

Unofficial translation

**Implementation Committee of the  
Convention on environmental impact  
assessment in transboundary context**

The Ministry of ecology and natural resources of Ukraine presents compliments to the Implementation Committee of the Espoo Convention and firstly would like to thank for the fruitful cooperation with the Ukrainian party.

In letters dated 06/23/2011 and 02/01/2011, the Implementation Committee of the Espoo Convention has put the Ukrainian party a number of questions concerning the legal mechanism for the implementation of the Espoo Convention in Ukraine, including the ones connected with the adoption of the Law of Ukraine "On the Citi-Planning Regulation" dated 17.02.2011, № 3038-VI. In this regard, the Ukrainian party gives answers to the questions posed in the abovementioned letters.

Annex: the mentioned above on \_\_pages

**Deputy Minister –  
chief of staff**

**D. Mormul**

Answers to questions posed in letters  
from 23/06/2011 and from 02/01/2011

**a) What activities require the evaluation of environmental impact.**

The procedure for determining the objects for which EIA is a mandatory procedure is different depending on the object.

*For project documentation concerning the construction* of the objects that have the following procedure of determination. Paragraph 2 of Part 1, Art. 31 the Law of Ukraine "About regulation of city planning" requires to add the assessment of the existing or foreseeable impact on the environment to the project documentation for construction projects, which are highly hazardous, and facilities that are assessing the impact on the environment in the transboundary context.

The list of activities and objects that are highly hazardous is approved by the Cabinet of Ministers of Ukraine from 27.07.1995 № 554 (hereinafter - List 554). This list has been substantially changed from the date of the previous answer. In particular, the Resolution of the Cabinet of Ministers of Ukraine from 06.06.2011 № 630, stated the changes to be made to paragraph 22 of the List 554, and the item is revised to read so:

“22. Projects for the construction of objects that belong to IV-V degree of complexity”

Thus, in accordance with paragraph 2 of Part 1, Art. 31 of the Law of Ukraine "About regulation of city planning" the activities related to the maintenance of facilities of IV-V degree of complexity also require preparation of impact assessment on environment. The procedure for determining degrees of complexity of the objects is governed by the order of referring facilities to the IV-V degree of complexity, approved by the Cabinet of Ministers of Ukraine from 27.04.2011 № 557 (hereinafter - the Order of 557). According to paragraph 5 of the Order 557, the construction sites that have at least one of the following signs are to be attributed to the 4<sup>th</sup> category of complexity:

- 1) Those designed for permanent stay of more than 300 persons and (or) periodic stay of more than 500 persons;
- 2) Those pose a possible danger to more than 10,000 individuals who are outside the object;
- 3) Those, that in case of failure or inability (inexpediency) of further operation:
  - a. may cause damages in the amount of more than 15,000 minimum wages;
  - b. may lead to termination of the facilities of transport, communications, energy and utilities at the regional level;

c. may lead to loss of cultural heritage sites of local importance.

Under paragraph 6 of the Order 557 are the construction sites that have at least one of the following signs are attributed to the 5<sup>th</sup> degree of complexity:

1) Objects, which in accordance with the Law of Ukraine “About the objects of increased risk” are concerned to be the objects of high risk (the affiliation of certain facilities to the objects of increased risk is based on the threshold mass ratios of hazardous substances for the identification of high risk, approved by the Cabinet of Ministers of Ukraine from 11.07.2002 № 956; the procedure for identification of high risk is defined by the order for identification and registration of high hazard objects approved by the Cabinet of Ministers of Ukraine from 11.07.2002 № 956);

2) Objects, designed for permanent stay of more than 400 people and (or) periodic stay of more than 1,000 people;

3) Objects, which represent a possible danger to more than 50,000 people who are outside it;

4) Objects, which in case of failure or inability (inexpediency) of further operation:

a. may cause damages in the amount of more than 150000 minimum wages;

b. may lead to termination of the facilities of transport, communications, energy and utilities at the regional level;

c. may lead to loss of cultural heritage sites of local importance.

