

**Assessing Implementation of the
ENP Action Plans**

Assessment of the EU-Ukraine Action Plan
Implementation: Environment and Sustainable
Development

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This publication reflects results of the assessment of the implementation of the environmental component of the EU-Ukraine Action Plan for the period 2005-2008. The assessment was done in the framework of the project “Assessing Implementation of the ENP Action Plans in Azerbaijan, Armenia, Georgia, Moldova and Ukraine” by Resource and Analysis Center “Society and Environment” (with input of experts of other environmental NGOs in Ukraine) using the methodology developed within the project of WWF-EPO and Hbf.

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FOREWORD

Project “Assessing Implementation of the ENP Action Plans in Azerbaijan, Armenia, Georgia, Moldova and Ukraine”

The assessment of the implementation of the EU-Ukraine Action Plan in the field of environmental protection and sustainable development in Ukraine takes place within the project “Assessment of the implementation of the ENP Action Plans in Armenia, Azerbaijan, Georgia, Moldova and Ukraine”. The project is implemented with financial support of The Black Sea Trust for Regional Cooperation (a project of the German Marshall Fund). The project’s partners are the following organizations: Resource and Analysis Center “Society and Environment” (Ukraine, Lead Partner), Association “EcoTIRAS” (Moldova), Association “For sustainable human development” (Armenia), Association “Green Alternative” (Georgia), Center of Environmental Law “EcoLex” (Azerbaijan), Hbf (Belgium), WWF-EPO (Belgium).

The goal of the project is improvement of, and strengthening civil society participation in, the implementation of the ENP Action Plans in the area of environmental protection in Armenia, Azerbaijan, Georgia, Moldova and Ukraine. We expect that the project implementation will bring more benefits in the area of environmental protection, sustainable development and civil society issues in Armenia, Azerbaijan, Georgia, Moldova and Ukraine. The non-governmental organizations will participate more effectively in monitoring ENP Action Plans implementation and will be more effective in lobbying for sustainable public policies and environmental issues related to the implementation of the ENP and Action Plans. The cooperation of the civil society organizations in the Black Sea regions will be strengthened.

The key element of the project is an independent assessment of the implementation of the ENP Action Plans and the discussion of the obtained results with representatives of NGOs, state bodies, European Commission. The assessment is done for five countries (Armenia, Azerbaijan, Georgia, Moldova and Ukraine).

The Resource and Analysis Center “Society and Environment” is implementing the project in Ukraine. The following experts participated in the assessment: Andriy Andrusyevych (RAC “Society and Environment”, the assessed objectives: “Ratifying international environmental conventions and protocols”, “Reinforcing structures and procedures to carry out EIA”, Supporting civil society actors and local authorities”, “Enhancing cooperation with neighbouring countries”), Nataliya Andrusyevych (RAC “Society and Environment”, the assessed objectives: “Strengthening cooperation with the EU”, “Assessing the level of EU commitment”), Nataliya Chyzhmakova, Anna Tsvetkova (“Mama-86”, the assessed objective: “Promoting the adoption of environmental legislation (sectoral approach – water)”), Anna Golubovska-Onisimova (“Mama-86”, the assessed objective: “Ensuring integration of environmental aspects in other policy sectors”), Zoryana Kozak (RAC “Society and Environment”, the assessed objectives: “Developing plans and programmes for the environment”, “Improving public information and participation”, “Preparing regular reports on the state of the environment”), Volodymyr Morozov (UKRNTEC, the assessed objective: “Improving permitting and enforcement structures”), Yuriy Urbansky (NECU, the assessed objective: “Improving sustainability of energy and transport policy”), Serhiy Vykhryst (European EcoForum, the assessed objectives: “Strengthening administrative structures and procedures”, “Implementing the provisions of the Kyoto Protocol and UNFCCC”).

At the round table “Implementation of the EU-Ukraine Action Plan: the methodology for assessment of the environmental component” (October 9, 2008, Kyiv, Ukraine) the goals of the project and the methodology for assessment were discussed by 22 representatives of the NGOs, state bodies and EC Delegation to Ukraine.

The draft assessment was available at the web-page of the RAC “Society and Environment” at www.rac.org.ua. The representatives of the key stakeholders had the opportunity to express their position in regards of the draft assessment.

On March 24, 2009 at the round table “Assessing Implementation of the environmental component of the EU-Ukraine Action Plan: discussion of the preliminary results” 22 representatives of the NGOs, state bodies and scientific institutions discussed the preliminary results of the assessment in order to provide their suggestion and recommendations.

The presentation of the preliminary results of the assessment took place on February 24, 2009 in Brussels (Belgium) at the public event “Environmental Barometer in the ENP East”. The representatives of the European Commission, Missions of Ukraine, Armenia, Moldova and Azerbaijan to the EU, EU-based civil society organizations dealing with ENP participated in this workshop.

Methodology of the assessment

For the assessment of the EU-Ukraine Action Plan we used the methodology presented in the Handbook to Assess Implementation of the Action Plans in the Field of the Environment “Greening the European Neighbourhood Policy”. The Handbook was developed by the Heinrich Boll Foundation and WWF-EPO.

The methodology was developed in the manner to be used for assessment of any ENP Action Plan between a national government and the European Union. All Action Plans have many common features and set major objectives to be achieved in the process of the Action Plan implementation. The objectives to be assessed have been selected mainly from the section of the Action Plans dedicated to the environment (for example, strengthening administrative structures and procedures, developing plans and programmes for the environment, etc.). The assessment also includes two issues related to the level of commitment of the national government and the EU.

Fifteen objectives have been selected to be assessed:

- Strengthening cooperation with the EU;
- Assessing the level of EU commitment;
- Ratifying environmental international Conventions and Protocols;
- Developing plans and programmes for the environment;
- Promoting the adoption of environmental legislation;
- Strengthening administrative structures and procedures;
- Reinforcing structures and procedures to carry out EIA
- Improving permitting and enforcement structures
- Improving public information and participation
- Preparing regular reports on the state of the environment;
- Supporting civil society actors and local authorities;
- Enhancing cooperation with neighbouring countries;
- Ensuring integration of environmental aspects in other policy sectors (promoting sustainable development);
- Implementing the provisions of the Kyoto Protocol and UNFCCC;
- Improving sustainability of energy and transport policy.

For each objective there were selected appropriate questions that help to identify the current situation with implementation of the objective. On the basis of the answers to these questions, the indicator is scored in the form of a percentage. Under this approach, the indicator for each objective can be compared in its evolution over time for each country.

The main stages of the assessment were the following:

- 1) Close review of the Action Plan and the identification of relevant questions and possible new questions.
- 2) Data collection. The main sources of information are government web sites, reports and legislative documents, as well as consultations with representatives of the NGOs, state bodies, EC Delegations, etc.
- 3) Review of some of the questions listed on the score sheet, in particular where scoring is hindered by a lack of reliable information. In such cases, it may be necessary to adapt the questions to take into account the availability of data in the country.

The assessment may cover one year of the Action Plan implementation, as well as broader period time.

For every question there are four possible options for answer: three level of “yes” (excellent, adequate, poor) and “no”. Each level of answer corresponds to a mark (from 0 for *Nothing* to 3 for *Excellent*). Each indicator may be scored on a scale of 0 to a maximum score corresponding to the maximum mark by question multiplied by the number of questions per objective. This can be converted into a percentage.

For each indicator the evaluator should also prepare a brief explanation of the actions undertaken in the country as well as of the broader context. The assessment also contains recommendations of actions to be undertaken to improve the implementation of AP environmental objectives.

Every objective also includes broader explanation on every question or group of questions. Also there are general conclusions on the objective and recommendations for better implementation.

For assessing the environmental component of the EU-Ukraine Action Plan all objectives proposed in the Handbook were used. For every concrete objective the experts adapted some questions, included new questions or deleted non-relevant questions, taken into account country specifics in each area.

PART I

INTRODUCTION

The integration to the European Union is one of the priority directions of the foreign policy of Ukraine. This is supported by many political and legal instruments, such as the Law of Ukraine “On Concept of the National Program of the Adaptation of the Legislation of Ukraine to the Legislation of the European Union”, Program on the Integration of Ukraine to the European Union, Strategy of the Integration of Ukraine to the European Union, etc.

After the enlargement of the European Union in 2004, the relations between Ukraine and the EU, including in the field of environmental protection, take place within the European Neighbourhood Policy (ENP). This policy was developed by the EU towards its new neighbours.

The European Neighbourhood Policy differs from the potential membership in the European Union and offers the neighbour countries the privileged relations with the EU, building upon a mutual commitment to common values, including democracy and human rights, rule of law, good governance, market economy principles and sustainable development. The Commission Communication on Wider Europe (2003) sets out the goal of the ENP “to avoid drawing new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union”. The Communication proposes that the EU should aim to develop zone of prosperity and a friendly neighbourhood – “a ring of friends” – with whom the EU enjoys close, peaceful and cooperative relations.

The EU should act to reinforce and unite its existing neighbourhood policy towards these regions around two overarching objectives:

- To work with the partners to reduce poverty and create an area of shared prosperity and values based on deeper economic integration, intensified political and cultural relations, enhanced cross-border cooperation and shared responsibility for conflict prevention between the EU and its neighbours.
- To anchor the EU’s offer of concrete benefits and preferential relations within a differentiated framework which responds to progress made by the partner countries in political and economic reform.

Among other things, the ENP highlights the importance of the environmental protection as one of the directions of cooperation of the EU with neighbourhood countries. The ENP Strategy says that “Environmental pollution does not respect borders and can therefore be best addressed through a mix of international, regional and national actions”.

The main instrument of the ENP implementation at national level are the Action Plans, approved and agreed by the EU and national governments. The point of departure for the Action Plans is a common set of issues, which correspond with the ENP’s objectives. However the drawing up of an Action Plan and the priorities agreed with each partner will depend on its particular circumstances. These differ with respect to geographic location, the political and economic situation, relations with the European Union and with neighbouring countries, reform programmes, where applicable, needs and capacities, as well as perceived interests in the context of the ENP. Thus the Action Plans with each partner will be differentiated. Among other things, Action Plans will promote good environmental governance in partner countries to prevent environmental degradation and pollution, protect human health, and achieve a more rational use of natural resources.

The EU-Ukraine Action Plan was adopted on February 12, 2005 for 2005-2007, and it was prolonged till 2009.

According to the ENP, the EU and partner countries define the set of priorities for implementation in the jointly agreed Action Plans. The Action Plans contain the number of key areas for specific actions, including political dialogue and reforms, trade and measures preparing partners for gradually obtaining a stake in the EU's Internal Market; justice and home affairs; energy, transport, information society, environment and research and innovation; and social policy and people-to-people contacts.

The EU-Ukraine Action Plan contains the separate chapter on environment. This chapter contains three groups of measures to be implemented in the field of environmental protection, namely:

- Take steps to ensure that conditions for good environmental governance are set and start implementing them (this includes, *inter alia*, ensuring strategic planning, establishing procedures regarding access to implement the Aarhus Convention, reinforcing structures and procedures to carry out environmental impact assessment, including in relation to transboundary issues);
- Take active action for prevention of deterioration of the environment, protection of human health, and achievement of rational use of natural resources, in line with the commitments of Johannesburg Summit (legislation, plans and programmes for key environment sub-sectors and their implementation);
- Enhance co-operation on environmental issues (implementation of provisions under the Kyoto Protocol and the UN Framework Convention on Climate Change, participation in the Danube – Black Sea Task Force, possible participation in selected European Environment Agency activities, Active participation in activities of the Joint Ukraine – EU Working Group on Climate Change.

The EU-Ukraine Action Plan also provides for measures to promote the sustainable development, namely completion of administrative structures and procedures to ensure strategic planning of sustainable development and co-ordination between relevant actors, adoption of a national strategy on sustainable development, integration of environmental considerations into other policy sectors, particularly industry, energy, transport, regional development and agriculture.

To implement the EU-Ukraine Action Plan every year the government of Ukraine adopts Measures to implement the Action Plan. These Measures contain the detailed measures for implementation of the provisions of Action Plan, timetable and responsible state bodies. In the field of environmental protection there is a low level of the implementation of measures and their postponing to next years.

In the field of environmental protection there is a low level of the implementation of measures approved by the Action Plan. Also many measures are postponed for next years. For example, according to the Information on Implementation of the EU – Ukraine Action Plan in 2006 (Regulation of the Cabinet of Ministers of Ukraine No 243 of April 27, 2006) only 2 measure were implemented, other measures (near 12) were postponed to the next year. Such situation in the field of environmental protection is the same in other years.

Nevertheless, according to the assessment of the Ukrainian Government some progress was made in the implementation of the environmental protection provision, and according to the EU assessment good progress was made in this field (Position Paper on EU – Ukraine Action Plan Implementation for 2005-2006). Among the positive steps the Position Paper, among others, mentions the following: the activity on climate change (for example, creation of the Center on Climate Change, approval of the National Action Plan for the implementation of the Kyoto Protocol, approval of the Procedure for consideration, approval and implementation of the projects aimed to reduce the volume of anthropogenic emissions or increase absorption of the greenhouse gases according to Kyoto protocol, approval of the Procedure for coordination of measures concerning Ukraine's commitments under the Kyoto Protocol, creation of the National Agency of Environmental

Investments of Ukraine, etc.), on ratification of the international agreements of Ukraine in the field of environmental protection (for example, ratification of the European Landscape Convention, ratification of the Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea against Pollution, ratification of the Stockholm Convention on the Persistent Organic Pollutants, etc.)

In 2008 the European Commission published the report on Implementation of the ENP in 2007 (Progress Report for Ukraine) (Communication from the Commission to the European Parliament and the Council, 23/04/2009, SEC (2009) 515/2). The document, *inter alia*, says that the legislative basis and sectoral legislation, as well as access to information and public participation still need improvement. The special attention should be paid to the monitoring and compliance with legislation.

For the effective implementation of the EU-Ukraine Action Plan it's important to make independent monitoring and assessment of the implementation of Action Plan in different fields, including in the field of environmental protection and sustainable development. Such assessment was done by the consortium of experts (Razumkov Center) for 2005-2007. The index of the Action Plan implementation in the field of environmental protection in 2005 was 0.74; in 2006 – 0.62; in 2007 – 0.65. In general the assessment of progress in the field of environmental protection is classified as “some progress achieved”.

At the present moment the negotiations on new Practical Instrument and Association Agreement between Ukraine and the EU take place. The Eastern Partnership of the European Union is under establishment. Ukraine receives the financial aid from the European Union in the framework of the European Neighbourhood and Partnership Instrument (ENPI). In this context it is important to ensure that adequate priority is given to the environmental protection and sustainable development issues in the above mentioned policy instruments and processes.

SUMMARY

MAIN CONCLUSIONS AND RECOMMENDATIONS

The assessment of the implementation of the environmental component of the EU-Ukraine Action Plans was done for the period 2005-2008, that is for the whole period of the EU-Ukraine Action Plan implementation.

See *Table 1* for results for each of the assessed objectives.

The relatively high results for some of the assessed objectives are due to the specifics of the questions-indicators used for the assessment. Some objectives put the emphasis on the adoption of legislation, existence of particular provisions in the legislation, programs development, etc., rather than their practical implementation. This is true especially for the environmental impact assessment, ratification of the international conventions and protocols.

ble 1. Assessment general results

No	Assessed objective	Grade in percentage
1	Strengthening cooperation with the EU	63,3 %
2	Assessing the level of EU commitment	30,3 %
3	Ratifying international environmental conventions and protocols	52,8 %
4	Developing plans and programmes for the environment	24,2 %
5	Promoting the adoption of environmental legislation (sectoral approach – water)	30,8 %
6	Strengthening administrative structures and procedures	41,0 %
7	Reinforcing structures and procedures to carry out EIA	64,9 %
8	Improving permitting and enforcement structures	46,7 %
9	Improving public information and participation	35,1 %
10	Preparing regular reports on the state of the environment	36,4 %
11	Supporting civil society actors and local authorities	38,1 %
12	Enhancing cooperation with neighbouring countries	54,5 %
13	Ensuring integration of environmental aspects in other policy sectors (promoting sustainable development)	27,3 %
14	Implementing the provisions of the Kyoto Protocol and UNFCCC	33,3 %
15	Improving sustainability of energy and transport policy	33,3 %

Some objectives have relatively low percentage because of the lack of the basic documents/strategies/plans/programmes, and, consequently, impossibility to assess the content and practical implementation of such documents. This includes development of plans and programmes, promotion of the sustainable development, preparation of regular reports on environment.

The objective of the level of EU commitment received relatively low grade. This is because this objective included questions on the implementation of the new funding instrument (European Neighbourhood and Partnership Instrument) in Ukraine.

The assessment report includes answers to the concrete questions, as well as comments and explanations, main conclusions and recommendations for the improvement of situation.

The following conclusions and recommendations are common for the all objectives:

1. The EU-Ukraine Action Plan is not properly integrated into the national policy of Ukraine, including in the field of environmental protection. The official position of Ukraine on the ENP implementation is that the main principles of the ENP don't reflect the strategic interest of Ukraine to obtain membership in the European Union. This leads to the formalistic implementation of the ENP and the EU-Ukraine Action Plan.

Recommendations: While developing the Association Agreement and new Practical Instrument, it is necessary to take into account the specifics of the relations between Ukraine and the EU in order to ensure that the European integration aspirations of Ukraine would be the integral part of its national policy and would have the prospects for the effective implementation at the national level.

2. The environmental protection and sustainable development are not priorities in implementation of the ENP and EU-Ukraine Action Plan. The environmental protection has similar weak position in the national policy of Ukraine. The EU – Ukraine Action Plan itself doesn't include the environmental protection and sustainable development among its priorities.

Recommendations: The environmental protection and sustainable development should be incorporated as priorities on the national level, as well as into the new policy documents between Ukraine and the EU (namely Association Agreement and Practical Instrument) and in the process of implementation of the ENPI.

3. Low level of the implementation of the EU – Ukraine Action Plan. The European Union put Ukraine as an example for other ENP countries as to implementation of the EU-Ukraine Action Plan. Nevertheless, the level of implementation of the EU-Ukraine Action Plan needs to be higher, including in the field of environmental protection. Many objectives are not achieved, some are achieved partly. In this context the main problem is that the objectives of the Action Plan are very broad and long-term. So, it's very difficult to assess properly the level of their implementation.

Recommendations: To ensure appropriate level of implementation of the new Practical Instrument by strategic planning and clear criteria for the assessment of the implementation level.

4. The measures implemented according to the Measures to Implement the EU-Ukraine Action Plan often didn't correspond to the objectives of the Action Plan. Some objectives lacked specific measures for their implementation.

Recommendations: To ensure that the measures for implementation of the new programming documents correspond to their objectives.

5. Low level of the practical implementation of legislation/plans/programs/policy/international documents at national level. One of the main problems for every assessed objective is low level of implementation of legislation, plans, programs, policy, and international conventions. Even in the fields where necessary legislation is in place practical implementation is not adequate. This is true for the fields of EIA, access to environmental information, preparation of regular reports on the state of the environment, etc.

Recommendations: To focus on the practical implementation of the national legislation, plans, programs, international conventions, and to find mechanisms and funding for their effective implementation.

6. There is a need to adopt new legislation (or to amend existing legislation), as well as to adapt the legislation of Ukraine to the EU legislation. In particular, this is true for the water sector and permitting system.

Recommendations: To develop the legislation of Ukraine in the field of environmental protection in order to align it to the norms and standards of the European Union and international law; the process of adaptation shall be effective, task-oriented, and take into account the national specific situation.

7. The public participation in the process of decision-making is not adequate. This problem relates to the general processes (for example, development of Association Agreement, new Practical Instrument, etc.) and to some specific issues, such as development of plans and programs, EIA.

Recommendations: To pay more attention to the public participation issues, including in relation to development, implementation and monitoring of the future documents adopted in the framework of relations between Ukraine and the EU, as well as in the implementation of the ENPI.

8. There are barriers in access to the environmental information. The web-sites of the appropriate state bodies don't have enough information; sometimes information available is outdated.

Recommendations: To ensure full access for the public to the environmental information by effective implementation of the Aarhus Convention, as well as to other important information, such as draft new policy documents.

9. Lack of the integrative approach and strategic vision during the implementation of the ENP, EU-Ukraine Action Plan, and national environmental policy.

Recommendations: In the future, in order to ensure effective implementation of the environmental component of the eurointegration policy of Ukraine it's necessary to use the integrative approach and strategic planning. When adopting new legislation, program or policy, it's necessary to have in mind the need for appropriate changes in the other related fields. One of the preconditions to ensure the strategic planning is the adoption in the near future of the Strategy of the National Environmental Policy of Ukraine for the period till 2020 and National Action Plan for 5 years.

CONCLUSIONS AND RECOMMENDATIONS ON OBJECTIVES

The following are conclusions and recommendations for specific objectives/issues:

Objective 1:

Strengthening cooperation with the EU

- The Ukraine's foreign policy and activities at national level reveal a high priority given to the European integration. Ukraine actively incorporates the commitments related to the cooperation with EU, including those under the ENP and EU-Ukraine Action Plan, into its national policy, strategic and legislative instruments.
- Recently the institutional capacity of the state bodies to work with European integration issues was strengthened (creation of the special departments on the European integration within the Ministries, special trainings, etc.)
- The level of practical implementation of the commitments under the EU-Ukraine Action Plan implementation, including in the field of environmental protection, is rather low.
- The public lacks information on the ENP issues and does not have possibilities to participate in the processes related to the ENP.
- It is important to ensure inclusion of the environmental protection and sustainable development as the priority issues into the new Practical Instrument and Association Agreement and to ensure public participation in the development of these new instruments.
- The informing of public on the issues of European integration, including in the field of environmental protection, needs to be strengthened.

Objective 2:

Assessing the level of EU commitment

- The European Union / the EC Delegation to Ukraine is making some steps forward in the cooperation with civil society in Ukraine. There are good examples of the involvement of public to the preparation of reports on the EU-Ukraine Action Plan implementation for 2007 and 2008.
- The civil society in Ukraine doesn't have enough information on the European integration, the procedures of the public involvement are not developed well.
- The environmental protection issues are not priorities for the first year of funding within the European Neighbourhood and Partnership Instrument.
- No funding within the ENPI is currently available for the civil society organizations, in particular in the form of small grants.
- Ukraine makes initial steps to participate in the work of the European Environmental Agency. Nevertheless, these efforts need more support from the EU side.
- It is important to effectively involve the civil society into the development of new bilateral policy instruments, in particular by widening consultation process and abolishing selective approach. It's necessary to intensify the dialog between the EC Delegation to Ukraine and civil society.

- The web-site of the EC Delegation to Ukraine has to contain all relevant information and has to be updated regularly.
- The Annual Action Programs (within the ENPI) have to be developed in time, with public participation and reflect the environmental priorities of the country. The program of small grants has to be created within national package under the ENPI.

Objective 3:

Ratifying international environmental conventions and protocols

- EU-Ukraine Action Plan sets objectives to implement only two multilateral environmental agreements: Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) and Kyoto Protocol to the UN Framework Convention on Climate Change (1997). The Government of Ukraine has taken additional obligations, in particular related to ratification/accession to a number of other treaties.
- During the period of implementation of the EU – Ukraine Action Plan Ukraine ratified the following international conventions and protocols: Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea Against Pollution, the European Landscape Convention, Stockholm Convention on Persistent Organic Polluters.
- The key problem is compliance with existing obligations under environmental treaties. Relevant bodies of the Bern, Aarhus and Espoo Conventions have found Ukraine in non-compliance with its obligations under these treaties.
- It is necessary to include into the new Practical Instrument an objective to strengthen capacity and control over compliance with multilateral environmental agreements.

Objective 4:

Developing plans and programmes for the environment

- The Annual Measures to Implement the EU – Ukraine Action Plan provided for adoption of a number of programmes and plans on various environmental issues, including Strategy of National Environmental Policy till 2020, State Program on the Conservation of Biodiversity for 2005-2015. No programme or plan was adopted.
- The following concepts of programs or drafts plans and programmes were developed: Concept of the National Environmental Policy of Ukraine for the period till 2020, Concept of the National Program on Conservation of Biodiversity for 2005-2025, Concept of the National Program of Development of Reserves for the period till 2020; draft Strategy of the National Environmental Policy for the period till 2020, draft National Program of Development of Reserves for the period till 2020, etc.
- It is necessary to improve the development, adoption and implementation of programmes and plans, and to ensure public participation in these processes.
- It is necessary to ensure the adoption in the near future of two important strategic documents: the Strategy of the National Environmental Policy of Ukraine for the period till 2020 and the National Action Plan for 5 years.

Objective 5:

Promoting the adoption of environmental legislation (sectoral approach – water)

- There is no political will to implement measures on adaptation of the water legislation of Ukraine to the EU legislation.
- There is low technical level of preparation of Ukraine for the adaptation of water legislation. The level of the implementation of water related issues of the State Program on Adaptation of the Legislation of Ukraine to the EU Legislation is very low.
- Human resources in water issues are well skilled and the population wants to have access to good quality drinking and bathing water. These factors may help to make necessary progress in this field.
- The complexity of the solution of problems in the water sector of Ukraine needs clear definition of the state bodies responsible for adaptation of the Ukrainian legislation to the water legislation of the European Union.
- To improve the situation the following are the key requirements: political will, in-depth analysis of the water sector, assessment of financial needs for the adaptation, developing realistic timetable for implementation of the relevant EU Directives and appointment of responsible state bodies for the effective implementation of water legislation.

Objective 6:

Strengthening administrative structures and procedures

- The distribution of powers of and among the state authorities responsible for environmental protection issues, including the Ministry of Environmental Protection, was not subject to comprehensive revision for years.
- The key policy document in environmental protection area - the Main Directions of the State Policy of Ukraine in the Field of Environmental Protection, Use of Natural Resources and Environmental Safety (1999) - has not been ever revised.
- A draft Strategy of the National Environmental Policy of Ukraine for the period till 2020 was developed. It needs to be adopted in the near future together with the Action Plan for 5 years. Also it still needs further improvement and consultations with the public.
- It is necessary to harmonize current and future sector strategies with the Strategy of the National Environmental Policy for the period till 2020 (after its adoption).
- It is necessary to ensure the real access and public participation in the decision-making process on environmental issues.
- It is necessary to increase the coordination between different state bodies and to develop the mechanisms of the practical cooperation of ministries and institutions on the environmental protection issues.

Objective 7:

Reinforcing structures and procedures to carry out EIA

- The proper legislation and key procedures for the environmental impact assessment (EIA) are in place.
- Key problem areas include the capacity of state authorities (personnel capacity), practical opportunities for public participation and restricted access to information.

- Ukraine lacks clear mechanisms for strategic environmental assessment (plans, programs, draft laws) and EIA of transboundary impacts (under Espoo Convention).
- It is necessary to include again into the new Practical Instrument an objective to reinforce structures and procedures to carry out environmental impact assessments, including in relation to transboundary issues but with specific priorities to increase capacity of the personnel involved in the EIA, to improve practical mechanisms for public participation in EIA, to ensure adequate access to information in EIA process, to adopt legislation for strategic environmental assessment and ratification of SEA Protocol (2003) to the Espoo Convention, to adopt measures for proper implementation of the procedures under Espoo Convention.

Objective 8:

Improving permitting and enforcement structures

- The permitting and enforcement system of Ukraine has all necessary elements and in general corresponds to international practice of environmental protection management. However, permitting, enforcement and compliance practice differs significantly from the European Union standards primarily because of absence of practical toolkits and technical conditions as part of permits. The system was inherited from Soviet times and still relies on unrealistic sanitary-hygienic norms. This leads to immense gap between declared strict legal standards and actual environmental impact.
- The situation may be improved by implementation of the Directive 2008/1/EC on Integrated Pollution Prevention and Control and broad use of best available technique approach.

Objective 9:

Improving public information and participation

- Annual Measures adopted by the Government of Ukraine provided for a number of specific and general tasks to implement this objective.
- Numerous shortcomings in practical implementation were revealed. The legislation in the area of access to environmental information and public participation is still inadequate: gaps and inconsistency are of primary concerns. No adequate practical mechanisms were set up to ensure effective access to information and public participation in environmental matters.
- On December 27, 2008 the Cabinet of Ministers of Ukraine adopted the Action Plan for Implementation of the Decision of Parties to the Aarhus Convention.
- It is necessary to include again into the new Practical Instrument an objective to improve public information and participation with the specific priorities to improve legislative framework to comply with the Aarhus Convention obligations.
- It is necessary to develop practical mechanisms for ensuring access to environmental information (e.g. by improving means of its dissemination), to improve practice in public participation in environmental decision-making.

Objective 10:

Preparing regular reports on the state of the environment

- The law requires preparation of the National Reports on the State of Environment on annual basis. But the Ministry of Environmental Protection doesn't comply with this requirement.

- The main challenges include irregular preparation of reports, limited access of the public to the process of preparation of national reports, lack of broad informing about the status of preparation of national reports, drafts, effective distribution of the national reports (especially of printed copies).
- Key recommendation is to ensure regular preparation of national reports on the state of the environment and public participation in the process of their preparation.

