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BLITZ-ANALYTICS

DRAFT LAW ON STRATEGIC ENVIRONMENTAL ASSESSMENT: STRONG AND WEAK POINTS

On February 21, 2017, a group of MPs registered a draft law on strategic environmental assessment (No6106). Comparing to the previous draft, rejected by the parliament following a veto by the President of Ukraine, the newly proposed SEA model has both strong and weak points.

Proposed SEA procedure generally represents EU Directive 2001/42/EU, which Ukraine has an obligation to implement. Yet, proposed SEA application scope excludes two important planning documents: local programs of economic and social development (which are adopted every year to enable use of budgetary funds) and land use documents (spatial planning, including public participation). In the EU most of SEAs at local level are carried out for spatial plans.

It is important that sectoral plans and programs will also not require SEA, except for those which are "adopted". In fact, a number of such documents is "approved", not adopted. For example, recently discussed by the civil society Hydro Energy Development Program till 2026 was approved, not adopted by Cabinet of Ministers. It's unclear whether EU support programs are covered by the proposed law – most likely not, while the Directive 2001/42/EU includes an explicit requirement for this. At the same time, the proposed SEA coverage is broader compared to directive as a result of the reference to national list of EIA projects and inclusion of plans and programs, which are not required by the legislation. This means that numerous local strategies (including in energy and wastes management areas), which are voluntary developed by local communities will face additional administrative barriers and need additional financial resources.

Regarding financial resources needed to carry our SEA, the explanatory note (attached to the draft law) is misleading the MPs and the government again by stating no money is needed. In reality, SEA will require funding from state or local budgets since it is state and local authorities, who decide to develop plans, programs or strategies. In the EU member states, SEA related expenditures may amount to 7-10% of the total costs for the development of a plan or program. For example, in Estonia SEA costs range between 4K and 30K euros per program or plan, in Hungary – from 20K to 40K euros. These are direct expenditures by the relevant authorities.

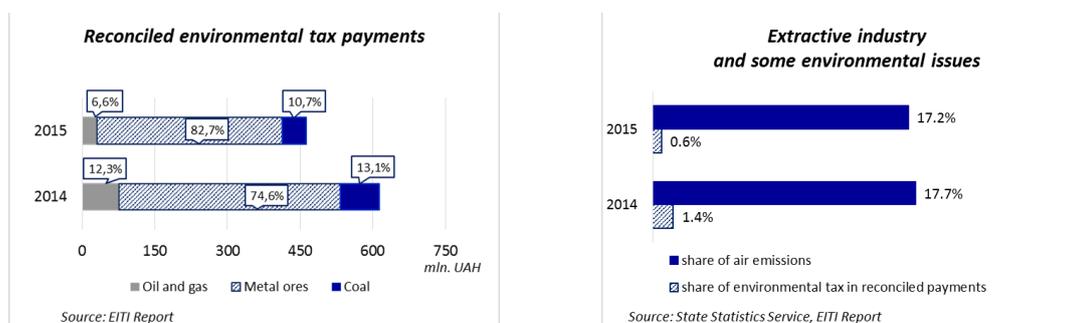
Some provisions of the draft law need serious reconsideration. In particular, we have concerns over the definition of the "initiator" of the plan or program. The definition of the "initiator" of a planning document includes "local self-governance body which is responsible for developing of a state planning document and carries out general oversight and control over its implementation". This raises ambiguity as to who will be treated as initiator: city council or its executive office, regional council or regional state administration (which is not even a self-governance body) because functions to "develop", "general oversight" and "control" are separated by existing law: drafts plans are prepared by executive bodies, while adoption and control is sole responsibility of relevant councils.

EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE: AN INSTRUMENT FOR ENVIRONMENTAL RESPONSIBILITY

On February 21, 2017, the [2nd EITI National Report of Ukraine](#) was made public, covering 2014-2015. The report covers extraction of oil, gas, coal, iron ore, titanium, as well as transportation of oil and gas. Reconciling was made for 9 major payment types of 97 large companies. Full information for the report preparation was submitted by 50 such companies. Share of the reconciled revenues in total extracting industry payments is 81,5% in 2014 and 82,8% in 2015. All information is presented as open data.

Extractive Industries Transparency Initiative is implemented in 51 countries worldwide. From practical perspective, it should be used to build trust and cooperation between public authorities, companies and local communities, used as a key to unlock investments and develop better policies in extracting sector. At the international level, one of the key trends is opening more detailed information on environmental dimension of the extracting industry. We looked into new report from this perspective as well.

According to State Fiscal Agency, total reconciled environmental tax payments were UAH 613,3M in 2014 and UAH 462M in 2015 or, respectively, 1,4% and 0,6% of all tax revenues from extracting industry. Over 2/3 of these amounts were paid by iron ore sector.



Environmental tax has clear targeted assignment, but it does not comply with polluter pays principle. This conclusion is, in particular, supported by the fact that high environmental impacts of the sector are not balanced by small environmental tax payments. The latter are paid but are insufficient to address local environmental pollution challenges. We recommend that future reports include detailed information on capital investments in extracting sector, at least covering investment into introducing environment-related best available technologies.

Given the de-centralization process in Ukraine, we looked into allocation of tax revenues from extracting industries among the regions. According Independent Administrator's assessment three regions give highest share: Dnipropetrovska, Poltavska and Kharkivska. In 2014 share of these three regions was 59,6% of total revenues, and 76,3% in 2015.

While disclosing the payments by the companies, the Report does not reveal how the state spends this money from extracting industry. Starting next year, local budgets will get 5% of rent fee for hydrocarbons. Local communities are already awaiting these funds. These revenues should be used to meet local communities' needs: creating new economic opportunities, dealing with social challenges and mitigation/compensation of environmental impacts. Yet, rent fees have no targeted assignment for their use, so it's up to local self-governance bodies whether environmental problems will get their share of financial allocations. For this reason, a clear and transparent prioritization mechanism needs to be developed to ensure fair use of these financial resources and further reporting by the regions.