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LEGAL REGULATION OF ENVIRONMENTAL IMPACT ASSESSMENT IN UKRAINE: CURRENT STATE

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Abstract. The article analyzes the main provisions of the new Law of Ukraine “On Environmental Impact Assessment”. The terminology, procedure and mechanisms for environmental impact assessment are described. The possible problems that the parties will face in practice undergoing an environmental impact assessment procedure are reflected. The advantages and disadvantages of the new Law are highlighted and possible problems in the implementation of the norms of the Law are analyzed.

Keywords: Environmental Impact Assessment, European Union Directive, the Ukraine–European Union Association Agreement, proposed activities, environmental review, public consultations.

1. INTRODUCTION

On December 18, 2017 the Law of Ukraine “On Environmental Impact Assessment”, which introduced a European model of environmental assessment in Ukraine, came into force. It replaced the outdated post-Soviet institution of state environmental review, which was regulated by legislation, adopted back in 1995.

If the state environmental review could be carried out at the stage of implementation of decisions that have the potential to affect the environment negatively, then the environmental impact assessment is conducted at the planning stage of activities with the purpose of prevention of damage to the environment and *before* making a decision on carrying on economic activities. This is the essential and main difference between these two procedures.

The new law is aimed at establishing the legal and organizational framework for conducting Environmental Impact Assessment (hereinafter referred to as EIA) in accordance with the provisions of Directive 2011/92/EU of the European Parliament and of the Council of December 13, 2011 on the assessment of the effects of certain public and private projects on the environment, which establishes the rules for conducting an environmental impact assessment procedure, and concerns the assessment of the environmental impacts of public and private projects that are likely to have significant effects on the environment.

Also, the adoption of legislation on Strategic Environmental Assessment is an important aspect of the introduction of basic approaches to the legal regulation of environmental requirements in the sphere of state planning and economic activities in Ukraine and the fulfillment of the obligations

stipulated in the Ukraine–European Union Association Agreement. As of March 20, 2018, the corresponding bill No. 6106 of February 21, 2017 was adopted, but at the time of publication of the article it was not signed by the President of Ukraine. The document is based on Directive 2001/42/EU of the European Parliament and of the Council of June 27, 2001 on the assessment of the effects of certain plans and programmes on the environment. The SEA procedure is applied to a wide range of state plans and programmes, for example, in the field of land use, transport, energy, waste, agriculture, etc. Its implementation will create more opportunities for comprehensive monitoring, determining possible significant environmental impact and reasonable alternatives to the proposed plan or programme.

Analysis of the latest scientific research and materials shows that the scientific and practical discussions on the introduction of an environmental impact assessment following the model of the EU Directive have become particularly relevant after the adoption of the Law of Ukraine “On the Regulation of Urban Development Activities” of February 17, 2011 No. 3038-VI, according to which it was simplified the procedure for obtaining permits for construction and excluded construction projects for objects that pose an increased environmental hazard from the list of objects of state environmental review, and, as a result, project impact assessment system on the environment changed significantly.

In fact, as a result of these changes, the institution of environmental review was practically abolished (leveled) in Ukraine, but the environmental assessment procedure, which remained in the State Building Standards, differs significantly from the European standard of EIA.

Some comparison aspects of the environmental review in Ukraine and the environmental impact assessment following the model of the European Union have been the subject of scientific and analytical research and are covered, in particular, in the works of such scientists and analysts as A. O. Andrusyevych [1], Ye. Yendroshka, D. Skrylnikov, Ye. Alekseeva [3], T.O. Tretiak [4] and others.

2. ANALYSIS AND DISCUSSION

For a more detailed clarification of the quality and effectiveness of the introduced law, it is necessary to analyze its main approaches, terminology, procedure and mechanisms for conducting EIA. The legislator has kept the right track and took Directive 2011/92/EU of the European Parliament and of the Council of December 13, 2011 only as a basis, and adapted the remaining procedures to his vision and realities. For example, Directive [2] defines the following basic concepts: “projects and programmes”, “Environmental Impact Assessment”, “environmental status report”, “the community”. On the other hand, in the Law of Ukraine on Environmental Impact Assessment, the following definitions of concepts are presented at the legislative level: “impact on the environment”, “public”, “proposed activity”, “competent local authority” and “competent central authority”.

