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## Environmental impact assessment in livestock and poultry: public participation

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Problem statement. One of the important aspects of agricultural production is the provision of environmentally safe operation of livestock and poultry farms. After all, in the process of their activity, there is a high risk of deterioration of the quality of soil, water sources (due to the waste products from open-air feeding grounds) and atmospheric air (as a result of the emission of gas impurities caused by the vital activity of animals and the evolution of excrement and other organic substances). The identified risks for the environment, and, accordingly, the life and health of people, require the legislator to effectively regulate the planning and operation of such objects.

Overview of relevant research. In legal science, Oleh Kolbasov and Yurii Shemshuchenko studied some issues of environmentally safe placement and operation of livestock and poultry complexes. However, these works were devoted to the legal regulation of agricultural production in general and only fragmentarily concerned animal breeding. The recent implementation of the procedure of environmental impact assessment in Ukraine adds to the relevance of our study. This institution is new for the Ukrainian legal system. Therefore, fundamental studies of its functioning in the field of

agricultural production, in particular livestock, have not yet been carried out. Some aspects of the application of the environmental impact assessment procedure have been analyzed in the works by Taras Tretyak and Andrii Yevstigneyev, but they mainly relate to the analysis of the efficiency of the mentioned mechanism and its role in ensuring environmental safety.

The aim of the research is to determine the place of the procedure of the environmental impact assessment in planning the activity of livestock and poultry complexes, to investigate the possibility of public influence on the decision-making on the admissibility of planned activities, as well as to analyze the state of adaptation of Ukrainian legislation in this area to the requirements of EU and international acts.

Discussion. Since the proclamation of independence and to date, the Ukrainian norm-maker's approach to planning the placement of livestock and poultry farms has undergone a series of transformations. From 1995 to 2017, the Law of Ukraine "On Environmental Expertise" was in force, which obliged to conduct a state environmental expertise for activities and objects that present an increased environmental hazard. First, the issue of the list of activities and objects that constitute an increased environmental hazard was regulated by the decision of the Cabinet of Ministers of Ukraine (hereinafter referred to as CMU) of July 27, 1995, no 554. According to it, cattle-breeding complexes with a capacity of more than 5,000 heads and a poultry farm were recognized as such objects in the area under investigation. And with regard to poultry farms, there was no detailed information on the number of poultry. In 2013, a new CMU resolution came into force (dated August 28, 2013, no 808). According to it, subject to compulsory ecological expertise were cattle-breeding complexes for the cultivation of pigs (5,000 heads or more), cattle (2,000 heads and more), fur animals (3,000 heads and more), poultry (60 thousand hens and more, 85 thousand broilers and more); production in the field (installations) for the processing and utilization of animal waste, including poultry, fish farming.

Annex XXX (Environment) of the Ukraine-European Union Association Agreement has set Ukraine's task of gradually bringing

its legislation closer to the EU norms, including Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (hereinafter referred to as Directive 2011/92/EU). In order to comply with this requirement, Draft Law of Ukraine on environmental impact assessment (2009a) was developed, which refers to activities and objects that may have significant environmental impacts and are subject to an impact assessment the capacity for intensive poultry or pig production from more than 40,000 places for poultry; 2 thousand places for pigs (more than 30 kg); or 750 places for sows (the first category), as well as installations for utilization or disposal of animal carcasses or animal wastes (the second category). However, this bill has not become a law.

Eventually, on May 23, 2017, was adopted, and on December 18, 2017 – the Law of Ukraine “On Environmental Impact Assessment” (hereinafter referred to as the Law) was put into effect. The environmental impact assessment (hereinafter referred to as the EIA) is established by this Law for a fairly wide range of objects and types of planned activities. The law provides for two categories of planned activities and objects that can have a significant impact on the environment and are subject to an assessment of the environmental impact. The difference between the above mentioned categories is the state body authorized to determine the admissibility or inadmissibility of the planned activity, as well as the environmental conditions for its proceeding. Such bodies are the Ministry of Environment and Natural Resources of Ukraine (for the first category) and the environmental and natural resources divisions of the oblast and city Kyiv and Sevastopol state administrations, the executive authority of the Autonomous Republic of Crimea on ecology and natural resources (for the second category). In addition, the planned activity falling under the first category is subject to mandatory review of the availability of grounds for the assessment of transboundary environmental impact.

To the first category, the Law refers capacities for intensive growing of poultry (60,000 places or more), including broilers (85,000 places or more), pigs (3,000 places for pigs more than 30 kilograms or 900 places for sows). The second category includes the capacity

for growing: poultry (40,000 places or more); pigs (1000 places or more, for sows – 500 places or more); large and small cattle (1000 places and more); rabbits and other fur animals (2000 heads and more); installations for industrial utilization, removal of animal carcasses and/or animal wastes.

