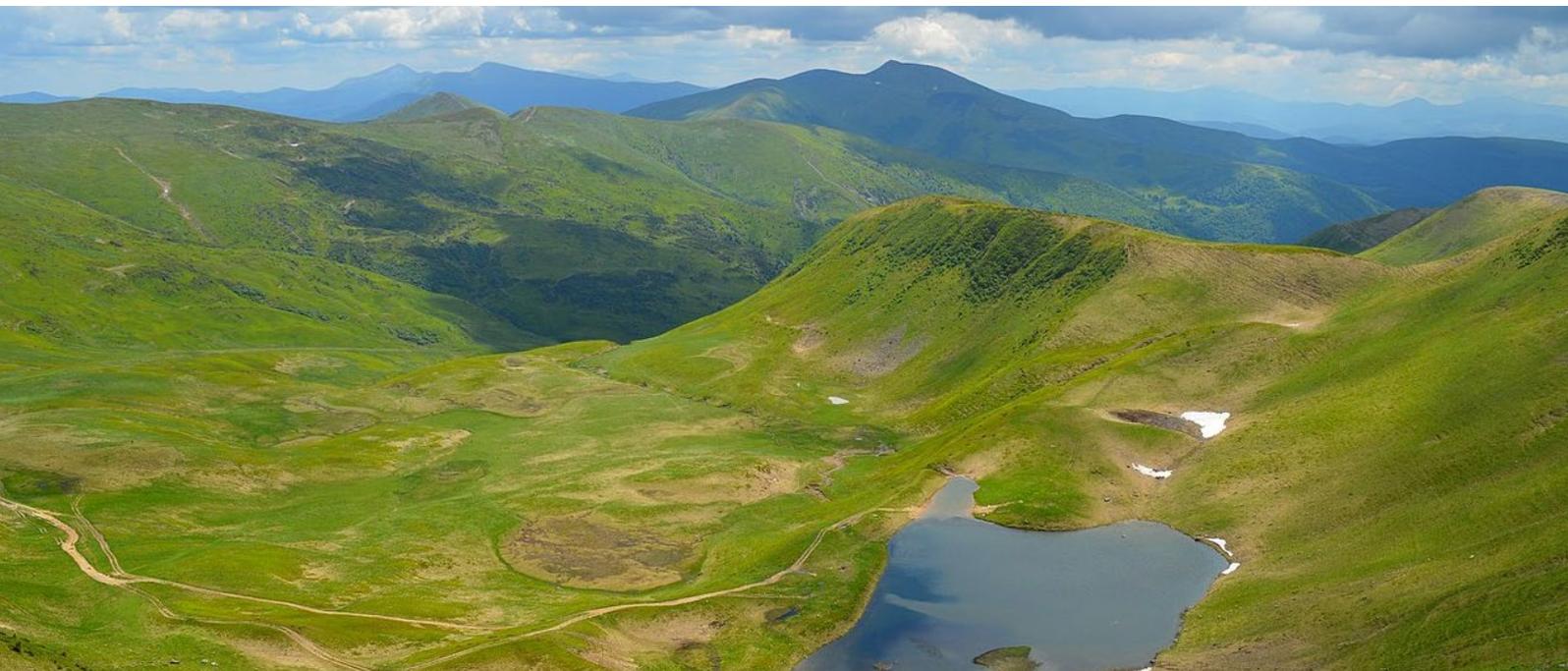




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Public monitoring of the environmental assessment procedures implementation

Part 1. Methodology

Kyiv, 2019

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The author — **Caira Fedir** (photo is created in the framework of photo competition for protection of mountains Svydovets and Borzhava, license CC BY-SA 4.0unchanged). The Carpathian massif Svydovets is under the public watching because of the plans of building a huge ski resort. In particular, the public is monitoring the process of environmental impact assessment here.

More information — in the publications of the project.



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This methodology is aimed to help in monitoring of environmental assessment procedures implementation in the Eastern European countries that are in the process of bringing their environmental legislation in line with international requirements. This publication presents:

- the main principles of implementation process;
- steps of monitoring that will help to determine the position of environmental assessment procedures in a particular country;
- main implementation problems with the purpose to solve them;
- advantages of full implementation, one of which is prevention of environmental damages and ensuring sustainable development of the state.

