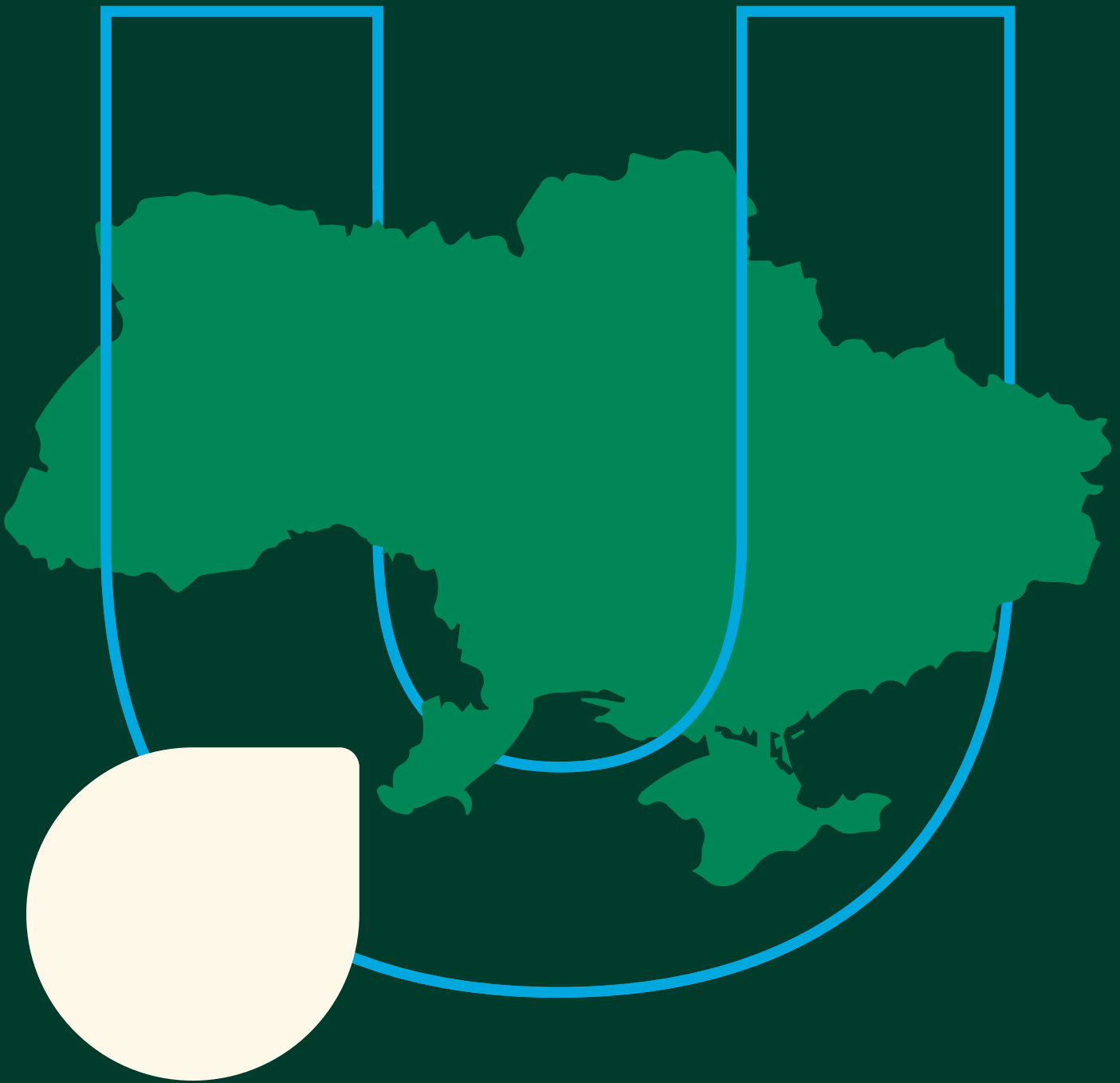


REAL DEAL country profile

Ukraine



**REAL
DEAL**

RESHAPING CITIZENS'
DELIBERATION FOR THE
EUROPEAN GREEN DEAL



1

Overview

Ukraine is a semi-presidential and unitary republic whose multiple administrative divisions consist of the Autonomous Republic of Crimea (illegally annexed by Russia), 24 oblasts, districts, cities, city districts, settlements, and villages (Constitution of Ukraine). As it happens with other countries under analysis, Ukraine distributes the competences related to the aspects of European Green Deal implementation to the different levels of public administration.

