

Topical Issues of Harmonization of Ukrainian Waste Treatment Laws With eu Legislation

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Abstract

At the current stage of Ukraine's economic development, legal regulation of waste management is one of the most important tasks facing the society and the state. At the government level it is recognized that the effect of the sphere's drawbacks is a negative impact of the wastes on people's health and the environment, insufficient economic incentives intended to stimulate the collection and treatment of an appalling amount of waste, lack of an effective administrative system in the sphere, and last but not the least, gaps and shortcomings existing in the waste laws of Ukraine.

The EU legislation takes a complex approach to solve the problem of accumulating waste, its import and export, inspection and control of waste movement within the European Union territory. The problem is addressed through the relevant strategies, market directives, regulations for waste transportation procedures, rules of the European Parliament and the EU on waste transportation, and other regulatory acts.

The waste laws of Ukraine should be radically reformed and adapted to the standards specified in the above-mentioned EU regulatory framework. Setting priorities and determining the reform and adaptation vectors would facilitate implementation of projects in the sphere, formation of incentives, financial resources and institutional potential for harmonization of the national environmental regulatory acts with the EU legislation in the short- and long-term prospects. The aim of the alignment should not be a direct transfer of the EU standards into the national waste laws, but rather their step-by-step adaptation to the key normative and legal requirements of the European Union with a parallel strengthening of the institutional basis, necessary to implement the appropriate reforms of waste management regulation.

Keywords: waste; waste treatment laws; the European Union legislation; harmonization of legislation.

1. Introduction.

A significant factor of the growing environmental crisis is a multifaceted problem of waste. The near space contains about 3,000 of wasted satellites [1-3] and over 5,000 t of used materials, which have produced millions of fragments orbiting the planet [4-6]. Millions of tons of such toxic wastes as sulfur dioxide and nitric oxides are discharged into the atmosphere. The soils, especially those in the urban and industrial localities, are polluted with wastes that contain pesticides, heavy metals, radioactive substances, and other toxic components [7-8]. Fresh and sea water is contaminated with waste from wrecked ships [9-10] and scores of cubic kilometers of poorly treated sewage.

The scale of the challenge has increased due to a tripled growth of the global population in the 20th century coupled with a rapid industrialization. In addition, the aggregate raw material production has grown, its output exceeding that of all the human history, and 4/5 of this growth has taken place since the middle of the previous century. A fast-growing impact of the man on the terrestrial life, including discharge of waste, has resulted in the situation when the environment is no longer a stable fundamental development factor. The balance between material-and-energy and information exchange is disrupted, in particular due to forming an increasingly complicated artificial environment and unlimited acquired needs. According to the US National Commission on Materials Policy, over the period of 1940–1970 the total volume of raw material lost by the country's economy through turning it into waste exceeded 20 billion tons. The speed of waste generation is incommensurable with the industrial backward recovery of extracted useful materials [11, p. 95]. But this phenomenon is not natural. For instance, ants cause no problems for the environment, although the mass of their population is four times bigger than the human population of the planet, and they consume as many calories as 30 bln people. However, unlike human beings these insects do not pollute the environment, but on the contrary – enrich it with vital matter [12]. A non-waste closed cycle – biological and technical – could be organized, if desired, by the population of the planet. Meanwhile a bulk of consumed resources is spent to maintain a huge cost-consuming technogenic system outright adverse to the natural environment [13, p. 251]. As a result – several decades of the industrial model development have raised an issue of human survival.

2. Historical Background.

By the 1970-s, awareness came that at the turn of the millennium the problems determining the global ecological situation, such as

environmental accumulation of toxic chemicals and radioactive waste, are of a complex nature. For example, for every resident of Dnipropetrovsk there is over 2,000 tons of hazardous waste [14-15]. Detection of such chemicals as DDT even in the animal organisms of Antarctic has shown that there are no pollution-free areas on the planet. Non-degradable toxic wastes are capable of penetrating the water-bearing strata of the Earth, accumulating in human bodies in lethal concentration. Radioactive wastes, particularly those having a long half-life period, are of special hazard [See: 16-18]. Their insecure burial poses a continuous threat of large-scale catastrophes [19-23].

