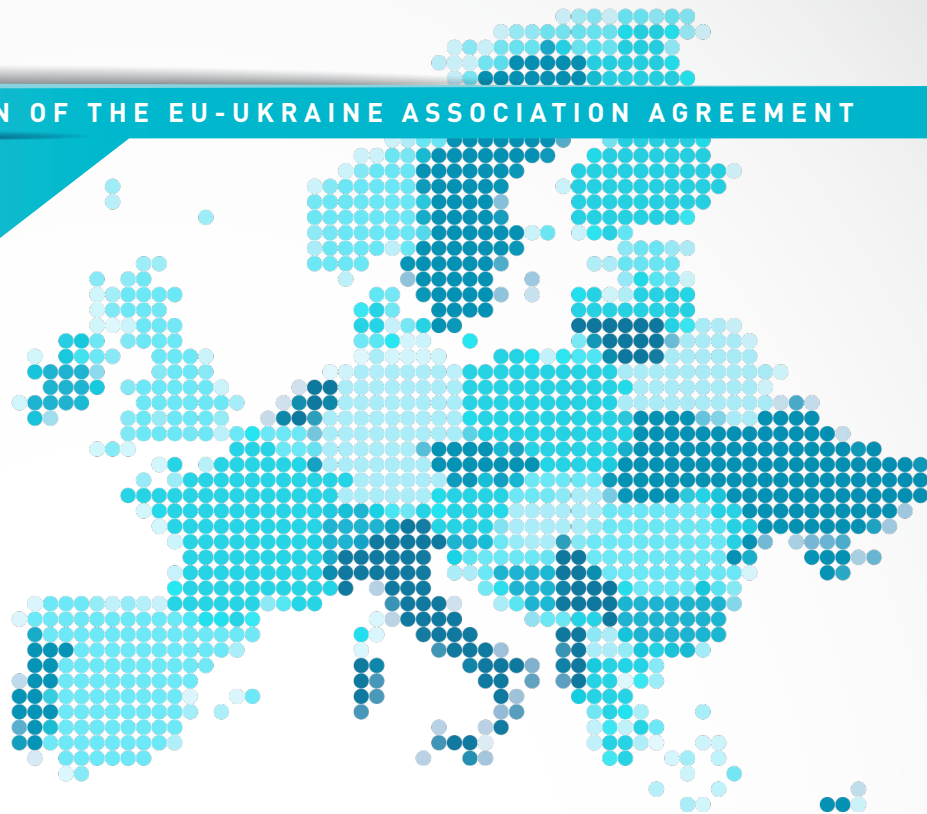


A FALSE START OF ENVIRONMENTAL REFORMS



**PARLIAMENTARY
EXPERT GROUP ON
EUROPEAN INTEGRATION**

Parliamentary Expert Group on European Integration is an independent expert community established by the Open Society Foundation NGO to promote implementation of the EU – Ukraine Association Agreement by improving the quality of lawmaking processes.



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Adopted in early October 2016, the bills On Environmental Impact Assessment and On Strategic Environmental Assessment were unexpectedly vetoed by the President who suggested improvements and finalization of the bills. The Parliament has been considering the bill On Environmental Impact Assessment since June 2015 (including the work on the initial and integrated bills) and the bill On Strategic Environmental Assessment for nearly one year since October 2015.

Ukraine should implement relevant EU Directives of the European Union by the year-end as part of its commitment to the EU-Ukraine Association Agreement. The vetoed bill On Environmental Impact Assessment was meant to introduce the country's first mechanism to evaluate environmental impact of certain business activities. In particular, the bill sought to enhance compliance with the precautionary principle, which lies at the heart of European Union's environment policies. This idea is new to Ukraine. Therefore, it is hard to agree that the bill could create "barriers to a constitutional right of entrepreneurship". In the EU law, the precautionary principle works well without no damages to EU businesses instead of our approach "to relieve consequences". Nonetheless, business associations representing the animal breeding market players welcomed the veto of the bill On Environmental Footprint Evaluation.

The bill On Strategic Environmental Assessment was vetoed for a number of reasons, including the lack of clear criteria to designate particular documents of public planning. It is worth noting in this context that the framework law On Public Forecasts and Preparation of Programs for Social and Economic Development of Ukraine was adopted as back as 2000 and last amended in 2012.

The text of the President's veto includes no proposals regarding the alternative wording of the criticized clauses in both bills. Such proposals are required by the Constitution of Ukraine, as well as by the relevant rules of expertise, adopted by the President of Ukraine in 1997, and the Cabinet of Ministers rules of procedure.

INDUSTRIAL PARKS: INCOMPLIANCE WITH THE ASSOCIATION AGREEMENT

On October 4, 2016, the Verkhovna Rada of Ukraine approved the following bills in principle:

2554a-d

A bill amending Section 20 «Transitional Provisions» of the Tax Code of Ukraine to encourage the development of the domestic industrial sector by attracting investments into the real economy through industrial park.

2555a-d

A bill amending the Customs Code of Ukraine to encourage the development of the domestic industrial sector by attracting investments into the real economy through industrial parks.