Objective 11:

Supporting civil society actors and local authorities

- Key problem is absence of any specific measures taken by the Government to implement this objective. Specific issues identified include inadequate powers of the local authorities in the field of environmental protection, low level of cooperation between local authorities and civil society on environmental issues, absence of any communication strategies with civil society on environmental issues, inadequate support to civil society.
- Public participation in policy-development at national and local levels got lower scores because of existing general practice of exclusion of environmental NGOs from the development of sectoral policies at any level.
- Access to environmental information held by local authorities is worse when compared to access to information held by the Ministry of Environmental Protection or its local agencies.
- It is necessary to include into the new Practical Instrument an objective to strengthen the role of local authorities in the field of environmental protection, to increase their capacity to cooperate with NGOs, to increase and improve mechanisms of financial support to civil society.

Objective 12:

Enhancing cooperation with neighbouring countries

- The Annual Measures provided for several tasks to implement this objective, including creating and improving management of cross-border protected areas, development of bilateral agreement with Moldova on the use of protection of Dnister river water resources. Some of these are still being implemented.
- Some of the problems identified include lack of information about bilateral cooperation, the need to intensify the dialogue on transboundary issues and lack of joint cross-border projects with the countries where EU financial support is not available.
- The new Practical Instrument should include an objective to enhance bilateral cooperation with neighbouring countries, in particular on cross-border issues.

Objective 13:

Ensuring integration of environmental aspects in other policy sectors

- In Ukraine there is no political will to strengthen the priority of the environmental policy and its integration into the development strategies of the country.
- There is no Strategy of Sustainable Development in Ukraine. Existing draft strategy needs further improvement and consultations with the public.

- The Cabinet of Ministers of Ukraine approved the Concept of the National Environmental Policy of Ukraine for the period till 2020. At present the Strategy of National Environmental Policy of Ukraine for the period till 2020 and Action Plan for 5 years are under development.
- It is necessary to adopt the Strategy of Sustainable Development and to ensure the integration of environmental considerations into the key policy sectors.
- It is necessary to create special bodies to ensure the effective integration of environmental considerations and development and future implementation of the Strategy on Sustainable Development.
- The new Practical Instrument and Association Agreement have to include as priorities the promotion of sustainable development and to integrate the environmental considerations into all appropriate fields covered by these documents.

Objective 14:

Implementing the provisions of the Kyoto Protocol and UNFCCC

- Steps taken by Ukraine to implement UNFCCC and Kyoto Protocol were not comprehensive and focused primarily on two issues: use of joint implementation and emission trading. In the case of joint implementation, the “rules of the game” were changed several times by the Government resulting in barriers in the use of this financial mechanism under Kyoto Protocol. The Government yet made full preparations to start emission trading. It is unclear how the funds raised from emission trading will be used.
- It is necessary to improve quality of national inventory report, to set transparent and clear rules for joint implementation projects, to ensure transparent emission trading mechanisms with clear conditions on the use of funds gained, to develop in consultation with local authorities regional strategies on mitigation of climate change impacts, to develop plans for adaptation to climate change, to effectively implement sectoral programs which support Kyoto goals (such as those on energy efficiency).

Objective 15:

Improving sustainability of energy and transport policy

- The level of implementation of Action Plan provisions aiming at improving the environmental profile of transport and energy is very low. There is a delay in developing of the new transport policy and actual start of activities on its preparation is beyond the Action Plan period. The government didn't develop or approve the state programs on energy efficiency and use of renewable energy.
- Situation with nuclear safety is critical: decommissioning of Chernobyl NPP is far behind the schedule and overbudgeted comparing to initial plans, nuclear sector still did not show any valuable progress in solving the problem of nuclear waste and used fuel management.
- Greening of the transport and energy sectors must become the priority task for the next period. In addition to improving the state of environment it may help to address challenges caused by the economy crisis and gas conflict with the Russian Federation.

PART II

IMPLEMENTATION OF THE EU – UKRAINE ACTION PLAN: ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

List of abbreviations

AP – Action Plan
BWRO – basin water resources office
CBC – cross-border cooperation
EBRD – European Bank for Reconstruction and Development
EC – European Commission
EIA – Environmental Impact Assessment
EIB – European Investment Bank
EIDHR – European Instrument for Democracy and Human Rights
ENP – European Neighbourhood Policy
ENPI – European Neighbourhood and Partnership Instrument
EU – European Union
GDP – gross domestic product
GHG – greenhouse gas
GMO – genetically modified organism
IBPP – Institution Building Partnership Program
IBRD – International Bank for Reconstruction and Development
IMO – International Maritime Organization
IPPC – integrated pollution prevention and control
MARPOL Convention - International Convention for the Prevention of Pollution from Ships
MEP – Ministry of Environmental Protection
MOP – Meeting of Parties
NAEI – National Agency for Environmental Investments
NEAP – National Environmental Action Plan
NGO – Non-governmental Organization
OECD – Organization for Economic Cooperation and Development
POPs – persistent organic pollutants
RB – river basin
RBD – river basin district
TACIS - Technical Assistance for the Commonwealth of Independent States
TAIEX – Technical Assistance and Information Exchange Instrument
UN ECE – United Nations Economic Commission for Europe
UN FCCC – United Nations Framework Convention on Climate Change
VOCs – volatile organic compounds
WFD – Water Framework Directive
WTO – World Trade Organization

Objective 1

STRENGTHENING COOPERATION WITH THE EU

In addition to the indicators for each major environmental objective, as identified in the Action Plan itself, the assessment includes a general indicator for the level of commitment of Ukraine towards cooperation with the EU.

While this objective is not linked to a specific element of the Action Plan, it has been included into the assessment in order to give a general overview of Ukraine's cooperation with the EU and of the implementation of the ENP and the associated Action Plan.

The questions used for this objective focus on strategic policy and planning documents in order to assess how the country has incorporated its commitments of cooperation with the EU into its national policy.

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
POLICY					
Has a policy declaration on integration/cooperation with the EU been adopted? (1)					Main documents concerning the integration and cooperation between Ukraine and the EU were adopted before the adoption of the EU-Ukraine Action Plan in 2005.
Has a strategic policy instrument for the implementation of the Action Plan been adopted? If yes, is it effectively implemented? (2)					There is no strategic political instrument for implementation of the EU-Ukraine Action Plan. Nevertheless, every year the Government adopts Measures to Implement the EU-Ukraine Action Plan. These documents include the list of concrete measures, implementation timetable and the state body responsible for their implementation. . These measures are concrete but the government does not adopt them in a timely manner; the measures themselves often do not reflect strategic priorities. The level of implementation of such measures varies for specific issues.
Do legislative programming instruments incorporate the adoption of legislation necessary for the implementation of the Action Plan? If yes, does it set clear deadlines? Are these instruments implemented effectively? (3)					The annual measures to implement the EU-Ukraine Action Plan and annual measures to implement the State Program of the Adaptation of legislation of Ukraine to EU legislation provide for adoption of the appropriate legislation. The excellent grade is impossible because of the low level of the implementation of the measures.
Does the working plan of the relevant ministries integrate steps for the implementation of the Action Plan? If yes, does it set clear deadlines? (4)					The situation depends on the state body. This assessment takes into account the analysis of priorities of the Ministries activities adopted for 2008.
INSTITUTIONAL ISSUES					
Within the appropriate Ministries have departments on cooperation/integration with the EU					Most state bodies have separate departments dealing with integration/cooperation with the EU.

been set up? (5)					
Have government officials received training on cooperation/integration with Europe? (6)					There is special state program for training, retraining and advanced training of personnel in the field of European and Euroatlantic integration of Ukraine.
Does the Government provide information to the public on cooperation policy and activities with the EU? (7)					There is special state program on public awareness raising but in practice the public doesn't have enough information.
Does the Government monitor regularly and officially the Action Plan's implementation? (8)					The government monitors (with delays). But there is no clear methodology for such monitoring.
COOPERATION IN THE FIELD OF THE ENVIRONMENT					
If a policy instrument has been adopted for the implementation of the Action Plan, does it describe specific actions and deadlines for achieving environmental objectives? Is it implemented effectively in the field of environment? (2)			X		The annual Measures to implement the EU-Ukraine Action Plan provide for, inter alia, the measures in the field of environment. The level of implementation of these measures (in the field of environment) is low.
Do legislative programming instruments provide for the adoption of the legislation necessary for the implementation of the environmental objectives of the Action Plan? Are these instruments implemented effectively in the field of environmental protection? (3)					The annual Measures to implement the EU-Ukraine Action Plan and annual Measures to implement the State Program on Adaptation of the Legislation of Ukraine to the Legislation of the EU provide for adoption of new legislation. The level of implementation of such measures in the field of environmental protection is low.
Overall assessment: 19 grades from 30 possible					
Score – 63,3 %					

COMMENTS AND EXPLANATIONS:

1. At the present time Ukraine's foreign policy and activities at national level reveal a high priority given to the European integration.

The Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine (entered into force in 1998) is the main document setting the legal framework for the cooperation between Ukraine and the European Union. The Agreement provides for the framework for the political dialog and cooperation in different fields, including the environmental protection.

In 1998 the Strategy of the Integration of Ukraine to the EU was elaborated and approved by the Decree of the President of Ukraine.

The important direction in the process of approximation of Ukraine to the EU is the adaptation of the legislation of Ukraine to the standards and norms of the European Union. This is taking place in accordance with the State Program of the Adaptation of the Legislation of Ukraine to the Legislation of the EU (2003).

The EU-Ukraine Action Plan, which has been implemented in 2005-2008, expires in February 2009. The new practical instrument has to be developed soon.

There are also negotiations between Ukraine and the EU about signing of the Agreement of Association between Ukraine and the EU.

In the context of environmental protection it is very important to ensure that the new practical instrument and Agreement on Association between Ukraine and the EU properly include the environmental protection among the priorities and integration of environmental concerns into other fields like energy, transport, agriculture, etc.

2. There is no strategic political document for implementation of the EU-Ukraine Action Plan. The EU-Ukraine Action Plan is a framework document which provides for main directions of activities. The category “Other key areas”, section “Transport, energy, information society and environment” provides for some environmental protection issues. The environmental protection and promotion of sustainable development are not among the priorities for activities in the Action Plan. The environmental issues are not integrated properly into other fields regulated by the Action Plan, including transport, energy, agriculture, etc.

Every year the Government of Ukraine adopts measures to implement the EU-Ukraine Action Plan. In particular, since the adoption of the EU-Ukraine Action Plan four regulations of the Cabinet of Ministers of Ukraine has been adopted, namely Regulation of the Cabinet of Ministers of Ukraine of August 6, 2008 “On the Approval of the Measures to Implement the EU-Ukraine Action Plan in 2008”, Regulation of the Cabinet of Ministers of Ukraine of April 26, 2007 “On the Approval of the Measures to Implement the EU-Ukraine Action Plan in 2007”, Regulation of the Cabinet of Ministers of Ukraine of April 27, 2006 “On the Approval of the Measures to Implement the EU-Ukraine Action Plan in 2006”, Regulation of the Cabinet of Ministers of Ukraine of April 22, 2005 “On the Approval of the Measures to Implement the EU-Ukraine Action Plan in 2005”.

These documents include list of concrete measures and concrete time for their implementation, as well as responsible bodies for implementation (appropriate ministries, agencies and other state bodies). These measures are concrete. Nevertheless, they often don't reflect strategic priorities and are adopted with significant delays.

In this context, the level of implementation of these measures is one of the most problematic issues. The assessment by the Joint Evaluation Report of the EU-Ukraine Action Plan (March 11, 2008) says that “good progress had been achieved” and EU puts Ukraine as an example for other Eastern neighbours regarding implementation of the Action Plan. Still, there are many fields where the level of implementation of the EU-Ukraine Action Plan is rather low.

3. The annual Measures to implement the EU-Ukraine Action Plan mentioned in the paragraph 2 provide for adoption of the new legislation or amending existing.

Every year the Government of Ukraine adopts special measures to adapt the legislation of Ukraine to the EU norms and standards and to implement the State Program of Adaptation of the Legislation of Ukraine to the Legislation of the EU. These include the Regulation of the Cabinet of Ministers of Ukraine of June 16, 2005 “On the Approval of the List of Measures to Implement the State Program of the Adaptation of the Legislation of Ukraine to the Legislation of the EU in 2005”, the Regulation of the Cabinet of Ministers of Ukraine of March 15, 2006 “On the Approval of the List of Measures to Implement the State Program of the Adaptation of the Legislation on Ukraine to the Legislation of the EU in 2006”, the Regulation of the Cabinet of Ministers of Ukraine of March 7, 2007 “On the Approval of the List of Measures to Implement the State Program of the Adaptation of the Legislation of Ukraine to the Legislation of the EU in 2007”, the Regulation of the Cabinet of Ministers of Ukraine from of June 11, 2008 “On the Approval of the List of Measures to Implement

the State Program of the Adaptation of the Legislation of Ukraine to the Legislation of the EU in 2008”.

These documents specify fields of *aquis communautaire*, sources of *aquis communautaire* for relevant field, list of measures, timetable for their implementation (only Measures for 2008), and state bodies responsible for their implementation.

The annual implementation reports indicate the level of implementation of such measures. The level of implementation of these measures in the field of environmental protection is very low. For example, in 2007 no measure provided in the field of environmental protection was implemented. The indicated measures were postponed to the next 2008 year.

4. The situation varies for specific ministries. The assessment of this issue was done on the basis of analysis of the working plans of selected ministries and the priorities for activities of ministries for 2008. These priorities were approved by the Regulation of the Cabinet of Ministers of Ukraine of February 22, 2008 “On the Approval of the Priorities for the Activities of Ministries for 2008”.

A few examples of the inclusion of the European integration issues into the priorities include:

- The Ministry of the Agrarian Policy of Ukraine: adaptation of the legal basis in the field of seeds to the EU requirements;
- The Ministry of Economy of Ukraine: membership of Ukraine in WTO and starting the process of creation of the free trade zone between Ukraine and the EU; adaptation of the national legislation on the transportation and the development of the network of the international transport corridors to the norms and standards of the EU; cooperation with EU and implementation in Ukraine of the new instruments and mechanisms of the external assistance;
- The Ministry of the Foreign Affairs of Ukraine: finalizing the work on preparation of the draft new enhanced agreement between Ukraine and the EU;
- The Ministry of the Environmental Protection of Ukraine: practical implementation of the environmental standards of the EU; improvement of the system of waste treatment according to the EU standards; etc.

In addition, the priorities for activities of some ministries include implementation of some provisions of the EU-Ukraine Action Plan and corresponding annual measures for its implementation.

5. There are joint bodies for implementation between Ukraine and the EU, namely: EU-Ukraine Cooperation Council; EU-Ukraine Cooperation Committee (in its framework seven sub-committees were set up, including Sub-Committee 7 “Energy, transport, nuclear safety and environment”), EU-Ukraine Parliamentary Cooperation Committee.

Most state authorities have separate departments which deal with cooperation/integration with the EU, namely:

- Ministry of the Environmental Protection of Ukraine – Department on international cooperation and European integration;
- Ministry of Economy of Ukraine – Department of the legal issues in investment activity and cooperation with EU; Department on international technical assistance and cooperation with international financial organizations; Department of cooperation with the EU;
- Ministry of Foreign Affairs of Ukraine – Department of the EU;
- Ministry of Regional Development and Construction of Ukraine – Department of international cooperation, investment development and European integration issues;
- Ministry of Education and Science – Department on international cooperation and European integration;

- Ministry of Fuel and Energy of Ukraine – Department of European integration and international cooperation;
- Ministry of Ukraine for Family, Youth and Sport – Department of international cooperation and European integration;
- Ministry of Finance of Ukraine – Department of International Relations and European integration;
- Ministry of Justice of Ukraine – State department of the adaptation of the legislation; etc.

6. Before adoption of the EU-Ukraine Action Plan, the State Program on Training, Retraining and Advanced Training of specialists in the field of European and Euroatlantic Integration of Ukraine for 2004-2007 was approved by the Decree of the President of Ukraine of December 13, 2003. The main goal of the Program is to meet the demand of state bodies for human resources in the field of European and Euroatlantic integration. The Cabinet of Ministers of Ukraine was responsible for coordination and monitoring of the Program. In December every year the Cabinet of Ministers approves measures to implement the Program for the next year. Such measures were adopted for 2005, 2006 and 2007.

The results of monitoring of the Program implementation reveal that the State Program was implemented effectively. There were developed the Methodological recommendations on evaluation by the state bodies and local authorities of the demand for specialists in the field of European and Euroatlantic integration. Measures were taken to set the structure and scope of training, retraining and advanced training of specialists in the field of European and Euroatlantic integration. A regulation was adopted on foreign languages training for state officials. The universities organized trainings for state bodies according to the special programs in the form of thematic, long-term and short-term workshops on the issues of European and Euroatlantic integration. Summer schools were held on European integration issues for state officials.

On November 5, 2008, the Cabinet of Ministers of Ukraine adopted the Regulation “On the Approval of the State Special Program on Training, Retraining and Advanced Training of Specialists in the Field of European and Euroatlantic Integration of Ukraine for 2008-2011”. The Program provides for measures to improve the education of specialists in the field of European and Euroatlantic integration. The implementation of the tasks and measures of the Program lies within Twinning and TAIEX instruments. The Program includes list of concrete tasks and measures for the Program implementation.

7. The government of Ukraine implements the policy on awareness raising on European policy issues. In particular, the State Program on Awareness Raising on the Issues of European Integration of Ukraine for 2004-2007 (approved in 2003 by the Decree of the President of Ukraine) was implemented.

On July 2, 2008, the Cabinet of Ministers of Ukraine by its Regulation approved a new “State Special Program on Awareness Raising on Issues of the European Integration of Ukraine for 2008-2011”.

Every year the government of Ukraine adopts concrete measures for the Program implementation. The Cabinet of Ministers of Ukraine is responsible for coordination and monitoring of the implementation of the Program.

Nevertheless, in practice the public doesn't have enough information on the European integration. The web-pages of the relevant state bodies are not updated regularly; the information is not full or even not available. The civil society organizations don't have the possibility to be the real actors of the European integration process because of the lack of information. The main documents related to the European Neighbourhood Policy and financial instrument for its implementation (European

Neighbourhood and Partnership Instrument) are not available or available only in English. The public doesn't have the possibility to participate in the process of development, revision and monitoring of the instruments related to the European integration. The main work in the field of informing on European integration is done by the NGOs, not state bodies which are responsible for the European integration issues.

8. The government monitors the implementation of the EU-Ukraine Action Plan. The results of this monitoring are demonstrated in the reports on implementation of the annual measures to implement Action Plan and in more general form in the Position Paper on implementation of the Action Plan.

On November 22, 2005, the State Committee on European and Euroatlantic Integration approved the Methodological Recommendations on Preparation of Measures to Implement EU-Ukraine Action Plan in 2006 and on Monitoring of Their Implementation. These recommendations were used in the course of next years of the implementation of Action Plan as well. The Methodological Recommendations were developed for central and local state bodies, other state bodies which are responsible for the implementation of the provisions of the EU-Ukraine Action Plan. According to these Recommendations the state bodies make analysis of the implementation of measures and assessment of their results, and according to this analysis prepare: the report on implementation of the Action Plan according to a special form; analytical paper; description of the situation; information on achievement of concrete results; materials on political, economic, social and other positive results of the implementation of relevant measures (quantitative and/or qualitative indicators); assessment of the status of implementation of the corresponding priority task and, where applicable, relevant problems; information on implementation of additional measures which are directed to the implementation of the provision of the Action Plan.

However, state bodies either don't prepare such information, or don't make such information available. Only two documents are available: "Information on implementation of the EU-Ukraine Action Plan in 2005" and "Information on implementation of the EU-Ukraine Action Plan in 2006". These reports provide, *inter alia*, information on the status of the implementation of the measures.

In the Position Paper on EU-Ukraine Action Plan implementation by Ukrainian Side for 2005-2007 there is general information with the following assessment grade: "the goal was achieved", "significant progress made", "good progress made", "reasonable progress made", "some progress made". Nevertheless, the criteria for definition of such assessment are not clear.

In sum, the government doesn't regularly carry out monitoring and publishes reports with delay. The methodology is not clear enough. Furthermore, the public is not involved to the monitoring and does not have possibility to express its views on the implementation of the Action Plan.

CONCLUSIONS AND RECOMMENDATIONS:

Ukraine actively incorporates the commitments related to the cooperation with EU and implementation of the ENP and EU-Ukraine Action Plan into its national policy, strategic and legislative instruments. Recently the institutional capacity of the state bodies to work on European integration issues was increased (set up of special departments in the Ministries, carrying out trainings, etc.). Nevertheless, the level of practical implementation of these commitments, including in the field of environmental protection, is rather low. The public lacks information on the ENP issues and does not have possibilities to participate in the processes related to the ENP.

Recommendations:

1. To take practical steps to comply with obligations related to the ENP implementation.

2. To ensure inclusion of the environmental protection and sustainable development as the priority issues into the new practical instrument and Association Agreement as the priority issues.
3. To ensure public participation in the European integration processes.
4. To improve access to information on European integration processes, including access to relevant documents.

Objective 2

ASSESSING THE LEVEL OF THE EU COMMITMENT

This objective goes beyond the framework of the environmental objectives of the Action Plan. The purpose of including this objective is to generally assess the level of EU commitment to support the neighbouring countries in implementation of the Action Plans, including in the field of environmental protection.

The questions are based at different mechanisms available for the EU and its member states in order to support efforts of the neighbouring countries at national and regional level.

Question	Yes,			No	Note
	excellent	adequate	poor		
Grade	3	2	1	0	
<i>EC SUPPORT TO CIVIL SOCIETY ACTORS (1)</i>					
How active is the EC / EC Delegation to Ukraine in communicating and supporting civil society actions?					Not enough active. Nevertheless, recently there was some progress made.
Has the EC set up a capacity building system and/or information mechanisms for civil society actors?					There is a web-site of the EC Delegation to Ukraine. Nevertheless, it doesn't contain all necessary information which is interesting for public. Information on funding opportunities is available only in English. The important documents also often are available only in English.
How active is the EC in involving civil society actors in the preparation and adoption of programs, reports, etc.?					In 2007-2008 there was significant progress in this field. The EC invited public to submit their position on implementation of the EU-Ukraine Action Plan in 2007 and 2008. At the present time the EC plans to involve public into the process of the mid-term review of the ENPI documents (Strategy Paper and National Indicative Program).
<i>ENPI (2)</i>					
Do projects funded by ENPI ¹ address the needs of your country in order to implement the environmental objectives of the Action Plan?					The Annual Program for 2007 within ENPI doesn't provide any funding for the environmental protection field.
Do the environmental projects funded by ENPI ² under the current annual programming address satisfactory ³ the environmental priorities set by your country for implementing the Action Plan?					

¹ Contrary to next question, the evaluator should not merely take into account environmental projects but also projects in general, including those with potential negative impacts on the environment and environmental projects.

² The answer should take into account contributions from country, CBC and regional programs from which the country benefit.

³ The answers to this question shall be assessed on the own judgment of the evaluator, based on available information related to programming of ENPI funds.

Does the share of ENPI funds allocated to environmental projects under the country program reflect the importance of the environmental objectives of the Action Plan?					
Is ENPI funding for environmental projects available for civil society in the country? If yes, is it easily accessible (e.g. amount of grants and co-financing required, procedure, etc.)					The ENPI funding is not available for civil society in the country.
Does your country benefit from capacity building and technical assistance programmes (e.g. TAIEX, twinning, participation in EEA activities) in order to address environmental issues in the country?					The activities in this regards already started.
EEA ACTIVITIES (3)					
Has the region been supported by the EU (including financially) to participate in EEA's activities? If yes, has the country benefited from this program (e.g. capacity-building, data collection)?					The dialog on cooperation already started, but at the present moment there are no tangible results.
BILATERAL COOPERATION (4)					
Is some form of bilateral cooperation with EU Member State(s) in place with Ukraine in the field of environment?					There is cooperation in the framework of existent bilateral agreements in the field of environmental protection. The cross-border cooperation is very active.
If yes, do projects funded by the Member State(s) address the needs of your country in order to implement the environmental objectives of the Action Plan?					Some EU Member States provide the financial support for Ukraine, including for implementation of the EU-Ukraine Action Plan. Nevertheless, the number of project in the environmental protection field is rather low.
Overall assessment: 10 grades from 33 possible					
Score - 30,3%					

COMMENTS AND EXPLANATIONS:

1. Since 2008 the EC Delegation to Ukraine started to make more efforts for communicating with civil society. The positive example in this regard is the conference held by the EC Delegation "European Commission and Civil Society: Gained Experience and New Opportunities in Ukraine" (July 2008, Kyiv, Ukraine). The main purpose of the conference was to widen the cooperation between Ukrainian civil society organizations and the European Commission.

The EC Delegation to Ukraine has the experience of cooperation with civil society organization through providing funding for projects within the Institution Building Partnership Program (EBPP) and European Instrument for Democracy and Human Rights (EIDHR). Nevertheless, there was no funding for projects in the field of environmental protection.

The EC Delegation to Ukraine supports its own web-page, where it places main news, events, documents and other information. Nevertheless, the web-site doesn't contain all information which is interesting for public. The information on funding opportunities is available only in English. The important documents also often are available in English. Some information is outdated.

In 2007-2008 there was significant progress made in the field of involving the civil society into preparation and adoption of programs, reports, etc. The public was invited to submit their comments on implementation of the EU-Ukraine Action Plan in 2007 and 2008. At the present time the European Commission plans to involve civil society to the process of the mid-term review of ENPI documents (Strategy Paper and National Indicative Program). The EC Delegation to Ukraine is responsible for these consultations.

2. In 2005 – 2008 the Ministry of the Environmental Protection participated in the following environmental projects funded by the EU: “Technical assistance to prepare investments projects in the Black Sea basin” (3 300 000 euro) and “Management of the transboundary river basins: second phase, Prypyat river” (1 200 000 euro).

At the present time the Ministry of the Environmental Protection of Ukraine is preparing twinning project “Support to the Ministry of Environmental Protection of Ukraine in implementation of the Law on Environmental Audit”.

On November 25, 2008 the Ministry of Environmental Protection together with the European Commission in the framework of using the TAIEX instrument held the seminar on remedying consequences of technogenic accidents (on the example of accident in Kerch).

The Annual Program for 2007 within ENPI doesn't provide for funding for projects in the field of environmental protection. The main attention was paid to the implementation of the Energy Strategy of Ukraine.

The European Commission took decision to widen the cooperation with Ukraine which goes beyond the technical assistance, namely to cooperation through the support program, including budgetary support of the environmental sector.

In October, 2008, the meeting of representatives of the Ministry of the Environmental Protection and Swiss Agency of International Cooperation took place. The main purpose of the meeting was to identify the actions for 2009 in order to use new instrument of cooperation between Ukraine and the EU, namely budgetary support in the field of environmental protection.

As a result of the meeting, the Ministry of the Environmental Protection set up the Working Group to develop the Action fish of the project of sectoral budgetary support of the European Commission, which is responsible for support of the active dialog with the EU and preparation for implementing the budgetary support.

The Working Group is composed by the representatives of the Ministry of the Environmental Protection, Ministry of Finance, Ministry of Economy, as well as representatives of the EC Delegation to Ukraine and Swiss Agency of International Cooperation.

The Working Group works on identifying indicators to be achieved using the budgetary support from the European Commission in the field of environmental protection.

At the present time the Ministry of Environmental Protection is preparing to obtain the budgetary support already in 2009 in order to resolve most urgent environmental problems.

3. The cooperation with the European Environmental Agency is only at its starting point. The Ministry of the Environmental Protection of Ukraine sent to the Agency a request in regards to the possible participation of Ukraine, including on possible measures within the future cooperation, financial fees, etc.

The Ministry received the response as to the widening of the bilateral cooperation and possible membership of Ukraine in the Agency. The letter indicated that the primary basis for the present time might be the exchange of information of environmental information. Also the letter says that they sent Ministry's request to the General Director of the European Commission on Environment for further informing on the options of Ukraine's participation in the activities of Agency. But the Ministry still doesn't receive any answer.

Ukraine is interested to develop cooperation with the European Environmental Agency on the following issues: creation of the legal basis for effective implementation in Ukraine of the mechanisms of Kyoto Protocol and UN Framework Convention to Combat Climate Change; protection and management of water resources; improvement of management mechanisms; air protection, especially in the industrial regions; protection and conservation of biodiversity; environmental education; public participation in decision-making and access to justice on environmental matters.

4. Cooperation in the field of environmental protection with EU Member States takes place in the framework of bilateral agreements signed at governmental or ministerial level. The majority of such agreements were signed before the EU-Ukraine Action Plan adoption. For example, the Agreement between the Government of Ukraine and Government of Germany on Cooperation in the Field of Environmental Protection of June 10, 1993, Agreement between the Government of Ukraine and Government of Poland on Cooperation in the Field of Environmental Protection of January 24, 1994, Agreement between the Ministry of Environmental Protection of Ukraine and Ministry of Environmental Protection of Netherlands on Cooperation in the Field of Environmental Protection of June 1, 1994, Agreement between the Ministry of Environmental Protection of Ukraine and Ministry of Environmental Protection of Slovak Republic on Cooperation to Protect the Environment of September 30, 1994.

