

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

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Action implemented by:



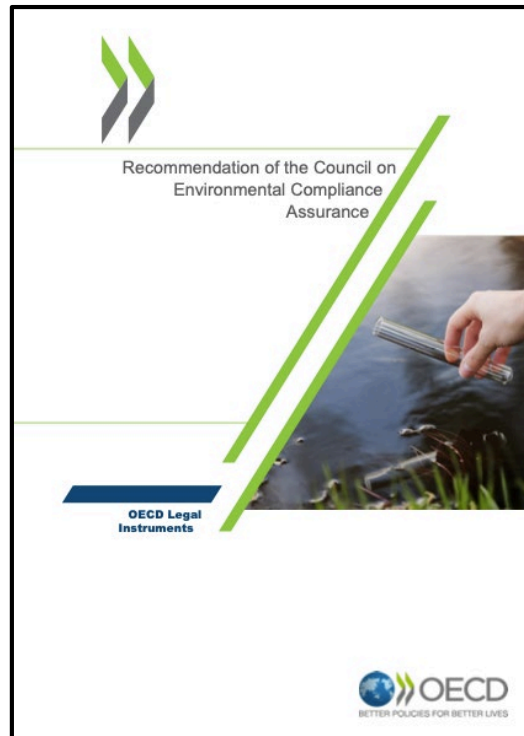
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Scope

- 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.

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OECD Recommendation on Environmental Compliance Assurance

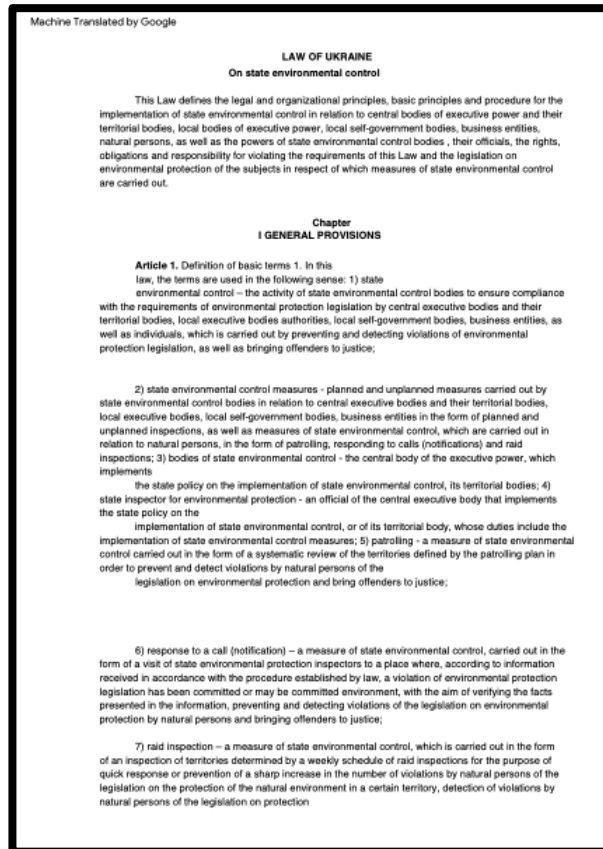


3 Pillars of Compliance Assurance (CA)

- Compliance Promotion (5 Components)
- Compliance Monitoring (4 Components)
- Enforcement (5 Components)
- + Institutional Aspects of CA (5 Components)

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Draft Law on State Environmental Control



Task:

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

- Convergences
- Divergences
- Gaps

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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

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

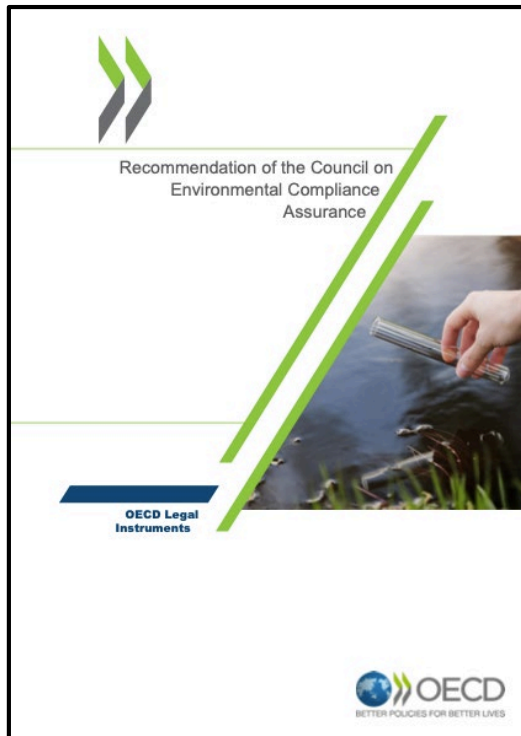
“Promote transparency of compliance assurance activities and public disclosure of compliance records as a tool to apply market and public pressure on non-compliant businesses”

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High Convergence with 11 of 19 OECD Sections of the Recommendation

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V – Institutional Aspects	
V, 1	23.11
V, 2	19.9; 26.2; 26.5; 26.8
V, 3	17.4

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.