Nature protection is complicated by the inertness of ideological mindset, strong international competition, and government funds deficit. A constantly growing waste generation has become a negative by-effect of economic development and expanding consumption. That is why even the EU has not fully coped with the trends detrimental for the environment. Thus, in 1985 every European resident produced annually 300 kg of domestic waste; in 1995-1997 – 400 kg; and in 1998-2000 – as much as 500 kg. However, increasingly more waste was treated (on the average 25 % in 1998-2000) or recycled. The EU laws require that at least 45% of used packaging material go to recycling. In practice, 50 % of glass breakage, 60% of paper litter, and about 50% of metal are recycled. Relatively big quantities of plastics are a challenge, too: the relevant figure slightly exceeds 20 % [24].

3. Current State of EU Legislation and Ukrainian Waste Laws.

The EU political approaches to the field are basically stated in the Community's Waste Management Strategy [25] and recognized legislatively by the EU Waste Framework Directive 75/442/EEC, which is supplemented by the Council Directive 91/689/EEC on hazardous waste [26], Regulation on shipments of waste, Regulation No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste [27]. The latter Regulation replaced the Council Regulation No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Union. This rational stand of the EU makes Europe a global environmental movement hub. The European environmental policy is mostly preventive aiming not only to solve actual problems, but in the first place to prevent the appearance of new ones. Environmental priorities underlie practically all the components and lines of the EU's activity, being embodied in regional, scientific and technical, agricultural, transport, and trade policies. Since the 1990-s, the Community's programs have been directed to address complex issues of the man-nature interaction. Application of their guidelines by advanced industrial countries in the twenty-first century can mark the beginning of solving global environmental problems.

The ecological situation in Ukraine is characterized by pollution of vast territories with toxic, domestic and other kinds of waste due to the technogenic clutter and unreasonable structure of production and natural resource management. By the time of Ukraine's getting its sovereignty, the overall land area of the republic accounted for less than 3 % of the former Soviet Union territory. However, it accommodated one quarter of all the production potential, which means that Ukraine was responsible for about 25 % of the natural environment pollution. This disproportion resulted in the country's

technogenic impact on the nature exceeding that of advanced countries by 4-5 times. In 1991 Ukraine accumulated 17 bln tons of waste in the territory of 53,000 ha (mostly in Donetsk and Dnipropetrovsk regions). The waste recirculation rate was very low; waste management problems were hardly addressed.

But for all that, the CIS countries (with few exceptions [28-29]) virtually lack specialized research on waste legislation. Individual subject-related opinions do not provide a holistic picture of this legislative aspect which necessitates exploration and development of the said state legal activity.

4. Adaptation Way

Ukraine's aspiration to harmonize its environmental legislation with the norms of the European Union is stipulated by the country's 'European choice'. The European Union is a strategic guide, and the recent candidates for membership from Central and Eastern Europe have set a practical example of that kind of approximation. A common frontier between Ukraine and the EU provides an additional impetus for the country to act in line with the updated agreements on partnership and cooperation. Setting priorities and working on reform vectors will facilitate implementation of projects in the field, formation of incentives, financial resources and institutional potential for harmonization of the national regulatory framework with the normative legal requirements of the EU in the short- and middle-term prospects. Notably, the alignment should be aimed not at a direct transfer of the EU directives to the national legislation of our state, as it takes place in the EU membership candidates, but rather at a gradual adaptation to the key regulatory requirements of the EU with a parallel strengthening of the institutional basis necessary for the reform implementation. It is this approach that can ensure a maximum efficiency of efforts directed to achieve the strategic priorities.

Alignment is integration of fundamental principles of one regulatory environment into another legislative framework without a full conformity, which is required for approximation. The alignment is supposed to promote the following processes:

- research of the EU regulatory acts in order to identify their main principles and specific features;
- analysis of certain parts of the national regulatory framework and institutional structure aimed to find out whether they contain the relevant principles and specificity of the EU laws;
- modification of the national legislation or elaboration of acts to introduce the basic principles of the EU legislation;
- adaptation of the institutional structure to allow for application of the modified national laws in practice.