*For activities that do not anticipate carrying out the construction works.* If the facility or activity is stated at the list 554, it is a binding activity to get a positive assessment of the state ecological expertise for carrying out such activity (Part 3 of Article. 39 of the Law of Ukraine "On Ecological Expertise"). Part 1, Art. 8 of the Law of Ukraine "On ecological expertise" requires to add to the documentation for these activities, which is to be submitted to the state environmental review assessment of existing or foreseeable impact on the environment, the ecological risk assessment and alternative options to reduce this projected impact.

Paragraph 12 of the Order of the involvement of the public to discussing issues concerning decisions that may impact the environment, approved by the Cabinet of Ministers of Ukraine from 29.06.2011 years № 771 (hereinafter - the order of 771) requires the mandatory public hearings in the case if the person intends to exercise activity or operate the object, which is highly hazardous.

In the case when the activity or object for which these documents are prepared do not involve construction DBN A.2.2-1-2003 "The composition and content of impact assessment (EIA) in the design and construction businesses, homes and structures. Main terms of designing”, approved by the order of the State Construction Committee of 15.12.2003, № 214 (hereinafter - DBN A.2.2-1-2003), similar to law in force the provisions of Part 7 of art. 9 of the Code of Administrative Justice of 06.07.2005, № 2747-

IV (hereinafter - CAJ), Law of Ukraine "On Ecological Expertise", and the order of transmission of documents to the state environmental review, approved by the Cabinet of Ministers of Ukraine from 31.10.1995 № 870.

Paragraph 12 of the Procedure 771 has a duty to hold public hearings also in other cases set by the law. This provision allows to apply Appendix 1 to the Espoo Convention directly. Thus, almost all items and activities specified in this application are highly hazardous, accordingly to the list 554, and therefore, the assess of the impact on the environment for such activities is required. The exception is only deforestation of large areas (paragraph 17 of Annex 1 to the Espoo Convention), in this case § 17 of Annex 1 to the Espoo Convention will be applied directly and this activity shall be deemed as those, to which public hearings are to be held in other cases provided by law (Section 12 of the Procedure 771).

**b) What is the role of the specially-authorized bodies in the field of environmental protection.**

Their role will be different depending on the object. In the case of the construction project, in accordance with paragraph 2 of Art. 31 of the Law of Ukraine "About regulation of city planning", agencies in the field of environmental and health do not participate in the examination. The agencies mentioned above carry out the professional certification of the relevant experts of expert organizations that will examine construction projects (Section 5 of the Procedure of the professional qualification of responsible individuals of different types of works (services) related to the creation of objects of architecture approved by the Cabinet of Ministers of Ukraine 23.05.2011, № 554).

Specific authorities in the field of environment and health are also entitled to held methodological support of the above experts.

Paragraph 2 of Part 1, Art. 31 of the Law of Ukraine "On city planning regulations" requires the customer to add to the project documentation the materials on evaluation of environmental impact in case of submitting of the project documentation for construction to the examination. Preparation of the EIA is regulated by DBN A.2.2-1-2003 and Procedure 771.

According to Section 1.7 DBN A.2.2-1-2003 EIA documents for activities and objects that do not pose a high environmental hazard are developed in the short scope and agreed with the local Environmental Protection and the State Sanitary and Epidemiological Service of the Ministry of health of Ukraine.

In the case when the activity does not provide new construction, but is highly hazardous, Part 3 tbsp. 13 Law of Ukraine "On Ecological Expertise" requires a mandatory state ecological expertise. This examination is authorized to be conducted by a specially-authorized body in the field of environmental protection (Section 2, Art. 24 of the Law of Ukraine "On Ecological Expertise"). In this case, the same body carries out public hearings (Item 5 of the Procedure 771).

As the organizer of public discussions and public hearings, the specially-authorized body in the field of environmental protection determines the date and place of public hearings and provides adequate information to the public about:

- The customer of the project solutions and the contents of his statements;

- A summary of the draft decision;

- The name of the body which takes decisions, with address at which you can review the documents on which the decision is made, and additional information, make a request, suggestions (comments);

- The deadlines for proposals (comments).

In case of the state ecological expertise carried out by the specially-authorized body in the field of environmental protection, in accordance with Section 14 of the 771, public hearings are held under the chairmanship of the authorized representative of the body, who:

- provides for the registration of participants;

- announces the agenda and proposals for regulation of its conducting;

- inform participants about the order of keeping minutes, making proposals (comments) in writing or orally, the content of proposals (comments) received, and the procedure for their consideration;

- announces issues, which need to attract public attention;

- provides a discussion of the submitted proposals (comments).

The organizer of the public discussion provides answers to questions of the audience orally at a public hearing or in writing after it has been finished (Item 16 of the Procedure 771).

Public hearings will not exclude the submission of proposals (comments) in accordance with paragraph 10 of the 771, within the period prescribed for public discussion. Proposals (comments) received during the specified period, subject to mandatory review by the authority that takes decisions. This body in the case of the state ecological examination of objects that do not involve the construction will be the conclusion of the state ecological examination conducted by the specially-authorized body in the field of environmental protection. In this regard, this body must provide the acceptance of these comments and proposals, and wholly or partially take into account the suggestions (comments) or make a reasonable rejection (§ 19 of the Procedure 771).

In addition, if the state ecological expertise is carried out by the specially-authorized body in the field of environmental protection, the latter provides free public access to relevant information. This information, in accordance with article 24 of Procedure 771 is:

A set of documents containing the justification of impact assessment on environment;

The data on significant factors that affect or may affect the environment, taking into account the possibility of an ecological emergency situation;

The information on measures of prevention the negative effects on the environment and / or their reduction;

A brief description of the draft decision under discussion in the public form;

The alternative draft decisions examined by the by the applicant;

The decision on the results of public examination (in case of its holding).

According to § 25 of the Procedure 771, the information about the conclusion of state ecological expertise, if the latter is the final solution, is placed in the print media that are distributed at the relevant territory, and on the official website of the organizer of public discussion.

For carrying out certain activities, which does not provide construction, it is mandatory to conduct the state ecological expertise, and also the Epidemiological Inspection can be made. The need for this is determined in each particular case by the authorized persons of the State Sanitary and Epidemiological Service (Part 3 of Article. 12 of the Law of Ukraine "On ensuring sanitary and epidemiological welfare" of 24.02.1994, № 4004-XII). In case if the sanitary and epidemiological expertise is conducted together with state environmental review - the conclusions of these two examinations are the final decision in the sense of Art. 6 Espoo Convention. Therefore, the results of public participation must be taken into account in the conclusion of the state sanitary-epidemiological examination. The procedure of carrying out the state sanitary-epidemiological examination is determined by the order the state sanitary-epidemiological examination approved by the Ministry of Health of 09.10.2000, № 247.

The assessment of environmental impact is foreseen at the process of granting a permit for operating the equipment with the defined levels of impact of physical and biological factors on the air. The need to obtain such permission is under Part 5 of Article. 11 of the Law of Ukraine "On air protection" from 16.10.1992, № 2707-XII. Clause 8 of the Procedure of giving permits for operating the equipment with the defined levels of impact of physical and biological factors on the air, payment for these works and accounting firms, institutions, organizations and citizens - businessmen who have obtained such permits, approved by the Cabinet of Ministers of Ukraine of 29.03.2002, № 432 (hereinafter - the order № 432) the local state administrations are obliged to consider the concerns of NGOs and, if it is required to organize and conduct their public discussion.

The role of health authority in this procedure is that the institution of the State Sanitary and Epidemiological Service reviews the application and documents for obtaining

a permit within 30 calendar days from the date of its receipt and in the absence of comments prepares the conclusion about giving a permit to the entity (paragraph 7 of 432).

Without this approval the specially-authorized body has no right to issue this permit.

**c) Who will be responsible for conducting public hearings, including:**

- (I) notification to the public;**
- (II) organizing public hearings;**
- (III) providing information.**

*In case of the construction project.* The responsible for conducting public hearings, including notification of the public, organizing public hearings, providing information, is assigned to the customer of the project by the paragraph 1.6 DBN A.2.2-1-2003. The provisions of paragraph 5 of the Procedure 771 states that organizer of public discussion can be an executive body, which takes the decisions, the local government or customer of such a decision.

*In case when the final decision is the conclusion of the state ecological expertise,* the responsibility for conducting public hearings, including notification of the public, organizing public hearings, providing information states to the body which will conduct the state ecological expertise (territorial authorities of environment preservation or Ministry of Ecology and Natural Resources or customer of planned activities). This conclusion follows from the provisions of paragraph 5 of the 771, if it is interpreted in the context of paragraphs 2 and 6 article 6 Aarhus Convention and § 78 of the Report of the Compliance Committee to implement the Aarhus Convention at Lithuania on 07.03.2008 (ECE/MP.PP/2008/5/Add.6).

**d) Who will be responsible for:**

- (I) preparation of EIA documentation;**
- (II) verification of EIA documentation.**

The responsibility for the preparation of the EIA in the case when the latter will involve construction, and in the case when the project will not include construction of the project will be assigned to the customer of the solution.

Paragraph 4 of the approval of construction projects and their examination, approved by the Cabinet of Ministers of Ukraine from 11.05.2011 № 560 (hereinafter - Procedure 560) defines the bodies exercising approval of construction projects in case the latter are implemented with the involvement of the state budget, the budget of the Autonomous Republic of Crimea, local budgets and funds of enterprises, institutions and state-owned. These agencies before approving these projects are to check them, including the EIA materials for their compliance with current legislation, and the requirements of the Espoo Convention.



For construction projects, which are conducted by public funds and from other sources and belong to the IV and V degrees of complexity Part 2 of Art. 31 of the Law of Ukraine "About regulation of urban activities" states the examination of construction projects. In the process of this examination the test will be made, including the EIA materials.

If the project will not involve new construction, but will belong to the list of objects and activities that are highly hazardous (list 554) for these objects part 3 Clause 13 of the Law of Ukraine "On ecological expertise" provides the mandatory state ecological expertise. In the process of this examination the verification of the EIA will be carried out.

**(e) Who will be responsible for identifying potential transboundary environmental impacts, when the appropriate procedure relating to the Espoo Convention will begin its operation, and who will implement this procedure.**

These functions, in the case when the project involves the construction, will make the customer of the project directly (paragraph 5 paragraph 1.6 DBN A.2.2-1-2003).

If the construction project is implemented with the involvement of the state budget, the budget of the Autonomous Republic of Crimea, local budgets and funds of enterprises, institutions and state-owned (except for cases stipulated by legislative acts) till the process of identifying the transboundary environmental impact and beginning the assessment procedures of the environmental impact, the bodies to approve this project will also be involved (these bodies are defined by the paragraph 4 of the Procedure 560). In particular, in case when the customer fails to make notification and other procedures under Art. Art. 6.3 Espoo Convention, the above authorities shall refuse to approve the construction project, and without this it can not be realized.

If the project does not involve new construction but belongs to the list 554, the responsibility for identifying potential transboundary impact on the environment and the launching of cross-border procedures for EIA will be assumed by local departments of Environmental Protection or the Ministry of Environment and Natural Resources (concerning the objects, the decision for approval (confirmation) of which is accepted by the Cabinet of Ministers of Ukraine) (Section 13 of the Procedure 771).

Additionally we announce that a draft resolution of Cabinet of Ministers of Ukraine "On approval of the impact assessment on environment in a transboundary context" has been worked out, and it will meet the provisions of paragraph 2 of Part 1, Art. 31 of the Law of Ukraine "About regulation of city planning" and correct the shortcomings of the current procedure.

***(f) Who will be responsible for EIA procedure (Environmental Impact Assessment) results registration, including public and potentially affected parties' comments.***

The authority that makes decisions will carry out the responsiveness to public opinion. If the project provides a new construction, that will be carried out with mobilization of the state budget means, means of autonomous republic of Crimea, means of local budgets, as well as means of enterprises, institutions and organizations of state property, in this case the responsiveness to public opinion will be carried out by the authorities that approve a relevant design (these authorities are specified in item 4 Order 560).

