

APPROVAL PROCEDURE OF ENVIRONMENTAL IMPACT ASSESSMENT IN THE LEGISLATION OF UKRAINE

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Abstract. The article is devoted to the institute of environmental impact assessment and the procedure for approval of this impact assessment in the legislation of Ukraine. The author singles out the subject of regulation of the institute and its tasks, which encompass clear and proper regulation of the environmental impact assessment procedure. The provisions of the Constitution of Ukraine related to this issue and the main directions of the state's environmental policy formulated in it are being analyzed. The article highlights the legal and organizational principles of environmental impact assessment aimed at preventing environmental damage, ensuring environmental safety, environmental protection, and rational use and reproduction of natural resources, which are regulated by the special Law of Ukraine "On Environmental Impact Assessment" and are in the process of adoption decisions on conducting business activities. The subjects of legal relations participating in the impact assessment procedure are determined and the scope of application of the impact assessment is defined. Special attention is paid to the procedure for approval of environmental impact assessment, which is multi-staged and consists of several steps defined by legislation. The article emphasizes ensuring transparency and public access to each of the stages of approval of the impact assessment, the need for timely, adequate, and effective public information in order to identify, collect, and take into account comments and suggestions of the public to the planned activity, funding public consultations.

Keywords: legal regulation; environmental impact assessment; environment; public consultations; assessment procedure.

INTRODUCTION

The subject of regulation of the environmental impact assessment institute is social relations arising in the sphere of assessment of the negative consequences of planned activities for the environment and human health, development of measures aimed at prevention, diversion, avoidance, reduction, and elimination of such an impact, as well as ensuring the strengthening of positive impact [Bilash 2023, 131].

The task of the institute is to clearly and properly regulate the environmental impact assessment procedure, which ensures openness and transparency, accessibility and public participation in decision-making, approximation to EU legislation, and fulfillment of the requirements of international agreements [Idem 2022, 191]. In the last decade, strategic environmental assessments (SEA) have been increasingly conducted, which are aimed at evaluating not planned physical interventions (construction of facilities, starting harmful industries), but at the level of strategic planning, in particular, at the plans, programs or political guidelines of governments. This institution of special administrative law does not regulate SEA, although both types of assessments are aimed at avoiding the implementation of activities that have a significant negative impact on the environment, as well as at ensuring the strengthening of positive impact.

1. CONSTITUTIONAL PROVISIONS

The Constitution of Ukraine guarantees everyone the right to an environment that is safe for life and health and to compensation for damage caused by violating this right. Everyone is guaranteed the right to free access to information regarding the state of the environment, the quality of food products and household items, as well as the right to its distribution. Such information cannot be classified by anyone (Article 50). At the same time, the Fundamental Law imposes an obligation on everyone not to harm nature and to compensate for the damage caused. This constitutional provision determines the content of norms regarding liability for violations of legislation in the field of environmental impact assessment [Lazur and Bilash 2021, 63].

Article 16 of the Constitution outlines the main directions of the state's environmental policy, namely: guaranteeing environmental safety; maintenance of ecological balance on the territory of Ukraine; overcoming the consequences of the Chernobyl disaster – a catastrophe of a planetary scale; preservation of the gene pool of the Ukrainian people. Article 13 of the Constitution also defines that the land, its subsoil, atmospheric air, water, and other natural resources located within the territory of Ukraine, natural resources of its continental shelf, and exclusive (maritime) economic zone are objects of ownership of the Ukrainian people.

Although the Constitution of Ukraine was adopted in 1996, and the above-mentioned provisions were enshrined by it only in the same year, legislative norms related to ecology and nature use, and the protection of environmental rights have appeared and become part of the national legal system even before its adoption.

A clear awareness regarding the significance of environmental issues and the need to regulate relevant social relations at the legal level occurred in the country after the Chernobyl nuclear power plant disaster in 1986. At that time, the state faced the task of not only overcoming the consequences of the accident but also of fundamentally restructuring management in the field of nature protection. At the end of the 1980s, acts were adopted that showed recognition of unresolved issues of nature protection and rational use of natural resources, failure to take into account the state of the environment, and possible environmental consequences when placing industrial facilities. In particular, this is evidenced by the joint Resolution of the Central Committee of the Communist Party of Ukraine and the Council of Ministers of the Ukrainian SSR dated November 18, 1988 No. 357 “On the radical restructuring of nature protection in the republic”.

