authorised central body shall within 10 business days inform the economic agent in writing about the decision regarding the transboundary impact assessment of the environmentally hazardous economic activity.

3. The authorised central body shall be authorised to impose requirements suspending the permitting procedures until the procedure of the transboundary impact assessment of any environmentally hazardous economic activity is completed.

4. On the basis of a request foreseen by paragraph 3 of this article the permitting body shall suspend the permitting procedure until the procedure of the transboundary impact assessment of any environmentally hazardous economic activity is completed.

Article 23. Notification of the affected states

1. The authorised central body shall officially notify the states whose environment is likely to be affected by a significant adverse transboundary impact.

The economic agent shall prepare the draft notification of the affected states and ensure its translation into a foreign language(s).

2. The notification shall contain information on the environmentally hazardous economic activity, including any available information on its possible transboundary impact, nature of a possible decision and the procedure for the transboundary environmental impact assessment, the proposed economic activity. The content and the form of a notification shall be established by the authorised central body taking into account the requirements of Ukraine's international treaties.

3. The notification shall indicate timeframe within which a response from the affected state regarding its participation in the transboundary environmental impact assessment is required. Such a timeframe shall be not less than 30 days from the date of receipt of the notification by the affected state. The authorised central body shall terminate the transboundary impact assessment procedure if all affected states decide not to participate in such an assessment or do not respond within the timeframe specified.

Article 24. Development of the transboundary environmental impact assessment materials

1. The development of the transboundary environmental impact assessment materials shall be ensured by the economic agent. Requirements for the content and composition of the transboundary environmental impact assessment materials shall be established by the Cabinet of Ministers of Ukraine taking into account the requirements of Ukraine's international treaties.

2. The terms of reference for the development of the transboundary impact assessment materials shall be coordinated with the authorised central body.
3. The authorised central body may request the affected states to provide information on the state of environment of respective territories of the affected states if such information is necessary for the development of the transboundary environmental impact assessment materials and shall forward the information received to the economic agent.
4. The economic agent shall ensure translation of all transboundary environmental impact assessment materials into a foreign language(s), identified on a case by case basis by the authorised central body.
5. The economic agent shall submit all transboundary environmental impact assessment materials to the authorised central body, which shall add them to the Single Registry, ensure their publication on the Internet and transmittal to the concerned states. All transboundary environmental impact assessment materials shall be considered public information.

Article 25. Consultations with the concerned state(s)

1. The delegation of Ukraine for consultations with the concerned state(s) may include representatives of the state executive bodies, economic agent, scientific and other institutions and organisations.
2. Consultations with the concerned state(s) shall be focused on the assessment of potential transboundary impact on the environment, measures to reduce or eliminate it, and other matters in concert with the concerned states on the basis of the transboundary environmental impact assessment materials.
3. Consultations with the concerned state(s) can take any form; outcomes of consultations shall be reflected in the minutes (if the consultations took the form of a meeting) and official letters (if the consultations took the form of an exchange of letters).

Article 26. Public discussion of the transboundary environmental impact assessment materials

1. The authorised central body together with the concerned states shall ensure public discussion of the transboundary environmental impact assessment materials. Public discussion of the transboundary environmental impact assessment materials within the territory of Ukraine shall be undertaken at the cost of the economic agent pursuant to the respective provisions of the present Law.
2. The authorised central body shall post announcement on the commencement of public discussion of the transboundary impact assessment materials, its procedure and timeframes.
3. The authorised central body shall provide the public in the areas of a foreign state likely to be affected by the environmentally hazardous economic activity with the possibility to submit written comments and proposals.
4. The authorised central body shall participate in public hearings on the territory of the concerned states to discuss the transboundary impact assessment materials.

The authorised central body may include into the delegation the representatives of the economic agent, other state bodies.

5. The authorised central body shall summarise all comments and proposals, received in the course of public discussion of the transboundary impact assessment materials, and shall prepare a Report on public discussion of the transboundary impact assessment materials.

Article 27. Taking into account of the outcomes of transboundary impact assessment of the environmentally hazardous economic activity

1. A decision on taking into account of the outcomes of transboundary impact assessment shall be adopted by the Joint Council on transboundary environmental impact assessment. The Joint Council on transboundary environmental impact assessment shall consist of representatives of the authorised central body and other concerned state executive bodies. The Regulation on the Joint Council on transboundary environmental impact assessment shall be approved by the Cabinet of Ministers of Ukraine.