In case the project does not provide a new construction, that will be carried out with mobilization of the state budget means, means of autonomous republic of Crimea, means of local budgets, as well as means of enterprises, institutions and organizations of state property, the responsiveness to public opinion will be carried out directly by the client.

In case the project does not provide a new construction, but do relevant to Enumeration 554, the responsiveness to public opinion will be carried out by territorial authorities of environment preservation or by Ministry of Ecology and Natural Resources or by customer of planned activities (concerning those objects approval decision of which is given by the cabinet of Ministers of Ukraine) (paragraph 12 Order 771).

***(g) What decision will be considered as “final decision” and who will take it.***

***(h) Who will carry out responsiveness to public and potentially affected parties’ being kept informed about final decision.***

*In case the project provides new construction.* In case the project will be carried out with mobilization of the state budget means, means of autonomous republic of Crimea, means of local budgets, as well as means of enterprises, institutions and organizations of state property, the decision of the authorities specified in item 4 Order 560 will be considered as the final one.

According to paragraph 4 Order 560, the construction projects carried out with mobilization of the state budget means, means of autonomous republic of Crimea, means of local budgets, as well as means of enterprises, institutions and organizations of state property (except cases specified in legislative acts) are approved by:

The Cabinet of Ministers of Ukraine on submission of central authorities of executive power, Council of Ministers of Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city administrations, as well as other authorities of the state power – as for the objects estimated worth of total of 100 mln uah and more, that belong to supercategory on methane and to dangerous category on sudden emission of the mines, where carried out the works at the depth of more than 800 metres, irrespective of their budget, as well as for the objects the construction project of which is realized with mobilization of foreign loans given on state guarantee.

The Cabinet of Ministers decreed that the right to approve the building projects estimated worth of total of 100 mln uah and more according to valid presentation,

approved by the Ministry of Economic Development and Trade, the Ministry of Finance, the Ministry of Building and Housing, can be given to the central authorities of executive power, Council of Ministers of Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city administrations, as well as other authorities of the state power;

central authorities of executive power, Council of Ministers of Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city administrations, as well as other authorities of the state power – concerning objects estimated worth of total from 30 to 100 mln uah;

enterprises, institutions and organizations of state property – concerning objects estimated worth of total up to 30 mln uah.

In case of carrying out the project without mobilization of any abovementioned means, the construction works will not be allowed to start without permission for fulfillment of construction works that is given by appropriate services of state architecture-construction control.

In case the project does not provide a new construction, but do relevant to Enumeration 554, the conclusion of state ecological commission of experts given by territorial authorities of environment preservation or by the Ministry of Ecology and Natural Resources (concerning those objects approval decision of which is given by the Ministry of Ecology and Natural Resources) (item 22 Order 771) and conclusion of state sanitary-epidemiological assessment (if there is decision to carry it out) will be the final decision.

The authority that is taking the final decision must give the final decision to the Ministry of Nature. The latest, being the authority responsible for realization of Expo convention items in Ukraine, must pass it to affected party by means of diplomatic channels.

***(i) Is there time frame for fulfillment of procedure mentioned above.***

Such time frames are determined by Order 771. які часові рамка встановлено Порядком 771. In particular, according to paragraph 2 item 23 Order 771, the time of public discussion cannot be less than 30 days starting from the date of announce publication on carrying out the state ecological assessment.

The paragraph 3 item 23 Order 771 provides public discussion in 15 days starting from the date of giving set of documents to the community. These documents must contain the grounds of environmental impact assessment.

The appraisal of project documentation for building is carried out during 15-90 days (depending on project complication) according to item 14 Order 560.

If the final decision is conclusion of state ecological commission of experts, the article 38 of Law of Ukraine “On ecological assessment” provides the terms of carrying out the ecological assessment. This term is from 45 to 120 days depending on project complication.

