



***Stipulation of the necessity to amend the draft law
“On Waste Management”***

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1. Background

In 2017, about 10 million tons of domestic waste were created in Ukraine and then buried on landfills totally covering the area of more than 8.5 thousand hectares. According to the data of the Ministry of Regional Development, as of 2017 the total number of landfills is 5434 units. Of these, 5.7% are landfills that are overloaded with waste, and 25% of landfills do not meet environmental safety standards. In addition, in Ukraine annually about 30 thousand unauthorized landfills are detected.¹ People burn garbage, throw it into rivers, bury it in the soil. As a result, land, water and air are polluted, affecting life and health of the population, and leading to an increase in the volume of expenditures from the state and local budgets for elimination of consequences.

The reason for such environmental pollution is the fact that Ukraine does not have proper waste management, including the legislative and material-technical base.

In order to solve problems in the area of waste management, the Ministry of Environment and Natural Resources of Ukraine has developed a draft law "On Waste Management" (https://menr.gov.ua/news/32869.html?fbclid=IwAR08ITQSlpGFgJi1o_FWS2xY8RhU2XmtAtspRDjScjNUEPAFM4KUBh31Rtk).

2. Shortcomings of the draft law

Despite the fact that this draft law was also designed to implement the EU-Ukraine Association Agreement and EU Directives, it does not contain all the key provisions of these acts. In addition, certain articles and terms of the draft law do not comply with the EU Directives. Having analyzed the draft law, EPL has developed the following comments and suggestions:

2.1. Terminology in the draft law is not consistent with the terms and definitions of the relevant Directives, is unclear and needs amendments.

The term "waste owner" is not entirely correct and do not correspond with the definition of the term "waste holder" from the Directive on waste. Namely the draft law suggests to introduce the term waste owner – the person who owns, uses and disposes of the waste. In accordance with the Constitution of Ukraine and other legislation (namely civil law), property rights are protected by courts and nobody can be deprived of property rights unless a relevant court decision is adopted. Concerning waste – owners of waste are obliged to dispose of their waste (definition of the term "waste"). Another question arises whether the waste producers are the owners of waste (draft law determines the rights and obligations of the waste owners), as the ownership title includes three elements – ownership, use, disposition of. If somebody wants to dispose of the waste, it means that they are the thing which is not used.

The terms "temporary storage of waste" and "waste storage" do not comply with the European directives, and inconsistent.

With regard to the term "storage of waste", it should be brought into compliance with the requirements of the Directive on the landfill of waste, which defines the landfill, and specifies that a permanent site used for temporary storage of waste meant for disposal

¹ <http://www.minregion.gov.ua/napryamki-diyalnosti/zhkh/terretory/stan-sferi-povodzhennya-z-pobutovimi-vidhodami-v-ukrayini-za-2017-rik>

during more than 1 year should be considered a landfill. Also, a place where waste meant for recovery is stored for more than 3 years is also considered a landfill.

The definition of “landfill” should be brought into compliance with the Directive on the landfill of waste.

The term “waste management objects” does not include vehicles, which are also objects of waste management. Also, according to the term, a “waste management object” is the object that carries out three operations - the collection, transportation and treatment of waste. Thus it is unclear if waste management object which performs two out of three operations - is it still an object of waste management?

The terms “preparing for re-use” and “re-use” should be clarified as they relate to different objects – re-use relates to products, preparing for re-use relates to waste. From the text of draft law it is unclear in many places to what the term re-use refers – to product or waste. Thus the text of the draft should be improved.

The term “acceptance” should be clarified and narrowed. The proposed definition allows for the acceptance of batteries, tires, bulky electronic and electric waste in private households. We think that the term “acceptance” should contain reference to the relevant legislation or articles of law introducing the systems of extended producer responsibility for special waste –electric and electronic equipment waste, used batteries, packaging, tyres etc.

2.2. The licensing system needs to be improved

The draft law leaves the old, not very efficient system, enforces it and focuses permitting powers on central level, which can lead to a manual operation and increase of corruption risks. Also, the timeframe for permits duration (3 years) is too short and will not encourage investments into waste sector. Also, under the existing licensing system, it is questionable whether licenses and permits for waste management operations should be preserved as many entities will face the doubled administrative burden. We believe that existence of licensing in this area is not justified. Namely, the EU Waste Directive speaks of the possibility of introducing a permit system for the processing of waste (disposal or liquidation, including preliminary preparations) (Article 23), while the draft law substantially broadens the range of subjects and types of activities subject to licensing - waste management operations (collection, transportation, treatment (recovery or disposal).

