

Mailing address: *P. O. Box 316, Lviv, 79000, Ukraine.* Physical address: *Ivan Franko St. 9/1a, Lviv, 79005, Ukraine.*
Tel./fax: (+38) 032-225-76-82. Tel.: (+38) 032-243-38-88. E-mail: epl@mail.lviv.ua. Web-page: <http://epl.org.ua>.

**The Compliance Committee
Aarhus Convention on Access to Information,
Public Participation and Access to Justice in
Environmental Matters**

public.participation@unece.org
fiona.marshall@unece.org

**The Implementation Committee
Espoo Convention on Environmental Impact
Assessment in a Transboundary Context**

Eia.Conv@unece.org
tea.aulavuo@unece.org

Statement of EPL on the proposals of the President of Ukraine as regards the laws № 1639–VIII, № 1640–VIII (EIA and SEA laws)

Dear members of the Aarhus Convention Compliance Committee and Espoo Convention Implementation Committee,

Let us express out esteem and high consideration to the members of the Committee.

We would like to draw your attention to the situation with introducing into the Ukrainian legislation the instruments of EIA and SEA, which is closely related to the cases concerning Ukraine ACCC/C/2004 /03 and EIA/IC/S/1.

On 4 October 2016, the Parliament of Ukraine voted for two key environmental laws - the Law "On Environmental Impact Assessment" (EIA) and the Law "On Strategic Environmental Assessment" (SEA) - that have been on top of Ukraine's European integration agenda in the field of environmental protection for several years. (English versions of both laws had been sent to both Committees by the Ministry of Environment of Ukraine) The adoption of these laws was welcome by Ukrainian and European experts and civil society because they are the first environmental laws that have been developed to fully implement provisions of the relevant EU directives.

However, on 31 October 2016, the President of Ukraine vetoed the laws issuing non-specific and ungrounded proposals to the laws. In general the comments formulated by the President demonstrate that the logic of the procedure and the substance of EIA have not been understood properly including in the context of the relevant EU procedures. The majority of the present comments from the President represent a non-systematic compilation of some of the commentaries which have been discussed either before the first or the second reading of the draft Law in the Parliament. Moreover, some of them refer to the text of the Law, which is not accurate anymore. The fact that the President's proposals were accompanied with unspecific and ungrounded commentaries formulated in very general terms makes us consider this to be a deliberate maneuver to make the enactment of the above laws impossible.

Translated proposals of the President that were submitted officially to the Parliament on October 31, 2016 could be found in the annex 1 and annex 2 to this letter. The table of article-by-article analysis of presidential proposals to the Law on EIA and Law on SEA could be found in annex 3.

It has to be noted that the veto and proposals were submitted to the Parliament on the 18th day after the President received the laws for the signature. According to the Constitution of Ukraine, if the President did not submit the reasoned and motivated proposals within 15 days, the laws are considered adopted and are to be signed.

The EIA law. The proposals/comments are not numbered and sometimes not clearly refer to the certain provisions of the Law. In some cases several issues are raised in one paragraph but could be considered as different proposals. Also, in some cases they demonstrate that the logic of the procedure and the substance of the model of EIA enshrined in the law have not been understood properly, including in the context of the relevant EU procedures. In general the proposals/comments have been formulated by the President in a very general way, without explanation of reasons and other specific/clarifying/justifying information.

The overall statement to be found in the President's proposals that the EIA law leads to the : "...creation of artificial barriers for exercising the constitutional right to entrepreneurship (Article 42 of the Constitution of Ukraine), and possible adverse consequences for economic development of our country" means that "the Law does not take into account some peculiarities of certain types of economic activity aimed at satisfying the need for immediate implementation of large-scale infrastructure projects, including those in the area of construction, being of major significance for reviving the economic capacity of the state and of some of its regions" (paragraph 4 of the proposals). ***However, pursuant to the EU EIA Directive, the large-scale infrastructure projects are subject to EIA and the exclusion thereof from EIA clearly contradicts the Directive as well as the relevant international obligations of Ukraine, including those under the Energy Community and the Espoo Convention.***

