

<p>EU-UKRAINE CIVIL SOCIETY PLATFORM</p>		<p>ПЛАТФОРМА ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА УКРАЇНА-ЄС</p>
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**THE IMPLEMENTATION OF THE CHAPTER ON ENVIRONMENT OF THE EU-UKRAINE ASSOCIATION AGREEMENT: CURRENT SITUATION AND KEY CHALLENGES**

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**Summary**

- The main aim of EU-Ukraine cooperation is to create a legal framework and build state capacity in the environmental protection sector.
- However, progress regarding legal approximation has proven difficult and remains sluggish in a number of priority areas.
- The adoption of laws on environmental governance, which were the major reform priority in 2014-2016, was vetoed by the President.
- The reforms have been undermined by vested interests, weak governance, political instability and lack of leverage on the part of the EU.
- Civil society plays an important role as a source of expertise and information as well as a watchdog; nevertheless, its participation is limited.

**Introduction**

Environmental protection is an integral part of the EU-Ukraine Association Agreement and an important element of the reforms promoted by the EU in Ukraine. It has a potentially far-reaching impact and is of particular importance due to the dire state of the environmental protection sector and its detrimental effect not only on ecological, but also socio-economic and domestic political problems. Ukraine faces considerable environmental risks but lacks the necessary environmental protection legislation and capacity to address the problems.

In this respect, the Chapter on Environmental Protection of the EU-Ukraine Association Agreement (AA), which aims at a gradual approximation of Ukraine's legislation with European legislation and harmonization with EU standards, is a timely and necessary tool. It stipulates that "gradual approximation of the Ukrainian legislation to EU law and policy on environment shall proceed in accordance with Annex XXX to this Agreement". The Annex enumerates necessary steps and sets deadlines for implementation. The provisions of the AA complement the international obligations undertaken by Ukraine. The process of approximation is facilitated by technical assistance.

However, the pace of reform in the area of environmental protection is problematic. Challenges in the sector have a complex, cross-cutting and diverse nature. The reforms suffer from domestic politics,

weak governance and subordination to economic, energy, industrial and financial interests and interest groups as well as to other reform priorities. Civil society is active and strong but lacks opportunities and requires greater cooperation on the part of the government.

In the remainder of this report, the progress made and key challenges are discussed in detail. The report will also provide recommendations.

### **The key elements of the Association Agreement**

The strategic aims and key areas of cooperation in environmental protection are outlined in Chapter 6 of Title V (Economic and Sector Co-operation) of the Association Agreement. Article 361 stipulates that the aim of cooperation shall be to preserve, protect and improve the quality of the environment and promote measures at international level aimed at dealing with regional or global environmental problems. The objectives focus on "environmental governance and horizontal issues, including access to environmental information and decision-making processes; water quality and water resource management, including marine environment; waste and resource management; nature protection, including conservation and protection of bio and landscape diversity; industrial pollution and industrial hazards; genetically modified organisms, including in the field of agriculture".<sup>1</sup>

To achieve these aims, Article 365 in particular points to the need to develop "an overall strategy on environment, covering planned institutional reforms (with timetables) for ensuring implementation and enforcement of environmental legislation; division of competence for the environmental administration at national, regional and municipal levels; procedures for decision-making and the implementation of decisions; procedures for promotion of integration of environment into other policy areas; identification of the necessary human and financial resources and a review mechanism; development of sector strategies, including clearly defined timetables and milestones for implementation, administrative responsibilities as well as financing strategies for investments in infrastructure and technology"<sup>2</sup>.

Annex XXX to the agreement lists 29 EU directives, guidelines for gradual approximation, and provisions for a regular dialogue to be established on these issues.

### **Implementation progress**

Progress in core areas has been slow; in key sectors such as waste management, water management and air pollution it has been mixed. In general, Ukraine achieved limited success with regard to following the timeframe and adopting necessary legislation. Ukraine has not been able to update its key environmental strategy and has failed to implement core legislation on environmental governance.

### ***The National Environmental Strategy***

The key strategic documents are the National Environmental Strategy until 2020 and the National Environmental Action Plan. The Strategy serves as a roadmap for the implementation of the environmental reforms and includes concrete objectives in institutional capacity-building, measures dealing with environmental reforms in line with EU principles, and the international conventions and agreements on environmental protection. The action plan supplemented the strategy, bringing Ukraine closer to the EU's environmental policy standards. However, both documents are outdated and require correction and updating, which is currently being prepared. The amendments are long overdue and need to be adopted more quickly.

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<sup>1</sup> EU/UA/en 405

<sup>2</sup> Ibid.

## *Environmental governance*

The adoption of two laws “**On Environmental Impact Assessment**” (EIA) and the draft law “**On Strategic Environmental Assessment**” (SEA), which provides for a legal procedure for a full environmental impact assessment, was considered by the EU to be the main legislative priority.

**The draft law “On Environmental Impact Assessment”** is based on Directive 2003/4/EC on public access to environmental information and Directive 2011/92/EU on assessing the effects of certain public and private projects on the environment. It creates a foundation for assessing the environmental impact of projects to prevent environmental degradation and public risks.

**The draft law “On Strategic Environmental Assessment”** transposes Directive 2001/42/EC on the assessment of the effects of specific plans on the environment and creates mechanisms of strategic environmental assessment. The adoption of this law is a part of Ukraine’s obligations under the Espoo Convention and the Energy Community Treaty.

Both laws were prepared with significant contributions from the Commission. The laws were prepared by the relevant working group and went through public consultations. Ukraine ratified the SEA Protocol to the Espoo Convention and became a member of the Protocol in December 2015. On 4 October 2016, the parliament adopted both laws, which were vetoed by the President. The Verkhovna Rada failed to return the vetoed drafts on time.

## **Sectoral objectives**

The main sectoral focus is on four sectors, in particular water and waste management, natural protection and air pollution. The Support Group worked with EU Delegation and relevant DGs to facilitate the implementation of the environmental chapter, notably in the fields of water management and nature protection.<sup>3</sup>

Approximation to the EU *acquis*, notably in the areas of waste and water management, is in progress. In 2015, the Cabinet of Ministers approved 21 implementation plans for the transposition of 26 EU environmental directives and regulations, defining the activities of ministries and agencies required for the timely implementation of EU environmental legislation. The plans are also important for ensuring transparency and enabling effective monitoring of implementation by civil society and business representatives<sup>4</sup>. However, the approved plans for the implementation of the relevant directives have not been followed. Ukraine is delaying the development of necessary legislation.

Some progress has been made with *water management*. An interdepartmental working group at the State Water Resources Agency was created in 2015. The law on managing water, based on the Water Framework Directive 2000/60/EC, which establishes a framework for the protection of inland surface waters, ground waters and coastal waters, and on Directive 2007/60/EC on the assessment and management of flood risks, was passed in October 2016. Necessary by-laws and competent authorities have yet to be created<sup>5</sup>. A draft law amending current texts on integrated approaches to water basin management was also adopted. A marine strategy is being developed. However, the preparation of the relevant water management strategy and the reform of the relevant state agency have yet to get underway.

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<sup>3</sup> <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/neighbourhood/pdf/key-documents/ukraine/20161028-report-sgua.pdf>, p. 19

<sup>4</sup> [http://www.kmu.gov.ua/kmu/control/uk/publish/article?art\\_id=248102785&cat\\_id=247984327](http://www.kmu.gov.ua/kmu/control/uk/publish/article?art_id=248102785&cat_id=247984327)

<sup>5</sup> <http://association4u.com.ua/images/components/comp1/EULaw/EU-Law-Developments-Review-for-Ukraine-No-7.pdf>

Progress was also achieved in *waste management*, where the draft strategy was prepared and presented to the Rada committee in February 2017. This strategy shall serve as the basis for implementing regional programmes and waste management plans and has been developed by dozens of Ukrainian and European experts and submitted to public debate<sup>6</sup>. However, its adoption is overdue. The legislative approximation is also delayed and the adoption of necessary Directives including Directive 1999/31/EC is overdue. The Environmental Protection Agency, which is set to act as a regulator, has not yet been created.

**Natural habitat.** Ukraine is party to a number of international conventions in this area, and its national legislation largely meets the requirements of the birds directive, but a number of elements should be improved. A working group was established by the Ministry of Ecology and Natural Resources in 2014. Ukrainian legislation on the conservation of natural habitats is partly compliant with Directives 92/43/EC and 2009/147/EC on special protection zones<sup>7</sup>. Draft laws amending the current laws on the animal world and the protection of animals from cruelty and transposing Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora as amended by Directive 97/62/EC and 2006/105/EC were prepared.<sup>8</sup>

### **Air pollution**

Adoption in this sector is slow. The implementation plan was approved by the Cabinet of Ministers in 2015, with most provisions to be undertaken in 2016-2017. The industrial emissions directive (2010/75/EC) is only partially reflected in the national legislation of Ukraine<sup>9</sup> and a number of by-laws and regulations are missing. The air quality framework directive (2008/50/EC) and fuel quality directive (98/70/EC) have not yet been transposed. A draft concept on the implementation directive (2008/50/EC) has been prepared and submitted for public consultation, but has not been yet approved.

### **Major issues**

The transposition and implementation of the EU *acquis* on environmental protection is undermined by weak governance, low institutional capacity and low priority of the sector in the dialogue taking place between the EU and Ukraine. The environment is often given less priority than other areas and is subject to pressure from business and energy lobbies.

A lack of domestic priority and the prevalence of vested interests are currently undermining reform of the sector. MENR and the relevant agencies are weak. This leads to a lack of coordination and an inability to mainstream environmental issues as part of sectoral policies. The environment is a cross-cutting issue, but other sectoral agencies have priority and undermine the environmental reforms. The strategy on energy contradicts the strategy on the environment. For example, the implementation of the directive on fuel is undermined by the decision of the Ministry of Energy to suspend the reorganisation of the scientific institute "MASMA" in January 2017. Similarly, the hydropower development programme was adopted by the Cabinet of Ministers despite the MENR's opposition<sup>10</sup>. A number of decisions have been taken that violate the AA commitments, which again points to a lack of coordination within the government.

MENR suffered in 2014-2016 from political turbulence and its minor position in Ukraine's power system. Ministers and the core team at the MENR are frequently replaced. This high turnover

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<sup>6</sup> <https://www.ukrinform.net/rubric-politics/2172700-vr-committee-represents-draft-national-waste-management-strategy.html>

<sup>7</sup> <http://archive.eap-csf.eu/assets/images/Nature%20Protection%20EU-Ukraine.pdf>

<sup>8</sup> [http://env-approx.org/images/documents/046/Module\\_1\\_S\\_VI.pdf](http://env-approx.org/images/documents/046/Module_1_S_VI.pdf)

<sup>9</sup> [http://ucep.org.ua/en/wp-content/uploads/2017/04/Zvit\\_2\\_UCEP\\_ENG\\_WEB.pdf](http://ucep.org.ua/en/wp-content/uploads/2017/04/Zvit_2_UCEP_ENG_WEB.pdf)

<sup>10</sup> <http://menr.gov.ua/press-center/news/123-news1/5110-minpryrody-vyslovylo-svoiu-pozytsiiu-shchodo-prohramy-rozvytku-hidroenerhetyky-na-period-do-2026-roku>

undermines the reform process due to lack of continuity and institutional memory as the new minister and his team start again from the beginning. Furthermore, it is affected by political instability and populism.

Domestic special interest groups from the industry, energy sectors and government agencies continue to prevail. For instance, a strong lobby prevents industrial emission regulation and the lifting of the ban on wood exports.

MENR also lacks capacity and power to influence policy and decision-making at regional level in Ukraine. There is a lack of coordination at national, regional and local levels, while the structures and division of responsibilities for dealing with environmental policy are in flux. There is a lack of structural cooperation between the center and the regions and between national and sub-national levels. Regional cooperation is weak. Government reform and updates to the comprehensive strategy are necessary.

Lack of knowledge and technical expertise is a problem. Environmental rules are at times poorly detailed and not properly translated. Important elements of the EU directives are occasionally missing from the prepared drafts, which undermines their quality and scope.

These changes ought to have been supported by a system of economic incentives and the inclusion of and close cooperation with NGOs, environmental experts, scientists and stakeholders at all levels of environmental governance.

Enforcement and reporting mechanisms need to be strengthened. EU-Ukraine dialogue and cooperation are currently being impeded. The reporting mechanism provided for in the Association Agreement is insufficient as there is no specific obligation to report to the European Commission on specific measures taken to transpose and implement the Directives. Monitoring of the implementation process in Ukraine is weak.<sup>11</sup> The panel of experts needed to start the work of the sub-committee is absent. A Domestic Advisory Group has not been established.

On the EU side, there is a lack of leverage when it comes to influencing the transposition and implementation process to complement diplomatic means when these are exhausted. There is a Dispute Settlement Body under DCFTA but the political will is lacking. Since 2014 the bulk of the EU's focus has been in other areas. Furthermore, limited funding and lack of EU-Ukraine institutional structures for dialogue and enforcement deprive the EU of the mechanisms needed to influence the implementation in Ukraine of the EU environmental acquis.

Coordination with other IOs, in particular IFIs and The Energy Community, which have leverage on Ukraine, could be improved.

CSOs are strong and active; however, their role is still limited due to a lack of involvement. Their participation should be increased in a structured and systemic way. CSOs should be provided with better access to information and decision-making to enable them to effectively engage in the reform process.

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<sup>11</sup> Limits of implementation of environmental *acquis communautaire* in Ukraine (2016)

## **Recommendations**

### *Recommendations for Ukraine and the EU:*

- Urgently adopt the laws on EIA and SEI;
- Update the National Strategy in order to streamline environmental reforms across all sectors and create long-term strategic priorities;
- Engage domestic civil society and create preconditions for structured and comprehensive dialogue;
- Increase visibility in society and raise awareness of direct benefits for citizens and local communities;
- The EU should consider a more diverse toolkit to influence Ukraine's reform in the sector, in particular leverage to induce the reforms and better prevent vested interests from blocking the reform process;
- Improve/create special mechanisms for consultation, reporting and monitoring and knowledge sharing.