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National Endowment
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TRANSITION

CLEAN AIR FOR UKRAINE

Road map on reduction of industrial
air pollution in Ukrainian towns

PRAGUE-KYIV 2020

Roadmap to better regulation and governance

- Environmental governance and management (decentralization of public administration)
- Environmental legislation (transposition of EU environmental *acquis*)

Environmental governance and management

- The environmental governance system inherited Soviet legacy
- Multitude of administrations at central and local level with overlapping responsibilities and weak coordination among them
- In 2010, Ukraine began to decentralize public administration to transfer certain competence from central to local (“oblast”) governments
- Ukraine is to complete the decentralization in line with the requirements of the EU-Ukraine Association Agreement

Environmental governance and management – central level

Ministry of Ecology and Natural Resources (MENR) abolished



tasks taken over by the Ministry of Energy



Ministry of Energy and Protection of Environment (MEPE) created (2019)



MEPNR (the Ministry of Environmental Protection and Natural Resources) created (2020)



MEPE transformed back into the Ministry of Energy and Coal Industry

Environmental governance and management – central level

- Agenda and organizational structure of ministries as central government authorities should be flexible, yet stable
- Not recommendable to abolish an entire organization after every election-term
- MENR - frequent restructurings, reorganizations, and leadership changes (**17 ministers over 25 years**) (!)

Environmental governance and management

- **7 (!) other ministries** currently involved in environmental protection; some, e.g., the Ministry of Justice have nothing to do with this agenda
- Environmental agenda to be vested in ministries/agencies that by nature of their tasks and functions were established for that purpose
- Large number of state organizations and enterprises (**46** natural reserve fund organizations, **3** research organizations, and **9** state enterprises) with unclear environmental protection agenda and the scope of responsibilities

Environmental governance and management

Structure of MEPE's subordinated agencies

	Ministry of Energy and Protection of Environment	
State Ecological Inspectorate	State enterprises (9)	Natural Reserve Fund Organization (46)
State Agency for Water Resources	Public Joint Stock Company	
State Agency for Exclusion Zone Management		
State Agency for Geology and Mineral Resources	Research Organizations (3)	

Environmental governance and management – local level

- At the local level, oblast branches abolished and departments of environmental protection in oblast state administrations created (POSITIVE STEP!)
- In decentralized governance structures (e.g. the Czech Republic) no regional branches of ministries of environment exist
- Regional environmental protection agenda vested in regional and district administrations (in Czech: “krajské úřady” and “okresní úřady”)
- To complete the decentralization and to outline departmental structure and scope of their responsibilities we recommend preparing a unified guideline for regional administrations (involve regional administrations in drafting it)

IPPC authorities - the Czech Republic

- Ministry of Industry and Trade – formulates industrial and energy policy in the context of the EU single market and operates the IPPC portal
- Ministry of the Environment – formulates environmental policy in the areas of air, water, and soil protection. (The Ministry of the Environment issues environmental permits only for facilities with significant, negative cross-border impact)
- Ministry of Agriculture – formulates agricultural policy in relation to IPPC
- Czech Environmental Inspectorate – performs control and compliance activities with the IPPC Act, and imposes sanctions
- CENIA (Czech Environmental Information Agency) – issues expert opinions for authorities issuing IPPC permits
- Regional authorities – issue the IPPC permits

IPPC authorities - Ukraine

- Ministry of Environmental Protection and Natural Resources – issues permits for group I operations
- “oblast” state administrations (OSAs) – issue permits for group II and group III
 - *Group I – includes plants registered by the state, having types of production processes or equipment that require the use of BAT;*
 - *Group II – includes plants registered by the state, not having types of production processes or equipment that require the use of BAT;*
 - *Group III – plants that do not fall into either of the two previous categories*

Environmental legislation (transposition of EU environmental *acquis*)

- Ukrainian environmental legislation is very broad and comprehensive; quantity precedes quality
- Largely declaratory, lacks essential enforcement mechanisms to be effectively implemented
- Overlapping, vague, redundant provisions
- The legislative and regulatory changes need to be conforming to international legal instruments binding upon Ukraine (including relevant EU legislation) and national law
- Several key systemic implementation obstacles to overcome stemming from Ukraine's non-membership in the EU

Environmental legislation (transposition of EU environmental *acquis*)

- EU regulations have direct effect in EU Member States - no need of any other act of Parliament in the Member State to turn them into law
- Legislation of Ukraine does not have a legal provision enabling a direct effect and the EU-Ukraine Association Agreement (or its implementing legislation in Ukraine) does not have a mechanism for that
- EU directives are not directly applicable and need an implementing regulation on national level

Environmental legislation (transposition of EU environmental *acquis*)

- Not recommended to implement the Industrial Emissions Directive into a framework act for other environment related acts
- The core of the IPPC process to be regulated in a separate act
- Example: IPPC Act in the Czech Republic, Environmental Protection Agency (EPA) Act of 1992 in Ireland
- The law should have a clear organizational structure, be drafted unambiguously and understandably, and be logically divided into sections
- The law should have a clearly defined scope (see e.g. IPPC Act in the Czech Republic)

Environmental legislation (transposition of EU environmental *acquis*)

- Obligations of operators of installations, procedures for granting an integrated permit, establishment of an integrated pollution register, the manner of collecting information on emissions and transfers of substances registered in the register and the provision of data therefrom, competences of the public administration bodies, the system of exchange of information on BAT, and sanctions for breach of obligations
- It should also define important terms such as “installation,” “emission limit,” “best available technique” (most can be taken from the Industrial Emissions Directive)
- Adopt Annex I of the Industrial Emissions Directive where the installations and thresholds are specified and include it as an annex to the law

Environmental legislation (transposition of EU environmental *acquis*)

- BAT, BAT conclusions, and BREFs should be defined in the law; texts are not suitable to include
- The law can implement (in the form of annex) the criteria for determining BAT as set out in Annex III of the Industrial Emissions Directive
- Not practical to include BREFs in a law because any change in BREF would then require legislative amendment

Thank you for your attention!

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Ministry of Foreign Affairs of the Czech Republic