

## EU Candidate Membership Status of Ukraine: Prospects for the Development of Environmental Legislation

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### **Abstract**

*The purpose of the article is to study the process and current state of harmonization of the environmental legislation of Ukraine with EU acquis in connection with the acquisition of the EU candidate membership status. The analysis of the legal framework for the formation of EU environmental policy has been carried out. The main principles of the EU in the field of environmental protection are defined. The article examines the process of formation and the current state of compliance of the national environmental legislation with EU environmental acquis. The main principles of the EU in the field of environmental protection are defined. The current state of alignment of the domestic legal regulation in the sphere of environmental protection with the environmental law of the EU is analyzed. Priority areas where the adaptation of environmental legislation with the EU acquis are highlighted. It is substantiated that the adaptation of the EU environmental acquis has to be accompanied by administrative, financial and organizational measures, which should be implemented to ensure its implementation.*

**Keywords:** environmental acquis; EU environmental policy; adaptation of environmental law; EU accession.

## Україна в статусі кандидата на членство в ЄС: перспективи розвитку екологічного законодавства

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### **Анотація**

*Метою статті є дослідження сучасного стану гармонізації екологічного законодавства України із EU *acquis* у зв'язку з набуттям статусу кандидата у члени Європейського Союзу. Розглянуто правову базу формування екологічної політики ЄС та визначено його основні принципи у сфері охорони навколишнього середовища. Проаналізовано етапи становлення кооперації між Україною та Європейським Союзом у сфері охорони довкілля та нормативні акти, що становлять правову основу процесу адаптації екологічного законодавства України до права ЄС. Досліджено процес формування й сучасний стан відповідності норм екологічного права України екологічному праву ЄС. Виявлено пріоритетні сфери забезпечення адаптації національного законодавства до *acquis* ЄС у сфері охорони довкілля. Обґрунтовано, що адаптація екологічного *acquis* ЄС має супроводжуватися адміністративними, фінансовими та організаційними заходами, які мають бути впроваджені для забезпечення його імплементації.*

**Ключові слова:** екологічне законодавство; екологічна політика ЄС; адаптація екологічного законодавства; вступ до ЄС.

### **Introduction**

On 23 June 2022 Ukraine was granted the status of a candidate for EU membership [1]. The EU accession is a long and highly complicated process, requiring candidate countries to transpose the entire *acquis communautaire* (divided into 35 negotiating chapters) into their internal law, as well as establish the administrative and legal structures in charge of implementing the legislation they have harmonized. Due to the fact that the law of the European Union is considered a demonstrative example of ensuring the quality regulation of social relations in any sphere of life, such obligations are envisioned as a good chance for Ukraine to break out of the bureaucratized and inefficient legislative activity of the post-Soviet type.

Back in 2007, Ludwig Krämer outlined that the EU as ‘the only region in the world which has publicly committed itself to try to reconcile economic growth, social concerns and environmental protection’ [2]. Having evolved to a sophisticated and detailed system of environmental regulation and multilevel governance, environmental protection now represents an important area of EU action both internally and on the international level [3], while the EU environmental standards are considered to be some of the world’s highest [4]. This gives us the grounds to support the opinion of environmental legal scholars that of today the EU environmental legislation is one of the most complete, developed and progressive in the world [5]. EU environment policy aims to promote sustainable development and protect the environment for present and future generations. It is based on preventive action, the polluter pays principle, fighting environmental damage at source, shared responsibility and the integration of environmental protection into other EU policies.

As part of the accession negotiations, Ukraine must align its environmental legislation to EU laws and standards, facing a challenge of prompt adaptation of European environmental *acquis* and ensuring the compliance with its fundamental provisions. Chapter 27 of the *acquis communautaire*, includes 200 legal acts in the environmental field covers the following spheres: climate change, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals, genetically modified organisms, noise and forestry. On the top of legislative transposition, the *acquis communautaire* also requires changes in environmental policies, the development of administrative capacity, changes in ensuring access to environmental information and public participation, investment in environmental protection measures as well as the development of environmental infrastructures.

It is undisputable that the Russian invasion of Ukraine 2022 has had a devastating impact on the state of Ukraine's environment, deepening the existing environmental threats and challenges by the war-caused reduction and deterioration of the state of natural ecosystems, chemical and industrial pollution, mining of territories, devastating damage to biodiversity. Thus, achieving the legislative alignment with the EU environmental *acquis* should not only be seen as the obligatory condition for Ukraine to become an EU member state but also the way to ensure green and sustainable post-war reconstruction, incorporating the priorities of green transition, net-zero economy and high-living standards of Ukrainian citizens. Meanwhile, implementation of the EU environmental policy and law is considered to be one of the most difficult reform packages in the whole EU integration process. For Ukraine, which will have to deal at the same time with post-war reconstruction and environmental restoration, it can be quite of a challenge.

### **Literature review**

Various aspects of approximation, harmonization and adaptation of Ukrainian environmental legislation to regulations and directives of the EU were covered by works of such prominent legal scholars as A. Getman, V. Lozo [6], G. Balyuk [7], N. Kobetska [8], G. Anisimova [9], M. Krasnova [10], L. Golovko [11], and others. According to insights provided by domestic and foreign legal scholarship, the main aims of the adaptation of national law to EU *acquis communautaire* are: acquisition of EU membership; implementation of administrative, qualitative judicial reform, establishment of the rule of law and democratization of social processes; facilitating the access of Ukrainian enterprises to the EU market; attraction of foreign investments; avoiding undesirable consequences of EU enlargement, etc. Meanwhile, it is outlined that imperfection and inconsistency

of normative legal acts negatively affects the process of exercising rights and fulfilling obligations by all subjects of social relations, disrupting sustainable development and questioning the state's capability to ensure the rule of law. The low level of integration of the ecological component into sectoral development programs is identified as one of the leading drawbacks of the adaptation process. Additionally, it is substantiated that the development of national legal system aligned with EU norms and standards should be ensured by the adoption of new legislative acts harmonized with the EU legal system simultaneously with the adaptation of existing laws. A special scholarly attention was paid to the fact that the process of harmonization of national environmental legislation with EU standards is complicated due to the initial declarative and framework character of the laws, that are aimed at regulating primarily the 'most important' issues, while most of the issues of a technical nature are regulated by by-laws of executive authorities with different legal status.

The vast majority of the research was devoted to the analyses of legal issues of compliance with EU environmental standards under the obligations imposed in the 2014 Association Agreement between Ukraine and the European Union. Notably, most of the research outcomes substantiated that the adoption of laws in line with specific EU directives, is insufficient without appropriate institutions and budgets, available to ensure the implementation of these laws, as well as effective system of monitoring and sanctions. Meanwhile, the recently obtained status of Ukraine as a candidate for accession to the EU poses new legal issues and challenges, requiring the prompt development of the scholarship in this sphere in order to create the theoretical grounds for adapting national environmental legislation and meet the EU's environmental protection requirements.

## **Materials and Methods**

The adaptation of Ukrainian legislation to EU requirements and standards, which is aimed at achieving compliance of the national legal system with the *acquis communautaire*, is carried out on the basis of the specific criteria. Thus, according to Copenhagen criteria<sup>1</sup>, one of the key conditions of the EU accession is the obligation of the candidate country to fully transpose and implement the rules, standards and policies that make up the body of EU legislation (*acquis*) [12], notably by the time of accession. According to Section II of the Law of Ukraine "On the Nationwide Program for the Adaptation of the Legislation of

<sup>1</sup> Complemented by the Madrid European Council in 1995, by which the requirement for observance of the *acquis communautaire* was added (Madrid European Council, 1999). Notably, the importance of approximation of laws in the associated countries to those applicable in the Community in the field of environmental protection was originally underlined by the European Council in Copenhagen 1993.

Ukraine to the Legislation of the European Union” “...acquis communautaire (acquis) is the legal system of the European Union, which includes acts of the legislation of the European Union (but not limited to them), adopted within the framework of the European Community, common foreign policy and security policy and cooperation in the field of justice and internal affairs.

Meanwhile, ensuring the compliance with Chapter 27 ‘Environment’ of the acquis communautaire is one the most difficult for candidate countries due significant resources and capital investments required. Strong financial commitments from candidate countries are justified by the fact that future benefits will exceed the costs of approximation: higher environmental standards will guarantee improved health and a better quality of life for citizens. Additionally, the environmental acquis is very broad, encompassing a high number of legislative acts within different policy areas. Finally, to implement and enforce environmental legislation, a “strong and well-equipped” administration at the central and local levels is “imperative”.

Following the fact that it primarily requires the candidate country to determine its ability to apply EU legislation (acquis), the present paper aims to provide an analysis of the evolution and current state of Ukrainian environmental legislation with regards to its compliance with EU environmental principles, norms and standards. The paper seeks to examine the current state of alignment with the EU environmental acquis, highlighting the priority spheres where the further development is required, combined with the perspective of the future dynamic relationship between the EU and Ukraine in environmental regulation. Taking into consideration that in the environmental field no transitional periods are granted to horizontal legislation (environmental impact assessment, access to information etc.) and nature legislation [13]), which means that the full compliance with such legislation should be achieved prior the accession, the analysis of the regulatory provisions in these spheres will be the main focus of the present research.

Despite the fact that acquiring the status of a candidate for EU membership amid the ongoing war of aggression the Russian Federation is a great challenge for Ukraine, it is envisioned to become a powerful driver for modernizing the state environmental policy from the standpoint of the supra-national influence of EU policy on national power structures, taking into account the influence of EU environmental programs in the field of management and environmental protection, ensuring the ecological safety of the population and territories, nature use, adaptation to climate change, ensuring ‘green transition’, raising the level of environmental awareness, ecological civic competence, etc. in the context of today’s realities and challenges.

## **Results and Discussion**

The perspective of EU membership requires a compliance with the environmental acquis, which is a collection of all environmental laws, comprising over 200 major legal acts covering horizontal legislation (environmental impact assessment, strategic environmental assessment, access to information), waste management, climate change, water and air quality, nature protection, industrial pollution control and risk management, chemicals and genetically modified organisms, noise and forestry [14]. Notably, by the date of accession, candidate countries are expected to effectively apply all EU legislation and policy, including the environmental ones.

According to Article 3 of the Consolidated version of the Treaty on the European Union, the aim of the Union is defined as promotion of peace, its values and the well-being of its peoples, by inter alia ensuring the sustainable development via balanced economic growth and based on a high level of protection and improvement of the quality of the environment [15]. While Article 11 and Articles 191-193 of the Treaty on the Functioning of the European Union state the EU is competent to act in all areas of environmental policy (such as waste management, climate change, air, and water pollution, etc), Article 5 outlines that the member states have primary responsibility for the protection of the environment, and the EU may act “only in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States” but can “be better achieved at Union level” [16]. This is the embodiment of the principle of subsidiarity, when the competence for policy and legislation is shared between the EU and the member state. This principle plays an important role in the environmental field as it ensures an effective integration process of the new member states, which have different backgrounds and commitments but a “shared responsibility”, as well achieving the reconciliation of environmental protection and economic growth due to participation and dialogue among the various actors and the different levels of governance, rather than by the vertical imposition of uniform standards and harmonized framework [17].

The European Union Network on Environmental Enforcement (IMPEL) is an international network of environmental authorities of EU Member States, candidate countries, and Norway, created to strengthen enforcement by providing a platform for policy-makers, environmental inspectors, and law enforcement officers to exchange ideas and best practices.

### ***Development of Ukraine-EU cooperation in the field of environmental protection***

For a long time, the economic development of Ukraine was carried out in the conditions of unbalanced exploitation of natural resources, which, accompanied

by the absence of comprehensive and complex environmental legal regulation and policy, as well as ineffective law enforcement activities, had led to significant depletion and degradation of strategic land, water, biotic, and mineral resources, posing the direct threat to environmental security and questioning the state's capability to ensure sustainable development. However, globalization, social transformations and official proclamation of European and Euro-Atlantic strategic course of Ukraine, enshrined in the preamble of the Constitution since 2019, resulted in heightening the priority of developing environmental legislation with regards to EU requirements, norms and standards.