2. The outcomes of transboundary impact assessment shall include:

- a) the transboundary environmental impact assessment materials;
- b) minutes (letters) as the outcome of consultations with the concerned state(s);
- c) a Report on public discussion of the transboundary environmental impact assessment materials.

3. The taking into account of the outcomes of transboundary impact assessment shall take the form of a decision of the Joint Council on transboundary environmental impact assessment, which may contain any recommendations to the economic agent or the permitting bodies regarding the environmentally hazardous economic activity, as well as mandatory assignments and conditions including the inadmissibility of the environmentally hazardous economic activity.

4. The authorised central body shall provide to all concerned states a copy of the decision of the Joint Council on transboundary environmental impact assessment regarding the environmentally hazardous economic activity, shall add it to the Single Registry and publish on the Internet within 10 business days from the date of its adoption.

The economic agent shall ensure translation of the decision of the Joint Council on transboundary environmental impact assessment into a foreign language(s).

Article 28. Provision of the final decision to the concerned states

The authorised central body shall inform all concerned states regarding the decision of the permitting body to issue or reject the document of a permitting character for the environmentally hazardous economic activity, which has been subject to the transboundary impact assessment, and shall publish it at its official web-page on the Internet.

Section 3. The affected state procedure

Article 29. General requirements for the affected state procedure

1. The transboundary impact assessment pursuant to the affected state procedure shall be undertaken on the basis of a decision of the authorised central body to be made on the grounds of:

- a) any information in its possession regarding the proposed economic activity, which will be undertaken on the territory (under jurisdiction) of a foreign state and is likely to cause a significant adverse impact on Ukraine's environment;
- b) a notification on the proposed economic activity, transmitted by a foreign state.

2. Implementation of the affected state procedure shall be ensured by the authorised central body and may provide for:

- a) a request to the foreign state regarding the need for the transboundary impact assessment;
- b) a response to the notification indicating intention (no intention) to participate in the transboundary impact assessment;
- c) participation in consultations between the state of origin and the affected state(s) on the provided transboundary environmental impact assessment materials;
- d) other actions and measures.

3. The authorised central body shall publish its decision regarding the transboundary environmental impact assessment pursuant to the affected state procedure and shall facilitate public discussion of the transboundary environmental impact assessment materials and taking them into account. The authorised central body shall inform the public of the final decision made by the state of origin.

Chapter V. Closing provisions

1. To acknowledge void the Law of Ukraine "On ecological expertiza". The conclusions of the state ecological expertiza, issued before the entry into force by the present Law, shall be valid for the whole period for which they were issued.

2. Delete point 4 of the List of documents of a permitting character in the field of economic activity, approved by the Law of Ukraine "On the List of documents of a permitting character in the field of economic activity".

3. In the Law of Ukraine "On environmental protection":

delete point «e» of paragraph 1 of article 3;

delete the words "and in undertaking public ecological expertiza" in point «e» of paragraph 1 of article 9;

delete point «ж» of paragraph 1 of article 15;

replace the words "ecological expertiza" in paragraph 1 of article 16 with the words "environmental impact assessment";

replace the words “state ecological expertiza” in point «з» of paragraph 1 of article 18 with the words “environmental impact assessment”;

replace the words “state ecological expertiza” in point «д» of paragraph 1 of article 20 with the words “environmental impact assessment, including the transboundary environmental impact assessment”;

replace the words “state ecological expertiza” in point «г» of paragraph 4 of article 20 with the words “environmental impact assessment”;

Chapter VI formulate as follows:

«Chapter VI. Environmental impact assessment.

Article 26. Mandatory nature of the environmental impact assessment

Environmentally hazardous economic activity shall be subject to environmental impact assessment before a document of a permitting character for such an activity is obtained. The list of highly environmentally hazardous types of activity and objects shall be established by the Cabinet of Ministers of Ukraine.

With respect to the types of economic activity, which are not environmentally hazardous economic activity, impact assessment shall be undertaken on a voluntary basis pursuant to a decision of an economic agent.

Article 27. Principles of environmental impact assessment

Environmental impact assessment shall be based on the principles of legitimacy, scientific reasonableness, comprehensiveness, independence, transparency, public participation and long-term prediction.

Article 28. Taking into account of the outcomes of environmental impact assessment

A permitting body shall be obliged to consider and take due account of the outcomes of environmental impact assessment when making a decision to issue or reject a document of a permitting character for the environmentally hazardous economic activity.

