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**ПРОГРЕС У ПОСТУПОВОМУ НАБЛИЖЕННІ
ЗАКОНОДАВСТВА УКРАЇНИ ДО ЗАКОНОДАВСТВА ЄС У ГАЛУЗІ
ЯКОСТІ ВОДИ ТА УПРАВЛІННЯ ВОДНИМИ РЕСУРСАМИ,
ВКЛЮЧАЮЧИ МОРСЬКЕ СЕРЕДОВИЩЕ**

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**PROGRESS IN GRADUAL APPROXIMATION OF UKRAINE'S
LEGISLATION TO THE EU LEGISLATION IN THE SECTOR OF
WATER QUALITY AND WATER RESOURCE MANAGEMENT,
INCLUDING MARINE ENVIRONMENT**

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Анотація. У статті представлено огляд та аналіз прогресу, досягнутого Україною у поступовому наближенні свого законодавства до директив ЄС у галузі якості води та управління водними ресурсами, включаючи морське середовище, зазначених у додатку XXX до Угоди про асоціацію між Україною та ЄС. У дослідженні робиться висновок про те, що здебільшого транспозицію відповідних положень директив ЄС завершено. Проте стверджується, що необхідні додаткові зусилля щодо транспозиції Нітратної директиви та Директиви про питну воду. Незважаючи на відчутні досягнення у розробленні планів управління річковими басейнами, затвердження планів управління ризиками затоплення, схвалення Водної стратегії України на період до 2050 року та Морської природоохоронної стратегії України, реалізація державної програми моніторингу вод зазнає очевидних труднощів, спричинених неспровокованою та невинуватою військовою агресією росії проти України, особливо в районах ведення активних бойових дій. Масове руйнування інфраструктури, включаючи системи централізованого водопостачання та водовідведення, ймовірно, перешкоджатиме імплементації в Україні Директиви про питну воду та Директиви про очищення міських стічних вод.

Ключові слова: Угода про асоціацію між Україною та ЄС, Водна рамкова директива, поступове наближення (апроксимація), транспозиція, імплементація, план управління річковим басейном, план управління ризиками затоплення, Морська природоохоронна стратегія України.

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Abstract. The article provides an overview and analysis of the progress made by Ukraine in gradual approximation to the EU directives in the sector of water quality and water resource management, including marine environment, listed in Annex XXX to the EU-Ukraine Association Agreement. The research concludes that for the most part the transposition of the respective directives is complete. It is argued, however, that extra effort is required under the Nitrates Directive and the Drinking Water Directive. notwithstanding tangible gains in the development of River Basin Management Plans, the approval of Flood Risk Management Plans, the adoption of the 2050 Water Strategy and the Marine Environmental Strategy of Ukraine, the implementation of the State Water Monitoring Program suffers obvious difficulties caused by the unprovoked and unjustified

russia's military aggression against Ukraine, especially in the areas of active warfare. Massive destruction of infrastructure including centralized water supply and sewerage systems is likely to hinder implementation of the Drinking Water Directive and the Urban Waste Water Treatment Directive in Ukraine.

Keywords: EU-Ukraine Association Agreement, Water Framework Directive, gradual approximation, transposition, implementation, river basin management plans, flood risk management plans, Marine Environmental Strategy of Ukraine

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Introduction. The EU-Ukraine Association Agreement [1] was signed and ratified by Ukraine in 2014 [2]. Article 363 of its Chapter 6 (Environment) provides for “gradual approximation of Ukrainian legislation to EU law and policy on environment”, which “shall proceed in accordance with Annex XXX to this Agreement” [1]. Besides, Article 365 (b) of the Agreement provides for the development of sector strategies, among others, in the sector of water quality and water resource management, including marine environment (hereinafter – *water sector*), “including clearly defined timetables and milestones for implementation, administrative responsibilities as well as financing strategies for investments in infrastructure and technology” [1].