■ Abbreviations

The following abbreviations have been used in this publication:

EA — environmental assessments

EIA — environmental impact assessment

SEA — strategic environmental assessment

■ Terms and Definitions

The following terms have been used in this publication:

Environmental assessments — a general term for various types of assessments of the potential environmental impact of planned activities, relevant plans and programs, etc.

Environmental impact assessment — the process of examining the anticipated environmental effects of a proposed project - from consideration of environmental aspects at design stage, through consultation and preparation of an Environmental Impact Assessment Report (EIAR), evaluation of the EIAR by a competent authority, the subsequent decision as to whether the project should be permitted to proceed, encompassing public response to that decision¹.

Strategic environmental assessment² — the process of examining the anticipated environmental effects of proposed plans and programs that include preparation of an environmental report, carrying out consultations, taking into account the environmental report and the results of the consultations in decision-making and provision information on the decision.

State planning documents — strategies, plans, schemes, urban construction documents, national programmes, state special-purpose programmes, and other programmes and programme documents, including their amendments that are developed and/or have to be approved by a state authority or local authority.

¹Environmental Impact Assessment

²Any plan or project likely to have a significant effect on a Natura 2000, either individually or in combination with other plans or projects, shall undergo an Appropriate Assessment to determine its implications for the site. The competent authorities can only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned (Article 6.3). In exceptional circumstances, a plan or project may still be allowed to go ahead, in spite of a negative assessment, provided there are no alternative solutions and the plan or project is considered to be justified for imperative reasons of overriding public interest. In such cases the Member State must take appropriate compensatory measures to ensure that the overall coherence of the N2000 Network is protected. (Article 6.4)

■ Introduction

Environmental assessments are leading procedures applied in Europe and elsewhere in the world that help to prevent environmental damages, to ensure environmental safety, rational use of nature resources, and to protect human right to a healthy environment in the decision-making process that can have harmful effects on environment. Environmental assessments ensure public participation in decisions on specific activities, plans, programmes and policies relating to the environment and help to adopt final decision in accordance with environmental legislation. It helps to consider state, public, and private interests during a decision-making process and keep these interests in balance with environment.

Environmental assessments ensure the balance between benefits of a particular decision and potential risks and environmental damages from its implementation that leads to sustainable development of the state. EA aim at preserving, protecting and improving the quality of the environment, at protecting human health and for prudent and rational utilisation of natural resources based on the precautionary principle.

EA help to prevent budget expenditures that could be necessary to eliminate environmental damage and their consequences caused by the implementation of the relevant activity or document of state planning. That is why it is important to monitor implementation of the EA international requirements and standards.

In the course of the monitoring it is necessary to take into account how Espoo Convention, Aarhus Convention, EU Directive on the assessment of the effects of certain public and private projects on the environment³, Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context⁴ are implemented in national law. This methodology is made with the aim to carry out objective monitoring of the state of implementation of EA and to identify the causes that hinder the implementation process.

■ Principles of the EA procedures monitoring

During the monitoring of EA implementation priority should be given to:

1. Compliance of adopted laws and provisions on EA with international norms.
2. Efficacy of adopted laws and provisions on EA.
3. Compliance of every step of adopted EA procedures with international requirements.
4. Relations of EA adopted laws and provisions with other national legal acts, especially in the area that governs health protection, land-use planning and planning in different economic sectors, licensing and permit systems and environmental management.
5. Possibility for the analysis and evaluation of possible environmental impacts (including health impacts) of activities before a decision is taken, at the earliest possible stage, as well as in the construction, operation, and phasing-out stages.
6. Support for integrated environmental management for sustainable development.
7. Involvement of all necessary resources for implementation of the EA procedures.

