

Environment-People-Law

Green Paper

ENVIRONMENTAL LIABILITY IN UKRAINE

Greenbook

on environmental liability

Content

[CHAPTER 1. Description of consequences caused by ineffective environmental liability 3](#_Toc502306630)

[**Casestudy 1. Health and budget losses due to business impunity** 4](#_Toc502306631)

[**Casestudy 2. Budget losses due to illegal exploration of natural resources** 4](#_Toc502306632)

[**Casestudy 3. Budget losses due to violation of nature conservation regulation** 5](#_Toc502306633)

[CHAPTER 2. The challenges of the environmental liability institute and reasons for such challenges 6](#_Toc502306634)

[**2.1. Reasons for ineffective environmental liability**  6](#_Toc502306635)

[1) Outdated Soviet system 6](#_Toc502306636)

[2) Inmature environmental culture 6](#_Toc502306637)

[3) Business interests and voters 6](#_Toc502306638)

[4) Lack of political unity in Eurointegration issues 7](#_Toc502306639)

[**2.2. Gaps of environmnetal liability system** 7](#_Toc502306640)

[1) Weak environmental control 7](#_Toc502306641)

[3) Punishment for environmental crimes and offences is too weak 8](#_Toc502306642)

[4) The companies are not subjects of penal and administrative liability 8](#_Toc502306643)

[5) The controlling body is not capable of terminating environmental damage 9](#_Toc502306644)

[6) Environmental damage is not compensated in full amount 9](#_Toc502306645)

[CHAPTER 3. Alternative solutions to the problems in the field of legal liability for environmental offences 10](#_Toc502306646)

[**Option 1. To leave environmental liability system unchanged**  11](#_Toc502306647)

[**Option 2. To introduce proposed changes established at the state level** 11](#_Toc502306648)

[**Option 3. To introduce cosmetic changes to the current institute of environmental liability** 12](#_Toc502306649)

[**Option 4. To introduce partial changes to the existing institute of environmental liability** 13](#_Toc502306650)

[**Option 5. Dramatic changes: to introduce new philosophy of liability for violation of nature conservation legislation and environmental damage** 13](#_Toc502306651)

This Greenbook focuses on analyzing the environmental liability institute and delineation of alternative solutions to the problems identified.

### CHAPTER 1. Description of consequences caused by ineffective environmental liability

Clean and safe environment is an expensive asset. Every year developed countries allocate a significant budget for their environmental programs[[1]](#footnote-1). They realize importance of the environment for the development of the national economy and population health. Ukrainian situation is different: high-quality environment is considered too expensive. At the same time the nature's laws are the same everywhere, and unsustainable use of natural resources, apart from one-time benefits in long-term prospects, negatively affects the economic potential of the state. Mismanagement of the environment results in the biodiversity losses, has a considerable impact on people’s health, prevents the development of tourism. In its turn, it leads to increasing expenditures from the state budget as well as to the losses of potential revenue for the state.

In Ukraine there is a branch of law that is supposed to regulate social relationships in the field of environment protection and use of natural resources. The rules of the game in this field are supported by the established liability (penal, administrative, civil and procedural ones) for violation of these rules. And still citizens and businesses all the time constantly breach environmental norms, while the state fails to properly address this situation with legal liability means. Consequently, nature, budget and population health suffer irreversible losses.

According to the data of the State Environmental Inspection of Ukraine on the results of the state supervision (control) for 2016, the total amount of the calculated losses caused to the state as a result of the breach of the nature conservation legislation amounted to 736 mln UAH. At the same time the real amount of damages covered from claims and lawsuits constitutes only 121 mln UAH (including losses for the previous years), that is less than 16%. According to the data of the State Environmental Inspection in Lviv region this part is only 3%. Only from January to September 2017 the state suffered losses to the amount of 280 mln 787 thousand UAH for the breach of nature conserving legislation. The territorial bodies of the SEI of Ukraine filed claims and lawsuits to the general amount of 178 mln 173 thousand UAH, and obtained 42 mln 578 thousand UAH (taking into account the claims submitted previously)[[2]](#footnote-2), which makes about 23% from the general amount of losses.

Similarly, the State fails to impose sanctions that put an end to the harmful activities for the environment. Out of 229 cases submitted to the courts with respect to the decision on termination of suspension of the activity of commercial entities that breach the requirements of environmental legislation, only in 126 cases the courts decided on imposing such sanctions. Consequently, more than 103 enterprises continued their activities that damage the environment.