Annex XXX to the EU-Ukraine Association Agreement lists the following water sector *acquis*: Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (hereinafter – *Water Framework Directive*); Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (hereinafter – *Floods Directive*); Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (hereinafter – *Nitrates Directive*); Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (hereinafter – *Urban Waste Water Treatment Directive*); Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (hereinafter – *Drinking*

Water Directive); and Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (hereinafter – *Marine Strategy Framework Directive*). Annex XXX contains clearly established timetables for the implementation of respective provisions of the water sector directives varying from 2 to 10 years of the entry into force of the EU-Ukraine Association Agreement.

The EU-Ukraine Association Agreement entered into force on 01 September 2017 [3]. However, pursuant to Article 486 (3) and (4) of the EU-Ukraine Association Agreement [1] and the note Verbale of the General Secretariat of the Council of the European Union [4] before the EU-Ukraine Association Agreement entered into force, a number of its provisions, including Article 363 and Annex XXX, were applied on a provisional basis from 1 November 2014. Taking into account Article 486 (5) of the EU-Ukraine Association Agreement, the ultimate deadline for the implementation of all provisions of the water sector directives, referred to in Annex XXX thereto, is 1 November 2024.

On 23 June 2022 the European Council has decided to grant the status of candidate country to Ukraine [5]. In paragraph 2 of the Joint statement following the 24th EU-Ukraine Summit (Kyiv, 3 February 2023) “The EU reiterated its commitment to support Ukraine’s further European integration” and “Ukraine underlined its determination to meet the necessary requirements in order to start accession negotiations as soon as possible” [6].

On 28 February 2023, aiming at ensuring Ukraine's preparation for negotiations on the accession to the European Union, the Cabinet of Ministers of Ukraine adopted the Procedure for the initial assessment of the EU *acquis* implementation status [7] (the so-called 'EU *acquis* self-audit' [8] or 'EU *acquis* self-screening' [9]).

The systematic comprehensive review of the progress made by Ukraine in gradual approximation of its legislation to the EU *acquis* in the field of environment and in the water sector, in particular, is, therefore, high on the agenda.

Analysis of the latest research and publications. Certain aspects of transposition, implementation as well as direct or indirect application of relevant provisions of the water sector directives have been discussed in the works of Valentyn Khilchevskiy, Vasyl Hrebin, Yulia Vystavna, Olesya Zorina, Sergiy Afanasyev, Oleksandr Obodovsky, Natalia Osadcha, Mykhailo Yatsyuk, Oleksiy Iarochevitch, Kostiantyn Danko, Borys Alexandrov, Galyna Minicheva, Olena Yara, Liudmyla Golovko, Vita Strokal, Oleh Kozytzky, Serhii Shevchuk, Volodymyr Yermolenko, Maryna Deineha, Olena Hafurova, Oleg Rubel and others. However, the majority of available sources are focused either on a specific issue within the EU water sector legislation, like the identification of water bodies, water quality, groundwater quantity, hydromorphological monitoring, preliminary flood risk assessment, identification of nitrate vulnerable zones, etc. or implementation of individual water sector directives. A comprehensive detailed review of the progress made by Ukraine in gradual approximation of its legislation to all water sector directives, listed in Annex XXX to the EU-Ukraine Association Agreement, taking into account the latest developments in this field is still required.

Statement of the task. The task of the article is to review the progress made by Ukraine in gradual approximation of its

legislation to water sector directives, listed in Annex XXX to the EU-Ukraine Association Agreement, vis-à-vis relevant provisions and timetables established therein and in view of the EU *acquis* self-screening (self-audit) launched by the Government of Ukraine.

Outline of the main research material. The 2050 Water Strategy of Ukraine was approved in December 2022 [10]. Implementation of all water sector directives, listed in Annex XXX to the EU-Ukraine Association Agreement, appear to be essential to the effective achievement of the relevant Water Strategy goals/targets [11].

