



**ENVIRONMENT  
PEOPLE LAW**

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# **POLICY BRIEF** **ON E-40 PROJECT AND** **ITS THREATS FOR THE ENVIRONMENT**



**Policy brief**  
**on E-40 project and its threats for the environment**

The purpose of the brief is to analyze the current state of water management and planning of implementation of projects that have an impact on the environment that result from the failure to conduct environmental assessments in full, which complicates the decision-making process and creates conflict situations. Any activity planned in Ukraine must guarantee environmental safety. For the purpose of ensuring compliance with environmental sustainability conditions in decision-making, in particular related to protection of water resources, there are environmental assessments - strategic environmental assessment (SEA) and environmental impact assessment (EIA). The primary task of strategic environmental assessment (SEA) is to make sure that a document of state development planning of a certain branch complies with already existing documents in the area of environmental protection and develop conditions for future development in compliance with environmental security, in particular, to coordinate the protection of rivers as natural formations that are used as waterways. SEA must provide for certain conditions for conducting an environmental impact assessment of a specific planned activity envisaged and determined by a state planning document. EIA is aimed at preventing environmental damage, ensuring environmental safety, environmental protection, rational use and reproduction of natural resources in the process of making decisions about economic activities that can have a significant impact on the environment, taking into account state, public and private interests.

The analysis of Ukraine's actions regarding the preparation and implementation of the E-40 project indicated to complete disregard for the instruments of environmental assessments, which led to ungrounded, unprofessional and environmentally harmful solutions that will result in the depletion of natural resources, destruction of unique ecosystems and possibly additional expenses from the state budget.

### **1. Challenges in the sector**

Examples of disregard for the obligations to conduct SEA in the water sector include the failure to conduct SEA of the Hydropower Development Program for the period up to 2026<sup>1</sup>, National target program of water management development and environmental rehabilitation of the Dnieper river basin for the period up to 2021<sup>2</sup>, the List of inland waterways belonging to the category of navigable, the CMU orders on prevention of emergencies in the Kryvyi Rih district of Dnipropetrovsk region and annual washing of the Inhulets river by the Dnieper waters.

The difficulty of implementation of the E40 project is the need to reconcile interests of three countries - Poland, Belarus and Ukraine -, which must take joint decisions at the national level on implementation of specific actions that will enable implementation of the project. Such decisions must go through environmental assessments at the national and international levels, as well as through general public discussion. In particular, the strategic environmental assessment of such a project should reconcile the E40 restoration project with the requirements of the Water Framework Directive (water basins management plans), the Bird Directive and the Habitat Directive (launch of the Emerald network), Waste Management Strategy and other strategic documents, as well as, ensure conditions for future EIA procedures. Environmental impact assessment should assess the potential impact of construction of ports, dredging works, construction of hydraulic structures etc. on the territory of Ukraine and neighboring states.

### **2. Successes in the sector**

To combat climate change, it is necessary to choose environmentally friendly technologies, in particular transport. One such type is water transport. Ukraine has an extensive network of waterways, and having

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<sup>1</sup> <https://zakon.rada.gov.ua/laws/show/552-2016-p#Text>

<sup>2</sup> <https://zakon.rada.gov.ua/laws/show/4836-17#n21>

signed the European Agreement on Main Inland Waterways of International Importance (AGN)<sup>3</sup> in 1996 it agreed that within its territory there is one of the listed in the Agreement inland waterways of international importance - E-40. Having signed the EU-Ukraine Association Agreement, Ukraine has agreed to implement the Water Framework Directive, which provides for assessment of the state of all water bodies, in particular rivers, classifying them into five categories and recommends to preserve and not to involve into economic activities those territories that have not been exposed to any anthropogenic pressure. At the same time, Ukraine has agreed to implement a number of EU Directives aimed to improve transport links.<sup>4</sup> Ukraine has announced ambitious goals of accession of the EU Green Deal, which provides for better governance and increase of the capacity of railways and inland waterways in 2021.<sup>5</sup> The increase of the number of water transport<sup>6</sup> is widely supported by representatives of this sector<sup>7</sup>, and the UNECE Inland Transport Committee has developed a large number of recommendations for development of inland water ways.

Ukraine has a full range of environmental assessments. The Protocol on Strategic Environmental Assessment entered into force for Ukraine on March 1, 2016, and the Law of Ukraine "On Strategic Environmental Assessment" was enacted on October 12, 2018. On December 13, 2017, the Law of Ukraine "On Environmental Impact Assessment" was enacted. On December 3, 2020, the President of Ukraine signed the Law of Ukraine "On Inland Water Transport", which will enter into force on January 1, 2022.

### **3. The way to reform the water transport sector**

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<sup>3</sup> [https://zakon.rada.gov.ua/laws/show/994\\_342#Text](https://zakon.rada.gov.ua/laws/show/994_342#Text)

<sup>4</sup> Council Directive № 96/75 / EC of 19.11.1996 on the systems of chartering and pricing in national and international inland waterway transport in the Community concerns the practice of granting the right to transport on the basis of a free pricing system and the principle of free conclusion of transportation contracts;

Council Directive № 87/540 / EEC of 09.11.1987 on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation;

Council Directive 96/50/EC of 23 July 1996 on the harmonization of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community;

2006/87/EC Directive of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels including standards construction and equipment;

DIRECTIVE 2008/68/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 September 2008 on the inland transport of dangerous goods, which in fact extends three international agreements on the carriage of dangerous goods for domestic transport;

Directive 2005/44/EC of the European Parliament and of the Council of 7 September 2005 on harmonised river information services (RIS) on inland waterways in the Community concerns the introduction of a river information service aimed at providing information on navigation and transportation for inland waterway vessels in order to ensure navigation safety.

