

#### **EU4Environment** Green Economy in Eastern Partner Countries

#### A critical analysis of how Ukraine's draft Law on State Environmental Control corresponds to the OECD Recommendation on Environmental Compliance Assurance

Simon Bingham

Committee of the Verkhovna Rada of Ukraine on Environmental Policy and Nature Management

1<sup>st</sup> December 2023











### Scope

- To identify areas of convergence and divergence of Ukraine's draft Law on State Environmental Control with the OECD Recommendation of the Council on Environmental Compliance Assurance.
- To provide recommendations on how identified divergences can be removed.









#### OECD Recommendation on Environmental Compliance Assurance



- 3 Pillars of Compliance Assurance (CA)
- Compliance Promotion
- Compliance Monitoring
- Enforcement

- (5 Components)
- (4 Components)
- (5 Components)
- + Institutional Aspects of CA (5 Components)







#### Draft Law on State Environmental Control

Machine Translated by Google

#### LAW OF UKRAINE On state environmental control

This Law defines the legal and organizational principles, basic principles and procedure for the implementation of state environmental control in relation to central bodies of executive power and their territorial bodies, local bodies of executive power, local self-povernment bodies, business entities, natural persons, as well as the powers of state environmental control bodies, their officials, the rights, obligations and responsibility for voluting the requirements of this Law and the legislation on environmental protection of the subjects in respect of which measures of state environmental control are carried out.

Chapter

Article 1. Detrivition of basic terms 1. In this law, the terms are used in the following sense: 1) state environmental control – the activity of state environmental control bodies to ensure compliance with the requirements of environmental protection legislation by central asecutive bodies and their trainfolial bodies, local executive bodies authorities, local self-government bodies, business entities, as well as individuals, which is carried out by preventing and detecting violations of environmental protection legislation, as well as bringing offenders to justice;

2) state environmental cortrol measures - planned and unplanned measures carried out by state environmental control holdies; in relation to cartial executive bodies and their territorial bodies; local executive bodies, local self-government bodies, business entities in the form of planned and unplanned inspections; as well as measures of state environmental control, which are carried out in relation to natural persons; in the torm of particing, responding to calls; inofficiation; 3) bodies of state environmental control - the central body of the executive power, which implements

the state policy on the implementation of state environmental control, its territorial bodies; 4) state inspector for environmental protection - an official of the central executive body that implements the state policy on the

implementation of state environmental control, or of its territorial body, whose duties include the implementation of state environmental control measures; 5) patroling - a measure of state environmental control carried out in the form of a systematic review of the territories defined by the patroling plan in order to prevent and detect violations by natural persons of the

legislation on environmental protection and bring offenders to justice

6) response to a call (notification) – a measure of state environmental control, carried out in the form of a vist of state environmental protection inspectors to a place where, according to information received in accordance with the protective established by Jaw, a violation for derivionmental protection legislation has been committed or may be committed environment, with the aim of ventying the facts presented in the information, preventing and detecting violations of the legislation on environmental protection by maturina persons and bringing offenders to justice;

7) raid inspection - a measure of state environmental control, which is carried out in the form of an impection of territories determined by a weekly schedule of raid inspections for the purpose of quick response or pervention of a sharp increase in the number of violations by natural persons of the legislation on the protection of the natural environment in a certain territory, detection of violations by natural persons of the legislation on protection Task:

Compare 26 Articles of first 5 Chapters against the 19 OECD Recommendation Sections to look for:

- Convergences
- Divergences
- Gaps















#### High Convergence with 11 of 19 OECD Sections of the Recommendation

OECD Recommendation	Convergence (Article Number, Clause & Point of the draft Law where relevant)
II - Compliance Promotion	1.1; 5.4; 5.6
II, 2	6.6; 16.1.11
II, 5	5.3; 10.5; 12.3; 13.2.3; 13.3; 14; 16.2.7; 19.19; 19.20; 26.2; 26.5; 26.8
III - Compliance Monitoring	1.1
III, 1	1.6; 17.4; 19.9; 19.20; 26.2
III, 2	1.2; 5.5; 6.6; 7; 17.4
III, 3	15.2
IV - Enforcement	1.1; 5.6
IV, 1	23.16
IV, 3	17.6
IV, 4	23.15; 23.16; 24.18
V-Institutional Aspects	
V, 1	23.11
V, 2	19.9; 26.2; 26.5; 26.8
V, 3	17.4