**(a) As per questions in letter from 23-06-2011**

*The committee also would like to know what kind of activities will be excluded from the previously planned, according to the new conditions that appeared after decision of Constitutional court; what activities are eliminated?*

The changes will occur only this activity – “Development and submission for consideration to the Cabinet of Ministers of Ukraine the project of decree of the Cabinet of Ministers of Ukraine on addition of changes to the Statute of Ministry of Environmental Protection of Ukraine, approved by the decree of the Cabinet of Ministers of Ukraine dated 02.11.2006 #1524 (with changes)”. Mentioned activity was excluded because the Law of Ukraine #2222-IV dated 08.12.2004 “On addition of changes to the Constitution of Ukraine” according to Decision of the Constitutional Court of Ukraine #20 пп/2010 dated 30.09.2010 is admitted as non-corresponding to the Constitution of Ukraine (is non-constitutional), due to the breach of constitutional procedure of its submission and approval.

Thereby there came into force the standards of the Constitution of Ukraine that existed before the changes by the Law “On addition of changes to the Constitution of Ukraine” #2222-IV dated 08.12.2004 according to which the power to approve regulations on ministries and central authorities of executive power belongs to the President of Ukraine.

The Decree of the President of Ukraine dated 13.04.2011 #452/2011 approved the Statute of the Ministry of Ecology and Natural Resources of Ukraine. Subitem 24 item 4 of the mentioned Statute refers to the power of the Ministry of Nature the organization, coordination and control “of carrying out the environmental impact assessment, also in transboundary context”. According to mentioned above the necessity to prepare the project of decree of the Cabinet of Ministers of Ukraine on addition of changes to the statute on Ministry of Ecology and Natural resources is not possible and unreasonable.

Other activities, contained in the Plan of Actions (strategy) concerning fulfillment of items 11-12 of decision IV/2 of the Expo, were not eliminated.

**(b) As per Act project on public participation:**

*Whether the article 20 of the Law of Ukraine “On Environment Preservation” was changed from the moment of strategy approval?*

The article 20 of the mentioned Law was not changed in the part of giving to the Ministry of nature the power to approve the order of public participation.

*Why the approval of decree on public participation was not considered as obstacle during strategy approval, but is considered as obstacle today?*

*Whether the article 20 of the Law of Ukraine “On Environment Preservation” does not allow to approve the procedure “of public participation” in environmental impact assessment”, but does not forbid to approve the procedure of public participation in impact assessment in transboundary context?*

Item “1” («1») part 1 article 20 of the Law of Ukraine “On Environment Preservation” refers to the powers of specially authorized organ in the sphere of environment preservation the power to “determine the order of organization and carrying out of public hearings or open sessions on questions of environmental impact of planned activity”. It gave rise for some organs of state power in Ukraine (Ministry of Justice) to consider, that delegating authority to approve the order of carrying out the public hearings to the power of specially authorized organ in the sphere of environment preservation, means the prohibition to all other organs, including the Cabinet of Ministers of Ukraine to approve such order.

As a rule they refer to decree part 2 article 19 of the Constitution of Ukraine, according to which, “the organs of state power and organs of local administration, their officials must act only on the basis, within power and in the way specified in the Constitution and the Laws of Ukraine”.

But the decree mentioned above, part 2 article 19 of the Constitution of Ukraine, is a constitutional guarantee for a person and national for abuse of state power authorities and cannot be considered as prohibition of state authority actions when they are carried out for realization of these rights. In case if the Cabinet of Ministers of Ukraine had approved the order of public participation (also in transboundary context), it would take measures for realization of the human and nation rights, that is why the decree part 2 article 19 of the Constitution of Ukraine cannot be considered as one that forbids such actions.

As a confirmation of exactly such understanding of the Decree of the Constitution of Ukraine can be also the decree part 2 article 116 of the Constitution of Ukraine, that gives to the Cabinet of Ministers of Ukraine the discrete power to take ***“measures to secure the human and nation rights and liberties”***.

