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Recommendations to Ukraine for implementation of certain provisions of the Governance Regulation 2018/1999 (stemming from Regulation (EU) No 525/2013)

Ukraine

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(updated as of 1 February 2022)



This document has been prepared within the framework of the EU4Climate Programme, financed by the European Union and implemented under the indirect management of the United Nations Development Programme (UNDP). The objective of the EU4Climate Programme is to support the development and implementation of climate-related policies by the Eastern Partnership countries, which contribute to their low emission and climate resilient development and their commitments to the 2016 Paris Agreement on Climate Change.

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List of abbreviations

AA	EU-Ukraine Association Agreement
CH ₄	Methane
CMU	Cabinet of Ministers of Ukraine
CO	carbon monoxide
CO ₂	Carbon Dioxide
COP	Conference of Parties
CSs	Controlled Substances
EnC	Energy Community
EnCT	Energy Community Treaty
ERU	Emission Reduction Unit
ETF	Enhanced Transparency Framework
ETS	Emissions Trading Scheme
EU	European Union
F-gases	Fluorinated greenhouse gases
GHG	Greenhouse Gas
HCFCs	Hydrochlorofluorocarbons
HFCs	Hydrofluorocarbons
KP	Kyoto Protocol
LEDS	Low Emission Development Strategy
LULUCF	Land use, land-use change and forestry
MEPR	Ministry of Ecology and Natural Resources of Ukraine
MMR	Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC
MRV	Monitoring, Reporting and Verification
MS	Member State
N ₂ O	Nitrous oxide
NECP	National Energy and Climate Plan
NF ₃	Nitrogen trifluoride
NIR	National Greenhouse Gas Emission Inventory Report
NMVOCS	Non-methane volatile organic compounds
NO _x	Nitrogen oxides
ODS	Ozone Depleting Substances
PA	Paris Agreement
PFCs	Perfluorocarbons
SDGs	Sustainable Development Goals
SF ₆	Sulfur hexafluoride
UNFCCC	United Nations Framework Convention on Climate Change
PAMs	Policies and measures

Introduction

To strengthen its response to the global threat of climate change and efficiently contribute to joint efforts at reducing GHG concentrations in the atmosphere, Ukraine has committed to implement its international climate-related obligations and reporting under multilateral and bilateral agreements and shape its legal framework in line with EU climate legislation and recommendations.

For instance, as the *Annex I Party to the UNFCCC, Annex B Party to KP and Party to Paris Agreement*, Ukraine is obliged to prepare and submit its Nationally Determined Contribution (NDC); Long-Term Strategy for low emission development (LTS); National Communication (NC); National GHG emissions Inventory Report (NIR); Biennial Transparency Report (BR) and National Adaptation Plan (NAP).

With this in view, on July 2021 Ukraine has submitted to the UNFCCC its *updated NDC*, setting a GHG emission level target by 2030 not exceeding of 35% GHG emission level comparing to 1990 (meaning a reduction in GHG emissions of 65% by 2030 compared to the levels of 1990)¹¹ and on July 2018 Ukraine has formally communicated its *2050 Low Emission Development Strategy (hereinafter - 2050 LEDS)* (with an indicative GHG emissions target to not exceed 31 - 34% of 1990 GHG emission level by 2050).² Ukraine has also submitted to the UNFCCC in 2013 its *first BR* with *sixth NC* combined into a single document³ and on April 2021, its most recent *NIR* (being part of Ukraine's GHG Inventory) covering the period of 1990-2019.⁴

Whereas under the *EU-Ukraine Association Agreement* Ukraine has affirmed its intentions to implement and promote climate change policies, falling under the scope of mutual cooperation objectives as well as on strengthening of existing climate commitments

included in multilateral agreements, to which both the EU and Ukraine are parties. The EU-Ukraine Association Agreement does not include any specific climate-relating reporting commitments, it imposes instead legally binding commitments to implement specific EU climate legislation [*Directive 2003/87/EC; Regulation (EC) 842/2006 on certain fluorinated greenhouse gases; Regulation (EC) 2037/2000 on substances that deplete the ozone layer*].

Additionally, it is essential to embark on in the footsteps of EU's Green Deal, the main new growth strategy to transition the EU economy to a sustainable economic model. A central objective of the EU Green Deal is to set out the trajectory for the EU to be climate neutral by 2050, while, as a milestone towards this target, the EU Commission proposed a 2030 target to reduce GHG emissions by 55 per cent compared to 1990.

