

“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 Ukraine

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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 Ukraine, 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

Since the Association Agreement was signed mid 2014, the significance of environmental policy and its cross-cutting nature is gradually growing in Ukraine, with a lot of constraints. Under ultimate goal of reforming the environmental governance system to improve the environmental condition and protection in Ukraine and to transit to sustainable development, Ministry of Ecology and Natural Resources became a real leader in implementing environmental reforming agenda. Yet, there is a lack of understanding, legislative instruments and political support to the environmental policy integration among different stakeholders, including the Government by itself, MPs, Local authorities and business. With the Association Agreement implementation as the main priority for Ukraine, Ministry declared end of 2016 that **jointly with environmental NGOs the new National Environmental Policy should be developed that would move environmental protection issues from lowest national priorities to the top state political priorities and make it a common objective**. It should become a framework for "green" cycle economy and should be based on harmonisation Ukraine's legislation with the European law with the goal of achieving sustainable development.

2. Recent environmental policy and law development highlights

Following Chapter 6. Environment of the AA, in recent years MENR focused both, on the legislation approximation (according Annex XXX to the Chapter 6) and on strategic work, updating the Law on Framework Environmental Strategy (adopted in 2010 as Association Agenda mandatory condition) and developing, discussing and adopting sectoral environmental strategies, such as:

The **updated State Strategy of Environmental Policy till 2030 (draft)** went through the public consultations and currently is under consent procedure.

Goals of the updated Strategy:

Goal 1. Formation of environmental values and principles of sustainable consumption and production in the society

Goal 2. Ensuring sustainable development of the natural resource potential of Ukraine

Goal 3. Ensuring the integration of environmental policy in the decision-making on the socio-economic development of Ukraine

Goal 4. Reduction of ecological risks for ecosystems and public health to a socially acceptable level

Goal 5. Improvement and development of the state environmental management system

The important innovation in this policy document of new generation is inclusion of target indicators, which define the dynamics in compare with 2015 year in 2020 and 2030.

Target indicators:

No.	Indicator	Target indicators	
		Baseline year (2015)	2020
1	Energy generated from renewable sources (percent in the total final energy consumption)	4,9	11,0
2	Water intensity of GDP (cubic meters of water used per UAH 1,000 of GDP, based on actual prices)	3,6	3,2
3	Energy intensity of GDP (primary energy consumption per unit of GDP, kg of oil equivalent per USD 1 based on 2011 PPP)	0,28	0,20
4	Resource intensity of GDP (percentage of natural resources cost per unit of GDP, compared to 2015)	100	90
5	Rural population with access to improved sanitation (percent of total rural population)	1,9	20
6	Urban population with access to centralized sewage (percent of total urban population)	87,1	90
7	Discharge of polluted sewage into water bodies (percent of total discharges)	15,7	13
8	River basins with approved river basin management plans (units)	-	1
9	Discharge of polluted sewage into the marine environment (percent of total discharges to the marine environment)	15	11
10	Water bodies in good ecological status (percent of the total number of water bodies)	-	-
11	Enterprises that implement chemical management systems in accordance with international standards (percent of the total number of enterprises using hazardous substances)	-	50
12	Volume of buried waste (percent of the total volume of generated waste)	50	45
13	Volumes of primary raw materials use (percent of total volume used)	90	85
14	Area of territories and objects of the nature reserve fund bodies (thousand hectares)	3803,1	6276,9
15	Area of the nature reserve fund of national significance (percent of the country's total territory)	2,24	5,14
16	Area of territories and objects of the nature reserve fund (percent of the country's total territory)	6,3	10,4
17	Area of territories of the national ecological network (percent of the country's total territory)	38,2	39
18	Forest area of the country (percent of the country's total territory)	15,9	17,0
19	Area of arable land (percent of the country's total territory)	53,9	51,6

20	Area of organic farmland (percent of the total area of agricultural land)	1	3
21	Proportion of the area of extensive agricultural lands (hayfields, pastures) in the country's total territory, %	13	13.9
22	Defined and implemented measures aimed at achieving a neutral level of land degradation		TBD
23	Communities that approved and implemented development strategies and action plans for their implementation developed with the participation of the public (percent of the total number of communities)	80	100
24	Emissions of greenhouse gases (percent compared to 1990 levels)	37,8	<76
25	Emissions of pollutants into the air from stationary sources (percent compared to 2015 levels)	100,0	<6
26	Emissions of pollutants into the air from stationary sources conventionally compared to carbon monoxide, taking into account the relative aggressiveness of the main pollutants (percent compared to 2015 levels)	100	95
27	Emissions of pollutants into the air from mobile sources conventionally compared to carbon monoxide, taking into account the relative aggressiveness of the main pollutants (percent compared to 2015 levels)	100	95
28	Cities of Ukraine, where the daily average concentrations of main pollutants in the air exceed the average daily maximum allowable concentrations (units)	23	22
29	Zones and agglomerations, which approved air quality improvement plans (percent of the total number)	0	30
30	Electric transport (percent of the total number of new purchased motor transport)	-	0,1
31	Budget expenditures on environmental protection (percent of GDP)	0,279	0,5
32	Environmental Performance Index ³	79,69 ⁴	-
33	State and local plans and programs that underwent a strategic environmental assessment (percent of the total number of developed plans and programs)	-	100
34	Report on the implementation of the state environmental policy (units)	1	1

In terms of monitoring and assessment mechanism according draft Strategy, the Ministry of Ecology and Natural Resources of Ukraine will conducts monitoring and prepare annual reports on the implementation of national environmental policy based on sectoral and regional reports. Every 5 years, the National Report on the implementation of environmental policy will be prepared by the MENR and submitted by the CMU for the approval by the Parliament.