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Seeking
compliance
assurance is
always a work in
progress



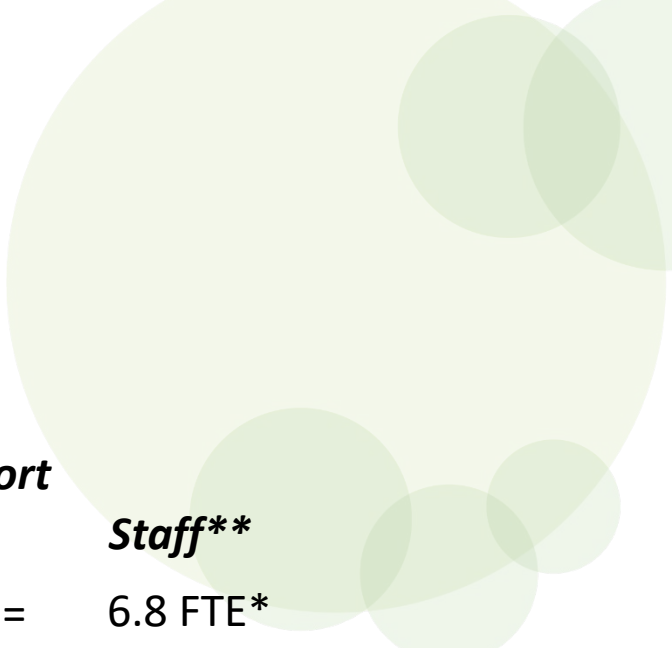
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Divergence 1 of 3

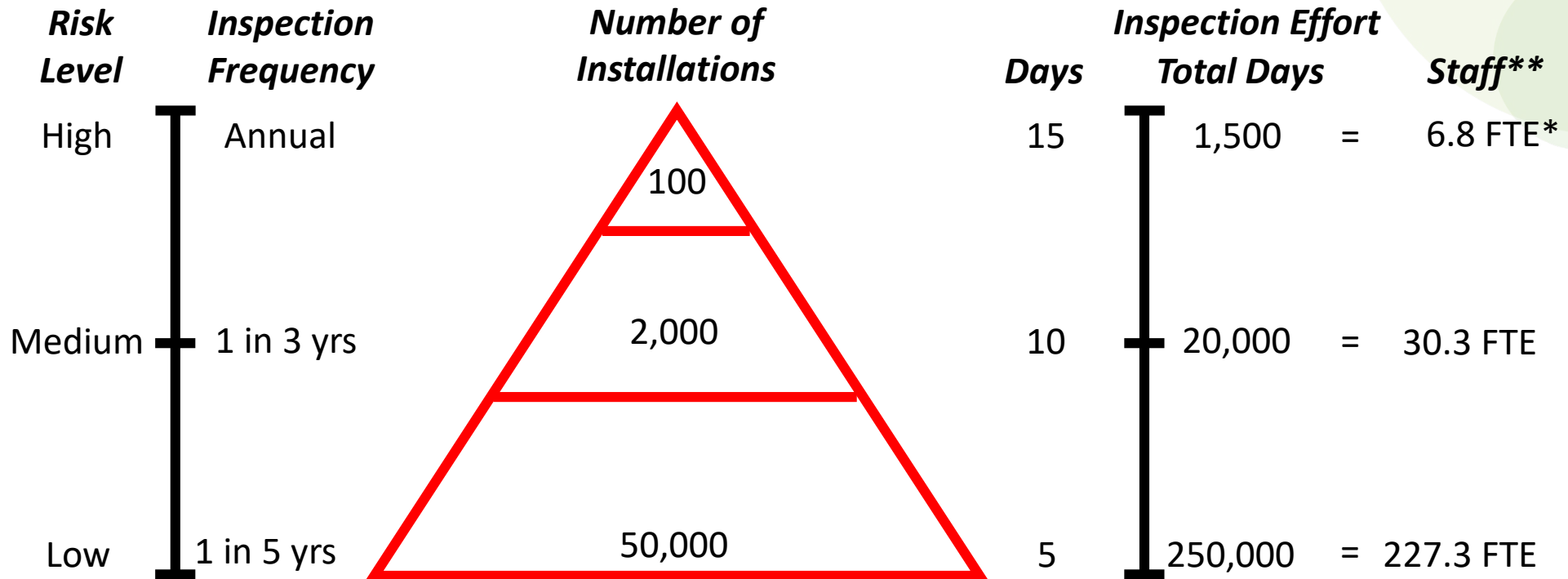
Between Article 14 of the draft Law, on “Planned measures of state environmental control in relation to subjects”, and the OECD Recommendation III, 2 on risk-based monitoring.

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.

Action implemented by:



The impact of level of risk on effort



Action implemented by:

220 days = 1 FTE*

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.

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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!

