

**Report of the Ukrainian Party
on the Matters Set Out in Paragraph 24 of Decision V/4,
Adopted at the Fifth Session of Meeting of the Parties to the
Espoo Convention
June 20-23, 2011, Geneva, Switzerland**

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Introduction

Ukraine has ratified the Convention on Environmental Impact Assessment in a Transboundary Context (hereinafter referred to as the Espoo Convention) by the Law of Ukraine No. 534-XIV dated 19.03.1999.

In paragraph 24 of Decision V/4 adopted at the Fifth Session of Meeting of the Parties to the Espoo Convention held on June 20-23, 2011 in Geneva, Meeting of the Parties requested the Government of Ukraine to report by the end of each year on:

steps taken to bring into full compliance the Danube-Black Sea Deep Water Navigation Route in the Ukrainian sector of the Danube Delta with the provisions of the Espoo Convention, implementing the measures in accordance with paragraph 19 of Decision V/4 of Meeting of the Parties of the Espoo Convention, and on the post-project analysis of the project;

the implementation of the strategy, in particular on concrete legislative measures adopted to this effect.

The Ukrainian Party has drawn up this report to implement para. 24 of Decision V/4 of Meeting of the Parties of the Espoo Convention.

1. Report on the Realization of the Action Plan (Strategy) for the Implementation of Paragraphs 11-12 of Decision IV/2 of the Parties to the Espoo Convention, Approved by Resolution No. 9-p of the Cabinet of Ministers of Ukraine dated 06.01.2010

1. Paragraph 1 of Clause 1 of the Action Plan (Strategy) for implementation of paragraphs 11-12 of Decision IV/2 of the Parties to the Espoo Convention, approved by Resolution No. 9-p of the Cabinet of Ministers of Ukraine dated 06.01.2010 (the “Strategy”) provides for the development and submission of the Draft Law of Ukraine “On Amendments to Certain Laws of Ukraine on Implementation of the Provisions of the Convention on Environmental Impact Assessment in a Transboundary Context (Appendix 1) to the Cabinet of Ministers of Ukraine. This legal and regulatory act was developed by the Ministry of Environmental Protection of Ukraine, agreed upon the public authorities concerned and submitted to the Cabinet of Ministers of Ukraine by Letter No. 21697/16/10-11 dated 04.11.2011 for the further introduction thereof to the Verkhovna Rada of Ukraine for approval purposes. However, in the opinion of the Cabinet of Ministers of Ukraine, the matters related to making amendments to the Law of Ukraine No. 3038-VI “On Regulation of Urban Planning Activity” dated 17.02.2011 shall be subject to further agreement.

On December 20, 2011 the Ministry of Environmental Protection of Ukraine, with participation of other executive authorities, held an approval meeting as well as scheduled a series of additional approval meetings for the submission of the stated Draft to the Verkhovna Rada of Ukraine as soon as possible.

2. Clause 1 of the Strategy provided for the development and submission for approval of the Procedure for Environmental Impact Assessment in a Transboundary Context to the Cabinet of Ministers of Ukraine. The Ministry of Environmental Protection of Ukraine developed this Procedure (Appendix 2) as of beginning of 2011. However, on February 17, 2011 the Law of Ukraine “On Regulation of Urban Planning Activity” was adopted and it materially changed the procedure of construction project assessment. This law required the adoption of a considerable body of bylaws which would ensure its implementation into practice. Discrepancy in the provisions of the Law of Ukraine “On Regulation of Urban Planning Activity”, to the extent they allow or disallow the state environmental expertise, prevented any material changes of the project assessment procedure until establishment of sustainable judicial practice. All that made it impossible to submit the developed Draft to the Government.

Despite problematic situation triggered by the adoption of the Law of Ukraine “On Regulation of Urban Planning Activity”, Resolution No. 771 of the Cabinet of Ministers of Ukraine provided for the Procedure for the Involvement of Public in Discussion of the Issues on Decisions Which May Affect the State of Environment. This Procedure is aimed at ensuring proper procedure for participation of public in making environment-gearred decisions as well as

removing a range of violations which had caused breach of the Espoo Convention and the Aarhus Convention.

Therefore, although the document provided for in the Espoo strategy was not submitted to the Cabinet of Ministers of Ukraine, another act of the Cabinet of Ministers of Ukraine designed for the fulfillment of the tasks set out for the Procedure for Environmental Impact Assessment in a Transboundary Context was adopted.

The Draft Procedure for Environmental Impact Assessment in a Transboundary Context shall be completed after adoption of the Draft Law of Ukraine “On Amendments to Certain Laws of Ukraine on Implementation of the Provisions of the Convention on Environmental Impact Assessment in a Transboundary Context”.

3. Clause 1 of the Strategy provided for the development and submission of the Draft Resolution of the Cabinet of Ministers of Ukraine “On Amendments to the Regulation on the Ministry of Environmental Protection of Ukraine approved by Resolution No. 1524 of the Cabinet of Ministers of Ukraine dated 02.11.2006” to the Cabinet of Ministers of Ukraine. Decree No. 452/2011 of the President of Ukraine dated 13.04.2011 approved the Regulation on the Ministry of Environmental Protection of Ukraine. According to sub-clause 24 of Clause 4 of this Regulation, the Ministry of Environmental Protection of Ukraine shall arrange, coordinate, and monitor the environmental impact assessment, including in a transboundary context ...”. In this regard, the tasks set out for the Draft Resolution of the Cabinet of Ministers of Ukraine “On Amendments to the Regulation on the Ministry of Environmental Protection of Ukraine approved by Resolution No. 1524 of the Cabinet of Ministers of Ukraine dated 02.11.2006” were fulfilled.

4. Clause 1 of the Strategy provided for the development and submission of the Draft Resolution of the Cabinet of Ministers of Ukraine “On Amendments to the Procedure for Approval of Investment Programs and Construction Projects and the State Expertise Thereof” to the Cabinet of Ministers of Ukraine. On February 17, 2011 the Law of Ukraine “On Regulation of Urban Planning Activity” was adopted and Article 31 thereof changed the construction project expertise procedure and required the adoption of a new resolution of the Cabinet of Ministers of Ukraine which would approve such expertise procedure. Resolution No. 560 of the Cabinet of Ministers of Ukraine dated 11.05.2011 approved the Procedure for Approval of Construction Projects and the Expertise Thereof.

