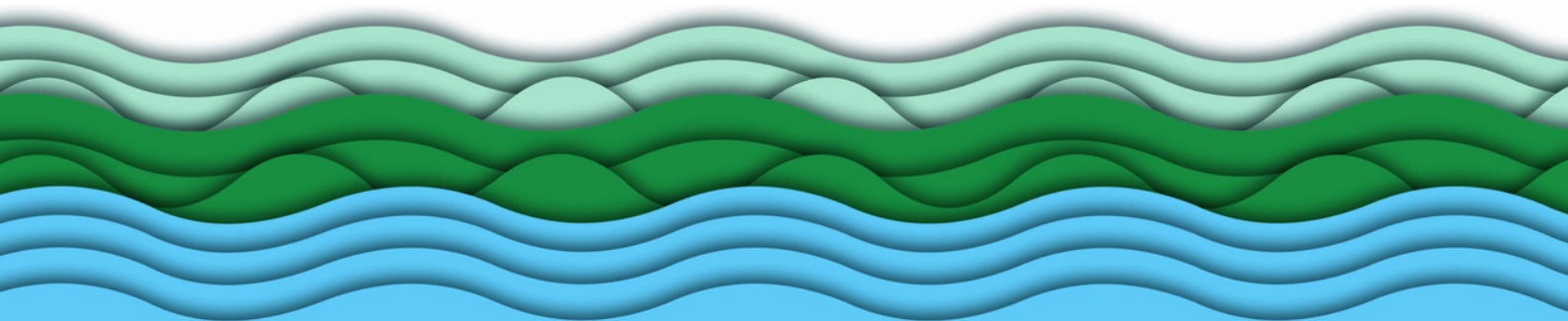
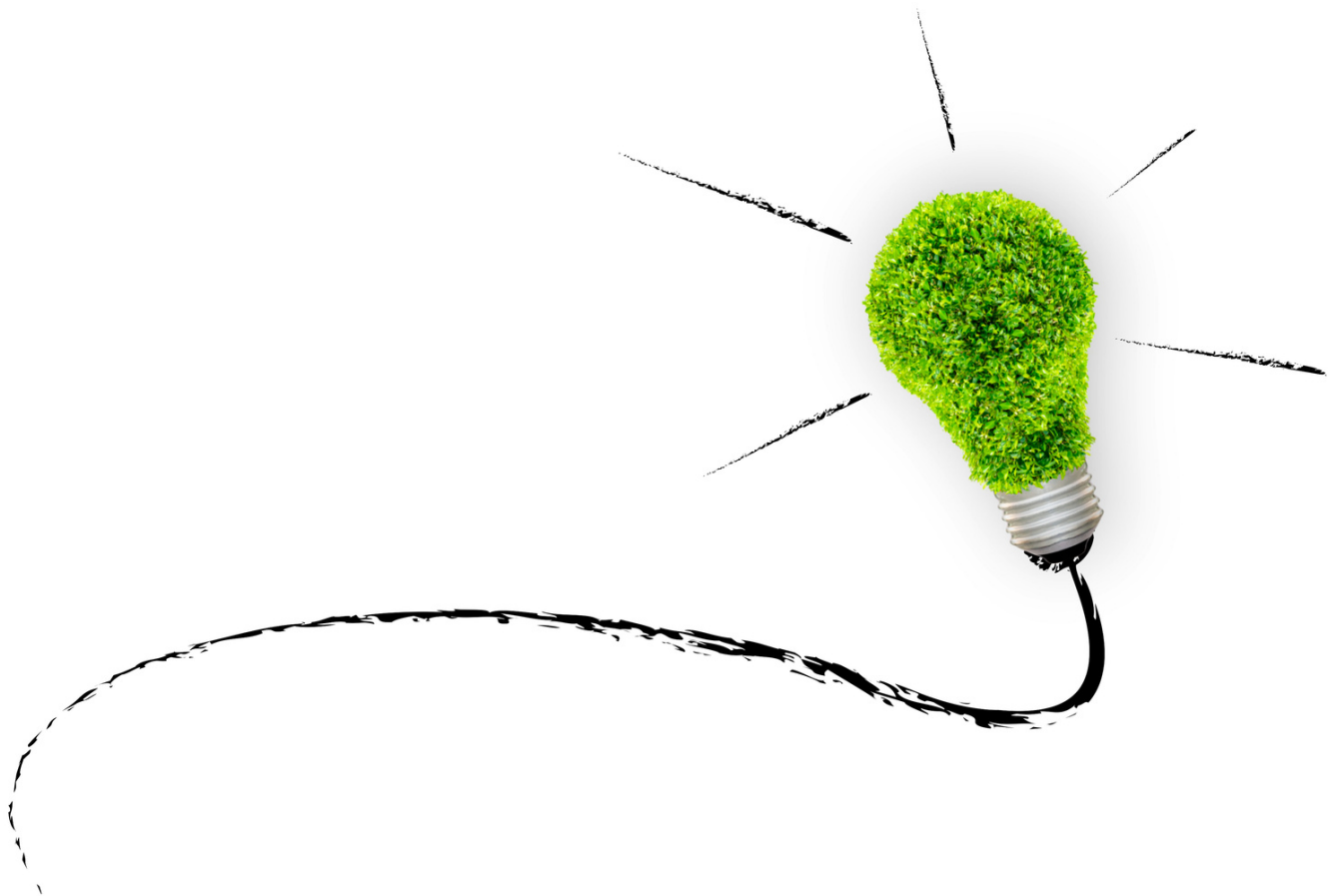