The community and the public in these two documents are clarified in almost identical style as one or more natural or legal persons and their associations, organisations or groups. It is important that in the definition there is no link to the locality, therefore a citizen or a public organization, irrespective of the place of residence or place of its main activity, has the right to submit any comments or suggestions it considers relevant to the proposed activity without the need to substantiate them. Also, a person does not need to be a legal entity to make comments, citizens can self-organize into groups and do not undergo additional legal registration for taking part in solving ecologically significant issues related to the discussion of EIA.

This definition meets the requirements of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and provides additional mechanisms and guarantees for public participation in decision-making, which is one of the most important innovations of the adopted law.

The proposed economic activity is the basis for the implementation of EIA, if the relevant type of this activity and objects that may have a significant impact on the environment are specified in the list in Art. 3 of the Law of Ukraine “On Environmental Impact Assessment”.

The proposed activity is understood as a proposed economic activity, which includes construction, reconstruction, technical upgrading, expansion, conversion, elimination (dismantling) of objects, other

intervention into the environment. Proposed activity shall not include reconstruction, technical upgrading, capital repairs, expansion, conversion of objects, other intervention into the environment which are not likely to cause a significant impact on the environment *pursuant to the criteria* approved by the Cabinet of Ministers of Ukraine in the Resolution No. 1010 of December 13, 2017 “On Approval of Criteria for determining proposed activity that is not subject to environmental impact assessment and criteria for determining extensions and changes in activities and objects that are not subject to environmental impact assessment”.

Such a proposed activity shall be made subject to the environmental impact assessment *before the decision* on carrying out the proposed activity *is made*. This significant innovation is coherent and appropriate from the point of view of taking into account the interests of the public and the environment, but it can create for the developer many additional risks and expenses that need to be taken into consideration, since without a positive conclusion on the EIA, it is forbidden to start the proposed activity, and authorized bodies can refuse issuing permits for these grounds.

For example, if a construction company plans to build a residential area (a complex of blocks of flats) within a settlement (where the connection to centralised water supply and/or sanitation systems is not envisioned), then such proposed activity is subject to the EIA procedure in accordance with Para. 10, Part 3, Art. 3 of the Law of Ukraine “On Environmental Impact Assessment”.

Let us assume that the developer wins the right to purchase or rent a land plot of communal property on a competitive basis in the form of an auction in accordance with the rules of the Land Code of Ukraine. He/She calculates his/her own profit, construction costs, studies the infrastructure, the needs of investors, the object attractiveness, concludes contracts for the development of the construction project, seeks partners, contractors and so on. But *before making a decision* to conduct this proposed activity, the developer must obtain a positive conclusion on the results of the EIA. In other words, he/she has already spent a certain part of the funds and time for the implementation of the business project, but until the positive conclusion is obtained from experts, state authorities and the public, the construction of a multi-apartment residential building remains questionable, because there is no guarantee that the entrepreneur will receive a positive opinion on the EIA.

On the other side, this process is difficult for entrepreneurs who build something new. Other enterprises can plan their business development in advance. For instance, the operating pig farming enterprise plans to increase its production capacity next year, so it wants to build additional premises to keep more pigs. In this case, consideration of the impact on the environment before the construction starts seems quite rational and necessary. Moreover, such ambitions of the pig farming enterprise can seriously affect the living conditions in a particular locality of people living nearby. Therefore, the human right to respect for his/her personal and family life, his/her home, as provided in Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and the consideration of environmental impact clearly prevail over the interests of business in the above situation.

The developer should independently determine when for its proposed activity the period “*before decision-making* whether to execute such activity” begins with the purpose to incur the least expenses and consider all alternative construction options, production technologies, etc. or get preliminary positive conclusions about the impact on the environment.

The essential point to remember is that the commencement of the proposed activity referred to in the list of the Law of Ukraine “On Environmental Impact Assessment” prior to the environmental impact assessment thereof and prior to granting the decision on carrying out the proposed activity thereto is prohibited. Moreover, conducting proposed activity that is subject to the EIA without such an assessment may become a reason for termination of the enterprise or its individual production facilities (sections) and equipment.