This Resolution declared Resolution No. 1269 of the Cabinet of Ministers of Ukraine “On Procedure for Approval of Investment Programs and Construction Projects and the State Expertise Thereof” dated 31.10.2007 as null and void.

5. Clause 2 of the Strategy provided for making amendments to State Construction Norms DBN (State Constructing Norms) 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. Deadline – September, 2011. This Draft was developed

by the Ministry of Environmental Protection of Ukraine and submitted to the Ministry of Regional Development, Construction, Housing and Public Utility Sector of Ukraine (Appendix 3).

6. Pursuant to Clause 4 of the Action Plan, the Ukrainian Party acknowledges that the development and approval of the guidelines on practical use of the Convention on Environmental Impact Assessment in a Transboundary Context will be possible upon adoption of the legal and regulatory acts set out in Clauses 1, 2, 5 of this Report.

2. Report on the Implementation of Measures on Development and Entering Into Bilateral Agreements Aimed at Realization of the Espoo Convention Provisions

Pursuant to paragraph 14 of Decision IV/2 of the Forth Session of Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context held on May 19-21, 2008 in Bucharest, Romania, the Ukrainian Party, according to the Reports of the Ukrainian Party (Letters No. 26949/12/10-10 and No. 4300/07/10-11-MII of the Ministry of Environmental Protection of Ukraine dated 27.12.2010 and 24.02.2011 respectively), has sent the draft bilateral agreement, complying with the requirements of Article 8 of the Espoo Convention, to Moldova, Poland, Slovakia, Hungary, Byelorussia.

In 2011, the Ukrainian Party in the Letters of the Ministry of Environmental Protection of Ukraine No. 3031/12/10-11 dated 09.02.2011 to the Republic of Belarus, No. 3028/12/10-11 dated 09.02.2011 to the Republic of Poland, No. 3029/12/10-11 dated 09.02.2011 to the Slovak Republic, No. 3030/12/10-11 dated 09.02.2011 proposed the timeline for the bilateral meetings. Once again, the Ukrainian Party requested the neighboring countries to hold the negotiations of the stated Agreements in Kyiv and proposed exact timeline of possible meetings. As the result, the negotiations with the Republic of Belarus held on 22.03.2011, with the Republic of Poland held on 05.04.2011, with the Slovak Republic held on 12.04.2011 and with *the Romanian Party held on 17.05.2011* took place in Kyiv.

The Parties discussed the draft agreements and major problems related to the legislative differences. It was agreed to proceed with the discussions and development of bilateral Agreements in September, 2011 after working through the Parties' comments.

In addition, we shall state that the Hungarian Party failed to reply to the invitation for negotiations and the proposal to provide any comments to the draft Agreement.

On November 7, 2011 the Ukrainian Party held the second round of negotiations with the Slovak Party regarding the draft bilateral agreement.

3. Report on Measures Undertaken to Ensure the Implementation of the Espoo Convention Provisions on the Danube-Black Sea Deep Water Navigation Route in the Ukrainian Sector of the Danube Delta

3.1. Measures Undertaken to Ensure the Implementation of the Espoo Convention Provisions on Bringing Into Full Compliance the Danube-Black Sea Deep Water Navigation Route in the Ukrainian sector of the Danube Delta.

The construction project assessment procedure is the legal procedure for the implementation of the Espoo Convention provisions. This procedure has been substantially changed due to the adoption of the Law of Ukraine No 3038-VI “On Regulation of Urban Planning Activity” dated 17.02.2011. To be put into effect, this law requires the Cabinet of Ministers of Ukraine to adopt a range of resolutions. Considerable part of these resolutions have been adopted, among them: Resolution No. 560 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Approval of Construction Projects and the Expertise Thereof and Declaration of Certain Resolution of the Cabinet of Ministers of Ukraine as Null and Void” dated 11.05.2011; Resolution No. 53 of the Cabinet of Ministers of Ukraine “On Approval of the Compliance Criteria for Expert Organizations Responsible for the Construction Project Expertise” dated 23.05.2011; Resolution No. 554 of the Cabinet of Ministers of Ukraine “Some Issues of Competency Assessment of Responsible Officers for Certain Types of Activities (Services) Related to the Creation of Architectural Objects” dated 23.05.2011; Resolution No. 557 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for the Classification of Construction Projects Falling Within IV and V category of complexity” dated 21.04.2011, etc.

The same Law introduces amendments to the Law of Ukraine “On Environmental Expertise” dated 09.02.1995. However, the Law of Ukraine “On Regulation of Urban Planning Activity” introduced no amendments to the provision of Part 3 of Article 13 of the Law of Ukraine “On Environmental Expertise” according to which “the state ecology expertise shall be compulsory for highly environmentally dangerous activities and objects. The list of highly environmentally dangerous activities and objects shall be established by the Cabinet of Ministers of Ukraine”. Herewith, Part 5 of Article 31 of the Law of Ukraine “On Regulation of Urban Planning Activity” provides for that “the establishment of events and construction project expertise procedure by other laws shall not be allowed”. Such situation invoked problems in the law-enforcement policy as the compulsory nature of the ecology expertise was not exactly determined.

As the sustainable practice of application of the provisions of the Law of Ukraine “On Regulation of Urban Planning Activity” and the Law of Ukraine “On Environmental Expertise” as well as acts adopted on the basis of the former were

unavailable, the steps to be taken to bring into full compliance the Danube-Black Sea Deep Water Navigation Route in the Ukrainian sector of the Danube Delta were not determined.

The situation in Ukraine was reviewed within the project “Assistance to Ukraine in Implementation of the Provisions of the Espoo Convention and the Aarhus Convention”. However, since termination of the project (in August, 2010) the situation in the sphere of implementation of the provisions of the Espoo Convention and the Aarhus Convention has considerably changed. In this regard the project recommendations became obsolete. Besides, the project recommendations could not consider the changes of the applicable Ukrainian legislation introduced by the Law of Ukraine “On Regulation of Urban Planning Activity”.