Summarizing the above, we can note that the list of activities that are subject to environmental impact assessment (and by December 2017 – the environmental expertise) has gradually expanded and detailed. At the same time, the current Law of Ukraine “On Environmental Impact Assessment” in the area under study almost literally duplicates the provisions of Directive 2011/92/EU in relation to objects classified in the first category. As for the second category, the Ukrainian legislator imposed more stringent conditions than the Directive, since it provided for a sufficiently wide range of objects and activities for which an environmental impact assessment should be carried out.

An important role in making decisions on the implementation of planned activities in international law (the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter referred to as the Aarhus Convention)) and EU Acts (Directive 2011/92/EU) is given to the public. In particular, the Aarhus Convention states that each of the Parties ensures public participation at an early stage when there is every opportunity to consider different options and where public participation can be most effective.

The Law of Ukraine “On Ecological Expertise” provided that for the purpose of taking into account public opinion the subjects of environmental expertise conduct public hearings or open meetings. Participation of the public in the process of ecological expertise may be carried out through speeches in the media, submission of written comments, proposals and recommendations, the inclusion of representatives of the public in expert commissions, groups on conducting public ecological expertise. Public opinion should be taken into account when preparing the conclusions of the ecological expertise. At the same time, the way in which public opinion was to be taken into account was not indicated.

The Law of Ukraine “On Environmental Impact Assessment” has expanded and detailed the ways of public participation in the discussion of the project of the planned activity. Thus, the public has the right: 1) to submit comments and proposals to the planned activity, scope of research and level of detail of the information to be included in the report on the environmental impact assessment; 2) to participate in the public discussion of the planned activity after submission of the report on the environmental impact assessment, which is carried out in the form of public hearings and the provision of written comments and proposals. In addition, we consider positive expansion of the Ukrainian legislator in comparison with the Directive number 2011/92/EU of the circle of persons who can participate in the discussion of the project of the planned activity with the public concerned to the public at large.

It should be noted that under the new Law, the public received more leverage of influence on the situation. After all, in contrast to the conclusion of the public environmental expertise (which had no binding force), public opinion can not be ignored: in the conclusion of the EIA, comments and suggestions that came from the public discussion should be taken into account or reasonably rejected. However, the Law does not define the relationship between the public’s comments and the adoption of a final conclusion on the environmental impact assessment. Everything relies on the subjective factor: at the discretion of the person who prepares such a conclusion. An attempt to bring objectivity in the process of forming a conclusion seems to be the possibility of formation under the appropriate authorized body, expert commissions for assessing the impact on the environment. However, the qualification requirements for candidates for such experts and the procedure for their selection at the normative level have not yet been approved.

In the Unified Register of Environmental Impact Assessment as of August 2, 2018, 12 EIA procedures were registered in the field under study in relation to intensive pig and poultry production projects. At the same time, in about half of the procedures the public really takes an active part. In considering projects for construction or expansion of pig complexes, the public generally requires additional research on the impact of certain factors on the

environment. As for the construction projects of poultry houses, the public often provides active resistance.

For example, we can consider the materials of the EIA “New construction of brigade for the production of chicken broilers no 55 on the territory of the Mikhailivka village council of Tulchinsky district of the Vinnytsia region”<sup>1</sup>. According to the media<sup>2</sup>, the public opposed the expansion of the poultry farm. This was manifested both in protest actions and in the preparation of letters to authorized bodies and international organizations (including the EBRD) and in participation in public discussions conducted within the framework of the EIA procedure. As for public discussions, it should be noted that with 23 comments submitted by the public, only 5 were partially and 1 was completely taken into account, the rest were rejected. The comments concerned both violations in the procedure for conducting public hearings and the fears of villagers that new construction will increase the negative impact on the environment, which in turn will lead to deterioration of their health and living conditions. In this type of discussion, the situation is such that local authorities tend to support similar projects as they bring in investments in the development of the corresponding settlements: additional budget revenues, increase of workplaces, development of social infrastructure. Consequently, the issue of ecology and the provision of a safe environment for life and health go away for a second, or even a third, plan.

The foregoing raises the question of how the public can appeal against the decision taken by the authorized body in the case that its proposals and comments are ignored. The Law of Ukraine “On Environmental Impact Assessment” provided for only the judicial procedure for the settlement of such disputes. That is, in fact, the public can defend their position only in court after approval of the conclusion on environmental impact assessment. In our opinion,

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<sup>1</sup> EIA Register.: <http://eia.menr.gov.ua/places/view/28> (access: 02.08.2018).