One should note, that Ukraine's climate neutrality intentions by 2070 are already illustrated in Ukraine's *2050 Green Energy Transition Concept (Ukraine Green Deal)* as of January 2020⁵. Whereas, Ukraine's *National Economic Strategy until 2030* (March 3, 2021) calls for achieving "economic decarbonization" and "climate neutrality no later than by 2060".⁶

In addition, on 11 February 2021, the EU and Ukraine held the 7th meeting of the Association Council recalling the importance of strengthening efforts to address challenges in the fields of climate action and environment as stipulated in the EU-Ukraine Association Agreement and in line with Paris Agreement, defining cooperation, inter alia, in the area of climate governance architecture and welcoming Ukraine's ambition to approximate its policies and legislation with the European Green Deal.²

The readiness of the EnC to join the EU and other international partners intentions in achieving net zero GHG emissions by 2050 is

¹ While the previous commitment entailed in the *Intended Nationally Determined Contribution (INDC)* submitted in 2015 (before the entry into force of Paris Agreement) targeted the level of GHG emissions at only 40% comparing to 1990 levels (meaning a reduction in GHG emissions of 60% by 2030 compared to the levels of 1990).

² Joint press release following the 7th Association Council meeting between the EU and Ukraine, available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/02/11/joint-press-statement-following-the-7th-association-council-meeting-between-the-eu-and-ukraine/>

expressed in the decision of the 19th Ministerial Council (MC) of the Energy Community (EnC) as of November 30, 2021.

By the same decision, the MC of EnC has adopted the *Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action (hereinafter – Governance Regulation 2018/1999)*, which is now a fully binding climate legislation for CPs to the EnCT, including Ukraine and sets out the necessary legislative foundation for reliable, inclusive, cost-efficient, transparent and predictable governance mechanism supporting CPs' path towards 2030 energy and climate targets and mid-century climate neutrality for the EnC. The said EU Regulation builds on and integrates the existing requirements for planning, reporting and monitoring in the energy and climate fields under the *Regulation (EU) No 525/2013 (hereinafter – MMR)*.⁷

In pursuit of the global ambition on climate change mitigation and long-term goals, the present Recommendations aim to assist Ukraine in reaching its climate and energy targets, streamline its efforts as regards international climate-related reporting obligations and align its domestic legislation with the EU Governance Regulation 2018/1999.⁸

Both MMR and the EU Governance Regulation 2018/1999 are part of climate *acquis* and recommendations under the EnCT as defined below.

By becoming a *Contracting Party to the EnCT* as of 1 February 2011, Ukraine has committed itself to transpose and implement provisions of the EU laws made applicable under it.

Starting from 2016 climate-related issues became integrated in the context of the EnC in the form of recommendations and guidelines, adopted by the MC of the EnC. The recommendations, guidelines have no binding legal force though CPs "shall use their best endeavours" to carry them out (Article 76 of EnCT).

The MMR⁹ was included in the EnC legislation under the MC Recommendation 2016/02/MC-EnC since October 2016. It lays down a basic framework for monitoring and reporting on GHG

emissions based on UNFCCC requirements. According to the EnC MC recommendation CPs were encouraged to prepare legal and institutional preconditions for introducing key elements of the MMR. Those cover adoption of low-carbon development strategies, establishment of national inventory system for GHG emissions and introducing legislation defining national systems for policies and measures (PAMs) and projections of anthropogenic GHG emissions by sources and removals by sinks.

In the European Union, the MMR was repealed by the Governance Regulation 2018/1999 in 2018 and thus has no longer been applicable.

Respectively, to duly account on the EU's legislative updates, as of November 30, 2021 the MMR, by the decision of EnC Ministerial Council is replaced by the Governance Regulation 2018/1999 [MC Decision 2021/14/MC-EnC]. In this regard, Ukraine is therefore obliged to align its domestic legislation with the adapted provisions of the Regulation by December 31, 2022.

Adapted by the MC Decision 2021/14/MC-EnC and building on the importance of meeting the CPs' international energy and climate targets the Governance Regulation amended and broadened the scope of the provisions of the MMR. Namely, the Regulation lays down extensive requirements for planning, reporting and monitoring on energy and climate policies, measures and targets. Those include, inter alia, preparation and submission of integrated national energy and climate plans (NECP), development and reporting on long-term strategies with a 30-year perspective (LTS) as well as preparation of biennial progress reports and annual reporting.