It can be stated that prior to the adoption of the Law of Ukraine “On Environmental Impact Assessment”, it was much easier for business entities in Ukraine to start proposed activity first, and only then to bring it into line with the requirements of the state, the interests of public and the environment in accordance with European standards. However, activity related to environmental impacts should take into account any effects on safety of livelihoods of people and their health, flora,

fauna, biodiversity, soil, air, water, climate, landscape, natural areas and objects, historical monuments and other material assets or for the totality of these factors, as well as the effects on cultural heritage or socio-economic conditions resulting from alterations to those factors.

The scope of application of the EIA covers the explicit list of the types of the proposed activity and objects likely to cause a significant impact on the environment and subject to the environmental impact assessment, which are provided directly in the law. This list is divided into two categories.

The first category of the types of the proposed activity and objects likely to cause a significant impact on the environment and subject to the environmental impact assessment shall include the following (in the scientific article the list is given in a generalized form):

- crude-oil refineries and natural gas processing plants, installations for the gasification and liquefaction of coal or bituminous shale;
- thermal power stations (TPP, CHP) and other installations for production of electricity, nuclear power stations and other nuclear reactors;
- installations designed for the production or enrichment of nuclear fuel, installations designed for the processing of irradiated nuclear fuel and high-level radioactive waste, installations designed for the final disposal of radioactive waste, storage or processing of irradiated nuclear fuel or radioactive waste in a different site than the production site;
- chemical production including production of basic chemical substances, biochemical, biotechnical, pharmaceutical production using chemical or biological processes, production of plant health products, regulators of plants growth, mineral fertilizers, paint, varnishes and other chemicals;
- construction of airports and airfields with a basic runway length of 2 100 m or more; highways; national and local motorways for common use of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road or realigned and/or widened section of road would be 10 km or more in a continuous length;
- operations in the sphere of hazardous, non-hazardous and other waste management;
- operations related to groundwater, dams, water reservoirs and other objects designed for the maintenance and permanent storage of water;
- extraction of petroleum and natural gas on the continental shelf, pipelines for the transport of gas, oil or chemicals;
- quarries and open-cast mining, the processing or enrichment thereof onsite where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares;
- waste-water treatment plants with a capacity exceeding 150 000 population equivalent;
- installations for the intensive rearing of poultry (with more than 60 000 places), including broilers (with more than 85 000 places), pigs (3 000 places for pigs over 30 kg or 900 places for sows);
- all non-selective or gradual logging of main use and non-selective sanitary logging on the territory exceeding 1 hectare; all non-selective sanitary logging in the territory and objects of the nature-reserve fund.

The list of the first category determines the complexity of activities and large dimensions of the impact on the environment, natural resources or on human life and health. For these objects, the conclusions are issued by the central executive authority that ensures the formation and implementation of the state policy in the sphere of environmental protection, i.e. the Ministry of Ecology and Natural Resources of Ukraine (hereinafter - the Ministry of Environment).

In addition to the list of the first category of activity, a notification on the proposed activity should be sent to the Ministry of Environment, if the proposed activity:

- 1) is likely to cause a significant transboundary impact;
- 2) is likely to cause impact on the environment of two and more regions (the Autonomous Republic of the Crimea) or the customer of which is the regional, Kyiv or Sevastopol city state administrations;
- 3) concerns the exclusion zone or the absolute (obligatory) resettlement zone of the territory affected by radionuclide contamination as a result of Chornobyl catastrophe, and/or the decision on adopting (approving) of which is taken by the Cabinet of Ministers of Ukraine;
- 4) will be financed with foreign loans under state guarantees.

The developer shall possess the right to independently submit the notification on the proposed activity subject to the environmental impact assessment directly to the Ministry of Environment with a view to obtain its environmental impact assessment conclusion, which gives the enterprise additional guarantees and a reputation for the conduction of the proposed activity.

In all other cases, the enterprise informs about the proposed activity the competent local authority at the place of carrying out of such activity, i.e. regional, Kyiv and Sevastopol city state administrations (relevant unit on ecology and natural resources), state executive authority of the Autonomous Republic of the Crimea on ecology and natural resources.

