

Pilot project: Establishment of methodological guidance and a good practice of implementation of new EIA legislation

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1. Background information, activities and results to be achieved

1.1. Background information on the situation in the sector

The EU-Ukraine Association Agreement (AA) requires Ukraine to approximate its legislation to the EU 'horizontal' *acquis*, in particular the EIA Directive 2011/92/EU. Environmental assessment in EU is a procedure that ensures that the environmental implications of decisions on certain projects are taken into account before the decisions are made.

On 23 May 2017 the Law on EIA has been adopted by the Ukrainian Parliament. It took effect on 18 December 2017, six months after the day of its entry into force. The adoption of the new law on EIA is an important step for Ukraine to fulfil the environmental commitments of the AA.

The Law on EIA envisages as main elements: Preparation of the EIA report by the developer; carrying out of public consultations; examination by the competent authority of the information presented in the EIA report and any supplementary information; the issuance of a reasoned conclusion by the competent authority on the significant effects of the project on the environment; and integration thereof into a respective decision.

The Law on EIA establishes a new system of environmental assessment in Ukraine compliant with international standards. However, the Law lays down new responsibilities (e.g. to organise public participation, to issue the scoping conditions and environmental conditions, etc.) on competent authorities at national and regional level. Hence, its implementation requires from these authorities to apply new approaches to the assessment which are different from traditional "ecological expertisa" thinking.

Recently, the MENR has launched the Single EIA Registry (<http://eia.menr.gov.ua/>) in order to implement the new Law on EIA. A number of planned activities have already been submitted via the register to the relevant competent authorities and the official EIA procedure has been launched..

In order to ensure proper implementation of the new EIA legislation prepared in cooperation with the APENA project, it is necessary to establish a uniform and coherent application of the newly established rules at national and at regional levels, especially as concerns new responsibilities of the competent authorities.

The MENR requested from APENA support in the first steps of practical implementation of the new EIA system in Ukraine through distinct pilot activities in particular in order to establish a uniform methodology and practice for main elements of the EIA system (especially related to new responsibilities of the authorities).

1.2. Pilot Project purpose

The overall objective of this Pilot Project was to support the establishing of a new EIA system in Ukraine. The key beneficiary of the Pilot project was the MENR and departments of ecology of regional (oblast) administrations in charge of EIA implementation.

The Pilot Project's specific purpose was to establish a uniform and coherent approach to the decision-making of the environmental authorities in charge, specifically on three key elements of the EIA procedure, namely

- a) issuing the scoping conditions (scoping opinion),
- b) issuing the EIA conclusion with environmental conditions based on consideration of real applications (projects), and
- c) organisation of public participation and taking into account of its outcomes in relevant

decisions.

1.3. Project activities

The Pilot project comprised three activities, namely:

- **Activity 1:** Three practical trainings for MENR and selected representatives of the departments of ecology of regional (oblast) administrations on methods and approaches on how to prepare a sound scoping opinion, organise public participation and prepare an EIA conclusion with environmental conditions in line with new Ukrainian EIA legislation and in accordance with EU best practice examples; Some of the specialists were trained in a way that they became trainers themselves for future trainings
- **Activity 2:** Pilot testing of the relevant provisions of the EIA law and sub-legislation related to scoping, public participation and an EIA conclusion in relation to at least two concrete activities / projects. Main focus was on the implementation of the public participation requirements and organising the public hearings according to the CMU Resolution “On approving the Procedure for public hearings in the process of EIA”.
- **Activity 3:** Elaboration of guidance document with methodological recommendations / instructions on preparing a scoping conditions, organising public participation (preparing report on public participation) and preparing an EIA conclusion with environmental conditions;

Supervision of all activities was done by KE 2 including elaboration of the methodological recommendations/guidance, organising trainings, etc. Two senior international experts, Mr. Jerzy Jendroska (Poland) and Mr. Nenad Mikulic (Croatia), were involved for providing trainings and consultative assistance on the relevant matters. In addition the local junior expert Ms. Yelyzaveta Aleksyeyeva was responsible for preparing the methodological recommendations/guidance on preparing a scoping opinion, organising public participation (preparing report on public participation) and preparing an EIA conclusion with environmental conditions according to the developed approaches as well as assisting to beneficiaries in proper organising of the public participation and preparing amendments to the current regulations secondary legislation based on results of the pilot testing.

