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“Advancing Belarus, Moldova and Ukraine for the European
Environmental Governance Reforms” project



Living document

Achieving Good Environmental Governance: analysis and recommendations for action

Position Paper Belarus

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Preamble

At the 4th EaP CSF Assembly in 2012, the Statement “THE NEED for BETTER ENVIRONMENTAL GOVERNANCE” was adopted. It followed the conclusions of two assessments¹ held by the EaP CSF WG3 covering Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine and included common for EaP countries trends stipulating that by that time:

- Environmental strategic planning and annual reporting has improved in advanced Association Agenda negotiating countries;
- The administration reforms were weakening administrative structures and procedures for environmental governance;
- Deregulation was undermining an informed decision making process on environmental matters (including elimination of the EIA procedures);
- Mechanisms and procedures for public participation on environment were often ignored in other sectoral policies decision-making processes (e.g. energy, transport, agriculture and industry);
- Environmental policy integration was generally not backed up with legislation (for instance, SEA Protocol remained ungratified except Armenia, no specific national laws adopted), limiting efforts to green economies and improve resource efficiency;
- The potential of the Shared Environmental Information System (SEIS) for improving the quality of information for environmental decision-making was underused.

Based on the 2012 European Integration Index findings², CSOs stressed in the Statement an alarming situation regarding the state of the environment in the six EaP countries, inter alia that the natural area under protection in majority of EaP countries is too little to effectively protect biodiversity and related ecosystem benefits and services. The Statement called for clear targets for EaP countries on key achievements required in Environmental Governance to improve the State of Environment. In conclusion, it called the EU Member States and the EaP countries for the inclusion of Environmental Governance into the political agenda of the EaP Summit in Vilnius in order to promote forceful action on environmental reforms in the EaP countries.

Vilnius Declaration of the 2013 EaP Summit first time (since the regional process was established) stressed the importance of environment as one of priority areas for cooperation that is mutually beneficial for the EU and the partner countries both from an environmental and economic point of view. The Declaration highlighted the need to pursue the process of regulatory approximation and policy convergence in strategically important fields of environment and climate change with particular attention to be paid to the green economy, biodiversity, a shared environmental information system and environmental assessments, the integration of environmental concerns into other sectors and the significant role of civil society.

After the Vilnius Summit, fundamental changes took place in the EaP region. 3 countries concluded Association Agreements with the EU: Georgia (was signed in June 2014 and entered into force on July 2016), Moldova (was signed in June 2014 and entered into force since July 2016), and Ukraine (was signed in June 2014 and entered into force on September 2017). Armenia and the EU have signed the Comprehensive and Enhanced Partnership Agreement (November 2017). Azerbaijan and the EU have renewed in 2017 their engagement and dialogue, including through the launch of negotiations on a comprehensive new agreement (previous bilateral agreement was concluded in

¹ <http://www.eesc.europa.eu/sites/default/files/resources/docs/assessment-of-ep-eng--2.pdf>

² http://archive.mama-86.org/images/stories/reports/WG3_Report_2013_Eng_short_Mama.pdf

1996). Belarus and the EU are also gradually approaching the agreement though clear timer-table and conditions were not set up yet.

The Fifth meeting of the Informal Eastern Partnership Dialogue took place on 29th June 2015 in Minsk with the sector session focused on Environment. This meeting represented the first comprehensive discussion on environmental issues at ministerial level since the creation of the EaP in 2009. The meeting offered the opportunity to discuss openly the implementation of SDGs within the EaP as well as to identify areas of common interests and common challenges and ways to improve our cooperation on environment. It was agreed at the meeting to continue the discussion and took on the requests by EaP countries to continue the meetings at ministerial level suggesting a formal EaP Ministerial on environment with all EU Member States.

The first EaP Partnership formal Ministerial meeting on environment and climate change took place on 18th of October 2016 in Luxembourg, where the EU and the Eastern Partner countries (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine) adopted Ministerial Declaration on cooperation on environment and climate change. The Ministerial meeting tasked the EaP Panel on Environment and Climate Change to steer the implementation of the Declaration. EaP CSF called for clear targets for EaP countries on key achievements required for Good Environmental Governance to improve the State of Environment including both, effective environmental policy and institutions.

The Luxembourg Declaration on cooperation on environment and climate change aimed to improvement of environmental governance, including:

- ensuring transparency, accountability and support evidence-based decision-making, good environmental data in line with Shared Environmental Information System (SEIS) principles, including monitoring and reporting the implementation of SDGs;
- support the involvement of civil society in decision-making, strategic planning and implementation, and results' monitoring of environmental policy, programmes and plans, in line with the Aarhus Convention;
- facilitate discussions between the EU, national governments and CSOs on setting and achieving concrete objectives of environmental reforms in the EaP countries;
- ensure the effective integration of environment into other policies thus support mainstreaming of environment, climate change and sustainable development objectives into all policy areas and enhance cross-sector and inter-Ministerial cooperation; adoption and effective implementation of SEA and EIA procedures at national level and in a transboundary context in line with the Espoo Convention and its Protocol on SEA.

