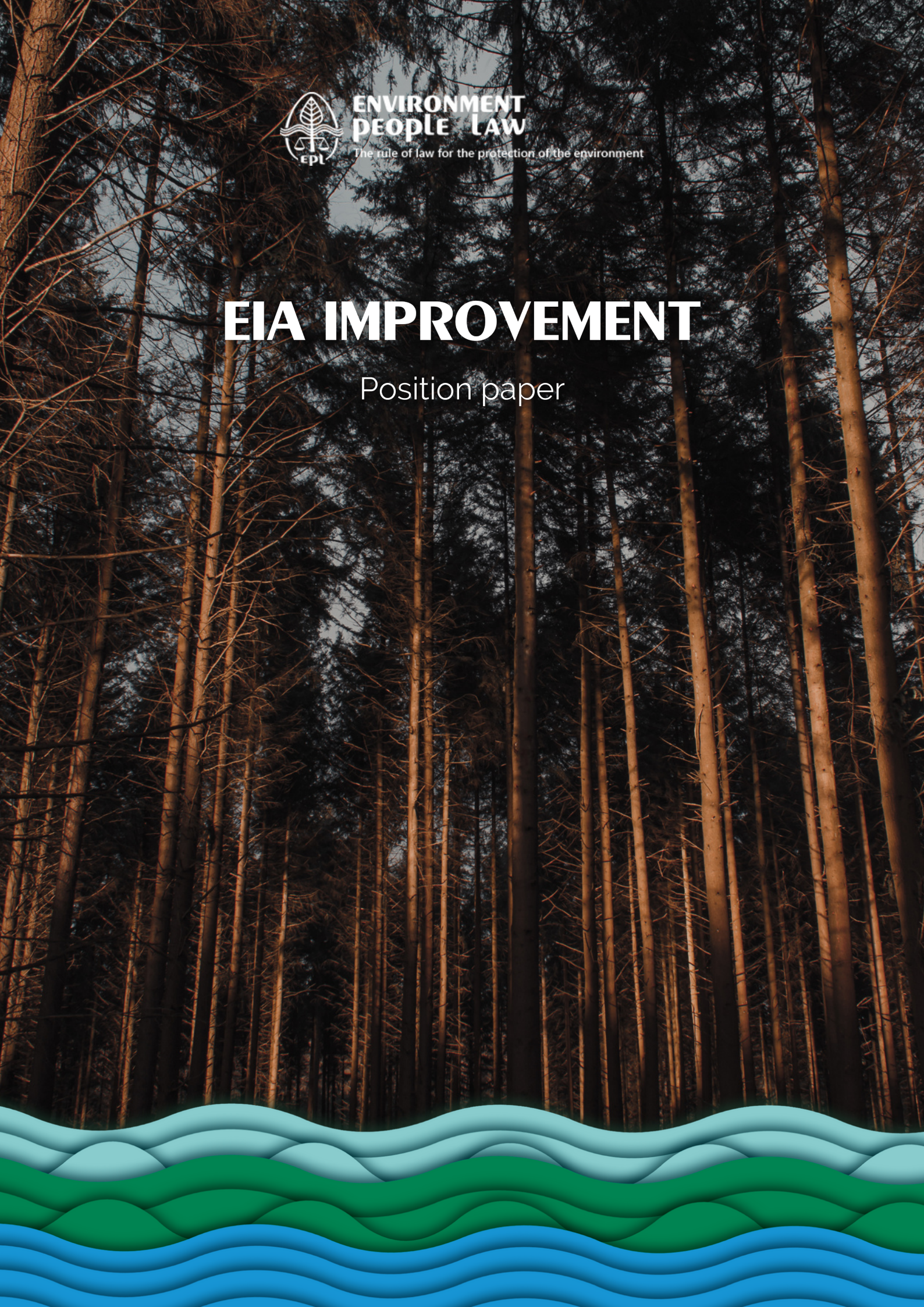
ENVIRONMENT
people law
The rule of law for the protection of the environment
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EIA IMPROVEMENT
Position paper

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On February 1, 2023, the government draft law # 8410 "On Amendments to the Law of Ukraine "On Environmental Impact Assessment" was registered in the Verkhovna Rada. This is essentially the first systematic revision of the law on EIA since its adoption in 2017.

As indicated in the explanatory table, the draft law was developed with the aim of improving the norms of the current Law of Ukraine "On Environmental Impact Assessment" in connection with the need to implement the principles of digitalization of the permit procedure, as well as with the aim of shortening the terms of the EIA procedure and reducing the body's discretionary powers when making decisions within the procedure. In our opinion, the proposed changes are much broader and deeper than stated, and while most of them are worth implementing, some are causing serious concern among representatives of civil society. What exactly is it all about?