The Article 21 of the Consolidated version of the Treaty on the European Union states that the EU's work in all fields of international relations is, inter alia, aimed at providing assistance for developing international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development [16]. In December 1991 the European Union noted the democratic character of the All-Ukrainian Referendum and called on Ukraine to maintain an open and constructive dialogue with the EU [18]. This, followed by the Ukraine's status as a EU's priority partner within the framework of the European Neighborhood Policy (since 2004) and the Eastern Partnership (since 2009), substantiated the fact that the influence of the EU on the formation of Ukrainian environmental policy and law had been in place for quite a while with a significant deal of progress achieved by 23 June 2022, when candidate status was granted to Ukraine.

The foundations for cooperation between Ukraine and the European Union in the field of environmental protection were laid in 1994 by the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Ukraine, of the other part [119]. The Agreement entered into force in 1998 and provided a framework for cooperation between the EU and Ukraine in all key areas of reforms, pointing out the aim of combating the deterioration of the environment. Article 51 of the Agreement stated that an important condition for strengthening relations between Ukraine and the EU is approximation of the current and future legislation of Ukraine to EU legislation in a number of spheres, including the environmental protection. In particular, it covered such issues as effective monitoring of pollution levels and assessment of the state of the environment; system of information on the state of the environment; combating local, regional and transboundary air and water pollution; restoration of the natural state of the environment; sustainable, efficient and environmentally safe production and use of energy; enterprise security; classification and safe use of chemicals; water quality, etc.



This was followed by adoption of the ‘Strategy on Ukraine’s Integration with the European Union’ in 1998, which formally proclaimed membership of the EU as Ukraine’s long-term strategic goal, pointing out the co-operation in Environmental Protection as one of the main directions [20]. In 2000, the Programme of Ukraine’s Integration with the EU pointed out among the conditions for Ukraine to become a member of the EU is to ensure the reduction of man-made load on the environment and transition to balanced use and reproduction of natural resource [21].

The next major legislative development stage towards harmonization of Ukrainian legislation was marked with the approval of the ‘State Program of adaptation of the legislation of Ukraine to the legislation of the European Union’ in 2004 [22]. Referring to the Article 51 of the 1994 Partnership and Cooperation Agreement, the Program identified environmental protection as one of the priority spheres where adaptation of national legislation should be primarily carried out.

Normative activity within the process of adaptation of domestic environmental law to the EU environmental *acquis* intensified after the approval in 2005 of the ‘Ukraine-European Union Action Plan’, one of the priority goals of which was contributing to the development and implementation of strategies and measures, aimed at ensuring economic growth and social rapprochement, rising of living standards and protection of the environment, thereby ensuring the achievement of the long-term goal of sustainable development by bringing Ukrainian legislation, norms and standards into line with the legislation of the European Union [23]. Notably, the Action Plan had a specially devoted section ‘Environment’ and established the opportunity to participate in certain types of activities of the European environmental protection agencies, as well as to take an active part in the activities of the joint Working Group Ukraine – EU on climate change issues.

### ***Current state and legal issues of compliance with EU environmental standards***

Since 2014, when the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their member states, on the other, (hereinafter – the AA) was signed, the integration and adaptation processes moved to an entirely new level. The AA provided a comprehensive institutional set-up for bilateral dialogue and monitoring of the process of gradual approximation and implementation of Ukraine’s legislation with the EU *acquis*. Chapter 6, “Environment” of the “Economic and sectoral cooperation” Section of the Agreement stipulates that the parties develop and strengthen the implementation of long-term goals of sustainable development and



a green economy. According to Annex XXX to the AA, Ukraine was expected to adapt its legislation to 26 EU directives and three regulations in the following sectors: environmental management and integration of environmental policy into other sectoral policies; atmospheric quality air; waste and resource management; quality water and water resources management, including marine environment; conservation; industrial pollution and technogenic threats; climate change and protection of the ozone layer; genetically modified organisms [24].

