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## ENVIRONMENTAL AUDIT AS AN ELEMENT OF THE LEGAL MECHANISM FOR PREPARING AND MAKING ENVIRONMENTALLY SOUND DECISIONS

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The article explores environmental audit as an effective tool to facilitate informed and informed environmental decisions. Eco-audit is aimed at identifying violations of environmental legislation that have already been committed in the course of business and other activities, or potential violations at earlier stages, in particular to identify potential risks. This reflects the preventive function of eco-audit.

**Keywords:** *environmental audit, environmentally friendly solutions, environment, environmental assessment, safety.*

## ЭКОЛОГИЧЕСКИЙ АУДИТ КАК ЭЛЕМЕНТ ПРАВОВОГО МЕХАНИЗМА ПОДГОТОВКИ И ПРИНЯТИЯ ЭКОЛОГОЗНАЧИМЫХ РЕШЕНИЙ

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В статье исследован экологический аудит как эффективный инструмент, способствующий принятию взвешенных и обоснованных экологически значимых решений. Проведение экоаудита направлено на выявление нарушений законодательства об охране окружающей среды, которые уже допущены в процессе хозяйственной и иной деятельности, или же потенциальных нарушений на более ранних стадиях, в частности на выявление возможных рисков. Это отражает профилактическую функцию экоаудита.

**Ключевые слова:** *экологический аудит, экологически значимые решения, окружающая среда, экологическая оценка, безопасность.*

## AUDITUL DE MEDIU CA ELEMENT AL MECANISMULUI LEGAL DE PREGĂTIRE ȘI ADOPTARE A UNOR DECIZII ECOLOGICE

Articolul explorează auditul de mediu ca un instrument eficient pentru a facilita deciziile de mediu informat. Auditul ecologic are ca scop identificarea încălcărilor legislației de mediu care au fost deja săvârșite în cursul activităților comerciale și a altor activități sau potențiale încălcări în etapele anterioare, în special, pentru identificarea riscurilor potențiale. Aceasta reflectă funcția preventivă a auditului eco.

**Cuvinte-cheie:** *audit de mediu, soluții ecologice, mediu, evaluare de mediu, siguranță.*

**Introduction.** Environmental audit is an important tool to make balanced environmental decisions. Therefore, environmental auditing isn't an end of itself, but a mechanism allowing to make rational and balanced management decisions.

**Formulation of the problem.** To improve Ukrainian legislation about regulation of relations associated with preparation and environmental decisions making when conducting an environmental impact assessment.

**Analysis of research and publi-**



**cations.** The theoretical basis of the research was the works of domestic and foreign scientists, in particular V.I. Andreytseva, O.V. Besyatsky, G.Y. Bistrova, M.M. Brynchuk, S.A. Bogolyubova, V.A. Vasilenko, M.I. Vasilyeva, A.P. Getman, M.T. Gogayeva, O.K. Golichenkova, N.M. Grishina, T.R. Zakharchenko, L.M. Zdorovko, N.R. Kobetskoy, V.V. Kostitsky, S.M. Kravchenko, G.A. Larionova and others.

**The purpose of the work** is to develop proposals for improving the legal regulation of environmental impact assessment, strategic environmental assessment, environmental audit in the context of the legal mechanism for making environmentally significant decisions.

**Main body.** In the legislation of Ukraine, the concept of “environmental audit” is a new phenomenon, a new institute, while in developed countries of the world ecological audit has been known for about 20–40 years.

The concept of environmental audit itself began to be developed in the 1970s at almost the same time and independently in several economically developed countries (the USA, Canada, the United Kingdom, the Netherlands, Sweden, etc.) as an objective response to the sharp deterioration of the environment. According to the definition of the International Organization for Standardization (ISO), environmental auditing is a documented, systematic process that involves objectively obtaining and evaluating information to determine whether specific environmental measures, conditions, management systems, or information meet their criteria. audit, as well as transferring the results of this process to the customer [1, p. 101].

In the broad sense of the word, environmental audit means independent qualified analysis, evaluation, development of appropriate recommendations and proposals based on the actual results of any environmentally significant activity. This involves not only checking the work and reporting of enterprises and organizations, but also a wide range of additional audit services, in particular, advisory, focused on improving the effectiveness of the internal system of control and management of the audited object [1, p. 100].

The environmental audit examines

only factual, documented evidence. The practice of peer review is here in a row of the cases are not allowed and the issue offorecasting is not a matter of competence of environmental audit. Despite these significant differences, environmental audit can be used in environmental assessment of various projects.

However, unfortunately, the situation in the field of environmental rights, including the right of everyone to a safe and healthy environment, can be considered catastrophic in the country.

The concept, conditions and procedure of environmental audit in Ukraine is regulated by the Laws of Ukraine “About Environmental Protection”, “About Environmental Audit” [2], as well as DSTU(National Standard of Ukraine) ISO 19011: 2012 “Guidelines for auditing management systems” [3], a number of other standards and regulations.

