

# The Year in Review—2012

## Environmental Policy and Law

The Year in Review—2012

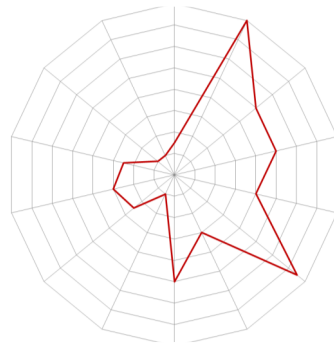


Featured stories and commentary by the experts of Resource & Analysis Center “Society and Environment” on key environmental policy issues and events

February 5, 2013

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## UKRAINE — EUROPEAN UNION

*Nataliya Andrusevych*

The year of 2012 was dynamic but lacking in progress concerning European integration processes, including those in the environmental protection sphere. This includes: continuing debates over the signature of the Association Agreement between the EU and Ukraine, adoption of new documents in the field of Eastern partnership, as well as efforts to approximate with EU legislation in the environmental sphere. So far, the progress made in the direction of European integration cannot score high, taking into account the political situation in the country, the low place of environmental issues on the government’s agenda and other foreign and domestic factors.

In 2012, the **Association Agreement between the EU and Ukraine** was initiated. At the end of 2012, the draft agreement leaked into the

Internet. Gradual approximation of national legislation with the policies and legislation of the EU is an important element of cooperation in many areas, including environmental protection. A separate annex lists directives which need to be implemented together with concrete deadlines. Such obligations of Ukraine are extremely important for achieving conformity with the EU *acquis* and standards. Much attention is given to compliance with existing legislation and multilateral agreements in the context of establishing a free trade area. Signing of the agreement is expected in autumn of 2013. However, it is necessary to begin an active process of reform now to achieve approximation with the *acquis* and standards, since Ukraine will have a great deal of new obligations, with those in the sphere of environment protection among them.

**The first steps towards approximation in the sphere of environment protection** were made on December 17, 2012, when the Ministry of Environment and Natural Resources of Ukraine approved “The Basic Plan of Adaptation of Environmental Legislation of Ukraine to the Legislation of the European Union” (Basic Framework of Approximation)” (Decree No. 659). The basic plan lists the European Union directives in the field of environment protection to which Ukrainian legislation should be adapted. For each directive, a short list of concrete legal acts to be approximated is indicated. In addition, the plan contains the basic legal requirements for such changes in the legislation. The basic plan sets out long-term prospects for convergence and is closely linked with the entrance into force of the Association Agreement between Ukraine and the European Union. However,

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## UKRAINE – EUROPEAN UNION

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the basic plan could play an important role in preparing our legislation for convergence at a stage when the Association Agreement remains in the future. There is an urgent need for approximation of national legislation with the European Union standards in many fields of environmental protection. In order to ensure the integration of Ukraine into the European space, acquisition of EU membership and the implementation of the future Association Agreement, the Cabinet of the Ministers approved Decree No. 767 dated 10.10.2012, which includes (1) the Concept of the Institutional Reform in the Sphere of Implementation of the future EU-Ukraine Association Agreement and (2) the Plan

for Conducting Institutional Reform in the Sphere of Implementation of the future EU-Ukraine Association Agreement.

In May 2012, the EU-Ukraine Cooperation Council approved and published the **renewed EU-Ukraine Association Agenda**.

When comparing the environmental section of the Association Agenda of 2009 and the renewed agenda of 2012 one cannot find many differences. The committee added one bullet point to the list on the promotion of sustainable development and a "green economy". The real issue is that little progress has been achieved in the implementation of the Association Agenda in the field of environmental protection since its adoption. Non-governmental organizations and independent experts have assessed the implementation of the environmental pillar of the Association Agenda, and these monitoring reports have come to pessimistic conclusions. Reports by the Joint Committee on Association Agenda Implementation are another important source for assessment of progress in this regard. On May 15, 2012, the committee made public the Second Joint Report of Senior Officials on the Implementation of the Association Agenda in 2011. Unfortunately, this report does not present a general assessment of the implementation of the environmental dimension of the Association Agenda and only lists individual events that took place in 2011 in the field of environmental protection and climate change. Its subjective and biased nature should also be noted. The

events described in the second report give only positive assessments of the facts. Furthermore, the report is silent about problems and difficulties in the implementation of the environmental dimension of the Association Agenda and negative trends in certain areas.

In 2012, the **Road Map of Eastern Partnership** was prepared (bilateral and multilateral dimension). Its preparation provided for participation by civil society through the National Platforms of the Eastern Partnership Civil Society Forum. Now Eastern Partnership tasks in the field of environmental protection have time-frames and indicators to check the progress made on relevant issues.

The **civil society** which supports Ukraine's European aspirations and works in various fields of public life is trying to promote reforms and maintain bilateral dialogue and public discussion concerning topical issues of European integration. Some examples of civil society efforts are the various activities of the Ukrainian National Platform of Eastern Partnership Civil Society Forum (UNP EaP CSF), which held its annual conference on November 21, 2012 in Kyiv, the Eastern Partnership Civil Society Forum in Stockholm, Sweden, held on 29-30 November, 2012, as well as the preparation by civil society actors of position documents, statements on topical issues of European integration, and monitoring papers.

**“Now the Eastern Partnership tasks in the field of environmental protection have time-frames and indicators to check the progress made on relevant issues”**



Nataliya Andrushevych,  
Chair of  
Governing Board  
Resource & Analysis  
Center "Society and  
Environment"

## KEY ISSUES IN THE FIELD OF ENVIRONMENTAL PROTECTION, 2012

Zoryana Kozak

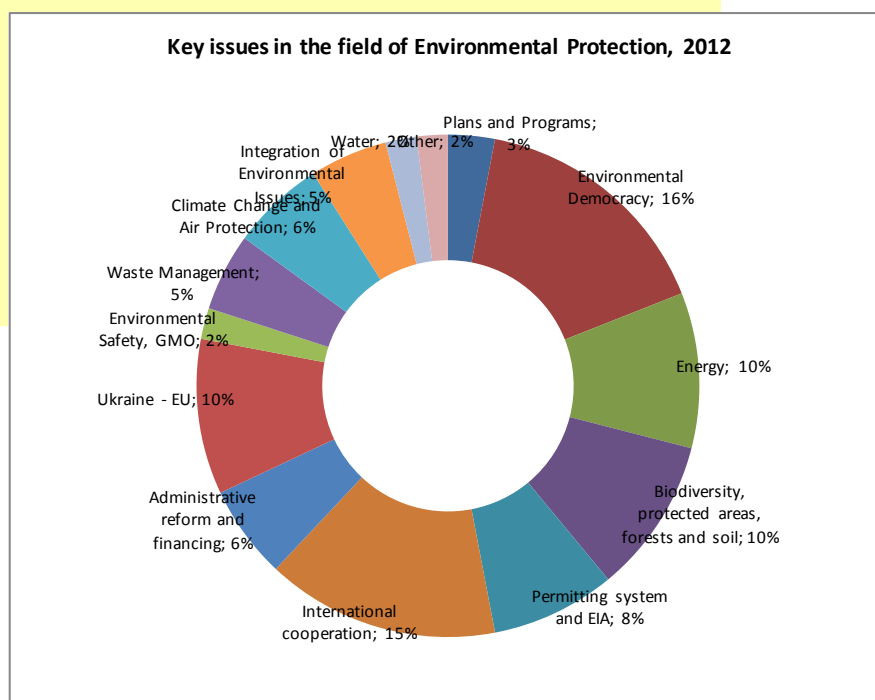
The aim of this review is to analyse and generalize key issues in the field of environmental protection in 2012, as well as to identify trends in solutions to environmental issues.

Key issues have been identified:

- on the basis of Environmental Policy and Law Weekly, including its special editions, prepared by Resource and Analysis Center “Society and Environment” in 2012;
- taking into account the importance of issues in the field of environmental protection or related fields in 2012, and increased attention to these issues on national and international levels, as well as attention by the parliament, president, government, ministries and community.

The diagram demonstrates the key issues at the national, European and international levels in 2012. All issues were grouped into the following categories:

- Administrative reform and finance (includes issues related to the implementation of administrative reform of state bodies in the field of environmental protection, funding of measures/plans/programs in the field of environmental protection).
- Biodiversity, reserves, forests and soil.
- Water.
- Licensing system and EIA (includes issues related to the licensing system, carrying out/cancellation of environmental review, implementation of the Espoo Convention).
- Environmental safety, GMOs (includes product safety, prohibition of the use of toxic substances, management of GMOs).
- Environmental democracy (includes access to information, public participation and implementation of the Aarhus Convention).
- Energy (includes energy issues



related to environmental protection).

