

Environment-People-Law

Policy Brief

**On the draft law**

**“On State Environmental Protection Service of Ukraine”**

Ukrainian environment is in poor condition and it is not a secret. Every day in news we hear about polluted rivers, illegal logging, lands fool of garbage, burning of leaves and other dry greenery, etc. The main reason for disregarding environmental rules is that current environmental protection system in most cases allows population and industry to pollute the environment and use nature resources without permits and go without punishment. As a result, Ukraine ranks 4th place in Europe in the number of deaths per 100 thousand people (137 deaths) due to air pollution[[1]](#footnote-1). An economical assessment of the social cost of premature deaths from illnesses caused by air pollution in Ukraine is $ 94.2 million (according to the data of 2010)[[2]](#footnote-2), which is more than a quarter of Ukraine's GDP. People also drink contaminated water and consume food grown on the polluted soil which also leads to different serious illnesses.

One of the solutions, that can help environmental protection system to guarantee real protection and prevent environmental damages, is to reform environmental control mechanism, which is currently late, inoperative, and doesn’t prevent or remedy environmental damages. It also has significant corruption risks.

With the objective to resolve environmental problems the Reform Support Team of the Ministry of ecology and natural resources of Ukraine had developed the draft law “On State Environmental Protection Service of Ukraine”. This draft was presented on November 7, 2018 at the Committee of the Verkhovna Rada of Ukraine on environmental policy, nature management and liquidation of the consequences of the Chernobyl disaster. According to the draft, it is planned to create a new control body instead of the State ecological inspection of Ukraine with the new network of its local bodies and some new functions (performing environmental monitoring).

The draft law contains some long-awaited progressive provisions. One is that the enterprises are to be obliged to identify quality and quantity of the air pollutants that they emit into the atmosphere. Also, not only physical persons (including CEOs), but also legal entities themselves are to become liable for environmental offences. Nevertheless, the draft law does not consist provisions that fix shortcomings of the current environment control mechanism. The adoption of the draft law will not lead to a real change in environment protection. The main arguments are given below.

***The draft law replaces a controlling institution, but does not amend the control system***

The draft law replaces an institution responsible for environmental control, but it does not change the way it works. That means that new authority is proposed to work according to old procedures. These procedures made control late: environmental control body (ECB) can only inspect some harmful activity after it receives a special permit. Usually, getting such a permit takes from two weeks to several months. So, when ECB finally gets it, often environment is already harmed, and the evidences as to who harmed environment and in which way are scarce. Also, according to the currents rules of procedure, ECB cannot initiate an investigation itself, even in cases of obvious violations. Thus, the control is inoperative. Environmental control procedures are based on the soviet planned checkups that are being conducted routinely. Also, ECB has to notify an enterprise that is scheduled to be inspected. Knowing the date of the visit, enterprises usually cut down their emissions, so ECB do not see the real picture of enterprise’s impact on the environment. All mentioned drawbacks of the current control procedures lead to further degradation of the environment. Without solving them ECB will not be able to effectively protect the environment and human rights. No matter how ECB is called and what institutional structure it has, it will not be able to fulfill its objective, unless the procedures are changed.

EPL proposes that before a new ECB is created, the control procedures are changed[[3]](#footnote-3). It also can be done simultaneously. A mere renaming of the ECB will not lead to a real and effective environmental protection.

***Control and oversight are (not) equal functions***

According to the draft law, control and oversight is the same function to be performed by State Environmental Protection Service of Ukraine. Yet, control and oversight are different and cannot be performed by the same institution. Oversight is a review of how the authorities exercise their powers. Supervision is carried out over the controlling authority and its activities. Provisions of the draft law in this regard contradict the principles of building of a transparent system of government bodies, and does not ensure their effectiveness, or elimination and prevention of corruption risks.

We propose that control and oversight are considered as two different functions. Also, they should be performed by two different bodies. Oversight should be performed by a special and independent body, control should be performed by ECB.

***ECB’s institutional organisation***

According to the draft law, system of State Environmental Protection Service of Ukraine includes central office and interregional local bodies. Today, regional bodies of State ecological inspection of Ukraine, operating at the regional (oblast) level, are not able to respond promptly or in time to violations of environmental norms, environment damages that occurred on local level, especially in cities or villages that are far away from regional offices. Further consolidation and reduction of the environmental control territorial bodies will only deepen the problem.