The EU Document “Eastern Partnership — 20 Deliverables for 2020. Focusing on key priorities and tangible results.” defined set of EaP countries achievements during 2017–2020, which included Chapter 16. Environment and adaptation to Climate Change containing targets for Integrated Water Resources Management, Green Economy, Sustainable Forestry, Adaptation to Climate Change, SEIS and Emerald Network.

Good Environmental Governance concept in general includes better institutions, better policy, better involvement of citizens (and various stakeholders) for increasing the effectiveness of nature protection and natural resources use. Good Governance is a new, more horizontal mode of governing in compare with traditional, hierarchical, state-centred style. It also means rules, processes and behaviours that affect the way in which powers are exercised particularly as regards openness, participation, accountability, effectiveness and coherence. It is about how things could and should be done.

In 2018, the Second EaP Partnership formal Ministerial meeting on environment and climate change will take place, where countries will report on their achievement in implementation of the Luxembourg Declaration.

This paper is devoted to snap-shot analysis of the governance status in Belarus, as well as recommendations to the EU, Governments and EaP CSF on actions to support the environmental governance reforms. This is living document, which will continue to be discussed with EaP CSF National Platform, Ministry of Environment, the Government and the EU Delegation.

1. Introduction

Despite some efforts made by the government, decisions on basic environmental issues (including transboundary ones) are still taken with no regard to the interests of the country's citizens, the expert community, often in a non-transparent manner. The practice and the policy of environmental management run in Belarus, despite the positive changes in the legislation, in certain cases do not change for the better, as evidenced by the growing number of conflicts on environmentally significant issues and the chronic state of non-compliance with the environmental conventions of United Nations Economic Commission for Europe (UNECE) by Belarus.

However, a serious challenge and an obstacle to the implementation of sustainable development approaches and principles, as well as good environmental governance is that environmental issues, programs and policies are limited to the efforts of the Ministry of Natural Resources and Environmental Protection, while other government agencies do not consider it their responsibility to integrate environmental approaches into various sectors.

Often enough, Belarus' lobbying for its environmentally risky and controversial projects (e.g. the construction of the Belarusian NPP) does not only pose additional and high risks for the environment of the European space, but also undermines the basis for international environmental cooperation at the level of the UNECE Conventions.

2. Main aspects of environmental policy and legislative regulation

Belarus is a party to 13 global and 10 European international conventions (and protocols to them) in the field of environmental protection.

The following national strategies have been developed:

The Water Strategy of the Republic of Belarus until 2020, and now work is under way to prepare a new strategy until 2030;

In 2015, the Government of the Republic of Belarus adopted a new national Action Plan for the Conservation and Sustainable Use of Biological Diversity for 2016-2020, and a strategy for the conservation and sustainable use of biological diversity was updated;

In 2016, the National Action Plan for the development of the "green" economy in the Republic of Belarus until 2020 was adopted.

In 2017, the National Solid Waste and Secondary Material Resources Management Strategy in the Republic of Belarus for the period up to 2035 was adopted³.

³ Комментарии и предложения к проекту Национальной стратегии по обращению с ТКО и ВМР в Республике Беларусь на период до 2035 года <http://ecoidea.by/ru/media/2801>

A planned increase in the percentage of recoverable secondary material resources can be identified among the priorities of waste management. In 2016, this figure was almost 15 percent, while there is sufficient potential to increase it by half.

Undoubtedly, the introduction of a deposit (collateral) collection system can be attributed to positive tools for handling waste in the draft strategy. Implementation of this component of the strategy will help to prevent the burial of valuable resources and improve the quality of secondary raw materials.

Progressive trends also include the desire for a regional approach to waste management. It is planned to build a modern landfill and waste-processing enterprise in each region,

The next priority of the strategy is to reduce the burial of waste at landfills. At the same time, it is proposed to achieve this goal through construction of an incineration plant and the production of RDF fuel, which can have dangerous consequences.

However, in the strategy, in its turn, should provide mechanisms for preventing waste generation. Furthermore, the draft strategy lacks activities aimed at reducing and preventing the generation of hazardous wastes.

Recently, strategic environmental assessment (SEA) has been introduced into the legislation. However, to date Belarus has not yet acceded to the Protocol on SEA, and legislative regulation of this issue does not fully comply with the Protocol.