Fig. 1. The ratio of the calculated, claimed and recovered environmental damages for Ukraine over January ‒ September 2017. This Figure is prepared by the authors as based on the SEI data of Ukraine, http://dei.gov.ua/menyu-3/2011-12-19-07-30-27/2017/4149-rezultati-zdijsnennya-derzhavnogo-naglyadu-kontrolyu-za-9-misyatsiv-2017-roku.html

**Casestudy 1. Health and budget losses due to business impunity**

10 years ago Ukraine suffered from “Ozhydiv disaster” caused by violation of hazardous freight transportation rules. Fifteen tankers with yellow phosphorus derailed and caught fire. In response to the disaster the environmental inspection calculated losses caused by the water resources pollution amounting to 19 thousand UAH, pollution of land resources – 21 thousand UAH, air pollution – 1 million 378 thousand UAH.

The operative mitigation of disaster required participation of 450 people and 80 vehicles. These activities were funded from the regional and state budget. The State spent millions on soil recultivation, reloading and transportation of pesticides accumulated due to the disaster, medical support and rehabilitation of the rescue team members and local population, environmental research, improving social infrastructure of the villages affected by the disaster, etc. Unofficial sources state that preliminary estimation of disaster mitigation efforts was about 100 mln UAH[[3]](#footnote-3). However, the open sources do not provide information on the actual amounts of funds used. In general 1,7 bln UAH was spent from the state budget in 2007 on prevention and environmental pollution mitigation efforts[[4]](#footnote-4).

At the same time, 10 years after the disaster none of the official persons from the enterprise-owner of the tank cars or transportation enterprise was brought to administrative or criminal responsibility and not a single kopek from the funds spent by the local and national authorities on disaster mitigation was reimbursed.

**Casestudy 2. Budget losses due to the illegal exploration of natural resources**

Annual illegal amber production is from 120 to 300 tons of amber a year. According to the Ministry of Natural Resources of Ukraine, the volume of illegal market of such amber (hereinafter ‒ the Ministry of Natural Resources) is 230-300 mln USD[[5]](#footnote-5). At the same time budget revenues from legal amber production are very low. Thus, for 2016 budget revenue from rental payments for amber production was 2 084 668 UAH or about 77 thousand[[6]](#footnote-6) USD.

According to unofficial estimate, annual volume of illegal amber production shadow market is at least 1 billion USD. Just for one day amber miners produce amber for 360 thousand USD. It means that during one year the budget of one raion in Rivne region suffers about 150 million USD losses. Only in Rivne region there are about ten raions like that, and there are plentiful reserves of amber in Volyn’ and Zhytomyr region[[7]](#footnote-7).

The rental payment for amber production is 25%[[8]](#footnote-8). Logically, budget losses from amber shadow market (according to the estimates of the Ministry of Natural Reserves) amount to 57,5-75 mln USD. The losses from the shadow market volumes that, according to the unofficial data, exists, can be estimated in the amount of the 250 mln USD.

At the same time irresponsible attitude to land resources in the process of amber extraction results in damage caused to large areas and ecosystems which is borne by the state. Thus, only according to the official statistics of the Ministry of Environment as of 2015 illegal amber extraction caused damage to 220 hectares of land in Zhytomyr region, 4 hectares ‒ in Volyn region, 169 hectares ‒ in Rivne region. The actual area of the damaged land is thousands of hectares, and none of the state institutions has exact data on this issue[[9]](#footnote-9). These damages also remain unrecovered.

## **Casestudy 3. Budget losses due to violation of nature conservation regulation**

## In March 2016 the forester of the State Enterprise «Bus’ke LG» (“Busk Forest Enterprise”) abused his position and misappropriated the property, namely 335 horn-beech trees with total cubic mass 147 cubic meters. Due to such illegal actions the forestry enterprise incur damages amounting to 1218761 UAH. The court sentenced the perpetrator to three years in prison, he was deprived of the right to occupy position of a forester in the state forest management enterprises for a period of 1 year and 5 months and a fine of 4250 UAH. At the same time the court exonerated a person from imprisonment with a probation period of 2 years.

The civil lawsuit aimed at recovering damages caused by illegal deforestation was not filed. Thus, causing damages to the state in the amount of more than one million hryvnias the perpetrator just paid a fine of 4250 UAH[[10]](#footnote-10).

In November 2015 the above-mentioned person being the head of the forest enterprise was already convicted for forest product embezzlement in the amount of 24669,10 UAH and had to pay a fine of 850 UAH[[11]](#footnote-11). However, this punishment did not prevent him from committing new crimes in the future.

Irresponsible attitude to nature causes deterioration of the quality of water resources, air and soils. It reduces the opportunities for their use in the economy of the future and has a negative effect on the health of people now. The State loses lots of money and invaluable natural resources some of which can hardly be recovered. Apart from budget losses the State faces a problem of additional expenses to repair the environmental damage and to improve life of people living in the regions with bad environmental conditions. As a result, it is not only the State that is suffering from material losses, but also every taxpayer who pays taxes to the state budget. Under quite complicated economic conditions the State, on the one hand, is still spending and losing millions and, on the other hand, takes loans in the international organizations. Why does it happen?