Bill 2554a-d suggests tax reliefs for business entities involved in industrial parks, while bill 2555a-d establishes a range of customs reliefs directly for industrial parks. Bill 2554a-d can be regarded as more progressive than other legal provisions on governmental support to undertakings as it establishes particular quantitative and qualitative requirements to aid recipients, unlike previous laws that only determined their status formally. However, bill 2555a-d is less advanced as it provides customs reliefs to industrial parks as a category of undertakings, failing to establish particular criteria.

Both bills envisage the support that is selective, leads to budget losses and gives advantages to recipients. Under the

Law of Ukraine On State Aid to Undertakings and Article 107 of the Treaty on the Functioning of the European Union, this support is subject to monitoring and control. Potentially, these bills may be deemed to adversely affect the competition and the free trade area to be established between Ukraine and the European Union. A key reason (along with the privileges to recipients and budget losses) is the selective nature of this aid. Participants of industrial parks that may receive tax reliefs will get competitive advantages over other undertakings outside industrial parks. Moreover, customs reliefs will give even stronger competitive position to industrial parks and their participants.

A preliminary analysis of the mechanisms has revealed their incompliance with the European Union's state aid rules. Under Article 264 of the EU-Ukraine Association Agreement, these state aid arrangements should be brought in line with the EU state aid rules within seven years from the entry into force of the Agreement. Given that both parties has started taking actions to establish the free trade area since January 1, 2016, the bills, if adopted, should review the support mechanisms to bring them in line with the EU rules.

PROGRESS IN LAWMAKING

Laws adopted:

- On Environmental Impact Assessment (2009a-d).
- On the National Energy and Utilities Regulatory Commission (2966-d).
- On Strategic Impact Assessment (3259).
- On amending certain regulatory acts of Ukraine to introduce basin principle of integrated water resources management (1641-VIII dd. October 4, 2016).

Bills endorsed in the first reading:

- On amending legislation on protection of economic competition regarding establishment by the Antimonopoly Committee

of Ukraine the size of penalties for violations of the competition laws (2431).

- On the Electricity Market of Ukraine (4493).
- On amending certain regulatory acts of Ukraine to implement the 1979 Convention on the Conservation of European Wildlife and Natural Habitats (2023).
- On amending certain regulatory acts of Ukraine to protect fauna and flora according to international treaties (3445).
- On amending certain regulatory acts of Ukraine to implement European norms of endangered species protection (2604).

EXPERT RECOMMENDATIONS

1) The Rules of Procedure of the Verkhovna Rada of Ukraine should envisage a mandatory opinion on compliance with the Association Agreement and EU law, such opinion to be attached to every bill registered in the Parliament.

2) The Parliament should speed up consideration of European integration bills submitted by the Cabinet and MPs (the list is attached).

3) The Committee on Environmental Policy, Natural Resources Management and Recovery from Chornobyl Disaster should, within the shortest time possible, consider suggestions of the President of Ukraine to improve bills On Environmental Impact Assessment and On Strategic Impact Assessment and take priority actions jointly with stakeholders to finalize the bills for them to be enacted.

LAWMAKING AND IMPLEMENTATION OF THE EU-UKRAINE ASSOCIATION AGREEMENT

**EUROPEAN INTEGRATION BILLS CONSIDERED
 CURRENTLY BY THE VERKHOVNA RADA OF UKRAINE**

1.	0906	On the government control to observe the compliance with laws on safety and quality of food and animal feedstock, on animals' health and welfare .
2.	2431	On amending legislation on protection of economic competition regarding establishment by the Antimonopoly Committee of Ukraine the size of penalties for violations of the competition laws.
3.	2845	On Animal Feedstock Security and Hygiene.
4.	4493	On the Electricity Market of Ukraine .
5.	4496	On amending certain regulatory acts of Ukraine to remove administrative barriers to exports of services.
6.	4579	On amending certain regulatory acts of Ukraine to acquire, exercise and protect the copyright and related rights .
7.	4584	On amending certain laws of Ukraine that regulate government statistics .
8.	4589	On amending certain food safety laws of Ukraine.
9.	4591	On Business Ombudsman.
10.	4593	On Rail Transport of Ukraine.
11.	4611	On Requirements to Food Contact Items and Materials.
12.	4614	On amending the Customs Code of Ukraine to protect intellectual property in the movement of commodities across customs borders of Ukraine.
13.	4615	On amending the Customs Code of Ukraine to comply with the EU – Ukraine Association Agreement.
14.	4619	On amending the Tax Code of Ukraine (in regard to tobacco products taxation).
15.	4629	On amending certain regulatory acts of Ukraine to protect the copyright and related rights in the Internet.
16.	4644	On amending certain regulatory acts of Ukraine to harmonize them with the EU legislation on transportation of dangerous goods.
17.	4646	On amending the Law of Ukraine "«On Accounting and Financial Reporting in Ukraine» to improve certain provisions.
18.	4683	On amending certain automotive transport acts of Ukraine to harmonize them with the EU regulatory acts .
19.	4685	On Electronic Trust Services.
20.	4775	On amending certain laws of Ukraine related to European groupings of cross-border cooperation.
21.	4941	On the Energy Efficiency of Buildings.