1.4. Envisaged results

The following results were expected at the end of the pilot project:

- The decisions made by the MENR and the departments of ecology of regional (oblast) administrations on scoping conditions and EIA conclusion, as well as reports on public participation are made according to legal requirements based on a uniform approach developed by the Pilot project.
- Methodological recommendations / guidance on preparing a scoping opinion, organising public participation (preparing report on public participation) and preparing an EIA conclusion with environmental conditions.
- At least 20 specialists of the beneficiaries in charge of EIA implementation tasks are trained on proper implementation of key elements of the EIA procedure; some of them in way that they become trainers themselves.
- Amendments to the current secondary legislation based on results of the pilot testing (if relevant).

2. Results achieved

2.1 Activity 1: *Three practical trainings for MENR and selected representatives of the departments of ecology of regional (oblast) administrations on methods and approaches on how to prepare a sound scoping opinion, organise public participation and prepare an EIA conclusion with environmental conditions in line with new Ukrainian EIA legislation and in accordance with EU best practice examples;*



The course which consisted of three consecutive 3days intensive practical trainings was held in Kyiv (on 30 January - 1 February 2018, 28 – 30 March 2018 and 18 – 20 April 2018) at the premises of MENR.

Uniform and coherent approach. More than 30 specialists of the MENR and departments of ecology of regional (oblast) administrations in charge of EIA implementation tasks were trained on proper implementation of key elements

of the EIA procedure such as approaches on how to prepare a sound scoping opinion, organise public participation and prepare an EIA conclusion with environmental conditions in line with new Ukrainian EIA legislation and in accordance with EU best practice.

Specific training program was developed including practical exercises and roleplaying games. Selected examples of EIA documentation and decision from EU countries related to scoping and EIA decisions have been specially translated for the trainings.



The uniform approaches were discussed and developed and most of departments of ecology of regional (oblast) administrations as well as

MENR apply them in the regular practice. The first scoping conditions, reports on public consultations and EIA conclusions were made after the trainings and were prepared according to the approaches discussed at the trainings. Examples of the documents (scoping conditions, reports on public consultations and EIA conclusions) can be found in the EIA register

(<http://eia.menr.gov.ua>).



Training of trainers. The training of trainer methodology was incorporated into the training course and at the end of the course of three trainings 28 participants received certificates of trainers and set of materials for trainers. Some of participants who were expected to become a trainer have been already

involved in organising additional workshop/training events in their regions. One of the trainers from

Zaporizka regional administration was involved into APENA EIA workshop in Lviv (May 2018) as a trainer.

All materials presented and used at the trainings can be found at:

<http://env-approx.org/index.php/ua/pilotnyi-proekt-z-ovd.html>

Status: Completed

2.2 Activity 2: *Pilot testing of the relevant provisions of the EIA law and sub-legislation related to scoping, public participation and an EIA conclusion in relation to at least two concrete activities / projects. Main focus will be on the implementation of the public participation requirements and organising the public hearings according to the CMU Resolution “On approving the Procedure for public hearings in the process of EIA”.*

Within the scope of this activity APENA experts monitored implementation and tested provisions of the EIA law and sub-legislation related to scoping, public participation and an EIA conclusion. All experts provided consultative assistance to beneficiaries on relevant matters.

In July 2018 the local junior expert Ms. Yelyzaveta Aleksyeyeva participated in two public hearings in Lviv and in Ternopil and provided recommendations to their organisers:

- On extraction of hydrocarbons, development consent decision – prolongation for the next 10 years of an extraction permit for the field, developer “Ukrigasvydobuvannya». (Lviv)
- On open quarry for extraction of limestone. (Ternopil).