UNECE









#### OECD Recommendation – Compliance Promotion II, 5

5.3; 10.5; 12.3; 13.2.3; 13.3; 14; 16.2.7; 19.19; 19.20; 26.2; 26.5; 26.8

"Promote transparency of compliance assurance activities and public disclosure of compliance records as a tool to apply market and public pressure on non-compliant businesses"









#### High Convergence with 11 of 19 OECD Sections of the Recommendation

OECD Recommendation	Convergence (Article Number, Clause & Point of the draft Law where relevant)
II - Compliance Promotion	1.1; 5.4; 5.6
II, 2	6.6; 16.1.11
II, 5	5.3; 10.5; 12.3; 13.2.3; 13.3; 14; 16.2.7; 19.19; 19.20; 26.2; 26.5; 26.8
III - Compliance Monitoring	1.1
III, 1	1.6; 17.4; 19.9; 19.20; 26.2
III, 2	1.2; 5.5; 6.6; 7; 17.4
III, 3	15.2
IV - Enforcement	1.1; 5.6
IV, 1	23.16
IV, 3	17.6
IV, 4	23.15; 23.16; 24.18
V-Institutional Aspects	
V, 1	23.11
V, 2	19.9; 26.2; 26.5; 26.8
V, 3	17.4





UNECE









#### Convergence does not mean full convergence



Multi-layered (e.g. Institutional V, 3)

Strengthen collaboration between environmental enforcement authorities, the police, customs and prosecutors in fighting environmental crime; ensure that police officers, prosecutors and judges in charge of environmental cases receive proper training; consider establishing specialized environmental police and prosecution units and/or dedicated environmental courts, as appropriate.













## Seeking compliance assurance is always a work in progress















# Divergence 1 of 3

Between Article 14 of the draft Law, on "Planned measures of state environmental control in relation to subjects", and the OECD Recommendation III, 2 on risk-based monitoring.

The way the legislation has been drafted, it is likely that more resource is placed into low-risk activities and that there potentially may be insufficient resource to deliver the intention of the Law.



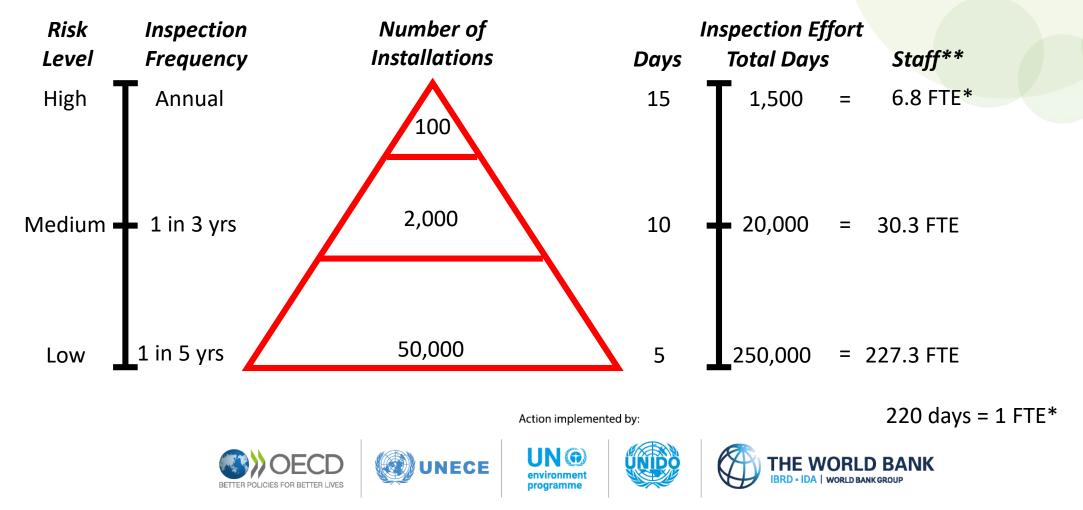






#### **EU4Environment** Green Economy in Eastern Partner Countries

### The impact of level of risk on effort







# Divergence 2 of 3

Between Article 15 of the draft Law, on "Unscheduled measures of state environmental control in relation to subjects management", and the OECD Recommendation III, 4 on *"identify root causes of non-compliance rather than only detect it ..."*.

The Law states that "only those issues that became the basis of implementation are checked" which has the potential to miss the root cause of the problem.