- Climate change and air quality protection.
- Environmental issues integration (includes issues related to introduction of the environmental component into other fields of life, its correlation with the economy and social component).
- International cooperation (include cooperation at international/regional levels related to environmental protection issues, participation in international negotiations, signing/ratification of international agreements).
- Plans, programs (includes development, amendment and implementation of plans, programs, strategies in the field of environmental protection).
- Waste management.
- EU – Ukraine (includes issues of implementation of the environmental dimension of the EU-Ukraine Association Agenda, signing the future Association Agreement, the Eastern Partnership and Eastern Partnership Civil Society Forum).

- Other issues (includes issues which do not fall under the above mentioned categories).

Every event (news) was tagged by one or more categories. While grouping issues into categories, we considered only quantitative indicators. The indicators of quality of the event and its importance were not taken into account for the purpose of this statistical data and diagram formation.

High scores in some categories do not always mean success or progress in this field, but often demonstrate relevance of the issue for society, public concern about this issue or some efforts made in this direction. For example, the high scores of the “Environmental Democracy” and “Energy” categories do not mean high achievement by our government in these fields. On the contrary – it indicates problems encountered in this field. On the other hand, the category “Integration of Environmental Issues” obtained a low percentage while its implementation has had a wide impact on resolving environmental protection issues.

**“High scores of some categories do not always mean success or progress in this field”**



Zoryana Kozak,  
Governing Board  
Member  
Resource & Analysis  
Center "Society and  
Environment"

## INTEGRATION OF ENVIRONMENTAL ISSUES

Zoryana Kozak

**The year 2012 was characterized by both achievement and shortcomings in achieving integration of environmental issues into different fields of public life. The main achievements include the consideration of environmental protection issues at the highest levels of the state authorities, particularly in the context of environmental safety and approval of policy measures concerning the resolution of these issues.**

On June 8, 2012, V. Yanukovich approved the new edition of the National Security Strategy of Ukraine (the decree of the President No 389/2012 "On the Decision of National Security and Defense Council of Ukraine dated June 8, 2012 "On the New Edition of the National Security Strategy of Ukraine"). The new edition pays much attention to environmental challenges and problems. The strategy reasonably emphasizes the environment, where new challenges to the international and domestic security of Ukraine have appeared. Protection and conservation of the environment is one of the five vitally important national interests of Ukraine.

**The new edition of the National Security Strategy of Ukraine pays considerable attention to environmental issues, emphasizes the necessity of integrating environmental issues into the social-labor field and seeks solutions for joint issues in the related fields of labor safety and civil population protection.**

On March 12, the President of Ukraine approved the National Action Plan for 2012 to implement the Program of Economic Reforms (2010-2014) "Prosperous Society, Competitive Economy, Effective State". Measures envisaged for 2012 address the area of environmental protection, in particular, the

improvement of state regulatory policy in the field of environmental safety.

In his annual address to the Parliament "On the Internal and External Situation of Ukraine in 2012" the President of Ukraine emphasized environmental issues in the context of environmental safety, as well as the need to create "a **fundamentally new socio-environmental-economic model of society**".

Unfortunately, in 2012 no measures aimed at integrating and mainstreaming environmental issues into the social sphere, particularly into the mechanism of social partnership, were taken. Lack of interaction between the institutions of civil society, bodies of state power and local self-government in the mentioned direction is considered to be the omission of environmental component integration into social life.

**The introduction of an environmental component into the social partnership in Ukraine can be justified by the need to develop and promote sustainable development policy** in order to balance environmental, social and economic needs. It also reflects a need to ensure cooperation with other social partners (trade unions and employers) in order to integrate environmental issues into the administration of state policy and to recognize their importance. The global community considers environmental rights and environmental democracy as an important element of good governance and informed decision-making and as a precondition for achievement of sustainable development. It is difficult to achieve sustainable development goals without recognition of the importance of the environmental component in parallel with social and economic

components. Therefore environmental issues should be introduced into social institutions and mechanisms, including social partnership.

**Parliamentary elections were the major political event of 2012.** Analysis of pre-election programs of political parties and individual candidates denoted pessimistic forecasts in relation to the resolution of environmental issues and their integration at the legislative level in the future. None of the pre-election programs included a comprehensive vision of environmental policy in Ukraine. The five parties which gained seats in the Parliament included "UDAR" and "Svoboda" with no environmental promises, the Communist Party and "Bat'kivschyna" with vague declarative promises, and the Party of Regions with a separate chapter on environmental issues. The situation is not fundamentally different from the results of the analysis of individual pre-election programs. 64,4% of the programs of individual candidates make no reference to environmental issues. Only 2,4% of programs contain substantial provisions on environmental issues. Though the remaining 33,3% of the programs do mention some environmental issues, such provisions are mostly declarative and formal.