In particular, the competent local authority is responsible for the EIA procedure for the second category of proposed activity and objects, which include, inter alia:

- deep drilling;
- activity related to agriculture, forestry and water management, for instance: re-cultivation and melioration of lands; afforestation (except for the reforestation); conversion of farming lands into another type of land use and conversion of particularly valuable lands into another type of land use; installations for the rearing of: poultry (40 000 places and more); pigs (1 000 places and more, for sows – 500 places and more); cattle and livestock (1 000 places and more); rabbits and other fur animals (2 000 heads and more); installations for the industrial recovery, disposal of animal carcasses and/or stockbreeding waste;
- activity related to extractive industry;
- activity related to energy industry: storage and processing of hydrocarbon raw materials; hydro power plants on rivers regardless of their capacity; hydro accumulating power plants (HAPP); wind farms, wind power plants with two or more turbines or constructions higher than 50 meters;
- production and processing of metals;
- activity related to chemical or food industry;
- infrastructure projects: development of industrial parks; construction of residential areas (complexes of blocks of flats) and shopping or amusement centres outside of settlements covering the area of more than 1,5 hectares, or within settlements where the connection to centralised water supply and/or sanitation systems is not envisioned; construction of cinema complexes with more than 6 screens; construction (equipment) of car parks covering the area of no less than 1 ha and with the capacity of more than 100 vehicles; construction of airports and airfields with a basic runway length of up to 2 100 metres; construction of railway stations, railways and facilities; construction of tramways, suspended lines and funiculars or similar lines of a particular type, used for passenger transport; construction of underground and ground metro lines as unified complexes, including depot maintenance complexes of buildings;
- tourism and leisure: ski runs, ski lifts, cable cars and associated facility complexes covering the area of 5 hectares and more; yacht clubs, yacht and boat parking; holiday villages and hotel complexes outside of settlements depending on the number of rooms, area and location; holiday villages and hotel complexes in the territory and objects of the nature-reserve fund or in the protection zones thereof; declaring natural territories to be resorts; permanent campsites and caravan sites; golf clubs; thematic entertainment parks.

The list of types of proposed activity and objects, which may have a significant impact on the environment and are subject to environmental impact assessment, is explicit and defined in Part 2 and 3 of the Article 3 of the Law of Ukraine “On Environmental Impact Assessment”. It is also a great advantage that this list is approved in the law, but not in any other normative legal act, considering that this corresponds to the principle of legal certainty and the possibility to foresee legal consequences for the subjects on which this law applies.

However, a proposed activity (defined in the Art. 3 of the Law of Ukraine “On Environmental Impact Assessment”), having as its sole purpose the national defence, the response to civil emergencies, the response to the consequences of the anti-terrorist operation on the anti-terrorist operation territory during the anti-terrorist operation period shall not be made subject to the EIC procedure, namely activity related to:

1) the construction of military and defense objects, which will be used exclusively to ensure the defense of the state and to which the legislation on state secrets applies;

2) restoration of some building parts with the aim of eliminating the consequences of emergency situations and restoring the functioning of objects designed to provide life-sustaining activity of the population without changing their geometric dimensions;

3) restoration of some building parts with the aim of eliminating the consequences of antiterrorist operation and restoring the functioning of objects designed to provide life-sustaining activity of the population without changing their geometric dimensions on the anti-terrorist operation territory during the anti-terrorist operation period in accordance with the list approved by the Decree of the Cabinet of Ministers of Ukraine of December 2, 2015 No. 1275.

In general, the EIA procedure involves undergoing of several stages, i.e.:

1) planning of economic activity subject to environmental impact assessment;

2) taking a decision by a developer to commence the EIA procedure in accordance with the law;

3) the preparation and submission to the competent authorities of a *notification* on the proposed activity subject to EIA;

4) the preparation by a developer of an *environmental impact assessment report*;

5) the carrying out of *public consultations*;

6) *the examination by the competent authority of the information* presented in the environmental impact assessment report, any supplementary information provided by the developer, as well as information received from the members of the public through the public consultations, through the transboundary impact assessment, other information;

7) providing the reasoned environmental impact assessment *conclusion* by the competent authority, which takes into account the results of the examination;

8) *the taking into account of the environmental impact assessment conclusion in the decision* on carrying out the proposed activity;

9) *actual carrying out of the proposed activity* (for example, commencement of construction, reconstruction, dismantling of objects, etc.).