³ Directive 2011/92/EU of the European Parliament and of the Council, http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf

⁴ Strategic Environmental Assessment, legal context, <http://ec.europa.eu/environment/eia/sea-legalcontext.htm>

⁵ EEA, 2015. The European Environment: State and Outlook 2015: Synthesis report. European Environment Agency, Copenhagen, see, p.19-20

■ Consequences of weak EA implementation

Weak implementation increases environmental, economic and social costs. For example, it has been estimated that the costs of damage to the health and environment caused by air pollution from European industrial facilities exceed Euro 100 billion annually⁵. The costs of not implementing environmental acquis⁶ are estimated at around Euro 50 billion in 2011. This means that more than Euro 4 billion monthly were ungrounded expenses of the EU, because practice shows that it is much cheaper to implement all the measures than to cover all economic and environmental costs related to their omissions or procrastinations⁷.

There are also social and economic costs incurred because of the failure to comply with the current environmental requirements. For example, full compliance with the EU policy on waste management can create additional 400,000 jobs and additional annual Euro 42 billion turnover in the area of waste management and waste treatment⁸. Similarly, if the current EU water legislation were fully implemented and all water bodies had "good" water, then total annual benefits would be at least Euro 2,8 billion⁹. Besides social and economic losses, the consequence of non-implementation or belated implementation¹⁰ of environmental requirements, including EA procedures, is also increased public distrust of public authorities that are in charge of the implementation. That is why in order to prevent both environmental and economic consequences, it is crucial to define the state of implementation and the causes that hinder the implementation of EA.

■ Causes of weak implementation of the EA procedures

The implementation of EA procedures may have different degrees of progress, which may be due to both to the process of developing and adopting the relevant regulatory acts and their content, and the availability of mechanisms for implementation and compliance with these norms, as well as with the availability of expert knowledge to prepare a report on the relevant environmental assessment, etc.

In the course of monitoring the state of EA implementation, it is important not only to determine the current state of implementation of procedures, but also to identify the causes that can impede the implementation process, which is important for progress in the implementation of procedures. Among others, causes of weak implementation of EA procedures can be the following:

- insufficient capacity of the administrative authorities responsible for the execution of tasks (in particular, due to insufficient data, evidence, information, and skills, especially at the local level, insufficient human and financial resources allocated to these authorities, as well as due to inadequate sanctions for violating legislation);
- lack of expert knowledge in the normative implementation of EA (development of relevant regulatory acts, etc.), as well as in the implementation of non-normative decisions (creation of relevant registers, publication of information, etc.);
- insufficient funding for the development of implementation mechanisms and compliance with environmental assessments;
- lack of political will;
- low priority of environmental issues;

⁵ One of the most important parts of the EU legislation that includes all environmental legislation.

⁷ <http://www.eea.europa.eu/publications/late-lessons-2> See e.g. the case studies on costs of late or non-action in the EEA report 'Late Lessons from Early Warnings: science, precaution, innovation' (2013)

⁸ http://ec.europa.eu/environment/waste/studies/pdf/study_12_FINAL_REPORT.pdf DG ENV, 2011. Implementing EU legislation for Green Growth. Study achieved by Bio Intelligence service, including the share per Member State of job and turnover creation

⁹ [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU\(2015\)536369](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2015)536369) European Parliamentary Research Service, 2015. Water Legislation: Cost of Non-Europe Report.

¹⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A316%3AFIN>, COM(2016) 316 final.

- low activeness of business entities in submitting applications for EA procedures (in particular, due to inadequate sanctions for violation of legislation);
- lack of background/baseline data on the state of the environment, which should be the basis for EA research;
- absence of public participation at an early stage of the decision making;
- low public participation in EA which could be attributed to:

1. low level of environmental consciousness and public activeness;
2. low level of public awareness about the existence of EA procedures and the rights of the public in these procedures;
3. low level of public awareness of the new planned activity or decision-making on public planning;
4. inability of the public to use registers or other official databases with information on EA;
5. highly technical description and details in case of EIA of projects
6. abstract nature of SEA of the strategic planning documents (plans, programmes, strategies)

■ EA monitoring steps

Persons who perform the monitoring should research legal requirements to EA that exist in the country of monitoring. Such requirements can include international law requirements if they were implemented or ratified by the country of monitoring. Only after it persons the EIA monitoring can be implemented.