Draft law stipulates the landfilling permits that should be issued after the entry into effect of the law. The permit is conditioned to the presence of financial guarantee that meets the requirements of Directive on the landfill of waste. But the draft is silent what is such guarantee, how such guarantee could be obtained. This could lead to legal uncertainties and, as a result, to practical problems. There are 5,5 thousands of disposal sites in Ukraine and they could be refused the landfilling permit on the basis of absence of financial guarantee. As a result no legal waste management facilities will operate in Ukraine and adequate waste management will be problematic.

Therefore, clarifications are needed regarding the timeframe for which the permit is issued, regarding issuing authority, regarding waste management operations subject to permitting procedure, and regarding the need for licensing hazardous waste management operations.

2.3. The provisions of Article 35 regarding **the National Waste Management Plan** do not meet the European requirements.

Article 28 of the Waste Directive contains clear requirements for waste management plans that are not reflected in the draft law. Therefore, article 35 should be amended to describe all the necessary details of the National Waste Management Plan.

2.4. The provisions on **transboundary movement of waste** do not comply with the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989).

Moreover, the draft law does not give details regarding the requirements for export, import and transit of hazardous waste, as well as other provisions for transboundary movement, for example the reasons for refusal to issue a license are not detailed.

2.5. There are no provisions on **termination of status of waste**.

Such gap will negatively affect the market of secondary raw materials (in particular, scrap metal) and will undermine the implementation of the waste hierarchy enshrined in the Waste Directive and this draft law. European Union developed criteria for termination of status of waste for metal, steel, copper, iron waste which should be implemented into ukrainian legislation.

2.6. Draft law fails to regulate the **management of municipal waste**

Draft law defines the possibility of adoption of separate law on municipal waste. But the Ministry of environment have not presented such law so far. Lack of regulation of municipal waste management will result in total chaos in this field. Its worth noting that Directive on waste contains provisions on municipal waste, on recycling of such waste, and such provisions are not transposed into framework draft law, nor they are transposed into National Waste Management Plan developed by the Ministry of Environment.

3. EPL's proposals to improve the draft law

The draft law should comply with the main EU directives in this area, both in terms of terminology and in relation to the basic principles of management and waste operations, and in relation to European approaches to managing of waste. The following directives need to be approximated: the Directive 2008/98 / EC on waste and Directive No.1999 / 31 / EC on the landfill of waste disposal as amended by Regulation (EC) No 1882/2003. According to the schedule of implementation of these directives, the first directive should be implemented within 3 years from the date of signing the EU-Ukraine Association Agreement, provisions of the last directive start being applied on the date of entry into force of the Association Agreement. Besides, the draft law have to be improved taking into account the following proposals.

3.1. Proposals on terminology

It is advisable to introduce the term "waste holder" denoting a producer of waste or a physical or a legal entity that owns waste.

It is also advisable to introduce the term "waste producer" - anyone whose activity leads to the generation of waste (the original producer of waste) or anyone who carries out pre-treatment, mixing or other operations that result in the change of the nature or composition of such waste.

We propose to replace the term "temporary storage of waste" (*тимчасове зберігання відходів*) with "waste storage" (*складування відходів*).

Also, we propose to change the definition of the term "landfill" to denote a place of waste liquidation (disposal) for landfilling waste in soil or on the surface including a place for internal burial of waste or a permanent place used for the permanent storage of waste, but does not include plants or territories where waste is unloaded for preparation for further transportation to recovery, treatment or disposal anywhere, and storage of waste until its recovery or treatment for a period of less than 3 years, or storage of waste until its removal for less than one year.

3.2. Proposals for the licensing system

The EU-Ukraine Association Agreement stipulates (Annex xxx) that the establishment of a permit system for institutions/enterprises performing waste disposal or utilization operations with specific obligations on the management of hazardous waste (Chapter IV of the Directive 2008/98 / EC) should be implemented within 5 years from the date of entry into force of this Agreement. That is, the Agreement and the Waste Framework Directive dwell on the permit system, which should contain specific conditions for the management of hazardous waste.

We propose to preserve the system of permits for waste management entities, with special requirements for activities in the area of hazardous waste management. Therefore, we consider it inappropriate to introduce a licensing system for the management of hazardous waste, since regulation of such activities can be ensured within the framework of obtaining permits. Let us stress that waste management permits should meet the European standards – the permit should define type and quantity of waste allowed for management, management operations codes are defined, the requirements for waste management facility have to be listed. General requirements for the facilities and operations of waste

management should be regulated in normative acts adopted before the entry into force of framework law.

To avoid bureaucracy and improve the quality of permit granting activities, we propose to authorize departments of environment and natural resources of oblast state administrations to control permit issuing direction. We also propose to increase the period of validity of the permit - from 3 years - to 10 years. We propose to introduce a register of permits, which should be publicly accessible through the electronic database of waste management (Article 30 of the Draft Law).