Given that MMR is no longer applicable in the EnC the present deliverable outlines Recommendations to Ukraine for the implementation of certain provisions of the Governance Regulation 2018/1999.¹⁰ It also accounts on EU Commission's supporting documents and guidelines – Implementing Regulation 2020/1208 on national reporting¹¹ and Delegated Regulation 2020/1044¹² on inventory guidelines and defining values for the global warming potentials based on the IPCC Fifth Assessment Report, which were also

incorporated in the EnC *acquis* by MC Decision 2021/14/MC-EnC.

The findings of Deliverable 2 established that in overall terms Ukraine partially transposes the provisions of the said EU climate *acquis*. Nonetheless, it also revealed the lack of coherence among separate existing legal acts on climate and energy policies, strategies and planning documents. The said documents also do not fully reflect the requirements for information on policies and measures (PAMs) and projections to be reported to the ECS. Thus, revising and updating Ukraine's energy- and climate-related legal acts is highly advisable to ensure proper strategic planning and reporting to the ECS as required under the EU Regulation. In addition, defining straightforward reporting obligations and clear responsibilities of state bodies in Ukraine as for preparation and

evaluation of PAMs and projections in a legal document (at least at the secondary level) is essential for due and reasonable implementation of the extensive requirements, including reporting rules, established under the Governance Regulation 2018/1999. Similarly, this will greatly improve Ukraine's ability to report under the Enhanced Transparency Framework (ETF) requirements as per Article 13 of the Paris Agreement.

The present report therefore outlines key recommendations and actions to be taken by Ukraine to implement certain provisions of the Governance Regulation 2018/1999 and addresses the gaps and inconsistencies identified in the analysis conducted under Deliverable 2.

1. Executive summary

The present report is prepared within the framework of the EU4Climate Programme, financed by the European Union and implemented under the indirect management of the United Nations Development Programme (UNDP). The objective of the EU4Climate Programme is to support the development and implementation of climate-related policies by the Eastern Partnership countries, which contribute to their low emission and climate resilient development and their commitments to the 2016 Paris Agreement on Climate Change.

The Energy Community is an international organisation which brings together the EU and its neighbours to create an integrated pan-European energy market. Ukraine as one of the Contracting Parties to EnCT shall thus approximate its domestic legislation with a number of EU *acquis* made applicable under it.

Starting from October 2016, the Ministerial Council of the Energy Community by adopting the MC Recommendation 2016/02/MC-EnC included MMR provisions as part of non-binding climate *acquis* to support the CPs, including Ukraine, to cut their GHG emissions as committed under the PA.

With this in view, under MC Recommendation 2016/02/MC-EnC CPs are encouraged to "prepare legal and institutional preconditions" in order to implement key MMR elements being: 1) adoption of Low-carbon development strategies; 2) development of National inventory system for GHG emission; 3) introducing legislation defining national systems for policies, measures and projections; 4) preparation and submission of biennial reports and national communications.

Nonetheless, in the European Union, the MMR was repealed by the Governance Regulation 2018/1999 in 2018 and thus has no longer been applicable. However, its reporting and monitoring requirements have been integrated into the EU Governance Regulation.

Duly accounting on the EU legislative updates, the Ministerial Council of the Energy Community has fully replaced the MMR by the Governance Regulation 2018/1999 [MC Decision 2021/14/MC-EnC] within the Energy Community. In this regard, Ukraine is therefore obliged to align its domestic legislation with the adapted provisions of the Regulation by December 31, 2022.

This includes reinforcing its legal and institutional framework by encompassing requirements of the Governance Regulation 2018/1999. In doing so, Ukraine shall also account on the EnC's 2030 targets related to GHG emission reduction, share of renewable energy and energy efficiency scheduled for adoption at the 2022 EnC MC.

The conducted gap analysis (See Deliverable 2) illustrated in overall terms partial transposition of MMR/Governance Regulation 2018/1999 provisions in Ukrainian legislation.

Whereas the remaining incompliances and identified gaps are to be addressed by means of duly accounting on the present Recommendations for Ukraine's implementation of the Governance Regulation 2018/1999. It outlines 4 core actions to be taken by Ukraine within specific timeframes (See section 2). The said actions are defined below and thus include:

1) Action 1: Enhance existing legal and institutional framework for national system for PAMs and projections to comply with obligations stemming from the Governance Regulation 2018/1999. The action proposes that Ukraine revise and streamline its current separate energy- and climate-related policies, strategies and planning documents adopted in form of legal acts and designate responsible

authorities and define their roles with overall responsibilities to implement reporting requirements stemming from Governance Regulation 2018/1999.