In November 2017, the Government approved the National Waste Management Strategy till 2030, which was under preparation almost a year and introduces European principles for the management of all types of waste in Ukraine: solid household, industrial, construction, hazardous, agricultural waste, etc. The document is the first strategic document of the national level, which

³ <http://epi.yale.edu/country/ukraine>

⁴ Data of 2016 Report.

defines a coherent state policy in the field of waste management and establishes preconditions for circular economy, which will require a large-scale technological modernization, shift in consciousness and refusal of consumer attitude to natural resources. MENR promote the approach of developing legislation as implementing mechanism for strategies, in particular, the Waste Strategy. However, there is a controversial trend in the Parliament to compete with different draft laws contradicting the Strategy and correspondent EU Directives, e.g. draft law No. 4835d "On Amendments to Some Laws of Ukraine on the Promotion of the Utilization of Household Waste as an Alternative Energy Source" is a big concern for Ukrainian environmentalists as it destroys all the EU-like waste management hierarchy proposed in the Strategy, and being dangerous for health and environment, claims green tariff to be imposed on energy produced from waste incineration. At the same time, **obligatory separate collection of municipal waste, which should start on 1 January 2018**, according the law «On waste» (2012), faced lack of waste management infrastructure and necessary equipment. Draft laws for implementing the Strategy according AA are being prepared by the Ministry.

Reforming water governance – is another active process being held of MENR, which involves various stakeholders. Draft **long-term Water Strategy**, in which the reform of public administration should be a key element, is under preparation. According to the MENFR, **new water management system should be aimed to achieve** Strategy goals, in particular **good environmental status of the water**, the effectiveness of its use, and the introduction of effective incentives for sustainable development of water sector. **The reform should take into account** a number of components such as the introduction of a **clear horizontal structure of water resources management, with division of water management functions and infrastructure management and service functions**; the corresponding vertical administrative structure of the **new water resource agency, which should eventually concentrate fully on the implementation of new European standards**. For the purposed of this process, Ministry coordinates **National Dialogue on Water Policy** with the participation of other ministries and agencies, international organizations and projects, scientists, NGOs and other stakeholders, with the support of the EU Water Initiative Plus project. **The amendment to Water Code imposed IWRM principals and the Government adopted the Decree on Procedures of River Basin Management Plans development**, which implements provisions of the EU Water Framework Directives into the national legislation. **The approved amendments to KMU Decrees on State water cadastre and Regulation of State Water Agency on establishing accounting of surface water bodies in Ukraine, which was not** carried out since 1957. Another **strategic document being prepared with involvement of various stakeholders is Marine Strategy**. In the end of 2017, MENR published draft Concept of reforming the sphere of protection and reproduction of water, the rational use of water resources and the development of water economy and melioration for public consultations.

The Air Quality reform is under consideration. Meanwhile, the Government approved the National Plan till 31 December 2033 for emission reduction from large combustion plants, elaborated by MENR and Ministry of Coal and Energy with involvement of experts and energy generating companies. The plan was elaborated taking into account further implementation of the EU Directives to comply with the Association Agreement as well as the requirements of the European Energy Community. It concerns, first of all, emissions of sulphur dioxide, nitrogen oxides and dust.

In order to achieve the ambitious goal to extend nature protected area till 10,4% from overall territory of the country, it is necessary to get more support from local governments and communities, which concerned about their access to traditional natural resources after the change of status. Therefore, MENR promote the recreation function conduction and tourist service development by National Natural Parks to make their performance sustainable, reconsider the

approach to recreation zones development within NNPs in order to create more work places for local communities, make tourism activities transparent and attractive for all stakeholders, also contributing to NNP budgets. Such change in attitude and proper regulation shell play an important role in achieving significant extension of natural protected territories area required by numerous national and international legal obligations of Ukraine. On the other hand, **mid 2017, a joint order** of the Ministry Of Ecology and Natural Resources and the Ministry of Agrarian Policy **on the introduction of new penalties for poaching was issued** to increase the size of fines for destruction and damage to all kinds of animals by an average of four times.