2. THE NOTICE ON THE PLANNED ACTIVITIES

The procedure for assessing the impact on the environment provided for by law consists of several stages: informing the authorized territorial body by the business entity about the intention to carry out the planned activity; publication of a notice on the planned activity, which is subject to an environmental impact assessment; notification on the commencement of public consultations on the environmental impact assessment report; ensuring the preparation of an environmental impact assessment report by the business entity; submission by the business entity of the prepared environmental impact assessment report and announcement of the start of public consultations of such report; public consultations in the process of environmental impact assessment; issuance of an environmental impact assessment opinion by an authorized central or territorial body [Aleksyeyeva 2018; Volkova 2021].

To ensure transparency and public access, each of these stages is reflected in the Unified Environmental Impact Assessment Register,¹ the management of which is determined by Resolution No. 1026 of the Cabinet of Ministers of Ukraine dated December 13, 2017.

¹ The Unified Environmental Impact Assessment Register is an automated information system for collecting, processing, reviewing, accumulating, systematizing, storing, and providing access to environmental impact assessment information and documents. The register is maintained for the purpose of ensuring the access of environmental impact assessment subjects to current regulatory and methodological information, access to environmental impact assessment documents and the possibility of their submission through an electronic cabinet, centralized accumulation and processing of information and documents regarding planned activities, free access of all interested parties to information and documents regarding planned activities created in the process of environmental impact assessment.

The information on the website of the Unified Environmental Impact Assessment Register is open, free access to it is provided via the Internet.²

A registration case is formed in the register, which contains the following documents regarding the planned activity: the notice on the planned activity, which is subject to an environmental impact assessment; the request of the business entity to provide conditions regarding the scope of research; all concerns and suggestions of the public regarding the planned activity, the scope of research to be included in the environmental impact assessment report; concerns and suggestions provided by the authorized body; announcement of the commencement of public consultations of the environmental impact assessment report; environmental impact assessment report; report on public consultations; information about the decision to implement the planned activity; other documents related to the planned activity submitted by the business entity.

The business entity informs the competent local authority on the intent to carry out the planned activities and the environmental impact assessment thereof by submitting the notice. This notice is submitted in writing and in an electronic form and contain information on the business entity, the planned activities, its location, socio-economic impact of such activities, environmental and other restrictions applicable to the planned activities, area, sources, and types of the possible impact on the environment, envisioned scope of assessment and the level of detail of the information to be included in the environmental impact assessment report, contemplated environmental impact assessment procedure and opportunities for public participation therein, the nature of the decision on carrying out the planned activities and the public authority competent to take this decision.

The notice on the planned activity is submitted by the authority to the Unified Environmental Impact Assessment Register within three working days from the date of receipt, and in the following 20 working days the public can provide the authorized territorial body with comments and suggestions on the planned activity, the scope of research and the level of detail of information to be included in the environmental impact assessment report [Kovalenko 2023, 19-20]. At the same time, when preparing the report, the authority may take into account or reasonably reject the comments and suggestions of the public, provided in the process of public

² The website <http://eia.menr.gov.ua/> of the Unified Environmental Impact Assessment Register is a separate unit of the register with open access via the Internet, which is intended to be integrated into the official websites of the authorized authority for the purpose of officially publishing environmental impact assessment documentation and providing information to the subjects environmental impact assessment entities and other interested parties about the progress and results of the environmental impact assessment of the planned activity.

consultations of the scope of research and the level of detail of information to be included in the environmental impact assessment report.

3. ENVIRONMENTAL IMPACT ASSESSMENT REPORT

The business entity submits the environmental impact assessment report signed by the authors and the announcement of the commencement of public consultations of the report to the authorized territorial body, and the latter enters the corresponding report into the Unified Environmental Impact Assessment Register, where it is stored throughout the duration of the planned activity, but not less than five years from the date of receipt of the decision on the implementation of the planned activity.

The environmental impact assessment report includes a description of the planned activities; a description of the reasonable alternatives relevant to the planned activities, and an indication of the main reasons for selecting the chosen option, taking into account environmental effects; a description of the current state of the environment and an outline of the likely evolution thereof without implementation of the planned activities; a description of the factors of the environment likely to be affected by the planned activities and its alternatives, including human health, state of fauna, flora, biodiversity, land (including land take), soil, water, air, climate factors, material assets, including architectural, archaeological and cultural heritage, landscape, socio-economic conditions and the interaction among these factors; a description and assessment of the likely effects on the environment; a description of the measures envisaged to preclude, prevent, avoid, reduce, offset significant adverse effects on the environment; all comments and suggestions, received after making public of the notification on the planned activities, showing information on acceptance or reasonable rejection; an outline of the monitoring and control programmes as to the effects on the environment of carrying out of the planned activities.

The announcement of the start of public discussion of the report must contain information about the planned activity (brief description); business entity; an authorized territorial body that ensures public discussion; the procedure for making a decision on the implementation of the planned activity and the body that will consider the results of the environmental impact assessment; terms, duration and procedure for public discussion of the environmental impact assessment report; the state body providing access to the environmental impact assessment report and other available information regarding the planned activity; the body to which questions, comments or proposals are sent, and the deadlines for submitting questions, comments and proposals; available environmental information regarding the planned activity; the location of the environmental impact assessment

report and other additional information determined by the business entity, as well as the time from which the public can familiarize themselves with them.

The notice on the commencement of public consultations on the report shall contain the information regarding the planned activities (outline); the business entity; the competent central authority ensuring the public consultations; the procedure for making the decision on carrying out the planned activities and the authority in charge of the examination of the environmental impact assessment findings; the terms, duration, and procedure for public consultations on the environmental impact assessment report; the public authority ensuring access to the environmental impact assessment report and other accessible information on the planned activities; the authority to which questions, comments and suggestions may be submitted, and the terms for the submission of questions, comments, and suggestions; the available environmental information on the planned activities; the place(s) where the environmental impact assessment report and other additional information identified by the business entity are located, as well as the time at which the public can examine them.

4. PUBLIC CONSULTATIONS

In the process of assessing the impact on the environment, timely, adequate, and effective public informing must be provided in order to identify, collect, and take into account the comments and suggestions of the public regarding the planned activities [Bilash and Karabin 2021, 349]. The public has the right to submit any comments or suggestions that it considers relevant to the planned activity, without the need to substantiate them. Comments and suggestions can be submitted in writing, including electronic form (following the procedure specified in Article 7 of the Law “On Environmental Impact Assessment”) and verbally during public consultations, the procedure of which is regulated by the government resolution “On the procedure for holding public consultations in the process environmental impact assessment” No. 989 of December 13, 2017.

Public consultations are funded at the expense of the business entity, and the fee amount is determined by the order of the Ministry of Ecology and Natural Resources of Ukraine No. 182 of May 30, 2018. The following fees are paid for: expert services of expert commissions’ members on environmental impact assessment, organization of public consultations (lease of premises for holding public consultations, technical support for holding public consultations, business trip, printing of materials, services for the organizing of public business trip, etc.) and conducting a public discussion

according to the transboundary impact assessment procedure, other expenses related to the maintenance of the Ministry of Environmental Protection.

Public consultations of the planned activity begin after submitting environmental impact assessment report from the day of official publication of the announcement of the commencement of public consultations of the report and provision of public access to the report for review. The legal deadline for the discussion is established: it must last at least 25 working days and no more than 35 working days [Patseva, Melnyk-Shamrai, and Lukianova 2022, 24]. The authorized territorial body considers all proposals and comments of the public and ensures the preparation of a report on public consultations. If public consultations were conducted in written (electronic) form, all the received written comments and suggestions from the public, as well as a table indicating information on the consideration or justified rejection of the received comments and suggestions are recognized as an integral element of the report on the public discussion. If public consultations were conducted in the form of a public hearing, then the minutes of the public hearing with all appendices and a table for taking into account the comments and suggestions of the public are included in the report on the public hearing. The organiser of the public consultation is obliged to report the conflict of interest to the authorised central body or authorised territorial body. In this case, the authorised central body or the authorised territorial body conducts the public meeting independently.

The public consultation report is entered into the Unified Environmental Impact Assessment Register at the same time as the conclusion of the environmental impact assessment.

5. ENVIRONMENTAL IMPACT ASSESSMENT CONCLUSION

The environmental impact assessment conclusion determines the admissibility or justifies the inadmissibility of the implementation of the planned activity and determines the environmental conditions of its implementation. The environmental impact assessment conclusion and ecological conditions of the implementation of the planned activity are mandatory for implementation.

The authorized territorial body issues a conclusion based on an assessment of the impact on the environment of the planned activity, the nature, intensity and complexity, probability, expected onset, duration, frequency, and inevitability of the impact, provided measures aimed at prevention, diversion, avoidance, reduction, elimination of the impact on the environment. When preparing the conclusion, the environmental impact assessment report and the report on public consultations are taken into account.

Article 9 of the Law “On Environmental Impact Assessment” defines the content of the environmental impact assessment conclusion. Thus, the descriptive part of the conclusion provides information about the environmental impact assessment procedure carried out, the consideration of the environmental impact assessment report, the considered and rejected comments and suggestions received during the public consultations. In the conclusion itself, the authorized territorial body determines: 1) the type, main features, and location of the planned activities; 2) ascertain the admissibility or justify the inadmissibility of the planned activities; 3) establish conditions for the use of the territory and natural resources during the preparatory and construction works and in carrying out the planned activities; 4) establish conditions for environmental protection and ensuring environmental safety during the preparatory and construction works and in carrying out the planned activities; 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 planned activities, which underwent the transboundary environmental impact assessment.

The environmental impact assessment conclusion is granted to the business entity free of charge within 25 business days of the completion of the public consultations, and where the transboundary environmental impact assessment is conducted – of the date of completion thereof and approval of the decision on taking into account of the outcome of the transboundary environmental impact assessment. The report on public consultations is attached to the environmental impact assessment conclusion. The conclusion is made public and entered into the Unified Environmental Impact Assessment Register. The conclusion of the environmental impact assessment loses its validity after five years.

According to Article 12 of the Law “On Environmental Impact Assessment” the environmental impact assessment conclusion, other decisions, acts, or omissions of government authorities or local authorities in the process of the environmental impact assessment may be challenged by any natural or legal person through a judicial procedure.

CONCLUSIONS

The 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) recognizes that the public has access to information, has the opportunity to participate in decision-making, and has access to justice on issues related to the environment, without discrimination based on citizenship, nationality, or place of residence, and in the case of a legal entity – without discrimination based on its registered location or actual center

of activity. The state must ensure that the relevant bodies have accurate and up-to-date environmental information and that the procedures for providing the public with environmental information are transparent.

By ratifying the Convention, Ukraine undertook to take legislative, regulatory, and other measures to implement the convention's provisions into public life. However, the shortcomings of the procedure, defined at that time by the law "On Environmental Expertise" dated February 9, 1995, became the basis for recognizing Ukraine as one whose legislation does not comply with the provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The implementation of the Association Agreement between Ukraine and the EU has become a qualitative impetus in solving the problems of Ukraine's non-compliance with international obligations (including such under the Espoo Convention and the Aarhus Convention). Without the fulfillment of the convention requirements, the approximation of legislation within the framework of the Association Agreement became impossible, and, on the other hand, the proper implementation of the provisions of the Agreement was able to ensure Ukraine's fulfillment of international obligations in accordance with the abovementioned conventions and the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context.

REFERENCES

- Aleksyeyeva, Yelyzaveta. 2018. *Populyarnyy komentar do Zakonu Ukrayiny "Pro otsinku vplyvu na dovkillya"*. Lviv: Vydavnytstvo "Kompaniya "Manuskrypt".
- Bilash, Oleksandr, and Tetyana Karabin. 2021. "Umweltschutzrecht in der Ukraine." *OER Osteuropa Recht* 3:335-52. <https://doi.org/10.5771/0030-6444-2021-3-335>
- Bilash, Oleksandr. 2022. "Pravo otsinky vplyvu na dovkillya." In *Osoblyve administratyvne pravo*, edited by Bernd Wieser, Yaroslav Lazur, Tetyana Karabin, et al. 191-210. Odesa: Vydavnychyy dim Hel'vetyka.
- Bilash, Oleksandr. 2023. "Umweltverträglichkeitsprüfung." In *Besonderes Verwaltungsrecht der Ukraine*, edited by Bernd Wieser, Yaroslav Lazur, Tetyana Karabin, et al. 131-41. Wien: Verlag Österreich GmbH – Berliner Wissenschafts-Verlag.
- Jendroška, Jerzy. 2013. "Perelik osnovnykh vymoh Konventsiyi ESPO, Orhus'koyi konventsiyi, a takozh Dyrektyvy pro OVNS, yakym povynna vidpovidaty pravova baza Ukrayiny u sferi otsinky vplyvu na navkolyshnye seredovyshe." In *Otsinka vplyvu na dovkillya ta uchast' hromads'kosti*, edited by Dmytro Skryl'nikov, and Yelyzaveta Aleksyeyeva, 29-39. Lviv: EPL.
- Kovalenko, Yuriy. 2023. *Otsinka vplyvu na dovkillya: konspekt leksiy*. Kharkiv: Kharkivs'kyy natsional'nyy universytet mis'koho hospodarstva im. O. M. Beketova.

- Lazur, Yaroslav, and Oleksandr Bilash. 2021. "Public institute of environmental impact assessment. Entrepreneurship." *Economy and Law* 11:63-69. <https://doi.org/10.32849/2663-5313/2021.11.08>
- Patseva, Iryna, Viktoriia Melnyk-Shamrai, and Vitalina Lukianova. 2022. *Otsinka vplyvu na dovkillya*. Zhytomyr: Derzhavnyy universytet «Zhytomyrs'ka politekhnik».
- Volkova, Anastasiya. 2021. "Pravovi ta orhanizatsiyni zasady otsinky vplyvu na dovkillya." *Ekonomika ta pravo* 3:28-36. <https://doi.org/10.15407/econlaw.2021.03.028>