2) Action 2: Develop and submit to the ECS Ukraine's National Energy and Climate Plan, which covers finalization of submission to the ECS by 1Q 2022 of first draft NECP [for the period from 2021-2030] based on the MC Recommendation 2018/01/MC-EnC.

3) Action 3: Enhance and introduce primary legal rules on national GHG inventory system by means of introducing hierarchical rules to explicitly enshrine legal obligation for respective state bodies/entities to submit information and data substantial for NIR compilation, including confidential one. Existing domestic rules are also to be revised to mirror the extensive requirements of the Governance Regulation 2018/1999.

4) Action 4: Start the process of LTS preparation and submission to the ECS in line with the Governance Regulation 2018/1999 on the basis of the existing Ukraine's 2050 LEDS. Defining responsible state authority/ies for LTS development and submission to the ECS, considering reasonable timeframes and the suggested timeline, is highly advisable.

2. Timeline for the Recommendations to support Ukraine in alignment with specific parts of its obligations under Governance Regulation 2018/1999

Timeline for Recommendations to Ukraine to align with specific parts of its obligations under the Governance Regulation 2018/1999 (adapted by MC Decision 2021/14/MC-EnC)				
SHORT TERM			MEDIUM TERM	
2022	2023	2024	2025	2030
Action 1: Enhance existing legal and institutional framework for national system for PAMs and projections to comply with obligations stemming from the Governance Regulation 2018/1999				
Recommendation 1: Streamline and revise existing separate energy- and climate-related legal acts on policies, strategies and planning documents in Ukraine				
Recommendation 2: Introduce legal rules defining roles and designating responsible authorities with overall responsibilities for requirements stemming from the Governance Regulation 2018/1999 and reporting thereof	Deadline 31 December 2022			
Action 2: Develop and submit to the ECS Ukraine's National Energy and Climate Plan				
Recommendation 1: Finalize process of preparation and submission of first draft NECP (as per EnC MC Recommendation) to the ECS	Deadline: 1Q 2022			
Recommendation 2: Start planning the process of the NECP in line with the Governance Regulation 2018/1999		Deadline 30 June 2024		
Recommendation 3: Foresee the submission to the ECS of the integrated NECP report				Deadline 15 March 2025
Action 3: Enhance and introduce primary legal rules on national GHG inventory system				
Recommendation 1: Introduce primary law rules as regards collection of information for NIR compilation, including confidential information	Deadline 31 December 2022			
Recommendation 2: Revise the existing legal rules in line with the extensive requirements of the Governance Regulation 2018/1999				
Action 4: Action 4: Start the process of LTS preparation and submission to the ECS in line with the Governance Regulation 2018/1999				
Recommendation 1: Launch the submission process of Ukraine's LTS and reporting thereof	Deadline 31 January 2023			

3. Action 1: Enhance existing legal and institutional framework for national system for PAMs and projections to comply with obligations stemming from the Governance Regulation 2018/1999

The Governance Regulation 2018/1999 imposes obligations on CPs to have relevant institutional, legal, and procedural arrangements in place for reporting on PAMs and on projections of anthropogenic GHG emissions by sources and removals by sinks (Article 39).

Those are essential preconditions for CPs' to create and operate national systems for PAMs and projections to comply, in particular, with biennial reporting obligations on PAMs and projections of anthropogenic GHG emissions by sources and removals by sinks stemming from Article 18 of the Governance Regulation 2018/1999. This information is also essential for reporting under the ETF.

Detailed information to be reported on PAMs and projections is defined in Article 18 and respective Annexes VI and VII to the Governance Regulation 2018/1999.

Current Ukraine's domestic rules setting up energy- and climate-related policies, strategies and planning documents lack consistency among each other and do not fully

reflect the specific and detailed requirements for reporting information on PAMs and projections stipulated in the EU Regulation.

For coherence and adequacy of policies and measures adopted at national level, Ukraine is encouraged to streamline its separate climate planning and strategies and policies by defining a leading "umbrella" document to be complied with.