New important practice of discussing and adopting a soft/ living policy documents was implemented with preparation of the Luxembourg Declaration Road-map. This document was prepared as a living document, in order to inform the public and discuss the vision and capacity of the Ministry of Ecology and Natural Resources on the way to reforming the system of environmental governance in Ukraine in accordance with the goals of the Luxembourg Declaration (LD) and launched on its 1 year-anniversary. In this document, the Ministry of Ecology and Natural Resources declared that it “seeks for better institutions, better procedures, wider involvement of the environmentally conscious public, greater transparency for increasing the effectiveness of nature protection on the basis of European standards. Such progress requires a fundamental reform to form a cross-cutting status of the environmental policy in the Government’s activities. To date, the Ministry of Ecology and Natural Resources has achieved certain success, however, the environmental governance reform is a long process that overcomes many obstacles.” The document contains the structured in order paragraphs of commitments under the LD, correspondent EaP 20 deliverables to be achieved in 2017 and 2020 in Environmental area and the Ongoing, Mid-term and Strategic goals and objectives.

Integrating Environmental policy

In April 2017, the Cabinet of Ministers of Ukraine has adopted the Mid-term Action Plan. According MENR, it was the first time since Independence that **six environment and climate change priorities were included into overall priorities of the Ukrainian Government activities. It is especially impressive in compare with 2015 CMU annual report**, in which the environment was not event included, just several points on AA implementation were dropped in the Health reform chapter.

Each of Plan’s environmental priorities incorporates European standards of the Association agreement. There are:

- **Sustainable management of water resources** including reforming of whole water management system
- **Good environmental governance** including defining of National environmental policy goals till 2030, implementing SEA and EIA, implementing of the integrated electronic environmental information system and public access to it, environmental inspectorate reform
- **Development of own mineral resources base** compliant with environmental requirements
- Adopting and implementing **climate change policy**, including adaptation plan and developing a model of gradual reduction of GHG emission
- **Preservation of Natural heritage** including extension of nature protected area
- **Effective and safe waste management** including the national system’s establishment.

However, while the Law on SEA to implement the EU Directive is still waiting for adoption in the Parliament (submitted second time after the veto of President and passed first reading), some other economic sectors strategies are being adopted with complete ignorance to the environmental impact. The worse example is adoption in February 2016 of the Programme of Hydropower

development till 2026 without MENR's consent. The Programme could have a significant negative impact to the environment, which was not investigated seriously prior to the adoption. At the same time, each project under such programme, if any, including possible construction of HPPs cascade on Dniester river, will undergo the environmental impact assessment and the Ministry will have to approve its results. Also, both countries – Moldova and Ukraine – ratified SEA protocol. Therefore, the Hydropower development Programme already violated the international law since it didn't come through transboundary SEA procedure, and it concerns not only Moldova. The decision to adopt this Programme could hamper Ukraine's attempts to get rid of non-compliance status under the Espoo Convention. Hopefully, **the Treaty between the Government of the Republic of Moldova and the Cabinet of Ministers of Ukraine on cooperation for conservation and sustainable development of the Dniester river basin**, which entered into force on 07.07.2017, could help to solve this problem at the bilateral level.

In 2017, the Law of Ukraine on EIA was finally adopted after several attempts and President's veto and has taken effect in December. To this end, the MENR has launched the Single EIA Registry. The same months, first set of bylaws was adopted by the Cabinet of Ministers to support the functioning of the EIA procedure:

- the Procedure for Submitting Documentation Seeking the EIA Conclusion and Financing EIA and the Procedure for Maintaining the Single EIA Registry;
- the Procedure for Public Hearings in the Process of EIA;
- the Criteria for identifying proposed activity, its expansion and change, which shall not be made subject to EIA.

Regional and local environmental policy and governance

Since regional MENR Departments were liquidated by the Administrative reform imposed before Maidan and their functions transferred to correspondent divisions of regional state administrations, the lack of coordination between central and local government authorities, gaps in the legislation precluding the government from using a consistent approach to planning and implementation of the national policy, while lack of environmental awareness and local initiative hamper or make it impossible to implement local action plans/ programmes for environment protection. At the same time, these action plans are not only an efficient environment protection tool but also a factor, which, under ongoing decentralization conditions, facilitates unification and consolidation of local communities as the plans must be developed and implemented with direct involvement of them. In reality, however, local government authorities often remove local communities from development of these action plans, if any. They also often ignore the guidelines developed by the Ministry of Ecology and international experience altogether. Rare positive examples of applying a proper approach to development and implementation of local action plans for environment protection are rather exceptions which just confirm a general disturbing state of affair.

In fact, establishment of environment protection departments within the structure of regional state administrations (ODA) in 2013 made environment protection activities dependent upon administrative and commercial interests. Therefore, implementation of environmental policies at the regional level is non-systemic and poorly coordinated. Only those tasks under National Environmental Action Plan (2011-2015) were carried out which are envisaged by other regulations or international technical assistance projects.

In September 2017, the Head of Khmelnytsky Regional State Administration (ODA) issued a decree eliminating the Department of Ecology and Natural Resources with intention to attribute its functions to agriculture industry department. Such initiative coincided in time with Ministry of Ecology and Natural Resources proposal to the Government to increase the number of staff in ODAs

departments of ecology in connection with entry into force of the Law on Environmental Impact Assessment end of the year. This extreme case, unfortunately, illustrate the low level of understanding and value of environmental policy in general and AA Chapter 6 requirements in particular among regional and local authorities. Therefore, **the main objective of regional environmental governance reform is raising awareness and education of local stakeholders including authorities, in particular, on the AA environmental provisions, and establishing a coordination mechanism with them.** MENR follows this objective as far as possible, for example, 3-days ad-hoc meeting with Deputy Heads of ODAs and representatives of Ecology Departments devoted to the EIA practical implementation was held in the Aarhus Centre in Kyiv end of November 2017. During this time, training was conducted and a model of effective interaction between the ministry and regional state administrations was agreed.