The constitution (arts. 85 & 116) attributes to national institutions (the Parliament and the Cabinet of Ministers) the power of approving national programmes on environment and to ensure environmental protection respectively. The constitution brings (art. 199) to local administrations on their respective territory, the power to ensure the implementation of national and regional programmes for environmental protection. This constitutional disposition provides for multilevel governance in the country despite its unitarian nature. The Autonomous Republic of Crimea has the constitutional power to elaborate, approve and realise programs on environmental protection in accordance with the national programmes (see art. 138).

Additionally, the environmental policy in Ukraine springs from several other provisions of the Constitution of Ukraine. They are:

- right to ensure ecological safety in Ukraine,
- right of citizens to healthy and safe environment, and
- right to free access to information regarding the environment.

Law 1264-XII on environmental protection regulates relations in the sphere of protection, use, and creation of natural resources, ensuring ecological safety, prevention of the negative environmental impacts of economic and other activities and liquidation of its consequences, conservation of natural resources, genetic stock of fauna, landscape and other ecosystems, unique areas and natural objects related to cultural heritage.

There are other common dispositions of public law to ensure an effective and direct application of the legal obligations to consult citizens on environmental and sustainability matters through deliberation processes. In this sense, the Verkhovna Rada adopted the Law of Ukraine “On Environmental Impact Assessment” on 23 May 2017; Decrees No.989, No. 1010 and No. 1026 of the Cabinet of Ministers of Ukraine were adopted on 13 December 2017.



2

Dimensions of environmental governance

Ukraine's independence has led to its active inclusion in international integration processes through the implementation of the provisions of the concept of sustainable development, biodiversity, ecosystem approach, and balanced use of natural resources. The signing by the state a significant number of international agreements aimed at EU accession requires the improvement of the existing legislation in accordance with the requirements of the European Union. Practical activities in implementing the institutional and administrative potential of European integration are the direct introduction of European standards in all spheres of public life and the involvement of the broader public of Ukrainian society in this process. The improvement of environmental governance in Ukraine has reached measures to achieve environmental planning, monitoring, supervision, and auditing.

The Association Agreement between Ukraine and the European Union, the European Atomic Energy Community, and their member states, aims at preserving, protecting, improving and reproducing the quality of the environment, protecting public health, rational utilisation of natural resources and encouraging measures at the international level aimed at addressing regional and global environmental problems.

The Russian invasion of Ukraine introduces hazards to humans and ecosystems posed by the Soviet legacy of nuclear facilities, including Chornobyl, and heavy industrial facilities located close to residential areas in Ukraine. Many of these sites require ongoing environmental management. Russian attacks on fuel depots and other energy sites, the shelling of industrial facilities, and the dust and rubble produced by using explosive weapons in residential areas pose near- and long-term threats to civilian health far beyond the immediate casualties. Russia's bombardment of civilian objects underscores the necessity of strengthening international humanitarian law to protect civilians and the environment in armed conflict.



2.1

Transparency (access to information)

The Constitution of Ukraine establishes citizens' right to access to public information in article 34.2 & 3. The Law of Ukraine on Access to Public Information (as amended on March 27, 2014, by draft law No. 0947) determines procedures for exercising and securing the right of every person to access information of public interest possessed by government agencies and other providers of public information. The law refers in article 1 to information of public interest regarding hazardous environment and other consequences of actions of commercial entities, or absence thereof. The information providers (art.12) are the government agencies in terms of the obligation to disclose information on request on the environmental situation. According to art. 21, for the cases of environmental situations, natural hazards, and other emergencies both real and potential, that threaten people's security, a response shall be given immediately but no later than within 48 hours following receipt of the request.

In practical terms, access to information in Ukraine is highly developed. Nevertheless, there are still challenges in the enforcement of the right to access information, most of them relating to public servants' lack of knowledge of legal requirements and how to put them into practice.

In the implementation of access to information obligations, responses are often of poor quality, incomplete or provided with delay. In addition, the fees of administrative proceedings are unreasonably high, thereby discouraging citizens to initiate administrative proceedings. To overcome these challenges, leading NGOs in Ukraine initiated the Fund of the Right for Information Protection and over 150 lawyers joined the Network of Defenders of the Right to Access Information. The Network provides free expert legal assistance and relevant judicial support to guarantee legal protection of the right of access to information.