Defining respective state authorities in Ukraine responsible for reporting on PAMs and projections is advised. Similar approach is suggested for preparation and evaluation of PAMs and projections. This is essential for due and reasonable implementation of the extensive requirements, including reporting rules, established under the Governance Regulation 2018/1999 and it is recommended by the end of 2022.

The above-said will thus reinforce Ukraine's existing legal and institutional arrangements for PAMs and projections and ensure coordination between actors responsible for energy and climate policies.

3.1. Recommendation 1: Streamline and revise existing separate energy- and climate-related legal acts on policies, strategies and planning documents in Ukraine

Under Article 39 of the Governance Regulation 2018/1999 by 1 January 2023, CPs shall operate and seek to continuously improve *national systems for reporting on PAMs and for reporting on projections of anthropogenic GHG emissions by sources and removals by sinks*. Those systems shall include the relevant *institutional, legal and procedural arrangements* established within a CP for evaluating policy and making projections of anthropogenic GHG emissions by sources and removals by sinks.

Establishing national system for reporting on PAMs and projections is of vital importance for complying with *reporting obligations* stemming from Article 18 of the Governance Regulation 2018/1999 as regards its PAMs [by 15 March

2023 and every two years thereafter] and its national projections of anthropogenic GHG emissions by sources and removals by sinks [by 15 March 2025 and every two years thereafter] according to set up templates. In addition, CPs shall aim to ensure the *timeliness, transparency, accuracy, consistency, comparability and completeness of the information* reported on PAMs and projections of anthropogenic GHG emissions by sources and removals by sinks, including the use and application of data, methods and models, and the implementation of quality assurance and quality control activities and sensitivity analysis (Article 39(2) of the Governance Regulation).

PAMs cover all instruments which contribute to meeting the objectives of the NECP and/or to implement commitments under points (a) and (b) of Article 4(2) of the UNFCCC [i.e. policies and measures on the mitigation of climate change, by limiting its anthropogenic emissions of GHG and protecting and enhancing its GHG sinks and reservoirs], which may include those that do not have the limitation and reduction of GHG emissions or change in the energy system as a primary objective (Article 2 of the Governance Regulation 2018/1999).

In addition, PAMs are binding elements for composing NECP (Article 3 of the Governance Regulation 2018/1999).

The Governance Regulation 2018/1999 distinguishes between “planned” “implemented” and “adopted” PAMs. In particular, “adopted PAMs” are those “*for which an official governmental decision has been made*” [by the date of NECP submission] and “*there is a clear commitment to proceed with implementation*” (Article 2). It thus implies that PAMs are to be adopted at the level of the governmental decisions and shall impose explicit implementing obligations on CPs.

The analysis conducted under Deliverable 2 revealed that Ukraine has separate planning documents, national action plans and strategies (mainly adopted at governmental level) that duplicate or overlap with each other.

For example, *2030 Climate Change Concept Action Plan (December 6, 2017)*,¹³ *National Action Plan on environmental protection until the period of 2025 (April 21, 2021)*¹⁴ and *Strategy for Environmental Safety and Adaptation to Climate Change until 2030 (October 20, 2021)*¹⁵ all entail identical and/or similar provisions on development of climate change adaptation plans and inclusion of climate change prevention measures in local (regional) strategies.

Instead of producing new action plans and strategies duplicating each other (including on coordination of development of priorities and national and sectoral level) it seems to be reasonable for Ukraine to define a single “umbrella” document.

One of the possible options thereof is to define NECP as a leading document in Ukraine among other energy- and climate-relating policies, strategies, and planning documents, except for those forming part of the NECP. From practical and legal perspectives, it might be achieved via adopting NECP by CMU decision, explicitly prescribing its prevailing force. This will also help Ukraine to comply with the Presidential decree [on Priority measures against challenges and threats to national security of Ukraine in the environmental sphere] according to which CMU is instructed to develop and adopt NECP by Fall 2021.

Another feasible option is to identify an “umbrella document” being any energy- and climate-relating document that sets up key national development goals and priorities to formulate a strategy or policy or planning document to contribute to meeting the objectives of the NECP and/or to implement commitments under points (a) and (b) of Article 4(2) of the UNFCCC, which may include those that do not have the limitation and reduction of GHG emissions or change in the energy system as a primary objective.