Monitoring of EIA and SEA implementation or evaluation of EA procedures that exists in countries (like environment expertise etc.) should be performed according to steps mentioned in tables 1, 2 and should be grounded on below mentioned information:

a) compliance of EA procedures with the international conventions and European legislation¹¹:

1. Current legislation and practice should be checked for the full integration of EA procedures, including each of the relevant stages of EA in the decision-making process;
2. EAs should be applied to a large number of activities and to various types of state planning documents, in particular in the areas such as human settlements development (land-use and urban planning), agriculture and industry (including upgrade of old technologies), energy and transport, development and exploitation of material resources, use of natural resources, recycling, storage and disposal of waste etc;
3. EA procedure should be harmonized internationally to unify terminology to facilitate mutual understanding and to conduct EA procedures in a transboundary context and proper conditions for involvement of public from neighbouring countries ensured;
4. The EA procedure must ensure:
 - a well-defined procedure of applying for a specific activity to the competent authorities;
 - definition of (research) scope of the assessment;
 - the procedure of independent review of the report;
 - the possibility of public participation, including taking into account of the comments of the public in the decision-making;
 - identification of mitigating measures;
 - connection with the decision-making process, including the protocol of decision-making (decisions);
 - post-project analysis and monitoring, analysis and monitoring of the consequences of implementation of the decision;
 - institutional and organizational requirements;

¹¹https://unep.ch/etu/publications/EIA_2ed/EIA_F_top2_hd.PDF

5. For higher efficiency and optimal distribution of financial and human resources, EA procedures should be applied in the location where activities are planned or which will be subject to state planning decisions, and where potential adverse environmental impacts can be expected, including long-term and irreversible consequences;
6. The EA procedure should be applied both to specific projects and to regional development schemes and programs, as well as to general policies and strategies;
7. Defining the scope of (research) assessment should not only indicate the assessments (research) activities, but also provide information on the selected justifiable alternatives;
8. In the process of defining the scope of (research) assessment, all parties concerned should be involved into consultations;
9. EA documentation should be independently analysed to monitor the quality and adequacy of the information before making a decision;
10. The procedure of assessment should be defined in the legislative framework and should be performed by an interdisciplinary team with appropriate expertise in order to ensure preparation of well-balanced and complete results, to increase the acceptability of the consequences and improve management of risks and uncertainties in EA;
11. EAs should allow for direct involvement of the affected public, individuals, groups and organizations at the early stages of EAs so that they can make an important contribution to identifying goals, impacts, alternatives;
12. Notifications about planned activities or state planning decisions should be published as early as possible in the EA procedure for informing the public through direct communication or through mass media such as newspapers, television or radio;
13. Efforts should be made to develop and improve:
 - integrated monitoring programs;
 - methods and programs for collecting, analysing, storing and disseminating in a timely manner directly comparable environmental data for generating baseline data for EA;
14. In order to improve the efficiency of EA, information should be collected to determine the benefits and costs of EA as a means for environmental protection planning and the integration of the environmental component in the decision-making process;
15. If necessary, alternatives should include not only production and consumption, but also different possibilities for technologies, processes, operations, location, mitigation and compensation in the EA procedure, including zero alternatives;
16. There should be promoted certain measures to facilitate the assessment of environmental impacts caused by new technologies in all areas of the economy; it is necessary to develop norms, guidelines and criteria for applying EA principles to technological innovations, in particular in the EIA procedure;
17. EA documentation should include at least the following:
 - the purpose and the need for the activity or for decision-making of the state planning;
 - which public authorities are obliged to make decisions based on the documentation and the reasons for the decisions;
 - description of the activity itself and justifiable alternatives (if necessary, including a zero alternative) in the EIA procedure;
 - potential environmental impacts, their strengths and alternatives, as well as the socio-economic implications of changes in the state of the environment resulting from activities or alternatives, as well as from the state planning decision;
 - the use of true data;
 - identification of gaps in knowledge and uncertainties that were established during the collection of information;