To ensure the right of access to public information, local public authorities as "information administrators" must designate special units or freedom of information officers, who will provide information upon request. They must simplify procedures for submitting requests and obtaining information, as well as provide public access to the meetings of local authorities.

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The access to information on environmental matters is specifically developed by the Law of Ukraine on Environmental Impact Assessment (hereafter, “EIA”) enacted on 18 December 2018. Art. 4 of the EIA law states that the public must be timely, adequately and effectively informed in the environmental impact assessment process. The EIA law establishes the terms of notification and the procedures on public participation in decisions on activities to be assessed by the environmental impact assessment report.

Proactive publication / Open Data

Law No. 319 amending some laws of Ukraine on access to public information in the form of open data compels public authorities and local governments to publish and update public information in the form of open data regularly. Open data must be provided free of charge on the webpages of the authorities and the single-state open data website. Open data provisions in Ukraine have enabled significant progress in the public control of the state and local budgets, public procurement, and beneficial ownership disclosure.

2.2

Participation

The obligation of public participation in decisions on environmental matters guaranteed by article 7 of the Aarhus Convention and Directive 2003/35/EC is implemented by Law of Ukraine N°.872787-VI of December 2010 ratifying the Protocol on the Accession of Ukraine to the Energy Community Treaty, and developed and complemented by the EIA law. The government of Ukraine introduced public consultations on key social issues to involve the public in shaping and implementing relevant national policy. Public consultations can be carried out as public discussions (direct form) and public opinion polls (indirect form).

Proactive participation / Open City

The Open City project is a crowdsourcing Internet platform for residents to interact with local authorities and utility providers, as well as for the self-organisation of citizens. To do this, there are two sections on the site. “Problems” allows citizens to create a message about the problem, which will be sent to the appropriate organisation for resolution. “Useful objects” is a map of the city on which users of the portal can apply for various valuable services, such as hospitals, schools, parking lots, tourist sites, free Wi-Fi zones, battery reception points, etc. (Handbook on Transparency and Citizen Participation in Ukraine).

The Law of Ukraine “On Strategic Environmental Assessment” enacted on 12 October 2018 aims to harmonise Ukrainian laws with the EU legislation. The law regulates strategic environmental



assessment relations, particularly for public health and enforcement of national planning documentation. This legal instrument states that the public has the right to take part in defining the scope of strategic environmental assessment and it regulates public discussions in the strategic environmental assessment process.

The public may also take part in the decision-making process during transboundary consultations (in cases foreseen by the international treaties entered into by Ukraine, particularly the Espoo Convention) of the country of origin (article 14 of the law) and transboundary consultations of the state concerned (Article 15 of the law) according to the Law of Ukraine on strategic environmental assessment.

Efforts made in Ukraine to promote public access to information and public participation in the decision-making process are defined by several general regulations, particularly by the Law of Ukraine “On Principles of State Regulatory Policy in Economic Operations” which determines the legal and organisational principles of government regulatory policy.

2.3

Access to Justice

Ukraine has implemented access to justice requirements through administrative, commercial, and civil proceedings. Claims for breach of the right of access to environmental information or the right to participate in the environmental decision-making process and claims to challenge public authorities are within the jurisdiction of administrative courts. There are no dedicated environmental courts. Any action brought in Ukraine to protect the rights under the Convention and environmental lawsuits are dealt by common law practices applicable to respective types of proceedings.

The Constitutional Court of Ukraine, in its decision on 28 November 2013 (Case No 12-rp/2013), ruled that a public organisation may only defend in court the personal non-property and property rights of its members and the rights and legally protected interests of other persons seeking such protection in cases when such power is provided for in its statutes and if the relevant law determines the right of a public organisation to apply to a court for the protection of the rights and interests of other persons. Besides, according to art. 1 of the Law of Ukraine “On Public Associations”, voluntary associations of natural and legal persons are competent, in addition, to protect environmental rights.