Also there are some agreements on water issues, for example Agreement between the Government of Ukraine and Government of Slovak Republic on Water Issues on Transboundary Waters of February 16, 1995, Agreement between the Government of Ukraine and Government of Hungary on Water Issues on Transboundary Waters of November 11, 1997, Agreement between the Government of Ukraine and the Government of Romania on Cooperation in the Water Sector on Transboundary Waters of September 30, 1997.

Recently the Government of Ukraine signed the bilateral agreements on climate change issues, for example the Agreement between the Government of Ukraine and Government of France to Promote Projects to Reduce Anthropogenic Emissions by Sources or to Enhance anthropogenic removals by sinks of greenhouse gases according to the article 6 of Kyoto Protocol of December 20, 2006, Memorandum of Understanding between the Cabinet of Ministers of Ukraine and the Government of Netherlands on Cooperation on Implementation of the UN Framework Convention on Climate Change and Kyoto Protocol, including on greenhouse gases emission according to the article 6 of Kyoto Protocol, of June 7, 2006.

Sweden, Great Britain, Denmark, Netherlands, Germany, Slovakia and Poland are among the EU Member States which provide the financial support to Ukraine. For example, Slovakia provided the financial support to Ukraine for implementation of the EU-Ukraine Action Plan priorities. Nevertheless, the environmental protection issues were priorities only for Sweden and Netherlands.

The Ministry of Environmental Protection of Ukraine participated in the project “Integrated Management of the Water Resources of Eastern Ukraine. Environmental Management System in the Syverskiy Donets Basin” (403 207 euro, funding – the Government of Denmark).

CONCLUSIONS AND RECOMMENDATIONS:

The European Community / The EC Delegation to Ukraine makes steps towards cooperation with civil society. There are positive examples of involvement of the public into preparation of the reports on implementation of the EU-Ukraine Action Plan in 2007 and 2008, and also plans to involve public for mid-term review of the ENPI documents. Nevertheless, the civil society doesn't have enough information on the European integration issues, the procedures of public involvement are not developed, and the level of involvement is not high enough.

The European Union just started to provide the financial assistance within the ENPI. The environmental protection issues and civil society development are not among priorities for the first year of funding. There is no funding for small projects for civil society organizations within the ENPI. The financial support is provided in the form of budgetary support. This makes it difficult to monitor its use.

Ukraine makes first steps to participate in the work of European Environmental Agency. Nevertheless, this work needs more support from the EU side.

Ukraine has bilateral cooperation with a number of the EU Member States, which takes place within implementation of the bilateral agreements on cooperation, which were mostly signed before 2005, and also through obtaining the financial support for implementation of projects from Sweden, Great Britain, Denmark, Netherlands, Slovakia and Poland.

It's necessary to ensure full involvement of the public in Ukraine into the participation in the European integration process by providing possibilities for participation in the decision-making process and ensuring access to the information. Clear criteria and principles of the public involvement have to be developed and adopted.

The web-site of the EC Delegation to Ukraine has to be updated regularly and contain more necessary information.

The Annual Action Programs have to be developed in time and with public participation, and reflect the environmental priorities of the country. It's necessary to create the small grants program of the civil society organizations.

Objective 3

RATIFYING ENVIRONMENTAL INTERNATIONAL CONVENTIONS AND PROTOCOLS

EU-Ukraine Action Plan has no wording related to the ratification by Ukraine of any international environmental agreements. It does mention commitments to implement Aarhus Convention (para. 60) and Kyoto Protocol (para. 62). These two comprise the first group of instruments subject to this assessment. AP also includes commitments related to implementation of some IMO conventions (para. 50). In this context, annual Measures to Implement the AP mention accession to the 1997 Protocol to the MARPOL Convention. This commitment is assessed separately.

Accordingly, this assessment covers implementation progress for the first group of instruments, and ratification (accession) progress for the second (comprising one instrument). Questions related to ratification are excluded as irrelevant for the first group and questions related to implementation are excluded as irrelevant for the second group.

In addition to the commitments under the AP, annual measures have additionally included commitment to ratify/accede to the following international environmental agreements: the European Landscape Convention, The Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea Against Pollution (annual measures for 2005), 1997 Protocol to MARPOL, development of Sustainable Transport Protocol to the Framework Convention on the Protection and Sustainable Development of the Carpathians (annual measures for 2007), several protocols to the Convention on Long-range Transboundary Air Pollution, development of a bilateral agreement with Moldova on sustainable use and protection of Dnister river (annual measures for 2008). These commitments are assessed under *General Questions*.

Bilateral agreements are subject to the assessment under Objective 12.

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
<i>KYOTO PROTOCOL (para. 62 of the Action Plan) (I)</i>					
<i>Implementation of the international agreement</i>					
Has legislation been adopted or adapted to implement the requirements of the international agreement? If yes, does it address satisfactorily the obligations set out in the agreement?			X		The majority of actions taken aim only at use of financial instruments under the Protocol.
Have other steps been taken to implement the international agreement?		X			National Environmental Investment Agency was set up. National Greenhouse Gas Inventory created. Other measures.
Is there a reporting system for the implementation of the international agreement in place in your country? If yes, has the country already reported on the implementation of the agreement?	X				Complex system developed. Latest national communication submitted in 2006.

Does the competent authority (focal point) have enough resources and competence to take measures for the implementation of the agreement?		X			Key measures must be taken by the Cabinet Ministers and/or the Parliament. The focal point does possess reasonable financial and human resources.
AARHUS CONVENTION (para. 60 of the Action Plan) (2)					
<i>Implementation of the international agreement</i>					
Has legislation been adopted or adapted to implement the requirements of the international agreement? If yes, does it address satisfactorily the obligations set out in the agreement?			X		All implementing legislation was adopted before AP was signed. However, experts show the need for additional legislation to be taken. This is confirmed by the decisions of Aarhus Convention Meetings of the Parties (2005 and 2008).
Have other steps been taken to implement the international agreement?		X			The Cabinet of Ministers adopted Action Plan for the Implementation of the Aarhus Convention (Dec 27, 2008).
Is there a reporting system for the implementation of the international agreement in place in your country? If yes, has the country already reported on the implementation of the agreement?	X				Yes, reports are regularly submitted.
Does the competent authority (focal point) have enough resources and competence to take measures for the implementation of the agreement?			X		The focal point is Ministry of Environmental Protection (newly appointed person in 2008). However, proper implementation requires actions to be taken by other agencies.
1997 PROTOCOL (ANNEX VI) TO MARPOL CONVENTION OF 1973 (para. 50 of the Action Plan) (3)					
<i>Adoption of an international agreement</i>					
Has the convention/agreement/protocol been ratified since signing the AP?				X	No draft decree on accession was developed.
If not, has the Government taken steps to initiate the ratification procedure? ⁴			X		Annual measures repeatedly put obligation to carry out preparatory work on the Ministry of Transport. Major problem – source for financial resources needed for Protocol’s implementation.
GENERAL QUESTIONS ON INTERNATIONAL AGREEMENTS (4)					
Has the country committed to ratifying other environmental Conventions and/or agreements not mentioned in the Action Plan?	X				A number of additional commitments under annual measures.
When relevant, was the country found to be in non- compliance with any of the international agreements adopted, and in particular, by treaty bodies? (5)				X	“No” means lowest possible rating. Ukraine was found to be in non-compliance with several international environmental agreements (Aarhus, Bern, Espoo Convention).
Overall assessment:					
19 grades from 36 possible					
Score - 52,8 %					

⁴ This procedure will vary in each country as it is regulated at the national level. What is important is to assess at which stage of the ratification procedure the country is, which would include looking at draft laws of ratification, submission to the Parliament, reviewing Parliament committees, etc.

COMMENTS AND EXPLANATIONS:

1. Compliance with Kyoto Protocol by Ukraine is largely result of significant decrease in industrial production (as compared to the base year of 1990). Ukraine has no national strategy on emission reduction of greenhouse gasses. Instead, Ukraine adopted National Action Plan for Implementation of Kyoto Protocol (2005) and a number of other legal acts. The key objective of the legislative and administrative actions taken is to facilitate use of financial mechanisms under Kyoto Protocol. In particular, significant attention was given to clearing the way for trade in emissions and joint implementation projects. E.g, the National Action Plan for Implementation of Kyoto Protocol primarily focuses on the development of greenhouse emissions and absorption inventory and preparation for use of financial mechanisms. A whole body of secondary legislation was adopted in the area of joint implementation projects and emissions trade. Several bilateral agreements were signed with the same purpose (e.g, with France and Japan). The National Environmental Investments Agency (set up in 2007) has its key objective (as far as Kyoto Protocol is concerned) to implement financial mechanisms of the Protocol. From this perspective Ukraine is demonstrating huge progress in implementation of Kyoto Protocol. At the same time, national implementation does not address adaptation to climate change and reduction of GHG emissions per GDP unit. For example, the ratio (index) of CO₂ emissions per GDP unit is 7483 for Ukraine while world average is 846 (developed countries – 565, Europe – 640), *metric tones of CO₂ per 1 million USD of GDP, data as of 2004, source: World Resources Institute*. In particular, the National Environmental Investments Agency has little authority to develop and implement programs for reduction of GHG emissions in industry.

2. All implementing legislation was adopted before AP was signed. Still experts support the need to adopt further secondary legislation. The need for further implementation steps is also supported in the decisions of the Meetings of the Parties of the Aarhus Convention (2005 and 2008). Latest decision by MOP-3 (Decision III/6f) adopted a conditional caution to Ukraine following county's failure to implements its recommendations of 2005. The key issue - development of mechanisms for practical implementation of the Aarhus Convention in Ukraine – was not addressed by Ukraine. In December 2008 the Cabinet of Ministers adopted an Action Plan for Implementation of the Decision III/6f. This is an important step which may improve Convention's implementation in Ukraine. However, the Convention covers issues which are outside the authority of the Ministry of Environmental Protection while the Ministry is the key implementing agency under the action plan mentioned. The action plan foresees establishment of an inter-agency working group – a step which may partly address the lack of competence of the Ministry of Environmental Protection.

3. Ukraine is party to 5 out of 6 existing annexes to MARPOL. Unfortunately, preparation for accession to Annex VI was postponed from year to year. Annual measures for EU-Ukraine AP implementation put an obligation for preparation for the accession on the Ministry of Transport of Ukraine. The key problem remains unsolved – source of funding for the expenses related to practical implementation of the Annex VI. At the time of this assessment there's no draft decree for accession to Annex VI (the accession to the Convention itself was done via a decree by the Cabinet of Ministers in 1993).

4. Annual measures have included commitment to ratify/accede to the following international environmental agreements: the European Landscape Convention, The Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea Against Pollution (annual measures for 2005), 1997 Protocol to MARPOL, development of Sustainable Transport Protocol to the Framework Convention on the Protection and Sustainable Development of the Carpathians (annual measures for 2007), several protocols to the Convention on Long-range Transboundary Air Pollution, development of a bilateral agreement with Moldova on sustainable use and protection of Dnister river (annual measures for 2008). The very fact of these additional commitments is important. Some of these ratifications were made (Black Sea Biodiversity and

Landscape Conservation Protocol to the Convention on the Protection of the Black Sea against Pollution, the European Landscape Convention).

5. Meetings of the Parties (MOP) of the Espoo Convention (IV) and Aarhus Convention (II and III) found Ukraine in non-compliance with its obligations under these conventions in the course of construction of the Danube – Black Sea shipping canal. In addition, the decisions by Aarhus Convention MOPs found Ukraine in general non-compliance with certain Aarhus Convention provisions. The third MOP of the Aarhus Convention adopted a conditional caution to Ukraine; similar conditional caution by Espoo Convention MOP did not come into effect due to Ukraine's withdrawal of its final decision on the canal.

CONCLUSIONS AND RECOMMENDATIONS:

EU-Ukraine Action plan sets objectives to implement only two multilateral environmental agreements: Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) and Kyoto Protocol to the UN Framework Convention on Climate Change (1997). The Government of Ukraine has taken additional obligations, in particular related to ratification and accession to a number of other treaties. Ukraine is active in addressing regional issues (Black Sea marine environment, Carpathian Mountains). The key problem is compliance with existing obligations under environmental treaties. Relevant bodies of the Bern, Aarhus and Espoo conventions have found Ukraine in non-compliance with its obligations under these treaties.

Recommendations: to include into the new practical instrument an objective to strengthen capacity and control over compliance with multilateral environmental agreements.

Objective 4

DEVELOPING PLANS AND PROGRAMS FOR THE ENVIRONMENT

Many Action Plans call for the development of environmental plans and programmes. This objective is usually worded in the Action Plans as “develop and/or implement national plans and programmes”. While some Action Plans only set a broad objective (Azerbaijan, Georgia, Ukraine), most specify the sectors on which planning should focus, including: biodiversity (Moldova, Egypt), waste (Israel, Tunisia), air and water (Egypt). Depending on the wording used, both the adoption and the implementation of plans and programmes should be taken into account.

Plans and programmes can play a crucial role in ensuring the effective implementation of environmental actions and the achievement of objectives. These plans and programmes are often closely linked with the adoption of national legislation – in some cases, they precede and appeal for new laws; in others, they help to implement new legal requirements.

Plans and programmes can either have a broad remit – such as the National Environmental Action Plans (NEAPs) that have set overall priorities for action in several ENP countries – or focus on specific sectors. The Measures to implement the EU-Ukraine Action Plan in 2008 provide for development of programs and plan of the broad scope (including, the Strategy of the National Environmental Policy of Ukraine till 2020, National Action Plan on Environmental Protection for 2009-2012). The Measures to Implement the EU-Ukraine Action Plan in 2005-2007 provide for the development of some specific plans and programs (Concept of the Conservation of Water Resources, State Program of the Development of the Reserves till 2020, State Program on the Biodiversity Conservation, Action Plans within the Large Carnivore Initiative for Europe and Large Phytivorous Animals Initiative).

Questions	Yes,			No	Notes
	excellent	adequate	poor		
	3	2	1	0	
PREPARATION AND ADOPTION					
Have relevant plan(s) or programme(s) been prepared since the AP was signed? (1)					There were adopted a few concepts and developed drafts of some state programs.
Have these plan(s) or programme(s) been officially adopted at ministerial or government levels? (2)					No plans and programs adopted out those provided by the annual measures to implement the EU-Ukraine Action Plan.
PROCESS (3)					
Did ministries in different sectors e.g. transport, industry, energy, health play an active role in preparing the plan(s) or programme(s)? In particular, did the Ministry of the Environment play a significant role in the development of the plan(s) and programme(s)? (4)					The Ministry of the Environmental Protection of Ukraine is responsible for developing plans and programs specified in the Measures to Implement the EU-Ukraine Action Plan for 2005-2008. Participation of other ministries takes place at the stage of adjustment of the draft concept or draft program.
Did local and regional governments					The local and regional authorities don't play

play an active role in preparing the plan(s) or programme(s)? (5)					significant role in this process. Mostly they participate in the development and discussion of the draft programs by providing proposals and comments.
Did society stakeholders in different sectors (environmental NGOs, industry, others) play an active role? (6)					The role of civil society in development of state programs is related to the problematic issue of access to environmental information and participation in decision-making process on environmental matters.
CONTENT					
Do(es) the plan(s) or programme(s) clearly define responsibilities for their implementation?					It's impossible to assess the content of the plans and programs because those provided by the Measures to implement the EU-Ukraine Action Plan were not adopted.
Do(es) the plan(s) or programme(s) include a clear and realistic financial plan that identifies resources, requirements and ways of meeting them?					
Do(es) the plan(s) or programme(s) set priorities for action?					
Do(es) the plan(s) or programme(s) provide monitoring and evaluation mechanisms?					
IMPLEMENTATION					
Have steps been taken to implement the plan(s) or programme(s)?					There were no steps taken to implement the plans and programs as they were not adopted.
COUNTRY-SPECIFIC QUESTIONS					
Does the legislation of Ukraine provide for requirements for the content of plans and programs, including responsible state bodies, funding, etc.? (7)					The legislation on adoption of the state programs sets the requirements for their content.
Overall assessment:					
8 grades from 33 possible					
Score - 24,2%					

COMMENTS AND EXPLANATIONS:

1. The annual Measures to Implement the EU-Ukraine Action Plan (2005, 2006, 2007, and 2008) provided for the adoption of the following plans and programs:

- Strategy of the National Environmental Policy of Ukraine till 2020 (Measures for 2008);
- National Action Plan on Environmental Protection for 2009-2012 (Measures for 2007, 2008);
- Concept on the Protection of Water Resources (Measures for 2005, 2006, 2007);
- State Program on the Conservation of Biodiversity for 2005-2015/ 2007-2025/ 2008-2025 (Measures for 2005, 2006, 2007);
- State Program on the Development of the Reserves till 2020 (Measures for 2006, 2007);
- Action Plans within the Large Carnivore Initiative for Europe and Large Phytivorous Animals Initiative (Measures for 2005, 2006).

These planned measures were not implemented in a timely manner. These measures were postponed from year to year. This is true, for example, for the State Program on the Conservation of Biodiversity, State Program on the Development of the Reserves till 2020, Concept on the Protection of Water Resources.

At the same time there is some progress in the field of adoption of plans and programs. The Cabinet of Ministers of Ukraine adopted a few concepts. This is one of the obligatory stages for development of the state special programs. The Cabinet of Ministers adopted the following concepts:

- Concept of the National Environmental Policy of Ukraine till 2020, approved by the Order of the Cabinet of Ministers of Ukraine No880-p of October 17, 2007;
- Concept of the State Program of the Conservation of Biodiversity for 2005-2025, approved by the Order of the Cabinet of Ministers of Ukraine No 675-p of September 22, 2004 (it had been approved before the AP was signed);
- Concept of the State Program of the Development of Reserves till 2020, approved by the Order of the Cabinet of Ministers of Ukraine No 70-p of February 8, 2006.

According to these concepts a few draft plans and draft programs were developed:

- Draft of the Strategy of the National Environmental Policy till 2020;
- Draft of the State Environmental Program of Conservation, Renovation and Sustainable Use of Biodiversity of Ukraine for 2009-2027;
- Draft of the State Environmental Program of Development of Reserves till 2020.

A few drafts are now at the stage of approval by the Parliament of Ukraine.

2. The Law of Ukraine “On State Program” No 1621-IV of March 18, 2004, sets the requirements on the procedure for state programs approval. Depending on the type of a program it can be approved only by a specific public authority. The State National Level Programs (including on environmental protection) are approved by the Parliament after submission by the Cabinet of Ministers of Ukraine, other state specific programs are approved by the Cabinet of Ministers of Ukraine (article 10).

3. The procedure of the adoption of the state specific program is provided by the following legal acts:

- Law of Ukraine “On State Programs” No 1621-IV of March 18, 2004;
- The Order of Development and Implementation of the State Specific Programs, approved by the Regulation of the Cabinet of Ministers of Ukraine No 106 of January 31, 2007.

4. The draft concept of program or draft program is agreed with the Ministry of Finance, Ministry of Labor and Social Policy, Ministry of Education and Science (on scientific and technical issues), Ministry of Environmental Protection (on environmental issues and on objects of increased environmental danger), National Agency on Effective Use of Energy Resources (on issues of energy efficiency), and other interested state bodies.

5. The Law of Ukraine “On Local Self-Government” No 280/97- of May 21, 1997, provides for the participation of the village and city councils in the preparation of the state environmental programs. At the same time neither Law of Ukraine “On State Programs”, nor Order of the Development and Implementation of the State Specific Programs have provisions on participation of the local authorities in development and adoption of programs. The Parliament of the Crimea Republic, oblast, Kyiv and Sevastopol city councils, city state administrations can initiate adoption of the state special programs (article 6). In this context their participation can be taken as active. They did not initiate any plans and programs provided by the Measures to implement EU-Ukraine AP. The Law of Ukraine “On Local State Administrations” No 586-XIV of April 9, 1999,

authorizes local state administrations to make proposals on the adoption of the state environmental programs.

Taking into account requirements of other legislation of Ukraine, the local state bodies participate in the development of the programs mostly by submitting their proposals and suggestions.

6. The legislation of Ukraine provides for specific provisions on the informing and on the public participation in the programs' adoption. The legislation provides that the initiator publishes the draft concept of the program in the official mass media and web-site. The initiators hold the public discussion of the draft concept (at conferences, meetings, etc.). They take into account the proposals coming from such discussion. The above mentioned requirements are often ignored; further informing and public participation in the process of the development of the draft program is sophisticated. There is a lack of access to the texts of draft programs.

7. The article 9 of the Law of Ukraine "On State Programs" No 1621-IV of March 18, 2004, contains provisions on the content of state specific programs, on the responsible state bodies, funding for the program. The Order of Development and Implementation of the State Specific Programs (approved by the Regulation of the Cabinet of Minister of Ukraine No 106 of January 31, 2007) provides for the specification of these requirements in the annexes (passport of the program, tasks and measures for the program implementation, expected results of the implementation of program).

CONCLUSIONS AND RECOMMENDATIONS:

The EU-Ukraine Action Plan defines this objective as "enhance/adopt national programmes and plans for key environment sub-sectors including priorities for investments in each sub-sector". Annual measures to implement the EU-Ukraine Action Plan provided for the adoption of the programming documents on the broad issues and on the specific issues. In this field there are the following challenges: need for improvement of the legal basis of development, adoption and implementation of program documents, violation of the deadlines for adoption, low activity of the key stakeholders in the development of programs, including the public.

The new Practical instrument should include clear priorities for the adoption of specific plans and programs. Two programming documents should be adopted as a matter of highest priority: Strategy of the National Environmental Policy till 2020 and National Action Plan on Environmental Protection. Adoption of these documents will significantly improve the state of environment in Ukraine, promote sustainable development and environmentally sound use of natural resources. In addition, this will comply with the European standards of good governance in environmental matters. These programming documents shall provide for both key concept and financial & organizational approaches. Key concept approaches to be defined include political priority of environmental safety, integration of environmental concerns into other areas, development of a group of tasks on environmental protection. Financial & organizational approaches shall cover funding sources for implementation, clear achievement indicators.

Objective 5

PROMOTING THE ADOPTION OF ENVIRONMENTAL LEGISLATION (SECTORAL APPROACH – WATER)

The Measures for implementation of the EU-Ukraine Action Plan adopted in 2005-2008 did not give proper attention to the water issues. They provided for only two measures related to water issues:

1. In 2007 a draft Concept of Water Resources Protection Planned was developed and submitted for approval to the Cabinet of Ministers of Ukraine, as provided by the Measures to implement the EU-Ukraine Action Plan in 2005. No information is available on steps taken afterwards. The list of draft legislation under consideration and consultations with the public at the official web-site of the Ministry of the Environmental Protection does not include this draft concept. According to unofficial information, the document was returned to the Ministry of Environmental Protection for revision of the financial mechanism of implementation.

2. The Measures to implement the EU-Ukraine Action Plan in 2008 included a task to develop an agreement between Ukraine and Moldova on the use and protection of water resources of the Dnister River. According to information at the official site of the Ministry of Environmental Protection “today the Ministry is elaborating draft Agreement between the Government of Ukraine and the Government of Moldova on cooperation in protection and sustainable development of the Dnister River basin in order to further submission for approval by interested ministries and departments.”

Therefore, this assessment covers all relevant legislation adopted in Ukraine, as well as regulations setting specific measures for adaptation of the Ukrainian legislation to the water legislation of the European Union, in particular the National Programme of Adaptation of the Ukrainian Legislation to the EU legislation, the National Programme of Water Sector Development and the National Programme “Drinking Water of Ukraine” for 2006-2020.

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
CONVERGENCE PLANNING TO THE EU LEGISLATION (1)					
Are there state authorities defined responsible for amendments or development of new legal acts at the national level?			X		Ukraine annually approves action plans for the implementation of the National Programme of Adaptation of Ukrainian Legislation to the EU legislation. These identify relevant state bodies responsible for the implementation of specific measures. However, the legislation itself does not list state authorities responsible for adaptation to the EU legislation on water issues.
Were there identified relevant national legislation acts to which amendments should be made?			X		National Programme of Adaptation of Ukrainian Legislation to the EU Legislation, through its implementation by annual action plans, determined certain legislative acts. However, there’s no adopted list of EU directives and regulations to which national legislation needs to be adapted.

Were there adopted new legislation acts or made amendments to the existing ones?			X		No legislative acts were adopted, but some law drafting started. E.g., there was developed draft “Technical Regulations on the Quality of Water for Human consumption”. Some of the quality indicators their meet, to some extent, Directive 98/83/EEC.
Has a satisfactory analysis of the relevant national legislation and institutional arrangements been conducted in order to determine to what extent it integrates with the EU principles and features?			X		State Department on Adaptation of the Ministry of Justice of Ukraine carried out a research on state of compliance of the national legislation to the basic principles of the EU law. However, this research did not deal with the institutional arrangements.
Were there dates (year) defined, when the changed or new legislation acts could come into effect? (so called transposition period)				X	No.
Was a proper economic evaluation of resources required for implementation of relevant legislation held?				X	No.
THE CONTENTS OF THE LEGISLATION / DRAFT LEGISLATION					
Have all the terms been clearly defined in line with EU definitions?			X		Terms used in the Ukrainian legislation correspond, to some extent, to the terms of used in the EU legislation. For example, in the Water Code of Ukraine there is a definition of river basin. Moreover, the State sanitary rules and norms No 383-96 “Drinking Water. Hygienic Requirements for Water Quality of Centralized Household Drinking Water Supply” requires studies of drinking water directly at the tap meeting the provisions of the EU Directive 98/83/EEC.
If the full implementation of the legislation necessitates the adoption of secondary legislation, are such measures likely to be adopted on time?			X		Such measures are stipulated but this does not guarantee their implementation within specified timeframes. For example, the regulatory impact analysis of the mentioned above Technical Regulations provides for its voluntary implementation after the implementation of the Action Plan in 2010, and obligatory - in 2011.
THE LEGISLATION ON THE PROTECTION AND USE OF THE WATER RESOURCES (WATER FRAMEWORK DIRECTIVE) (2)					
Does the legislation provide for a river basin approach?		X			The Water Code and National Programme of Water Sector Development. In addition, Ukraine took a commitment under the framework of the International Commission for the Protection of the Danube River to implement provisions of the European Water Framework Directive. River Basin Management Plan for the Danube Delta is to be developed.
Is the process of identifying river basin districts (RBD) clearly set up?				X	River basin districts have been assigned during the Soviet Union, while the methods or other governing legal document to

				identify river basin districts have not been developed yet.
Have RBDs been set up?			X	A process started to establish basin water resources offices (BWRO) within the system of the State Committee for Water Management. At present 9 offices were set up. Thus, the river basin districts are practically identified for the purpose of management.
Are satisfactory administrative arrangements provided within each RBD?			X	The Action Plan on the implementation of the National Programme of Adaptation of Ukrainian Legislation to the EU Legislation in 2008 provides for preparation of a draft national programme of water resources protection in Ukraine within the framework of adaptation of legislation to the WFD. The Ministry of Environmental Protection is the responsible agency.
Is coordination between the competent agencies properly ensured?			X	In some of the above-mentioned BWROs Basin Councils were formed and defined the limits of their competence. The process has just started.
Do appropriate cooperation procedures and structures exist for cooperation with other countries when RBDs extend beyond the territory of the country?			X	Yes, the Ministry of Environmental Protection, the State Committee for Water Management works within the framework of bilateral agreements and ratified conventions. Example - cooperation in the basin of the rivers Danube, Dniester, Dnipro.
Does the legislation provide for river basin management plan, including a programme of measures to ensure achievement of good water status?			X	Legislation provides for the development of programmes for protection and restoration of water resources of river basins. Unfortunately, currently only a programme on Dnipro river is operation. Good example is that this programme should be revised in 2009 as it expires soon.
Does the legislation provide for public consultation for the development of river basin management plans?			X	Generally legislation provides for this, there are examples of relevant articles in the relevant laws ("On Drinking Water"), but there is no specific legislation on the development of RB management plans and, therefore, no requirement for public participation. Under technical assistance projects several regulations for public participation were developed. Basin councils are set up with representatives of non-governmental organizations.
Does the legislation provide for the classification of water bodies in line with the classification set up in the WFD?				X No.
If so, does it provide for the designation of water bodies according to this classification?				X No.
Does the legislation provide for and define environmental objectives?			X	Yes, it does (Art. 35 of the Water Code concerning the standards in the use and protection of waters). But it does not define environmental standards of the water quality of water objects.
Are water quality objectives already set up by EU legislation integrated in national legislation?				X No.