### CHAPTER 2. The challenges of the environmental liability institute and reasons for such challenges

## **2.1. Reasons for inefficient environmental liability**

The consequences of the inefficient environmental liability institute described above appear due to the fact that nowadays this institute: 1) leaves certain violations unpunished, 2) does not impose sanctions on the perpetrators which are proportionate to the degree of social danger or harmfulness of their actions or the damage caused to the environment, 3) does not impose sanctions on the perpetrators which should change their future behavior, 4) does not discourage the potential perpetrators from the temptation to commit illegal actions, 5) does not recover environmental damages, thus, it is actually not useful for the environment which this institute is supposed to protect. The reasons for this is lack of reforms in the field, low level of environmental awareness, unpopularity of the idea of environmental liability among businesses and population and lack of unity among political forces of Ukraine regarding Euro-integration aspirations of the State.

### 1) Outdated Soviet system

Ukraine has been an independent state for a quarter of a century. However, outdated approaches to public administration and use of natural resources continue to dominate. While there were systemic reforms conducted in the other sectors, especially in the last five or ten years, the field of environmental protection is neglected as it is considered to be a non-priority field. The echo of the Soviet approach regarding the use of natural resources, when for the sake of economic progress "the clay was lifted", are still reflected in the laws and by-laws regulating this field. Progressive, well-working European mechanisms are not reflected in the nature conservation field of ​​Ukraine.

Environmental liability institute is one of the examples that lacks reforms. The liability system built to control central economy, including use of natural resources, is not working under market economy and does not regulate behavior of private players.

### 2) Immature environmental culture

The defining factor of environmental management in Ukraine is the lack of a sufficient level of environmental culture. Despite the legislative requirements to teach the subject "Environment" in secondary schools and higher educational institutions, this initiative is not implemented. As a result, an average citizen does not have at least some basic ideas of ​​the environmental laws and damages caused by violations of these laws to nature, economy and people's health. Dirty roadsides and recreational places for people, unwillingness to sort garbage, parking on lawns, burning of dry vegetation, popularity of hunting, zoos and dolphinariums is a manifestation of low environmental awareness of the population. Combined with the difficult economic situation, it contributes to the prosperity of illegal amber extraction, mining of other minerals, forest fellings and so on.

### 3) Business-interests and voters

The politicians and officials are involved in big business and are rarely interested in a well-functioning environmental liability institute. On the one hand, the attempts to use stronger punishments for the most frequent administrative environmental offences (deforestation, vegetation burning) committed by physical persons are negatively perceived by the voters, therefore, political forces do not lobby them.

### 4) Lack of political unity in Euro-integration issues

In 2014 Ukraine signed with the European Union the Association Agreement. This agreement emphasizes maintenance of sustainable development, well-grounded and rational use of natural resources, priority reimbursement of environmental damage and payment of fines by those polluting the environment. In the field of environmental protection, the Agreement places on Ukraine a number of commitments, which include, in particular, institutional reform to ensure real fulfillment and implementation of environmental legislation, which should include the reform of the institutes of legal liability and environmental control.

Unfortunately, certain political forces in the parliament and the government impede the implementation of European integration policy and legislation, and as of 2017 most of the obligations under the Environmental Protection Agreement remain unfulfilled or not properly implemented. At the same time, receiving financial assistance from the EU, Ukraine does not fulfill the conditions for such assistance in the field of environmental protection.

## **2.2. Gaps of environmental liability system**

The current legislation of Ukraine establishes legal framework for the use of natural resources, regulates limiting values for emissions and discharges, as well as the threshold concentrations of pollutants in different elements of the environment. Enforcement and compliance with environmental norms and rules in a normal social system is ensured by the institutes of environmental control and legal responsibility for violations in the field of environmental protection. Nowadays in Ukraine both institutions are inefficient. Let's examine them in more details.

### Weak environmental control

A prerequisite for the occurrence of liability in any area is the implementation of effective control measures. One of the important reasons for the inefficiency of the institute of liability for environmental offenses is lack of qualitative control by the state. Since 2007 the system of environmental control has undergone changes that made this system almost ineffective. Thus, environmental inspectors were deprived of the right to go to the place where the violation or event occurred the moment they became aware of them. Planned measures of control without warning the enterprises were prohibited. The general supervision of the prosecutor's office for compliance with the environmental legislation by all natural and legal persons was cancelled, including supervision by the state bodies that exercised control over the environment.

This led to the situation when such control became inadequate and unprompt. It does not allow qualitative fixing of violations, finding the guilty persons, establishing the amount of damage caused, other evidence base, etc. As a result, despite the fact of a violation, responsibility does not arise, as the control measures did not reveal all the necessary data for the proper qualification of the act or identification of the perpetrators. In addition, the moratorium on inspections that was in force in previous years also negatively affected the number of violations detected, the identification of guilty persons and environmental damages that were recovered.