In face of the tangled situation with the implementation of the provisions of the Espoo Convention and the Aarhus Convention, Ukraine has drawn up a range of projects. They were referred to in the previous section of this report.

Complexity of the implementation of the provisions of the Espoo Convention, with regard to bringing them into full compliance the Danube-Black Sea Deep Water Navigation Route in the Ukrainian sector of the Danube Delta, is also due to the fact that the implementation of the provisions of the Espoo Convention is subject to a series of expert examinations requiring extra costs. As the budgets of public authorities and state enterprises have been already approved, the allocation of extra costs for the mentioned expert examinations is practically impossible. In this regard, only 2012 will bring the possibility to approve new budgets and estimate extra costs for the provision of finance for the realization of measures directed at implementation of the provisions of the Espoo Convention on bringing into full compliance the Danube-Black Sea Deep Water Navigation Route in the Ukrainian sector of the Danube Delta.

To improve situation with the implementation of the provisions of the Espoo Convention in the process of realization of the project for creation of the Danube-Black Sea Deep Water Navigation Route in the Ukrainian sector of the Danube Delta, a meeting of Intergovernmental Coordination Council on the Implementation of Espoo Convention in Ukraine were held (02.11.2011).

New project “Assistance to Ukraine in Implementation of the Provisions of the Espoo Convention and the Aarhus Convention” was launched. This project provides for the assessment of the applicable Ukrainian legislation and the issue resolution procedures.

3.2. Measures of Environment Monitoring of the Area of the Danube-Black Sea Deep Water Navigation Route in the Ukrainian sector of the Danube Delta

Ukraine supports creation of a common international system of monitoring the entire Danube delta. In 2009, Ukrainian and Romanian consultations took place to organize the common monitoring of the Danube delta and delta front, but cooperation has not started yet.

At the beginning of this year (2011), under the auspices of the International Commission for the protection of Danube (ICPDR) and the UNECE, Ukraine, Rumania and Moldova have started the execution of the project "Common ecological monitoring, assessment and exchange of information for the integrated management of the Danube river delta region". It is the first step towards the complex management of Danube river delta that will allow us to prepare complex analysis of the situation in Danube river delta and to elaborate measures to maintain the sustainable development of the region. It will result in elaboration and implementation of the common program in Danube river delta that will contribute to the harmonization of the monitoring system in Danube river delta.

Ukraine has launched the system of comprehensive monitoring of the Danube delta environment, including research and engineering monitoring programs.

The works in 2011 are executed according to the Requirements specification for the execution of the works under the contract between Ukrainian scientific and research institute of ecological problems and State enterprise «Delta-Lotsman» and to the Program of complex ecological monitoring of the environment during the renovation and exploitation of DNR Danube river – Black Sea.

The principal contractor (Ukrainian scientific and research institute of ecological problems of the Ministry of nature environment protection of Ukraine) has involved the following organization in the execution of the works: Hydrometeorological observatory of Danube, Odessa Center of South research institute of maritime fish industry and oceanography, State enterprise "ChornomorNDIproject", Odessa branch of the institute of biology of southern seas of the National Academy of Sciences of Ukraine, Danube biosphere reserve of the National Academy of Sciences of Ukraine, Institute of hydrobiology of the National Academy of Sciences of Ukraine, Institute of zoology of the National Academy of Sciences of Ukraine, Ukrainian center of management of land and resources, Ukrainian scientific center of ecology of the sea, scientific production association "Avia".

The below-mentioned main kinds of works are stipulated by the Monitoring program in 2011:

obtaining and processing the results of regular hydrological and hydrochemical monitoring at the points of background observation, in

hydrotechnical works execution area and in the area of possible impact of the renovated DNR on the natural environment (river and sea parts);

obtaining and processing the results of control measurements of the quality of water and bottom sediments during dredging works execution;

monitoring of coastal dumps of earth deposit and monitoring in the area of maritime dump of deposit;

hydrobiological research on the maritime and freshwater parts during the renovation and exploitation of navigable route Danube river – Black Sea;

monitoring of the ichthyofauna state, assessment of the possible negative impact on the fish resources during the renovation and exploitation of navigable route Danube river – Black Sea;

quarterly calculation of the damages caused to the aquatic environment and fish resources and of the amount of compensatory payments, assessment of residual soil capacity of sludge ponds (maritime etc.).

scientific justification of the further exploitation of maritime pond during the period of execution of the works under the project for the overall development (operational dredging)

monitoring of plant and animal species of the coastline and wetlands of Danube biosphere reserve during the restoration and exploitation of DNR Danube river – Black Sea;

assessment of the state of water areas used for fishes spawning of and birds nesting and nutrition;

assessment of the cumulative impacts of the navigation on the state of terrestrial and water ecosystems;

determination of the possible negative impact on the ecological state of Danube river delta and of the possible transboundary impact on the territory of Rumania (assessment of impact level including in transboundary context; treatment of the materials related to the commentaries and observations of Romanian side, of the ESPOO Convention, in the context of actual data received as a result of the complex ecological monitoring);

analysis and generalization of observation results, elaboration of forecast of change of the state of natural environment;

elaboration of the recommendations concerning the prevention and minimization of the impacts etc.

The observations have been carried out of the state of the plant communities, araneofauna, entomofauna, macrozoobenthon of freshwater and brackish water territories within the Danube Biosphere Reserve, herpetofauna and rare ichthyofauna, avifauna. Below are given preliminary results of separate groupings monitoring.

Plant communities.

Field research has been carried out on the territory around navigable route as well as outside its borders. The biggest attention was paid to the study of the changes of flora and vegetation directly on the territory of the dam and in the way leading to it as well as of seaside parts of islands Stamboulskiy, Koubanskiy, Rouban and of Ptachina spit. Actual state of flora and vegetation on the island Yermakiv and their changes have been studied separately.

The territory of Stamboulskiy island has almost recovered its plant cover. The way to the dam is overgrown with the vegetation of initial stages of vegetational fluctuation. In September-at the beginning of October the projective cover of the vegetation was from 30 to 45 %, and on separates areas reached up to 85 %.