Are emission limit values already set in EU legislation integrated in national legislation?			X	No.
Does the legislation provide for prior authorization or regulation with emission controls for point source discharges?		X		Water Code of Ukraine, art. 49. Procedure for approval and issuance of permits for special water use (the Cabinet of Ministers of Ukraine of 13 March 2002, No 321).
Does the legislation provide for prior authorization for abstraction and recharge of surface and groundwater?		X		Water Code of Ukraine, art. 49. Procedure for approval and issuance of permits for special water use (the Cabinet of Ministers of Ukraine of 13 March 2002, No 321).
Does the legislation prohibit the direct discharge of dangerous substances into groundwater?		X		“The Order of Approval of the Maximum Allowed Discharge Rates of Pollutants and the List of Polluting Substances that are Subject to Authorization” (Regulation of the Cabinet of Ministers of Ukraine of 12.06.96, No 1100) “Methodology for Calculation of Damages Caused to the State as a Result of the Violation of the Legislation on the Protection and Rational Use of Water Resources”, approved by the Order of the Ministry of Environmental Protection of 18.05.95.
Does the legislation provide for measures to prevent or control diffuse pollution?			X	Such measures are provided in the programmes of restoration and protection of water resources. In addition, there is a definition of “Diffuse Pollution Sources” (not in the Water Code, but in the Law of Ukraine “On Approval of a National Programme of Protection and Restoration of the Environment of Azov and Black Seas”). “Methodology for Calculation of Damages Caused to the State as a Result of the Violation of the Legislation on the Protection and Rational Use of Water Resources”, approved by the Order of the Ministry of Environmental Protection of 18.05.95. However, diffuse sources of pollution are not reflected in the statistical data, there’s no methodology for identifying such sources.
Does the legislation provide for water monitoring programmes?		X		Water Code, art. 21; the Regulation of the Cabinet of Ministers of Ukraine of March 30, 1998 No 391 “On Approval of the State System for Monitoring the Environment”, the Government Decree of 05.12.2007 “On Approval of the Special Environmental Programme on Monitoring of the Environment”
Overall assessment: 24 grades from 78 possible				
Score – 30,8%				

COMMENTS AND EXPLANATIONS:

1. Planning the adaptation to the EU legislation.

The issue of protection, reproduction and use of water resources is complex and therefore these issues fall within the competence of various authorities in Ukraine.

One example of the implementation experience of certain EU directives is the Law “On Drinking Water and Drinking Water Supply”. Article 6 of this Law provides for the “approximation of requirements of state standards for drinking water, drinking water production technologies as well as means of measurement and methods of assessment to the relevant standards, technologies, tools and methods adopted in the European Union”. Today Ukraine has two legal acts on the quality of drinking water: State Standard 2874-82 “Drinking Water. Hygienic Requirements and Control of Quality” and State Sanitary Rules and Norms 136/1940 “Drinking Water. Hygienic Requirements for Water Quality of Centralized Household Drinking Water Supply”. It should be noted that while the State Standard 2874-82 provides for the monitoring of water quality using 28 indicators, the State sanitary rules and norms provide for twice as much indicators (56 indicators), which is even more than envisaged in the EU Directive 98/83 EEC. State sanitary rules and norms are not applied to bottled drinking water and water from local water sources if they are not used by a centralized water supply system and without pipe split network. This does not meet the European Directive 98/83 EEC. However, it should be noted that State sanitary rules and norms 136/1940 constitute, to a large extent, a compromised document that takes into account the provisions of the WHO Guidelines (1992) and Directive 98/83 EEC. State sanitary rules and norms 136/1940 has been in force for over 10 years and but still is not fully introduced into drinking water supply system. E.g., if one examines information about the water quality of centralized water supply sources in the city of Kyiv on December 2008, the indicators of drinking water met State Standard 2874-82 "Drinking Water", i.e., water quality was controlled according to the State Standard. The reasons are obvious: the inability of outdated water treatment technologies to ensure the desired quality of drinking water, lack of necessary research and their adequate laboratory equipment. The above reasons are impeding and will impede future adaptation of Ukrainian legislation on water resources to the European Law. This also applies to the Council Directive 91/271/EEC concerning urban wastewater treatment and many other “technical” Council directives, including Directive 2000/60/EEC of the European Parliament and the Council of October 23, 2000 (“Water Framework Directive”), which says that development of the river basins management plans should include measures that are required by the Directives 76/160/EEC, 79/409/EEC, 98/83/EEC, 96/82/EEC, 85/337/EEC, 86/278/EEC, 91/271/EEC, 91/414/EEC, 91/676/EEC, 92/43/EEC, 96/61/EEC). The outdated equipment and lack of own production of necessary clean-up and laboratory equipment will hinder the transition of Ukraine to the EU standards.

Maybe this is the reason why planning process for the adaptation of Ukrainian legislation to the EU legislation pays so little attention to water issues.

2. Legislation on the protection and use of water resources (Water Framework Directive).

The State Committee for Water Management of Ukraine took some steps to improve water management structures and implementation of basin principle to management of waters as provided by the Concept of the Development of Water Sector of Ukraine (approved by the Regulation of the Parliament of Ukraine of 14 January 2000 No.1390-XIV) and the National Programme for Development of the Water Sector. Today the structure of the State Committee for Water Management of Ukraine includes nine water basin resources offices. The development of model regulations on basin management is only planned. Therefore, their functions and powers are defined according to the developed and approved regulations of the State Committee for Water Management of Ukraine. State Committee for Water Management of Ukraine structure includes

Regional (*oblast*) Committees for Water Management and sub-regional (*Rayon*) offices for water management, and, at the same time, water basin resources offices. In other words, the reorganization of work of water sector is under way in Ukraine. Further reorganization of the water resources management, their protection and restoration, as well as adaptation of the Ukrainian legislation to the provisions of the Water Framework Directive is part of the development of the new Law of Ukraine "On the National Programme for Development of Water Sector".

The following considerations are important in the context of the effectiveness of the secondary legislation on discharges of polluting substances into water and on the use of water without special water permit. Analysis of the implementation of the existing "Methodology for Calculation of Damages Caused to the State as a Result of the Violation of the Legislation on the Protection and Rational Use of Water Resources" (approved by the Order of the Ministry of Environmental Protection of 18.05.95 No.37) reveals lack of its effectiveness. For example, discharge of 1000 m³ untreated sewage into water bodies will result in 5,02 UAH damages (less than €0,5). This allows water users to pay damages deliberately rather than introduce modern means and methods for treatment of inverse waters. The Action Plan on Implementation in 2007 of the National Programme of Adaptation of Ukrainian Legislation to the Legislation of the European Union (the Order of the Cabinet of Ministers of Ukraine of March 7, 2007, No.90-p) provided for the need to amend the Methodology for Calculation of Damages Caused to the State as a Result of the Violation of the Legislation on the Protection and Rational Use of Water Resources. Implementation deadlines were postponed to 2008. The Ministry of Environmental Protection by the letter of 20.03.2008 No.3470/27/10-08 submitted draft new methodology for approval and comments to the Ministry of Finance, Ministry of Economy and Ministry of Housing and Communal Services of Ukraine. The Ministry of Housing and Communal Services by its letter dated 15.05.2008 No.8/13-130 gave comments and suggestions. The Ministry of Finance and the Ministry of Economy did not provide any proposals and comments. The State Environmental Inspectorate by its letter dated 03.06.2008 4/3-2-412 sent suggestions and comments received from The Ministry of Housing and Communal Services to the developer, the Ukrainian Scientific Center of Ecology of the Sea (Odessa). It seems that work on this methodology will continue in 2009.

Although the question on prior permit for water abstraction and discharges was rated as "good", it only means that Ukraine has appropriate laws, but bringing them to the standards of the European Law requires a lot of work.

3. Measures to adapt water legislation of Ukraine to the EU legislation under the National Programme of Adaptation of Ukrainian Legislation to Legislation of the European Union in 2007-2008 (brief overview).

Action Plan on Implementation of the national programme in water resources in 2007 provided for the following measures:

- To prepare a draft legal act on the definition of water quality in areas designated for swimming (responsible bodies – Ministry of Health and Ministry of Environmental Protection). By the Resolution of the Cabinet of Ministers of Ukraine of 23.11.07 No 41632/3/1-07 this measure was taken out of implementation monitoring. This means in the near future our country will not work on this matter.
- To prepare a draft legal act for protection of ground waters (responsible bodies - Ministry of Justice, Ministry of Environmental Protection, State Committee for Water Management, Ministry of Industrial Policy, Ministry of Fuel and Energy, Ministry of Emergency Situations). By the letter dated 25.12.07 No 44-9/1169 the Ministry of Justice informed the Cabinet of Ministers that it

considers unnecessary the development of a separate law. Preparation of a draft legal act for protection of groundwater was provided in draft the Action plan for 2008 but it was dropped out.

- To amend Methodology for calculation of damages caused to the state as a result of the violation of the legislation on the protection and rational use of water resources, approved by the Order of the Ministry of Environmental Protection dated May 18, 1995 No 37. Its actual implementation was discussed above.

Action Plan on Implementation of the national programme in water sector in 2008 provided for the following measures:

- To prepare draft national programme of water resources protection (responsible body - Ministry of Environmental Protection). There is no official information concerning the implementation of this measure.

- The State Committee for Technical Regulation and Consumer Policy and the Ministry of Health should develop the following technical regulations:

- On drinking water for human consumption. Draft technical regulations were developed and sent for approval by the concerned central governmental bodies.
- On natural mineral waters. First draft technical regulations are under development.

In sum, in 2007-2008 only 3 measures were partly implemented out of 7 planned.

CONCLUSIONS AND RECOMMENDATIONS:

- There is no political will to implement measures on adaptation of the water legislation of Ukraine to the EU legislation.
- There's low technical level of preparation of Ukraine for the adaptation of water legislation. The level of the implementation of water related issues of the State Program on Adaptation of the Legislation of Ukraine to the EU legislation is very low.
- Human resources in water issues are well-skilled and the population wants to have access to good quality drinking and bathing water. These factors may help to make necessary progress in this field.
- The complexity of the solution of problems in the water sector of Ukraine needs clear definition of the state bodies responsible for adaptation of the Ukrainian legislation to the water legislation of the European Union.
- To improve the situation the following are the key requirements: political will, in-depth analysis of the water sector, assessment of financial needs for the adaptation, developing realistic timetable for implementation of the relevant EU directives and appointment of responsible state bodies for the effective implementation of water legislation.

Objective 6

STRENGTHENING ADMINISTRATIVE STRUCTURES AND PROCEDURES

Practically all Action Plans refer to strengthening administrative structures and procedures as a key element for “guaranteeing strategic planning of environmental issues and coordination between important persons concerned”. The EU-Ukraine Action Plan (paragraph 60 “Take steps to ensure that conditions for good environmental governance are set and start implementing them”) provides for further steps [to be taken] towards completion of administrative structures and procedures to ensure strategic planning of environment issues and co-ordination between relevant actors. In addition, paragraph 61 of the Action Plan provides for the development of framework legislation and basic procedures, ensuring planning for key environmental sub-sectors identified in National Strategy for the Environment, as well as taking first steps towards their implementation; enhancing administrative capacities including those for permitting as well as for enforcement and inspections; enhancing/adoption of national programmes and plans for key environment sub-sectors including priorities for investments in each sub-sector.

Annual Measures for the implementation of the EU-Ukraine Action Plan for 2005 (approved by the Order of the Cabinet of Ministers of Ukraine of April 22, 2005 No117-p) provided for some activities aimed at implementation of the para.60 of the Action Plan. Namely, it included the following actions: the Ministry of the Environment was to prepare draft Decree of the President of Ukraine “On the Ministry of the Environment of Ukraine” and a position document on the assessment of current status of strategic planning in the field of environmental protection and use of natural resources. Annual Measures for the implementation of the EU-Ukraine Action Plan for 2006 (approved by the Order of the Cabinet of Ministers of Ukraine of April 27, 2006 No243-p) did not directly contain any activity related to strengthening administrative structures and procedures as a separate paragraph or target. However, the section related to the implementation of Johannesburg Summit commitments (para’s. 115 and 116) had the following task: “to develop framework legislation, to improve main procedures and ensure development of plans for key sub-sectors of the environment, defined in the Main Directions of the State Policy of Ukraine in Environmental Protection Area, and their implementation; to strengthen administrative capacity, including permitting, enforcement and inspecting; to amend existing or adopt new national programmes and plans for key sub-sectors in the environmental protection area, including setting investment priorities for certain sub-sectors”. At the same time the list of measures had a paragraph related to strengthening of administrative structures and procedures: “[to improve] procedure of access to environmental information” (p.107). In 2007 the Measures also provided for “setting founding principles of the national environmental policy” (p.109). Annual Measures for the implementation of the EU-Ukraine Action Plan for 2008 (approved by the Order of the Cabinet of Ministers of Ukraine of August 6, 2008, No1072-p), under section “Ensuring proper implementation of the National Strategy of the Environmental Protection (Main Directions of the State policy of Ukraine in the Environmental Protection area, Use of Natural Resources and Environmental Safety)”(p.84), list, *inter alia*, the task to draft the Strategy of national environmental policy of Ukraine for the period until 2020 and drafting the National action plan of the environmental protection for 2009-2012. The first two objectives have been accomplished to some extent. In addition, under “strengthening powers of state authorities in the field of the environmental protection, including interagency coordination” the Measures provided for “studying the EU member states experience in interagency coordination in the field of the environmental protection” (p.85). No information is available whether this was accomplished.

In sum, the steps taken by the state authorities in Ukraine to implement the Action Plan’s objective of strengthening administrative structures and procedures can be hardly considered to be consistent and adequate. Questions in this section address administrative structures at national and local level, as well as issues of strategic planning.

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
ADMINISTRATIVE STRUCTURES					
<i>At the national level</i>					
Is there a Ministry of Environment? If there is a Ministry, does its remit extend to all key environmental issues in the country (e.g. water, waste, air, biodiversity, etc.)? (1)					Not excellent. The Ministry does exist and is in charge of wide range of environmental issues. However, it does not have authority over all key environmental issues in the country.
If not, are environmental issues addressed by other authorities at the cabinet level (e.g. Ministry of Energy, Transport, etc.)? (2)					For instance, Ministry of Fuel and Energy of Ukraine, Ministry of Agrarian Policy of Ukraine, Ministry of Emergency & Protection of Population from Chernobyl' Accident, Ministry of Transport and Communication, Ministry of Industrial Policy of Ukraine, Ministry of Health of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Coal Industry of Ukraine, other central executive bodies.
Have resources been increased since signing the AP in order to ensure that the national authorities can carry out their mission? (3)					Despite several regulatory measures, mainly adopted by the Cabinet of Ministers of Ukraine, the situation practically has not changed (this covers administrative resources, but not financial).
<i>At the regional/local level</i>					
Do regional/local authorities have competences for environmental issues? Is the distribution of competences between national and regional/local authorities clearly defined? (4)					There is no clear distribution, overlapping of powers.
Have resources been increased in order to ensure that the authorities can carry out their mission since the signing of the AP?					No significant changes in distribution of powers. Administrative reform has not been completed yet (administrative resources assessed, not financial).
STRATEGIC PLANNING					
Is there a strategy in place or planned for the environment? If yes, is it of good quality? (5)					Draft Strategy of the National Environmental Policy of Ukraine has been developed but has not been approved as of 2008.
Have steps been taken to implement the strategy?					For the 10 years since the adoption of the Main Directions of the State Policy of Ukraine In the Field of Environmental Protection, Use of Natural Resources and Environmental Safety, no comprehensive and systematic steps have been taken to implement this policy document.

Is the strategy being regularly revised (e.g. three yearly)?					No revision for 10 years.
Are there sector-specific strategies to support the overall strategy? (6)					Energy Strategy of Ukraine for the period until 2020.
Are there procedures such as consultation procedures between ministries/authorities in place? (7)					E.g., there is a procedure of interagency preliminary approval of draft legislation.
If yes, is the role of the Ministry of Environment or environmental authorities important in these procedures?					Not excellent because some central executive bodies (such as the Ministry of Economy of Ukraine, Ministry of Finance of Ukraine and Ministry of Justice of Ukraine) play much more important role.
Are there formal procedures in place to facilitate coordination between the authorities and other relevant actors (civil society, the scientific community)? (7)					Procedures do exist but on paper. In practice they have not been implemented systematically and effectively, numerous violations reported.
Has cooperation between the different actors improved since the signing of the Action Plan?					Occasionally yes. General cooperation framework needs improvement.
Overall assessment: 16 grades from 39 possible					
Score – 41%					

COMMENTS AND EXPLANATIONS:

1. The Ministry of Environment of Ukraine was established a long time before the EU-Ukraine Action Plan was adopted. Initially the legal status of the Ministry was set by the Decree of the President of Ukraine February 10, 1995, No.120, later replaced by the Decree of the President of Ukraine of May 29, 2000, No.724/2000 (revised in 2002). The Ministry of Environment (formerly the Ministry of Environment and Nuclear Safety of Ukraine or Ministry of Environment and Natural Resources of Ukraine, correspondingly) was established as the principal state authority in the system of central and other executive authorities in the fields of environmental protection, efficient use of natural resources, environmental safety, as well as some other areas .

In 2006 the Cabinet of Ministers of Ukraine approved a new regulation on the Ministry of Environment of Ukraine (Decision of November 2, 2006, No.1524 as amended in 2007 and 2008). The new regulation refers to the Ministry of Environment as to the main public authority in the system of central and other executive authorities working in the field of environmental protection, efficient use of natural resources, rehabilitation and safety, state control over soil use and protection, environmental safety, protected areas, waste management, formation, preservation and use of environmental network, geological analysis and efficient use of mineral resources, etc. The main objectives of the Ministry of Environment include: 1) to ensure implementation of the state policies in the field of environmental protection, efficient use of the natural resources (soil, mineral resources, ground and underground waters, air, forests, flora and fauna, marine environment and natural resources in territorial waters, continental shelf and exclusive (sea) economic area of Ukraine), waste management (except for radioactive waste), hazardous chemicals, pesticides and agrochemicals, environmental and, within its competence, radiation safety, mineral raw materials, protected areas, formation, preservation and use of environmental network, geological analysis and efficient use of mineral resources, etc.; 2) to carry out complex management and complex regulation in the fields of environmental protection, effective use and rehabilitation of natural resources, ensuring environmental safety and, within its competence, radiation safety, protection and use of the territories and objects of natural reserve fund of Ukraine, formation, preservation and

use of environmental network; 3) to carry out state control over compliance with the legislation in the field of the environmental protection, efficient use of natural resources, rehabilitation and safety, in particular use and protection of soil, environmental safety and, within its competence, radiation safety, protection and use of territories and objects of natural reserve fund, formation, preservation and use of environmental network, waste management (except for radioactive waste), hazardous substances, pesticides and agrochemicals, etc.

Despite numerous restructuring efforts the Ministry's key objectives and competences were not subject to any substantial changes since 1995.

2. The Ministry incorporates State Ecological Inspectorate, State Agency on Protected Areas, State Geology Agency, State Geodesic, Mapping and Cadastre Agency (Regulation on the State Ecological Inspectorate approved by the Decision of the Cabinet of Ministers of Ukraine of November 17, 2001, No.1520 (revised on June 16, 2004, No.770); Regulation on the State Ecological Inspectorate in regions, cities of Kyiv and Sevastopol, approved by the Decision of the Ministry of Environment of Ukraine of December 19, 2006, No.548; Regulation on the State Ecological Inspectorate on Environment Protection in Northwest region of the Black Sea, approved by the Decision of the Ministry of Environment on December 6, 2006, No.528; Regulation on the State Ecological Inspectorate of the Sea of Azov approved by the Decision of the Ministry of Environment on December 6, 2006 No.527). The operation of the State Committee for Water Resources, the State Committee for Land Resources, the State Committee of Forestry, and the National Environmental Investment Agency is coordinated by the Cabinet of Ministers of Ukraine through the Minister of the Environment (Regulation on the State Committee of Ukraine for Water Resources, approved by the Decision of the Cabinet of Ministers of Ukraine of June 27, 2007, No.882; Regulation on the State Committee for Land Resources, approved by the Decision of the Cabinet of Ministers of Ukraine of March 19, 2008, No.224; Regulation on the State Committee of Forestry of Ukraine, approved by the Decision of the Cabinet of Ministers of Ukraine of June 27, 2007, No.883; Regulation on State Agency of Ecological Investments of Ukraine, approved by the Decision of the Cabinet of Ministers of Ukraine of July 30, 2007, No.977). The State Committee for Nuclear Issues of Ukraine is a central executive body with a special status and its activity is directed and coordinated by the Cabinet of Ministers of Ukraine exclusively (Regulation on the State Committee for Nuclear Issues of Ukraine, approved by the Decision of the Cabinet of Ministers of Ukraine of December 27, 2006, No.1830). The State Committee on Fisheries is a central body of the executive authorities with a special status and its activity is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Agrarian Policy (Regulation on the State Committee on Fisheries of Ukraine, approved by the Decision of the Cabinet of Ministers of Ukraine of January 24, 2007, No.42). The State Hydro-meteorological Agency functions as a part of the Ministry of Emergency Situations and Protection from the Consequences of Chornobyl Accident (Regulation on the State Hydro-meteorological Service, approved by the Decision of the Cabinet of Ministers of Ukraine of April 26, 2002, No.570 (subordination switched from the Ministry of the Environment to the Ministry of Emergency Situations in accordance with the Decision of the Cabinet of Ministers of Ukraine of July 15, 2005 No.589). Finally, the State Sanitary-Epidemiological Agency functions as a part of the Ministry of Health (Regulation on the State Sanitary-Epidemiological Agency of Ukraine, approved by the Decision of the Cabinet of Ministers of Ukraine of August 19, 2002, No.1218 (as revised by the Decision of the Cabinet of Ministers of Ukraine of September 24, 2004, No.1273).

3. Before the EU-Ukraine Action Plan was approved the activities of central state bodies in different fields, including environmental issues, had been regulated by the regulations approved by the Decrees of the President of Ukraine. As mentioned in p.2 above in 2006-2008 the Cabinet of Ministers of Ukraine adopted new regulations by its decisions concerning all key bodies of state authorities that have powers in the field of environment (and in other areas, too). The competence has not been changed significantly, though. Therefore, the changes outlined dealt with distribution

of powers among central powers rather than with the implementation of the EU-Ukraine Action Plan. This had no impact the issue of resources (administrative, not financial).

4. According to the Law of Ukraine “On Local State Administrations” of April 9, 1999, (in particular articles 2, 13, 18 and 21) a local state administration has the following powers in the field of land protection and use, natural resources and environmental protection: 1) develops and ensures implementation of the approved programmes on efficient use of lands, forests, soil fertility on lands owned by state; 2) administers state owned lands in accordance with the law; 3) develops and submits for approval to the appropriate council draft regional environmental programs and ensures their implementation; submits proposals to appropriate bodies as to the state environmental programmes; 4) takes measures as to the reparation of damages resulting from violations of environmental law by enterprises, institutions, organisations and citizens; 5) submits proposals to appropriate bodies of local self-government concerning local protected areas; 6) informs the population about threats caused by accidents and situations, the state of the environment, including measures taken for its improvement; 7) organizes work to eliminate consequences of environmental accidents, involves enterprises, institutions, organisations irrespective of their property status, including citizens into these activities; 8) submits proposals in accordance with law as to suspension of the operation of enterprises, institutions and organisations irrespective of their property status in case of the environmental law and sanitary rules violations; 9) develops and ensures compliance with regulations on water extraction facilities for water supply for drinking, household use and other needs of the population, sets sanitary control zones for water sources; restricts and prohibits drinking water use for industrial purposes for enterprises.

According to the law of Ukraine “On Local Self-government in Ukraine” of May 21, 1997, the competence of executive bodies of village, towns and city councils includes (Art.33): a) original (self-government) powers, including: 1) preparation and submission for approval of a council proposals concerning land tax rates, payment rates for the use of the natural resources, withdrawal (buy-off) of local community lands, as well as granting permission for construction and use of those lands; adoption in accordance with the law of the compensation rates for enterprises, institutions and organisations irrespective of their property status for the pollution of the environment and other environmental damage; setting rates for the use of municipal and sanitary networks in relevant human settlements; 2) preparation and submission for the approval of a council draft environmental local programmes, participation in the preparation of the state and regional environmental programmes; 3) preparation and submission for the approval of a council proposals as regards decision-making on territorial planning and setting-up local protected areas and other territories that require special protection; submission of proposals to appropriate state bodies as regards granting to natural and other objects a status of a great environmental, historical, cultural or scientific value, status of natural, historical or cultural heritage protected by law; 4) charging land fees; b) delegated powers: 1) control over compliance with land and environmental protection laws, use and protection of lands, natural resources of national and local value, forests recreation; 2) keeping a register of land owners, land users and land lease contracts; issuing documents certifying land property and lease rights; 3) coordinating activities of local land authorities; 4) co-approval of permits for the use of natural resources of national value; 5) settlement of land disputes in accordance with the procedure set by law; 6) taking necessary measures as regards elimination of accidents consequences in accordance with the law, informing the population, involving into this process enterprises, institutions, organisations and population; 7) selection territories for the short- and long-term storage and placement of industrial, household and other wastes in accordance with the law; 8) preparation of its conclusions concerning assignment or withdrawal of lands carried out by executive authorities or self-government bodies; 9) organizing and carrying out land-planning, approval of land use plans; 10) control over implementation of measures provided by land use plans; 11) establishment and ensuring functioning of local environmental automated information & analysis systems which are part of the national information & analysis system as a mechanism for ensuring access to environmental information. The competence of city council executive bodies

(with some exceptions) includes coordination of the activities of relevant state environmental protection bodies.

This may create an impression that the scope of competences of state local authorities and self-government bodies complement each other. However, in practice, it is, first, impossible for them to execute powers separately (especially as regards self-government bodies), without involvement of the others; and second, delegated powers can be (but do not need to be) transferred to others; but since it has not been done systematically none of the above-mentioned bodies assumes responsibility. Lastly, executive bodies of local self-government are scarcely financed and thus experience problems with performing their own functions. At the same time state power bodies on-site are not “authorized” to provide assistance or take responsibility.

5. In 1998 the Parliament of Ukraine approved Main Directions of the State policy In the Field of Environmental Protection, Use of Natural resources and Environmental Safety (the Decision of the Parliament of March 5, 1998). It has never been revised. In 2007 the Cabinet of Ministers of Ukraine adopted the Concept of the National Environmental Policy of Ukraine for the Period until 2020 (Decision of October 17, 2007, No.880-p). It states, in particular, that “many provisions of [Main directions...] are still pressing, but in general they do not reflect current needs. Since [1998] many events occurred which shaped the development of environmental strategies at the international level, while Ukraine demonstrated development of the economy”. That Decision of the Cabinet of Ministers of Ukraine also obliged the Ministry of the Environment to develop in 3 months period and submit to the Cabinet of Ministers of Ukraine a draft Strategy of the National Environmental Policy of Ukraine for the period until 2020. The draft was developed and is accessible at the official site of the Ministry of the Environment (<http://menr.gov.ua/documents/ProektStrategy.doc>). Civil society representatives were involved into the development and discussion of the draft strategy.

Therefore, the Strategy itself is under development and discussion. *Main Directions* therefore still stand as the only strategy paper in force, while approved a long time before the EU-Ukraine Action Plan, never revised and to a large extent outdated (this is confirmed by the decision mentioned). The Concept of the National Environmental Policy should be regarded as an interim framework document only. It appears to be a major development in this area since the adoption of the Action Plan, though.

6. As mentioned, programmes, plans, concepts, strategies have been developed, which stand as strategic environmental papers for some sectors. The only bearing “strategy” title is the Energy Strategy of Ukraine for the Period until 2030. If looking into the substance of these strategic documents, it appears that there is no systematic approach in their development. They are not interrelated and mutually complementary, and, in fact, they are not harmonized by *Main directions*. For this reason experts increasingly stress the absence of strategic understanding and vision of the environmental activities and policy in Ukraine.

7. For instance, in accordance with the Paragraph 49 of the Regulation of the Cabinet of Ministers of Ukraine (approved by the Resolution of the Cabinet of Ministers of Ukraine of July 18, 2007, No.950) a state body which carries out preparation of the draft decision of the Cabinet of Ministers of Ukraine is considered to be main developer of the draft. The preparation draft decisions of the Cabinet of Ministers of Ukraine is carried out, in accordance with their competence, by ministries, other central executive authorities, the Cabinet of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state authorities. Drafts which are submitted by the Minister of the Cabinet of Ministers of Ukraine or the Minister for the Parliamentary Relations and other state authorities related to the issues of their competence as well as in other cases provided by the Rules of Procedure of the Cabinet of Ministers of Ukraine are prepared by the Secretariat of the Cabinet of Ministers. In case were a draft addresses issues which fall within the competence of several

executive authorities, the main draft developer is considered to be a body that holds a dominating competence in a particular area. Other executive authorities, which according to their competence are participating in the development of a draft decision, or its endorsement, are considered to be authorities concerned. The main developer decides on its own which are the authorities concerned based on contents of the main provisions of a draft. The main developer organizes, directs and coordinates activities of the interested authorities on the preparation of a draft decision of the Cabinet of Ministers, takes exhaustive measures to settle divergences and holds settlement procedures (consultations, conferences, meeting etc.). Members of the Parliament of Ukraine, scientists and other experts as well as representatives of citizens' organizations may be involved, upon their consent, into the preparation of a draft decision of the Cabinet of Ministers. During the preparation of a draft decision of the Cabinet of Ministers on issues concerning social-labour issues, the main developer must send the draft to the authorized representative of all-Ukrainian trade unions, their associations and the authorized representative of all-Ukrainian association of employers' unions.

CONCLUSIONS AND RECOMMENDATIONS:

The steps taken by the state authorities in Ukraine to implement the Action Plan's objective of strengthening administrative structures and procedures can be hardly considered to be consistent and adequate. The distribution of powers of and among the state authorities responsible for environmental protection issues, including the Ministry of Environmental Protection, was not subject to comprehensive revision for years. The key policy document in environmental protection area - the Main Directions of the State Policy of Ukraine in the Field of Environmental Protection, Use of Natural Resources and Environmental Safety (1999) - has not been ever revised. A draft Strategy of the National Environmental Policy of Ukraine for the period till 2020 was developed.