1. Not all the environmental crimes are recognized by Ukraine

During the recent decade the level of environmental crime has been rising fast, the volume of operations have been increasing and new illegal actions on valuable biodiversity or environmental objects have been done. According to UN Environment, in 2016 the profit from international environmental crime exceeded that from illegal arm trade. Nowadays it is the world’s fourth-largest criminal enterprise after drug smuggling, counterfeiting and human trafficking.[[12]](#footnote-12) The Criminal Code of Ukraine from 2001 was amended with new constituent elements of crimes in the field of the environment only once – in 2009. Ukrainian legislators fail to respond to changes in criminal situation in this field. For example, the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora obliges Ukraine to foresee in national legislation penalties for trade or possession of such samples. Nevertheless, Ukrainian legislation still does not criminalize such acts and only provides for administrative liability with a maximum sanction for individuals in the amount of less than six euros, while for the same violation in most EU countries there are high levels of criminal liability, and in China, even capital punishment, in particular, for the illegal export of pandas[[13]](#footnote-13). This leads to the fact that certain environmental offenses, long recognized in the European Union, are not prosecuted in Ukraine at all, and crime in this sphere is only gaining momentum, causing more and more damage to the environment.

Similarly, the current legislation does not establish administrative liability for the number of environmental offences that also affect the amount of damage caused to the environment and causes losses to the state.

### Punishment measures for environmental crimes and offence are too weak

In the vast majority of cases the maximum sanction for environmental offenses is imprisonment for up to five years. In other words, for contamination of land, air or water, even if it led to death or mass disease of people (regardless of number), irreversible loss of natural resources (regardless of the amount), including loss of species of animal and plant life or impossibility to use these resources for a long time (pollution for the period of 5, 50 or 300 years), the maximum penalty will be only five years of imprisonment. Such a correlation of the degree of public danger of the act and the corresponding sanction is false and disproportionate. For example, according to the Greek law, for the illegal dumping of waste motor oil (even a small amount), a guilty person may be imprisoned for up to ten years. According to Finnish or Dutch legislation, the trade in endangered species of flora and fauna means six years in prison.

Fines for administrative offenses in the field of environmental protection are also very low. For example, for failing to take measures to preserve places of migration, habitats of species during the construction there is a negligible responsibility - from 51 to 119 UAH[[14]](#footnote-14). Instead, the effects of such actions on the environment - the death of individuals or even extinction of species - are significant and sometimes are even irreversible. The fine for citizens for pollution of lands (energy saving light bulb thrown into the forest plantation, fused exhaust oil) is from 320 to 1 360 UAH. Such fines are much lower than the cost of legal neutralization of such substances or the cost of cleaning the contaminated land.

The untaxed minimum income of citizens, which is the basis for the calculation of penalties under criminal and administrative law, remains unchanged since 1996 and is 17 hryvnias. For comparison, in 1996 the minimum wage was 15 UAH, and in 2017 – 3200 UAH. As a result, the punishment does not substantially stimulate offenders and potential violators to change their behavior. Moreover, this situation sometimes encourages offenders, since the benefits (saving from the failure to install a cleaning filter) are sometimes higher than the risks (payment of a fine provided by the law). Often after prosecution the perpetrators commit such offenses again.

### The companies are not subjects of criminal and administrative liability

Nowadays the criminal law contains a section of environmental crime, but only individuals are prosecuted. Under Ukrainian legislation polluting companies as legal entities are not subject to criminal or administrative liability in the situation of environmental offenses. Instead, the main violations of environmental and nature-saving legislation are committed precisely in connection with the activities of legal entities (illegal dumping of waste, emissions and discharges without corresponding permits, excess emissions and discharges of pollutants into the environment, etc., carrying out activities without corresponding permits. Responsibility in limited cases is borne by the directors of enterprises, and the size of sanctions is sometimes insignificant in comparison with profits made by the enterprise, including those due to neglect of ecological requirements and norms. This model of public administration was inherited from the Soviet era, when all the enterprises belonged to the state or communal forms of ownership, and therefore, there was no need to punish them with severe financial or organizational sanctions. In other areas of law within the national legal system the institution of criminal and administrative liability of legal entities is already known. Thus, for example, a fine for the construction of an object belonging to a class of objects with significant consequences, without permission as of January 2018 exceeds one and a half million UAH[[15]](#footnote-15).

As a result, the main perpetrators, whose actions are the most harmful for the environment, actually avoid the punishment.

### The controlling body is not capable of terminating environmental damage

Till 2014 the bodies of the State Environmental Inspection had the right to restrict and temporarily suspend the activities of enterprises that violated environmental requirements. In the process of deregulation such powers of the controlling body were cancelled. Now harmful activity of the enterprises can be banned or even suspended exclusively by the court. This state of affairs is extremely dangerous, because to termination of operations of a plant emitting poisonous substances into the air or discharging them in water will mean waiting for several months or even years untill all judicial procedures are completed. The damage caused to the environment during this period is irreversible. Instead, in most of developed countries an administrative body that carries out environmental monitoring and control can suspend activities that are carried out with violations and cause damage to the environment[[16]](#footnote-16).