Water Framework Directive (WFD)

It is argued that the river basin approach for water management has been initially introduced into the water-related legal framework of Ukraine by the State-wide Target Program on the Development of Water Management and Environmental Rehabilitation of the Dnipro River Basin until 2021 [12], adopted by the Law of Ukraine of May 24, 2012, №4836-VI [13]. The program, *inter alia*, provided for the development of river basin management plans (hereinafter – RBMP) for 9 river basins of Ukraine [14] by the year of 2021. The ambitious target would have most likely remained declaratory if concrete steps aimed at implementation of the WFD were not taken.

The transposition of the WFD in Ukraine began with the adoption of the cornerstone amendments to the Water Code introduced by the Law of October 04, 2016, №1641-VIII [15]. Thus, Article 13-1 of the Water Code assigned the river basins of Ukraine to 9 individual river basin districts, established the procedure for delineation of their boundaries, provided for the identification, as appropriate, of sub-basins [16] and other water management units corroborated with the relevant administrative arrangements. Article 13-2 of the Water Code provided for the production of a RBMP for each river basin district and outlined its main

elements. Article 13-3 of the Water Code clarified the role of the river basin councils in the system of river basin management and Article 13-4 institutionalized the procedure for the development of water balances.

Amendments to Article 21 and the new Articles 21-1 and 21-2 of the Water Code revised the fundamentals of the state water monitoring system and introduced classifications of ecological and chemical status for surface waters, quantitative and chemical status for groundwaters, and ecological potential for artificial and heavily modified surface water bodies. Amendments to Article 81 of the Water Code [17] enshrined the strategic environmental objectives for all water bodies similar to those established in the WFD.

Based on the above amendments to the Water Code [15] and aimed at their implementation, a comprehensive set of secondary legislation was adopted. Elaborating more in detail on the above provisions of the amended Water Code of Ukraine, the new Procedure for the State Water Monitoring [18], Model Regulation on River Basin Councils [19] and the Procedure for the Development of River Basin Management Plans [20] were approved. Pursuant to the Procedure for the Development of River Basin Management Plans draft RBMPs are, *inter alia*, subject to strategic environmental assessment (SEA) [20] and approval of the river basin councils [21].

All of the above pieces of secondary legislation were developed following relevant provisions of the WFD and taking due account of the guidance documents developed under the WFD Common Implementation Strategy [22].

Since early 2017 [23] Ukraine has identified surface and ground water bodies, delineated river basin districts, sub-basins and water management units, re-organised River Basin Directorates as the structural units of the State Agency for Water Resources of Ukraine (hereinafter – the SAWR), supports activities of 13 River

Basin Councils as advisory bodies to the SAWR, launched the state water monitoring [24] corroborated with strengthened laboratory capacities [25], and adopted the timetable for the development of RBMPs for all 9 river basin districts [26].

Pursuant to the implementation timelines of the EU-Ukraine Association Agreement [1] and the synchronised therewith national timetable RBMPs for all river basin districts of Ukraine shall be approved by the Cabinet of Ministers of Ukraine by 01 november 2024 [26]. It is worth mentioning that the RBMPs in point will not be the first ones to be developed in Ukraine. In 2011 with international financial support and technical assistance under the auspices of the Danube River Protection Convention and the International Commission for the Protection of the Danube River (ICPDR) the RBMP for Tysa River was developed. Likewise, with international financial support and technical assistance the RBMP for Southern Bug River was developed in 2014. Both RBMPs have been scheduled for the update as part of the implementation of the WFD before 2024 [27].

Floods Directive

The transposition of the Floods Directive in Ukraine began with the adoption of the above amendments to the Water Code, whereby its Chapter 21 was amended to introduce a preliminary flood risk assessment, flood hazard and flood risk maps, flood risk management plans (hereinafter – FRMP) and appropriate administrative arrangements [15].