In summer, on the dam the overgrowing of which has started at the end of spring –at the beginning of summer of this year, it was noticed the formation of vegetation cover not only from pioneer vegetation, but also from arboreal and dumetosous one. The shallows around the dam are overgrowing with the dense vegetation cover from hygrophyte species with general projective cover reaching up to 100% in some areas.

Inspection of islands Stamboulsiy, Yermakyyv, Ptashina spit and the Bystriy estuary that are located directly near the route Danube river – Black Sea, has revealed that the formation of the vegetation was taking place in favorable conditions, particularly, it concerns water, meadow and meadow-swamp vegetation complex.

The washout of coast line along Starostamboulske and Bystre mouthes did not occur. Growth of land and forming of the vegetation cover have taken place on the considerable area. The formation of pioneer vegetation with high projective cover 85-100% started on this area.

At present time, the Bystriy estuary has the depth from 0,1 to 1,0 m. A small depth contributed to the development of real water vegetation - from 25-30 to 45-60 % of the water surface, that is an extraordinarily high indicator in comparison with previous years.

On Yermakyyv island, renewal changes of the vegetation are in progress almost on the whole part of the island. First of all, the renewal of water and swamp species of vegetation is in progress. True water vegetation is not developed enough, but new species for the DBR flora was found - elodea naturallii (*Elodea nuttallii* Planchon) H. St. John . It was also noticed the renewal and spreading of the population of rare species registered in the Red Data Book of Ukraine – swimming caltrop *Trapa natans* L. and spring snowflake *Leucojum aestivum*, as well as a considerable spreading of the population of the species the groupings of which are registered in the Green Data Book of Ukraine - white water lily *Nymphaea alba*.

During field research of the territory of the reserve at the beginning of this year 8 new species of plants were found, and 2 more species of plants found during last field research, are not determined yet. At present, the DBR flora makes up 966 species of higher vascular plants.

Vegetation cover development in Danube river delta this year was connected with climate peculiarities of the year. At the same time, this year, it was observed the influence of the last year's inundation that brought in Danube river delta not only the biggest quantity of water and mud, but also a lot of different seed plant material that has already revealed in findings of new species of plants for the DBR flora.

Rare ichthyofauna.

During the reporting period, for the study of the influence of the DNR on the rare species of ichthyofauna, a research fishing was carried out with the use of special fishing tools – fry tuck nets, fry trawls and drift nets, according to the specified methodologies that allow to release young fishes back to water body without any damages after biological parameters been studied. Observations were carried out regularly of the additional catches of rare species of fishes during the fulfillment of industrial catch in the area of DNR «Danube river – Black Sea».

Extraordinarily high quantity of young fishes of starlet was registered in the section of Kiliyske mouth of Danube river from 19 to 20 km during the carrying out of catches by drift nets in third decade of July of this year. It should be noted, that it is exactly in this section during industrial catch of herring was registered as well an additional catch of young fishes of starlet, thus, at the request of the administration, this catches was stopped starting from the 24th of May of this year. Among the other rare species of fishes of ichthyofauna of the DBR, only fresh-water eel was registered in the catches.

As a result of the observations carried out during the reporting period, for the second time in this year was noted a species of royal fish (*Chalcalburnus chalcoides* Guld.) that is very rare one for Danube river and Ukrainian ichthyofauna in general. In the same area of costal waters during industrial catch on the 1st of September, 2011, for the first time for the ichthyofauna of the DBR and of the neighbouring part of Black Sea it was registered a new species of the family of stumpnose - salpa (*Sarpa salpa* L.).

One of the peculiarities of 2011 was a low water level in Danube river during the whole period of observations. This natural factor undoubtedly had a certain impact on the representatives of the ichthyofauna, including of the rare one in the area of research.

Avifauna.

According to the data of ornithological observations during the nesting period some changes have taken place in the structure of nesting settlements of birds of Charadriiformes order of the front edge of the delta in comparison with previous years. The quantity of piping plover in the nesting place increased by 3 times, and the quantity of Caspian plover (this species is included in the category 1 of the Red book of Ukraine) increased by 40 pairs. On the Taranova spit that is a part of buffer zone of the reserve, the quantity of sandwich tern increased more than twice, and were noticed in the nesting place 4 species of birds that are recorded to the Red book of Ukraine – little tern, Caspian plover, catcher, pied avocet.

In August, a systematic registration of waterfowl species of birds in the seaside zone of the DBR was carried out, including the area of Ptashina spit that is located near the bar part of the Bystre mouth. It was noted that the majority of such species like mallard, gadwall and greylag goose during the stated period is the highest for last ten years, that, probably, is the result of low water level of Danube river during summer period, increase of the shelvy areas that are the main place of nutrition for the majority of birds species of water and swamp complex. The positive factor is as well the prohibition of the hunting on the territories of national parks, biosphere reserves and wildlife preserves, that was enabled by the adoption

of the Law of Ukraine №1826-6 “About the amendments to the Law of Ukraine “About the natural-preserve resources of Ukraine” in 2010.

On the Yermakiv island, where in 2009 the works of its renaturalization were carried out, small landscape changes took place: acceleration of the overgrowing of the inside part of the island by higher aqueous vegetation and the increase of the quantity of shallow water areas and spits. Considerable surfaces of shallows with good nutrition base and comfortable place on Yermakiv island have influenced species composition and quantity of birds during

During August registrations dated 17.08.10 on Yermakiv island has been registered 39 species of birds with total quantity of 15158 specimens (16% from the general quantity of birds in seaside part of Kylyiska delta). In comparison with last year, the changes occurred in the structure of birds groupings: the quantity of ichthyophagist birds (pelicans, cormorants) decreased and the quantity of water vegetation and zoobenthos eating birds (Anatidae, Charadriiformes) increased. Taking into account the above-mentioned, it can be noticed that Yermakiv island is of great importance for the birds during the period of season groupings.

Thus, the impact of the DNR on the state of birds nesting during the stated period can be considered as a minimum one. Somewhat higher indicators of quantitative composition of birds of water and swamp complex in August of this year, with respect to previous years registration data, are not connected to the DNR Danube river – Black Sea activity;

In general, preliminary analysis of the research results indicate that the biggest impact on the development of vegetable and animals groupings of the DBR during the reporting period was related to the climate peculiarities of the year.