3. Institutional reform

Though the EU-like policy and legislation development process is dynamic at the drafting stage and could be assessed mainly positively, but it often gets unnecessary complicated at the adoption stage (in the Parliament) and the implementation capacity also remains to be seen. That is why currently the institutional part of the environmental governance is the most important in the overall reform.

Most existing problems of environmental governance in all its aspects and dimensions – from legislative and regulatory frameworks to proper organization of environmental monitoring – are entailed by the ungrounded managerial pseudo reforms of 2013, which shattered the very institutional basis of the environment protection cause in Ukraine. Here, liquidation of territorial bodies of the Ministry of Ecology and Natural Resources (by Cabinet of Ministers Decree # 159 dated March 13, 2013) and transfer of their powers to ODAs played a fatal role and led to disruption of environment protection links between the centre and regions. As a result, the influence of the Ministry to coherent with national goals regional and local environmental policy and of environment protection authorities - to regional decision-making was diminished at the national and local levels, respectively.

At the same time, reconciling environmental and socio-economic factors for the public administration purpose and ensuring the integrated nature of environmental policies are the most important precondition for effective counteraction to further deterioration of the environmental situation.

The moratorium on inspections of business companies, which was introduced by the Cabinet of Ministers in 2016 and continued trough 2017 and again extended in 2018, badly weakened the significance of the environmental control and influence of the State Ecological Inspection. Deregulation dominating the decision-making priorities of Cabinet of Ministers posing growing hazard to environment and health, because absence of control promote irresponsible behaviour of enterprises and citizens ending with dumping used mercury lamps, leaving hazardous waste in piles under open sky, extensive pollution of water and air, no punishment for making money from non-compliance with the due legislation and irreversible damages to the environment.

This situation clearly called for urgent institutional transformations in the environment protection system. As the magnitude of existing problems and related reform tasks is huge, the realistic approach assumes that point actions and the formulation of the strategy will occur simultaneously, while ideally point reforms must be undertaken as part of a well defined strategic vision for the future of the environment protection cause in Ukraine.

Ministry has limited capacity to deal simultaneously with policy planning & implementation and transformation. There is simply not enough staff, first of all. However, MENR successfully cooperate with International organisations and donors to get necessary technical assistance for supporting

reforms. Hence, the Reform support team (RST) was established by the MENR's Order No. 226 of 18.07.2017, which started operating end of previous year, after the competition was complete. The reforms in environmental sphere, which RST should draft and support the implementation, include:

- Public Administration Reform,
- Reform of the system of ecological monitoring, control and liability for environmental damage,
- Electronic Governance and the fight against corruption,
- Geology and Mineral Resources,
- Sustainable use of water resources,
- New climate policy,
- Waste management,
- Natural heritage conservation,
- Reduction of emissions by large enterprises and implementation of the EU Directive concerning industrial emissions

Recently opened in Ukraine REC's office – another powerful partner, which potentially could contribute to developing the coordination with regional and local stakeholders for modern effective environmental policy implementation.

The work on reforming the water resources management system started with overall goal to increase the efficiency of water management through the implementation of integrated water resources management according to the basin principle. Leading experts-practitioners on public sector reforming, water resources management, irrigation, representatives of international organisations and top-management of the Ministry are engaged into the review of institutional and functional capacity of water resources management system in Ukraine and finalising of the consolidated concept of its reforming including dividing functions of water policy formulation and realisation and infrastructure management and service provision.

There the fundamental reform of the State Ecological Inspection is going on. On May 2017, the Cabinet of Ministers at its session approved a Concept of reforming the system of state ecological supervision (control). The purpose is to create an effective state system for preventing environmental violations and monitoring the state of the environment, reducing pressure on the business environment, broadly engaging the public in supervision (control), creating a single integrated state environmental monitoring and supervising (control) body, the Service. Main challenges are associated with: removing conditions for corruption, significantly strengthen the technical capacity (including purchase and installation of new various equipment and launching of new laboratories), concentrate environmental inspection function in one service (currently it is dispersed among several control bodies subordinated to different central authorities), as well as concentrate the environmental monitoring function (dispersed as well), what require complete reload of the system. Reforming activities to be implemented in 2018 include:

- submit amendments to legislation on improvement of the system of supervision (control), organization of environmental monitoring, ensuring functioning of the national ecological

automated information-analytical system, access to environmental information in framework adaptation of legislation to European norms⁵;

- to form a logistical and laboratory base for environmental monitoring and supervising (control) conduction by the Service.

