



## Consequences of the entry into force of the Law on Regulating Urban Development for the obligations of Ukraine under the Espoo Convention

*Analysis of legislative changes*

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### *Introduction*

This paper represents results of the initial legal analysis of the possible implications resulting from recent changes introduced into the legal framework of environmental impact assessment system in Ukraine. The paper focuses on assessment of any impact of these changes on the current state compliance by Ukraine with its obligations under the Espoo Convention.

### *Scope of legislative changes*

The changes into EIA legal framework will be introduced in form of amendments to existing laws, most importantly:

- The Law of Ukraine 'On the environmental protection' (1991)
- The Law of Ukraine 'On the environmental expertiza" (1995)

The amendments will be introduced by the Law on Regulating Urban Development, adopted on Feb 17, 2011, which entered into force on March 12, 2011. The text of this Law is available in Ukrainian at the official web-site of the Parliament of Ukraine:

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=3038-17>

Some provisions of this Law will enter into force 3 months later, i.e. on June 12, 2011. These provisions include the amendments to the Law of Ukraine 'On the environmental protection' and the Law of Ukraine 'On the environmental expertiza' .

Specific most important amendments include:

- a) Law on the Environmental Protection
  - a. Article 27 (Objects of Expertiza)
    - i. Deletion of words "and other pre-planning and pre-project documentation" in para.(a)
    - ii. Deletion of para (b) (which currently lists various types of project documentation to be subject to expertiza)
  - b. Article 28 (State Environmental Expertiza)
    - i. Replacement of second sentence of part 1 (paragraph 1) with a new provision stating that construction projects are subject to expertiza under the Law on Regulating Urban Development (currently – subject to Law on Investments Expertiza)
- b) Law on Environmental Expertiza
  - a. Article 7 (Objects of Environmental Expertiza)
    - i. Deletion of words "pre-project and project documentation" from the lists of material which are subject to environmental expertiza
  - b. Article 13 (State Environmental Expertiza)
    - i. Replacement of second sentence of part 1 (paragraph 1) with a new provision stating that state expertiza [*there is no reference to "environmental", author*] is carried out under Article 31 of the Law on Regulating Urban Development (currently – subject to Law on Investments Expertiza)
  - c. Article 14 (Objects of the State Environmental Expertiza)
    - i. Almost full deletion of paragraph 2
    - ii. Deletion of words "investment projects, technical-economical feasibility studies and calculations, project and working projects [*means actual project documentation (papers, maps, analysis, etc- author)*] for construction of new or renovation of existing factories" from the list of objects.

## Consequences

The major practical consequence of the introduced changes is practical elimination of state environmental expertiza in Ukraine. No information is available on any research on possible

compliance by Ukraine with Espoo Convention without taking into account this procure (see, e.g., *Independent review of Ukraine's legal, administrative and other measures to implement the provisions of the Convention*, commissioned by the Implementation Committee – the document uses the term “State Environmental Review (SER) when referring to this procedure). In other words, the Government of Ukraine and various experts were always heavily relying on this decision-making procedure when analyzing compliance of Ukraine with its obligations under Espoo Convention.

A completely new permitting decision-making procedure is introduced: construction expertiza (assessment) of planned projects. This new expertiza will be carried out by private entities under the supervision of the Ministry of Urban Development . No separate environmental expertiza (review) of project documentation is provided, but it requires that experts group shall include a representative from the field of “ecology” (Art.31.2). Another important feature introduced is so called “declarative compliance” principle, which means that an investor can simply make a declaration that the project proposed complies with requirements of the law in various field and can start construction immediately. This option is available to any project of I-III class of complexity, since such projects do not require any expertiza (review) at all (Art.31.3).

The changes introduced seem to keep the OVNS system (EIA documents prepared by the proponent) unchanged.

Similarly, the Law on Regulating Urban Development eliminated other types of expertiza (fire-safety, sanitary, etc).

## **Conclusions**

1. With a view of heavy reliance in the past by the Government and by experts on the procedure of state environmental expertiza in the context of implementation of Espoo Convention in Ukraine, elimination of this procedure gives substantial grounds to conclude that Ukraine may fall into serious non-compliance with its obligations under the Espoo Convention.
2. If the new permitting system will operate as envisaged, the Ministry of Environment of Ukraine will no longer be in a capacity to serve as focal and/or contact point of the Convention since it will have no competence/role in EIA procedure in the future for most planned activities, except for forestry, GMOs and some other.

3. There is an urgent need to carry out a comprehensive analysis of the consequences of the entry into force of the Law on Regulating Urban Development for the obligations of Ukraine under the Espoo Convention.