In case one person causes bodily harm to another person, a law enforcement agency has the right to stop such unlawful acts and even isolate a person from society until the sentence is delivered. In the case of companies manufacturing harmful products or emitting harmful substances to the environment, which results in deterioration of people's lives and health, environmental control bodies or any other administrative authorities cannot take such measures. They have to bring the case to the court, which significantly delays termination of actions that cause damage to health or the environment, and thus increases the amount of damage caused.

### Environmental damage is not compensated in full amount

Currently Ukraine has not established the institute for compulsory environmental insurance for objects, where activities or accidents could cause significant damage to the environment. In case the company has to compensate a significant amount of money, it goes bankrupt, and the burden of environmental damage is put on the state budget, which is also unable to compensate it.

The damage caused is recovered from a guilty person in court. But the system leaves much to be desired here. The frequent drawback of documents used to calculate damage caused to the environment is the discrepancy of the amount of money received with the actual damage caused to the environment, that is, the cost of restoring the previous condition of the environment. Thus, for example, according to the approved methodology the damage caused by the illegal felling of a tree with trunk diameter of 18 to 22 cm is proportionate to the average market value of two cubic meters of firewood. At the same time, the value does not take into account any tree species (except for very rare ones), nor its height, nor the region it is growing in, nor the condition of timber. This reimbursement is obviously insufficient. Let’s give another example, when the calculation of damage caused by pollution of land resources does not depend on the concentration of the pollutant. According to the approved Methodology,[[17]](#footnote-17) following the court decision the amount of damage to be compensated by the offender for polluting the land lot with a gram or ton of lead (extremely hazardous substance), will be the same.

Taxes and methods for calculating environmental damage are also used to determine the amount of damages for qualifying an act as an administrative misconduct or crime. Thus, the inadequacy of the calculated amount of damage leads to the fact that acts that really cause significant damage to the environment and therefore constitute a high level of social danger are qualified only as administrative offenses.

There is also no mechanism for directing the recovered funds for restoration of the environment to its previous condition that existed before the violation, i.e. elimination of pollution, restoration of relief, forest plantations or populations. Thus, the environmental element affected by the violation remains polluted or lost, even if the offender was identified and had to pay fines and recover damages.

This state of things is quite satisfactory for a part of business, which, taking advantage of the lack of real responsibility, exploits the environment for its own enrichment. Ineffective liability institute makes it possible for irresponsible businesses to use natural resources free of charge or cheaply, to dump excessive discharges, emissions and waste products with impunity, to save funds on not installing modern cleaning equipment. By polluting the environment and transferring the share of the real value of products from the consumer to society, such businesses receive an unlawful economic advantage. There are cases when foreign companies transfer to Ukraine their production which is environmentally harmful and, consequently, is becoming too costly in the European Union, but in Ukraine, under conditions of ineffective liability, still generate profit to their owners. Instead, environmentally conscious business loses in the competition, because similar products manufactured in compliance with the requirements of environmental legislation, are getting more and more expensive.

### CHAPTER 3. Alternative solutions to the problems in the field of legal liability for environmental offences

The state sets rules of conduct regarding use of natural resources, implementation of activities that may have a negative impact on the environment. This is due to the fact that the environment is a general public good, and the negative impact on it directly affects the welfare and health of the majority of the population. In addition, the damage caused to the environment leads to economic losses of the state and additional expenditures from the budget to eliminate the consequences of the damage caused and restoration of the environment to its previous condition.

At the same time, to protect and preserve the environment, in particular by means of compliance with environmental norms, there must be effective mechanisms that encourage compliance, prevent future violations and compensate for the damage caused. One of the mechanisms ensuring compliance with environmental norms is a working legal liability institute that is proportionate and adequate in relation to the damage caused to the environment. The purpose of liability is not only the application of negative consequences in the form of punishment of the offender, but also the correction of the latter, the prevention of the onset of similar violations committed by both specific offenders and an uncertain group of persons, as well as compensation for the subsequent restoration of the environmental conditions that existed before the violation, for compensation of the losses incurred as a result of such violation. The ultimate goal of legal liability is to preserve the public good, the protection of which was established by legal regulation, in this case - protection of the environment.

However, the liability that nowadays exists in the field of environmental protection does not fulfill its functions. Taking into account the analysis of the current institute of liability for violation of environmental norms and causing damage to the environment, it is possible to distinguish the following alternative solutions to the problems of ineffective liability.  
 Let's consider five possible options (scenarios) of the Government's actions regarding the reform of legal liability institute in the field of environmental protection. A summary of the correlation of the proposed measures depending on the chosen action is shown in Table 1

.