According to the Law of Ukraine “On Environmental Audit”, environmental audit is a documented systematic independent process of environmental audit assessment, which includes the collection and objective evaluation of evidence to determine the compliance of certain activities, measures, conditions, environmental management system and information about these issues related to the requirements of the legislation about environmental protection and other criteria of environmental audit.

Article 11 of the above mentioned Law defines the areas of environmental audit, in particular the audit is carried out: in the process of privatization of state-owned objects, another change of ownership, change of specific owners of objects, as well as for the needs of environmental insurance, in the case of transfer of state’s objects and municipal property for long-term lease, concession, creation on the basis of such joint ventures, creation, operation and certification of environmental management systems, as well as implementation of economic and other activity. This environmental audit is different from the ATS, because its subject matter and scope are not planned activities, but implemented or implemented activities, and the conditions for the role of the legal mechanism of environmental decision-making will increase, but it

cannot function outside the legal mechanism of environmental management and protection.

Environmental audit is a legal institution that is effective enough to ensure functioning of mechanism for ecology solutions under contemporary circumstances.

In Ukraine legal regulation of environmental audit is based on the Constitutional norms. In particular norms of Article 3 are determinative. These norms recognize a human being, his or her life and health as the highest social value. At the same time rights and freedoms of man and their guarantees determine content and orientation of activity of the state. The state is responsible to the man for the activity. The main duty of the state is to assert and provide rights and freedoms for man. Also, according to norms of Article 50 everybody has a right to the environment safe for life and health, a right for free access to state information about environment, quality of food products and household items, and a right to distribute such information. Environmental audit is a one of the mechanisms of implementation these constitutional provisions.

The role of environmental audit in making environmentally significant decisions has increased with Ukraine’s transition to market economy, active attraction of foreign investments, an opportunity to enter international markets, etc. A substantial amount of foreign investments in Ukraine’s economy stipulates conducting of mandatory environmental audit programs. First and foremost, this requirement concerns investing through The European Bank for Reconstruction and Development, The International Bank for Reconstruction and Development, The World Bank, etc.

Environmental audit is an important tool to make balanced environmental decisions.

Therefore, environmental auditing isn’t an end of itself, but a mechanism allowing to make rational and balanced management decisions.

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However, in the legal definition of



this element there is no such essential feature as its importance for making environmentally sound decisions.

At the same time, environmental audit is a necessary element of the green decision-making mechanism, and its role in ensuring compliance with environmental requirements depends on establishing a sufficient legal framework.

M.N. Brynchuk: environmental audit refers to the verification and assessment of the status of legal entities and citizens-entrepreneurs in ensuring the rational use of the environment and the protection of the environment from harmful effects, including the state of cleaning and technological equipment, their compliance with the requirements of current legislation, conducted to identify past and existing environmental problems for the preparation and adoption of sound environmental decisions.

Removing this gap is essential for the legal mechanism for making green decisions. After all, the implementation of environmental audits is not an end in itself, but a mechanism that allows you to make rational, sound management decisions.

To better understand the nature of the environmental audit, we will identify and uncover the key elements of the environmental audit, which include principles, objects, criteria, goals and objectives.

According to the definition of environmental audit given in the Law, the basic principles of environmental audit include: independence; legality; scientific validity; objectivity; impartiality; certainty; documentation; confidentiality; personal responsibility of the auditor.

To the objects of environmental audit the Law of Ukraine "On environmental audit" refers to enterprises, institutions and organizations, their branches and representative offices or associations, individual production facilities, other economic objects; environmental management systems; other objects provided by law.

And the subject of the environmental audit is specific documentation in the field of environmental protection, environmental management and environmental safety, as well as the actual activities of natural and legal persons having environmental impact. As noted

in Art. 6 of the Law of Ukraine "About Environmental Audit".

The environmental audit evidence is documented information about the activity of the environmental audit object that can be verified. The environmental audit evidence is used by the environmental auditor to determine the compliance of the environmental audit object with the requirements of the legislation of Ukraine on environmental protection and other criteria of environmental audit.

Criteria are used to evaluate objects in the environmental audit process – specific requirements that may be contained in environmental legislation, standards, and the organization's environmental policies and procedures established within the organization's environmental management system, under the terms of contracts, contracts. According to Art. 5 of the Law of Ukraine "On Environmental Audit" criteria of environmental audit are the requirements of regulatory acts on environmental protection, methods, guidelines, organizational requirements, guided by which the environmental auditor evaluates the evidence of environmental audit, conducts their analysis and prepares a conclusion on the object of environmental audit. The environmental audit criteria may also be subject to other legal requirements. The environmental audit criteria are defined in the environmental audit contract.

The main purpose of the environmental audit is to ensure compliance with environmental legislation in the course of business and other activities.

An additional goal of environmental audit is to provide guidance on how to improve environmental impact. The stated purpose is additional because it is not always necessary, the more so the recommendations of the environmental audit are often of a general nature, for the realization of which a whole complex of additional studies that are outside the scope of the environmental audit agreement is required.