Despite the crucial support of International organisations, EU member countries, other donors, without technical assistance of which many of environmental reform progress would be impossible to achieve, Ukraine, represented by the Ministry of Ecology and Natural Resources, plays the proactive and often leading role in whole transformation process. Still, the technical and other assistance will be needed to finalise the institutional reform of environmental protection public administration system, and to re-build practically from zero the technical and logistical basis of new Inspectorate.

Armed conflict in eastern Ukraine has resulted in a regrettable range of harm to the region's lands and terrain, its surface and subterranean water systems, and its vegetation and wildlife. Hostilities also bring a significant increase in the risk of incidents at industrial and infrastructure facilities⁶. Close cooperation if the MENR with international organisations is needed to prevent and mitigate the associated risks and in a future – for the environmental rehabilitation of Donbass.

4. Fiscal reform

The main sources of environmental protection budget revenues are environmental taxes, fines and penalties for damages caused as a result of violations of environmental laws. Following the decentralisation reform, in 2015-2017 the Budget Code defined that 20 percent of the environmental tax is directed to the State Budget of Ukraine, while the rest enters the special fund of local budgets, of which 25% - to "rural, settlement, city budgets, budgets of the combined territorial communities, created in accordance with the law and the prospective plan of communities territories formation", and 55% - to regional budgets.

From January 1, 2018, an environmental tax of 55% is credited to a special fund of local budgets, including: to rural, settlement, city budgets, budgets of combined territorial communities - 25%,

to the regional budget - 30%. A special fund local budgets also will obtain 70% of proceeds from monetary penalties for damage caused by violation of the legislation on the protection of the environment due to economic and other activities, including: to rural, settlement, city budgets, budgets of combined territorial communities - 50%, to the regional budget - 20%.

Local environmental funds can be used only to provide financial support for the implementation of environmental protection measures.

According results of independent surveys, in 2014-2015 regional environmental funds were used mainly for housing and communal service construction works; any activity for improving air quality wasn't conducted in majority of regions; no information available for public access about planning, realisation and implementation monitoring and control use of ecological funds; ecological effect is neither being planned nor evaluated; there is no single system for monitoring and control of the targeted use of ecofunds.

⁵ In order to fulfil its commitments to implement a number of acts of the EU environmental acquis, specifically, the Framework Water Directive, Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on Ambient Air Quality and Cleaner Air for Europe and other acts, Ukraine needs to enhance its environment monitoring system. The latter should satisfy a need in generating trustworthy environmental information needed to make timely managerial decisions and evaluate performance of environmental policies. To this end, the regulatory framework, technical and methodological basis of the state environmental monitoring system must be brought in compliance with the EU requirements.

⁶ <http://www.osce.org/project-coordinator-in-ukraine/362566?download=true>

According to the MENR, in 2016 environmental taxes were used ineffectively too. Statistics on using local funds demonstrates that only 1/3 of all funds allocated were used in 2016 at all, and significant part of the latter was used not for nature protection activities.

At the same time, a new online system for public procurement, a field where corruption has been rampant - ProZorro, developed by a partnership of government, business and civil society – has been mandatory for procurement by all state institutions and enterprises since 2016. After 13 months of functioning, the system – which makes publicly available all tender documents, including the bids submitted – made possible savings of more than UAH 31.4 billion (€1 billion) of public money. ProZorro received the World Procurement Award in 2016 in recognition of its accomplishments won first prize at the Open Government Awards 2016.

Meanwhile, rates of environmental taxes and fines are growing (being currently still too small to stimulate the environmental behaviour), as well as the mechanisms for their uses are being revised. The goal of this revision is to encourage polluters rather paying for the environmental modernization of their enterprises than taxes and fines. However, the monitoring and control on both, the revenues and targeted use of environmental funds requires significant improvements⁷.

5. Openness, access to information, public participation and stakeholders involvement into the decision-making on environmental matters

In recent years, the MENR demonstrated new behaviour of openness, readiness for the dialogue with stakeholders, taking into account their proposals. Such change contributed to growing trust of NGOs and created conditions for partnership in implementation of environmental goals and objectives.

The access to information is not a major concern any more in terms of MENR's compliance with requirements of existing legislation as well (e.g. The law on Ukraine On access to public information, CMU Decree on Provisions on data sets that are subject to disclosure in the form of open data, etc.)

On November 2017, BRDO (Better Regulation Delivery Office) presented second time an analytical study "Openness of the Government". The research investigated the coverage of public data on official websites of ministries and departments. The key focus is how the Ukrainian ministries meet the requirements for the openness and accessibility of information about their activities. In general, the Government has improved its openness by 19%, while **the Ministry of Ecology and Natural Resources** - by 35% and received 71 points out of 77 possible, **becoming the leader of the Government's openness rating among the ministries. The rating is based on sophisticated methodology taking into account various aspect of the information available for public access.**

MENR is working on developing the evidence-based and participatory decision-making process, also aiming to the implementation of e-governance in the environmental sphere. It is imperative to