- description of monitoring and mitigation measures to minimize environmental damage;
 - a non-technical summary, including a visual presentation (maps, charts, etc.);
18. Special attention should be paid to the activation of special research programs aimed at:
 - improvement of existing quantitative and qualitative methods of assessing environmental impacts from planned activities or adopted state planning decision;
 - better understanding of cause-effect relationships and their role in integrated environmental management;
 - analysis and monitoring of the effectiveness of implementation of such decisions with the intention to minimize or prevent environmental impacts (post-project analysis);
 - development of methods for stimulating creative approaches to search of environmentally justifiable alternatives to planned activities; production and consumption in the EIA procedure;
 - development of a methodology for applying EA principles at the macroeconomic level;
 19. Education and trainings should be considered as important methods for improving practical application and implementation of EA:
 - to manage (both allies and opponents in power);
 - for practitioners;
 - for students (of universities and other higher schools);
 20. Cooperation in the EA in a transboundary context is necessary and should enable:
 - to provide information, announcements and consultations at the earliest stages of the EA procedure and before deciding on planned activities or on a public planning document with potentially significant environmental impacts from other countries;
 - exchange of true information and data on the planned activities, documents of state planning and their possible transboundary impacts;
 - public participation in the areas that will be affected, based on the principles of reciprocity and non-discrimination;
 - to provide, if necessary, a mechanism for independent analysis, which may include a joint commission, joint monitoring and preparation of documents on the assessment, implementation of mutually agreed mitigation measures to include the views of potentially affected countries in the decision-making process;
 21. It is necessary to include EA norms into the existing or new bilateral or multilateral agreements with potential environmental impacts.

b) compliance of actual level of application of the EA procedure with the desired ideal option in accordance with the EA laws:

1. Ensuring real public participation in EA;
2. The extent to which reliable information about the planned activity or the state planning document is made public and the availability of this information for the parties concerned;
3. The level of application of international requirements at each stage of EA procedures;
4. The reasons for ineffective implementation of rules of EA procedures.

Table 1. Monitoring of EIA processes.

The process should be in compliance with law requirements, including international law requirements, if they were implemented or ratified by the country of monitoring. Detailed questions you may find in the Part 2 of this publication, see MONITORING SHEET (EVALUATION CHECKLIST).

EIA stages	Things to watch
1. Scoping, announcement on planned activity, determination of the scope of research	<ol style="list-style-type: none"> 1. Announcement on the planned activity: the content of the announcement, publication of the announcement and its availability to the public. 2. Public participation in the determination of the scope of research: possibility for the public to give proposals to the scope of research, duration and form of such participation (written comments etc. and the way how public can give such comments).
2. Preparation of EIA report	<ol style="list-style-type: none"> 1. Taking into account results of public participation in the determination of scope of research: who and how considers them. 2. Report on EIA: content of report, including non-technical summary, consideration of public comments to the scope of research.
3. Public participation: public consultations, and, if it is required, transboundary public consultations.	<ol style="list-style-type: none"> 1. Announcement about public consultations: the way of its promulgation and its content. 2. Duration of public consultations and the way how public can take part in them. 3. Availability of the report on EIA to the public: how and where public can find it, and the scope of report (full report or some parts etc.) 4. Transboundary public consultations: availability of grounds for them, countries that were informed and countries that took part in them, the way how and which information was given for such consultations, also language of provided information. 5. Where results of public participation (including transboundary) are placed or who collect them (report on public consultation, what it consists of, etc.), who need to take them into account.
4. Analysis of information received from applicant, public, including foreign public, and preparation conclusion on EIA, including the report on public participation.	<ol style="list-style-type: none"> 1. Who and how prepares the conclusion on EIA 2. Content of conclusion on EIA, including analysis of information received from applicant, public, including foreign public (report on EIA, report on public participation etc.), environmental conditions for performing the planned activity. 3. Availability of conclusion on EIA for the public
5. Preparation of the development consent taking into account the EIA decision and environmental conditions wherein.	<ol style="list-style-type: none"> 1. Information on EIA that is given to prepare the development consent: who gives, which information. 2. Who and how prepares development consent 3. Whether the development consent includes environmental conditions for performing planned the activity, mentioned in the conclusion on EIA. 4. Availability of the development consent for the public
6. Other additional steps of monitoring (if needed).	<ol style="list-style-type: none"> 1. Monitoring of project implementation consequences to environment. 2. Public access to justice in the related to EIA processes questions. 3. Research of other information, if needed

Table 2. Monitoring of SEA processes

The whole process should be in compliance with law requirements, including international law requirements if they were implemented or ratified by the country of monitoring. Detailed questions you may find in the Part 2 of this publication, see MONITORING SHEET (EVALUATION CHECKLIST).