The impact of the renovation and exploitation of DNR Danube river – Black Sea on the vegetable groupings, on the representatives of rare ichthyofauna, on the state of population of Amphibia and vermigrade of the DBR fauna and on the avifauna was not registered.

Appendices:

1. The Draft Law of Ukraine “On Amendments to Certain Laws of Ukraine on Implementation of the Provisions of the Convention on Environmental Impact Assessment in a Transboundary Context”.

2. The Draft Procedure for the Environmental Impact Assessment in a Transboundary Context.

3. The draft of 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.

THE LAW OF UKRAINE
"On Amendments to Certain Laws of Ukraine on Implementation of the
Provisions of the Convention on Environmental Impact Assessment in
Transboundary Context"

The **Verkhovna Rada of Ukraine** hereby r e s o l v e s:

I. The below-mentioned Ukrainian laws shall be amended as follows:

1. In the Law of Ukraine «On Environment Protection» (Bulletin of the Verkhovna Rada of Ukraine, 1991, No. 41, p. 546, official publication):

Section VI-1 shall be added as follows:

«Section V-1. ENVIRONMENTAL IMPACT ASSESSMENT

Article 25-2 Environmental Impact Assessment

«In the event that individuals or legal entities plan to undertake highly environmentally dangerous activities or activities which may have substantial impact on environment or activities which may cause significant transboundary impact, the environmental impact assessment shall be carried out.

While the environmental impact assessment is carried out, the designated executive authority in charge of ecology and natural resources shall be entitled to make ecology and expert assessment of such environment-gearred project.

To ensure ecology and expert assessment of construction projects, customers and other institutions and organizations shall provide the designated executive authority in charge of ecology and natural resources with the environmental impact assessment materials for the construction project as well as other materials required for the ecology and expert assessment.

When making the decision entitling to the highly environmentally dangerous activities or activities which may have substantial impact on environment or activities which may cause significant transboundary impact, the respective decision-making authority shall consider recommendations and comments of the ecology and expert assessment and general public.

When made, the decision entitling to the highly environmentally dangerous activities or activities which may have substantial impact on environment or activities which may cause significant transboundary impact shall be released to the public concerned along with the ecology and expert assessment results and

environmental impact assessment materials as well as other materials on which the decision-making process was based.

This provision shall be also applied to construction projects unless and except to the extent as otherwise expressly provided in the urban planning laws.

The procedure for the environmental impact assessment (including also in transboundary context) shall be established in the Cabinet of Ministers of Ukraine.

2. In the Law of Ukraine «On Environmental Expertise» (Bulletin of the Verkhovna Rada of Ukraine, 1995, No. 8, p. 54; 2000, No. 27, official publication):

Part one of Article 15 shall be added with clause 8 as follows:

«8) in the event that the planned activity is subject to the international agreements on environmental impact assessment in transboundary context, the environmental impact assessment in transboundary context results shall be provided as developed according to the Procedure approved by the Cabinet of Ministers of Ukraine.

3) Article 21 following clause 4 shall be added with new clauses as follows:

«4-1) shall establish consultative and advisory authority at the Cabinet of Ministers of Ukraine responsible for the coordination of issues on the implementation of the Convention on Environmental Impact Assessment in Transboundary Context;»

«4-2) shall approve the procedure for the environmental impact assessment in transboundary context as submitted by the central designated executive authority in charge of ecology and natural resources.»;

4) Article 24 following clause 8 shall be added with new clauses as follows:

«8-1) organization of and control over the issues related to the environmental impact assessment in transboundary context;»;

«8-2) organization and conduction of the environmental expertise, if Ukraine is the country of origin with consideration for the results of the environmental impact assessment in transboundary context.»;

5) Article 32 following clause 5 shall be added with new clauses as follows:

«5-1) to carry out the environmental impact assessment in transboundary context according to the procedure as approved by the Cabinet of Ministers of Ukraine;

6) Section VI shall be added with Article 34-1 as follows:

«Article 34-1. Public Notice of the Proposed Activity

To ensure due consideration of the public opinion in the process of environmental impact assessment, the customer shall make the announcement of purpose of the planned activity for the respective local and public authority designated to carry out the state environmental expertise of the relative activity or object.

The announcement of purpose of the planned activity shall contain the following:

- a) Details of the planned activity;
- b) Description of possible essential environmental impact factors;
- c) Description of measures designed for impact prevention and (or) mitigation, including emissions;
- d) Non-technical summary of the above-mentioned items;
- e) Review of main alternatives considered by the customer;
- f) Reports and recommendations addressed to the public authority;
- g) Time and place of any planned public hearings and consultations;
- h) Time and place of studying the environmental impact assessment materials, submission of comments, questions, and proposals.

The announcement of purpose of the planned activity may contain other details. The announcement of purpose of the planned activity shall contain the details set out in part 1 of this Article.»;

7) part two of Article 38 following the words «which arose in the process of expertise» shall be added with the words: «, including for the environmental impact assessment in accordance with the requirements of the Convention on Environmental Impact Assessment in Transboundary Context.»;

8) Article 48 shall be added with part two as follows:

«In the event that Ukraine is the affected party according to the requirements of the Convention on Environmental Impact Assessment in Transboundary Context, environmental expertise shall be financed as provided in the provisions of international agreements.».

3. In the Law of Ukraine «On Regulation of Urban Planning Activity» (Bulletin of the Verkhovna Rada of Ukraine, 2011, No. 18, p. 735; 2011, No. 44, p. 1775, official publication):

Article 1 shall be added by then paragraph 11-1 after paragraph 11 as follows:

«11-1) The Environmental Impact Assessment – is the process of a decision making as regards to the performance of the activity, which could have negative environmental influence to people life and health or environment, which is consist of evaluating by the interested public and by the public authority of the proposed decision in the purposes as much as it possible to fulfill the interests of different actors in the course of the decision making.»