To ensure implementation of the EU-Ukraine Association Agreement, in 2014-2015 the Cabinet of Ministers of Ukraine adopted plans for implementation of the above EU directives and regulations, and the Ministry of Infrastructure of Ukraine has developed roadmaps for all transport sectors, including inland water transport. The roadmaps identify the main directions and specific steps and measures for the implementation of the Directives and regulations relating to inland water ways.

<sup>5</sup> On December 11, 2019, the European Commission presented the European Green Deal of - a roadmap for stability the EU economy by turning climate and environmental challenges into opportunities in all policy areas.

<sup>6</sup> [The EU Green Deal and inland waterways transport - INDanube](#)

<sup>7</sup> [IWT-sector-input-to-Roadmap-Smart-Sustainable-Mobility-Strategy-20200722.pdf \(ebu-uenf.org\)](#)

As of today, the government has amended the Resolution of the Cabinet of Ministers of Ukraine on the list of inland waterways<sup>8</sup>, which fixes the navigation dimensions of the future E40 without the implementation of strategic environmental assessment of the document (or amendments to it), allocates funds to finance dredging works without granting the necessary permits for such works and without environmental impact assessment of such works. The River Basin Management Plan for the Prypiat and the Dnieper rivers fails to take into account the impact of future E40. All this indicates to gross disregard for national law and lack of ability to strategically plan and coordinate different areas of the country's economic development.

What are the ways of preventing negative impact on the environment and improving the quality of management decisions in the area of water resource management, in particular, in terms of using water ways as transport corridors? Priority steps should be as follows:

- to outline by the official governmental decision the list of actions necessary for recovery E-40 inland waterway in accordance with international obligations;
- to hold a tender for procurement of services of conducting a feasibility study for the restoration of E-40 inland water way on the Ukrainian territories;
- to conduct strategic environmental assessment of this project in order to coordinate it with the Pripyat and Dnieper river basin management plan and identify future environmental impact assessemnts on national and international levels;
- to involve qualified research institutions to assess radiation impact of construction and operation of E40 on the state of water resources of Ukraine, to monitor the impact during operation;
- if after the SEA the decision on admissibility of inland water ways is adopted - to conduct environmental impact assessments of relevant projects of port construction, dredging, etc .;
- to upgrade water transport by switching to energy efficient models, e. g. replacing diesel engines with biogas or electric ones;
- to involve inland water ways for passenger transportation and development of tourism and recreation.

#### **4. Consequences of the government's omissions**

Designing the E-40 way without conducting environmental assessments jeopardizes implementation of Ukrainian reforms that are on the way, and also creates a risk of destruction of particularly valuable natural territories of Ukraine.

River basin management plans are developed in order to achieve environmental goals, defined for each area of the river basin, within a set timeframe. Strategic environmental goal for all river basin districts is to achieve / maintain a "good" ecological condition of surface and groundwater massifs, as well as "good" ecological potential of artificial or significantly altered surface water bodies. Such plans should include and evaluate the issues of construction and operation of E40 navigation way. Otherwise, it will be impossible to achieve environmental goals of such plans.

The basin of the Pripyat River is the territory of the Emerald Network, so the construction of the E40 way through this territory may have effects on the territories protected by the Bern Convention, as it may cause serious damage to this valuable protected sites, species and habitats.

The Pripyat River flows through the protected area of the Chornobyl Biosphere Reserve, which according to the legislation makes it impossible to implement E-40 project.

#### **5. The impact of the proposed actions on the interests of Ukraine**

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<sup>8</sup> <https://zakon.rada.gov.ua/laws/show/640-96-n#Text>

The White Paper on the progress, achievements and future of sustainable inland water transport in Europe, 2020 ([https://unece.org/DAM/trans/main/sc3/publications/IWW\\_WhitePaper\\_ECE\\_TRANS\\_279.pdf](https://unece.org/DAM/trans/main/sc3/publications/IWW_WhitePaper_ECE_TRANS_279.pdf)) at page 20 states that as of 2020 there is only a feasibility study prepared in 2014 and 2015, which identified the optimal technical solution and provided general recommendations for the development of E40. However, according to the developed action plan (road map) until 2025, the main task as of today is to study the possible environmental impact through conducting appropriate environmental assessments.

According to the developed action plan (<https://unece.org/fileadmin/DAM/trans/doc/2016/sc3wp3/ECE-TRANS-SC3-WP3-2016-13e.pdf>), Poland, Belarus and Ukraine were supposed to conclude agreements declaring joint reconstruction of E-40 way and ensuring performance of environmental impact assessments of this project and broad involvement of the public in order to coordinate all actions on the implementation of E-40 at the national and international levels.

Ukraine's preparing and implementing the E-40 project in compliance with environmental assessments will indicate to full consideration of environmental assessment tools that will prevent the depletion of natural resources, destruction of unique ecosystems and excessive expenses from the state budget for elimination of negative consequences.