SEA stages	Things to watch
1. Scoping	<ol style="list-style-type: none"> 1. Announcement (application) on the planned activity: the content of the announcement or application, publication of the announcement and its availability to the public. 2. Who and how determines the scope of research 3. Public participation in the determination of the scope of research: public possibility to give proposals to the scope of research, duration and form of such participation (written comments etc. and the way how public can give such comments). 4. Taking into account results of public participation in the determination of scope of research: who and how considers them.
2. Preparation of the SEA report	<ol style="list-style-type: none"> 1. Who prepared it 2. Contents of the report, including non-technical summary, consideration of public comments to the scope of research.
3. Public consultations and, if it is required, transboundary consultations	<ol style="list-style-type: none"> 1. Publication of the report on SEA and of the plan or program project: who and where publishes it. 2. Announcement about public consultations: the way of its promulgation and its content. 3. Duration of public consultations and the way how public can take part in them. 4. Availability of the report on EIA to the public: how and where public can find it, and the scope of report (full report or some parts etc.) 5. Where the results of public participation (including transboundary) are placed or who collects them (report on public consultation, what it consists of, etc.), who and how considers public comments or propositions etc. 6. With which state/local authorities the consultations were held, which information and how was given to authorities, who and how considers and collects the results of such consultations. 7. Transboundary consultations: availability of grounds for them, countries that were informed and countries that took part in them, the way how and which information was given for such consultations, also language of provided information, consideration of the result of such consultations.
4. Taking into account the SEA report findings in adopting the state planning document.	<ol style="list-style-type: none"> 1. Who adopts the state plan or program and how the results of step 3 where considered in it
5. Informing about adoption of the state planning document.	<ol style="list-style-type: none"> 1. Who and how informs about the adopted decision 2. Whether the final decision is published or not, which additional documents are also published with it (results of public participation etc.)
6. Monitoring consequences of state planning document implementation on environment, including population health	<ol style="list-style-type: none"> 1. Who and how performs it and how often (for example, each year) 2. Who, how, when and where need to publish results of monitoring 3. Which additional measures are performed after monitoring (measured for environment damages elimination etc.)
7. Other additional steps of monitoring (if they are needed).	<ol style="list-style-type: none"> 1. Public access to justice in related to EIA processes questions. 2. Research of other information if it is needed

■ Expected results and advantages of EA monitoring

An obvious advantage of monitoring the implementation of international EA norms is the fact that this procedure can help to preliminary and transparently reveal critical issues, gaps and possible structural decisions, including before termination of the period of implementation of relevant requirements or coming into effect of certain measures for implementation of European norms¹², in particular SEA and EIA procedures.

Better implementation increases effectiveness of EA, confidence of the population in environmental legislation, and will also create equal conditions of economic entities working on the internal market¹³. Moreover, the more norms will be implemented, the more effective will be the implementation of new environmental standards, in particular in the application of EA procedures.

As a result of the monitoring, the main problems of implementation will be revealed, which will help to involve international experience and assistance in solving similar problems of implementation. In addition, the findings will allow to use correctly the available funding, and will make the government's achievements in implementation more visible to the public and all stakeholders.

The monitoring will also make it possible to reveal the challenges that can be faced by the government in the course of implementation and ensuring effectiveness of new environmental legislation¹⁴.

■ Conclusions

The effectiveness of implementation of international requirements for environmental assessments in national legislation depends on many factors, including the quality of national norms and the process of their adoption and ensuring the mechanisms for their implementation, the availability of material, scientific, technical and expert resources for the application of EA procedures and compliance with the requirements at each EA stage.

This methodology will allow for objective assessment of the state of implementation of international requirements for environmental procedures in the national legislation, identify gaps and causes that impede the implementation process.

¹² <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A316%3AFIN>, COM(2016) 316 final.

¹³ http://ec.europa.eu/environment/enveco/economics_policy/pdf/report_sept2011.pdf For example, uneven playing field among companies that treat waste according to the legislation and those who illegally export waste. See: The costs of not implementing the environment acquis (COWI 2011), p. 67

¹⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A316%3AFIN>, COM(2016) 316 final.



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