



**ENVIRONMENT
PEOPLE LAW**

The rule of law for the protection of the environment

Policy brief

THE REFORM OF LEGAL RESPONSIBILITY FOR ENVIRONMENTAL OFFENSES



Policy brief on the reform of legal responsibility for environmental offenses

Despite the fact that the man-made load on the environment in Ukraine is 4-5 times higher than in developed countries, the level of compliance with environmental legislation remains low. The reason for this is a whole range of factors, from corruption in the State Environmental Inspectorate and law enforcement agencies, inconsistency of the current model of legal responsibility with modern conditions of the market economy, to the still low level of environmental awareness and economic well-being of the population.

1. Challenges in the sector

The old model of legal responsibility, which was formed in the Soviet times, still operates in the sphere of environmental protection in Ukraine. The main subject of all types of responsibility in this area remains a natural person who bears disciplinary, administrative, civil and criminal responsibility. Even in the context of industrial activity, officials and specialists are responsible. Legal entities are subject exclusively to civil liability, which consists in compensation for damage caused to the environment and is applied in the order of economic proceedings.

The EU-Ukraine Association Agreement (2014) covers neither of the two EU directives in the area of environmental liability - neither Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, nor Directive 2008/99/EC on the protection of the environment through criminal law. Instead, for the past ten years, the process of European integration has been the main and almost the only driver of all environmental reforms in Ukraine. Any other environmental reforms, even those stipulated by multilateral environmental agreements, to which Ukraine is a Party, if they were not covered by the European integration process, practically did not advance. In connection with this situation, by the end of 2023, Ukraine has not yet carried out a comprehensive analysis of national legislation in the area of legal responsibility for environmental offenses in terms of their compliance with the EU standards, nor any measures to implement these standards in Ukraine.

Big business, which uses natural resources on an industrial scale and causes significant environmental pollution, has gained opportunities to exert significant pressure on parliamentarians and high government officials. For professional lobbying of its interests, business creates and finances a number of organizations that, in the information space and in the expert environment, defend the argument of the corruption among environmental control bodies and lobby for the complete deregulation of their activities. The initiative to implement any stricter environmental standards is positioned as an obstacle to business and economic growth and an additional opportunity for the corrupt Environmental Inspectorate to get financial benefits from business. Initiatives on the reform of legal responsibility in the environmental sector are perceived similarly.

2. Successes of the reform

In July 2021, the Parliament of Ukraine approved the draft law "On State Environmental Control" in the first reading. This draft law, among other things, for the first time provides for the introduction of administrative and economic responsibility for legal entities in the field of environmental protection, establishes a list of violations for which fines and other types of administrative and economic sanctions will be imposed on businesses, and high fines for gross environmental offenses committed by business entities. However, this legislative initiative did not receive further official development.

The government also developed a draft law on amendments to the Code of Ukraine on Administrative Offenses in terms of strengthening responsibility in the field of nature protection and use of natural resources, but this draft law did not provide for a systematic review of the current system even within the framework of administrative responsibility, and ultimately did not receive support in the Parliament.

3. Next steps in reforming the sector

The first and urgent step in the implementation of the reform should be a systematic analysis of the current model of environmental responsibility for its compliance with the EU acts in this area and the development of a road map for this reform. These are, first of all, Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, nor Directive 2008/99/EC on the protection of the environment through criminal law. Moreover, it is necessary to take into account that both these directives are in the process of revision in the EU and it is necessary to take into account the latest drafts of updated acts.

The next logical step should be the development of a legal framework for the reform, which will include changes to the Criminal Code of Ukraine, the Code of Ukraine on Administrative Offenses, the Economic Code of Ukraine, the Law of Ukraine "On Environmental Protection", the special law on state environmental control, if it is adopted, and a number of sectoral laws regulating certain aspects of industrial and other activities that affect components of the environment. The main directions of such changes should be as follows:

- revision and expansion of the list of environmental violations that entail criminal liability, increasing the amount of sanctions;
- application of criminal law measures against legal entities for criminal offenses in the area of environmental protection;
- review and expansion of the list of administrative offenses in the area of nature protection, increasing the amount of sanctions;
- expansion of economic responsibility of legal entities for violation of environmental requirements, which will involve application of a wide range of administrative and economic sanctions, including proportionate and dissuasive fines;
- diverge from the model of compensation for environmental damage based on methods with the subsequent allocation of funds to environmental protection measures, which are in no way related to the affected component of the environment, and introduction of mechanisms for placing responsibility on those who caused damage to the environment to ensure recovery of the environment to its previous state.

4. The cost of non-doing (failure to implement the reform)

Failure to take the above steps will lead to further disregard for environmental regulations and environmental degradation. This will negatively affect the length and quality of life not only of Ukrainians, but also of the population of the eastern part of the EU. Increasing the level of compliance with EU environmental requirements is one of the elements of the European Green Deal, and delaying implementation of key Directives in this area will seriously affect the level of trust of European partners and will obviously reduce the chances of Ukraine's quick accession to the EU.

5. Impact of the proposed changes on each citizen as a "final consumer"

The introduction of effective, proportionate and dissuasive sanctions for violations of environmental norms will help increase the level of business compliance with these requirements, stimulate healthy competition and development of a green and circular economy. The implementation of the reform will contribute to improvement of the state of all environmental components, restoration of natural resources and increase of ecosystem services. This will have a positive effect on the life expectancy and quality of life of the population, which in the long run will also accelerate growth of the economy and well-being of the population.