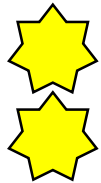
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Gaps (or potential divergences)

OECD Recommendation	Gap (or potential divergence if not covered elsewhere e.g. 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
IV, 2	No mechanism to correct violation before sanction
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



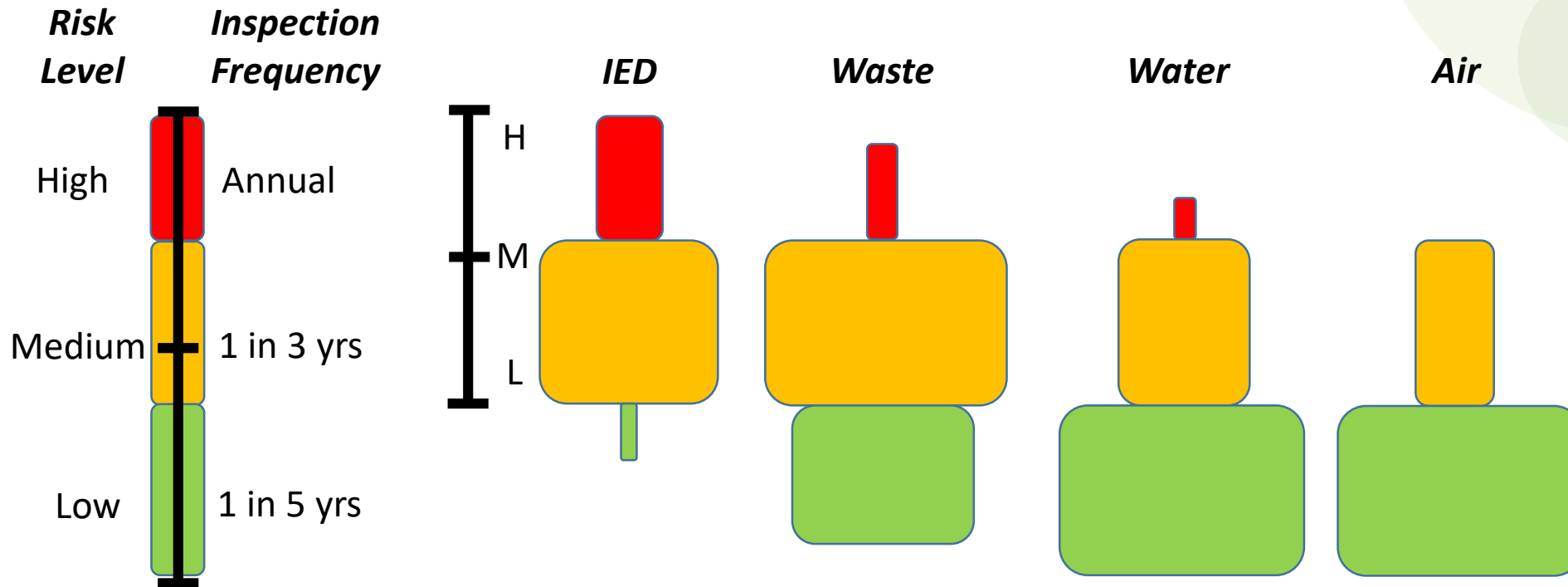
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Potential conflict with Article 23 of IED

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,

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IED within overall risk distribution



Action implemented by:

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”.

Action implemented by:

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.
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Action implemented by:

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.

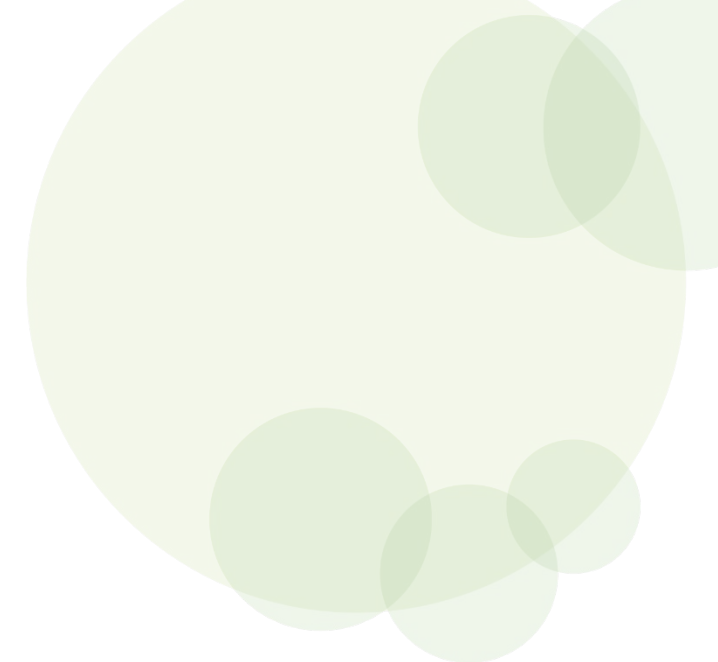
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General Recommendations (3)

- 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.



Action implemented by:



End – Thank you for your attention

Action implemented by: