

# Environmental POLICY AND LAW

## UA REVIEW

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### HIGHLIGHTS

## WHAT'S THE FUTURE OF SEA?

**O**n March 2, 2018, the Parliament adopted the Law on Strategic Environmental Assessment (draft No.6106). Introduction of SEA mechanism will ensure that environmental concerns are taken into account during development and adoption of state planning documents, in particular by assessing environmental effects of their implementation.

Adoption of this law signals that O.Semerak, the Minister of Environment of Ukraine, is ready to invest political capital into purely "environmental" projects, while a wide range of political groups in the Parliament are ready to support such initiatives, including the opposition. Yet, the text of the adopted law poses a number of risks for comprehensive SEA implementation in Ukraine.

The key problem lies with its provision discriminating the

public. Public participation in environmental decision-making is an important principle of SEA. Yet, the new law provides for a notion of public, which has a direct geographical criteria: public means physical persons, their associations, organizations or groups, "registered on the territory covered by the strategic planning document". This criteria, linking exercise of a right to place of registration, limits constitutional human rights of the citizens, and is likely to hinder effective public consultations in the process of SEA, thus undermining their very purpose.

In addition, regional socio-economic development programs have been excluded the scope of application of the SEA law till 2020, while they are usually subject to SEA in the EU. Application of SEA to spatial planning has been also limited by special provisions relating to territory planning documents under the Law on Regulating Urban Development Activities.

## NATURE PROTECTION IN THE FOCUS OF PARLIAMENT AND MINISTRY OF ENVIRONMENT

**I**n addition to campaign to save storks, which found themselves trapped in freezing temperatures in Ukraine, March has been full of developments in nature protection policy. The Parliament voted amendments to the Law of Nature Protection Fund (regarding local authorities powers in this area). The amendments will allow regional authorities to re-gain management powers in relation to protected areas at local level.

The Ministry of Environment finally came up with a public proposal for implementing two nature protection EU instruments: birds and habitats directives. During the press-

conference on March 12, 2018, O.Semerak, the Minister of Environment of Ukraine, announced public consultations over new draft law On Emerald Sites Network. It is unclear why the focus was put on Emerald Network implementation in Ukraine. Designation of NATURA 2000 sites in Ukraine indeed faces some obstacles, mainly due to the fact Ukraine is not a member-state of the EU. Yet, additional bilateral agreements between Ukraine and the EU would give a chance to Ukrainian species and habitats to become part of the European nature in political sense, not just geographically. This would also create additional opportunities for financing designation and management of such sites.

### NUMBER OF THE MONTH

**159** tasks

**are assigned to the Ministry of Environment  
(encompassing 649 measures) under the Action Plan for  
Implementation of the Association Agreement**

## ENVIRONMENTAL DIMENSION OF THE ACTION PLAN FOR IMPLEMENTING EU-UKRAINE ASSOCIATION AGREEMENT

In March the government made public its decision No.1106, adopted on October 25, 2017, approving the Action Plan for Implementing EU-Ukraine Association Agreement (hereinafter the Action Plan). The decision also annulled previous governmental action plans for implementation of the Association Agreement, as well as individual implementation plans for directives and regulations, in particular listed in Annex XXX to the Association Agreement.

**The Action Plan in numbers.** The Action Plan includes specific measures and tasks aimed at implementing the Association Agreement. Out of total 1943 tasks, the Ministry of Environment is responsible for implementing 159, which directly (or indirectly) relate to the environmental protection. The section "Environment" of the Action Plan lists 88 tasks, which cover a total of 401 measures to be (co-)implemented by the Ministry of Environment.

While the Action Plan does not set timeframes for its implementation, specific deadlines are set for specific measures and tasks. Environmental tasks and measures are to be implemented in the period of 2018-2022. In exceptional cases, the Action Plan sets deadlines beyond that period: October 31, 2024, for development and approval of river basin management plans (item 1779 of the Action Plan), a period of 2018-2030 for implementing measures envisaged by the Concept of State Climate Change Policy Implementation (item 1726(7)), etc.

2018 is the year packed with implementation measures the most. 274 measures are to be implemented this year, out of which 160 measures have a deadline of March 20, 2018.

**The Action Plan in facts.** The Action Plan includes - in particular in section "Environment" mostly tasks and measures aimed at implementing specific provisions of the Association Agreement and directives/regulations envisaged by Annex XXX. Yet, even

brief analysis of the environmental dimension of the Action Plan reveals a number of factors which will have impact on effective implementation of the plan and objective monitoring and assessment. These include:

- Lack of implementation indicators, both for tasks and measures. This will lead to subjective assessment by Ukraine of the implementation of its obligations.
- Inclusion of measures, which have been already implemented. For example, item 1704(1-3) provides for development, consulting the EU experts and submission for Government's approval of the wastes management strategy till 2030; this is despite the fact the strategy was already approved on November 8, 2017 (Government's decision No.820-p).
- Artificially increased total number of measures. For example, item 1687(1) provides for the development of a draft law on strategic environmental assessment, but the same measures is copy-pasted in items 1688 (1), 1689(1), 1690(1) where the latter just provide details of the same draft law.
- Lack of measures which reflect completion of tasks in practical terms. Significant number of tasks in environmental protection area provide for approval (adoption) by the Government of its decisions. Yet, some measures are limited to submission of draft decisions for government's consideration (not their approval), for example items 1686, 1688, 1689.

A strength of the Action Plan is the fact it is not focused on legal approximation of the national legislation. It also entails institutional and organizational capacity measures, aimed at implementation of directives and regulations. These include development of information systems, quality monitoring systems, networks, plans and programs.

### QUOTE OF THE MONTH

**"Our country needs to gradually change its energy policy vector, re-orienting towards green technologies. In partnership with the Energy Community, Ukraine decided to develop integrated energy and climate change plans, starting 2020. This is a step towards of European integration of energy and climate policies and strengthening our positions on international fora in the area of preventing dangerous climate change".**

Ostap Semerak, Minister of Environment of Ukraine, 3rd Meeting of the Committee on Energy and Climate of the Energy Community.

### EV

**On March 19, 2018, a preliminary feasibility study was presented, designed for development of renewable energy in the Chernobyl exclusion zone. The French Ministry of Economy and Finance funded development of a concept for solar energy cluster of a total forecasted capacity of 1.2GW.**