## **Option 1. To leave environmental liability system unchanged**

Administrative liability for environmental crimes was established by the code which was adopted in 1984[[18]](#footnote-18). Criminal liability was established by the code from 2002[[19]](#footnote-19). While certain articles have been amended to stiffen penalties or to extend the range of offenses for which liability arises, the penalties for environmental damage remain inadequate and uneven. The amount of the non-taxable minimum income, which is used as the basis for calculating the amount of fines, has not been increased since 1996. Therefore, the fines are too small and do not justify the purpose of the application of liability.

Due to the fact that there are no systemic changes in the institute of environmental liability, the state incurs losses. Thus, in 2016 only 16% of the damage was compensated, in January-September 2017 - about 23% of the total amount of damage. Hundreds of millions of hryvnias remained unpaid.

At the same time every year budget funds are allocated to eliminate the damage caused to the environment. Thus, in 2016 over 5 billion 234 million UAH from the consolidated budget were allocated to the prevention and elimination of environmental pollution[[20]](#footnote-20), for January - September 2017 – more than 3 billion 36 million UAH[[21]](#footnote-21).

Thus, the state and every citizen, as a taxpayer, incurs losses not only due to the damage caused to the environment, but also due to additional expenditures used to eliminate the environmental damage. At the same time Ukraine continues to take loans from the international financial institutions, in particular the IMF. Given that the changes to the liability system are introduced, budget losses would be significantly lower, and, consequently, the rates of foreign loans attraction would also decrease.

If environmental liability is left as it is today, it will be virtually impossible to prevent environmental offenses and negative environmental impacts; compensation of the environmental damage will not take place to the full extent. Due to this fact the state and the population will continue to bear economic and resource losses, and deterioration of the environment will bring a negative impact on the welfare, life and health of the population.

## **Option 2. To introduce proposed changes established at the state level**

According to the Concept of the state supervision (control) system reform, adopted by the order of the Cabinet of Ministers of Ukraine as of 31.05.2017 № 616-р[[22]](#footnote-22), lack of the system of liability for the economic entities results in low efficiency and incapability of the State Environmental Inspection. The concept enhances the necessity of creating an effective system of bringing to responsibility for the damage caused to the environment and compensation for losses. This problem is to be solved by means of:

* introducing amendments to the legislation regarding strengthening responsibility for the administrative offenses and crimes against the environment, as well as in the process of the use of natural resources;
* introducing financial guarantee of environmental liability.

At the same time, any other detailed measures, plans of the state in this area at the official level are not disclosed and not fixed, and strengthening the level of liability and introduction of obligatory insurance of environmentally dangerous activities alone will not lead to sufficient changes in the institute of environmental liability for environmental damage harm.

## **Option 3. To introduce cosmetic changes to the current institute of environmental liability**

*Increasing sanctions for environmental offences*

*Description of change:*

Increasing sanctions means increasing fines, establishing more severe punishments or establishing additional punishment. Such enhancement of penalties should take place with consideration of the type of violation and its consequences for the environment for the punishment to be adequate and proportionate to the damage. In addition, it is necessary to abandon the non-taxable minimum income of citizens as a basis for calculating the amount of punishment, if there are objective reasons to leave it unchanged in the future.

*What is to be done:*

Development and adoption of normative legal acts on amendments to the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses.

*Potential qualitative changes:*

The degree of liability will be proportional to the damage done to the environment due to a violation. This will help to prevent new violations, to correct those who committed such violations, and to fill the state budget.

*Improving the mechanism of calculating damage*

*Description of change:*

Calculation of environmental damage in accordance with the existing methods does not allow to determine its objective full amount. This leads to the fact that the amount of damages to be taken from a guilty person is often lower and does not cover all the losses of the state from environmental damage. The change involves reviewing the methods of calculating the damage caused to determine the objective amount of environmental damage.

*What is to be done:*

Development and introduction of changes into the existing methods of calculating damages.

*Potential qualitative changes:*

This change will lead to the establishment of the real impact on the environment from illegal actions for proper qualification of actions of guilty persons and further recovery of the real amount of damages.

*Distribution of funds recovered as damages for the restoration of the environment*

*Description of change:*

Nowadays the funds collected for causing damage to the environment are allocated to a variety of activities, and not all of them are related to the protection of the environment. According to the proposed change, the funds received from penalties from the perpetrators responsible for the environmental damage, will be directed to eliminate the damage, to maximum restoration of the condition of the environment that existed before the negative impact, on the application of appropriate environmental measures. In particular, if the damage was caused as a result of illegal felling of trees, the penalties recovered will be allocated to the planting of new trees, where possible, at the place where the violation took place.

*What is to be done:*

Drafting and amending tax legislation, drafting and adopting a regulatory and legal act on the use of funds received through fines and compensations for violation of environmental legislation for the environmental damage.