Despite the fact that according to Association Implementation Report on Ukraine, there was little progress in environmental reforms in 2021 [25], decent progress in adaptation of Ukrainian environmental legislation to the requirements of the EU has been made overall. This includes a set of laws that implement of the requirements of horizontal environmental *acquis*, *which is expected to be primarily implemented by the candidate states. In particular*, the Law 'On Environmental Impact Assessment' from 23 May 2017, implements the European environmental assessment model in Ukraine following the requirements of Directive 2011/92/EU and ensures the fulfillment of Ukraine's international obligations within the framework of the Association Agreement between Ukraine and the EU and the Energy Community Treaty [26]. The Law of Ukraine 'On Strategic Environmental Assessment' from 20 March 2018, establishing a strategic environmental assessment mechanism in Ukraine, which operates in the countries of the European Union. According to Article 3, the Law is aimed at promoting sustainable development by ensuring environmental protection, the safety of the population's life and health, and the integration of environmental requirements during the development and approval of state planning documents [27]. The law itself provides such tasks as the integration of environmental goals and priorities of sustainable development into the development of state planning documents, the extension of strategic environmental assessment practice to local projects and programs, and the coordination of procedures for carrying out such assessment in Ukraine by similar procedures of the European Union member states.

### ***Ukraine's roadmap as a candidate for EU membership in the field of environmental protection***

Association Implementation Report on Ukraine also highlights the progress made in the area of climate action. In particular, the adoption and submission of Nationally Defined Contribution to the Paris Agreement and National Strategy on Adaptation to Climate Change as well as launching of the EU Ukraine focused dialogue on the EU Green Deal and Ukraine's green transformation. Meanwhile, the Russian war of aggression in Ukraine has exposed the additional urgent

need for effective coordination and coherence between EU policy frameworks regarding the implementation the EU Green Deal. Currently, it follows a sectoral approach that contradicts the EU's policy coherence ambitions, while an integrated approach aimed at minimizing internal and external trade-offs between core issue areas, such as food and environmental protection in order to facilitate efficient alignment with long-term global agendas, such as the 2030 Agenda for Sustainable Development and the Paris Agreement is required.

The latest signifiatory legislative developments aimed at reaching the alignment with EU requirements in the environmental field were implemented by the Law 'On Waste Management' from June 20, 2022, which marks the beginning of required changes for Ukraine's accession process [28]. Taking into account the requirements of the EU directives and in order to improve the state of the environment and achieve sustainable development goals, the law envisions to implement the European hierarchy of waste management; organize the planning of the waste management system at the national, regional, and local levels; close the old landfills, while bringing the remaining ones to European standards; create conditions for the construction of modern waste processing infrastructure in Ukraine according to European rules and open borders for investors; etc. Additionally, the law enshrines the "du pollueur-payeur" principle, according to which the generator or owner of waste covers the costs of preventing the generation of waste, its collection, transportation, and processing, including the costs of creating and maintaining waste treatment facilities [29]. Noteworthy, the principle of "du pollueur-payeur", which is aimed at preventing or otherwise eliminating damage to the environment is one of the main principles on which the EU's environmental policy is based. Additionally, the Article 13 of the Law, 'General requirements for waste management' was supplemented by the part 9, which lays the legislative basis for the legal regulation of waste generated as a result of Russia's military aggression against Ukraine.

Among the recent events that laid down the foundation for the further development of environmental legal framework with regards to its approximation to the EU standards was an agreement on Ukraine's accession to the LIFE programme, signed on 24 June 2022. LIFE is a program of the European Union, dedicated exclusively to the issues of nature conservation and climate action. The program itself is aimed at promoting the transition to a sustainable economy, protecting the environment, and stopping the loss of biodiversity. In the short term, the LIFE programme could support Ukraine's reconstruction efforts through a needs analysis and the mobilization and capacity building of different actors to tackle soil and water decontamination through nature-based solutions. In the medium and long term, as in other countries participating in

LIFE, projects can aim to: develop and demonstrate eco-innovative techniques and approaches; promote best practices and behavioral changes; support the development, monitoring, and enforcement of laws similar to those in the EU, as well as plans and strategies that can contribute to implementing these laws [30].

The process of approximation of Ukrainian legislation to the EU environmental acquis has been ongoing since 1998. It covered the adaptation of the legislation of Ukraine to EU environmental legislation; gradual approximation of ecological the legislation, norms and standards of Ukraine to the legislation, norms and standards of the European Union; implementation and introduction of European standards of environmental protection and nature management in separate acts of environmental legislation; gradual approximation of the legislation of Ukraine to the law and EU policies in the field of environmental protection [31]. Over the past few years, Ukraine has made significant progress in bringing national legislation closer to the legislative requirements of the European Union. Specific strategies and concepts were developed for the integration of European standards.

Meanwhile, a significant scope of legislative activity towards ensuring the alignment with EU environmental acquis should be done. In particular, the adoption of the Law 'On the territories of the Emerald Network' to fulfill the provisions of the Bern Convention on the Protection of Wild Flora and Fauna and Natural Habitats in Europe [32]. Currently, there are more than 350 emerald objects on the territory of Ukraine, recognized by the Bern Committee. Nevertheless, due to the lack of relevant legislation, such objects do not have legal status. While Association Agreement with the EU created the legal grounds for ensuring the development and regulatory support of the Emerald Network, a specialized law has not been adopted yet. Due to the fact that a large number of territories of the Emerald Network are located in temporarily occupied territories and, after the war, need comprehensive management plans capable to ensure their restoration, the adoption of the law should be one of the key priorities [33].

Communication adopted by the European Commission on 17 June 2022 concerning the European Commission's opinion on Ukraine's application to become a member of the European Union is a structural assessment based on knowledge and experience gained from close cooperation of the EU with Ukraine, including the state of alignment with EU acquis. Accordingly, environment and climate change are the part of the cluster on the 'Green agenda and sustainable connectivity'. For this cluster, the strategic high-level dialogue with Ukraine on the European Green Deal and the Ukrainian green transition, which was launched in 2021 has demonstrated high level interest and dedication to the green agenda on the side of the Ukrainian government. This is necessary to enable the country's green transition and to reach its new climate targets in line with the objectives of the Paris

Agreement. The dialogue has also shown that considerable efforts are needed to ensure legislative alignment for instance with the EU climate and environmental *acquis*, as well as to secure the adequate administrative, financial and organizational capacities to implement and enforce it [34]. Meanwhile, the development of fully-fledged environmental legislation on should be carried out, inter alii, by a) developing and adopting a framework legal act (e.g., Climate Law of Ukraine) in the sphere of climate change, which shall be aimed at the developing legal measures to achieve net zero greenhouse gas emissions, protect the natural environment and Ukrainian citizens from the adverse impacts of climate change b) ensuring integration of climate change issues into all spheres of state policy.

## **Conclusions**

Environmental legislation of Ukraine has been gradually adapting to the EU environmental *acquis*. Considerable progress has been made in compliance with the horizontal EU environmental *acquis regarding* environmental impact assessment, strategic environmental assessment, waste management, climate change. However, considering the acquisition of the status of candidates for EU membership, Ukraine faces additional obligations to implement EU environmental legislation. In particular, this concerns adopting new laws and implementing a new environmental policy in such areas as climate action, Emerald network sites, etc. as well ensuring adequate administrative, financial and organizational capacities to implement and enforce it. With regards to the latter, there is an urgent need for elaboration of the EU Approximation Strategy in order to provide with a comprehensive legal framework for developing the technical and institutional infrastructure as well as further legislative activity aimed at ensuring the alignment with the EU's environmental *acquis* and its effective implementation. It is envisioned to define objectives, targets, strategies and activities to be undertaken in the abovementioned priority areas. Noteworthy, harmonization with the EU environmental *acquis* should not be seen as an obligatory condition for Ukraine to become an EU member state but also an effective legal tool to form a solid regulatory basis for ensuring green and sustainable post-war reconstruction, incorporating the priorities of green transition, net-zero economy and achieving high living standards of Ukrainian citizens.

## **Recommendations**

Taking into consideration the recently granted EU candidate membership status of Ukraine, the article is envisioned to be useful for legal scholars, law students, practicing lawyers, nongovernmental organizations as well as policy makers as an overview of the current state, prospects and challenges of development of legal regulation in the environmental field.

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