Based on the above amendments and aimed at their implementation relevant pieces of the secondary legislation approving the methodology for a preliminary flood risk assessment, the methodology for the preparation of flood hazard maps and flood risk maps, and establishing the procedure for the development of a FRMP were adopted. All of them were developed following relevant provisions of the Floods Directive and

taking due account of the respective guidance documents developed under the EU WFD Common Implementation Strategy [22].

As concerns implementation of the Floods Directive in Ukraine the preliminary flood risk assessments [28] were conducted [29], flood hazard maps and flood risk maps prepared for some areas with potential significant flood risks [30] and FRMPs for certain territories within all 9 river basin districts approved by the Regulation of the Cabinet of Ministers of Ukraine of October 08, 2022, №895-p [31].

Nitrates Directive

The term “eutrophication” and the general objective of preventing eutrophication and water pollution caused by nitrates were introduced into the Water Code of Ukraine by the above amendments of October 04, 2016 [15]. Furthering transposition, the structure of RBMP [20] provided for identification and mapping of protected areas, including areas designated as vulnerable zones under the Nitrates Directive. Relevant provisions of the Nitrates Directive dealing with monitoring were also accommodated in the new Procedure for State Water Monitoring [18].

The Methodology for the Identification of Nitrate Vulnerable Zones was approved by the Order of the Ministry of Environment of Ukraine of April 15, 2021, №244. On November 24, 2021, the Ministry of Agrarian Policy and Food adopted the Order №382 “On approval of the Rules for ensuring soil fertility and the use of certain agrochemicals”. The Order regulates: periods during which soil fertilization is undesirable; rules for fertilizer application in the fields located on steep slopes; rules for waterlogged, flooded, frozen or snow-covered soil fertilization; conditions for soil fertilization nearby water bodies; rules for storage of manure in areas vulnerable to nitrate accumulation; procedures for fertilizer application, minimizing leaching of nitrogen compounds into water bodies;

rules for maintaining soil quality during crop rotation; rules for maintaining minimum vegetation during rainy periods; scheduling application of fertilizers and keeping records of their use; and fertilizer application in irrigated areas [32].

Notwithstanding the above, to date no nitrate vulnerable zones have been designated in Ukraine. The Operational Plan for the implementation of the 2050 Water Strategy of Ukraine assigns the Ministry of Environment, the Ministry of Agrarian Policy and other central executive authorities concerned to designate nitrate vulnerable zones until December 2023 [10].

Urban Wastewater Treatment Directive (UWWTD)

Main approaches of the UWWTD were transposed into the legislation of Ukraine by the Law of Ukraine on Amending the Law on Drinking Water and Drinking Water Supply of May 18, 2017, №2047-VIII [33]. Building on its provisions, the Ministry of Environment of Ukraine adopted the Order of January 14, 2019, №6 on Approving the Procedure for Determining the Population Equivalent of a Settlement and the Criteria for Identification of Sensitive and Less Sensitive Areas. Pursuant to the above criteria, decisions concerning the identification of sensitive and less sensitive areas were vested with the local self-governance authorities of Ukraine. The Order also transposed UWWTD requirements for discharges from urban waste water treatment plants to those sensitive areas which are subject to eutrophication. Furthering transposition, the structure of RBMP [20] provided for identification and mapping of protected areas, including sensitive and less sensitive areas identified under the UWWTD. In addition, the Ministry of Regional Development of Ukraine updated its rules for accepting waste water into the centralized sewerage systems [34] and approved the procedure for the re-use of treated waste water and sludge [35]. On a wider scale of countering eutrophication

the Government of Ukraine adopted amendments to the Technical Regulation limiting the content of phosphates and other phosphorus compounds in detergents [36].

On January 12, 2023, the Parliament of Ukraine adopted a separate Law “On sewerage and wastewater treatment” №2887-IX whereby the relevant provisions transposing the UWWTD were relocated from the Law of Ukraine “On drinking water, drinking water supply and sewerage” to this newly adopted Law.