Furthermore, the Concept of reforming the system of state oversight (control) in the field of environmental protection[[4]](#footnote-4), approved by the Cabinet of Ministries of Ukraine from 31.05.2017 #616-p, foresees not only interregional, but also regional offices of the new ECB. Although the draft law was develop with the purpose of implementation of the Concept provisions, it substantially deviates from the model proposed in the Concept.

ECB network should include regional bodies and its representatives in cities and other major settlement. Otherwise, environmental control will remain ill-timed and inefficient.

***New ECB should be independent***

According to the proposed amendments, activities of the State Environmental Protection Service of Ukraine will be directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of ecology and natural resources of Ukraine. At the same time, in order to ensure the real independence of the new environmental control body, it should be placed on the same level with the Ministry of ecology and natural resources of Ukraine in the system of central bodies of executive power.

***Environmental monitoring***

The draft law added new functions to the State Environmental Protection Service of Ukraine – organizing of environmental monitoring. Nowadays this is the responsibility of the Ministry of ecology and natural resources of Ukraine. In order to collect full information on the environment, quality of water, air, soils etcetera, ECB should not organize, but carryout environmental monitoring itself. Performing monitoring ECB will be able to identify reasons and sources of environmental damage. Acting upon reliable environment monitoring data, ECB will be able to exercise it control powers effectively and stop environment pollution or degradation.

Currently, the quality of State ecological inspection performance is measured by the number of protocols issued and guilty persons brought to responsibility. As a result, the main goal of environment control is to punish guilty person, but not to protect and restore the environment, to prevent environmental damages. Environmental monitoring will help to change the objective of ECB from punishment to restoration of the environment and prevention of its degradation and pollution.

***Criminal liability of legal entities***

According to the draft law legal entities are to be responsible for their impact on the environment and ECB is to have powers to bring them to administrative responsibility. Apart from these progressive provisions, legal entities will not be personally responsible for environment crimes that are more dangerous and lead to considerably larger damages to the environment and human rights.

Criminal code of Ukraine contains rules under which criminal-law measures (like fines, liquidation, property confiscation) are applied to legal entities for committing crimes by their authorized persons on behalf or\and in interest of a legal entity. Currently, these rules do not apply to environmental crimes. In our opinion, in addition to administrative responsibility, legal entities should be criminally liable, meaning criminal-law measures should be applied to companies - perpetrators of environmental crimes. Including the respective provisions to the Criminal code of Ukraine will help to prevent serious environmental damages caused by legal entities by making them to change their behavior in a more environmentally friendly way.

***Systematic changes***

The draft law changes title, institutional system of ECB and adds some responsibilities. But it does not envisages systematic changes that will bring real solutions with regard to environmental control. These systematic changes should include:

1. Effectively changing the objective of ECB from punishment to environment protection and restoration.
2. Vesting ECB with the responsibility to carry out environmental monitoring.
3. Amending the environmental control procedures.
4. Ensuring independence of ECB.

In addition to the reform of environmental control, changes are required in the following related areas:

* use of funds raised as payment or fined for impact on the environment,
* full division of control and oversight functions,
* and in state policy as to raising people’s environmental consciousness.

Detailed proposals as to resolving problems of environment protection system can be find here http://epl.org.ua/ekoanalityka/

**Summarizing the mentioned above**, the draft law “On State Environmental Protection Service of Ukraine” does not included changes needed to resolve problems of environmental control and overall of the environmental protection system of Ukraine. It changes the title and institutional structure of ECB, but it does not include provisions that ensure its independence, that change the objective of ECB from punishment to environment protection and restoration, that amend environment control procedures. Environment-People-Law insists that the draft law be revised taking into account above-mentioned considerations. Only then it will have not only shallow, but systemic changes that will reform environmental control and ensure real environment protection.

1. Mortality attributed to household and ambient air pollution, data by country, WHO <http://apps.who.int/gho/data/view.main.GSWCAH37v> [↑](#footnote-ref-1)
2. Economic cost of the health impact of air pollution in Europe, WHO

<http://www.euro.who.int/__data/assets/pdf_file/0004/276772/Economic-cost-health-impact-air-pollution-en.pdf> [↑](#footnote-ref-2)
3. Detailed proposals as to resolving problems of environmental control system can be find here: <http://epl.org.ua/eco-analytics/bila-knyga-pro-reformu-ekologichnogo-kontrolyu/> [↑](#footnote-ref-3)
4. Concept of reforming the system of state supervision (control) in the field of environmental protection, Cabinet of Ministries of Ukraine, <https://www.kmu.gov.ua/ua/npas/250269536> [↑](#footnote-ref-4)