<sup>2</sup> Селяни проти «Нашої Ряби» Юрія Косюка. ЄБРР розпочав розслідування.: <https://vn.20minut.ua/Groshi/selyani-proti-nashoyi-ryabi-yuriya-kosyuka-ebrr-rozpochav-rozsliduvann-10700421.html> (access: 02.08.2018).

this approach of the legislator does not fully ensure the right of the public to take into account its views when planning potentially hazardous activities. After all, challenging an already adopted decision is far from as effective as agreeing on an acceptable variant for all parties of the process before making such a decision. We believe that it is precisely from these considerations that the Aarhus Convention Compliance Committee noted that to ensure proper conduct of the public participation procedure, the administrative functions related to its organization are usually delegated to bodies or individuals which are quite often specializing in public participation or mediation, are impartial and do not represent any interests related to the proposed activity being subject to the decision-making<sup>3</sup>. From the above, there are two basic requirements for the organizers of public discussions: they must be competent and impartial.

In view of the above, in our opinion, the Procedure for conducting public hearings in the process of environmental impact assessment (CMU Decree of December 13, 2017, no 989) needs to be improved. After all, it indicates that the organizer of public hearings may be a legal entity or an individual entrepreneur who has experience in the field of environmental protection for at least two years and the human and technical resources necessary for holding public hearings in the relevant region or regions. However, in our opinion, experience in the field of environmental protection is not obligatory for successful moderation of the discussion. Significantly important is the experience of organizing and conducting negotiations and discussions, conflict resolution skills, etc.

In view of the complexity of the conflicts that may arise in the process of public discussion of the planned activities, in our opinion, the development of a mechanism for the implementation of mediation in this area is extremely important and relevant. Such conflicts are usually multilateral and characterized by complex interdependence (solving one aspect tends to create new challenges). The proposed procedure is aimed at resolving disputes by finding

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<sup>3</sup> A. Andrusevych, S. Kern (ed.), *Case Law of the Aarhus Convention Compliance Committee (2004–2014)*, Lviv 2016, p. 55.

common interests and making a decision that will suit all parties of the process.

In fact, any conflict concerning the planning and placement of livestock and poultry complexes covers the interests of the public, business entities, and authorities. Thus, obviously there is an apparent imbalance between forces and authorities. The specificity of mediation as a way of resolving conflicts is aimed at overcoming this imbalance and ensuring the equality of the parties in the negotiations. The mediator should put the interests of all parties at one level, using a variety of methods and tools for this. Such an expansion of the capabilities of “weak stakeholders” and the creation of a balance of power between the parties involved is an absolute plus of the use of mediation to resolve conflicts that arise when planning the placement of livestock and poultry farms<sup>4</sup>.

In addition, mediation allows the independent expert to be involved in the negotiation process, the conclusions of which will be trusted by the parties. Mediation will facilitate a better understanding of the real situation because the neutral person (mediator) objectively assesses the case and, in the case of conducting estimated mediation, helps each party better understand the strengths and weaknesses of their positions. Therefore, even if mediation does not resolve the dispute, this improvement of understanding may lead the parties to focus their claims or arguments in such a way as to facilitate future negotiations or disputes.

However, despite the obvious advantages of using mediation in the process of environmental impact assessment, there are a number of difficulties in implementing this procedure in Ukrainian realities. In particular, in Ukraine there is still no clear legal regulation of mediation. At present, only a draft law on mediation is available, around which numerous discussions are held. In addition, in order to properly regulate mediation while planning potentially hazardous activities, in our opinion, it is necessary to resolve the following issues:

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<sup>4</sup> U. Caser, C. Marques Cebola, *Environmental mediation: an instrument for collaborative decision making in territorial planning*, „Finisterra. Revista Portuguesa de Geografia” 2017, LII, no 104, p. 113.



1. At what stage of the EIA may mediation be applied? We believe that mediation can be applied at any stage of the EIA. Moreover, if it is obvious that the conflict can not be avoided, mediation should be applied as soon as possible. After all, as practice shows, in order to maximally take into account the interests of all stakeholders, the involvement of the public in the dialogue should take place from the very beginning of the planning process (when ideas can be discussed, challenged and finalized) and continue until decisions on the implementation of activities are made.
2. Can mediation, in some cases, be mandatory for application? In our opinion, this question is rather controversial. After all, the obligation violates one of the basic principles of mediation – the voluntary participation of the parties. At the same time, we consider it is acceptable to provide for a norm according to which the organizer of public hearings, if there are fundamental contradictions in the proposed activity, should invite the parties to settle the dispute through mediation.
3. What should be the terms of the mediation procedure? We believe that in order to prevent abuse and delay of EIA, mediation should not exceed 60 days, with the possibility of extension, if necessary, up to 90 days.