The approval of the order of public participation in environmental impact assessment will mean the taking measures from the side of the Cabinet of Ministers of Ukraine for securing the human and nation rights and liberties. Thus, if the part 2 article 19 of the Constitution of Ukraine is interpreted in the system with its item 2 article 166, then part 2 article 19 of the Constitution of Ukraine cannot be considered as one that forbids the approval of such order.

Moreover it is not possible to contain such prohibition item “k” part 1 article 20 of the Constitution of Ukraine “On Environment Preservation”, because the mentioned law has less juridical power against the Constitution of Ukraine (part 2 article 8 of the Constitution of Ukraine).

It is necessary to admit that the logical conclusion of the above mentioned interpretation of decrees part 2 article 19 of the Constitution of Ukraine is putting a veto for any actions of the state organs in case of not controlling of their deeds. But the lawmaker assigns another order. In particular according to part 7 article 9 of the Administrative Legal procedure Codex of Ukraine “in case of absence of the law that regulates appropriate legal relationships, the court applies the law that regulates the similar legal relationships (law analogy), and if there is an absence of such law the court is going out of the constitutional principles and general legal bases (right analogy)”. The above mentioned rule indicates that the lawmaker has determined the rule according to which the absence of the norm means the usage of right analogy or law analogy, and doesn’t mean an automatic prohibition.

An inexhaustible character of powers list of the Cabinet of Ministers of Ukraine, assigned in article 17 of the Law of Ukraine “On Environment Preservation” is pointed by

the words in part 2 of the same article, where it is said that “The Cabinet of Ministers of Ukraine can fulfill also other powers according to the legislation of Ukraine”.

The impossibility to limit lawful deeds of the Cabinet of Ministers of Ukraine only with those, provided by the law, is caused by the fact that the state power in Ukraine is realized on the bases of its division at legislative power, executive power and judiciary power. In case of disability of the Cabinet of Ministers of Ukraine to make deeds directly not provided by the law of Ukraine, the executive power instead of the Cabinet of Ministers of Ukraine will be realized by The Supreme Soviet (Rada) of Ukraine, because for carrying out any action there will be necessary appropriate law or adding the changes to the existing ones. For fulfillment of executive power the Cabinet of Minister of Ukraine must have definite level of freedom in actions. That is why the interpretation of the decree part 2 article 19 of the Constitution of Ukraine, according to which the Cabinet of Ministers of Ukraine has no right to make deeds directly not provided by the law, is not concurred to the decree article 6 of the Constitution of Ukraine.

The abovementioned shows that the item “1” (“1”) part 1 article 20 law of Ukraine “On Environmental Preservation” contains only permission to specially authorized organ in the sphere of environment preservation the power to “determine the order of organization and carrying out of public hearings or open sessions on questions of environmental impact of planned activity. The decree of this part does not contain the prohibition of the Cabinet of Ministers of Ukraine to regulate to approve this order. In this case the item “1” (“1”) part 1 article 20 law of Ukraine “On Environmental Preservation” is not an obstacle for approval of the Cabinet of Ministers of Ukraine the order on environmental impact assessment (also in transboundary context). The above was taken into consideration during the process of Order 771 approval.

***(c) The mechanism of screening and use of criteria listed in appendix 1.***

***The committee does not consider the answer of Ukraine as a satisfactory one for the interest of the latest and asks to continue explanations. Moreover the answer seems to be such that provides that existing decrees in Ukraine, including the list of activity kinds, which are subjects to impact assessment are proper, but then as was marked towards Ukraine, that this is not correct, also Ukraine agreed as per list of activity kinds (i.e. including of activity kinds that do not require constructions).***

The information as for this question contains in answer for the question (a) of the previous sheet.

Also in addition we inform that indeed the list of activity kinds and objects that are subjects of high danger (i.e. List 554) does not include such kind of activity as felling of forests at long range.

In addition we inform that there is developed a project of decree of the Cabinet of Ministers of Ukraine “On approval of Order of Environmental Impact assessment in transboundary context that will correspond to decree paragraph 2 part 1 article 31 of the Law of Ukraine “On regulation of city building activity” and which will remove the defects of the effective procedure.