Recommendations:

- To further improve, in consultations with the public, and adopt the Strategy of the National Environmental Policy of Ukraine in the near future together with the Action Plan for 5 years.
- To harmonize current and future sector strategies with the Strategy of the National Environmental Policy for the period till 2020 (after its adoption).
- To clearly separate powers in the field of environmental protection between relevant public authorities.
- To ensure the real access and public participation in the decision-making process on environmental issues.
- To increase the coordination between different public authorities and to develop the mechanisms of the practical cooperation of ministries and institutions on environmental protection issues.

Objective 7

REINFORCING STRUCTURES AND PROCEDURES TO CARRY OUT EIA (ENVIRONMENTAL EXPERTIZA)

EU – Ukraine Action Plan incorporates this objective as “reinforce structures and procedures to carry out environmental impact assessments, including in relation to trans-boundary issues” (para. 60).

Annual measures did not provide for any actions in relation to this objective.

This assessment focuses on environmental impact assessment at project level. Issues related to strategic environmental assessment are considered within specific questions only.

Closely linked to this objective is the objective of public information and participation, as well as that of environment integration.

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
GENERAL QUESTIONS					
Does the existing legislation require EIA for activities likely to have a significant impact on natural resources and the environment? If not, is the adoption of such legislation planned? (1)	X				There's an intention to adapt national legislation to EU and Espoo Convention (draft decree of the Cabinet of Ministers of Ukraine).
STRUCTURES					
Are responsibilities clearly defined and distributed between the national and local/regional governments? (2)		X			
Is the capacity of the regulatory authorities sufficient ⁵ ? (3)			X		There's a need for capacity building of the personnel involved in the area of modern technologies, lack of access to databases containing modern data on possible risks and impacts of certain planned activities
PROCEDURES					
Are criteria and procedure for defining which activities are subject to EIA clearly established? (4)	X				There's a list of activities which must be subject to state environmental <i>expertiza</i> .
Does the procedure in place provide for a preliminary screening stage to decide if an EIA is required for the proposed project? (5)		X			The procedure for screening of other activities (not listed as EIA-compulsory) is not clear.

⁵ This is a rather subjective benchmark, although it is important as without sufficient capacity, legal requirements can hardly be implemented and enforced. It relates mainly to the number and the degree of qualifications (technical capacity) of people in charge of reviewing EIA at both national and local levels.

Does the procedure in place provide for a scoping stage to identify the potential significant impacts and the main alternatives to assess? (6)	X				At OVNS level (part of procedure done by the developer).
Is the information to be provided by the developer in the EIA clearly established e.g. through setting the minimum content of the EIA? (7)	X				By secondary legislation.
Are consultation procedures with authorities likely to be concerned by the project in place and well applied? (8)	X				Part of procedure for state environmental <i>expertiza</i> .
Does the legislation clearly require the relevant country authorities and stakeholders to be informed in the case of probable trans-boundary impacts? (9)		X			Only at OVNS/developer level (regulated by State Building Norms for EIA and Espoo Convention).
Does the legislation clearly require consultation with the relevant country authorities and stakeholders in case of probable trans-boundary impacts? (10)			X		Only by Espoo Convention (in force for Ukraine).
Are clear procedures in place to ensure effective information for the public early on in the process? (11)		X			Often violated in practice.
Is the public concerned given early and effective opportunities to participate in the environmental decision-making procedures? (12)				X	In practice the public has very little opportunities.
Are the results of the consultations with the public and relevant environmental authorities taken into account in the decision-making process? (13)		X			The law requires so.
Is the competent authority required to inform the public of the decision to grant or refuse development consent? (14)			X		The law requires so, but in practice this does not happen.
Is the competent authority required to inform the country(ies) consulted in case of trans-boundary impact of the decision to grant or refuse development consent to the developer? (15)			X		Under Espoo Convention.
Are the exceptions to information rights, e.g. related to commercial confidentiality, clearly set out? (16)			X		Significant problems reported.
Can the authority, which takes a decision on the development consent, attach conditions to a positive decision? (17)	X				Both the law and practice is positive.
Is a public right of appeal against the	X				General procedures.

decision clearly set up and in place? (18)					
(19) Does the EIA procedure include a follow-up requirement? If yes, is it well applied?			X		This is not done in practice.
Overall assessment: 37 grades from 57 possible					
Score - 64,9 %					

COMMENTS AND EXPLANATIONS:

1. Environmental impact assessment in Ukraine comprises two separate procedures: so called OVNS (EIA done by the developer) and *state environmental expertiza* (EIA done by environmental protection agencies). EIA legislation in Ukraine includes: the Law of Ukraine on Environmental Protection (1991), the Law of Ukraine on Environmental Expertiza (1995), the Decree of the Cabinet of Ministers of Ukraine on the List of Activities and Objects Which Pose a High Risk to the Environment (1995), the Decree of the Cabinet of Ministers of Ukraine on the Procedure for Submission Documents for State Environmental Expertiza (1995), State Building Norms DBN A.2.2-1-2003 “Structure and Content of EIA During Planning and Construction of Enterprises, Houses and Buildings”. A special order establishing the procedures for performing state environmental expertiza was repealed in 2004. From decision-making perspective only state environmental expertiza can be considered. State environmental expertiza is obligatory for activities and objects which pose a high risk to the environment. The list of such activities and objects is set by a decree of the Cabinet of Ministers. Recently, a new draft decree was developed which incorporates screening approach used in EU legislation and Espoo Convention (1991).

2. Section III of the Law of Ukraine on Environmental Expertiza clearly sets the competence of the Parliament, Cabinet of Ministers, Ministry of Environmental Protection, local authorities and self-governments in the area of environmental expertiza (art.18-26). At the same time, the order establishing the procedure for performing state environmental expertiza (repealed in 2004) was the only document setting the competence for local divisions of the Ministry of Environment. In practice, local environmental protection agencies use the procedure which was established by the repealed order.

3. Lack of capacity of the personnel is a relevant issue for both public agencies and consulting companies (which do planning and project development, including OVNS/EIA). In practice, experts involved use outdated data and methodologies developed during USSR times. The assessment of this question was based on personal interviews.

4. Art.13 of the Law on Environmental Expertiza says that the state environmental expertiza must be carried out for activities and objects posing a high risk to the environment. The list of such activities and objects is set by a decree of the Cabinet of Ministers. This assessment does not cover strategic decisions (plans, programs and policies) as objects of state environmental expertiza.

5. There are no clear criteria for establishing the need for environmental expertiza for other (non-compulsory) activities. State environmental expertiza can be carried out when 1) there's evident or possible threat to the environment, 2) there's a decision by the Cabinet of Ministers of Ukraine, the Government of Crimea, local authorities and self-governance bodies, courts or law enforcement agencies, 3) national environmental interests require so (art. 34 of the Law on Environmental Expertiza). Under the Law on Environmental Protection (art. 27) and the Law on Environmental Expertiza (art.14) state environmental expertiza can be carried out both for planned project level activities, and also state investments programs, general city development plans, draft laws, etc. At

the same time, there are no clear criteria for screening of strategic decisions. In practice, state environmental expertiza was occasionally performed for such decisions.

6. This issue is not regulated at expertiza but OVNS level. In accordance with the State Building Norms .2.2-1-2003 the EIA has one of its objectives to identify the list of possible adverse environmental impacts and zones of impact by the planned activity for different location options (para. 1.2). The EIA at OVNS level should not merely consider elements of environment which may be affected by the planned activity, but also those currently having negative state of environment (para. 2.8). For each element (component) of the environment at consideration the EIA should include, in particular, the justification for the need to assess it, list of impacts (including indirect), justification of limits of affected zones by the planned activity (para. 2.9).

7. State Building Norms .2.2-1-2003 – it's a document setting the procedure for development of the EIA documentation as part of the project documentation for new construction, extension, reconstruction or technical renovation of the industrial and civil facilities (planned activity), key requirements for its structure and content. The list of other documents which must be submitted as package for estate environmental expertiza is set by the Decree of the Cabinet of Ministers of Ukraine on the Procedure for Submission Documents for State Environmental Expertiza (1995).

8. Article 15 of the Law on Environmental Expertiza requires that the documents which are submitted for state environmental expertiza need prior approval by relevant agencies. Decree of the Cabinet of Ministers of Ukraine on the Procedure for Submission Documents for State Environmental Expertiza directly requires that such documents must be first approved by (para. 11):

- Ministry of Health or its local bodies (conclusions of state sanitary hygienic expertiza)
- State Committee on Work Safety or its local bodies (expert conclusion)
- Fire Department of the Ministry of Internal Affairs or its local bodies (expert conclusion).

The authority performing the state environmental expertise may require additional expert conclusions depending on the specific circumstances.

9. Ukraine is a party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention, 1991) which sets procedures for consultations with other countries in case of likely significant adverse impacts of the planned activity on the environment of other countries. In Ukraine, dully ratified international treaties are part of national legislation and can be enforced with accordance with law (art.19 of the Law of Ukraine on International Treaties of Ukraine, 2004). If an international treaty establishes rules other than those in national legislation, the rules of international treaty shall apply (art.19.2. of the Law of Ukraine on International Treaties of Ukraine). Paragraph 1.11 of the State Building Norms .2.2-1-2003 has a direct reference to Espoo Convention. At the same time, in practice such procedures were never applied, including in violation of the obligations under Espoo Convention.

10. See above.

11. The legislation related to OVNS and environmental expertiza sets basic key requirements for public participation. E.g., the public shall be informed at a pre-project stage already (Intentions Statement must be published), at OVNS stage, and at environmental expertiza stage (Environmental Impacts Statement, requirements for the content set by the Art.35 of the Law of Ukraine on Environmental Expertiza (1995)). Publicity is one of the principles of the environmental expertiza (art. 6 of the Law of Ukraine on Environmental Expertiza (1995)). At the same time, in practice these requirements are often ignored or violated (e.g., the EIS is published in a very short time before the decision is taken).

12. Article 11 of the Law of Ukraine on Environmental Expertiza says that authorities carrying out the environmental expertiza must hold public hearings or open meetings in order to take into account public opinion. Public participation can be carried out by statements in mass-media, written comments, proposals and recommendations, inclusion of the members of the public into the expert groups and commissions. Preparation of final conclusions of environmental expertiza and decisions on further realization (use, implementation) of the EIA objects must take into account public opinion. Similar requirements are part of the procedure under State Building Norms .2.2-1-2003. In practice, however, the public has no opportunities to participate in the state environmental expertiza because of late and ineffective informing, lack of willingness by the authorities and developers to ensure transparency of the decision-making process.

13. The outcomes of public participation must be taken into account. In practice they are often ignored, though. See para.12 above.

14. Art.10 of the Law of Ukraine on Environmental Expertiza requires that the final conclusions of the environmental expertiza are published. However, this never happens and, even worse, the conclusions are often classified. There's no register of conclusions of state environmental expertiza in Ukraine.

15. See para.9.

16. Yes, the reasons (basis) for restricting access to environmental information are clearly set by the Law of Ukraine on Information, Law on State Secret, Law on Environmental Protection and the Regulation for the Procedure for Providing Access to Environmental Information (set by the Order of the Ministry of Environment, No169, 2003). However, the practice reveals that public cannot access OVNS documentation submitted for environmental expertiza and even to the conclusions of the expertiza.

17. Additional conditions may be set by the conclusions of the environmental expertiza directly or by returning the documentation for further improvement.

18. The appeal procedures are general: administrative and court. The Law of Ukraine on Environmental Expertiza sets possible reasons for appealing the conclusions of the state environmental expertiza (art.45) as well as decisions based on such conclusions (art.46). E.g., conclusions of the state environmental expertiza can be repealed by a court if they were prepared in violation of the procedures established by the law.

19. State Building Norms .2.2-1-2003 say that post-project analysis may be carried out upon initiative by the operator (operating the facility) or state authorities. Procedures for state environmental expertiza do not include such a stage.

CONCLUSIONS AND RECOMMENDATIONS:

EU – Ukraine Action Plan incorporates an objective to “reinforce structures and procedures to carry out environmental impact assessments, including in relation to trans-boundary issues”. Annual measures did not provide for any actions in relation to this objective. The assessment confirmed that proper legislation and key procedures for the environmental impact assessment (EIA) are in place. Key problem areas are: capacity of state authorities (personnel capacity), practical opportunities for public participation and restricted access to information. In addition, Ukraine lacks clear mechanisms for strategic environmental assessment (plans, programs, and draft laws) and EIA of transboundary impacts (under Espoo Convention).

Recommendations: to include again into the new practical instrument an objective to reinforce structures and procedures to carry out environmental impact assessments, including in relation to trans-boundary issues, with the following specific priorities: to increase capacity of the personnel involved in the EIA, to improve practical mechanisms for public participation in EIA, to ensure adequate access to information in EIA process, to adopt legislation for strategic environmental assessment and ratification of SEA Protocol (2003) to the Espoo Convention, to adopt measures for proper implementation of the procedures under Espoo Convention.

Objective 8

IMPROVING PERMITTING AND ENFORCEMENT STRUCTURES

Relevant text in the Action Plan says:

"2.5. Transport, energy, information society and environment

Environment

61. Take active action for prevention of deterioration of the environment, protection of human health, and achievement of rational use of natural resources, in line with the commitments of Johannesburg Summit

– Develop framework legislation and basic procedures and ensure planning for key environmental sub-sectors identified in National Strategy for the Environment; take first steps towards their implementation.

– Enhance administrative capacities including those for permitting as well as for enforcement and inspections."

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
PERMITTING					
Is there a satisfactory permitting system in the country?		X			Ukrainian permitting system is well developed structure but lacks efficiency.
Is the permitting system integrated, i.e. is there a single integrated permit? How well integrated are permits for water, air or IPPC type installations?				X	Implementation of European system of integrated pollution prevention and control according to Directive 2008/1/EC is the most important task for reforming the existing Ukrainian system.
Are there resources allocated to environmental permitting in the administration in charge of the environment ⁶ ?			X		The Ministry of Environment Protection of Ukraine (MEP) designates authority to administer and issue permits to its territorial agencies. All 27 regional (oblast) agencies employ 130 officers altogether; they are dealing with permits for more than 15,000 enterprises. Out of these officers approximately 41% deals with atmospheric air, 37% - water use and discharges, and 22% - solid waste disposal. However, their salaries are significantly lower than in commercial sector; there is also lack of toolkits and methodologies.
Have the resources (human and financial) allocated to permitting been increased since the signing of the AP?			X		Difficulties and problems with state budget funding occur every fiscal year without exceptions. Important institutional change was the reorganization in 2007 which led to a separation of environmental inspectorates from environmental regional agencies.

⁶ The assessment should take into account the level of resources, e.g. no resources, limited resources, highly trained civil servants, etc.

Have initiatives been launched in order to strengthen the capacity of the permitting authorities (e.g. training, manuals, etc.)?		X			Significant technical assistance was provided by OECD, the World Bank and other international organizations. The situation was not significantly improved, yet.
Are the authorities in charge of permitting easy to identify and contact?		X			Environmental permitting system was created in Ukraine a long time ago; it is linked to pollution payments to the state budget and, therefore, strictly controlled. The lack of expertise and work overload lead to some difficulties in contacts.
Are there time limits imposed by law on the administration to issue permits? If so, are they satisfactorily applied?			X		As a rule it is not possible to get permit in a month term, though it is a legal demand. All kinds of formalistic excuses are widely used.
ENFORCEMENT STRUCTURES					
Are there environmental inspection authorities in place in the country?		X			Inspection activities are fulfilled by the State Environmental Inspectorate and its special regional bodies (the State Environmental Inspectorate of the Autonomous Republic of Crimea, oblasts, Kyiv and Sevastopol cities, Black Sea and Azov Sea marine inspectorates). Effectiveness of their activities needs improvement.
Does the police (or equivalent enforcement authorities in the country) have specific units in charge of environmental matters?		X			In addition to the MEP, some inspection functions are delegated to the Ministry of Health, Ministry of Agricultural Policy, State Committee on Forests, and State Committee on Waters, State Committee on Land Resources and local executive bodies, local self-government. Some issues are subject to cooperation with the Ministry of Emergency Situations, the Ministry of Defense and the Ministry of Internal Affairs. The Ministry of Internal Affairs deals with technical state of road transport, including control over compliance with transport air emissions standards. In the previous years the Ministry of Internal Affairs also incorporated special environmental police. Achieving proper level of interagency coordination remains an acute problem.
Are the tasks of the authorities in charge of enforcement clearly defined and competences shared?			X		There is no clear division in authorities between MEP and the Ministry of Emergency Situations, the State Committee for Waters, the State Committee on Land Resources, the State Committee for Fisheries, the State Forestry Committee, other central executive authorities of Ukraine.
Is a plan (or plans) for environmental inspection adopted or in the process of being adopted?		X			There's regular on-going planning of the ecological inspectorate activities at both national and local levels. The effectiveness of control is not sufficient.

Have initiatives been launched in order to strengthen the capacity of the enforcement authorities (e.g. training, manuals, etc.)?		X		Significant technical assistance was provided by OECD, the World Bank and other international organizations. In accordance with annual planning, MEP carries out trainings for inspectors. The State Environmental Inspectorate distributes copies of new legal acts, instructions, provides consultation support to its departments, etc. But these activities have to be improved.
Are there statistics publicly available as to the number of environmental infractions punished? If so, are they regularly updated?			X	Reports on the ecological inspectorate activities, including monthly ones, are published on regional web-pages and MEP portal, they are included in annual national and regional reports on the state of environment.
Are there in-depth analyses of the data obtained through statistics to further interpret the quality of enforcement?			X	As for national statistic system as a whole, environmental reporting suffers from formality. The data processed do not constitute a necessary basis for political decision-making processes. Nevertheless, the State Environmental Inspectorate quarterly analyses statistical information on a number of lawsuits, fines, suspension of industrial activities, etc.
Have specific resources (human and financial) allocated to the enforcement of environmental laws been increased since the signing of the AP?			X	Important institutional change was the reorganization in 2007 which led to a separation of environmental inspectorates from environmental regional agencies. In 2006 -2008 inspection departments got some special vehicles, boats, communication devices, computers, lab equipment, etc. The number of inspectors remains the same in the last years.
Overall assessment: 21 grades from 45 possible Score – 46,7%				

COMMENTS AND EXPLANATIONS:

After adoption of the EU-Ukraine Action Plan for 2005 – 2008, air legislation was subject to the most dynamic development. Two other key areas (water discharges and solid waste disposal) were not subject to substantial revision.

Despite similarity of common objectives to control main sources of industrial pollution, similarity of basic demands and institutional approaches, Ukrainian environmental legislation significantly differs from the EU *acquis communautaire*. This is particularly true for enforceability of legal standards & requirements, as well as compliance practice. Practical solution of these problems in the future lies within implementation of the European system of IPPC in Ukraine.

Unrealistic requirements for reporting and pollution control are applicable to both large and small polluters. There's no integrated approach to assessing environmental performance of industrial

facilities. No consideration is given to pollution transfer, soils pollution, noise and vibration, landscape aspects, electromagnetic impact.

Like in previous years, main attention is paid to "end-of-pipe" measures of emissions control instead of assessing industrial process itself, promoting pollution prevention by cleaner technologies use, and substitution of toxic materials. Clearly it has negative impact on the effectiveness of planning of daily activities of both permitting and enforcement bodies.

Industrial pollution legislation in European Union is based on the Directive 96/61/EC (new edition - Directive 2008/1/EC) concerning integrated pollution prevention and control, which combines air and water protection, waste disposal, physical factors (noise, vibration, odors), rational use of raw materials and energy, safety measures.

Necessity of implementation of this Directive is declared by the Law of Ukraine "On the National Programme of Adaptation of the Legislation Ukraine to the EU legislation". Today the existing environmental regulation system is based on separate permits for natural resources use and pollution, namely for air emissions, fresh water use and waste water discharges, licenses for disposal, utilization and treatment of waste, permits for use of mineral resources, plants and animals, etc.

The World Bank IDB project No TF055860 for the Reform of Legal Framework and Enhancing Environmental Permitting in Ukraine of 2006 – 2008 may be considered as an example of international technical assistance for permitting and enforcement bodies. The documents developed under this project included: draft decree of the Cabinet of Ministers of Ukraine on the concept for reforming permitting system, draft law on the system of environmental permits, draft action plan for integrated permits implementation and simplified regulation of small and medium polluters, secondary legislation guidelines. Special attention was paid to reforming of the State environmental inspectorate. Practical implementation of these proposals is a task for the near future.

Similar problems arise with the protocols to the UN ECE Convention on Long-range Transboundary Air Pollution on POPs, heavy metals, sulphur and VOCs. The Measures of the EU-Ukraine Action Plan Implementation in 2008 included a task of their ratification, but none was ratified.

CONCLUSIONS AND RECOMMENDATIONS:

The permitting and enforcement system of Ukraine has all necessary elements and in general corresponds to international practice of environmental protection management. However, permitting, enforcement and compliance practice differs significantly from the European Union standards primarily because of absence of practical toolkits and technical conditions as part of permits. The system was inherited from Soviet times and still relies on unrealistic sanitary-hygienic norms. This leads to immense gap between declared strict legal standards and actual environmental impact.

The situation may be improved by implementation of the Directive 2008/1/EC on Integrated Pollution Prevention and Control and broad use of best available technique approach.

Objective 9

IMPROVING PUBLIC INFORMATION AND PARTICIPATION

Public information and participation is an element mentioned in most Action Plans. The objective refers to the establishment of “procedures regarding access to environmental information and public participation, including implementation of the Aarhus Convention and, in particular, by determining the structures and procedures to ensure acceptable service level actors wishing to have access to information”.

Among action plans for implementation of the EU – Ukraine Action Plan, adopted for 2005-2008, only the action plans for 2005 and 2007 provided for a number of measures to implement the Aarhus Convention, including definition of structures and procedures to ensure acceptable service level for those wishing to have access to information. Some measures were specific (such as the functioning of the Aarhus Information and Training Center at the State Environmental Institute of the Ministry of Environmental Protection), others were general (improving procedures for access to information about the environment).

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
GENERAL QUESTIONS ⁷					
Has the country ratified the Aarhus Convention?	X				On July 6, 1999, the Parliament of Ukraine adopted the Law of Ukraine No.832-XIV “On Ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”.
Have the appropriate legislation been adopted to implement the Aarhus Convention? (1,2)			X		Legislation on the implementation of the Aarhus Convention had been adopted before signing the EU - Ukraine Action Plan. However, since then necessary regulations were not adopted to implement the Aarhus Convention, in particular, for identifying structures and procedures to ensure acceptable service level for those wishing to have access to information, as provided in paragraph 15 of the EU – Ukraine Action Plan.
ACCESS TO ENVIRONMENTAL INFORMATION					
Are there satisfactory administrative systems in place for prompt responses to requests for information from the general public? (3)			X		There are no specially designed structures in the governmental bodies responsible for providing information, particularly environmental. Providing environmental information, by responses to requests, is carried out within regular administration procedures. There're separate procedures for dealing with citizens'

⁷ This question is for Eastern ENP countries which are members of the UN ECE.

					requests. Such requests are dealt by specially designated officials or division. For example, at the Ministry of Environmental Protection this is done by the Documentary Office of the Administrative Department.
Are there satisfactory guidelines available on information held by authorities & how to request access to this information? (4)			X		Regulation on the Procedures for Providing Environmental Information, approved by the Order of the Ministry of Environmental Protection of December 18, 2003, No. 169, does not establish exhaustive procedures of access to environmental information both concerning the range of information held by public bodies and the range of public bodies that should have such information. In addition, it contains provisions that do not meet the requirements of the Aarhus Convention and the laws of Ukraine, in particular: information requests are limited to three questions on one environmental problem, denial to provide environmental information if it is classified as a state secret, increasing the response time for providing environmental information. Information on the range and the types of environmental information that is available at public bodies, including the Ministry of Environmental Protection, and the list of government bodies that should have environmental information, is not available on the web page of the Ministry of Environmental Protection.
Are there well established channels of publication of environmental information in the country (e.g. laws, case-law, decisions of the administration etc.)? (5)			X		Ukraine is creating a system of sources which contain legislation and judicial practice, including on environmental issues.
Is access to information free of charge ⁸ or inexpensive ⁹ ?		X			The Law of Ukraine "On Information" of October 2, 1992, No.2657-XII, Art. 36 provides for full or partial reimbursement of costs related to requests for access to official documents and provision of written information.
Are there clear guidelines for authorities on how to apply commercial confidentiality requirements, including when to disclose because of public interest? (6)			X		The legislation on information in Ukraine was amended with provisions on important social information that is subject of public interest, but it has no definitions of "information that is socially significant", and "public interest".

⁸ If so, it should be assessed as "Yes, excellent".

⁹ If so, it should be assessed as "Yes, adequate" or "Yes, but poor", depending on whether the access is still easy even if not free of charge, or if there are obstacles to access.

					There are also no formal guidelines, explanations, guidance, which would establish the procedure for providing information that is of public interest.
PUBLIC PARTICIPATION					
Are there procedures for enabling public participation in decision making in place in the country, e.g. have clear procedures been established for submitting comments in writing or at hearings and for the notification of decisions? (7)			X		Ukraine has legislation on public participation in public affairs, which had been adopted before the EU - Ukraine Action Plan. However, the legislation on public participation in decision-making regarding the environment requires substantial revision.
If so, are the citizens well informed of these procedures? (8)			X		Environment non-governmental organizations (NGOs) are aware of the legal acts that define the procedures for public participation in decision-making concerning the environment, and their content. As for ordinary citizens, their awareness depends on how active they are and opportunities they have, because such acts are available on the Internet. Fulfillment by the public authorities of the requirements of the law on public participation indicates numerous violations.
Have tools been developed for the identification of the participating public? In particular, if there is an Environmental Impact Assessment procedure in place, does it also involve public participation? (9)			X		Legal instruments of Ukraine provide mechanisms for environmental impact assessment and public participation in their implementation. Implementation of these mechanisms is difficult.
Are the outcomes of public participation procedures taken into account in an appropriate manner, e.g. does public input have a tangible influence on the actual content of the decisions?				X	In accordance with the laws of Ukraine, the conclusions and recommendations of the public, as a result of its participation in decision-making on environmental issues, are advisory in nature. But the law requires taking them into account to the most extent possible in the preparation of the decisions. However, in practice the public has little impact on the actual content of the decisions.
Have incentives been developed to allow applicants to engage in early dialogue within the framework of participation procedure?				X	Such incentives have not been developed.
ACCESS TO JUSTICE					
Does the country provide for independent and impartial review bodies, including courts? (10)			X		Ukraine has a system of state bodies to which citizens and NGOs can apply to challenge decisions that violate their rights and interests. However, both governmental officials and the public point to the significant systemic

				problems in independence and impartiality of these bodies, including courts.
Have clear rules been developed concerning the standing of individuals and NGOs to access judicial and other reviews for violations of the Convention and for violations of domestic environmental law? (11)	X			Ukraine has legal acts establishing the procedure for access by the public to judicial or other review in case of violation of national environmental legislation.
Have remedies to stop the application of a decision dangerous for the environment been developed (e.g. preliminary injunctive relief while the decision is being challenged)? (12)		X		Procedural Ukrainian legislation contains provisions on securing claims which challenge decisions dangerous for the environment.
Have mechanisms been established to provide the public with information on access-to-justice procedures? (13)			X	Information about access to justice remains complex and confusing for citizens, especially for the population without access to Internet resources. A positive shift is availability of such information on official web pages of courts.
Have assistance mechanisms been developed for the public in accessing review procedures, e.g. financial support to pay a lawyer if necessary? (14)			X	Ukrainian legislation contains specific provisions on the issue of providing free legal assistance, but the system that would ensure real access to people such assistance is not created. Therefore, on June 9, 2006, the President of Ukraine by the Decree No. 509/2006 approved the Concept for establishment of a system of free legal assistance in Ukraine. In Ukraine there are separate entities providing free legal assistance to the public. These include a small amount of NGOs focusing on free legal assistance in case of violation of environmental rights and interests. In addition, there's a system of legal clinics (usually at higher educational institutions), public receptions at the state executive authorities which provide free legal assistance to certain citizens' groups (particularly the poor).
Is there a time limit set by national law between the introduction of an appeal and the decision given by the judge/authority of appeal? If not, is the average length of the procedure time acceptable? (15)			X	Procedural legislation of Ukraine has requirements for the duration of the trials. In particular, the first instance administrative case should be considered and resolved within a reasonable time but not more than two months after the opening of proceedings, unless otherwise set by the Code (Article 122 of the Code of Administrative Procedure of Ukraine). The same requirements are stated in Civil Procedure Code of Ukraine (part 1 of Art. 157). However, there are many cases when these timeframes

					were violated.
COUNTRY SPECIFIC QUESTIONS					
Did the country ensure that no acts by state authorities classify environmental information? (16)				X	The Ministry of Environmental Protection approved orders, which classified some environmental information (making it information with a restricted access).
Overall assessment: 20 grades of 57 possible					
Score - 35,1%					

COMMENTS AND EXPLANATIONS:

1. Following ratification of the Aarhus Convention by the Law of Ukraine of November 28, 2002, No.254-IV several amendments were made to the legislation:

- The Law of Ukraine “On Environmental Protection” of June 25, 1991, No.1264-XII (amended in part on environmental human right, the powers of government bodies, definition of environmental information, etc.);

- The Law of Ukraine “On Environmental Expertiza” (EIA) of February 9, 1995, No.45/95-VR (amended on the contents of the environmental impact statement, possibilities of interested individuals to challenge decisions taken by the relevant authorities on the basis of the conclusions of the state environmental *expertiza*);

- The Law of Ukraine “On Local Self-Government in Ukraine” of May, 21, 1997, No.280/97-VR (on the delegated powers of executive bodies of village, township, city councils, setting up and securing functioning of local environmental automated information-analytical systems which are part of a national network of environmental automated information-analytical system of access to environmental information);

- Code of Administrative Offences of December, 7, 1974 No.8073-X (supplemented by the Article 914 which provides an administrative liability for failure of or untimely provision of environmental information).