**ENVIRONMENT
PEOPLE LAW**

The rule of law for the protection of the environment

Policy Brief On ENVIRONMENTAL REFORMS



Policy Brief On Environmental Reforms

The sphere of environmental protection needs both horizontal (change of the old corrupt and inefficient system of ecological control to transparent, effective and operative; reform of legal liability for environmental violations in terms of the extension of administrative and economic sanctions and measures of a criminal nature to legal entities, revision of the composition of violations and penalties; creation of a high-quality monitoring system to obtain initial data and display a complete picture of the state of the environment; raising environmental awareness of the population; introduction of an integrated permit), and sectoral reforms (solving problems in the areas of waste management, water and air quality, industrial pollution, conservation of natural ecosystems, climate change, etc.)¹. This brief presents an analysis of the policy of the Government and Parliament on the implementation of these reforms during September 2019 - July 2020.

1. Evaluation of reform policies of the Parliament and Government during the period of September 2019 – July 2020 and its compliance with the Toronto Principles

The change of government led to the formation of a new policy of reforms in the field of environmental protection, which began with the unification of the Ministry of Environment and the Ministry of Energy into a single ministry - the Ministry of Energy and Environmental Protection of Ukraine (hereinafter - the MEEP), instead of with the creation of the agenda. Oleksiy Honcharuk's government presented that unification as a way to ensure sustainable development².

After the ministerial reorganization, on 29 September 2019, the Government approved the Program of Activities of the Cabinet of Ministers of Ukraine³ (hereafter – the Programme), where it listed the objectives of the MEEP, which included: conservation of natural ecosystems; efficient and economical use of natural resources; addressing issues of waste accumulation, climate change and energy efficiency. Though the new governmental goals are in line with the following Toronto Principles⁴ and include environmental damage prevention, eco-control reform, legal responsibility and environmental monitoring, natural resource management, and waste management; yet still, certain actions of the Government of Honcharuk and the Verkhovna Rada of Ukraine (hereinafter - the Parliament) contradicted them.

The Honcharuk government did not end the policy cycle due to its resignation on March 4, 2020. On May 27, 2020, the new Government of Denys Shmygal formed an independent Ministry of Environmental Protection and Natural Resources of Ukraine (hereinafter - the Ministry of Environment) and on June 12 approved the agenda of the new policy of eco-reforms, which corresponds to the Toronto Principles. As of July 2020, the implementation of measures for the full launch of the new Ministry of Environment is still underway, which slows down the implementation of the tasks of the new reform policy, consideration of appeals, issuance of permits, etc.