Article 31 shall be added by words after first sentence of a second paragraph as follows:

«Environmental-expert evaluation of the building project – the document of informative-advisory character, isn't binding issued by the central executive body, which ensure of forming and performance of the state policy in the environmental sphere or regional, Kyiv, Sevastopol city administration, executive environmental

body on the Autonomous Republic of Crimea and in which the position of the bodies are emphasized as regards of possible, negative influence of planed activity on the people life and health or environment.»

sentence two of paragraph 2 of part one of Article 31 shall be restated as follows:

«The Cabinet of Ministers of Ukraine determines:
the procedure of the environmental impact assessment;
the list of such objects shall be determined by the Cabinet of Ministers of Ukraine»;

part two of Article 31 of the Law of Ukraine «On Regulation of Urban Planning Activity» shall be added with the paragraphs as follows:

«While expertizing construction projects for the highly environmentally dangerous objects as well as objects subject to the environmental impact assessment in transboundary context, the designated executive authority in charge of ecology and natural resources shall be entitled to provide ecology and expert assessment of a construction project.

To ensure ecology and expert assessment of construction projects, customers and other institutions and organizations shall provide the designated executive authority in charge of ecology and natural resources with the environmental impact assessment materials for the construction project as well as other materials required for the ecology and expert assessment.

An expert assessment of construction projects should obligatory contain the information does the public comments have been taken into account properly.»

Clause 1 of part four of Article 31 of the Law of Ukraine «On Regulation of Urban Planning Activity» following the words «fall within IV and V category of complexity,» shall be added with the words «as well as those subject to the environmental impact assessment in transboundary context».

Second sub-paragraph of the paragraph fore should be added by the clause 4 as follows:

«4) absence in the expert assessment of construction report the information that the outcomes of the public participation are taken into account properly.»

Regulation on environmental impact assessment in a transboundary context

This Regulation rules legal relations in the process of implementation of procedures of environmental impact assessment in a transboundary context and is aimed at ensuring rational use of natural resources, environmental protection and environmental safety.

Section I General provisions

1. Rules stipulated in this Regulation apply only insofar as they do not contradict the provisions of international treaties on environmental impact assessment in a transboundary context.
2. If a decision, envisaged by clauses on a decision regarding the necessity of conducting environmental impact assessment (hereinafter – “EIA”), is made in relation to several procedures or a single procedure consisting of several stages, this Regulation shall apply to all procedures and stages, during which EIA is conducted and EIA materials are prepared.

Section II Procedure of environmental impact assessment in a transboundary context when Ukraine is a Party of origin

3. A person, planning an activity which is likely to cause a significant transboundary impact in accordance with Appendix 1 (hereinafter – “the applicant”), shall submit an application for determination of necessity of conducting EIA procedure for such a project to the Republican Committee of the Autonomous Republic of the Crimea, oblast, Kyiv and Sevastopol municipal office of the central executive authority, whose competence includes the issues of EIA (hereinafter – “the Territorial Body”). A statement of intention in accordance with Appendix 2 shall be attached to this application.
4. The Territorial Body shall examine the content of the statement of intention within ten days and determine the public concerned of the corresponding project.

If a person, that does not belong to the public concerned, requests in writing to participate in the EIA procedure of the corresponding project, such person shall be provided with such a possibility.

If the Territorial Body has reservations to the statement of intention, it shall state them to the applicant in writing. Having addressed the reservations the applicant shall submit the statement of intention again.

5. If the Territorial Body cannot exclude the likelihood of adverse transboundary impact on the environment or human health, it shall send the statement of intent and other submitted materials to the specially authorized body in the field of environmental protection and natural resources of Ukraine (hereinafter – “Ministry of Environment”). This decision shall be made by the Territorial body within five days.

6. The Ministry of Environment shall examine the statement of intent within ten days and, if the likelihood of a transboundary impact is absent, the Ministry of Environment shall send the response to the Territorial Body and the national EIA procedure shall continue.

The Territorial Body shall not make the statement of intent public before receiving the response from the Ministry of Environment on the absence of likelihood of a transboundary impact or before sending a notification.

7. If despite of the conclusion of the Ministry of Environment or the Territorial Body that the proposed activity is not likely to cause significant transboundary impact, the Affected Party, however, requests these materials, the Ministry of Foreign Affairs and the Ministry of Environment shall take measures to ensure negotiations on the necessity of sending a notification and carrying out of other procedures envisaged by Articles 3 – 7 of the Convention on Environmental Impact Assessment in a Transboundary Context (hereinafter – “Espoo Convention”). If the parties agree on the necessity of sending a notification and carrying out of other procedures envisaged by articles 3 – 7 of the Espoo Convention, the state bodies shall act as if a transboundary impact was likely to occur. In this case the Ministry of Environment shall request the applicant to submit the statement of intent and develop the draft notification.

8. If the proposed activity is likely to cause a significant transboundary impact, the Ministry of Environment shall demand from the applicant to prepare the draft notification.

9. After preparation of the draft notification the applicant shall submit it to the Ministry of Environment. The Ministry shall examine the draft notification and in case of absence of defects shall send it to the affected party. If there are defects about the notification, the Ministry of Environment shall state them to the applicant in writing. After elimination of these defects the applicant shall submit the draft notification to the Ministry of Environment.

10. The Ministry of Environment shall inform the authorized body of the affected party and the Territorial Body about the notification simultaneously with sending of the notification.

11. The Territorial Body shall send the statement of intention to local self-government bodies or local executive power bodies (depending on the public circle that may be affected by the planned activity) in order to notify the public about it. Mass media shall be prohibited to refuse to publish the statement of intention.

12. The local self-government body or the local executive power body shall at the expense of the applicant publish the statement in mass media or notify about it the affected public in a way that ensures the possibility of the public to become aware of its contents (local mass media outlets; notification of the public by placement of announcements in public places, etc.).

13. The interested public shall have the right to send their comments by electronic mail or by post to the Territorial Body within ten days.

14. The affected party shall examine the sent materials and inform whether it wants to participate in transboundary EIA procedures. If it intends to participate in transboundary EIA procedures, it shall send confirmation and necessary information to Ukraine.

15. If the affected country refuses to participate in transboundary EIA procedures, transboundary EIA procedures shall not be carried out further.

16. In case of absence of response from the affected party the Ministry of Foreign Affairs together with the Ministry of Environment within their powers shall take actions to ascertain the position of the interested party. If sufficient actions do not allow to obtain the response of the affected party, the notification should be sent.