Another issues raised by the President was that "...some of the activities like the reconstruction, technical upgrading and capital repairs of the construction objects, or expansion and conversion of objects might not cause a significant impact on the environment. The inclusion of such activities into the EIA procedure will establish additional barriers and burdens for business". ***However, the EIA model enshrined in the Law acknowledges that some of the types of activities or changes thereto are not likely to cause significant impact on the environment. To this end and pursuant to the approach of the EIA Directive, the Law on EIA provides for the exhaustive list of types of activities and thresholds thereto subject to EIA, as well as for the competence of the Cabinet of Ministers of Ukraine to approve the criteria for those changes (e.g. including reconstruction, technical upgrading and capital repairs of the construction objects, or expansion and conversion of objects) to the activities listed in the Law which are not likely to cause a significant impact on the environment (point 22 of Article 3(2) of the Law and point 14 of Article 3(3) of the Law). The exclusion of changes to the types of activities from EIA will be clearly contrary to the requirements of the EIA Directive.***

Another comment from the President is related to the EIA decision and its role in the development consent procedure. "If a decision on implementation of the proposed activity is issued depending on the availability of the environmental impact assessment decision, included into the list of permitting documents for economic activity as referred to in the Law (point 37, paragraph 4, Article 17), the time limits will increase and the authorization procedures required to commence the proposed activity will become more complicated. It contradicts one of the main principles of the state policy related to the authorization system in the field of economic activity, which provides for reducing the level of state intervention in the process of economic activity." ***Such a statement clearly contradicts the objective and spirit of EIA and its role in a decision making procedure. It is also contrary to the approach of Articles 2 and 8a of the EIA Directive.***

With regards to public interests the President's proposals assert that the EIA law "provides for new forms and methods for involvement of the public in the process" while the mechanisms of taking due account thereof have not been elaborated enough. ***As a matter of fact, the Law on EIA does not provide for any extra forms of public participation in addition to those already envisioned. The provisions of the Law on EIA on taking due account of the outcomes of public participation are completely inline with the relevant provisions of the Aarhus and Espoo Conventions as well as the EIA Directive.***

As regards the issue of competence of the State Ecological Inspection to restrict/limit the activities of enterprises in the case of infringement of the legislation on environmental impact assessment as it was also mentioned in the proposals, it is fully in line with Ukrainian legislation that says that the Ecological Inspection possesses the powers to restrict the activity while only the court has the power to suspend or terminate it. The Law on EIA clearly distinguishes between the powers to restrict (Article 16 (4) of the Law) and the powers to suspend the activities, the latter being vested with the court.

There are also some other comments such as, for example, to take into account the peculiarities of the activity carried out in the Exclusion Zone of Chernobyl. ***Following the latest amendments to the legislation of Ukraine, enacted by the Parliament in July 2016, the EIA law assigns the Ministry of Environment to carry out EIA for such activities.***

The SEA Law. The comments of the President are not specific, which proves that the SEA procedure is not fully understood. In fact they do not contain any recommendations, only general assumptions as regards the specific issues covered by the Law. The proposals/comments, submitted by the President, are even more general and vague than those submitted under the EIA Law; hence it is, as a matter of practice, impossible to digest the real meaning thereof and, thus, take them into account. According to the Reglament of the Parliament the proposals submitted should be formulated in a manner making it possible to put them for vote.

From the communication with the representatives of the Presidential Administration, it became clear that the only concern they had was that the SEA law does not regulate the procedure for insignificant changes to the local and regional programs of social and economic development and whether such changes are subject to SEA. Paragraphs 7 and 8 of Article 11 of the SEA law are extremely clear in that regard which leads to the conclusion that the only reasonable explanation of the President's veto to the SEA law was that, not being able to distinguish two procedures, the SEA procedure was considered by the Administration to be an element of the EIA procedure. And SEA law was vetoed just because it was voted in the package with the EIA law.

By imposing the veto on the laws that are aimed to transpose the EU EIA and SEA Directives under the EU-Ukraine Association Agreement and bring Ukraine into compliance with a number of international obligations, including those under the UNECE Espoo and Aarhus Conventions and the Energy Community Treaty, the President consciously or unconsciously closes the doors for the EU standards of environmental safety and for Ukraine's EU integration perspectives in the field of environmental protection.

Therefore we are urging the Aarhus Convention Compliance Committee and Espoo Convention Implementation Committee:

- 1/ to consider this information at their meetings and take the information provided into account during the consideration of the issue of compliance of Ukraine with its obligations under the respective treaties;
- 2/ to express their positions concerning the Law on EIA and the Law on SEA and bring them to the attention of the government, the Parliament and the President of Ukraine.

With best regards,

EPL Director



Olena Kravchenko

Annex 1. Proposals of the President on the Law on EIA, dated 31.10.2016

Annex 2. Proposals of the President on the Law on SEA, dated 31.10.2016

Annex 3. Table with the analysis of the proposals of President of Ukraine of 31.10.2016.