Such a situation suggests that there are threats to the adequate and effective implementation of environmental state policy in Ukraine, to the formulation of legislative fundamentals for environmental protection and to the integration of environment components into different fields of public life.



Andriy Andrushevych,  
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## ENERGY

*Andriy Andrushevych*

**Without a doubt, 2012 was the year of nuclear energy and shale gas in Ukraine. Even the construction of small hydropower plants stood as less important, although still being subject to much attention from local communities and public authorities at all levels.**

*Nuclear energy*

**On the eve of the parliamentary elections in Ukraine, the nuclear lobby went for broke: the Cabinet of Ministers of Ukraine submitted to the Parliament the draft law on construction of Units 3 and 4 at Khmelnytska Nuclear Power Plant. On September 6, 2012, the Parliament of Ukraine adopted the Law of Ukraine "On the design and construction of reactors 3 and 4 of Khmelnytska NPP". Discussion of the draft took just six minutes.**

**The public was indignant. Non-governmental environmental organizations of Ukraine urged the President of Ukraine not to sign the law on the construction of new power units at the Khmelnytska NPP.** In an open letter, experts warned V. Yanukovich about the considerable risks of a technical, economic and environmental character related to this project.

**Neighboring countries are still shocked.** The reaction of neighboring countries may be severe: Ukraine did not complete transboundary consultations with neighboring countries under the framework of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context. For example, Austria did not even start its public hearings, as it was waiting for further information from Ukraine. A Belarusian environmental group

called Ecodom submitted a complaint to the Implementation Committee of the Espoo Convention claiming they had no opportunity to express their views on the project. The investigation of the Committee continues but it is easy to predict the results. These gross violations take place against the background of regular violations by Ukraine of the convention's requirements and the decisions of its bodies.

In addition, the Implementation Committee of the Espoo Convention is already considering a potentially new case concerning lifetime extension for two Rivne nuclear power plant units (following an appeal from a public organization called Ecoclub). At present, the committee has come to the conclusion that Ukraine did not apply provisions of the Espoo Convention when taking decisions about the 1<sup>st</sup> and 2<sup>nd</sup> reactors of Rivne NPP, and that this decision fully falls under the scope of the convention.

At the end of the year the Policy Paper "Construction of Units 3 and 4 at Khmelnytska Nuclear Power Plant" was presented. **Experts argued that the law being adopted in such a hurry brings threats both to its implementation and to national energy security.** The policy paper includes analysis of six possible alternatives for action by the new Parliament of Ukraine, including the submission of a constitutional petition to the Constitutional Court and a zero option (no action by the Parliament of Ukraine).

The experts raised a number of concerns related to the decision by Parliament on KhNPP- 3,4, including the violation of vari-

ous national procedures and international treaties applicable to such decisions (including the Espoo Convention on Environmental Impact Assessment in a Transboundary Context). It is also emphasized that the implementation of this decision will create barriers for economic development, cause a rise in electricity and energy prices and increase dependence on a single supplier of energy resources.

*Shale gas*

In the field of energy and environment, shale gas was the main topic of this year in Ukraine. This was the topic for a number of propositions, decisions and scandals.

On May 10, 2012, the Cabinet of Ministers of Ukraine took a decision on the results of tenders to select investors for geological study and development of the Yuzivska and Oleska shale gas fields. The Oleska field (located in Ivano-Frankivsk and Lviv regions) will be developed by the US company Chevron and the Yuzivska field (Donetsk and Kharkiv regions) by Shell, a British-Dutch company.