A number of other acts have been adopted:

1) On access to environmental information:

- Regulation on the procedure for providing access to environmental information, approved by the Order of the Ministry of Environmental Protection of December, 18, 2003 No.169,

- Decision of the Parliament of Ukraine “On Informing the Public on Issues Concerning the Environment” of November 4, 2004, No.2169-IV,

2) On public participation in decision-making:

- Regulation on Public Participation in Decision-Making in the Field of Environmental Protection approved by the Order of the Ministry of Environmental Protection of December, 18, 2003 No.168.

2. After the signature of the EU - Ukraine Action plan some legal acts introducing provisions of the Aarhus Convention were taken. For example, on November 1, 2005, the Ministry of Environmental Protection by the Order No. 397 approved the Regulation on quarterly public informing through the mass-media about the objects, which are major polluters of the environment.

Despite the adoption of several legal acts to implement the Aarhus Convention they do not provide effective and proper implementation of its provisions. Therefore, the public have repeatedly pointed out to the urgent need to bring these acts into compliance with the requirements of the Aarhus Convention.

On 27 of December 2008 the Cabinet of Ministers of Ukraine by Regulation No.1628 approved the Action Plan to implement the decision of the Meeting of the Parties of the Aarhus Convention III/6f. The Action Plan provides for development and submission for approval to the Cabinet of Ministers of:

- Draft laws of Ukraine on: amendments to the legislation on issues related to the implementation of the Aarhus Convention and the ratification of the amendment to the Aarhus Convention (on GMOs),

- Draft regulations of the Cabinet of Ministers of Ukraine on: the involvement of the public into discussion about the decisions that may affect the environment; procedure for information disclosure on the state of the environment; approval of regulation on the national environmental network of automated information-analytical system on access to information about the environment; development and adoption of the model regulation on regional Aarhus Center.

3. The Instruction on the procedure of handling citizens' appeals, individual appointments at the Ministry of Environmental Protection of Ukraine, approved by the Ministry of Environment of July 6, 2005, No.244, provides for a list of responsible persons for timely, correct and complete consideration of appeals.

However, this mechanism does not always ensure timely response to the requests by citizens. In some cases, public requests for environmental information remain unanswered at all. For more information on non-compliance with requirements on access to environmental information can be found:

- Section 3.1. *The right to access to information concerning the environment*, in *Monitoring Report Observance of environmental rights in Ukraine – 2006*, Alexander Stepanenko (ed)., Kharkiv: Publishing House "Human Rights", 2007, available at <http://greenworld.org.ua/index.php?id=1194598134>,

- Section 7. *The right to access to information* (<http://www.khpg.org/index.php?id=1217065825>) and Section 18 *The right to safe environment* (<http://www.khpg.org/index.php?id=1217068541>), in *Human Rights in Ukraine–2007*, E. Zakharov, J. Rapp, V. Yavorskiy (eds), Ukrainian Helsinki Human Rights Union, Kharkiv: Human Rights, 2008. (<http://www.khpg.org/index.php?r=a1b6c14d1>).

4. The measures for implementation of the Aarhus Convention MOP decision III/6f approved by the Cabinet of Ministers of Ukraine on December 27, 2008, include development and publication of a manual.

Several manuals on implementation of the Aarhus Convention were developed by the NGOs under relevant projects and programmes.

5. The legislation of Ukraine, including environmental, is published in several mass-media, in particular in the official publications (Bulletin of the Parliament of Ukraine, Official Bulletin of Ukraine, Ukraine's Official Bulletin of the President of Ukraine, Government Courier of Ukraine).

The legislation is available in the Internet. For example, the web page of the Parliament of Ukraine (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi>). This web page allows selecting acts by issuing authority. However, it does not allow selecting a specific topic therefore complicating access to information on legislation, including environmental.

The executive authorities have their own web pages, which include their acts and legislation within the scope of their activities. The Ministry of Environmental Protection places such

information in its web page - <http://www.menr.gov.ua/cgi-bin/go?node=Zakonodavstvo> - which covers acts of the Parliament of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, Ministry's own acts, international legislation and draft documents. However, this is not done systematically. For example, the last acts of the Parliament of Ukraine and the President of Ukraine available there only until, correspondingly, May and November 2007, under heading 'international law' only 6 agreements are available. There is no thematic systematization under the heading 'legislation', the legislation in some sections is missing (this true for such headings as 'fauna', 'land resources', 'protection, non-exhaustive use and rehabilitation of plant resources', 'environmental network and biodiversity conservation') or is not complete ('protection of water resources'). There are some positive trends, though. The Ministry of Environmental Protection began to place last its own acts in a chronological order and for the period from 12.01.2005 till 26.01.2009 full text are available (although the list of acts comprising 125 items allows access to only 49 acts; the list is incomplete).

The Measures for the implementation of the EU - Ukraine Action Plan in 2005 provide for securing operation of the Aarhus Information and Training Center. Practical activities of the Center require significant improvement, especially on issues of the preparation and publication on its web site of timely information about the activities on environmental issues. Information that is available on its web page (<http://www.menr.gov.ua/cgi-bin/go?node=Aarhus>) is outdated and incomplete (most pages are blank).

Ukraine has a single state register of court decisions, general access to which is located at <http://www.reyestr.court.gov.ua>. It includes Courts decisions since 2006. However, a search engine works in a way that makes impossible to search for thematic issues.

6. The Law of Ukraine "On amendments to some legislative acts of Ukraine related to guarantees and unhindered enjoyment of the human rights to freedom of speech" of April 3, 2003, No.676-IV introduced the following amendments to the Law of Ukraine "On Information":

- Information with restricted access status can be disclosed without the consent of its owner, if this information has public importance, that is if it is a subject of public interest and if the public's right to know this information prevails owner's right to protect such information (the last paragraph of Art. 30)

- The person is exempt from liability for disclosure of information with restricted access status if the court finds that this information has public importance (Art. 47¹).

7. The main legal acts in this area are:

- Constitution of Ukraine of June 28, 1996, (in particular Art. 38, which stipulates the right of citizens to participate in public affairs, in national and local referenda),

- Law of Ukraine on Environmental Protection (e.g., Art. 6, 9, 11, 21, 30),

- Law of Ukraine on environmental Expertiza of February 9, 1995, No. 45/95-VR (e.g., Art. 6, 8, 10, 11, 12, 16, 18, 42),

- Law of Ukraine on the Planning and Development Territories of April 20, 2000, No.1699-III (Section IV-1 "The Procedure for Consideration of Public and Private Interests in Planning and Development of Territories"),

- Law of Ukraine "On the Procedure for Decision-Making on Location, Design, Construction of Nuclear Installations and Facilities for Treatment of Radioactive Waste, which are of National Importance" of September 8, 2005, No.2861-IV (Art. 3).

These laws define basic principles of public participation in decision-making concerning the environment. The procedures of public participation are further detailed in:

- Regulation of the Cabinet of Ministers of Ukraine “On Some Issues to Ensure Public Participation in Formation and Implementing State Policy” of October 15, 2004, No.1378, stipulating procedure for consultations with the public on the formation and implementation of state policy,
- Regulation on Public Participation in Decision-Making in the Field of Environmental Protection, approved by the Order of the Ministry of Environmental Protection of Ukraine of December, 18, 2003 No.168.

The Regulation of public participation is the one requiring most a revision. In particular, the definition of public concerned does not meet the definition set out in the Aarhus Convention, streamlining of public participation forms (currently it does not fully comply with the requirements of the Decision of the Cabinet of Ministers of Ukraine of October 15, 2004, No.1378). In fact, this Regulation only defines a procedure of public discussion as one of the forms of public participation listed in paragraph 1.5. The procedure for other forms of participation is unaddressed. Therefore, one of the measures of the Action Plan for the implementation of the Aarhus MOP Decision III/6f, approved by the Cabinet of Ministers of Ukraine on December 27, 2008, No. 628-r, is the development and submission for approval of a draft regulation of the Cabinet of Ministers of Ukraine on the Procedure of the Public Involvement into Discussion of Issues Related to Decision-Making on the Environmental Matters.

8. Information on the state of enjoyment of the right to participation in environmental decision-making can be found in the reports developed by the public:

- For the year 2005, in Section XIII “Status of compliance with environmental rights of citizens”, in the compiled human rights organisations report *Human Rights in Ukraine–2005* (<http://www.khpg.org/index.php?id=1152341346>),
- For the year 2006, in Section 2.3 of the Monitoring Report *Observance of environmental rights in Ukraine – 2006* (<http://greenworld.org.ua/index.php?id=1194598134>),
- For the year 2007, in Section 18 “The right to safe environment”, in human rights organizations’ report *Human Rights in Ukraine – 2007* (<http://www.khpg.org/index.php?id=1217068541>).

9. These include the laws of Ukraine “On Environmental Expertiza” of February 9, 1995, No.45/95-VR, “On the Planning and Development of Territories” of April 20, 2000, No.1699-III, State building norms A.2.2-1-2003 “The Composition and Content of the Materials of Environmental Impact Assessment (EIA) in the design and construction of enterprises, buildings and structures”, approved by the Order of the State Committee for Construction and Architecture of Ukraine on December 15, 2003, No.214. However, the provisions on the definition of the public concerned that is participating in decision-making does not meet the requirements of the Aarhus Convention. E.g., Art. 30-4 of the Law of Ukraine “On the Planning and Development of Territories” sets the requirements for persons participating in public hearings, which include a place of residence criteria:

- Adult individuals living on, or adjacent to, the territory affected by the documentation being developed as defined by the relevant local government body responsible for conducting public hearings;
- Legal persons having premises located on the territory affected by the documentation being developed.

Under such circumstances, environmental NGOs which are not located on such territory cannot

participate in the public hearings, therefore constituting violation of paragraph 5 of Art. 2 of the Aarhus Convention.

In practice, no requirements of Ukrainian legislation on public participation in the environmental impact assessment, environmental expertiza are enforced. Problems already arise at the stage of informing the public of the specific environmental impact assessment procedure under way. Environmental impact statement is either not published (although there's a positive trend for increase), or made public through the a mass-media that do not provide adequate broad public access (because of low-circulation printed media, use of media, which do not provide adequate access to the contents of such information (radio, television information). There're clear barriers on access to documentation and even to the conclusions of the environmental expertiza (final decision). E.g., the web page of the Ministry of Environmental protection has only five conclusions for all the previous years, <http://www.menr.gov.ua/cgi-bin/go?node=VYSN%20DEE>); the web page of the Environmental Protection Agency in the Lviv region has only a list of project documentation submitted for state environmental expertiza,

http://www.ekology.lviv.ua/index.php?option=com_content&task=category§ionid=4&id=47&Itemid=98).

10. For example:

- Viktor Yushchenko, *'I am concerned that citizens can not protect their rights'* (<http://www.president.gov.ua/news/12796.html>); President's Decree of February 7, 2008, No.109/2008 "On immediate measures to ensure implementation and guarantee the constitutional right to appeal to the government and local government bodies",

- The address of the VIII Extraordinary Congress of the Judges of Ukraine to Judges of Ukraine of June 26, 2007 (<http://court.gov.ua/home/getfile.php?id=15272>); Report of Mr. P. Pylypchuk at the VIII Extraordinary Congress of the Judges of Ukraine "On the sate of the implementation in the state [of Ukraine] of the Constitution and laws as regards guarantees of independence of courts and judges" (<http://court.gov.ua/home/getfile.php?id=15234>),

- Section 7 "The right to fair trial" (<http://www.khpg.org/index.php?id=1217064962>) and section 18 "The right to safe environment" (<http://www.khpg.org/index.php?id=1217068541>) human rights organisations' report *Human Rights in Ukraine – 2007*, E. Zakharov, J. Rapp, V. Yavorsky (eds), Ukrainian Helsinki Human Rights Union, Kharkiv: Human Rights, 2008. (<http://www.khpg.org/index.php?r=a1b6c14d1>).

11. The majority of the legislation was adopted before the EU - Ukraine Action Plan. In particular, the Law of Ukraine "On Appeals of Citizens" of October 2, 1996, No.393/96-VR, the Law of Ukraine "On Prosecution" of November 5, 1991, No.1789-XII, Civil Procedure Code of Ukraine, Code of Administrative Court Procedure of July 6, 2005, No.2747-IV (adopted after EU – Ukraine Action Plan).

12. Articles 117 and 118 of the Code of Administrative Court Procedure set out the procedure for provisional remedies in administrative cases. Although the Code does not provide the list of such remedies, including suspension of the decision appealed. However, part of 3 Art. 117 of the Code indicates that the submission of an administrative court claim as well as and opening of the proceedings in an administrative case does not stop the action of the decision appealed, but the court may, in course of taking provisional remedies, suspend the decision or certain provisions appealed by taking a separate ruling. The plaintiff is entitled to submit a motion on suspension of the decision appealed. Also, the court on its own initiative is entitled to make a ruling on measures to secure administrative action if there is a clear threat of harm to the rights, freedoms and interests of the plaintiff before taking decision on the administrative case, or if the protection of such rights,

freedoms and interests will be impossible without taking such provisional measures or if their protection will require substantial efforts and costs, and if there are clear signs of decision's (action, inaction) illegality. It should be emphasized that the previous Civil Procedure Code of Ukraine (1963) had a separate chapter 31-A "Complaints against decisions, actions or inaction of state authorities, local government officials and officers». Art. 248⁴ of that Code had a direct provision that a complaint to a court suspends the implementation of the decision (act) appealed.

The Civil Procedure Code of Ukraine contains separate articles on securing claims, including articles establishing lists of provisional measures to secure claim. But, there is no suspension of an appealed act (art. 152). However, the list given in Civil Procedure Code of Ukraine is not exhaustive, since, if necessary, the court may apply other ways to secure the claim. Court may use several types of measures to secure a claim. However, the public should be aware that the use of such measure may cause serious financial problems. In case such provisional measures are cancelled, or a court rules against plaintiff, or the case is closed, the person towards which the provisional measure was taken has a right to claim damages.

13. A positive example of providing information on selected issues of access to justice is the web-page of the Supreme Court of Ukraine. The very first heading there is dedicated to information for citizens, including - bank details for payments for court technical support fees and state duties payable, phone numbers to get information on cases, the procedure to appeal court decisions to the Supreme Court, list of cases scheduled for consideration, public reception hours, transportation and maps information

(<http://www.scourt.gov.ua/clients/vs.nsf/0/72A41AD3D074F19AC2256BF700525561?OpenDocument&Start=1&Count=300>).

The web page of the State Judicial Administration (<http://court.gov.ua/>) includes a page devoted to information about the courts in Ukraine and information on specific issues of access to justice dealt by a specific court. However, it includes in some cases incomplete and outdated information, search on the administrative courts is not possible (as of February, 2009).

14. The right to free legal assistance for certain categories of citizens is provided by several laws of Ukraine. For example, "On State Social Assistance to Low-Income Families", "On the Status of War Veterans, Guarantees of their Social Protection", "On Psychiatric Assistance", "On Social Services", "On Protection of Childhood", etc., as well as in procedural codes: Civil Procedure Code of Ukraine (articles 12, 56, 84) and the Code of Administrative Court Procedure of Ukraine (articles 16, 90). The Regulation of the Cabinet of Ministers of Ukraine of April 27, 2006, No.590 imposed limits on costs compensation related to the consideration of civil and administrative cases, and the procedure of their compensation by the state.

15. According to data available at the web page of the Judicial Administration of Ukraine ("Analytical tables on the state of justice in 2008" <http://court.gov.ua/home/getfile.php?id=17920>), in the 1st half of 2008:

a) the district administrative courts:

- 13 603 completed cases were considered with the violation of the time limits established by the Code of Administrative Court Procedure, representing 29.57% of all cases in which the proceedings were completed,

- 10 286 cases pending at the end of the reporting period were under consideration for over 2 months, representing 30.74% of the number of pending cases.

b) the local general courts:

- 6 391 administrative completed cases were considered with the violation of the time limits established by the Code of Administrative Court Procedure of Ukraine, representing 10.99% of all cases in which proceedings were completed,

- 7 611 administrative cases pending at the end of the reporting period were under consideration for over 2 months, representing 27.73% of the total number of pending cases.

16. The following legal acts are the basis for classifying information as confidential: 1) the Order of the Ministry of Environmental Protection “On Bringing into Force the List of Confidential Information” of November 25, 2004, No.470, adopted for the execution of the Regulation of the Cabinet of Ministers of Ukraine “On Approval of Instruction about the Registering, Storing and Using Documents, Cases, Publications and Other Media Containing Confidential Information that is the Property of the State” of November 27, 1998, No.1893 and 2) the Order “On Amendments to the Order of the Ministry of Ukraine of 25.11.2004” of April 3, 2006, no.158. Under these acts the following information can be classified as confidential: information on management of environmental issues on transboundary rivers of Ukraine; the management of environmental issues related to biologically active (toxic, infectious) substances, genetically modified organisms, which can be used as biological weapons; some conclusions of the state environmental expertiza (EIA), information on technical specifications hydro-installations; information concerning the operation of Russian Federation Black Sea Fleet on the territory of Ukraine.

CONCLUSIONS AND RECOMMENDATIONS:

EU-Ukraine Action Plan defines this objective as “establish procedures regarding access to environmental information and public participation, including implementation of Aarhus Convention, particularly by establishing structures and procedures for ensuring an acceptable level of service to those wishing to have access to information”. Annual measures provided for specific as well as general measures to implement this objective. Problem areas include inadequate legal framework on access to environmental information and public participation (the lack of necessary legal acts, inconsistencies among existing legislation), creation and operation of appropriate mechanisms for informing the public about the state of the environment, for public participation in decision-making concerning the environment.

Recommendations: To include this objective into a new practical instrument with the following implementation priority areas: improvement of legislation implementing the Aarhus Convention, introduction of mechanisms to ensure adequate access to environmental information, including channels of its dissemination; increasing the role of the public in decision-making concerning the environment; creation and development of a free legal aid and strengthening the independence of courts as basic conditions for ensuring the right to access to justice.

Objective 10

PREPARING REGULAR REPORTS ON THE STATE OF THE ENVIRONMENT

Many Action Plans call for the preparation of state of the environment reports. This objective is not included in the Action Plan of Ukraine. Nevertheless, the EU-Ukraine Action Plan sets broad objectives linked to environmental informing.

Question	Yes,			No	Notes
	excellent	adequate	poor		
Assessment	3	2	1	0	
IMPLEMENTATION (1)					
Has a state of the environment report been prepared since the signing of the Action Plan, or is a report under preparation?					During 2005-2008 there was prepared only one National Report for 2006.
Is there a legal requirement to prepare such a report regularly?					The Law of Ukraine on Environmental Protection requires annual preparation of the National Report.
PROCESS (2)					
Were NGOs consulted during the preparation of the report?					The representatives of the Public Council within the Ministry of the Environmental Protection and Central Association of the Consumer Unions of Ukraine participated in the work of the Commission for preparation of the National Report for 2006. Nevertheless, the public doesn't have the appropriate access to the draft National Reports on the State of the Environment, and no effective consultations with public were held.
Was the scientific/academic community involved in the process?					24 scientific and educational institutions dealing with environmental issues research took part in the preparation of the National Report on the State of Environment for 2006 as members of the Commission for preparation of the report.
CONTENT (3)					
Does the state of environment report cover the most important environmental issues in the country?			X		The National Report on the State of Environment for 2006 includes the following issues: - state of the components of the environment; - environmental policy of Ukraine; - management in the field of environmental protection, etc.
Is the report based on recently collected data?			X		The National Report on the State of the Environment is based on the materials and data collected by the Crimean Committee on Environmental Protection, State Agencies of Environmental Protection in regions and cities of Kyiv and Sevastopol, scientific and public

					organizations.
Does the report identify important problems that need to be addressed?			X		The Chapter 14 of the National Report on the State of the Environment for 2006 deals with some environmental problems in Ukraine and means for their solution, including the conservation of the island Khortysia and biocenosis of the island Zmiinyi, the issue of poaching in Carpathians and illegal fishing, state of water and sewage system and quality of drinking water.
DISSEMINATION (4)					
Does the report have a clear and understandable summary?					The National Report on the State of the Environment for 2006 doesn't have a summary. Its conclusions are presented as a separate chapter and they don't include a brief description of the main provisions of the report.
Is the report available on the Internet?					The National Report on the State of the Environment for 2006 is available on the web page of the Ministry of Environmental Protection of Ukraine at http://menr.gov.ua/documents/nd_stan_%20v_ukrini_2006.doc . But, the Ministry made the Report available with a huge delay.
Did the government widely disseminate the results of the report to the press, schools and other groups?					The dissemination of the National Report is inadequate. The printed version of the National Report for 2006 had only 1000 copies. This is not enough for broad dissemination. The National Report for 2006 is not even available in many key libraries of Ukraine.
COUNTRY SPECIFIC QUESTIONS					
Are the reports preparing regularly and in time? (1.1)					Since the Law on the Environmental Protection of Ukraine included the requirement to prepare the National Report on the State of Environment, no report was prepared on time.
Overall assessment:					
12 grades from 33 possible					
Score - 36,4%					

COMMENTS AND EXPLANATIONS:

1. The assessment of this objective covers only the National Report on the State of Environment. The Law of Ukraine "On Environmental Protection" No 1264- XII provides for the requirement to adopt and disclose the National Report on the State of Environment.

The legislation provides for adoption and disclosure of other reports, too. Such reports can deal partly with environment or its components, in particular:

- The National Report on the Technogenic and Natural Safety of Ukraine (article 14 of the Decree of the President of Ukraine "On Decision of the Council of National Safety and Defense of Ukraine of November 11, 2002 "On the State of Technogenic and Natural Safety of Ukraine" of February 4, 2003 No.76/2003; the Regulation of the Cabinet of Ministers of Ukraine "On Preparation of the National Report on the State of Technogenic and Natural Safety in Ukraine" No.1476 of September 17, 2003);

- The National Report on the Quality of Drinking Water and State of Drinking Water Supply (article 9 of the Law of Ukraine “On Drinking Water and Drinking Water Supply” No2918-III from April 29, 2004).

The above mentioned reports are not covered by this assessment.

1.1. The Law of Ukraine on the Environmental Protection provides for the annual preparation and approval of the National Report on the State of Environment. The Regulation of the Cabinet of Ministers of Ukraine No.61 of February 7, 1992 “On Preparation of the National Report on the State of Environment in Ukraine” (with changes made by the Regulation of the Cabinet of Ministers of Ukraine No.337 of May 7, 1993 and Regulation No.61 of February 7, 1992) specifies provisions of the Law on the Environmental Protection and states that the deadline for National Report is July 1. The Ministry of Environmental Protection doesn't comply with above mentioned provisions. There is no National Report on the State of Environment for 2005. Some National Reports are prepared with delay in 1-2 or more years, for example National Reports for 2006 and 2007. There're several reasons for such delays, including the timeframes of the statistical reporting, state budget funding procedures.

2. The Ministry of Environmental Protection prepares the National Report, and the Parliament of Ukraine approves it. However, this procedure is not ever followed.

The Regulation of the Cabinet of Ministers of Ukraine No.61 of February 7, 1992 “On Preparation of the National Report on the State of the Environment in Ukraine” provides for the creation of the special commission for the preparation of the National Report. The Commission includes:

- a) representatives of the central bodies of executive power – Minister of the Environmental Protection (chair of the Commission), Minister of Health (vice chair of the Commission) Minister of the Emergency Situations and Protection from Consequences from Chornobyl Catastrophe, first deputy of the Minister of Economy, first deputy of the Minister of Agrarian Policy, first deputy of the Minister of Labour and Social Policy, first deputy of the Minister of Foreign Affairs, deputy of the Minister of Education and Science, Head of the State Committee on Forestry, Head of the State Committee for Construction, Architecture and Housing Policy, Head of the State Committee on Water Economy, Head of the State Committee on Statistics, Head of State Committee on Land Resources, Head of National Space Agency;
- b) representatives of scientific and educational institutions – president of the Ukrainian Academy of Agrarian Sciences, vice president of the National Academy of Science of Ukraine;
- c) representatives of the public – head of the Ukrainian Council of the Ukrainian Society of Nature Protection (upon consent).

According to the paragraph 2 of the Article 1 of the Regulation of the Cabinet of Ministers of Ukraine No.61 of February 7, 1992, the Ministry of the Environmental Protection approves membership of the Commission.

The practice of the appointment of the members of Commission for the preparation of the National Report on the State of the Environment, including for 2006, shows the increasing number of members of the Commission, including increase of the number of scientific and educational institutions and the public represented. In addition, instead of including the representatives of

individual environmental NGOs (this was the practice for the National Reports for 2000, 2001, 2003), the Ministry includes into the Commission representatives of the Public Council within the Ministry of Environmental Protection.

3. The Law of Ukraine on the Environmental Protection doesn't include provisions which specify structure and content of the National Report. On June 16, 2007, the Ministry of Environmental Protection approved the requirements on the structure (content) of the National Report on the State of Environment.

The questions in this section were graded as "poor" because there's no National Report for 2005 and 2007.

The participants of the round table "Assessment of the Environmental Component of the EU-Ukraine Action Plan: Discussion of Preliminary Results" held on March 24, 2009, in Kyiv (Ukraine) stressed the fact that the National Report is rather a compiled reference report than an analytical document on the state of the environment in Ukraine.

4. The Law of Ukraine on Environmental Protection provides for two obligatory forms for disclosure of the National Report:

- 1) by publishing as a separate edition;
- 2) by putting on the Internet.

The web-page of the Ministry of Environmental Protection includes National Reports only for 1996, 1998, 1999, 2000, 2001, 2002, 2003, 2004, and 2005. See:
<http://www.menr.gov.ua/cgi-bin/go?node=NAC%20dop%20p%20NPS>.

Implementation of the requirement to publish the National Report as a separate edition (paper version) is much worse.

CONCLUSIONS AND RECOMMENDATIONS:

The law requires preparation of the National Reports on the State of Environment on annual basis. But the Ministry of Environmental Protection doesn't comply with this requirement. The main challenges include irregular preparation of reports, limited access of the public to the process of preparation of national reports, lack of broad informing about the status of preparation of national reports, drafts, effective distribution of the national reports (especially of printed copies).

Recommendations:

- as to preparation of the National Reports – broad informing about the procedures of preparation of the National Reports, including about possibilities for the public to make proposals on the content on the report at early stages as well as final draft;
- as to dissemination of the National Reports – to increase of the number of printed copies of National Reports, preparation and dissemination of the summaries of National Reports, preparation of easy readers-friendly versions of the National Reports for general public.

Objective 11

SUPPORTING CIVIL SOCIETY ACTORS AND LOCAL AUTHORITIES

The EU – Ukraine Action Plan has the following wording related to this objective: Establish communication strategies on the benefits of environmental policy; support civil society actors and local authorities (para. 60).

This objective is closely linked to that concerning access to information and public participation.

As to non-governmental organizations (NGOs), this assessment covers only environmental NGOs.

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
<i>ROLE OF CIVIL SOCIETY ACTORS (2)</i>					
Are there NGOs or NGO networks active in environmental issues in your country?		X			Scope of their activities shrinks gradually every year, partially due to lack of financing.
Are there legally binding procedures requiring the involvement of civil society actors in decision-making regarding environmental issues?		X			Lack of adequate practical application.
Are civil society actors included in practice in the legal decision-making process?		X			
Are civil society actors included in practice in the development of policies at the national level?			X		
Are civil society actors included in practice in the development of policies at the local level? ¹⁰			X		
Are NGO initiatives supported (financially or by other means) by the State? (3)			X		In a very limited and non-transparent way.
If yes, has this support increased since the previous assessment?				X	
<i>ROLE OF LOCAL AUTHORITIES (4)</i>					
Are local authorities in regular contact with civil society actors?			X		
Do local authorities freely provide information to civil society actors?			X		
<i>COMMUNICATION STRATEGIES AND OTHER TOOLS (5)</i>					

¹⁰ This may be difficult to assess at the level of each local authority. However, the evaluator should be able to obtain a general overview of the situation through data from official reports or contacts with professional organisations as regards which projects are likely to be assessed at the local level. The professional association/organisation of EAI practitioners would also be a useful source of information.

Have communication strategies been established in the country regarding environmental issues? If already in existence at the time the baseline situation was assessed, have they been improved since then?		X			
Have awareness raising programmes targeting civil society (including information campaigns) been developed and implemented?			X		
Have civil society actors initiated environmental education in the country?			X		
If so, have they been supported by the authorities?			X		
CONTRRY SPECIFIC QUESTIONS					
Did Ukraine start a reform of self-governing bodies? If so, did it improve the distribution of powers between central and local authorities? (6)				X	
Overall assessment: 16 grades from 42 possible					
Score - 38,1 %					

COMMENTS AND EXPLANATIONS:

1. General comments. None of the annual measures plans envisaged relevant actions or measures for implementation of this objective. E.g., the Annual Measures for 2007 has a provision related to this objective which reads ‘to take measures to conclude a Protocol on Environmentally Sustainable Transport and Infrastructure to the Framework Convention on the Protection and Sustainable Development of the Carpathians (2003)’. It’s hard to make a link between “support civil society actors and local authorities” and development of the protocol mentioned. Annual measures for 2006 and 2008 did not provide for a single action or measure related to this objective. All annual measures had some actions envisaged under “Foster the development of civil society” objective (para. 5 of the AP). Those measures had a general nature (not environmentally focused) and mostly were related to the law drafting. In this context, adoption of the Concept for the Dialogue between the State and Civil Society could be a significant step forward (it had not been adopted, though). For this reason, this assessment covers measures and actions implemented outside of the AP implementation context.

2. As to public participation. This assessment includes a separate objective related to public participation in environmental matters. Therefore, under this objective the experts assessed relevant general political, legal and practical framework/issues and in environmental context only. E.g., the question related to financial support covers only support granted to environmental NGOs. Public participation in policy-development at national and local levels got lower scores because of existing general practice of exclusion of environmental NGOs from the development of sectoral policies at any level.

3. As to financial support. There’s practically no information publicly available on support to environmental NGOs. Some regional environmental authorities do publish such information

(without specifying any amounts). Based on personally interviews a conclusion was made that some support is granted, but the majority of comes as “public procurement of services” (that means the support given is not to fund initiatives projects proposed by NGOs), tenders are not transparent. Estimated amount of support is very small.

4. Dialogue with local authorities (including self-government) is limited. This is due to several reasons: rather limited authority (powers) of local authorities in the field of environmental protection, inadequate mechanisms of cooperation with NGOs as such, non-transparency of local authorities, especially in such issues as planning and land lease. Access to environmental information held by local authorities is worse when compared to access to information held by the Ministry of Environmental Protection or its local agencies.

5. As to communication strategies. Since the adoption of the AP the Government has significantly developed the system of so called public councils (advisory groups comprising representatives of civil society). This mechanism, in principle, is capable to put in place information exchange between NGOs and state authorities. Recently, the Ministry of Environmental Protection was implementing a program for development of Aarhus centres in each region of Ukraine. At the same time, too often these centres have been created on paper only. Some environmental NGOs do implement initiatives related to environmental education but these initiatives have local, non systematic and irregular character.

6. As to the reform of local self-governance. The reform of local self-governance is of course a much wider issue than the distribution of powers in environmental protection area. However, experts stress the need for such a reform in Ukraine. If done, such a reform could improve environmental governance by improving the distribution of powers between local and central authorities. For political reasons this reform is not currently under way in Ukraine.

CONCLUSIONS AND RECOMMENDATIONS:

The EU – Ukraine Action Plan has the following wording related to this objective: Establish communication strategies on the benefits of environmental policy; support civil society actors and local authorities (para. 60). This objective is closely linked to that concerning access to information and public participation. None of the annual measures envisaged relevant actions or measures for implementation of this objective. As to non-governmental organizations (NGOs), this assessment covers only environmental NGOs. Key problem is absence of any specific measures taken by the Government to implement this objective. Specific issues identified include low powers of the local authorities in the field of environmental protection, low level of cooperation between local authorities and civil society on environmental issues, absence of any communication strategies with civil society, low level of support, including financial, to civil society.

Recommendations: to include into the new practical instrument an objective to strengthen the role of local authorities in the field of environmental protection, to increase their capacity to cooperate with NGOs, to increase and improve mechanisms of financial support to civil society.

Objective 12

ENHANCING COOPERATION WITH NEIGHBORING COUNTRIES

One of the priorities of the chapter “Environment” of the EU-Ukraine Action Plan is “[to] enhance co-operation on environmental issues” (para.62). This priority includes, inter alia, the following task: “to identify possibilities with neighbouring countries for enhanced regional co-operation, particularly in relation to trans-boundary impacts”.

The Annual Measures to implement the EU-Ukraine Action Plan contained the following tasks for implementation of this priority: ratification of the Black Sea Biodiversity and Landscape Protocol to the Convention on the Protection of the Black Sea against Pollution (Measures for 2005), measures on creation and operation of transboundary biosphere reserves “Western Polisia” (Ukraine-Poland-Belarus) and “Roztochya” (Ukraine-Poland) (Measures for 2006), improvement of management of transboundary reserves “Eastern Carpathians” and “Danube Biosphere Reserve” (Measures for 2007), signing of a new agreement with Moldova on use and protection of the water resources of the river Dnister” (Measures for 2008).

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
<i>EXISTING OR POSSIBLE COOPERATION AGREEMENTS WITH NEIGHBOURING COUNTRIES</i>					
Are the structures provided for by the agreement fully in place?					Mostly the periodical meetings of the joint working groups at oblast (region) level.
Are these structures functioning properly (i.e. are there regular meetings, are decisions taken, etc.)?					In the framework of the transboundary cooperation.
If the agreement provides for exchange of information, does it happen effectively?					Mostly periodical exchange of data on monitoring of the state of separate objects.
Is it planned to sign cooperation agreement with neighbouring countries?					It was planned to sign agreement only with Moldova. The agreement was not signed yet.
If this is the case, are negotiations processing effectively?					The process of negotiations is complicated by the construction of the hydroelectric station.
Is it available information on implementation and measures within the framework of bilateral agreements (meetings, discussions, consultations, etc.)?					There is no enough consolidated information.
<i>INFORMAL COOPERATION</i>					
Have meetings on transboundary/regional issues been organized at national, regional or local level?					Mostly within separate projects and conferences.

Are exchanges of information taking place at national, regional or local level?					Irregularly.
Have consistent political declarations been made on regional cooperation?					Development of the local programs of transboundary cooperation, agreements at regional level.
Are joint regional projects in place, involving common activities for stakeholders from both countries?					Yes, mostly within initiatives supported by the European Union. This is true mostly for regions of Western and Southern Ukraine.
Do regional/local administrations or other stakeholders have regular contacts with regard to environmental issues?					Mostly Western and Southern regions.
Overall assessment: 18 from 33 possible grades					
Score - 54,5%					

COMMENTS AND EXPLANATIONS:

1. The bilateral cooperation with neighbouring countries takes place mostly in the form of cooperation of the territorial bodies of the Ministry of the Environmental Protection of Ukraine, often within the current bilateral governmental agreements. The information about the bilateral cooperation at the level of the Ministry of Environmental Protection is not available enough because of the lack of National Reports on the State of Environment for 2005, 2007 and 2008. The official web page practically doesn't have information on this issue. Nevertheless, recently the Ministry of the Environmental Protection of Ukraine presented the new web site on the international cooperation in the field of environmental protection (<http://www.dicei.org.ua>). This is a positive step and that's why the question on the access to information on bilateral cooperation got a good grade.

2. Significant cooperation with neighbouring countries takes place on the protection and sustainable use of separate objects (Black Sea, Carpathians) within the regional agreements. Ukraine participates actively in these processes. Work is carried out to host in Ukraine of the Secretariat of the Carpathian Convention. Nevertheless, this assessment is focused mostly on bilateral cooperation.

3. The assessment of the first part of this objective is based on the analysis of the annual regional reports on the state of environment. The territorial bodies of the Ministry of Environmental Protection actively participate in the transboundary cooperation on the environmental issues. Few oblasts (regions) have bilateral agreements on the cooperation between oblast state administrations (territorial bodies of the Cabinet of Ministers of Ukraine) signed for implementation of the bilateral governmental agreements with neighbouring countries. In turn, the oblast administrations regularly have meetings with representatives of the corresponding bodies of the neighbouring countries. For example, in Lviv oblast the events in the framework of interregional and intergovernmental agreements (for example, the Agreement on Cooperation between the Inspectorate of the Environmental Protection of Zheszov and State Division of the Environment and Natural Resources of June 24, 2004, Agreement between Lviv Oblast State Administration and Voyevoda of Pidkarpatia of May 20, 2000).

4. Significant cooperation takes place between other related authorities, especially the State Committee of the Water Sector. According to the National Report on the State of Environment (2006) in 2005-2006 the Committee was cooperating on border water issues (under the framework of intergovernmental bilateral agreements on water issues) with Hungary, Slovakia, Romania,

Moldova, Poland, Russia and Belarus (for example, Agreement between the Government of Ukraine and Government of Poland on Cooperation in the Field of Water Sector on Border Waters of October 10, 1996, the Agreement between the Cabinet of Ministers of Ukraine and Government of Belarus on the Joint Use and Protection of Transboundary Waters of February 28, 2002). The working groups on the protection of the quality of water of the transboundary rivers were created in the framework of implementation of the intergovernmental bilateral agreements, their rules of procedures approved. According to the protocol decisions and approved plans for the current years, the working groups on the protection of the quality of waters have meetings biannually according to the plans.

5. The implementation of the measures provided by the annual measures is adequate. Ukraine ratified the Black Sea Biodiversity Conservation and Landscape Protocol to the Convention on the Protection of the Black Sea against Pollution. At the same time, the agreement on protection and use of water resources of the river Dnister with Moldova was not signed (in particular, because of disputes on construction by Ukraine of the Dnister hydropower station).

6. As to unofficial cooperation and joint projects. Practically in all regions of Ukraine regular meetings take place on the issues of bilateral cooperation on environmental protection issues. Especially this is true for the exchange of information on monitoring of the state of waters and air. At the same time, the Western regions of Ukraine have much more contacts and joint projects. This is mostly due to the possibilities of the EU funding for such joint measures. The Eastern and Northern regions of Ukraine have lower level of cooperation with neighbor countries (especially with Russia), including in the implementation of projects. Also there is cooperation on the issues of nuclear safety in Chornobyl zone, for example, on the monitoring of radiological situation.

CONCLUSIONS AND RECOMMENDATIONS:

The EU – Ukraine Action Plan has the following wording related to this objective: Identify possibilities with neighbouring countries for enhanced regional co-operation, particularly in relation to transboundary impacts (para. 62). The annual measures provided for several tasks to implement this objective, including creating and improving management of cross-border protected areas, development of bilateral agreement with Moldova on the use of protection of Dister river water resources. Some of the problems identified include lack of information about bilateral cooperation, the need to intensify the dialogue on transboundary issues and lack of joint cross-border projects with the countries where EU financial support is not available.

Recommendations: to enhance bilateral cooperation with neighbouring countries at local level (oblast level), in particular on cross-border issues (shared and transboundary waters and forests, cross-border environmental corridors).

Objective 13

ENSURING INTEGRATION OF ENVIRONMENTAL ASPECTS IN OTHER POLICY SECTORS (PROMOTING SUSTAINABLE DEVELOPMENT)

According to the EU-Ukraine Action Plan (“Promotion of sustainable development” section, para.24) Ukraine took obligations to:

- Take further steps towards completion of administrative structures and procedures to ensure strategic planning of sustainable development and co-ordination between relevant actors.
- Complete and adopt a national strategy on sustainable development, and take steps to ensure its implementation. Take steps towards completion of a long-term strategy.
- Take further steps for the integration of environmental considerations into other policy sectors, particularly industry, energy, transport, regional development and agriculture.

In 2005-2008 the Cabinet of Ministers of Ukraine adopted the following annual measures to implement this part of the EU-Ukraine Action Plan:

- To develop the draft law “On the Strategy of Sustainable Development of Ukraine (Measures for 2005)
- To develop the draft law “On Environmental Insurance” (Measures for 2005)
- To the concept of the transition of Ukraine to the sustainable development principles (Measures for 2006)
- To study the experience of the EU Member States on development and adoption of the strategic document on the sustainable development issues (Measures for 2007).
- To ensure the adoption of the Concept of the Transition of Ukraine to the Sustainable Development (Measures for 2008).

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
GENERAL PRINCIPLES AND MAIN INSTRUMENT FOR INTEGRATION OF THE ENVIRONMENTAL CONSIDERATIONS INTO SECTORAL POLICIES (1)					
Have the strategic planning been introduced with taking into account environmental considerations/sustainable development at national and regional level?					The strategic planning of social and economic development and sectoral national policies hardly takes into account the environmental considerations. According to the Methodological Recommendations on Planning of the Regional Development Strategies, the environmental considerations have to be integration into the mechanism of development of the Regional Development Strategies, and the alternative scenarios have to be analyzed.
Have the strategic documents which contain provision on the obligation of integration of the environmental considerations into sectoral policies been adopted (or are under development)?					On October 17, 2007, the Cabinet of Ministers of Ukraine adopted the Concept of the National Environmental Policy of Ukraine for the period till 2020 (Order No 880-p). The Strategy and National Action Plan are under development.
Have the Strategic Environmental Assessment (the main tool for					The Strategic Environmental Assessment is mentioned in the Concept as one of the instruments. The draft of the Strategy of the National

integration of the environmental policy into the strategic planning) been adopted?					Environmental Policy and draft Action Plan for 5 years also include the task to approve and implement of the SEA.
INTEGRATION OF ENVIRONMENT INTO SECTORAL POLICIES (2)					
Administration: have joint committees been set up or other steps taken to integrate the environment into sectoral policies?					The procedure of the coordination of the decision-making of the Cabinet of Minister of Ukraine according to the Regulation of the Cabinet of Ministers provides for some opportunities for the integration of environmental considerations. There are indirect examples of the joint commissions.
Plans and programs: have any joint policies been issues?					The policy to prevent climate change can be an example of such policy ¹¹ .
PREPARATION OF THE NATIONAL STRATEGY (3)					
Has a national strategy on sustainable development been adopted since the signing of the Action Plan?					On June 22, 2005, the draft law "On Strategy of Sustainable Development" was submitted for consideration to the Cabinet of Ministers of Ukraine. On September 30, 2005, the Cabinet of Ministers returned the draft for re-approval. On December 30, 2005, the Ministry of Economy was invited to prepare the concept of transition of Ukraine to the principles of the sustainable development instead of the draft law. The issue is being addressed by the executive bodies. ¹²
If not, is one being developed?					Yes. Nevertheless, the strategy has been under development for many years.
PROCESS (4)					
Did ministries in different sectors plan an active role in preparing the strategy?					At the present moment we are talking about the concept. With some reservations it's possible to consider the formal mechanism of the co-approvals of the draft according to the Regulation of the Cabinet of Ministers of Ukraine as a possibility for ministries to participate in the development.
Did society stakeholders in different sectors (environmental NGOs, industry, others) play an active role?					Starting May 16, 2008, the Draft is placed on the official web site of the Ministry of Economy: www.me.gov.ua There was no active involvement of the stakeholders.
IMPLEMENTATION (5)					
Have steps been taken to implement the actions in the strategy.					The concept is not approved. The institutional intersectoral mechanism is not created.
COUNTRY SPECIFIC QUESTIONS					
Has the Law on Environmental Insurance been adopted?					On May 12, 2005, the Cabinet of Ministers of Ukraine agreed with the proposals of the Ministry of Environmental Protection to support draft law "On Environmental Insurance", developed by Rudenko, member of the Parliament. But the draft law was not considered in 2005. ¹³
Overall assessment: 9 grades from 33 possible					

¹¹ The elements of the national policy on combating against climate change are considered in the separate section of this assessment.

¹² Based on the official Information on Implementation in 2005 of the EU-Ukraine Action Plan (February 13, 2006).

¹³ Based on the official Information on Implementation in 2005 of the EU-Ukraine Action Plan (February 13, 2006).

Score - 27,3%	
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COMMENTS AND EXPLANATIONS:

1.1. In general, the strategic planning of social and economic development and sectoral policies hardly takes into account the environmental protection considerations. The “integration” takes place in the form of preparation of a separate chapter, mostly small. The SEA doesn’t take place, the alternatives are not considered. The Law of Ukraine “On State Forecasting and Development of the Programs of Economic and Social Development of Ukraine” (2000) defines the order of preparation, approval and content of the programs of the economic and social development of Ukraine, which doesn’t provide for environmental considerations.

The situation with regional planning is a little bit better. Following the Decree of the President of Ukraine of May 25, 2001, No. 341/2001 “On the Concept of the State Regional Policy”, the Ministry of Economy of Ukraine by its Order No. 224 of July 29, 2002, approved the Methodological Recommendations on Development of the Regional Development Strategies. According to these Recommendations the documents of the UN Conference on Environment and Development (Rio-92), “Agenda 21” and other international document should be taken into account during the development of the regional development strategies.

1.2. As to the integration of the environmental policy. On October 17, 2007, the Cabinet of Ministers of Ukraine approved by its Decision No 880-p the Concept of the National Environmental Policy of Ukraine for the period till 2020. At the present time the Strategy of the National Environmental Policy of Ukraine for the period till 2020 and the Action Plan for 5 year are under development.

The integration of the environmental protection considerations and rational use of natural resources (environmental goals) into the sectoral policy at the same level as economic and social goals is one of the main principles on which the National Environmental Policy is based.

The goal of implementation of the national environmental policy is to stabilize and improve the state of the environment of the country by implementation of the national environmental policy as an integrated factor of the social and economic development of Ukraine to ensure the transition to the sustainable development of economy and introduction of the sustainable system of the use of natural resources.

Main tasks of the national environmental policy include improvement of the system of the integrated environmental management by integrating the environmental component into the programs of development of the economic sectors.

1.3. One of the main instruments of the integration of the environmental policy is strategic environmental assessment. The instruments of the national environmental policy provided in the Concept of the National Environmental Policy of Ukraine for the Period till 2020 include the introduction of strategic environmental assessment of the plans and programs of different sectors of economy as well as regional plans and programs.

Among sector strategies, the State Program of Development of the Ukrainian Village for the Period till 2015 approved by the Regulation of the Cabinet of Ministers of Ukraine No 1158 of September 19, 2007, is worth mentioning. It does have integrated environmental considerations into its purposes and tasks.

2.1. In Ukraine there is no political will for increasing the priority of the environmental policy and its integration into the development strategies of the country. Despite the regular requests of the

Public Council at the Ministry of the Environmental Protection to the Minister of the Environmental Protection about the need to create a Working Group on Integration of the Environmental Protection at the Cabinet of Ministers of Ukraine, this initiative still doesn't have any support. So, at the present time the management system of the central executive bodies includes just some elements of the administrative mechanisms for the integration of environmental considerations into the sectoral policies.

The Regulation of the Cabinet of Ministers of Ukraine (approved by the Regulation No. 950 of July 18, 2007) provides that the members of the Cabinet of Ministers ensure the coordination of their activities in the process of implementation of the state policy. The Minister as a member of the Cabinet of Ministers of Ukraine "makes his/her proposals to the Cabinet of Ministers for its consideration on the issues related to the implementation of his/her obligations on coordination of the activities of the central bodies of executive power". During the development of the draft legislation, the co-approval (coordination) procedure is used. The main developer defines the stakeholders for the preparation of the draft decision of the Cabinet of Ministers. For the preparation of the draft of legislation the main developer can create a working group. The Cabinet of Ministers of Ukraine can create such a group, too, on very important issues of a national importance. The top officials of the Cabinet of Ministers can create a working group on issues of interministerial character upon the proposal of the central body of executive power or by their own decision. The Regulation also defines the procedure for approval of the draft decisions of the Cabinet of Ministers. According to this procedure, in case no proposals from the interested body were submitted, the draft is considered as co-approved and agreed without comments. If there were some comments taken into consideration and draft amended (or if the developer has a new chief), the draft follows co-approval procedure again.

So, the regulation provides for some possibilities of the Ministry of the Environmental Protection and to the Minister of Environmental Protection to implement an integrated environmental policy. However, the lack of legal requirements on integration of the environmental policy into the sectoral policies in Ukraine (for example, in the EU this requirement is provided by the EU Treaty) doesn't allow to make the environmental policy a higher priority.

Nevertheless, during the last 10 years several interministerial working bodies can be traced, which partially implement the task of integration of the environmental policy into the sectoral policies.

For example, the Interministerial Commission on Implementation of the UN Framework Convention on Climate Change (created by the Regulation of the Cabinet of Ministers of Ukraine No.583 of April 14, 1999) is chaired by the Vice-Prime-Minister of Ukraine. The first deputies of the chair are the Minister of the Environmental Protection, First Deputy of the Minister of Economy, First Deputy of the Minister of Fuel and Energy. The Commission also includes first deputies of practically all central bodies of the executive power which are dealing with greenhouse emissions and implementation of the Convention, as well as the Head of the Committee of the Parliament of Ukraine on Environmental Policy Issues, representative of the Secretariat of the Cabinet of Minister of Ukraine, vice president of the National Academy of Science (upon consent), members of the Parliament of Ukraine (upon consent), representatives of the public, officials of the central bodies of executive power.

The Interministerial Commission on the Environmental Monitoring Issues was created by the Regulation of the Cabinet of Ministers of Ukraine No. 1551 of November 17, 2001, to coordinate the activities of the ministries and other central bodies of executive power as to implementation of a common policy on the basis of available actors of the state monitoring system. At the present time the inter-agency commissions on monitoring are being created at oblast level with participation of sectoral actors.

The Working Group on development of a strategic document “Foundations of the National Environmental Policy. National Action Plan on Environmental Protection” (approved by the Decision of the Ministry of Environmental Protection No 135 of April 3, 2007, with changes made by the Decision of the Ministry of Environmental Protection No 212 of April 21, 2008) is one of the examples of a interministerial coordination body are dealing with integration of the environmental policy. The first deputy of the Minister of Environmental Protection chairs the Working Group. The representatives of various central bodies of executive power, National Academy of Science, the public participate in the work of the Working Group. The draft Strategy provides for creation of the Interministerial Commission on Integration of the Environmental Policy.

3.1. There was no significant progress on this issue. On September 24, 2008, the Ministry of Economy developed and submitted for consideration the draft Regulation of the Cabinet of Ministers of Ukraine “On Adoption of the Concept of Ukraine’s Transition to the Sustainable Development”. The Ministry of Environmental Protection gave the negative assessment of the Concept and didn’t approve it.

3.2. The Ministry of Economy submitted to the Cabinet of Ministers of Ukraine the draft Regulation of the Cabinet of Ministers of Ukraine “On Creation of the National Council on Sustainable Development of Ukraine”. Indeed, it was necessary to create such an institutional mechanism on development and implementation of the Strategy of Sustainable Development first, then develop the strategy, make it public, organize public discussion, coordinate its content with all stakeholders and then submit it to the Cabinet of Ministers of Ukraine for its approval.

CONCLUSIONS AND RECOMMENDATIONS:

Little progress was made on implementation of the tasks of the EU-Ukraine Action Plan on the integration of the environmental policy into sectoral policy and implementation of the sustainable development. Except some attempts by the Ministry of Environmental Protection (on preparation and approval of documents of the new national environmental policy) and the Ministry of Economy of Ukraine (on preparation of the draft Regulation of the Cabinet of Ministers of Ukraine on creation of the National Council on Sustainable Development), no appropriate legally binding and institutional decisions were taken.

Therefore, Ukraine lacks political will to make the environmental policy and its integration to the development strategies of country a higher priority.

At the present time the system of management of the central state bodies includes only some elements and prototypes of administrative mechanisms for the integration of environmental considerations into the sectoral policies. There’re positive examples of integration environmental considerations into sectoral policies. For example, the State Specific Program of the Ukrainian Village Development till 2015, approved by the Regulation of the Cabinet of Ministers of Ukraine No. 1158 of September 19, 2009, provides for integrated environmental considerations in its objectives and tasks.

The procedures of the Regulation of the Cabinet of Ministers of Ukraine provide for some possibilities for the Ministry of Environmental Protection and Minister of Environmental Protection to carry out an integrated environmental policy. Nevertheless, the lack of legislative requirements for integration of environmental policy into sectoral policy doesn’t make the environmental policy a cross-cutting issue.

The progress made in creating a legal basis and institutional mechanisms for the integration of environmental policy into sectoral policy is due to the approval of the Concept of the National Environmental Policy of Ukraine for the period till 2020 and development of draft Strategy and

National Action Plan. At the same time, the procedure of strategic planning of the policy of social economic development and national sectoral policies doesn't provide for integration of environmental considerations. There're no legal requirements for the strategic environmental assessment.

There were little progress made in development and implementation of the policy of sustainable development. The Ministry of Economy developed and submitted in 2008 for the consideration of the Cabinet of Ministers of Ukraine the draft Regulation of the Cabinet of Ministers of Ukraine "On Approval of the Concept of Ukraine's Transition to the Sustainable Development". This document was developed without active involvement of stakeholders. The preparation and submission to the Cabinet of Ministers of Ukraine of the draft Regulation of the Cabinet of Ministers of Ukraine "On Creation of the National Council on Sustainable Development of Ukraine" was a step forward. But the Regulation was not adopted, yet.

Recommendations:

- To include the legislative and institutional steps for the integration of environmental policy and sustainable development as priority tasks of the new Association Agreement and new practical instrument.

- To approve the Strategy of National Environmental Policy and the National Action Plan for the period of five years, and to ensure the appropriate funding for their implementation.

- To create Interministerial Commission on Integration of the Environmental Policy at the Cabinet of Ministers of Ukraine (with participation of all stakeholders, including the public). To ensure appropriate administrative and financial resources for its work. To plan as a high priority the introduction of the SEA into the strategic planning of the development policies.

- To create the National Council (Commission) on Sustainable Development at the Cabinet of Ministers of Ukraine (with participation of various stakeholders, including the public). To ensure appropriate administrative and financial resources for its work. To mandate the Commission to prepare and implement the Concept and the Strategy of Sustainable Development of Ukraine, as well as framework policy on sustainable consumption for ten years.

Objective 14

IMPLEMENTING THE PROVISIONS OF THE KYOTO PROTOCOL & UNFCCC

EU-Ukraine Action Plan (para.62) provides for an obligation to “Implement provisions under the Kyoto Protocol and the UN Framework Convention on Climate Change”.

The Measures for implementation of the Ukraine-EU Action Plan in 2007, approved by the Order of the Cabinet of Ministers of Ukraine of 26 April, 2007 No. 238-r, provided for actions to implement the provisions of the Kyoto Protocol and the UN Convention on Climate Change (p. 111.

“Implement the provisions of the Kyoto Protocol and the UN Framework Convention on Climate Change” through programmes and projects of international technical assistance that provide support for implementation of the Ukraine-EU Action Plan (TACIS Regional Action Programme 2006 (project "Support to implementation of the Kyoto Protocol") and grant from the government of Japan to modernize the industry and use of the mechanism under the Kyoto Protocol).The measures for implementation of the Ukraine-EU Action Plan in 2008, approved by the Order of the Cabinet of Ministers of Ukraine of August 6, 2008 No.1072-p, did not provide for further activities in this direction.

Question	Yes,			No	
	excellent	adequate	poor		
Grade	3	2	1	0	
IMPLEMENTATION					
Is there a monitoring system for the emissions of greenhouse gases in the country? (1)					There are some elements that usually comprise part of the monitoring system, but a monitoring emissions system of greenhouse gases is not created per se.
Have cost-effective national and/or regional programmes been formulated to improve the quality of local emissions factors, activity data and/or models for the preparation and updating of the inventory?					
Are there national and/or regional programmes in place (or planned) containing measures to mitigate climate change (e.g. sectoral programmes on energy, transport, waste, land use, industry, households, buildings or specific technologies such as energy conservation or renewables) (Art. 4.1 (b))? (2)					Special national or regional programmes aimed at mitigating climate change were not adopted. However, indirectly sectoral (industry) programmes provide for activities that promote mitigation of climate change.
Has the country made efforts regarding the development and exchange of practices and processes to control emissions and to hinder climate change (Art. 4.1 (c), (d), (h))? (3)					Efforts made in this direction are not systematic. As a rule, foreign partners initiate such actions.
Have plans been adopted to adapt to					

climate change (coastal zone management, water resources...) (Art.4.1 (e))?					
Have initiatives been launched to raise public awareness regarding climate change issues (Art.4.1 (i)) (e.g. training programmes)? (4)					No initiatives by governmental bodies. The official website of the Ministry of Environment had announcements of the trainings organized by NGOs.
REPORTING					
Does the country have a system of national inventories of anthropogenic emissions (Art.4.1 (a) of the Convention)? (5)					First national report on the inventory was prepared in 2004 (for 2001-2002).
If so, is it periodically updated and published? (6)	X				The inventory is updated annually. In 2008 the inventories report for 1990- 2006 was prepared.
If the country submits a national communication to the UNFCCC Secretariat, does it submit it on a regular basis? In particular, where the first communication has been submitted, are steps being taken to prepare a second communication?					There were two national communications – the last on June 27, 2006. The parties were supposed to submit the fourth national communication by January 1, 2006.
Do the communications contain information regarding steps taken or envisaged to implement its legal commitments?					Formally speaking there are such paragraphs. However, it is stated that “in order to meet commitments under the Kyoto Protocol Ukraine does not need to take special measures” (see p. 7 of the 2 nd communication).
COUNTRY SPECIFIC QUESTIONS					
Does the country use the joint implementation mechanism? (7)					Several projects have been implemented; a considerable number of projects are under development and harmonization.
Does the country use emission trading? (8)					Legal and institutional framework for international trade of emissions was created to certain extent. There is no in-country emissions trade.
Has the country taken steps to support developing countries (e.g. sharing of technologies, financial support)?					
Has the country benefited from the Clean Development Mechanism (for certified emissions reductions)?					
Has the country provided a description of policies and measures to implement its commitments and of their effects in its communications to the Secretariat? (9)					Formally such paragraphs were included into communications. However, they do not have any practical importance. Actions are mostly provided by plans and programmes adopted in the mid 90's, which have not been revised. The only exception is the use of joint implementation and emissions trading.
Overall assessment: 15 grades from 45 possible					
Score – 33,3%					

COMMENTS AND EXPLANATIONS:

The actions taken by Ukraine to implement this commitment cannot be regarded as a consistent, comprehensive and sufficient. In 2008 this issue did not become a priority despite the fact that the decision of the National Security and Defense Council of Ukraine of June 15, 2007 "On the State and Problems of Implementation by Ukraine of the United Nations Framework Convention on Climate Change" recognized as insufficient the activities by key actors on the implementation of the UNFCCC and the Kyoto Protocol, including actions taken by the Ministry of Environmental Protection of Ukraine, Ministry of Economy, Ministry of Finance and other central executive authorities, the Interagency Commission on Ensuring Implementation of the UN Framework Convention on Climate Change.