The environmental impact assessment shall be carried out in compliance with the requirements of the environmental legislation, taking into account the environmental situation in the location of the proposed activity, environmental risks and forecasts, prospects for the socio-economic development of the region, capacity and types of cumulative impact (direct and indirect) on the environment, including taking into account the impact of existing objects, proposed activity and objects for which the decision on carrying out the proposed activity has been obtained or for which such a decision is under consideration.

Unquestionably, one of the key stages of the new EIA procedure is the consideration of public opinion and position.

Transparency of EIA is ensured via the timely, adequate and effective informing of the public. All EIA documents (notifications, notices, reports etc.) are made public by posting thereof on the official Internet website of the competent authority. In addition, a Single Environmental Impact Assessment Registry has been launched for the proper implementation of the Law of Ukraine "On Environmental Impact Assessment". This Registry is an automated information system for the collection, processing, review, accumulation, systematization, storage and provision of access to information and documents of the EIA. In this Register, virtually all documents related to the undergoing of the EIA procedure are retained. One of the biggest advantages of this platform is that the Register will limit the contact of the official with the business entity, that is especially important in the context of combating corruption manifestations and improving the investment climate in Ukraine. Decree of the Cabinet of Ministers of Ukraine of December 13, 2017 № 1026 approved the procedure for maintaining a Single Environmental Impact Assessment Registry.

The notification on the proposed activity subject to the EIA, the notice on the commencement of public consultations on the environmental impact assessment report shall be made public by the developer no later than 3 working days of the submission thereof to the competent authority *by*

publishing in the printed mass media (at least two) identified by the developer, the territory of dissemination of which covers the administrative-territorial units likely to be affected by the proposed activity, as well as placed on the *notice boards* of the local self-governance authorities or *in other public places* in the location of the proposed activity or *shall be made public by any other means* that guarantees the informing of the inhabitants of the relevant administrative-territorial unit in the location of the planned object or the relevant community likely to be affected by the proposed activity and other stakeholders.

In order to notify the residents of the respective territory about the proposed activity, the developer independently chooses a public place in the local area. This can be, for example, public transport stops, cultural centres, even supermarkets or other places of public gathering (especially if the locality is small). The main goal is to ensure maximum awareness of the public for successful public consultations on the proposed activity, which will guarantee a reduction of the risks of further appeal against EIA conclusions.

Also, there may be practical problems with the choice of local printed mass media, because if a proposed activity is going to be carried out in a small village, it is not always possible to find two publications that have the resources to publish all the information. However, the developer independently chooses the media. In addition, since the law provides for the publication a large amount of information on the proposed activity, this can be expensive, and sometimes the mass media need to issue a special edition with information about the proposed activity of the enterprise. Nowadays the proposals not to detail all aspects of the proposed activity in the media, but only to inform about the place of familiarization with the EIA report and the timing of the consultations, are discussed.

A detailed mechanism for carrying out public hearings is regulated by the Decree of the Cabinet of Ministers of December 13, 2017 No. 989 "On Approval of the Procedure for Carrying out Public Hearings in EIA Process". In particular, the authorized body is responsible for carrying out public hearings in the process of public consultations on the proposed activity by:

- disclosure of the notice on the commencement of public consultations on the EIA report, and, if necessary, notice of carrying out public rehearing;
- carrying out of public consultations;
- consideration, full accept, partial accept or reasonable rejection of comments and suggestions from the public received during the public hearings;
- preparation and disclosure of the report on public consultations, which should be added to the Single Environmental Impact Assessment Registry.

To simplify the work, the authorized body is given the right to involve *public hearings organizer* into carrying out public consultations. This person is determined once a year on a competitive basis and works under the contract, taking into account the requirements of the Law of Ukraine "On Public Procurement" (official public portal Prozorro). Public hearings organizer may be a legal entity or an individual entrepreneur with at least two years-experience in the field of environmental protection and the human and technical resources necessary to ensure the conduct of public hearings in the relevant region or regions. Their functions are mainly focused on material, technical, organizational and administrative carrying out of public hearings (location, audio or video recording, registration of participants, etc.).

The presence of both public hearings organizer and developer is obligatory at public hearings. Otherwise, hearings are considered to have failed. Meanwhile, in the event that representatives of the public fail to attend public hearings, a relevant act is drawn up, and the hearings are deemed to be held.