The EU legal system is guided by the principles of motivating standards observance. Performing its regulatory functions, it applies the permitting regulatory approach (while in Ukraine that approach is still based on command and administrative enforcement actions). Therefore, the legal systems alignment will call for identification of instruments or legislative provisions, facilitating the society's and institutional structures' change-over to more up-to-date approaches, oriented to ensure law observance through economic incentives.

When determining potential positive effects of the legal systems alignment, it should be noted that the major inducements are an expected positive environmental result and investment volume growth, as it occurred in the Central and Eastern European countries. Advantages of sustainable development concept introduction far outweigh its costs. Even with approximate calculation, the profit from the EU environmental standard introduction is 50% higher than its estimated costs [30, p. 10-11]. It is planned to reduce production and maintenance costs due to availability of pure water and cutting primary water-treatment costs, reduction of raw material consumption due to its effective use and expansion of material recovery and processing. A positive result is also expected in the social sphere with the public participation in a decision-making process and development of a responsible attitude to environmental protection (e.g. getting people involved in separate waste collection and processing).

As the experience of the new EU member states proves, introduction of market methods of pricing and production is likely to affect positively the emission density in Ukraine. It is also supposed to release disposable funds for new investments, since a rise in resource efficiency allows saving financial assets of production enterprises. According to a number of research investigations conducted in the EU member states, tightening of economic policy does not hinder economic growth, although requiring a considerable restructuring of certain industries (in particular, energy-intensive ones). The methods and means to implement a new economic policy in Ukraine, as well as terms of the necessary investment can be determined in relation to the pace of general economic transformations.

Our country's commitment to alignment of its environmental standards with the EU legislation is clearly stated in the draft Partnership and Cooperation Agreement, which is to replace the 1994 PCA [31]. The key environmental aspect of the new PCA, alongside with a general furtherance of harmonious and stable development, is a reduced waste generation. Alignment provisions are included into the national program of the Ukrainian legislation adaptation to the legal environment of the EU, adopted by the Law of Ukraine on March 18, 2004; the Concept of the National Environmental Policy of Ukraine for the period until 2020, approved by Ordinance of the Cabinet of Ministers of Ukraine No 880-p dated October 17, 2007.

At the moment, it is necessary to specify: a) which exactly waste management acts of the EU could become the most appropriate guides for Ukraine; and b) which of the regulatory acts offer concepts and approaches as to reforming the key environmental policy instruments aimed to ensure an effective solution of the country's most acute ecological problems, outlined in governmental political documents. Attention should be focused on the EU environment management mechanisms and principles, which could help forming the legal framework of reforms in the state. It is important to direct the suggested mechanisms to resolve the issues that are set as priorities by the government of Ukraine, and not by the EU government or third countries. Then the Ukrainian government is likely to make efforts and allocate resources for solving the specified problems.

Consequently, it is important to find answers to the following questions:

- Which of the political instruments and legislative acts of Ukraine need to be reformed in the first turn to solve the country's priority ecological problems?
- Which of the branches of the EU law can help to solve the problems most efficiently?
- Are there any evident barriers to the legislation alignment?
- What are the main institutional problems and financial issues that might arise during the alignment?

From the standpoint of the environmental authorities of Ukraine [32], the key causes of the waste problem occurrence are as follows:

- outdated, resource-consuming or polluting technologies;
- low environmental awareness of the population and lack of effective economic mechanisms and incentives to form nature conservation commitment;
- absence of a continuous environmental monitoring of waste locations;
- insufficient financing of environmental activity "with whatever funds remain";
- lack of an effective waste management system (separate collection, storage, and dumping).

5. Current Gaps and Drawbacks of Ukrainian Waste Law.

The main drawbacks of the Ukrainian political instruments and legislative acts include a discrepancy between the theoretical environmental standard provisions, notable for large scale and a high degree of detail, and the system of their practical implementation. As a result – the regulatory authorities are unable to monitor or ensure the standard compliance in full. For the same reason, the regulating entities believe that to meet the standards is not feasible technically or entails excessive expenditures. Accordingly, they are not so eager to abide by the standards, which they regard as unjustified and burdensome. Neither technical, nor economic aspects of enterprise activity are taken into consideration. Moreover, lack of flexibility of the allowable waste system restricts severely a gradual introduction of waste-minimizing or waste elimination techniques. In practice, they use coordinated permissions – temporary, though regularly extended – to discharge waste in quantities that exceed the set standards. The permissions are issued on an individual basis by regulatory authorities having broad powers to set up permission terms at their own discretion and hence – prone to corruption.