The EU-Ukraine Association Agreement (Annex XXX) provides the introduction of a register of institutions and enterprises that collect and transport waste (Chapter IV of Directive 2008/98 / EC). Taking into account the deregulation reform being undertaken in Ukraine, involving, inter alia, european projects, and in order to bring the provisions of the draft law in compliance with the requirements of the Waste Directive, it is necessary to exclude the obligation to get permits for those entities that only collect and/or transport non-hazardous waste.

For such entities, it is necessary to provide for registration in the relevant register, which meets the requirements of the Directive (Article 26).

3.3. Proposals to Article 35 of the National Waste Management Plan

According to Article 28 of the Framework Waste Directive, waste management plans should contain, at least the following information:

- (a the type, quantity and source of waste generated within the territory, the waste likely to) be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;
- (b existing waste collection schemes and major disposal and recovery installations,) including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community legislation;
- (c an assessment of the need for new collection schemes, the closure of existing waste) installations, additional waste installation infrastructure in accordance with Article 16, and, if necessary, the investments related thereto;
- (d sufficient information on the location criteria for site identification and on the capacity of) future disposal or major recovery installations, if necessary;
- (e general waste management policies, including planned waste management) technologies and methods, or policies for waste posing specific management problems.

The waste management plan may contain, taking into account the geographical level and coverage of the planning area, the following:

- (a organisational aspects related to waste management including a description of the) allocation of responsibilities between public and private actors carrying out the waste management;
- (b an evaluation of the usefulness and suitability of the use of economic and other) instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;

- (c) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;
- (d) historical contaminated waste disposal sites and measures for their rehabilitation.

Therefore, it is necessary to fully transpose provisions of the Directive regarding waste management plans and these provisions should be followed in the process of waste management plans development.

3.4. Proposals regarding transboundary movement of hazardous waste

We propose to take as a basis for this article the provisions of the Resolution of the Cabinet of Ministers of Ukraine of 13.07.2000. No. 1120 "On Approval of the Regulation on the Control of Transboundary Movements of Hazardous Waste and its Utilization / Disposal and the Yellow and Green Listings of Waste", where the process of granting import, export and transit permits for hazardous waste is detailed in accordance with the provisions of the Basel Convention.

Also, the draft law takes away the functions of the competent executive body, which ensures the implementation of the provisions of the Basel Convention, from the Ministry of Environment and gives it to the central executive body, which implements the state policy in the area of waste management. Such body is not created yet and it will generate troubles with transboundary permitting. In addition, the Ministry of Environment was empowered to be the competent authority under Basel Convention by the Cabinet of Ministers of Ukraine in 2000 (decision N574, 29.03.2000)

3.5. Proposals on the regulation of **termination of status of waste and by-products.**

The previous versions of the framework law "On Waste" contained the article on termination of the status of waste.

We propose to add the article "Termination of the status of waste" with the following wording:

1. The termination of the waste status may be declared if the waste has undergone the recovery operation specified in Annex II to this Law and meet the criteria for declaring termination of the status of waste.

2. Criteria for announcing the termination of waste status:

1) There is demand for waste that is used in technological processes;

2) the waste corresponds to the technical specifications, customer specifications, standards and product requirements, as specified by law;

3) the use of waste will not lead to overall negative impact on the environment or human health;

4) the waste does not have dangerous properties.

3. In order to demonstrate compliance with the criteria for termination of waste status, the producer or holder of waste should implement ISO 9000 quality management system and ISO 14000 environmental management system.

4. The central executive authority, which implements the state policy in the area of waste management, controls compliance with the procedure of announcing the termination of the waste status.

5. Waste generator or a waste holder who declares the termination of the waste status is obliged to:

1) to get registered with the Register of waste generators and holders who have declared the termination of the status of waste;

2) to provide information on the amount of waste for each batch for which the termination of a waste status has been declared for the Waste Management Information System.

3) to issue conformity certificates for each batch of waste.

6. The procedure of announcing the termination of waste status shall be approved by the Cabinet of Ministers of Ukraine.

3. 6. Proposals on the regulation of **municipal waste management**

Regulation of municipal waste management should be included in the present draft law or already developed draft law, which should be voted and adopted simultaneously with this framework law.

4. Conclusions: why this draft law will not improve the legal regime of waste management

This draft law frivolously implements the provisions of Waste Directive, nor introduces key terms in compliance with relevant EU directives, nor introduces the european permitting system in waste management, nor implements the majority of provisions of the Waste Directive. This will create difficulties in implementation of waste heirarcy, polluter pays principle and extended producer responsibility prnciple. The draft fails to regulate the obligations of waste producers and aste holders, and termination of waste status, does not introduce openness and accountability in the area of waste management, etc.

Therefore, we think that the draft law "On Waste Management", developed by the Ministry of Environment and Natural Resources of Ukraine should be substantially amended with regard to above comments and normative law-drafting requirements.