17. If the affected party agrees to participate in transboundary EIA procedures and sends its comments, the Ministry of Environment shall send these materials to the Territorial Body.

18. The Territorial Body shall gather the information sent by the national and foreign public, add its comments if any and transfer this information to the applicant.

19. Based on these and other materials, the applicant shall prepare the project of the proposed activity and EIA as its part which shall also include the statement about consequences for the environment.

20. The applicant shall send the EIA report to the Ministry of Environment or the Territorial Body in order to conduct public hearings. The hearings shall be conducted at the expense of the applicant.

21. The Territorial Body shall send the materials to the Ministry of Environment in order to be sent to the public concerned in the affected parties. The affected party shall organize public hearings. It shall send their results to Ukraine.

22. The Ministry of Environment receives comments from the public of the affected party and immediately but not later than in 5 days send them to the applicant directly or through the Territorial Body for consideration.

23. The applicant shall consider recommendations of Ukrainian public and the public of the affected party and in case of necessity corrects the project and send it together with the public recommendations to the Ministry of Environment or the Territorial Body in order to conduct the state ecological expert assessment.

24. The Ministry of Environment or the Territorial Body shall conduct the state ecological expert assessment of materials of the appropriate project and prepare the state ecological expert conclusion.

25. The draft of the final decision prepared by the authorized body shall be submitted to the Ministry of Environment (or, if the final decision is made by the Ministry of Environment, this body) and consultations with the affected party (parties) shall be carried out together with the Ministry of Foreign Affairs on the issues specified in article 5 of the Convention.

26. The results of consultations shall be sent to the applicant who shall take them into consideration in the project of the proposed activity. After that the final decision shall be made.

27. If the final decision is not the decision that is made by the Ministry of Environment, this decision within two workdays shall be sent to the Ministry of Environment in order to be transferred to the affected party (parties).

The final decision shall be the decision of the specially authorized body or organization that approves the consequences for the environment or conditions of activity of a person and grants the right to conduct the activity which adversely affects the environment.

Section II. Procedure of environmental impact assessment in a transboundary context when Ukraine acts as the affected party

28. If Ukraine acts as the affected party, the Ministry of Ecology and Natural Resources shall contact the party of origin in order to determine the periods for carrying out of procedures envisaged by the Convention.

29. After reception of the notification of the party of origin the Ministry of Environment shall send the notification and the documents attached to it to local

self-government bodies and executive power bodies in the territory of which the affected public is located.

30. These executive power bodies and local self-government bodies shall bring this information to the attention of the affected public in a way that ensures a reasonable possibility of access of the affected public to this information.

At the same time the Ministry of Environment shall publish this information on its web site.

31. This information shall include the period during which the affected public shall have the right to submit their comments to the Ministry of Environment and if the public is notified about the project by executive power bodies or local self-government bodies, to these bodies. This period shall be established by the Ministry of Environment with due account for the time for response to the notification of the party of origin and the time necessary to ensure proper notification of the affected public about the project.

32. After reception of comments from the public concerned the Ministry of Environment shall prepare the response to the notification based on those comments and add its own comments.

33. The response to the notification shall include the opinion regarding whether Ukraine wants to participate in the procedures envisaged by the Espoo Convention. If the Ministry of Environment and the affected public do not find a significant adverse impact of the project situated in the territory of the country of origin, the Ministry of Environment shall inform about its unwillingness to participate in the procedures envisaged by the Espoo Convention.

34. If the Ministry of Environment does not find a significant adverse impact of the proposed activity, which take place on the territory of the country of origin, but the affected public thinks that such impact will occur, the Ministry of Ecology and Natural Resources shall make the decision about necessity of participation in the procedures envisaged by the Espoo Convention. However in case of presence of the substantiated opinion of the public that the participation in the procedures

envisaged by the aforementioned convention is necessary the Ministry of Environment shall send the response to the notification with consent to participate in the procedures envisaged by the Espoo Convention.

This decision of the Ministry of Environment may be appealed against by the affected public in accordance with the procedure established by current legislation.

35. After reception of EIA materials from the party of origin the Ministry of Environment in case when this body holds the public hearings, the Ministry of Environment shall ensure the public concerned to be acquainted with the EIA report and other received materials.

If the local self-government bodies or local executive power bodies holds public hearing, the Ministry of Ecology and Natural Resources sends EIA report to them and the local self-government bodies or local executive power bodies shall ensure the public concerned to be acquainted with the EIA report and other received materials and hold public hearings.

The public hearing may be performed only after fifteen day from the data when public concerned was provided with the opportunity to be acquainted with the EIA report and other received materials.

Unless otherwise stipulated by international treaties, the expenses for translation of the project into Ukrainian or Russian and expenses for conducting of public hearings for the affected public of Ukraine shall be borne by the applicant or the party of origin.

36. After the materials are brought to the attention of the public, the Ministry of Environment shall define the procedure of conducting of the public hearings on the EIA materials.

At the same time with conducting of the public hearings the Ministry of Environment shall begin the state ecological expert assessment of the EIA report. The opinion of the state ecological expert assessment shall include the assessment of the project's impact on the environment and life and health of the public concerned.

37. In order to ensure the proper environmental impact assessment the Ministry of Environment shall have the right to demand from other central bodies of executive

power their opinions on allowability of implementation of the project within the limits of their competences. If a longer period of examination by other central bodies of executive power is not envisaged by the Ministry of Environment, the period of examination of such documents shall be 20 days since the moment of their arrival.

38. If no opinion is received from a central body of executive power within the period envisaged by the previous clause of these regulations, the body shall be considered to unconditionally confirm the allowability of implementation of the project.

39. After the Ministry of Environment receives comments and proposals of the public, it shall examine them and opinions of central bodies of executive power and prepare the conclusion of the state ecological expert assessment on this basis. This conclusion may include recommendations of the public, or these recommendations may be given as an appendix to the opinion. The opinions of state power bodies shall be stated in the text of the opinion.

40. The aforementioned conclusion of the state ecological expert assessment together with appendices shall be transferred to the party of origin.

