

**Training Workshop on the Practical Application of Transboundary  
Environmental Impact Assessment (EIA): Bilateral Agreements on  
Transboundary EIA**

**REPORT**

**16-17 March 2021  
Kyiv, Ukraine**

**online**

Action implemented by:

## Training Workshop on the Practical Application of Transboundary Environmental Impact Assessment (EIA): Bilateral Agreements on Transboundary EIA

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### Background

Within the framework of the European Union funded EU4Environment programme (2019-2022), UNECE has been assisting the six Eastern Partnership countries, including Ukraine, in comprehensive capacity-building and institution building on Strategic Environmental Assessment and transboundary EIA and in finalizing legal reforms in this area.

Ukraine's experience in applying EIA in a transboundary context is significantly less developed than the application of EIA at the national level. The use of bilateral agreements on transboundary EIA is a practical way for the countries involved in transboundary EIA procedures, in particular, Ukraine and Romania to reconcile their national legislative requirements and procedures in advance, thereby improving capacities of environmental ministries to coordinate and supervise these procedures effectively. The Convention on Transboundary Environmental Impact Assessment in a Transboundary Context (Espoo Convention), as set out in article 8, provides a legal basis for bilateral agreements as a way for achieving its effective application. The bilateral agreement that the two countries initiated negotiations on a decade ago will be useful in addressing differences between the two countries' implementation practices and will support them in improving the implementation of the Convention.

The workshop has supported Ukraine and Romania in the implementation of the recommendations made by the Meetings of the Parties (MOP) to the Espoo Convention in 2011–2020 on the development of the bilateral agreement ( *See decisions/relevant parts of decisions VIII/4d; IS/1 (f); VI/2; V/4 regarding compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta*).

The workshop has further taken into account other MOP decisions of relevance to bilateral agreements, including on decisions on reporting and reviews of implementation of the Convention (decisions VIII/5 (2020); VII/1 (2017); VI/1 (2014) and V/3 (2011) – as well as relevant recommendations and findings of the reviews of implementation adopted by the Meetings of the Parties (Sixth–Third Review covering the periods 2016-2018; 2013-2015; 2010-2012 and 2006–2009, respectively). These findings include a continuing need for bilateral agreements to address differences in: the content of the notification; language; time frames; how to proceed when there is no response to a notification or if there is disagreement about the need for notification; the interpretation of various terms and the conduct of post-project analysis. The workshop was facilitated by the EU4Environment Project Manager at UNECE and an international legal consultant to UNECE.

### Meeting objectives, expected outputs and outcomes

The objective of the workshop was to

- enhance the capacity of environmental ministries to design and apply bilateral agreements for the effective implementation of transboundary EIA procedures in line with the Espoo Convention (Article 8) and the European Union's Directive on EIA and;
- contribute to accelerating and completing the work on the preparation of the draft bilateral agreement on transboundary EIA between Ukraine and Romania.

### **Participants**

The Workshop gathered 18 participants from Ukraine, including one of the Deputy Environment Ministers, and 12 from Romania, including the Secretary of State, representing the two countries' environmental ministries and other relevant government agencies. The workshop was attended by a representative of the EU Delegation to Ukraine, representatives of the UN etc. Further details are summarized in the LoP.

## MEETING REPORT

### Training Workshop on the Practical Application of Transboundary Environmental Impact Assessment (EIA): Bilateral Agreements on Transboundary EIA

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#### Concept of the Workshop and Agenda

The concept for the Workshop was reflected in the Agenda which was translated into Romanian and Ukrainian languages and distributed in advance of the Workshop. It assumed Day 1 (divided into Opening and 2 substantive Sessions) to be devoted to presenting the general issues related to bilateral agreements under the Espoo Convention while Day 2 (divided into 6 substantive Sessions followed by Concluding Remarks) to be devoted to presenting and discussing the key issues of concern related to the basic elements of a bilateral agreement. The 6 substantive Sessions in Day 2 were designed after a thorough examination of the two drafts of a bilateral agreement prepared by the two Parties concerned (i.e. one from Romania and one from Ukraine) which revealed the key issues where the two countries seemed to have slightly divergent views and/or proposed slightly different approaches to regulate a given issue in the bilateral agreement. Each such a session included the Parties presenting alternately their positions and then commenting by legal experts: national legal experts (Mr. Dmytro Skrylnikov from Ukraine and Mr. Felix Zacharia from Romania) and the international legal expert to UNECE Mr. Jerzy Jendrośka.

#### Conduct of the Workshop

The Workshop was conducted as envisaged in the Agenda (attached). It was opened by Mr. Roman Shakhmatenko, Deputy Minister, Ministry of Environmental Protection and Natural Resources of Ukraine and Mr. Ionut Sorin Banciu, State Secretary, Ministry of Environment, Water and Forests of Romania and by Ms. Chloe Allio, Head of Operations Section 3 "Economic cooperation, energy, infrastructure and environment", Delegation of the European Union to Ukraine and Mr. Dennis Besedic, Head of Office, UN Resident Coordinator's Office in Ukraine.