1. Digitization of the procedure

The draft law proposes several measures to increase the level of digitization of the procedure, all of which seem to be fully justified:

- the draft law provides that any natural or legal person will be able to register in the Register for the purpose of targeted notification about the publication of information and documents in it (a kind of EIA-subscription);
- the requirement for the business entity to submit documents in paper form is abolished, electronic forms of documents (messages, announcements) are introduced, which can be filled out directly through the Register user's account;
- all communication in the EIA procedure between the business entity, the authorized body, other authorities and local self-government bodies takes place through the Register using electronic means of communication;
- the possibility of submitting public comments and proposals in electronic form through the Register, using other means of electronic communications or means of other state web portals of electronic services is introduced.

At the same time, even in the digital age, one should not forget that not all Ukrainians use digital technologies, and opportunities to participate in the EIA procedure should be provided for everyone on equal terms. Any digitization should facilitate access, but not narrow it, leaving out the inhabitants of remote regions, rural territorial communities or older generations. Therefore, when canceling the requirement for the business entity to submit documents to the authorized body in paper form, it is necessary to retain the requirement to submit one copy of EIA report (as well as other documentation provided by the business entity, necessary for the assessment of the impact on the environment), intended for physical placement in a place accessible to the public on the premises of the authorized body. Otherwise, it is not clear how the authorized body will perform its duties envisaged by part. 5 and 6 of the Law “On Environmental Impact Assessment”.

2. Shortening the time frame of the procedure

It is proposed to reduce the time frame of the EIA procedure in the following way. First, by reducing the three working days to one of those allocated to the body for uploading documents into the EIA Register. For example, it is suggested that the EIA report be uploaded into the Register no later than the next working day from the date of its receipt by the authorized body. This is quite justified, because the Register works well, documents can be submitted online, and due to this, the EIA procedure is shortened by an average of 12-15 working days.

In addition, it is suggested to reduce the period of public discussion of the notification of the planned activity from 20 to 12 working days. It is difficult to agree with such a proposal. If the state has already introduced public participation at the stage of determining the scope of the study of the EIA report, the term for such participation should be adequate for meaningful public participation. **Generally accepted international standard is at least 1 calendar month.**

It is proposed to reduce the upper limit of the public discussion of the planned activity after submission of EIA report. Now it will last exactly 25 working days, and even if necessary, the

business entity or the authorized body will not be able to extend it, because the law will not allow it. In fact, this is a weakening of "Aarhus" rights, which is also not welcomed by the Aarhus Convention. The correct practice is when democratic rights develop in the direction of expanding access and opportunities for the public.

The period allocated to the authorized body for preparation of conditions regarding the scope of research and the level of detail of information to be included in EIA report is reduced from 30 to 15 working days, the period for preparing the EIA conclusion (since the day of the end of the public discussion) is reduced from 25 to 15 days. It is important to emphasize that the quality of EIA conditions and conclusions was quite poor even before, therefore shortening of the time frame of their preparation is unlikely to have a positive effect on the completeness and effectiveness of the conditions regarding the report and environmental conditions of EIA conclusions.

3. **Reduction of discretionary powers of the authorized body**

It is proposed to add a new Article 9-1 to the Law on EIA regarding refusal to issue EIA conclusion, as well as to add a new Part 6-1 of Article 9 regarding the grounds for issuing a conclusion on the inadmissibility of the planned activity. Even in the first years of implementing EIA procedure, the practice showed the need to legislate the grounds for refusal and issuing a conclusion on inadmissibility, so such changes are long overdue and much supported.

4. **Changing the methods of notificating the public about EIA procedure**

First, it is proposed to replace publication of documents in EIA procedure on the official website of the authorized body with publication in the Register. In fact, it is an effort to consolidate the practice that has actually been established.

Also, the draft law plans to involve relevant territorial communities into notification of the public, which may be affected by the planned activity. It is proposed to publish documents (notifications, announcements, information on EIA conclusion and decision on implementation of the planned activity) on the official websites of district and state administrations and on the official websites and bulletin boards of local self-government bodies of territorial communities that may be affected by the planned activity. The possibility of targeted notificatio (subscription), which was discussed above, is also introduced. In addition to official channels, the draft law proposes to encourage local public authorities to additionally publish documents in other ways, in order to collectively ensure that information is brought to the attention of residents of the relevant administrative-territorial units (social networks, Viber groups, etc.).

The requirement to publish notificationss and announcements in printed media is cancelled. Instead, a business entity is planned to be obliged to notify by placing such documents in at least three public places (in particular, on the notice boards of local self-government bodies, objects of social and cultural purpose, post offices, on stationary equipped stops of route vehicles, in places designated and equipped by state authorities or local self-government bodies, and other places of mass presence of population) in the territory where it is planned to carry out the planned activity and in all settlements that may be affected by the planned activity.

Time and practice will show whether changing the methods of notification about EIA procedure will lead to better informing the public. It appears that in some cases, publishing information in the print media can also be effective. Importantly, this method of notifying the public is provided for in the recently adopted Law of Ukraine "On Administrative Procedure", which will enter into force in December of this year. In our opinion, publication in print media, as a way of notification, should be preserved in the law, at least in the form of an option for a business entity.

5. **Changing the methods of providing access to EIA reports**

As before, in addition to the Register, provision of access to physical copies of EIA reports (as well as other information submitted by the business entity) is provided, in particular by placing them during the entire period of public discussion in at least the following places accessible to the public:

1) in the premises of the authorized body;
2) in the premises of local self-government bodies of territorial communities that may be affected by the planned activity;
3) in the premises of the business entity.

The authorized body and local self-government bodies ensure the placement and access to EIA reports in their premises from the next working day after the day of receipt of such documentation from the business entity.

At the same time, it is proposed to add a condition to the norm, which previously simply imposed on the business entity the costs of producing paper copies of the report, - if there is a request from the public.

"9. Production of copies of environmental impact assessment report and other documentation provided by a business entity necessary for environmental impact assessment, for their physical placement for the purpose of familiarizing the public in accordance with parts five and six of this article shall be provided by the economic entity ***upon request from the public****."*

Such a proposal is absolutely unacceptable. First of all, it is not clear what the request is about, a person comes and asks – please give me the EIA report - and they give him/her a copy to read right away? Is it a request to make a copy for using later? To whom should such a request be addressed (to the relevant public authority or business entity), how quickly will such a request be considered?, Will all pages from the 11th page of EIA report be paid for the requester of public information? All these issues in practice will lead to its ambiguous interpretation, different law enforcement and, as a result, violation of the rights of the public.

Moreover, such a norm is inconsistent with the provisions of Part 6 of Article 7 of the Law "On Environmental Impact Assessment", according to which the public discussion of the planned activity after submission of environmental impact assessment report begins on the day of the official publication of the announcement and provision of public access to environmental impact assessment report. . That is, according to the law, the public discussion begins only when the paper report on EIA is available in the premises of the authorized body, relevant local self-government bodies, and the business entity. It is absolutely unclear how the request fits into this algorithm of actions of the authority. After all, it turns out that until someone makes a request for the production of a copy, the public discussion does not begin, and the entire EIA procedure is suspended. Given that one of the tasks of the draft law 8410 was to reduce the EIA procedure, this proposal seems absolutely unacceptable.

Innovations regarding public hearings

Another unpleasant surprise is introduction of conditions for conducting public hearings. The article on public discussion is proposed to be supplemented with the provision that public hearings are held on the condition that at least ten people have registered to participate in them. If fewer than ten people have registered to participate in public hearings, it is suggested not to schedule public hearings.

First of all, it is worth noting that such a norm is written incorrectly and will create situations of ambiguous interpretation, because one or several public hearings may be held in one EIA procedure, depending on the scale of the expected impact. The rule in the proposed form does not regulate whether 10 people must register for each public hearing (in case of appointment of more than one), or in general for public discussion in the form of hearings. This, in turn, can lead to abuses on the part of the body that carries out EIA.

Moreover, such a condition will clearly not contribute to the effective public discussion required by Article 6 of the Aarhus Convention. Public hearings are a form of involving ordinary people, those who find it difficult to prepare comments in writing, but who, nevertheless, have something to say about the planned activity or features of the local environment. The requirement to register for public hearings at least 10 people, who are ordinary local residents and may be facing the EIA procedure for the first time in their lives, is excessive and unrealistic.

We see some logic in establishing procedural filters that will allow not to hold public hearings in cases where public interest is completely absent. However, in our opinion, interest of even one person, expressed in the form of registration for public hearings, is a sufficient indicator of public interest for the appointment of such hearings.

6. Bringing into compliance with the EIA Directive

The EU Directive on EIA provides for consultations with the concerned authorities as a mandatory element of the EIA procedure. This element was not provided for in the initial version of the law on EIA. To bridge this gap and bring the national legislation into compliance with the relevant EU act,

amendments are proposed to the law on EIA envisaging (in parallel with public discussion) consultations with other authorities and local self-governments in accordance with their competence on issues related to the environment.

Also welcome are the proposals for changes to Article 3, which was hastily, and therefore not in the best way, amended in March 2022. It is about canceling the requirement to conduct EIA in wartime and during the reconstruction period, which contradicted the relevant EIA Directive. The changes that are proposed somewhat improve the situation.

Conclusions

During the five years of practical implementation of the provisions of the law on EIA, several places for improving the procedure have been identified, and this is quite normal. It is also good that the government found time to review the provisions of the law thoughtfully and comprehensively, without succumbing to the criticism of lobby groups of unscrupulous businesses, which called for changing the law almost in the first months after its adoption. The vast majority of proposals related to the EIA procedure itself (except for shortening the time frame for analysis and preparation of decisions by the body) seem appropriate and optimal. At the same time, one gets the impression that the Ministry of Environment still does not share European positions on the importance and benefit of public involvement, because most of the provisions of the draft law in this part are aimed at limiting or narrowing such participation (reduction of deadlines, the need to submit a request to receive an EIA report, holding public hearings only if 10 people are registered). We call on the Ministry of Environment to reconsider these positions, because European integration in the environmental sphere is directly related to the constant and progressive expansion of the public's opportunities to participate in the process of making management decisions.