Among the many types of environmental audit, when applied in the mechanism of making environmentally sound decisions, it is important to classify it as mandatory and voluntary. Voluntary environmental audits are carried out in relation to any custom environmental audit facilities the subject concerned with the consent of the manager

or the owner of the environmental audit facility.

Mandatory environmental audit is commissioned by interested executive bodies or local self-government bodies for objects or activities that pose increased environmental risk, according to the list approved by the Cabinet of Ministers of Ukraine in the following cases:

- bankruptcy;
- privatization, concession of state and communal property, except in cases stipulated by law;
- transfer or acquisition into state or communal property;
- leasing of state or municipal property;
- creation of joint ventures on the basis of state and communal property;
- environmental insurance of objects;
- Completion of the product sharing agreement in accordance with the law;
- in other cases provided by law.

The necessity of establishing a mandatory environmental audit is dictated by the interests not of economic, but above all of environmental safety. In this regard, in our opinion, it is necessary to enshrine in the Law of Ukraine "About Environmental Audit" the mandatory environmental audit also in the following cases, namely:

- reorganization in the form of mergers, divisions, separation of economic entities engaged in environmental activities;
- preparation and presentation of environmental reports to public authorities and the public by economic entities whose activities have a significant impact on the environment;
- confirmation of the accuracy of data provided for obtaining environmental tax benefits, granting state loans for environmental protection measures, etc.

Sometimes, banks, environmental companies, new owners, government bodies and public organizations are interested in conducting environmental audits. Banks use the environmental audits to reduce the risk of non-repayment of loans, since the assessment of the state of natural resources, environmental and technological equipment, the detection of arrears of environmental payments made through an environ-



mental audit, give a true picture of the financial condition of the borrower. In addition, Western banks adopted the Sustainability Principles in 2003. These are voluntary principles, according to which one of the conditions for financing projects that can affect the environment is the conduct of an environmental audit to determine the environmental risks of the planned activity.

Environmental auditing is also increasingly important for environmental businesses. For example, when it comes to obtaining loans from international banks, placing securities on international currency exchanges, or making deliveries of products to foreign and international markets. Of particular relevance is the environmental audit of the implementation of international standards ISO 14000 series [ 4 ] at the level of state standards that regulate the methodological bases of auditing environmental performance of enterprises.

The Law of Ukraine “On Environmental Audit” also proposes to classify environmental audits on internal and external (Article 13). An internal environmental audit of the facility is carried out at the request of its owner or the body authorized to manage it for their own needs. External environmental audit is carried out at the request of other interested entities.

Representatives of the French science of environmental law identify two main types of environmental audit:

- diagnostic, which allows checking compliance of activity of this or that enterprise with environmental norms and standards at a certain moment. This type of audit has the direct purpose of preventing the risk of damage to the environment and allows us to analyze the threats from potential sources of danger, which in some cases may lead to the administrative or even criminal liability of the enterprise. This indicates that there is a preventative potential for this type of audit. Environmental risk audit allows businesses to choose the appropriate means of preventing environmental risks, as well as to select the most appropriate and least costly means of recovering damage, ie to use the necessary type of environmental risk insurance.

- operating, which allows checking the compliance of these activities with

environmental standards and standards from a dynamic point of view, ie within a certain hour. The operational environmental audit allows to control of the enterprise from a dynamic point of view and relates to management aspects of its activities.

Provedennya ekoaudytu aimed primarily at detecting violations of environmental law that has been in the process of economic and other activities or potential violations, or even at an earlier stage, particularly in identifying risks. This reflects the preventive function of eco-audit.

According to the results of the eco-audit, recommendations should be developed aimed at improving the activities, improving the eco-efficiency, and stimulating environmental activities. Today, according to the Law of Ukraine “On Environmental Audit”, the report on environmental audit may contain recommendations on the measures that should be taken to eliminate the identified discrepancies (Part 2 of Article 20 of the Law). Instead, we propose to make this provision imperative. Although it is clear that not all recommendations will be objective in nature, in any case, they will, firstly, facilitate the legitimate behavior of business entities; secondly, it will be a kind of guarantee for the business entities if the recommendations from the controlling bodies are fulfilled.

It is important to emphasize that voluntary environmental audit is not only a legal mechanism of self-control, but also an instrument that allows an early-stage entity to identify risks, weaknesses, and prevent the cumulative effect of minor violations of environmental legal requirements until they have evolved into a systematic violation of the law, that entails legal liability.

**Conclusions.** In our view, it is the preventative function of an environmental audit that needs legislative support, encouragement and development. For this purpose, it is important to use the experience of foreign countries in which the legal institute of environmental audit occupies an important place in national environmental law.

Thus, among the reasons for conducting an environmental audit are:

- Reducing the risk of receiving penalties for environmental payments, damaging the environment; for viola-

tion of tax legislation in the field of environmental management;

- increasing the level of competitiveness of manufactured products and investment attractiveness of the business;

- development of production and bringing it in line with international standards.

Given the level of legal regulation of environmental audits in Ukraine, it can be argued that it is a new legal institution in the system of environmental law in Ukraine.

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