Primarily, shale gas has become a geopolitical issue in the context of Ukraine-Russia relations (energy independence). While completing construction of Khmelnytska NPP – 3,4 is considered as a step towards dependence on Russia, the shale gas production is considered to be a move in the opposite direction. Any critic or resistance against shale gas production gets, in the best case, a "pro-Russian policy" label, and in the worst, insinuations of receiving Russian support. Such geopoliticization of shale gas production has put

**"While completing construction of Khmelnytska NPP – 3,4 is considered as a step towards dependence on Russia, the shale gas production is considered to be a move in the opposite direction"**

**“The main achievement in 2012 in the field of international cooperation was the signature of the Dnister Agreement”**

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)



## INTERNATIONAL COOPERATION

*Nataliya Andrusevych, Andriy Andrusevych*

In 2012, Ukraine ratified several international treaties, including the Protocol On Sustainable Forest Management to the Framework Convention on the Protection and Sustainable Development of the Carpathians, Amendments to the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area, the Nagoya Protocol On Access to Genetic Resources to the Convention on Biological Diversity and the Nagoya-Kuala-Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety, the treaty between the Ministry of Ecology and Natural Resources of Ukraine and the Ministry of Environment Protection of the Kazakhstan Republic on cooperation in the sphere of environment protection.

The main achievement in 2012 in the field of international cooperation was the signature of **the Agreement for Cooperation in the Sphere of Protection and Sustainable Development of the Dnister River Basin** (November 29, 2012 in Rome, Italy) during the 6th conference of the parties of UNECE-Water Convention. The NGO community has struggled over 16 years for modernization of these Transboundary Waters Cooperation Agreements via implementation of Article 9 of the UNECE Water Convention. Numerous resolutions, letters and appeals directed to both governments were produced by the NGO community, and in particu-

lar by Eco-TIRAS—a pan-basin association of ECOs from Moldova and Ukraine which is a unique entity in the whole of Eurasia. The signed treaty permits the development of a modernized river basin Transboundary Agreement on Cooperation and is considerable as a model of such kinds of treaties in the UNECE region.

An important event – **the Rio+20 Conference on Sustainable Development** – was held on June 20-22, 2012, in Rio de Janeiro. A document entitled “The Future We Want” was the main result of the summit. This voluminous and ambitious paper has as its main subject-matter the reaffirmation of past political obligations concerning the achievement of sustainable development. The paper was criticized by the community and some experts because of its weak formulation. Nevertheless, Rio+20 set new trends and issues, for example, the definition of “green economy” as an important instrument for sustainable development and poverty reduction. Among other important achievements, experts name the “Sustainable Energy for All” initiative which sets three aims till 2035: universal access to modern energy services, doubling the share of renewable energy in energy consumption, and doubling the energy efficiency index. It is worth mentioning the decision to develop Sustainable Development Goals (SDGs) by 2015. These goals should not prevent or divert focus from the

achievement of the Millennium Development Goals, which they will replace after 2015.

**We still have a serious problem of compliance with some international treaties.** In 2012 the Kyoto Protocol, the Aarhus Convention and the Espoo Convention were especially relevant.

Ukraine re-established compliance with the **Kyoto obligations**. On March 9, 2012, the Enforcement Branch of the Compliance Committee of the Kyoto Protocol, at its 19th session in Bonn, took a positive decision to lift a ban against Ukraine’s participation in Kyoto mechanisms. This means that Ukraine may continue to use emissions trading and joint implementation mechanisms as it did before.

Ukraine has all but failed to use a chance to lift the caution which remains in force until the next session of the Meeting of the Parties to the **Aarhus Convention**. This decision by the Compliance Committee was communicated to the President of Ukraine by a letter from the Executive Secretary of the United Nations Economic Commission for Europe. In response, the President of Ukraine ordered the Cabinet of Ministers of Ukraine to urgently prepare and submit drafts of necessary legislative acts. However, such drafts were not made public. In addition, Ukraine failed to confirm its willingness to host the upcoming session of the Meeting of the Parties to the Convention. At the same time,



Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)

## INTERNATIONAL COOPERATION

the Convention Bureau received information on the prosecution of environmental activists (in connection with the death of V. Goncharenko, an environmental activist).

Ukraine continued to make efforts aimed at fixing a difficult situation with the implementation of the **Espoo Convention**. In this context, several laws were

drafted in the field of environmental impact assessment with technical assistance by the EU. The comprehensive draft law on environmental impact assessment was not adopted, however. Meanwhile, the Implementation Committee of the Espoo Convention received a complaint from a Belarus-based NGO alleging gross violations of the Espoo Convention provi-

sions in decision-making by the Parliament of Ukraine with the construction of units 3 and 4 of the Khmelnytska nuclear power plant. This issue was deeply analyzed in a policy paper, *Construction of Units 3 and 4 at Khmelnytska Nuclear Power Plant: The Role of the Parliament of Ukraine (2012)*, presented by the NGOs and expert organizations in 2012.