# Divergence 3 of 3

Between Article 13 of the draft Law on "General requirements for implementation of state environmental measures control over business entities" and the OECD Recommendation III, 4 on "implement adequate procedures to respond to citizens' complaints..." which has the potential to allow significant pollution to continue.

The 4 hour rule!











## Gaps (or potential divergences)

	OECD Recommendation	Gap (or potential divergence if not covered elsewhere e.g <del>.,</del> other laws, procedures etc)
	II, 1	Economic sectors not mentioned
	II, 3	Information dissemination pathways not specified
	II, 4	No relevant article covering Environmental Management Systems (EMS) in risk-criteria
3	IV, 2	No mechanism to correct violation before sanction
3	IV, 5	No mechanism to enforce payment of penalties
	V, 4	Capacity Building not mentioned
	V, 5	Performance assessments of environmental enforcement authorities not mentioned

Action implemented by:

UN 🙆

environment

programme













### Potential conflict with Article 23 of IED

Low risk sites in IED sites must get an an inspection at a minimum of every 3 years – the draft Law (Art. 14) proposes a low risk inspection frequency of 1 in 5 years,





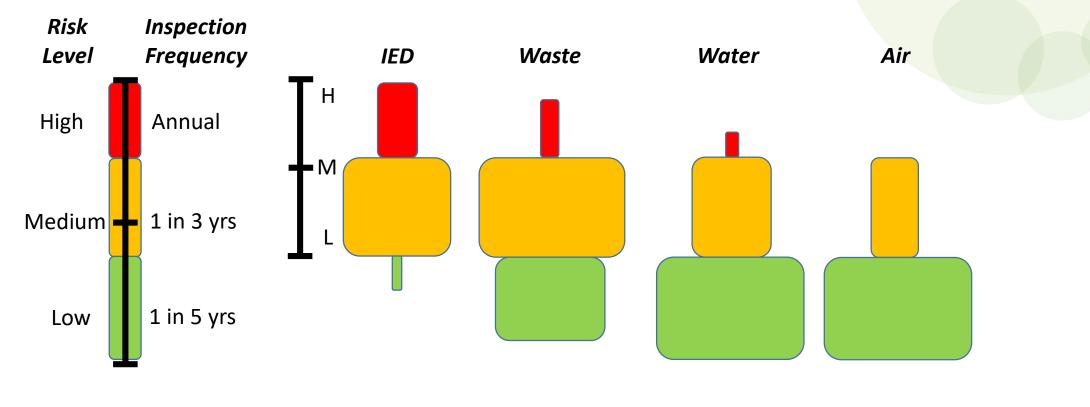






#### **EU4Environment** Green Economy in Eastern Partner Countries

### IED within overall risk distribution













#### **EU4Environment** Green Economy in Eastern Partner Countries

### Potential conflict with Article 23 of IED (2)

Article 14, Clause 7, Point 3 of the draft Law states that "In the event that during the scheduled inspection of a business entity, which is assigned to a high degree of risk from the conduct of economic activity, the state environmental control body did not find violations of the requirements of the legislation on environmental protection - the next scheduled inspection of such business entity is carried out no earlier than two years later".









## General Recommendations (1)

 Review the comments in Chapter 3 of the report, which identify minor omissions or areas requiring clarification (for example, on issues like minimum wage levels, national security, commercial confidentiality etc.) and implement changes as required.











#### **EU4Environment** Green Economy in Eastern Partner Countries

# General Recommendations (2)

 Consider how the legislation of some activities included within the draft Law could take away potential flexibility of regulatory institutions to apply wider compliance assurance tools and techniques.

It is acknowledged, however, that there could also be potential counter arguments and reasons why there would be a wish to include them within legislation.











## General Recommendations (3)

 Draw up a plan to identify potential mechanisms and opportunities to enhance compliance assurance as even where convergences are identified, more could or should often be done to achieve full adherence with each particular requirement of the OECD Recommendation. Enact this plan.





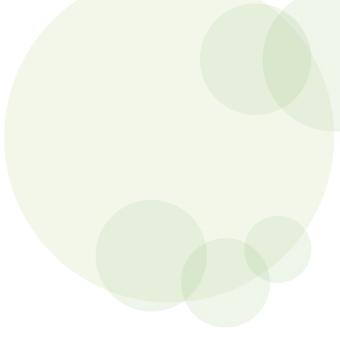








#### **EU4Environment** Green Economy in Eastern Partner Countries



### End – Thank you for your attention