Article 29. Public participation

Public participation shall be ensured through timely, adequate and effective informing and ensuring opportunities to provide comments at early stages of environmental impact assessment.

Article 30. Transboundary environmental impact assessment

Transboundary environmental impact assessment shall be a special type of the environmental impact assessment and shall be undertaken pursuant to the requirements of the valid international treaties, laws and other legal instruments of Ukraine.”;

replace the words “conclusion of the state ecological expertiza” in paragraph 4 of article 52 with the words “conclusion on environmental impact assessment”.

point «в» of paragraph 2 of article 68 formulate as follows:

«“violation of the requirements of the legislation of Ukraine when undertaking environmental impact assessment, including the provision of intentionally false conclusion on environmental impact assessment;»

replace the words “state ecological expertiza” in point «д» of paragraph 2 of article 68 with the words “regarding environmental impact assessment”;

4. In the Law of Ukraine “On the regulation of urban development activity” (3038-6): replace the words “shall be supplemented with the assessment of existing or foreseeable impact on the state of environment” in part 3 of paragraph 1 of article 31 with the words “shall be supplemented with the outcomes of environmental impact assessment”;

add point 4) to part 2 of paragraph 4 of article 37:

“4) outcomes of environmental impact assessment”;

5. In the Law of Ukraine “On the decision-making procedure for placement, designing, construction of nuclear plants and objects designated for radioactive waste treatment of a national significance” (2861-15):

replace the words “conclusion of the state ecological expertiza” in subpoint 2 of paragraph 1 of article 5 with the words “outcomes of environmental impact assessment”.

6. In the Forest Code of Ukraine (3852-12):

replace the words “ecological expertiza” in subpoint 9 of paragraph 1 of article 29 with the words “environmental impact assessment”;

replace the words “ecological expertiza” in paragraph 2 of article 61 with the words “environmental impact assessment”;

add subparagraph 5 to paragraph 8 of article 69 with the following wording: “outcomes of environmental impact assessment”.

7. In the Law of Ukraine “On the national system of biosafety in creation, testing, transportation and use of genetically modified organisms” (1103-16):

replace the words “the state ecological” in subpoint 6 of paragraph 1 of article 8 with the words “environmental impact assessment”;

replace the words “undertakes state ecological expertiza” in subpoint 2 of paragraph 1 of article 9 with the words “ensures environmental impact assessment”.

8. In the Law of Ukraine “On wastes” (187/98):

replace the words “state ecological expertiza” in subpoint «в» of paragraph 1 of article 23 with the words “environmental impact assessment”;

add article 7-1 stating:

“Article 7-1. Environmental impact assessment

Issuance of permits, provided for by the present Law, for objects and types of activity subject to environmental impact assessment shall be undertaken taking into account the outcomes of environmental impact assessment of such an activity pursuant to the Law of Ukraine “On environmental impact assessment”.

9. To amend the Code of Ukraine on entrails (132/94) with article 15-1:

“Article 15-1. Environmental impact assessment

In case the use of entrails entails environmentally hazardous economic activity, rendering their use shall be undertaken taking into account the outcomes of

environmental impact assessment pursuant to the Law of Ukraine “On environmental impact assessment”.

10. In the Law of Ukraine “On oil and gas” (2665-14):

replace the words “ecological expertiza” in paragraph 2 of article 45 with the words “environmental impact assessment”;

add subpoint 8 to paragraph 1 of article 12 of the following wording: “taking into account the outcomes of environmental impact assessment.”

add paragraph 3 to article 14 of the following wording: “Issuance of special permits for rendering use of oil-gas-bearing entrails shall be undertaken taking into account the outcomes of environmental impact assessment.”

11. To the Cabinet of Ministers of Ukraine:

to reconcile its acts with the requirements of the present Law within three months after its entry into force.

12. The present Law shall enter into force on the date of its publication.

The President of Ukraine

V.Yanukovych

Appendix 3

Draft

Amendments

to State Construction Norms DBN A.2.2-1-2003 “Structure and Contents of Environmental Impact Assessment (EIA) Materials in Designing and Constructing Industrial Enterprises, Buildings, and Facilities. Basic Principles of Design” approved by Order No. 214 of the State Construction Committee of Ukraine dated 15.12.2003 due to required implementation support of the regulations of the Aarhus Convention and the Espoo Convention

Clause 1.6 of DBN A.2.2-1-2003 following paragraph 3 shall be added with the paragraphs as follows:

“- the customer shall submit the announcement of intent to the territorial environment protection authorities. If the object to be constructed is located within the territorial waters or the approval (affirmative) decision is to be taken by the Cabinet of Ministers of Ukraine – the announcement of intent shall be sent to the Ministry of Ecology and Natural Resources;

-the territorial environment protection authorities or the Ministry of Ecology and Natural Resources shall determine whether the object belongs to the activities and projects subject to EIA, define the scope of the environmental impact assessment, and determine whether the environmental impact assessment is required to be carried out in a transboundary context. In this regard, the customer shall be given with the notice of the EIA process (in the event that the object is not subject to the EIA process, such notice shall provide the customer with the relevant information, if EIA is required, the notice of the EIA process shall provide the customer with the EIA process terms and conditions).

The territorial environment protection authorities or the Ministry of Ecology and Natural Resources shall determine whether the announcement of intent complies with the environmental legislation requirements. The stated authorities shall make such decision within the five day period. In the event that the announcement of intent complies with the environmental legislation, the territorial environment protection authorities or the Ministry of Ecology and Natural Resources shall make it available on their respective official web sites or, as the case may be, make public disclosure of the announcement of intent in the way ensuring the ability of the public concerned to inform themselves about its contents.

The notice of the EIA process shall also point out the EIA aspects on which the customer should turn its attention and the sections which may be streamlined, public participation requirements (including those applied in a transboundary context), and additional requirements.

For highly environmentally dangerous projects or the projects subject to the EIA process in a transboundary context, the territorial environment protection authorities or the Ministry of Ecology and Natural Resources may require the development of the EIA implementation program with due regard to the particularities thereof.

Any and all recommendations provided in the notice of the EIA process shall be formed with a view of the opinion of the public concerned”.

Paragraph 4 shall be deemed to be paragraph 7 and restated as follows:

“On the basis of the EIA terms and conditions contained in the notice of the EIA process, the EIA materials development statement shall be given according to the form provided in Annex Д, with proper reasoning of the volume of works depending on the threat to the environment posed by the planned activity, its alternative (including waiver of the mentioned activity), options of physical planning and the state of environment;”.

Paragraph 6 shall be deemed to be paragraph 10 and restated as follows:

“during the EIA process for highly environmentally dangerous activities and projects or those subject to the EIA process in a transboundary context, the territorial environment protection authorities or the Ministry of Ecology and Natural Resources shall ensure, for the customer's account, giving notices to the population on planned activity, determine the place and procedure for public hearings, open

meetings, through relative public authorities make project documentation available to the public, inform the population of the planned activity and public participation procedure by publishing the announcement of intent in mass media, collect people's appeals, review and consider any comments and proposals.

The customer shall provide the EIA materials and all information required for the information sharing purpose.”.

Paragraph 7 shall be deemed to be paragraph 11 and restated as follows:

“for highly environmentally dangerous projects and activities and those subject to the environment impact assessment process in a transboundary context, the customer or the general designer, acting on its behalf, shall submit the EIA materials in the package of the project documentation to develop conclusions and recommendation of ecology and expert assessment carried out by the Ministry of Ecology and Natural Resources or the territorial environment protection authorities”.

Clause 1.7 shall be restated as follows:

“1.7 For highly environmentally dangerous activities and projects, EIA materials shall be developed in the scope as set out in Section 2 of these Norms with due regard to the recommendations contained in the notice of the EIA process.

For highly environmentally dangerous projects and activities as well as those subject to the environment impact assessment in a transboundary context, the authority approving the construction project shall consider conclusions and recommendation of ecology and expert assessment carried out by the Ministry of Ecology and Natural Resources as well as commentaries and notes of the public concerned in the process of approval of such project.”.

Clause 1.8 shall be restated as follows:

“1.8 On the basis of the EIA final report conclusions and the notice of the EIA process, the customer and the contractor shall draw up the text of the announcement on environmental consequences of planned activity and ensure its publication in the mass media as well as send the announcement on environmental consequences and the EIA final report in paper and electronic forms to regional, territorial environment protection authorities or the Ministry of Ecology and Natural Resources (depending on the place of the object location).

The announcement of environmental consequences of planned activity, the EIA final report with due regard to the considered comments of the public and ecology and expert assessment as well as with reasoning of rejection of the neglected comments of the public as part of the project documentation shall be submitted by the customer or general designer for approval and expertise.”.

Clause 1.9 shall be restated as follows:

“1.9 Comments of the public shall be considered in accordance with the procedure for the involvement of the public in discussion of the issues on decisions

which may affect the state of environment approved by the Resolution No. 771 of the Cabinet of Ministers of Ukraine and regulatory documents provided in Annex B.

In this regard, the territorial environment protection authorities or the Ministry of Ecology and Natural Resources (depending on the object location) shall ensure:

- giving notices to the population, according to the established procedure, on discussions of the planned activity;
- public discussion of the project (the scope of the discussion shall be determined by the dimensions of the expected impacts);
- provision of the project documentation to the members of the public in accordance with the announcement of intent (Annex Г).”.

In paragraph 4 of clause 1.10 of DBN A.2.2-1-2003 the words “on the part of the customer and the EIA contractor” shall be removed.

Paragraph 7 of clause 1.10 of DBN A.2.2-1-2003 after the words “Motives of neglecting any given” shall be added with the words “comments shall be presented in the EIA final report”.

Paragraph 10 of clause 2.1 of DBN A.2.2-1-2003 shall be added with the words “which records ecological parameters;”.

Clause 2.1 of DBN A.2.2-1-2003 shall be added with paragraph 11 as follows:

“- summary of non-technical nature.”.

Clause 2.2 of DBN A.2.2-1-2003 shall be added with the paragraph as follows:

“- the notice of the EIA process”.

Clause 2.8 of DBN A.2.2-1-2003 shall be added with the paragraphs as follows:

“Taking into account the object characteristics, certain sections may be absent or abridged, but other sections shall be expanded more broadly. Volume of any given sections shall be determined in the notice of the EIA process given by the designated authorities with due regard to the opinion of the public concerned.

The mentioned requirements to the volume of the EIA materials shall be represented in the EIA materials development statement.”.

Clause 3.4 of DBN A.2.2-1-2003 shall be restated as follows:

“4.3 The announcement of environmental consequences of planned activity shall be signed by the customer and general designer, any copies thereof, including magnetic copies, shall be submitted for further control to the territorial environment protection authorities or the Ministry of Ecology and Natural Resources. These bodies shall make the announcements of environmental consequences publicly available on the Internet or in any other way ensuring, as the case may be, their availability to the public concerned.”.

Annex B of DBN A.2.2-1-2003 shall be restated as follows:

“Annex B (referential)

EIA IN THE CONSTRUCTION INVESTMENT PROCESS WORKFLOW

Stage	Design and Construction Stage Description	EIA Stage Description
Construction Decision Making by Investor		
Pre-Investment Investigations		
1	Development of output data of the object to be constructed, determination of production program, investment intents, demand for raw materials, power resources and personnel etc.; front-end engineering and design	Drawing up the announcement of intent (Annex Γ), receipt of the notice of the EIA process from the designated ecology and natural resources authority or its territorial offices. Environmental impact pre-assessment of the designed object
2	Optioneering to consider the object location with due regard to the state of environment and land use planning and management	
3	Drawing up and approval of the development statement for investment feasibility studies, scheme design	Drawing up the EIA materials development statement (Annex Δ) made with consideration for any recommendations provided in the notice of the EIA process as part of the development statement for the investment feasibility studies, scheme design
4	Development of the investment feasibility studies, scheme design in the volume established according to the regulatory documents	
5	Reconciliation and approval of the investment feasibility studies, scheme design	
Design		
6	Drawing up and approval of the design (detailed design) development statement	Drawing up the EIA materials development statement as part of the design (detailed design) development statement with consideration for any changes of and

		amendments to the design decisions against those accepted in the investment feasibility studies, scheme design or changes of urban planning situation. Holding public hearings for highly environmentally dangerous objects and activities as well as those subject to the environmental impact assessment in a transboundary context
7	Design (detailed design) development	Full-scale EIA if it was not carried out at the previous stages or EIA updating according to the design (detailed design) elements. Drawing up the announcement of the environmental effects. Submission of the announcement of the environmental effects to the local authorities
8	Reconciliation and approval of the design (detailed design)	Ecology and expert assessment, expertise and approval of EIA according to the applicable legislation
9	Development of working documentation	Updating of the EIA materials in making changes of the manufacturing procedure and the design of construction and installation activities, etc., their submission for approval and state expert appraisal. Such updating shall not significantly change the design which may significantly change the nature of the environmental impact
Construction		

10	Project construction	Obtaining of a construction permit. Action implementation according to the EIA materials
Operation		
11	Mastery of the designed capacity (post-project analysis)	Environmental performance review in accordance with EIA materials, updating EIA materials and carrying out the post-project analysis (if applicable)

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