Evaluation of the implementation of horizontal reforms

In the area of environmental control reform, the Honcharuk's government has chosen to maintain the inspection, whose main task is to exercise control, instead of creating a service that is designed to provide administrative services, which positively influences the environmental protection⁵. Thus, the Cabinet of Ministers of Ukraine (hereinafter - CMU) revoked the decision of

the previous government to liquidate the State Ecological Inspectorate (hereafter – SEI) and the creation of the State Environmental Protection Service of Ukraine. It also liquidated the State Azov Marine Environmental Inspectorate and the SEI of the Crimean Black Sea District, created in 2018. In order to eliminate inefficiency, corruption and other shortcomings of the procedure of environmental control of the MEEP, SEI, the Parliamentary Committee on Environmental Policy and Environmental Management cooperated with experts and drafted the bill No.3091 on the state ecological control. This bill introduces administrative and economic sanctions for legal entities for committing environmental offenses. Such changes in the area of control and accountability correspond to the Toronto Principles.

Under the Shmyhal's government, an alternative bill on environmental control № 3091-1 was registered, which did not meet the challenges of environmental control and legal liability. Also, Yegor Firsov, the acting head of the SEI, who started the fight against major environmental pollutants and corruption schemes in the SEI, was fired. Such a personnel decision negatively affected the process of reforming the SEI.

According to the Shmyhal Government's report, the MEEP did not fulfil the task of introducing the system of integrated permits for pollutant emissions in the period of September 2019 – January 2020⁶. As of July 2020, the Ministry of Environment has published a bill introducing an integrated permit to collect comments and suggestions from stakeholders. During the analyzed period, practically no measures were taken to increase the environmental awareness of the population and reform the environmental monitoring system.

Evaluation of the implementation of sectoral reforms

During September 2019 – July 2020, the Parliament adopted laws regulating the functioning of the system of monitoring, reporting and verification of greenhouse gas emissions; business activities with ozone-depleting substances and fluorinated greenhouse gases; unimpeded access of citizens to the coasts; prohibition of continuous felling in objects of the nature reserve fund; improvement of legislation on extraction of amber and other minerals (law on amber), inventory control of state forest fund.

Aforementioned laws resolve sectoral environmental issues. At the same time, a law banning continuous felling in the nature reserve fund removes the moratorium on continuous felling in certain categories of forests, and allows for the gradual felling and reforestation, which negatively affects the preservation of forests and contradicts the goals approved by the Government of Honcharuk. The Amber Act postpones the environmental impact assessment (hereafter - EIA) to the post-production sharing agreement (hereafter - PSA) stage, which constitutes the decision on the implementation of the planned activities. Such a change negates the purpose of the EIA, which must be carried out before issuing a permit document, and the decision itself should be based on the conclusions of the EIA. In addition, on January 30, 2020, a government bill was registered, which abolishes the requirement to conduct EIA when granting (extending, re-registering, amending) a special use permit of the resources. Shmygal's government has made it a priority to simplify access to the resources. Such actions demonstrate the state policy directed to finding the fastest way to sign the PSA and extract the mineral resources at the price of neglecting the environment, which is contrary to international obligations and the Toronto Principles, in particular, makes it impossible to prevent harm to the environment, which also does not meet the approved objectives of the Government in the field of environment.

On 21 July 2020, the Parliament adopted in the first reading the long-awaited bill on waste management, which was an important shift in this field. Also, the bill on the protection of animals

was adopted in the first reading, which prohibits killing as a way to regulate the number of animals, introduces restrictions on the use of wild animals, etc. The draft law on the preservation of the Emerald Network remains under consideration by the Parliamentary Committee on Environmental Policy and Nature Management.

The policy in the sphere of environmental reforms was unstable: in September 2019 - July 2020, its agenda and goals changed twice. Although the approved goals of the new policy were in line with the Toronto Principles, the CMU and the Parliament set the course to mineral resources as quickly as possible at the cost of levelling the EIA and causing damage to the environment that contradicted those goals. Unstable political situation, liquidation of the Ministry of Environment, creation of the MEEP, return of the independent Ministry of Environment, the distribution of leverage, the organizational and working processes of new teams hampered the implementation of reforms and adhering to the international environmental commitments. The authorities managed to make decisions on specific sectoral problems in the field of environment, while the issues of priority implementation of horizontal reforms, which were a prerequisite for solving sectoral problems and establishing a quality environmental management system, remained open.