**Session 1** devoted to Legal basis, nature and scope of bilateral agreements in light of the provisions and established practice under the Espoo Convention and EU EIA Directive included a Power Point presentation by the international legal expert Mr. Jerzy Jendrośka, who presented the key legal issues of particular interest for the bilateral agreement between the two Parties concerned, focusing on legal nature of a bilateral agreement (binding or non-binding) and its scope (only EIA or EIA and SEA). The presentation was followed by questions and answers.

**Session 2** devoted to **Elements of bilateral agreements in light of the provisions and established practice under the Espoo Convention and EU EIA Directive and relevant recommendations by the Meeting of the Parties to the Espoo Convention** included two Power Point presentations: by the international legal expert Mr. Jerzy Jendrośka and by Ms. Elena Santer, Secretary to the

Implementation Committee under the Espoo Convention and its Protocol on SEA. The presentations paid special attention to presenting international standards and practical experience in addressing the key issues where the two countries seemed to have slightly divergent views and/or proposed slightly different approaches to regulate a given issue in the bilateral agreement. The presentations were followed by questions and answers.

**Day 2** of the Workshop started with a brief introduction by the international legal expert Mr. Jerzy Jendrośka to the order and format of the debate. Each session was devoted to a particular issue of concern, with the two Parties alternately presenting (10 minutes each) their positions: for Ukraine by Ms. Olena Miskun, Head of International Cooperation Division, Ministry of Environmental Protection and Natural Resources of Ukraine, and for Romania by Ms. Mihaela Macelaru, Councillor, Focal Point for the Espoo Convention, Ministry of Environment, Water and Forests of Romania. The statements from parties were followed in each session by comments made by the national legal experts: national legal experts (Mr. Dmytro Skrylnikov from Ukraine and Mr. Felix Zacharia from Romania) and the international legal expert Mr. Jerzy Jendrośka who provided comments aiming at identifying common positions, issues of concern, and potential compromise approaches regarding given issue.

**Session 3** was devoted to **Legal nature and scope of the bilateral agreement between Ukraine and Romania.**

It was initiated by the statement by the representative of Ukraine regarding proposed legal nature and scope of the bilateral agreement in light of the legal framework of Ukraine (in particular Law on EIA of 2017) and the statement by the representative of Romania regarding proposed legal nature and scope of the bilateral agreement in light of the legal framework of Romania (in particular Law on EIA of 2018). The statements were followed by comments of legal experts who identified similar approaches of both Parties to the legal nature (binding) and scope of bilateral agreement (only EIA).

**Session 4** was devoted to **Scope of activities and approach to trigger transboundary procedure**

The statements of both Parties regarding proposed scope of activities covered and approach to trigger transboundary procedure was initiated by the statement by the representative of Romania and followed by the statement of the representative of Ukraine.

The legal experts noted some similar positions but also some differences regarding the scope of activities covered and approaches to trigger transboundary procedure, and identified potential for possible compromise solutions.

**Session 5** was devoted to **Public participation.**

The statements of both Parties regarding public participation were initiated by the statement by the representative of Ukraine and followed by the statement of the representative of Romania Ukraine.

The legal experts noted some similar positions but also some differences regarding the approach to translating the documents (while principal language would be English the issue to be solved related to translation into national languages) and regarding the venue for public hearing and its organization. Some possibilities for potential compromise solutions were identified.

**Session 6** was devoted to **Time frames and documenting in the final decision how due account was take of the outcome of transboundary procedure.**

The statements of both Parties regarding proposed time frames and documenting in the final decision how due account was take of the outcome of transboundary procedure was initiated by the statement by the representative of Romania and followed by the statement of the representative of Ukraine.

The legal experts noted some similar positions but also some significant differences regarding the original approach to time-frames concerning both the matters covered time-frames and their duration. Some possibilities for potential compromise solutions were identified (for example fixed time-frame only for the reply to notification while other time-frames to be fixed in the initial consultations).

**Session 7** was devoted to **Post-project analysis and other elements potentially to be included into the bilateral agreement**

The statements of both Parties regarding post-project analysis and other elements potentially to be included into the bilateral agreement following the practice presented in Day 1 was initiated by the statement by the representative of Ukraine and followed by the statement of the representative of Romania.

The legal experts noted some similar positions (for example regarding the need for a joint body), but also some differences, in particular in relation to the approach to post-project analysis (mandatory in each case or upon request). A number of other issues to be regulated in the bilateral agreement were also identified.

**Session 8** was devoted to **Completion of the bilateral agreement**

The statements of both Parties regarding the content of the agreement and the next steps for its completion was initiated by the statement by the representative of Romania and followed by the statement of the representative of Ukraine.

The statements were followed by comments by national legal experts (Mr. Dmytro Skrylnikov from Ukraine and Mr. Felix Zacharia from Romania) who both noted a number of common positions regarding the scope and content of the agreement and suggested proposals for reaching consensus on the outstanding issues and the next steps for its completion.

The **Workshop** was concluded by comments of the international legal expert Mr. Jerzy Jendrośka who summarised the discussion and pointed to the emerging consensus on a number of issues, and by Mr. Leonid Kalashnyk of UNECE who confirmed the possibility for UNECE within the framework of the European Union funded EU4Environment Programme to assist in the next steps

for the completion of the bilateral agreement following the emerging consensus in this respect, along with a brief outline of next steps.