⁷ For example, in the period from 2014 to 2017, there were 2 thousand cases of violations of environmental legislation in the Ivano-Frankivsk region. Fines amounted to almost 150 thousand UAH. At the same time, the state suffered damages costing almost 57 million UAH, of which it was charged in favour of the state a bit more than 2 million UAH. At the same time, about 90% of recreational facilities in a region are put into operation without treatment plants. The loss of the Carpathian forests, massive uncontrolled deforestation constitute a permanent threat of flood. But every year the state budget to fight the harmful effects of water provides only 200 thousand UAH, what is not enough for anything. (Source – MENR)

develop modern systems for processing environmental information and making decisions in the sphere of environment protection, specifically, a shared with EU environmental information system (SEIS) and pollutant release and transfer register and make sure that monitors do use these systems. Ukraine should calculate and use environmental indicators recommended by the UNECE joint inter-sectoral task force at the national and regional levels. On the whole, environmental information, which is generated by the Ukrainian environment monitoring system, should become more accessible, precise, and timely to feed in the **Uniform Electronic System for Access to Environmental Information**. The system is to include inter alia the information on permits, licenses, statistical reports, materials of inspections and environmental monitoring, open data of EIA materials and geo-data of natural protected territories of Ukraine, the SEIS portal with indicators data and graphs information in dynamics by year, etc. for the use of governmental bodies, economic actors and the public.

MENR also develops its geo-information system to integrate **geo-spatial data from different systems of environmental relevance on the base of a common globally known and generally applied technology** to be integrated then into a national Ukraine-wide GIS complex, providing for application of cloud technologies. **In December 2017, a modern geoportal “Water resources of Ukraine” was presented to water and environment stakeholders.** This portal will become part of the broader platform "Open Environment", developed by the Ministry of Environmental Protection in cooperation with the State Water Agency and other central executive bodies. For the first time, it opens the access to regularly updating river information and will play an important role in the development of river basin management plans.

Among new practice being performed by the MENR, is a **contest-based selection of top managers of facilities, bodies and organisations of the Minister subordinated to the Ministry of Ecology and Natural Resources**, allowing the public to observe the session proceedings and discussion of contestants by modern communication tools. Though the procedure are being criticised by NGOs demanding better criteria of selection and more public influence to decisions, this trend is positive and the procedure is being improved further. Using new e-tools is a modern feature of the MENR. For example, **the new Public Council within the Ministry of Ecology was formed in 2016 by rating internet-voting for candidates members (4214 persons voted).**

Another example of involving citizens into management of environmental problems is launching and operating of the **new electronic service** - ecomapa.gov.ua, which functioning since September 2016 and incorporates the **interactive map of waste dumps in Ukraine and a mobile add-on with a function of on-line notification on newly identified waste dumps** in GIS coordinates. The service is permanently updated. Any person can visit the service site, register and submit information on a waste dump. Submitted data is processed and submitted to relevant authorities in format of citizens' applications. Since launching, more than 1500 messages containing relevant info were received.

Public participation in environmental decision-making is regulated by number of laws and underlaws and in general, MENR performance is satisfactory: regular consultations, roundtable and dialogues take place and Ministry hears stakeholders, takes into account their opinion and explains decisions (following the openness mode of behaviour). However, this is not enough to build systematic work on stakeholders involvement into decision-making, and the Ministry seems understanding it and reflecting in their plans. At the same time, major problem of public participation and influence of decision-making concerns not the Ministry, but other sectoral Ministries, the Government and the Verkhovna Rada of Ukraine (Parliament). This is, probably, the main challenge ahead – to consolidate wide platform of different stakeholders in order to implement effectively the environmental requirements of the AA at the level of the Government and the Parliament. **However, adoption of legislation is just a first step. Yet, the implementation**

level of oblast, cities and villages needs even more efforts on awareness raising, education, but also coordination, monitoring and control.

On October 2017, Ministry of Ecology and Natural Resources of Ukraine published the National report on state of environment in Ukraine in 2015 and Regional reports on state of environment in 2016 at the official web-site. However, overall comprehensive reports on environmental policy implementation are not being prepared, and though the Minister is regularly reporting to the Cabinet of Ministers on fulfilment of tasks (including annual achievements) and publish it on the web-site, these summary reports are not being discussed with public prior to finalisation. Overall procedure of environmental policy effectiveness monitoring and assessment, policy review and reports preparation, still need to be established. Yet, Ukraine provides statistics only for 17 out of 42 basic UNECE environmental indicators.

At the same time, in September 2017, the Compliance Committee under the Kyoto Protocol decided that Ukraine is back to compliance due to improved reporting on GHG emissions. It probably means that Ministry has limited capacity to cover all aspects of their work with assessments and reporting, therefore should every time select priorities to concentrate on. International work is clear priority. In 2017, Ukraine also came from non-compliance back to fully compliant status within the Aarhus Convention, and Espoo Convention is in the process.

Meanwhile, there is a lack of public monitoring and assessment activities could be noticed. The only comprehensive assessment report **on Environment pillar of the EU-Ukraine Association Agreement implementation was issues by the UPSCP in 2016⁸.**

Another efforts was conducted with preparation of the Eastern Partnership Index, which covers 6 EaP countries and contains Sustainable Development and Environment chapters⁹.