Drinking Water Directive (DWD)

The Law of Ukraine on Drinking Water, Drinking Water Supply and Sewerage [33] was amended in 2017 to, *inter alia*, transpose relevant provisions of the DWD, including the notion of the point of compliance [37]. Other requirements of the DWD including its revisions of December 2020 [38] were embodied into the amendments to the State Sanitary norms and Rules “Hygienic requirements for drinking water intended for human consumption” [39] awaiting approval.

Marine Strategy Framework Directive (MSFD)

Aimed at implementing its EU-Ukraine Association Agreement commitment under the MSFD, the Government of Ukraine listed the elaboration of the Marine Environmental Strategy among its mid-term priorities until the year of 2020 [40]. The following tasks connected thereto were identified: update of objectives and tasks of the national environmental policy, and the development of the Marine Environmental Strategy; initial assessment of marine waters (within the Ukrainian part of the Black and the Azov Seas), determination of environmental status and establishment of environmental targets and indicators; establishment of the monitoring programme for ongoing assessment and regular update of targets; and preparation of a plan of measures to achieve good environmental status (GES) of marine waters [41].

The initial assessment of marine waters was accomplished with the support of a series of consecutive regional EU/UNDP EMBLAS projects (EMBLAS-I, EMBLAS-II and EMBLAS-Plus) [42] where the Joint Black Sea Surveys (JBSS 2016/2017/2019), National Pilot Monitoring Studies and Joint Open Sea Surveys (NPMS/JOSS 2016 - 2017) and the National Monitoring Studies (NMS/JOSS 2019) were carried out. The projects supported Ukraine in implementing the national and regional monitoring programmes, aligned with the reporting requirements under the Black Sea Integrated Monitoring and Assessment Programme (BSIMAP), MSFD and the WFD. Based on the results of the above initial assessment, the Marine Environmental Strategy of Ukraine determined a set of characteristics for GES of its marine waters (Annex 2) [43] on the basis of the qualitative descriptors [44] corresponding to those of the MSFD.

The Marine Environmental Strategy of Ukraine was approved by the Regulation of the Cabinet of Ministers of Ukraine of October 11, 2021, №1240 [43]. The overall strategic objective of the 2021 Marine Environmental Strategy is to achieve and, once achieved, maintain GES of Ukraine’s marine waters of the Azov and the Black Seas pursuant to the MSFD and taking into account the 2030 Ukraine’s SDGs 6 (ensure availability (accessibility) and sustainable management of water resources and sanitation) and 14 (conserve and rationally use the oceans, seas and marine resources for sustainable development) [45].

The 2021 Marine Environmental Strategy, *inter alia*, provides for the development of: the Action Plan for achieving and maintaining GES of the Azov and the Black Seas; the Procedure for the Development and Approval of the Integrated Coastal Zone Management (ICZM) Action Plans; the Program of the State Environmental Monitoring of Seas for the period of 2022-2027; and the ICZM

Action Plans for the Azov and the Black Seas [43].

Conclusions. For the most part the transposition of the water sector directives, listed in Annex XXX to the EU-Ukraine Association Agreement, is complete. Extra effort is required under the Nitrates Directive and the DWD [37]. In line with the 2050 Water Strategy of Ukraine the development of RBMPs is underway. FRMPs for certain territories within all 9 river basin districts were approved in 2022. The 2021 Marine Environmental Strategy provides for a number of follow-up instruments which are also under development.

At the same time, to date no nitrate vulnerable zones have been designated in Ukraine. Likewise, no sensitive areas or less sensitive areas have been identified. Implementation of the State Water Monitoring Program suffers obvious difficulties caused by the unprovoked and unjustified Russia's military aggression against Ukraine [25], especially in the areas of active warfare. Massive destruction of infrastructure including centralized water supply and sewerage systems is likely to hinder implementation of the DWD and UWWTD in Ukraine. Devastating impact on the environment including surface, ground and marine waters is still to be assessed.

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