1. Development of an action plan to create a system of state control and monitoring of emissions of greenhouse gases was provided by the Plan of measures to implement priorities of the Cabinet of Ministers of Ukraine in 2008 (approved by the Order of the Cabinet of Ministers of Ukraine of February 27, 2008 No.383-r). The deadline set was June 2008, the agency responsible for implementation of this measure - the National Agency for Environmental Investments (NAEI).

2. See, for example, Sectoral programme of energy conservation and implementation of alternative vehicle fuel in 2006-2010, approved by the Order of the Ministry of Transport and Communications of Ukraine of February 9, 2006, No.114. According to the National Action Plan on implementation of the Kyoto Protocol to the UN Framework Convention on Climate Change, approved by the Order of the Cabinet of Ministers of Ukraine of August 18, 2005, No.346-r, a national action plan to mitigate the effects of climate change had to be developed by October 2006, projects of regional action plans to mitigate the effects of climate change – by December 2006. Several regions have developed draft action plans but due to the lack of systematic approach, any methodological assistance from the sectoral central authorities, lack of awareness and capacity of local staff, these drafts seem to be of a very low quality.

3. For example, Ukraine and the EU established a working group on climate change, which holds regular meetings open to the participation of interested public.

On July 14, 2008, the Memorandum between Ukraine and the Government of Japan on cooperation in implementing the UN Framework Convention on Climate Change and the Kyoto Protocol, in accordance with Articles 6 and 17 of the Kyoto Protocol was signed. Memorandum aims at developing cooperation between both countries to achieve reductions in greenhouse gas emissions and implementation of the Kyoto mechanisms in Ukraine and Japan. According to the paragraph 2 (c) of the Memorandum of Understanding between the Ministry of Environment, Agriculture and Maritime Affairs of Spain and the National Environmental Investment Agency (NEIA) of Ukraine on activities provided for in Article 6 and 17 of the Kyoto Protocol of December 11, 2008, the parties agreed, *inter alia*, “to promote technology transfer, advanced and environmentally friendly technologies to reduce emissions of greenhouse gases and improving the complete removal of gases, including, *inter alia*, renewable forms of energy, technology, low energy consumption, emissions reduction from municipal waste and wood sinks”.

On November 11, 2008, a final workshop of the project "Air quality in the border zone Suchava-Chernivtsi" was held. Representatives of Romania and Ukraine have discussed proposals for cooperation in information exchange among actors monitoring the quality of air and water quality of transboundary rivers and identified the work plan to create databases.

4. For example, on August 8, 2008, the announcement was made about the training “Increasing efficiency of the climate protection activities of public environmental organizations”, organized by

Dniprodzerzhinsk community environmental organization “Voice of Nature” with financial support of Henrich Boell Foundation (<http://www.menr.gov.ua/cgi-bin/go?node=2801>). On July 3, 2008, in Kiev, in the Central Botanical Garden, a national campaign “Go green!” was presented. It was initiated by UNDP-Ukraine and supported by the Ministry of Environmental Protection of Ukraine. The campaign as a volunteer initiative aims to improve the level of environmental protection in the context of economic and social development.

5. According to the Procedures for Functioning the National System of Assessment of Anthropogenic Emissions and Absorption of Greenhouse Gases, which are not regulated by the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted by the Cabinet of Ministers of Ukraine on April 21, 2006, No.554, “the national assessment system of anthropogenic emissions and absorption of greenhouse gases – is a system of organizational and technical measures for monitoring, collecting, processing, transmission and storage of information required for estimating anthropogenic emissions and absorption of greenhouse gases”. It encompasses all activities that lead (can lead) to anthropogenic emissions of greenhouse gases into the air from sources (businesses, industries, machines, plants, vehicles, etc.) as well as those related to the absorption of greenhouse gases. The purpose of the system is, in particular: evaluation of data on anthropogenic emissions and absorption of greenhouse gases, preparation and submission of national inventories of anthropogenic emissions and absorption of greenhouse gases and national communication on climate change under the Kyoto Protocol. The functioning of the system relies is supported by NEIA (according to the Order of the Cabinet of Ministers of Ukraine of April 17, 2008 No.392). According to the Order of the Cabinet of Ministers of Ukraine of April 10, 2006, No.468 “On procedure for coordination of measures to implement the obligations of Ukraine under the United Nations Framework Convention on Climate Change and the Kyoto Protocol to the Convention”, ministries and other central executive bodies, the Council of Ministers of Ukraine of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations, with the participation of the National Academy of Sciences, annually by December 15 submit to the Ministry of Environmental Protection of Ukraine data on the volume of consumption of all types of fuels, as well as types of industrial and agricultural activities, which cause anthropogenic emissions. National Environmental Investment Agency, on the basis of this information, sends to the Secretariat of the UN Framework Convention a national inventory of anthropogenic emissions and absorption of greenhouse gases and national communication on climate change (according to the Order of the Cabinet of Ministers of Ukraine of April 17, 2008 No.392). In accordance with the provisions of the National Environmental Investment Agency of Ukraine, approved by the Order of the Cabinet of Ministers of Ukraine of 30 July 2007 No.977, NEIA “carried out an annual inventory of anthropogenic emissions and absorption of greenhouse gases and summarizes the results of the inventory” and “develops national cadastre anthropogenic emissions and absorption of greenhouse gases and provides archival storage of its information” (paragraphs 4.4 and 4.5). The Order of NEIA of October 24, 2008, No.58 approved “Procedures for Carrying out National Inventory of Anthropogenic Emissions by Sources and Absorption of Greenhouse Gases”. Numerous complaints as to the quality of the inventory were expressed by the members of the public in Ukraine and by international experts who assessed the quality of information provided. The major deficiencies include incompleteness of inventory, lack of transparency during its development, formalistic attitude to the involvement of public in the process of preparation the inventory.

6. First national inventory report of GHG emissions and absorption in Ukraine for 2001-2002 was prepared in 2004 (until then the inventory of emissions and absorption of greenhouse gases was carried out only in 1995 and 1999). After 2004 each subsequent year the inventory was updated. Thus, at the end of 2008 five national reports altogether were produced on inventories of emissions and absorption of greenhouse gases in Ukraine; the last in 2008 for the period 1990-2006. The national inventory reports (since 2005 for the period 1990 - 2003) are published on the official website of the Ministry of Environmental Protection (<http://www.menr.gov.ua/cgi-bin/go?node=Nac%20kadastr%20parn%20gaz>).

7. Plan of measures to implement priorities of the Cabinet of Ministers of Ukraine in 2008 (approved by the Order of the Cabinet of Ministers of Ukraine of February 27, 2008, No.383-r) provides for the preparation of an indicative list of joint implementation projects under the Kyoto Protocol for the period 2008 - 2012 at the enterprises managed by the Ministry of Industrial Policy of Ukraine. The procedures for the preparation, review, approval and implementation of projects aimed at reduction of anthropogenic emissions of greenhouse gases (joint implementation projects under Article 6 of the Kyoto Protocol) were introduced by the Order of the Cabinet of Ministers of Ukraine of February 22, 2006, No.206 (as revised on August 20, 2008). Requirements for the preparation of joint implementation projects were approved by the Order of NEIA of June 25, 2008 No.33. Requirements for the documents justifying the volumes of anthropogenic emissions and absorption of greenhouse gases for a letter of support for the owner of a source of emissions, where joint implementation project is planned were approved by the Order of NEIA of June 25, 2008 No.32. In 2007 a guide was prepared to develop joint implementation projects (http://www.menr.gov.ua/documents/Posibnyk_z_Pr_spilnogo_vprovadz.pdf). List of joint implementation projects that were granted letters of approval are published on the official website of the Ministry of Environmental Protection (<http://www.menr.gov.ua/cgi-bin/go?node=Pr%20spilnogo%20vprovadz>). Persistent attempts by regulatory bodies to change policies and procedures for the development, support and approval of joint implementation projects provoked numerous complaints. E.g., in 2006 certain requirements were approved by the Ministry of Environmental Protection, but in 2008 the relevant legal acts were revoked and, in the same 2008, NEIA approved new requirements.

8. The decision of the National Security and Defense Council of 15 June 2007, "On the State and Problems of Implementation by Ukraine of the United Nations Framework Convention on Climate Change" (put into effect by President's Decree of July 20, 2007, No658/2007) entitled the Cabinet of Ministers of Ukraine to prepare and submit by the end of 2007 to the Parliament of Ukraine a draft law on the use of Kyoto mechanisms, stipulating, in particular: the definition of conditions and the procedures for trade in assigned amount units, transmission or receiving of assigned amount units, emission reduction units, certified emission reductions, the introduction of a system of price control in emissions trading, determining the timing of payment for the transferred or received emission units, establishing liability for violations in this area, the definition of criteria for selection of relevant projects, procedures for receipt and use of funds coming from emissions trade. Draft Law of Ukraine "On Regulation of Amount of Anthropogenic Emissions and Absorption of Greenhouse Gases" was prepared and published on the official website of the Ministry of Environmental Protection (http://www.menr.gov.ua/documents/P_ZKU_p_vykydy_antropog_gaziv.doc). The Order of the Cabinet of Ministers of Ukraine of May 28, 2008 No.504 approved Regulation on the National Electronic Register of Anthropogenic Emissions and Absorption of Greenhouse Gases. The register is set up and supported by NEIA in order to provide input into circulation, accounting, storage, transmission, receipt, cancellation and removal of carbon units, including emission reduction units, certified emissions reduction units, assigned amount units, absorption units, their transfer to the next commitment period in accordance with provisions of the UNFCCC. The Order of the Cabinet of Ministers of Ukraine of February 22, 2008 No.221 approved the Procedures for Consideration, Approval and Implementation of Projects Targeted Environmental (Green) Investments in the commitment period under the Kyoto Protocol to the UNFCCC, that is the procedures for use of funds received from emissions trading.

Despite there is no direct trade emissions at the international level, Ukraine is interested and declared its readiness to conduct trade. For example, the Order of October 1, 2008 No.1294-r "On Operation of Assigned Amount Units (parts)" the Cabinet of Ministers of Ukraine obligated the NEIA "upon receipt from the International Journal of Transactions a confirmation of technical possibility for transactions, to transfer 1 460 517 assigned amount units from the accounts of

Ukraine in the national electronic registry of anthropogenic emissions and absorption of greenhouse gases to the national registry of Japan”.

CONCLUSIONS AND RECOMMENDATIONS:

Present state of the economy of Ukraine, as well most forecasts of its development, suggests that in foreseeable future Ukraine is going to be in compliance with its main obligations under the UN Framework Convention on Climate Change and the Kyoto Protocol. At the same time, Ukraine has no national or regional climate action plans. Steps taken by Ukraine to implement UNFCCC and Kyoto Protocol were not comprehensive and focused primarily on two issues: use of joint implementation and emission trading. In the case of joint implementation, the “rules of the game” were changed several times by the Government resulting in barriers in the use of this financial mechanism under Kyoto Protocol. The Government yet made full formal preparations to start emission trading. It is unclear how the funds raised from emission trading will be used, and whether this process will be transparent.

Recommendations:

- To improve quality of national inventory report, both in terms of completeness of data, and transparency of its preparation and reliability of the original statistics;
- To develop national plan for GHG emissions reduction;
- To ensure functioning of stable, transparent and accessible terms, rules and procedures for the development, support and approval of joint implementation projects;
- To assist relevant public authorities (primarily NEIA) to develop a realistic regional programmes on mitigation climate change effects;
- To develop and adopt plans for adaptation to climate change;
- To incorporate climate change issues into sectoral programmes and action plans of relevant ministries and into development policies of relevant sector (energy, transport, industry, etc.);
- To implement in practice sectoral programs which contribute to the goals of UNFCCC and Kyoto Protocol;
- To ensure transparency and control over emissions trading mechanism and use of funds received.

Objective 15

IMPROVING SUSTAINABILITY OF ENERGY AND TRANSPORT POLICY

The Action Plans address the transport and energy sectors, often with extensive provision. As these two sectors have wide-ranging impacts on the environment, including impact on climate change, their provisions related to the environment are included among the objectives identified.

As the task of this report is primary to assess the progress in the EU-Ukraine Action Plan implementation, not the quality of the plan itself, it's necessary to highlight its serious shortcomings from the public point of view. The problem is that the tasks provided for the transport and energy sectors in the Action Plan are directed primary to the development of the transit potential of Ukraine; therefore they reflect the interests of the European Union. Even the tasks on "internal" progress in these fields are to ensure the security (in a broad sense) of the transit potential of Ukraine. At first view this may not seem to be a big problem, but such disproportion gives wrong indication to Ukrainian officials and diminishes the role of the Action Plan as an instrument for impact on sustainable development of the above mentioned fields.

Nevertheless, some tasks of the Action Plan, if appropriately implemented, can promote the greening energy and transport sectors in Ukraine. The most relevant provisions of the EU-Ukraine, for the purpose of this assessment area, include the following tasks: "To elaborate and start implementing a national transport strategy, including transport infrastructure development", in particular Ukraine's commitments to continue development of the Concept for a sustainable transport policy, and "To implement selected measures and reforms in the railway transport sector". For the integrity of the assessment the implementation of specific and up-to-date provisions on the improvement of security of the traffic and tanker transportations are also addressed in this report.

In the energy sector, key attention was paid to "Progress energy efficiency and the use of renewable energy sources", in particular adoption of "action plans for improving energy efficiency and enhancing the use of renewable energy, for reinforcing the institutions, accompanied by financing plans and timetable for implementation". The list of questions for assessment was supplemented by the questions on the cooperation of Ukraine on the nuclear energy and nuclear safety issues.

Question	Yes,			No	Notes
	excellent	adequate	poor		
Grade	3	2	1	0	
SUSTAINABLE TRANSPORT POLICY					
Has a national sustainable transport policy been adopted since signing the Action Plan? If not, is one being developed? (1)				X	The development of this policy is planned for 2009-2010.
Does the policy address major environmental issues arising from transport (e.g. air and water pollution, health impacts, acidification of the natural environment and climate change)? (2)			X		Although the process of the policy development has not started yet, there are reasons to put the grade "in advance".
Did stakeholders in different sectors (environmental and other NGOs,	--	-	--	--	The process of the policy development has not started yet, so the question is

industry, others) plan an active role in the development of the policy?					irrelevant. However, the developer of the policy and European consultants have the task to involve stakeholders into the process.
Have steps been taken to improve and enhance railroads and inter-model services for both freight and passengers? (3)		X			Some activities take place but overall progress is insufficient
COUNTRY SPECIFIC QUESTION					
Has the action plan on increasing safety on roads been developed and started implementing? If not, are the appropriate programs/measures being under development? (4)				X	There is significant delay in program development, so the grade is “no”. Nevertheless, in 2008 some progress was made.

COMMENTS AND EXPLANATIONS (TRANSPORT):

1. In June 2007 the European Commission made a call for expression of interest in project implementation “Support for development and implementation of the transport policy in Ukraine” under the Twinning program (<http://www.welcomeurope.com/default.asp?id=1200&idfunding=1990>).

The announced objectives of the project were the following:

- To increase efficiency/effectiveness of the transport sector performance;
- To contribute to sustainable economic and social development.

However, practical implementation of the project will start only in January, 2009 (http://twinning.com.ua/index.php?option=com_content&task=view&id=798&Itemid=47) and will last for 2 years. So this task of the Action Plan is not completed. The information on this issue you can find at the web-site of the Ministry of transport and communication of Ukraine at: <http://www.mintrans.gov.ua/uk/news/9860.html>
<http://www.mintrans.gov.ua/uk/news/9854.html>

2. There is already a number of existing programming and regulatory documents in the transport sector, which are related to the environmental protection issues and minimizing the negative impacts of transport (the issue of relevance of these provisions and the level of their implementation are not subject to this assessment). In addition, given the fact European experts will participate in the process, there are grounds to expect an environmental component in it (delukr.ec.europa.eu/press_releases.html?id=44241).

3. In Ukraine the railway transport remains the most comfortable and accessible both for passenger and cargo transportation. The tasks to increase its attraction and competitiveness in comparison with highway and aviation transport are the following: to increase the comfort of transportation, to introduce the modern level of service, and to decrease the time of transportation. In recent years there is significant progress in this regard, namely the introduction of new high-speed trains, reconstruction of the railways (mintrans.gov.ua/uk/news/10215.html), first steps taken to enable booking and buying tickets through Internet and POS-terminal at railway stations (mintrans.gov.ua/uk/news/9961.html). The Ministry of Transport and Communications of Ukraine developed the draft Program on Reforming the Railway Transport and submitted it to the Government’s approval in order to ensure the effective work of the railway transport, further development of this sector and its integration into the international transport systems

(mintrans.gov.ua/uk/news/9847.html). The State Administration of the Railway Transport of Ukraine (“Ukrzaliznytsya”) plans to obtain a loan from the International Bank for Reconstruction and Development (IBRD) in the amount of 750 mln USD for electrification and construction of other railroad tracks on some parts of the railway, as well as a commercial loan in the amount of 550 mln USD from the European Bank for Reconstruction and Development (EBRD) and European Investment Bank to buy the railroad vehicles. “Ukrzaliznytsya” already received a loan in the amount of 120 mln USD. 40 mln USD from this amount will be used for construction of Beskydy tunnel (project now is at tender stage).

Still, the statistics indicators are not so good. In 2008 Ukrzaliznytsya bought 180 passenger coaches (this figure is much higher than in previous years) and 1849 cargo coaches contrary to 200 and 4000 coaches accordingly (in 2007: 37 and 2040 accordingly).

In 2007 the amount of passenger transportation by the railway in Ukraine decreased by 0, 2% in comparison to 2006, and by 0,1% for 11 months of 2008. For comparison, in 2008 the passenger transportation by automobile transport was increased by 5,4% (mintrans.gov.ua/uk/statical/9834.html).

Except for funding from international financial institutions (such as EBRD and EIB) and Ukraine’s orientation to integration into the Transeuropean transport network (TEN-T), it’s difficult to monitor the real impact of the EU institutions on the development of the railway sector in Ukraine.

4. By the Order No 1121/2007 of November 20, 2007 “On Urgent Measures to Ensure Safety of the Road Traffic” the President of Ukraine requested the Cabinet of Ministers of Ukraine to develop a draft National Special Program on Increasing the Road Traffic Safety in Ukraine for the period of 2009-2012. But one year later, on October 30, 2008, the Cabinet of Ministers adopted just the Concept of this program (<http://www.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1384-2008-%F0>). Instead, in 2008 first steps were made to increase the road traffic safety in Ukraine. On September 24, 2008, the Parliament of Ukraine adopted the Law No.586-VI “On Changes to Some Legislative Acts of Ukraine on Improvement of Regulation of Relations in the Field of Ensuring the Road Traffic Safety”. The Law increased the liability for violation of the Rules of Road Traffic, and made changes to these Rules.

We expect that the Program will be developed during 2009 because the Ministry of Transport and Communication started implementation of the “Road Traffic Safety” project under EU Twinning Program

http://twinning.com.ua/index.php?option=com_content&task=view&id=793&Itemid=47. The main objectives of the project include development and implementation the National Program on Increasing Road Traffic Safety for the period of 2010-2014.

PLANS FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY					
Has a good national plan for energy efficiency and renewable energy been adopted since signing the Action Plan? If not, is a satisfactory one being developed? (5)				X	Some activities took place but at the present time there are no concrete results in a form of programming documents, except for the adopted Concept.
If there is a plan, does it contain specific and measurable targets/objectives?	--	--	--	--	
If there is a plan, does it contain a clear and realistic financial plan (e.g. identifying likely sources for	--	--	--	--	

Did societal stakeholders (environmental and other NGOs, industry, others) play an active role in the development of the plan? (6)			X		During the Concept's development there were formal steps taken to inform and involve the public, but information was not complete, easily accessible. Concept developers did not take active steps on informing.
Have steps been taken to implement the actions in the strategy?	--	--	--	--	Under "strategy" we mean a set of plans, which are still not adopted. So it's impossible to assess their implementation.
COUNTRY SPECIFIC QUESTIONS					
QUESTIONS ON NUCLEAR ENERGY AND NUCLEAR SAFETY					
Have the standards of nuclear safety adopted at international level been followed in the process of finalizing the construction and starting operations of power generating units of Khmelnytska Nuclear Energy Station (K2) and Rivne Nuclear Energy Station (R4)? (7)				X	The construction of these power generating units were finished under the out-of-dated soviet times project with minor modifications, which doesn't comply with modern standards of the nuclear safety.
Has the State Nuclear Regulatory Committee of Ukraine been strengthened?	X				The State Nuclear Regulatory Committee of Ukraine is probably the only state body in Ukraine which is not criticized much by the environmental NGOs as to quality of its work, involvement of the public and openness. The Committee on a regular basis publishes a Report on the State of Nuclear and Radiation Safety in Ukraine. It takes a strong position on a number of issues, facilitates participation of the NGOs in the Public Council established at the Committee.
Has a progress been made in decommissioning Choronobyl NPP and implementation of the Shelter Implementation Plan (SIP)? (8)			X		Some but little progress made.
Has a state strategy on nuclear wastes treatment been adopted? If no, is such a strategy under development? (9)		X			Draft strategy was developed and made public.
Overall assessment: 10 grades from 30 possible					
Score - 33,3%					

COMMENTS AND EXPLANATIONS (ENERGY):

5. The issues of energy efficiency and renewable energy sources shall be subject to two separate programs.

A new version of the Complex State Program on Energy Efficiency should be developed, as provided by the Action Plan for 2006-2010 to implement Energy Strategy of Ukraine until 2030, adopted by the Decision of the Cabinet of Ministers of Ukraine on July 27, 2006 No.436-r. In 2007 National Agency of Ukraine for the Effective Use of Energy Resources (NAER) developed draft Concept of State Special Program for Effective Use of Fuel and Energy Sources. The Cabinet of Ministers of Ukraine adopted the Concept of State Special Economic Program on Energy Efficiency for 2010-2015 only late in 2008 (on November 19, 2009), <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1446-2008-%F0>. By this decision the Government also instructed NAER to develop, in consultation with other relevant agencies, and submit by January 1, 2009, a draft

State Special Economic Program on Energy Efficiency for 2010-2015. That means the program was not developed in 2008.

As to renewable energy sources, a respective program is being developed following the same scenario but with more delays. A draft Concept for State Program for the Use of Non-traditional and Renewable Energy Sources was developed by the Ministry of Fuel and Energy of Ukraine and is still waiting for Government's approval. It should be stressed that none of the annual Measures for the implementation of the EU – Ukraine Action Plan adopted in 2005-2008 provided for specific tasks on development of plans or programs mentioned. Some sources report of the development and approval of the so called Roadmap on Energy Efficiency, Use of Renewable Energy and Measures to Combat Climate Change as being an important step forward, http://mpe.kmu.gov.ua/fuel/control/uk/publish/article?art_id=146163&cat_id=99008. However, this document does not qualify to be a programming document – neither for its content nor scope – as referred to in the EU – Ukraine Action Plan.

6. Draft Concept of State Special Program for Efficient Use of Fuel and Energy Resources was made public through official mass-media in 2007. The draft concept was given for public commenting on March 22, 2007, at the IV International Exhibition “Energy Efficiency, Alternative Energy and Clean Environment”, at the IX International Exhibition “Energy Saving Equipment and Technology” and International Congress “Energy.Ecology.People”, <http://www.cdie.gov.ua/NAER/?mod=index&id=214>. Unfortunately, the most interested NGOs received the public notification too late and were denied access to the draft itself. There was no public discussion of the program itself and no additional information on this issue is available.

As to the draft Concept for State Program for the Use of Non-traditional and Renewable Energy Sources. The National Environmental Center of Ukraine received first information about it by a letter from the Ministry of Fuel and Energy. The Ministry did not take any active steps to inform environmental NGOs about this document and did not put it on its web-site (while most draft documents are available there).

7. Following refusal in 2001 to take a loan from EBRD and Euratom for construction of nuclear power units at Khmelnytska and Rivne NPP (K2/R4), the Government of Ukraine took the cheapest way to implement this. In result, the units were constructed under original soviet design projects. This was subject to an extensive criticism by Ukrainian and international NGOs. Since these units do not meet modern safety standards, Energoatom took a loan from EBRD, under state guarantees, for modernization of the units constructed. It should be stressed that modernization measures were not implemented by the time the units were put into operation and the costs were spread to three fuel periods. This means the units were in operation for three years while not meeting safety standards. As of beginning of 2008, all planned measures were not implemented and there's no information available on their full implementation. More details on safety modernization can be found on pp.26-27 of the Report on the State of Nuclear and Radiation Safety in Ukraine for 2007, <http://www.snrc.gov.ua/nuclear/doccatalog/document?id=87963>.

8. In accordance with the Memorandum of Understanding between the Governments of the G-7 Countries and the Commission of the European Communities and the Government of Ukraine on the Closure of the Chernobyl Nuclear Power Plant, on December 15, 2000, the last remaining unit 3 was shut down. The two other units were shut by that time. From the time of the shut down of the unit 3, the Chernobyl NPP is in the process of decommissioning. Series of projects are implemented for this purpose and to make the destroyed unit 4 safe:

- Construction of the Interim Spent Nuclear Fuel Storage Facility (ISF-2) to ensure long-term storage of used nuclear fuel at Chernobyl NPP. Its construction is required for decommissioning of the units 1, 2 and 3 of the NPP and ISF-1.
- Construction of the plant “Vector”, which would ensure treatment, storage and disposal of radioactive wastes produced as a result of the accident and decommissioning process.

- Works on Shelter and preparation for a new confinement.

Initially ISF-2 and Vector were supposed to be constructed in 2004. However, both are far from operation. Construction of the Vector seems to make most progress, first stage finished. ISF-2 can be expected to be finished not earlier than 2013 (due to the change of sub-contractor; the original sub-contractor FRAMATOM /AREVA “failed” to construct it). These two projects suspend decommissioning of the NPP and construction of the new confinement. More details can be found in the Report on the State of Nuclear and Radiation Safety in Ukraine for 2007, <http://www.snrc.gov.ua/nuclear/doccatalog/document?id=87963>

9. Notification on publication of the draft Strategy for Treatment of Nuclear Wastes in Ukraine was put on the official web-site of the Ministry of Emergency Situations in Ukraine. Public consultation process was over by September 6, 2008. Unfortunately, because of its “hidden” place on the web-site, the NGOs found this information after consultation process was already over.

CONCLUSIONS AND RECOMMENDATIONS:

It is clear that implementation of the Action Plan provisions on improving the environmental profile of transport and energy has failed. As a matter of fact environmental issues are not a priority for the Government of Ukraine. Low priority given to these issues in the Action Plan further contributed to such approach and insufficient implementation of relevant provisions. The key problem is the delay in developing new transport policy when first steps are taken beyond the Action Plan period. The progress with energy part of the Action Plan is not better. State programs on energy efficiency and use of renewable energy sources were developed and approved by governmental bodies at a speed of a snail. Situation with nuclear safety is critical: decommissioning of Chernobyl NPP is far behind the schedule and overbudgeted comparing to initial plans, nuclear sector is yet to show any progress in solving the problem of nuclear waste and spent fuel management.

The Government of Ukraine has to stop current widespread practice of “last minute” approval of state programs, concepts and strategic decisions. Greening of the transport and energy sectors must become the priority task for the next period. In addition to improving the state of environment it can help to address challenges posed by the financial crisis and gas conflict with Russian Federation.

While developing the bilateral document for the next period of cooperation both Ukraine and EU have to consider tasks which were not properly implemented and propose a new, realistic and practical plan for their implementation. It is clear that new tasks need to be supported by respective feasible implementation plans and, what is most important, a strong commitment by the Government of Ukraine to implement them.