*Potential qualitative changes:*

The transfer of funds collected as compensation for damage to the environment will contribute to the restoration of the environmental elements and maximum elimination of the consequences of environmental pollution. This, in its turn, will improve the environment, public welfare and public health.

## **Option 4. To introduce partial changes to the existing institute of environmental liability**

*Increasing sanctions for environmental offences*

*Improving the mechanism of calculating damages*

*Distributing funds obtained as damage compensation for environmental restoration,* as well as

*Extending the list of illegal actions in the field of environment protection*

*Description of change:*

Nowadays not all the actions in Ukraine that cause environmental damage and violate environmental norms are considered as offenses. Therefore, although a person violates environmental norms, s/he can not be brought to administrative or criminal responsibility. The proposed change envisages expanding the list of unlawful acts in the field of environmental protection, for the commission of which there should be administrative or criminal liability.

*What is to be done:*

Drafting and adoption of normative and regulatory acts on criminalization of certain types of actions (amending the Criminal Code of Ukraine) and amending the Code of Ukraine on Administrative Offences.

*Potential qualitative changes:*

Adoption of the proposed change will lead to the fact that those who violate environmental norms will bear responsibility for this. This, in its turn, will contribute to the reduction of the negative impact on the environment. Also, these changes will contribute to the fulfillment of international obligations to protect certain elements of the environment and to increasing the environmental awareness of citizens.

## **Option 5. Dramatic changes: to introduce new philosophy of liability for the violation of nature conservation legislation and damaging the environment**

*Changing the philosophy of liability*

*Description of change:*

The current philosophy of responsibility in the field of environmental protection does not prevent environmental damage, does not guarantee compliance with environmental norms and does not lead to full compensation of environmental damage. In fact, the current model of responsibility does not fulfill its functions.

Liability for violation of environmental legislation should encourage compliance with established rules of conduct, prevent violations and damage to the environment. Responsibility must be adequate and proportionate to the offense committed, it must be in line with the damage caused to the environment. In addition, funds received from offenders to compensate the damage should be allocated at eliminating the negative effects of violations, on maximizing the restoration of environmental elements that were damaged. This is the idea of the proposed change.

*What is to be done:*

Complete change of the philosophy of liability and ensuring its efficiency when all the proposed changes mentioned below are adopted.

*Potential qualitative changes:*

Liability will be efficient, will prevent the damage, environmental awareness of the public will increase, the amount of losses incurred by the state and the population will be reduced, the negative impact of illegal activities on the environment will be reduced .

*Increasing sanctions for environmental offences*

*Improving the mechanism of calculating damages*

*Distributing funds obtained as damage compensation for environmental restoration,* as well as

*Extending the list of illegal actions in the field of environment protection, as well as*

*Extending the liability of legal persons*

*Description of change:*

Сurrently legal entities do not have administrative and criminal responsibility for violation of environmental legislation. This leads to the fact that the actual offender that causes the damage does not feel adequate negative consequences for causing it. In addition, the process of recovering damages from a legal entity is getting more complicated because it is not always possible to establish its fault. This leads to the fact that legal entities violate environmental norms, causing much more damage to the environment than individuals or physical persons-entrepreneurs, and for the most part, they remain unpunished. Officials of the relevant enterprise may be liable, but this in no way affects the activity of the enterprise itself and further compliance with the environmental norms on the part of the legal person.

The change envisages establishing administrative and criminal liability for legal entities in the field of environment protection.

*What is to be done:*

Development and adoption of a legal act on amendments to the provisions of the current legislation (Criminal Code of Ukraine, Criminal Procedure Code of Ukraine, Code of Ukraine on Administrative Offenses / or adoption of a special law, etc.) regarding the establishment of criminal and administrative liability of legal entities for violations of environmental legislation

Potential qualitative changes:

Changes will lead to preventing violations of environmental legislation and environmental damage by legal entities, encouraging legal entities to comply with environmental regulations in the process of their activities that have an impact on the environment.

*Giving the powers to the controlling body on suspending and terminating the activities of persons that violate environmental legislation*

*Description of change:*

Nowadays the controlling body has no possibility to suspend activities that cause damage to the environment, or to stop it. Due to this fact the volume of the damage caused is more dramatic, and the illegal activity is longer. It also affects the expenditures from the state budget that are used to eliminate the damage caused to the environment.

The change involves giving the authority that controls compliance with environmental legislation the right to decide on a temporary termination (suspension) and on terminating the activities of legal entities and physical persons whose activities violate the requirements of the legislation and have a negative impact on the environment.

*What is to be done:*

Development and adoption of appropriate regulatory acts to give the appropriate controlling body with the aforementioned powers and to regulate the grounds and procedure for the exercise of such powers.