Based on results of the pilot testing following recommendations on amendments to the EIA legislation has been developed:

- Additional provisions were included into the Draft Law of Ukraine “On amending certain laws of Ukraine with regard to access to environmental information and public participation in environmental matters” (developed with support of APENA experts, Annex 2.1), in particular to the Law of Ukraine “On public appeals” (on public comments within EIA procedure) and the Law of Ukraine “On Environmental Impact Assessment” (improving the provisions on notification about the planned activity without compromising the content and size of information needed for scoping);
- Amendments to the Regulation of the CMU On approving the procedure for public hearings in the process of EIA with the new annex (Annex 2.2),
- Amendments to the Regulation of the CMU On approving the procedure for submitting documents for the EIA conclusion, procedure for financing EIA procedure (revised annex on EIA decision, Annex 2.3)

Taking into account the fact that due to the lack of personnel in the EIA unit different MENR officials chair the public hearing and in order have of similar approach, MENR developed the template for the speech of the Chair of a public hearing. After the participation in the public hearings the local junior expert improved (redrafted) the Template for the speech of the Chair of a public hearing developed by MENR. (Annex 2.4)

Status: Completed

2.3 Activity 3: *Elaboration of guidance document with methodological recommendations / instructions on preparing a scoping conditions, organising public participation (preparing report on public participation) and preparing an EIA conclusion with environmental conditions;*

The Guidance on preparing scoping conditions, organising public participation (preparing report on

public participation) and preparing an EIA conclusion (Annex 3.1) was developed with the substantial input of senior international experts as well as through the consultative process with the beneficiaries.

The Guidance contains standardized methodological approaches and practical advices and thus ensure further efficient and coherent implementation of the new EIA legislation at national and regional levels and consists of three main parts: scoping, preparing report on public participation and preparing an EIA conclusion (45 pages). Each part was developed and discussed with MENR and departments of ecology of regional (oblast) administrations at the trainings and their comments have been taken into account. The Guidance is planned to be adopted by the Order of MENR by the end of October 2018.

Status: Completed

Publication of the Guidance shall be made after its internal approval and adoption by the MENR Order in the final phase of the APENA project.

3. Expenditures

4. Lessons learned / recommendations

Establishment of uniform approaches and common practice of the application of the newly established rules at national and at regional levels is crucial for the proper implementation of the new EIA legislation.

The representatives of the departments of ecology of regional (oblast) administrations highly appreciated the trainings on the specific elements of the EIA procedure. Also due to decentralisation they had been lacking of communication and coordination with MENR and among themselves. During the pilot project trainings they established better communication and coordination (e.g. the Viber group was established where they can consult each other on specific issues).

Further support in improvement of capacity of MENR and regional environmental authorities on EIA and SEA is needed. Lack of personnel in the EIA units of MENR as well as in the regional authorities can be considered as one of the most critical issue for the proper implementation of the new EIA legislation. Increasing the staff responsible for EIA (and SEA) as well as trainings for these new staff members shall be considered as the first priority.

To ensure sustainability and further development of unified approaches it is important to continue educational and capacity building activities after the end of APENA project.

Following issues could be considered for the future activities:

- review of the current practice and development of the common approaches to the issues related selection of alternatives and quality of the EIA report. (These issues were identified during the Pilot project and partially covered, however the follow up review and identification of further activities needed will be required.)
- support of the pilot activities of the independent EIA and SEA experts' commissions, development of the electronic rosters of experts, specific training modules and trainings for such experts might be recommended.
- development of technical guiding document on the list of activities subject to EIA;
- preparing training materials and trainings for organizers of public hearings - independent facilitators hired by public authorities carrying out EIA procedure - not yet recruited, but when recruited will need specific training;
- development of coordination mechanism for EIA and SEA activities (guidance documents, training modules, pilot activities);
- when new full version of the EIA electronic register will be launched additional training for the

MENR and the departments of ecology of regional (oblast) administrations shall be conducted.

5. Annexes

Annexes of Activity 1

- 1.1 Agendas of three trainings;
- 1.2 Evaluation forms;
- 1.3. Lists of Participants.

Annexes of Activity 2

- 2.1 Draft Law of Ukraine “On amending certain laws of Ukraine with regard to access to environmental information and public participation in environmental matters”;
- 2.2 Amendments to the Regulation of the CMU “On approving the procedure for public hearings in the process of EIA with the new annex”;
- 2.3 Amendments to the Regulation of the CMU “On approving the procedure for submitting documents for the EIA conclusion, procedure for financing EIA procedure”;
- 2.4 Template for the speech of the Chair of a public hearing;

Annexes of Activity 3

- 3.1 Guidance on preparing scoping conditions, organising public participation (preparing report on public participation) and preparing an EIA conclusion;