Conclusions. Summing up the above, it should be noted that EIA is an extremely important mechanism aimed at providing the safest possible for the environment and human health placing and determining the conditions for the operation of livestock and poultry farms. At the same time, such projects tend to generate active public discussion. The conducted research shows that the legislation of Ukraine in this area meets the requirements of the EU and international acts. However, in order to improve the mechanism of public participation, strengthening the objectivity of the procedure and creating conditions for resolving conflicts at the planning stage, in our opinion, a number of changes and additions to the current legislation of Ukraine should be made.

## STRESZCZENIE

### Ocena wpływu na środowisko hodowli zwierząt gospodarskich i drobiu: udział społeczeństwa

Niniejszy artykuł poświęcony jest regulacjom prawnym prowadzenia ocen oddziaływania na środowisko (OOŚ) przemysłowych hodowli zwierząt gospodarskich i drobiu. W tekście autorka analizuje wytyczne z prawodawstwa Unii Europejskiej i Ukrainy dotyczące przedmiotów, objętych postępowaniem w sprawie oceny oddziaływania na środowisko. Zwrócono jednocześnie uwagę na wpływ udziału społeczeństwa w procedurze oceny oddziaływania na środowisko przemysłowych hodowli zwierząt gospodarskich i drobiu. Artykuł determinuje wymagania dotyczące przeprowadzania procesu społecznego, porusza problemy udziału społeczeństwa w OOŚ, które wpływają na skuteczność procedury, szczególnie równości uczestniczenia w postępowaniu w sprawie oceny oddziaływania hodowli na środowisko na Ukrainie. W celu zwiększenia efektywności prowadzenia OOŚ przemysłowych hodowli zwierząt gospodarskich i drobiu przedstawiono sposoby skutecznego rozwiązywania problemów w tym zakresie.

Co więcej, artykuł został poświęcony możliwości rozwiązywania konfliktów powstających przy ocenie oddziaływania na środowisko przemysłowych hodowli zwierząt gospodarskich i drobiu. Poprzez przeprowadzoną analizę mediacji w tym zakresie autorka podsumowuje, że takie działanie może być jednym ze skutecznych sposobów wypracowania wspólnych ustaleń co do rozstrzygnięcia sporów w sprawie OOŚ.

**Słowa kluczowe:** regulacje prawne przemysłowej hodowli zwierząt gospodarskich; regulacje prawne przemysłowej hodowli drobiu; ocena oddziaływania na środowisko; proces społeczny; mediacja; ochrona środowiska; Ukraina

## SUMMARY

### Environmental impact assessment in livestock and poultry: public participation

The article is devoted to the analysis of the state of the legal regulation of the environmental impact assessment, which is carried out for livestock and poultry complexes. The work analyzes the requirements of the EU

and Ukraine acts on the list of objects to be covered by the EIA procedure. Attention is paid to the issues of public participation in the discussion of planned activities. The requirements for the organization of public hearings have been analyzed in detail, a number of shortcomings have been identified that do not contribute to the effectiveness of the procedure and equality of the participants in such discussions. An attempt is made to formulate possible ways to eliminate the identified shortcomings.

The author also analyzed the place and possibilities of mediation of conflicts that arise when discussing projects for the placement of livestock and poultry complexes. It is concluded that mediation can be one of the effective ways of making a coherent decision and resolving disputes in the EIA process.

**Keywords:** legal regulation of livestock; legal regulation of poultry breeding; environmental impact assessment; public participation; mediation; environmental protection; Ukraine

## BIBLIOGRAPHY

Andrusevych A., Kern S. (eds), *Case Law of the Aarhus Convention Compliance Committee (2004–2014)*, Lviv 2016.

EIA Register. <http://eia.menr.gov.ua/places/view/28> (access: 02.08.2018).

Caser U., Marques Cebola C., *Environmental mediation: an instrument for collaborative decision making in territorial planning*, "Finisterra. Revista Portuguesa de Geografia" 2017, LII, no 104.

Селяни проти «Нашої Ряби» Юрія Косяка. ЄБРР розпочав розслідування. <https://vn.20minut.ua/Groshi/selyani-proti-nashoyi-ryabi-yuriya-kosyuka-ebrr-rozpochav-rozsliduvann-10700421.html> (access: 02.08.2018).