## ENERGY (continued from page 5)

those who question the environmental acceptability of this project in a difficult situation.

Iryna Sekh, the chair of the core committee of the Parliament on environmental issues and a representative of the All-Ukrainian Union "Svoboda," has criticized the process leading to permitting shale gas production. In fact, the party is blocking the signature of the product sharing agreement with Chevron in the so-called Oleska area.

The main argument concerns the environmental risks. However, these appeals by "Svoboda" to the environmental arguments look rather strange. Having analyzed its pre-election program, we found no environmental promises. None of its 35 individual candidates mentioned environmental issues in his/her pre-election program. Therefore, it is not surprising that some mass media point to pro-Russian roots for this anti-development position in relation to shale gas.

**Environmental risks, therefore, are the subject of speculation.** In practice, no domestic studies

were carried out related to the impact of shale gas production in Ukraine; usually it is considered sufficient to make a reference to the experiences of the USA or France. Currently in Ukraine, shale gas exploration is not subject to professional engineering and scientific discussion or research.

**We are observing a rather dangerous phenomenon when all discussions take place either at a "very high" level or with the public.** In both cases, discussions are of a political (often demagogic) nature because their participants are not experts in the field of mining, geology or hydrology. An objective assessment of the environmental component of shale gas exploration requires dialogue at the expert level and carrying out of national research (rather than merely studying foreign experiences). Presently, this dialogue is absent.

**•The issue of the environmental safety of shale gas exploration also shocked the environmental non-governmental sector. It**

**resulted in fundamental shifts in what seemed to be a rather steady framework for NGO work.** In particular, the Ministry of Ecology and Natural Resources took a decision to reformat the so-called public council at the Ministry of Ecology. Currently, this council is not recognized by a set of public organizations. Unfortunately, legitimate views and protests by environmental NGOs do not reach the attention of power. From the other side, NGOs are accused of having an inconsistent position in that they use the rhetoric of energy independence from Russia when talking of nuclear issues, but ignore this argument when discussing shale gas. **There is a high risk of a rift between the environmental sector and other members of civil society in Ukraine.** In particular, energy and pro-European centers look at shale gas exploration from an energy standpoint and, therefore, as a way to achieve the political independence of Ukraine from Russia.

**"Currently in Ukraine shale gas exploration is not subject to professional engineering and scientific discussion or research"**

**FURTHER READING**

**WE OFFER YOU A LIST OF POLICY AND POSITION PAPERS, PREPARED IN 2012 WITH OUR INPUT, WHERE YOU CAN GET MORE INFORMATION ON THE TOPICS COVERED IN *THE YEAR IN REVIEW – 2012***

- **Construction of Units 3 and 4 at Khmelnytska Nuclear Power Plant: The Role of the Parliament of Ukraine / Policy paper (2012)**

This policy paper was prepared in response to the adoption of the Law of Ukraine No 5217-VI “On the Design and Construction of the Units 3 and 4 at Khmelnytska Nuclear Power Plant”

- **Environmental Component of the Pre-election Programs of Political Parties and Candidates in Elections to the Parliament of Ukraine in 2012 / Policy Brief (2012)**

An analysis of the pre-election programs of 22 political parties participating in the elections for the Parliament of Ukraine in 2012 in a proportional constituency and 3,080 pre-election programs of individual candidates in electoral districts

- **Statement on the Necessity to Introduce the Environmental Impact Assessment in Ukraine / Position Paper (2012)**

Statement of the National Platform of the Eastern Partnership Civil Society Forum on the Necessity to Introduce the Environmental Impact Assessment in Ukraine

- **ENP Implementation Report in Ukraine/ Position Paper (2012)**

Position paper on ENP implementation report in Ukraine for 2011 on behalf of WG 3 of the National Platform of the Eastern Partnership Civil Society

- **Draft Energy Strategy of Ukraine till 2030 / Position Paper (2012)**

Position paper on Draft Energy Strategy of Ukraine till 2030 on behalf of WG 3 of the National Platform of the Eastern Partnership Civil Society Forum/ Prepared by Dixi Group

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Resource & Analysis Center “Society and Environment” is a think-tank non-profit organization focusing on environmental policy and law research, capacity building and implementation of innovative initiatives in Ukraine and regionally (Eastern Europe, Caucasus and Central Asia). The Center was registered in 2006.

The Center’s two work programs are:

- European Integration Processes;
- Human Rights & Environment.

We work using three approaches: analysis, capacity building and innovation.