6. Conclusions

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

With the Association Agreement implementation as the main priority for Ukraine, Ministry declared end of 2016 that **jointly with environmental NGOs the new National Environmental Policy should be developed that would move environmental protection issues from lowest national priorities to the top state political priorities and make it a common objective for achieving sustainable development.** So far, Ministry demonstrated by its activity the commitment to reach this ambition goal.

Following Chapter 6. Environment of the AA, in recent years MENR focused both, on the legislation approximation (according Annex XXX to the Chapter 6) and on strategic work, updating the Law on Framework Environmental Strategy (adopted in 2010 as Association Agenda mandatory condition) and developing, discussing and adopting sectoral environmental strategies and other policy documents. However, **the updated State Strategy of Environmental Policy till 2030 (draft)** is pending under consent procedure and not submitted to the Cabinet of Ministers yet. This delay jeopardise logic of policy framework development and implementation.

New important practice of discussing and adopting a soft/ living policy documents was implemented with preparation of the Luxembourg Declaration Road-map, which underlines that transition to better environmental governance requires a fundamental reform.

⁸ http://www.eesc.europa.eu/sites/default/files/resources/docs/environment_ukr_side_final.pdf

⁹ <http://www.eap-index.eu/>

In terms of environmental policy integration, the Cabinet of Ministers of Ukraine has adopted the Mid-term Action Plan in 2017 till 2020, for the first time since Independence including six environment and climate change priorities into overall priorities of the Ukrainian Government activities. However, the adoption in February 2016 of the Programme of Hydropower development till 2026 without MENR's consent, which could have a significant negative impact to the environment, inter alia concerns Dniester river, which is transboundary water course of Moldova and Ukraine (both ratified SEA protocol). Therefore, the Hydropower development Programme already violated the international law since it didn't come through transboundary SEA procedure, and the decision to adopt this Programme could hamper Ukraine's attempts to get rid of incompliance status under the Espoo Convention.

The Law on SEA to implement the EU Directive is still waiting for adoption in the Parliament and this delay is a serious obstacle to the environmental policy integration and good environmental governance in Ukraine. While after the adoption of the EIA law, MENR started its active implementation.

Since regional MENR Departments were liquidated by the Administrative reform imposed before Maidan and their functions transferred to correspondent divisions of regional state administrations, the lack of coordination between central and local government authorities, gaps in the legislation precluding the government from using a consistent approach to planning and implementation of the national policy, while lack of environmental awareness and local initiative hamper or make it impossible to implement local action plans/ programmes for environment protection. **The main objective of regional environmental governance reform is raising awareness and education of local stakeholders including authorities, in particular, on the AA environmental provisions, and establishing a coordination mechanism of them with MENR.**

Though the EU-like policy and legislation development process is dynamic at the drafting stage and could be assessed mainly positively, but it often gets unnecessary complicated at the adoption stage (in the Parliament) and the implementation capacity also remains to be seen. That is why currently **the institutional part of the environmental governance is the most important in the overall reform.**

The moratorium on inspections of business companies, which was introduced by the Cabinet of Ministers in 2016 and continued trough 2017 and again extended in 2018, badly weakened the significance of the environmental control and influence of the State Ecological Inspection. Deregulation dominating the decision-making priorities of Cabinet of Ministers posing growing hazard to environment and health, because absence of control promote irresponsible behaviour of enterprises and citizens and irreversible damages to the environment.

This situation clearly called for urgent institutional transformations in the environment protection system. As the magnitude of existing problems and related reform tasks is huge, the realistic approach assumes that point actions and the formulation of the strategy will occur simultaneously, while **ideally point reforms must be undertaken as part of a well defined strategic vision for the future of the environment protection cause in Ukraine.**

Ministry has limited capacity to deal simultaneously with policy planning & implementation and transformation. However, MENR successfully cooperate with International organisations and donors to get necessary technical assistance for supporting reforms.

The work on reforming the water resources management system started with overall goal to increase the efficiency of water management through the implementation of integrated water resources management according to the basin principle.

There the fundamental reform of the State Ecological Inspection is going on. On May 2017, the Cabinet of Ministers at its session approved a Concept of reforming the system of state ecological supervision (control). The Reform requires total reload of whole system. Challenging reforming activities to be implemented in 2018, with unidentified source of funding, include:

- submit amendments to legislation on improvement of the system of supervision (control), organization of environmental monitoring, ensuring functioning of the national ecological automated information-analytical system, access to environmental information in framework adaptation of legislation to European norms¹⁰;
- form a logistical and laboratory base for environmental monitoring and supervising (control) conduction by the Service.

At the same time, in 2014-2016, regional environmental funds (in violation of legislation) were used mainly for housing and communal service construction works; any activity for improving air quality wasn't conducted in majority of regions; no information available for public access about planning, realisation and implementation of the monitoring and control of ecological funds use; ecological effect is neither being planned nor evaluated; there is no single system for monitoring and control of the targeted use of eco-funds.

In recent years, the MENR demonstrated new behaviour of openness, readiness for the dialogue with stakeholders, taking into account their proposals. Such change contributed to growing trust of NGOs and created conditions for partnership in implementation of environmental goals and objectives. At the same time, major problem of public participation and influence of decision-making concerns not the Ministry, but other sectoral Ministries, the Government and the Verkhovna Rada of Ukraine (Parliament). **This is, probably, the main challenge ahead – to consolidate wide platform of different stakeholders in order to implement effectively the environmental requirements of the AA at the level of the Government and the Parliament. However, adoption of legislation is just a first step. Yet, the implementation level of oblast, cities and villages needs even more efforts on awareness raising, education, but also coordination, monitoring and control.**

MENR is working on developing the evidence-based and participatory decision-making process, also aiming to the implementation of e-governance in the environmental sphere.

Overall comprehensive reports on environmental policy implementation are not being prepared yet. So far, Ukraine provides statistics only for 17 out of 42 basic UNECE environmental indicators.

Meanwhile, there is a lack of CSOs/public monitoring and assessment activities could be noticed. The only comprehensive assessment report **on Environment pillar of the EU-Ukraine Association Agreement implementation was issues by the UPSCP in 2016. Another efforts was conducted with preparation in 2017 of the European Integration Index, which covers 6 EaP countries and contains Sustainable Development and Environment chapters.**

¹⁰ In order to fulfil its commitments to implement a number of acts of the EU environmental acquis, specifically, the Framework Water Directive, Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on Ambient Air Quality and Cleaner Air for Europe and other acts, Ukraine needs to enhance its environment monitoring system. The latter should satisfy a need in generating trustworthy environmental information needed to make timely managerial decisions and evaluate performance of environmental policies. To this end, the regulatory framework, technical and methodological basis of the state environmental monitoring system must be brought in compliance with the EU requirements.

7. Main recommendations

Verkhovna Rada of Ukraine

- Adopt as soon as possible the Law on SEA, coordinate numerous MP legal initiative with AA, adopted sectoral environmental policies and the MENR/ Government.

The Government

- Finalise the consent procedure, endorse and submit to Verkhovna Rada the updated State Environmental Strategy
- Because the adoption of required AA legislation is just a first step, the implementation level of oblast, cities and villages needs even more efforts on awareness raising, education, but also coordination, monitoring and control. We call upon the Government to task the MENR in preparing in cooperation with CSOs and submitting proposals on improving the effectiveness of regional and local environmental policy implementation.
- Cancel the Programme of Hydropower development till 2026 as harmful for environment and adopted with violation of consent procedure and environmental impact assessment procedures, as well as because the programme poses serious risks of international sanctions.
- Urgently remove the moratorium on environmental inspections of business companies, as dangerous for health and environment practice, which also entails irreversible damage to the environment.
- Ensure that the consolidated concept of reforming water management central body will clearly divide functions of water policy formulation and realisation and infrastructure management and service provision.
- Funding should be secured from all possible sources to enable the new Inspectorate Service to fulfil their tasks in 2018.
- Establish a single system of monitoring and control over the targeted use of environmental funds at the regional and local level, providing public access to information on planning, realisation and implementation ecological funds use, planning and evaluation of the ecological effect.
- Rates of environmental taxes and fines should be increase in not less than 100 times to stimulate the environmental behaviour. The goal of this revision is to encourage polluters rather paying for the environmental modernization of their enterprises than taxes and fines.

The Ministry of Ecology and Natural Resources of Ukraine

- Prepare and discuss with stakeholders the strategic vision for overall environmental reform, including institutional and policy pillars
- Continue the work on consolidating wide platform of different stakeholders in order to implement effectively the environmental requirements of the AA
- Make further efforts to calculate and use full set of 42 environmental indicators recommended by the UNECE joint inter-sectoral task force at the national and regional levels.
- Establish procedure of environmental policy effectiveness monitoring and assessment, policy review and reports preparation, with engagement of various stakeholders
- Prepare the Luxembourg Declaration implementation report
- Organize and conduct three-partite dialogue with possible participation of the EUD and CSOs to discuss current achievement, challenges and objectives of the environmental governance reform.

The European Union Delegation

- We call upon the European Union Delegation to provide all necessary support to environmental governance reforms, with special attention to the environmental monitoring system re-built.
- Organize and conduct three-partite dialogue with possible participation of the MENR and CSOs to discuss current achievement, challenges and objectives of the environmental governance reform.

International Organisations and Donors

- We ask for providing all possible support to environmental governance reforms in Ukraine, with special attention to the environmental monitoring system re-built.

CSOs

- We call upon our colleagues, different NGOs, their platforms and coalitions to prepare and present their Public assessments of environmental policy effectiveness in order to support content-wise dialogue with authorities and the EUD on the environmental governance reforms.



EASTERN PARTNERSHIP
Civil Society Forum

The project benefits from the support through the EaP CSF Re-granting Scheme. Within its Re-granting Scheme, the Eastern Partnership Civil Society Forum (EaP CSF) supports projects of the EaP CSF members with a regional dimension that contribute to achieving the mission and objectives of the Forum.

The donors of the Re-granting Scheme are the European Union and National Endowment for Democracy.

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.