The mechanisms for ecological monitoring and reporting system in Ukraine are characterized by dispersion of functions among different agencies which causes their inefficiency (as some data can be duplicated, and data bases of different authorities are uncoordinated) and absence of transparency, complicating the use of a complex approach to management of environmental activity.

When characterizing the system for standards enforcement it should be emphasized that a non-realistic list of standardized parameters and the complexity of the system regulating environmental activity result in a situation where regulation entities are invariably law breakers. Consequently, controlling authorities, whose duty is to ensure legislative acts compliance, face an impossible task. The difficulties are further complicated by deficit of resources, which the authorities need to have to fulfill their

functions: low salaries cause drain of qualified staff (in particular, environmental law experts); lack of the simplest facilities prevents the experts from proper discharge of their responsibilities.

The efficiency of mechanisms for ensuring compliance with the active legislation is still more impaired due to the controlling authorities' scarce resources that are not enough to employ economic incentive mechanisms for observance of the requirements or to apply sanctions against law breakers. The environmental controlling agencies are often at a disadvantage compared to local authorities and industrial enterprises, as they do not get an adequate support from the judicial system, which is inept as concerns environmental case trials. Light offenders are often fined, while the worst wrongdoers go unpunished due to political or economic pressure on the controlling bodies. At all events, the size of fines is usually too small to serve as a constraining factor.

It is also essential to identify potential problems and legal barriers on the way to alignment of waste management legislation. The legal barriers might be as follows:

1. contradictions contained in various national legislative acts. The large-scale law-making process of the recent fifteen years has been, to a great extent, methodless, causing legislation gaps and collisions between new laws, decrees, and bylaws. As a consequence – it is not always clear, which regulatory acts apply in specific cases. Many important parts of the legislation need revision and coordination with other branches of the national legislation;
2. unclear distribution of duties or powers among different agencies in regulatory acts which often makes introduction of new legislation unfeasible;
3. the framework legislation of Ukraine rarely contains new law implementation procedures, which should be formulated during the alignment in subsidiary legislative acts as part of active environmental legislation;
4. if a decision is made to align only a certain part of the legislation, rather than the entire legislative framework, it can lead to even greater legislative discrepancies;
5. reclamation of the historically accumulated waste involves considerable expenditures and creates difficulties for setting target environment quality values, whereas stringent requirements challenge politically the application of more pragmatic and feasible standards;
6. absence of a tradition of public participation in decision-making and introduction of new legal norms. Although the relevant regulatory acts have appeared in the present-day Ukraine, getting the public profoundly engaged is going to involve radical changes;
7. scarcity of legal resources, necessary to make large companies pay fines for non-observance of environmental acts requirements.

The outcome of law enforcement efforts in Ukraine is not evaluated in terms of their ultimate impact on the environment condition. Instead, the major focus is placed on activity indices (number of inspections etc.), depriving inspectors of any motivation to demand that their accountable companies abide by law.

The framework EU directives on the quality of the natural air and water resources, as well as those on waste management [33] comprise many useful concepts and approaches. Generally speaking, they suggest a balance between environmental priorities and a possibility of requirement enforcement. However instead a direct copying of the EU environmental quality standards, it is recommended to use them as a helpful guide attempting to set a balance between a desired ecological result and a realistic opportunity to enforce the standards with account of the current specific situation in Ukraine.

6. Conclusion

In summation, one of the main tasks of the Ukrainian waste laws adaptation to the EU principles and standards is to specify the legal aspects and methods of introducing new principles and concepts into the active legislation. This should be accomplished with due regard to discrepancies in the national law, lack of practical procedures of new legal provisions transposition, risk of inconsistencies that are likely to appear in the legal framework due to introduction of the new rules. A necessary step towards resolution of these issues would be a comprehensive analysis of gaps in the legislation by way of comparing the environmental laws, selected by Ukraine for alignment, with those of the EU. Based on such a survey, it is possible to identify the lines of future reforming the national legislative framework and adaptation of the EU legal provisions to the laws of Ukraine.

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