*Potential qualitative changes:*

As a result of the change the controlling authority will be empowered to respond promptly to unlawful activities and to stop the damage to the environment. Accordingly, the amount of damage caused to the environment will be less, which, in its turn, will reduce budget expenditures to eliminate the consequences of environmental damage.

*Changing the system of control*

*Description of change:*

An important prerequisite for the liability for environmental offenses is an effective system of monitoring compliance with environmental regulations. At the same time nowadays control is not efficient, which leads to ineffectiveness and lack of responsibility in general.

The change envisages reforming the system of control over compliance with environmental legislation in the field of control measures, fixing the violations and its circumstances, etc.

*What is to be done:*

Implementing the variant of public policy offered in the Greenbook on environmental control[[23]](#footnote-23).

*Potential qualitative changes:*

The change will contribute to the establishment of the effective system of environmental control, and consequently -- ensuring the real responsibility for violating environmental legislation.

1. <http://www.government.se/articles/2016/09/summary-of-the-governments-budget-initiatives-in-the-areas-of-environment-climate-and-energy/> <http://www.government.se/articles/2016/09/the-2017-budget-in-five-minutes/> [↑](#footnote-ref-1)
2. <http://dei.gov.ua/menyu-3/2011-12-19-07-30-27/2017/4149-rezultati-zdijsnennya-derzhavnogo-naglyadu-kontrolyu-za-9-misyatsiv-2017-roku.html> [↑](#footnote-ref-2)
3. https://ua.korrespondent.net/ukraine/297784-derzhava-zaplatit-za-fosfornu-tragediyu-100-mln-griven-kilkist-postrazhdalih-zrostae [↑](#footnote-ref-3)
4. Expenditures from the consolidated budget according to the data of the State Treasury Service of Ukraine,

   <http://www.treasury.gov.ua/main/uk/doccatalog/list?currDir=147445> [↑](#footnote-ref-4)
5. https://www.ukrinform.ua/rubric-presshall/1969707-burstinova-lihomanka.html [↑](#footnote-ref-5)
6. <http://www.treasury.gov.ua/main/uk/doccatalog/list?currDir=359194&&documentList_stind=21> [↑](#footnote-ref-6)
7. <http://www.volynpost.com/news/51268-vid-nezakonnogo-vydobuvannia-burshtynu-na-volyni-ta-inshyh-oblastiah-derzhava-nese-velyki-zbytky> [↑](#footnote-ref-7)
8. Article 252.20 of the Tax Code of Ukraine [↑](#footnote-ref-8)
9. https://www.ukrinform.ua/rubric-presshall/1969707-burstinova-lihomanka.html [↑](#footnote-ref-9)
10. http://www.reyestr.court.gov.ua/Review/68228098 [↑](#footnote-ref-10)
11. http://reyestr.court.gov.ua/Review/54824838 [↑](#footnote-ref-11)
12. UNEP-INTERPOL REPORT: VALUE OF ENVIRONMENTAL CRIME UP 26%

    http://web.unep.org/northamerica/news/2016/unep-interpol-report-value-environmental-crime-26 [↑](#footnote-ref-12)
13. Such severe punishment was one of the factors for growing of panda population and the International Union for Conservation of Nature shifting pandas in September 2016 from the category of endangered species to that of vulnerable ones. [↑](#footnote-ref-13)
14. Article 87 КпАП of Ukraine, <http://zakon3.rada.gov.ua/laws/show/80731-10> [↑](#footnote-ref-14)
15. Article 2 of the Law of Ukraine «On Liability for Offences in the Field of Urban Development» [↑](#footnote-ref-15)
16. http://www.abc.net.au/news/2014-11-08/the-epa-ceases-operations-at-a-tomago-waste-site/5875778 [↑](#footnote-ref-16)
17. The Order of the Ministry for the Environment and Nuclear Safety of Ukraine «On Adoption of the Methodology of Calculating Damaged Caused by Land Resources Pollution and Contamination due Environmental Legislation Violation» № 171 as of 27.10.97, <http://zakon3.rada.gov.ua/laws/show/z0285-98> [↑](#footnote-ref-17)
18. <http://zakon3.rada.gov.ua/laws/show/80731-10/page> [↑](#footnote-ref-18)
19. <http://zakon5.rada.gov.ua/laws/show/2341-14> [↑](#footnote-ref-19)
20. <http://www.treasury.gov.ua/main/uk/doccatalog/list?currDir=359194&&documentList_stind=21> [↑](#footnote-ref-20)
21. <http://www.treasury.gov.ua/main/uk/doccatalog/list?currDir=382903> [↑](#footnote-ref-21)
22. [http://zakon2.rada.gov.ua/laws/show/616-2017-%D1%80](http://zakon2.rada.gov.ua/laws/show/616-2017-%25D1%2580) [↑](#footnote-ref-22)
23. http://epl.org.ua/ekoanalityka/ [↑](#footnote-ref-23)