In general, public consultations in the process of the EIA is carried out with a view to identify, collect and take into account comments and suggestions from the public to the proposed activity. Public consultations on the proposed activity shall commence on the date of the official disclosure of the notice on the commencement of such consultations and *shall not be shorter than 25 working days and longer than 35 working days*. The developer shall bear the costs related to the public consultations.

After the completion of public consultations, when reviewing EIA report and preparing EIA conclusion, the authorized body shall consider, accept or reasonably reject all comments and suggestions received during public hearings and during the entire public consultations period. That is, the authorities take responsibility for the acceptance or rejection of all ideas, without exception, that were expressed at public hearings, regardless of their reasonability or proficiency. For example, if an individual person expresses an unwillingness of certain enterprise's construction or development near his/her village, as far as he/she considers it inappropriate for any reason, then the authorized bodies have to give substantiated response to the individual person's remark.

The competent authority shall grant the EIA conclusion by which, on the basis of the environmental impact assessment of the proposed activity, in particular the size and scale of the effects thereof (area and population likely to be affected), type (where present – transboundary), intensity and complexity, probability, expected start, duration, frequency and irreversibility of effects (including the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects), the measures envisaged to preclude, prevent, avoid, reduce, offset effects on the environment, *it shall ascertain the admissibility or justify the inadmissibility of the proposed activity and determine the environmental conditions for carrying out thereof.*

The EIA conclusion and the environmental conditions for carrying out of the proposed activity are binding for implementation. This document is taken into account in taking the decision on carrying out the proposed activity and may form the grounds for refusal of the decision on carrying out the proposed activity.

In the EIA conclusion the competent authority shall:

- 1) determine the type, main features and location of the proposed activity;
- 2) ascertain the admissibility or justify the inadmissibility of the proposed activity;
- 3) establish conditions for the use of the territory and natural resources during the preparatory and construction works and in carrying out the proposed activity;
- 4) establish conditions for environmental protection and ensuring environmental safety during the preparatory and construction works and in carrying out the proposed activity;
- 5) establish conditions for the prevention of emergencies and mitigation of consequences thereof;
- 6) establish conditions for the reduction of the transboundary impact of the proposed activity, which underwent the transboundary environmental impact assessment;
- 7) where the environmental impact assessment shows the need for:
 - compensatory measures – shall impose an obligation to implement those measures;
 - prevention, avoiding, reduction (mitigation), offset, control, as well as monitoring of the impact of the proposed activity on the environment – shall impose an obligation to undertake relevant action;
 - carrying out of additional EIA at the other stage of the project – shall determine the time frames and substantiate requirements for such an assessment;
 - carrying out of the post-project monitoring – shall determine the time frames and requirements thereto.

Where from the considered viable alternatives the environmental impact assessment shows that the environmentally justified alternative is different from the one proposed by the developer, with the written consent of the developer the EIA conclusion shall indicate the agreed alternative of carrying out the proposed activity. The EIA conclusion has to be granted to the developer within 25 working days of the completion of the public consultations.

After receiving the EIA conclusion, the developer applies to a public authority or a local self-governance authority seeking *the decision on carrying out the proposed activity*, which forms the basis for the commencement thereof, establishes (approves) parameters and conditions for carrying out the proposed activity and is taken in the form of a permit or other act of a public authority or a local self-governance authority pursuant to the procedure established by the legislation for the relevant decisions. For example, it is referred to a permit to perform construction works, to conduct operations

in the field of waste management, to start carrying out hazardous work, to special water use, to use of forest resources, to use of subsoil etc.

Where after granting the EIA conclusion the legislation does not require the taking of the decision on carrying out the proposed activity for it to commence, the EIA conclusion ascertaining the admissibility of the proposed activity shall be assumed to be the decision on carrying out the proposed activity.

It should be emphasized that the infringement of the EIA procedure, groundless and unjustified non-consideration or improper taking into account of the results of public participation, other violations of the legislation in the sphere of EIA shall form the grounds for cancellation of the EIA conclusion and the decision on carrying out the proposed activity through a judicial procedure.

The activity of business entities, regardless of ownership, in violation of the legislation on EIA may be: temporarily banned (suspended) or completely terminated. Such decision can be made exclusively by the court on the motion (claim) of the State Ecological Inspection of Ukraine, its territorial authorities or on the motion (claim) of other persons whose rights and interests have been violated.

3. CONCLUSIONS

The Law of Ukraine “On Environmental Impact Assessment“ is a procedural legal act defining the EIA mechanism starting from the notification on the proposed activity and ending with the decision on carrying out the proposed activity. The document was adopted in pursuance of the Ukraine–European Union Association Agreement.

The peculiarity of the EU Directives, introduction of which became mandatory for Ukraine in a framework of Association Agreement implementation, is that States must adapt their legislation to achieve the goals defined by the Directives, but they determine themselves the methods for achieving such goals.

Thus, the Directive 2011/92/EU of the European Parliament and of the Council of December 13, 2011 on the assessment of the effects of certain public and private projects on the environment was taken as a basis in Ukraine. EIA procedure was regulated, taking into account the Ukrainian realities, needs, experiences and problems manifested earlier in the course of massive and long-term environmental review, which over time discredited itself, in particular, because of the need to introduce systematic changes in the environmental legislation of Ukraine.

Important aspects and advantages of the new Law are:

- 1) confirmation of compliance with Ukraine's obligations under the Association Agreement with the European Union;
- 2) approval at the legislative level of the list of types of proposed activity and objects likely to cause a significant impact on the environment and subject to the EIA,
- 3) division of such types of proposed activity into two categories, which are defined depending on the complexity of the activity and the scale of the impact on the environment, natural resources or on human life and health;
- 4) introduction of obligatory public consultations in the EIA procedure;
- 5) creation of the Single Environmental Impact Assessment Registry;
- 6) carrying out the EIA procedure *before* the decision on carrying out the proposed activity is made;
- 7) preliminary indication of the methods of preventing possible negative consequences for the developer (business entity), as well as searching for alternatives of carrying out the proposed activity;
- 8) providing an in-depth framework for making well-considered decision by the authorized body thanks to the EIA report and information received during the consultations;
- 9) the responsibility of the authorized body for the issuance and reasonability of the EIA conclusion;
- 10) effective liability of the developer (business entity) for non-compliance with the EIA procedure or carrying out activity without the EIA.

At the same time, the new law is not devoid of certain shortcomings faced by the subjects of the relevant legal relations. First of all, business representatives did not fully understand the imperativeness of the norms of the Law and do not realize the importance of the EIA procedure for carrying out economic activities, therefore the procedure itself is delayed in time, and competent authorities, especially the Ministry of Environment, are currently overloaded. Subsequently, this situation will improve and the EIA will become a common thing for all parties.

The public is not familiar with the requirements of the law, therefore it does not actively use its ability to participate in public consultations in the EIA procedure. For example, if the local community missed the stage of public consultation through its passivity, the EIA conclusion was positive and the developer (business entity) began its proposed activity in compliance with environmental conditions, then the community actually loses the opportunity to adjust its activity or it will be much more difficult. However, it is also an additional guarantee for the developer (business entity) in the fight against unfair competition or unreasonable objections to the proposed activity.

Certain stages of the EIA procedure in practice may seem ineffective or too massive (for example, the need for a detailed description of the proposed activity in the printed mass media). Particularly, there may be problems in practice with the rule that “the proposed activity is subject to EIA *before making a decision to carry out the proposed activity*”. Not always the construction project or other proposed activity can cover everything that will affect the environment. If the developer (business entity) in its activity started the EIA procedure too quickly, then the EIA conclusion may determine that it is necessary to carry out the additional EIA at another project stage, and as a result the competent authorities can make such a request to the enterprise. This perspective is expensive and inconvenient for all parties, therefore it is worthwhile to analyze how often such problems arise and to consider the possibility of amending the legislation and liberalizing the procedure when, for example, the construction project and the EIA are being developed in parallel.

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У статті проаналізовано основні положення нового Закону України “Про оцінку впливу на довкілля”. Описано термінологію, процедуру та механізми проведення оцінки впливу на довкілля. Відображено можливі проблеми, із якими зіткнуться сторони на практиці проходження процедури оцінки впливу на довкілля. Виділено переваги та недоліки нового Закону та проаналізовано можливі проблеми під час реалізації норм закону.

Ключові слова: оцінка впливу на довкілля, Директива Європейського Союзу, Угода про асоціацію між Україною та Європейським Союзом, планована діяльність, екологічна експертиза, громадське обговорення.