2. Current challenges / issues in the environmental protection area

Pollution of air, soils, water resources; irrational use of natural resources; neglect and violations of environmental standards remain urgent problems in the field of environmental protection for Ukraine. Thus, out of 35 372 inspections carried out by the SEI during January-September 2019, violations were detected in 34 443 cases, and the damage caused to the environment amounted to more than UAH 1 695 000. Transposition of European Union directives, raising environmental awareness, setting up a monitoring system for the environment, reforming state environmental control and responsibility, implementation of an integrated permit, and solving a number of sectoral problems still remain as the relevant challenges.

In the context of the COVID-19 pandemic and changes in the composition of the Government and the ministry, maintaining environmental priorities and continuing their implementation by the authorities substitutes the main challenge.

3. Recommendations for priority actions in 2020-2021, in particular, for the agenda of Parliament's second session

Considering the changes in the composition of the Government and the existing economic problems and challenges created by the pandemic, it is necessary to strike a balance between economic, social and environmental decisions to ensure sustainable development of the state. The actions of the authorities must correspond to the approved goals and priorities of the eco-reform policy. The environment should not be relegated to the background, and the goals of environmental protection should remain a priority, despite the change in the composition and political leadership of the central authorities.

The priority for the Government and Parliament in the field of environmental protection for 2020-2021 to address the environmental issues and implement the Toronto Principles, should be the introduction of horizontal reforms, which are the basis for preventing environmental damage, while also providing the solutions to the most acute sectoral environmental problems and approximating the European Union legislation, namely:

Recommendations for horizontal reforms:

- accelerating the launch of full-fledged work of the Ministry of Environment;

- development and approval of a nationwide program to raise ecological consciousness of the population;
- adoption of the law on the procedure of environmental control and secondary laws on its implementation;
- development and adoption of the law on environmental monitoring;
- introduction of an integrated permit;
- extension of responsibility for environmental offenses to legal entities and ensuring the proportionality of the punishment for the violation;
- adoption of the Law "On Amendments to Certain Legislative Acts of Ukraine on Access to Environmental Information and Public Participation in Decision-Making on Environmental Issues".

Recommendations for sectoral reforms:

- adoption of a package of laws in the field of waste management ("On waste management", "On batteries, batteries and accumulators", "On waste electrical and electronic equipment", "On packaging and packaging waste", etc.);
- preservation of the requirement to conduct EIA before concluding production sharing agreements and before issuing (continuing, re-issuing, amending) a special permit on the use of resources;
- adoption of laws on identification and registration of animals, protection of wild and domestic animals from cruel treatment, prohibition of exploitation of wild animals in circuses and other entertainment events;
- development and approval of the strategy on the forestry development, which will ensure support and preservation of environmental, social and economic values of forests of Ukraine in the short and long terms;
- adoption of the secondary laws for the introduction of accounting and inventory of forests and plantations of all forms of ownership, taking into account the ecosystem services of forests while making any management decisions;
- adoption of the law on the territories of the Emerald Network to follow the obligations for the implementation of environmental protection of the Habitat and Poultry Directives.

¹ The list of reforms is formed on the basis of existing social problems in the field of environment and opinion polls conducted in 2017-2019 on the existing public demand of the population.

² Statements of the Prime Minister on the establishment of MEEP: <https://bit.ly/2Jp8myk>

³ The program was approved by Resolution No. 88-IX of the Verkhovna Rada of Ukraine on October 4, 2019. Access mode: <https://bit.ly/39pSxIM>

⁴ 2019 Toronto Environmental Principles: preventing environmental damage, reforming environmental control, environmental monitoring, legal liability for environmental offenses, natural resources management, waste management. Access mode: <https://bit.ly/2upFx12>

⁵ Article 17 of the Law of Ukraine "On Central Executive Bodies": <https://bit.ly/3dKqtwl>

⁶ <https://bit.ly/31Hi9rl>. Note: The progress report will be made public on February 14, 2020.