According to para. 3 art. 21 of the Law of Ukraine ‘On Environmental Protection’, public organisations in the field of environmental protection have the right to submit claims to the court for compensation for damage caused by violation of the law on environmental protection, including the health of citizens and the property of



public organisations. Systematic analysis of the Civil Procedure Code of Ukraine leads to the conclusion that in cases specified by law, bodies and persons who are entitled by law to take legal action on behalf of other persons or in the public or public interest, may apply to the court.

2.4

Compliance assurance, accountability, and effectiveness

The main governmental body of Ukraine in the sphere of the environment is the Ministry of Environmental Protection responsible for the protection and administration of the environment. Authorities within the Ministry are divided among various agencies and committees. Several other Ministries and Committees, including health protection, industrial safety and industrial policy, also have authority for certain aspects of environmental laws. Local authorities may also have some responsibility for the administration of environmental laws, depending upon the nature of the project under consideration. Law enforcement bodies, such as the Ministry of Internal Affairs and the General Prosecutor's Office, which includes a specialised environmental prosecutor's department, have significant authority to enforce actions against violations of environmental laws.

In terms of accountability, the Criminal Code of Ukraine, in force on September 1, 2001, includes in its first article environmental protection as one of its purposes. It also protects the environment in several articles including a concrete Chapter (VIII) on "criminal offences against the environment" and the criminalisation of "ecocide" defined in article 441, as the *"mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster"*.

In the report on criminal offences committed at enterprises, institutions, and organisations by types of economic activity in January-August 2019, the General Prosecutor's Office of Ukraine classified criminal offences according to the following categories: agriculture, forestry and fisheries – 1898; mining and quarrying – 733; manufacturing – 1437; supply of electricity, gas, steam and air conditioning – 759; water supply; sewage, waste management – 780. Strengthening criminal liability for environmental crimes is one of the means of effective implementation of criminal environmental policy directions.



3

Institutional context

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4

Role of Civil Society

Ukrainian civil society performed two countrywide mass protests with far-reaching consequences, which in the public discourse were even labelled as “revolutions”. The ‘Orange revolution’ of 2004/2005 and the ‘Revolution of dignity’ of 2013/2014 seem to prove that important components of civil society – namely, public practices – shared civic values, social capital, and its ethical and cultural dimensions.

Strictly speaking on environmental matters, it may be remarked that after the nuclear catastrophe in Chernobyl, the ecological movement “Zelenyi Svit” (Green World) started in Ukraine in 1989 and evolved into a potent political force.

The EU-Ukraine Civil Society Platform

The institutional, general, and final provisions of the EU Association Agreement with Ukraine (Article 469) stipulate the establishment of a Civil Society Platform, tasked with promoting regular meetings of representatives of the civil societies of both parties “to keep them informed of, and gather input for, the implementation of this Agreement”. Thus, the Platform complements the political bodies existing within the framework of the EU-Ukraine Association Agreement and allows civil society organisations from both sides to monitor the implementation process from the point of view of civil society and prepare their recommendations to the relevant authorities.

In 2018, Working Group 5 of the EU-Ukraine Civil Society Platform as part of its activities on “Energy, Transport, Environment, and Climate Change” submitted a report entitled “Climate change in the context of Paris Agreement commitments: challenges and cooperation opportunities for EU and Ukraine”.

Civil society is gathering information about the negative impact on the environment that the Russian illegal invasion of Ukraine is causing. For example, the Ministry of Environmental Protection and Natural Resources, “Ekozagroza” website, collects information about environmental crimes. In particular, the website collects data regarding the negative impact of the occupiers’ equipment (including air emissions), number of forest fires, and information on air pollution and groundwater. The Ukraine State Inspectorate’s “Crisis Centre” is also noteworthy. The Centre works mainly to



develop methodologies for collecting and analysing data on the invasion's negative impacts on the environment. This data can be used in future international litigation.

More than 50 civil society organisations are developing the Green Recovery Principles for Ukraine, a set of general principles that should be used in the implementation of all of Ukraine's recovery projects. They will work with other public organisations to study the implementation of Ukraine's recovery plan and advance ideas for sustainability and green principles.

The Aarhus Environmental Information and Education Centre cooperates with NGOs in all regions of the country to represent public opinion on the state of the environment, environment safety, and environmental protection oversight. The Aarhus Centre hosted 235 events with more than 5000 participants from 2017 to 2020: members of the central and regional governments, public organisations, research institutions, schools, and mass media.

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