This year, due to the implementation of the rules for business liberalization, environmental legislation will undergo significant changes, and environmental rights will be narrowed. Thus, the list of objects that are subject to EIA, as well as the state environmental assessment, underwent significant cuts.

It is also planned to remove from the legislation the possibility for environmental NGOs and citizens to bring an action to the court to suspend (prohibit) the economic activities of legal entities and entrepreneurs, if such activities result in "violation of environmental requirements, causing environmental damage, or a danger of causing future environmental damage is created".

The planned increase in the size of specially protected natural areas (SPNAs) in the National Sustainable Development Strategy (NSDD) is estimated at 8.8% by 2020. At present about 8% of the territory of Belarus is occupied by SPNAs. But only in less than 2% of territories there is an absolutely-protected regime, which implies a ban on any kind of economic activity. The practice of large-scale economic use of a large part of the territories of protected areas for deforestation and hunting wild animals is disturbing. Part of the marshes, which used to be especially protected, are now used for peat extraction.

We deem it necessary to involve local population, public and religious associations, and legal entities in the process of developing management plans for SPNAs at the initial and final stages. To implement the principles of openness and accessibility, information about SPNAs should be made available in an understandable and accessible way for the public.

The menu of opportunities to implement biodiversity conservation objectives and involve the public in environmental decision-making in relation to SPNAs is far from being fully implemented. Presently, to a large extent the management plan remains only a declaration of intent.

3. Institutional changes

One of significant institutional changes in last three-years period was as follows: the body responsible for state environmental assessment was changed from the Ministry of Natural Resources and Environmental Protection and its regional divisions to the educational center established by the Ministry, named “Republican center for state environmental assessment and professional improvement of specialist” since January, 2017.

The organizational structure of the National Environmental Monitoring System (hereinafter - NEMS) was formed, the principles of network set-up and observation rules, the composition of environmental information, the procedure for obtaining it and its provision to consumers of various levels are enshrined in legislation.

Twelve kinds of monitoring, within the framework of which the state of the environment and basic natural complexes are assessed, have been created and are functioning reliably. A mechanism for collecting, transmitting, processing, analyzing, storing and exchanging monitoring information has been developed and is operating.

For the purposes of information support, 11 information and analytical centers for monitoring types have been established and are operating, as well as the main information and analytical center of the NEMS.

Environmental monitoring is carried out by various state bodies and organizations, this information is filed in several databases and registers, which are disparate. In order to facilitate access to environmental monitoring data, the Aarhus Center of the Republic of Belarus made the first attempt to combine monitoring information in one source and created on its website a sub-section, in which 13 types of such monitoring were collected with links to sources (information is located at: <http://aarhusbel.com/eco-help/43>).

There are plans to integrate the NSES into SEIS.

4. Financing issues

In 2011, the target republican fund for nature protection ceased to function. All funds go to the general budget, despite the fact that the sanctions are quite high and have recently show a trend toward an increase, but this is not targeted money, and it does not fully return to the sphere of environmental protection. The volume of financing allocated to environmental protection activities in 2018 will total 0.409% in the country's budget, and this a 0.1 decrease compared to 2015.

5. Public participation and stakeholder involvement in environmental decision-making

Over the past few years, Belarus has taken certain steps to improve legislation with a view to incorporating the provisions of the Aarhus Convention and implementing Decision V/9c of the Meeting of the Parties regarding the case of construction of the Ostrovets Nuclear Power Plant. The institutions for public participation in environmental decision-making, as well as regulation of issues of access to environmental information in terms of securing mechanisms for the implementation of public rights have developed.

However, it is with regret that we make notion of ongoing issues with law enforcement practice and implementation of norms and principles of the Aarhus Convention in the Republic of Belarus.

Despite the legally enshrined procedure for access to environmental information, there are certain difficulties. Most importantly, they are conditioned by the legal conscience of state bodies and other owners of environmental information, which interpret the norms of legislation restrictively. In recent years, there have been more cases of refusal to provide environmental information, as well as documentation for conducting public environmental expertise due to the attribution by government authorities of such information and documentation to restricted information.

Public participation mainly occurs at a stage when it is already very hard to influence the decision-making process. The earliest stage of involving citizens to participate in environmentally significant decisions is absent. Practice leaves much to be desired: often state bodies treat the public formally and with neglect, and, when making decisions, do not take due account of public opinion when implementing an economic activity, which subsequently leads to conflicts. Conflict resolution is still at a rather low level, the parties generally do not want to compromise, each holding on to their position. There is no state control over compliance with the rules by the organizers of the public discussions procedure. An important issue for the public is the inaccessibility of final decisions after their approval, even of those, in the discussion of which the public took part. The final decisions resulting from public discussions in the field of architectural and town planning activities often receive the stamp "for official use" and become inaccessible to the public

Despite the fact that the situation with the construction of the NPP has become the basis for consideration by the Compliance Committee of the Aarhus Convention of the case concerning non-compliance with the Convention by Belarus, the practice with respect to the NPP does not improve in any way, and even shows signs of deterioration. This applies equally to access to environmental information and to public participation in decision-making, the exercise of the right to access to justice, and even to Article 3 (8), whereby the state allows persecution of activists.

Thus, the Meeting of the Parties to the Aarhus Convention held in September 2017 in Budva recognized that there are cases of persecution of anti-nuclear activists in Belarus (Decision of the Meeting of the Parties VI / 8 on compliance by Belarus with its obligations under the Convention)⁴

Compared with the provisions of the Aarhus Convention, the list of normative acts that are subject to discussion with the public is much too narrow. Thus, a limited list of draft normative legal acts is

⁴ https://www.unece.org/fileadmin/DAM/env/pp/mop6/Russian/ECE_MP.PP_2017_22_R.pdf,
https://www.unece.org/fileadmin/DAM/env/pp/mop6/English/ECE_MP.PP_2017_22_E.pdf

subject to public discussion; discussion of such regulations as the Forest Code, the Law on Wildlife, the Law on Specially Protected Natural Areas, the Rules of Hunting, the Rules of Forest Inventory, etc. with the public is not compulsory.

The country's judicial system is not ready to provide effective means of protecting the rights of the public guaranteed by the Convention. Exercising the right to access to justice is greatly complicated by the existing law enforcement practice, when courts simply refuse to take cases to proceedings⁵. Lack of qualification of judicial staff with respect to cases of this category poses a major challenge.

Unfortunately, the issues of implementation of the Aarhus Convention in Belarus are limited to the efforts of the Ministry of Natural Resources and Environmental Protection; other state bodies do not consider implementation of the provisions of the Convention, especially with regard to interaction with the public to discuss environmentally significant issues, to be their responsibility.

6. Conclusions and recommendations

In order to implement good environmental governance, we suggest the following:

- 1) to resume functioning of the republican target budgetary fund for nature protection and ensure targeted financing of measures aimed at solving problems in the field of environmental protection;
- 2) to strengthen the expertise of the Ministry of Natural Resources and Environmental Protection and its territorial bodies, and prevent the reduction of the number of branch offices of the above Ministry (departments for waste management, biodiversity, water resources and others) and territorial bodies;
- 3) to public organizations: to strengthen cooperation and interaction, to summarize successful practices of resolving environmental issues, to conduct campaigns and disseminate them among those interested, including media coverage;
- 4) to the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus, the Ministry of Forestry of the Republic of Belarus, the Ministry of Agriculture and Foods of the Republic of Belarus and other state bodies and organizations: to ensure publicity and transparency in their work, as well as to combat corruption, and for exclusion of "backstage maneuvering" in making important governmental decisions - to include experts from interested public environmental organizations in the composition of interdepartmental working groups, councils, commissions, which deal with issues of environmental protection and use of natural resources.
- 5) to prevent persecution, harassment and pressure on environmental activists exercising their rights under the Aarhus Convention.
- 6) to change the SPNA management system and practical approach to its implementation; to finance state environmental institutions from the state budget in the amount necessary to fulfill the tasks assigned to them; to exclude experimental forestry hunting farms, agricultural and other commercial enterprises from the structure of the state environmental institution.

- We expect the EU to continue and increase the intensity of actions aimed at developing a tripartite dialogue, the parties to which should be not only the government of the Republic of Belarus, but also the consolidated entities of civil society, including the issues of environmental protection, greening the economy and reducing the impact on climate;
- We expect from the EU a dialogue and partnership with the environmental civil society of Belarus not only on environmental issues, but also in a broader sense. These are issues related to

⁵ http://greenbelarus.info/files/downloads/court_review_web_02.2015.pdf

monitoring and evaluation of relevance and effectiveness of programs aimed at preserving the environment, ensuring long-term sustainability of project results, increasing the transparency of spending and decision-making.

- We expect the EU Delegation to Belarus to build an efficient dialogue with the civil society. In this dialogue, we expect close attention to attempts to substitute independent public actors with shell organizations that have state support, but lack public support.
- We invite the EU to cooperate with the aim of implementing the Aarhus Convention and the Espoo Convention in the Republic of Belarus, as well as in expanding the range of state actors involved, which should not be limited to the Ministry of Natural Resources and Environmental Protection.



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The overall amount for the 2017 call for proposals is 290.000 EUR. Grants are available for CSOs from the Eastern Partnership and EU countries.

Key areas of support are democracy and human rights, economic integration, environment and energy, contacts between people, social and labour policies.