41. The Ministry of Environment of Foreign Affairs shall take actions to participate in negotiations with the affected party in accordance with article 5 of the Espoo Convention.

42. After the party of origin makes the final decision and sends it to the Ministry of Environment, the Ministry shall bring it to the attention of the public concerned.

43. The Ministry of Environment together with the Ministry of Foreign Affairs shall take actions to ensure conducting of negotiations for postproject analysis.

Section III. Special features of the procedure of environmental impact assessment in a transboundary context for the projects for which the final decision is the approval of the urban planning grounding

44. If it is planned to conduct an activity that is not listed in the appendix 1 to the Espoo Convention and which is not subject to state ecological expert assessment or state expert assessment, provisions of articles 3-7 of the Espoo Convention shall apply to this type of activity if Ukraine and the affected party agree on that.

45. If the agreement mentioned in the previous clause is reached when there is no final decision regarding such activity, the Ministry of Environment and the applicant shall act in accordance with clauses 10-23 of these regulations.

The applicant shall order the preparation of the urban planning conclusion on the basis of the received information.

46. Before conducting of the public hearings the applicant shall send to the Ministry of Environment the draft urban planning conclusion which the Ministry shall send to the affected party in order to conduct the public hearings.

47. Public hearings for the Ukrainian public shall be conducted in accordance with chapter IV-1 of the Law of Ukraine «On Planning and Development of Territories».

48. Upon reception of comments of the public of the affected party the Ministry of Environment shall make their translation at the expense of the applicant (in case of necessity) and transfer it to the body authorized to approve the urban planning conclusion.

The aforementioned body shall prepare the draft decision on approval of the urban planning conclusion based on this information and with due account of opinions of the Ukrainian public and the public of the affected party. The draft shall be sent by the aforementioned body to the Ministry of Environment, who shall send it to the affected party.

49. The body authorized to approve the urban planning conclusion shall make its decision after carrying out of consultations envisaged by clauses 30 and 31 of these regulations. These consultations shall be carried out with participation of a representative of the body authorized to approve the urban planning conclusion and applicant.

50. If the agreement between Ukraine and the affected party regarding the necessity of application of provisions of articles 3-7 of the Espoo Convention to the urban planning grounding is reached after approval, carrying out of activity based on the urban planning grounding shall be suspended.

The applicant shall send the urban planning conclusion to the Ministry of Environment. The Ministry of Environment shall send it to the affected party.

51. After reception of recommendations from the affected party the Ministry of Environment shall make their translations at the expense of the applicant and transfer them to the body authorized to approve the urban planning conclusion.

If the authorized body finds it necessary to change its decision after examination of remarks and proposals of the public of the affected party, it shall prepare the draft of the new decision and send it to the Ministry of Environment. If the authorized body decides to leave the decision unchanged, it shall send the already approved decision to the Ministry of Environment.

After reception of the draft decision or the decision, the Ministry of Environment together with the Ministry of Foreign Affairs shall take actions to hold consultations regarding the final decision.

Appendix 1

List

of Activity which may Have Significant Transboundary Impact

1. Oil refineries (except for enterprises that only produce lubricants from crude oil) and installations for hydrogasification and liquefaction of coal or oil shale with capacity of 500 tons per day or more.

2. Thermal electric power stations and other installations for burning with heat power of 300 MW or more and nuclear power stations and other constructions with nuclear reactors (except for research installations for production and conversion of fissile and reproducible materials with maximum capacity that does not exceed 1 kW of constant thermal capacity).
3. Installations intended solely for generation or concentration of nuclear fuel, regeneration of spent nuclear fuel or collection, disposal and processing of nuclear waste.
4. Large installations for blast-furnace and open-hearth process and non-ferrous metallurgy enterprises.
5. Installations for extraction of asbestos and processing and transformation of asbestos and goods that contain asbestos: related to asbestos-cement goods - with annual output of more than 20000 tons of end product; related to frictional materials - with annual output of more than 50 ton of end product, and related to other types of asbestos use - with use of more than 200 tons per annum.
6. Chemical plants.
7. Construction of highways, speedways, long distance railways and airports with main runway length of 2100 meters or more.
8. Oil and gas pipe lines with large diameter pipes.
9. Commercial ports and internal water ways and inland navigation ports that allow passage of vessels with tonnage of more than 1350 tons.
10. Waste disposal installations for burning, chemical processing or burial of toxic and hazardous waste.
11. Large dams and reservoirs.
12. Ground water intake if the annual amount of taken water is 10 million cubic meters or more.
13. Cellulose and paper production with capacity of 200 or more metric tons of products per day.
14. Large-scale production, excavation and concentration in situ of metallic ore and coal.
15. Hydrocarbon production on continental shelf.
16. Large warehouses for storage of oil products, petrochemicals and chemicals.

17. Forest clearance on large areas.

Appendix 2

STATEMENT OF INTENTIONS

1. Investor (applicant) _____

Postal and e-mail address _____

2. Location of sites (routes) of construction (variants) _____

3. Characteristics of activity (object) _____

(based on similar objects, belonging to the objects that are highly environmentally hazardous, presence of transboundary impact)

Technical _____ and _____ technological
information _____

(types and volumes of manufactured products, period of operation)

4. Social and economic necessity of the planned activity

5. Demand of resources during construction and operation:

land _____

(land area that is confiscated for temporary and permanent use, type of use)

raw materials _____

(types, amounts, place of excavation and production, sources)

energy (fuel, electricity, heat) _____

(types, amounts, sources)

water _____

(amount, necessary quality, sources of water supply)

labor _____

6. Transport support (during construction and operation)_____

7. Environmental and other limitations of the planned activity by variants_____

8. Necessary ecological and engineering preparation and protection of the territory by variants_____

9. Possible impact of the planned activity (during construction and operation) on the

Environment:

climate _____ and
microclimate_____

air_

water_____

ground._____

vegetable and animal world, preserved objects

social environment (population) _____

technogenic environment _____

10. Production waste and possibilities of it recycling, disposal, recovery, deactivation or safe burial _____

11. Amount of EIA performance_____

12. Public participation_____

(address, phone number and time for examination of the project and EIA materials, submission of proposals)

Applicant_____

General planner_____

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)

”