As a separate note, Ukraine’s current energy- and climate-related policies, planning documents, strategies are suggested to be revised and/or supplemented by new ones to cover to the extent possible the following requirements for reporting information on PAMs and projections as provided for in the Governance Regulation 2018/1999:

1) Information to be reported on PAMs in the area of GHG emission covers, inter alia: quantitative estimates of PAMs effects on emissions by sources and removals by sinks of GHGs [ex ante assessments/ex post assessments], including costs and benefits (Annex VI to Governance Regulation 2018/1999); assessment of PAMs contribution to the achievement of the long-term strategy referred to in Article 15; the links between the different PAMs and their contribution to projection scenarios (as referred to in Article 18 and Annex VI to Governance Regulation 2018/1999);

2) Information to be reported on projections in the area of GHG emissions covers, inter alia: the descriptions of the models, methodological approaches and assumptions used for projections of anthropogenic GHG emissions by sources and removals by sinks; projections with/without/with additional measures (where available); results of the sensitivity analysis performed for the projections and information on the models and parameters used; references to the assessment and the technical reports that underpin the projections (as referred to in Article 18 and Annex VII to Governance Regulation 2018/1999);

One should note that Ukraine's 2021-2022 legislative agenda intends to introduce changes to the existing *Law on environmental protection* setting up climate-related provisions and preparing a *Draft law on the strategy of low-carbon development of Ukraine until 2050* outlining national priorities and climate-related objectives, fundamental rules on appropriate climate governance and monitoring and progress evaluation requirements towards the transition to low-carbon development [by Fall 2021]. Considering this, it might therefore be relevant

to include the requirements for reporting information on PAMs and projections in a draft primary law, for example in a Climate Framework Law or in a dedicated Governance Law transposing the Governance Regulation. Within this law, it is also advisable to envisage provisions defining clear objectives, competences, rights and obligations of state bodies involved in the process of development, adoption, evaluation and reporting on PAMs, projections and adaptations.

The present recommendation is also advisable to be applied to the integrated reporting on adaptations as referred to in Article 19(1) and Annex VIII (Part I) to the Governance Regulation 2018/1999. The same is suggested for the integrated reporting as referred to in Articles 19(2)(3) to 25 of the Governance Regulation 2018/1999, which, however, falls outside the scope of this report.

It is thus suggested to have the respectively revised and aligned energy- and climate-related policies, strategies and planning documents by end of December 2022.

3.2. Recommendation 2: Introduce legal rules defining roles and designating responsible authorities with overall responsibilities for requirements stemming from the Governance Regulation 2018/1999 and reporting thereof

Under Article 18 of the Governance Regulation 2018/1999 CPs shall report to the ECS on a biennial basis information on their national PAMs and their national projections of anthropogenic GHG emissions by sources and removals by sinks.

For this, countries must have in place, inter alia, necessary institutional arrangements for development, adoption, implementation and reporting on their national system on climate PAMs and projections of anthropogenic GHG emissions by sources and removals by sinks (Article 39 of the Governance Regulation 2018/1999).

As a separate argument, one should note that Governance Regulation 2018/1999 as an EU Regulation is directly applicable in the EU MS. This is to say that it enters into force and is

legally binding without any action on the part of member states (Article 288 of the Treaty on the Functioning of the European Union).

Whereas, since the above principle of "direct effect" of EU Regulations is not applicable to Ukraine, which is therefore encouraged to use its best endeavours to make the provisions of the Governance Regulation 2018/1999 functional by transposing them in a legal act, at least at secondary level.

Currently, MEPR is the main body for climate change field in Ukraine [MEPR Regulation adopted by CMU No.614 of June 25, 2020]. It is entitled to develop climate-related policies, evaluation, coordination, organization and monitoring of climate-related planning documents and strategies MEPR is also responsible for developing and issuing (within its competence) of regulations in the field of climate change as regards adaptation and

increase of resistance to climate change and determination of methods for estimating anthropogenic GHG emissions by sources and removals by sinks. Preparation, approval, and submission of national reports as committed under the UNFCCC, KP and the PA also falls under the competence of MEPR.

Nonetheless, as identified in the Gap analysis (See Deliverable 2) Ukraine is missing explicit legal provisions devoted to reporting and responsible institutions as envisaged in the Governance Regulation 2018/1999. In the light of the EU Commission's Implementing Regulation 2020/1208 and EEA's guidelines, this shall mean, inter alia, defining respective state authorities entrusted with the preparation and reporting on PAMs and projections, including their functional and hierarchical interactions. Determining a lead entity/state body within the national system for PAMs and projections is also recommended. Clearly differentiated functions and roles of responsible entities between two reporting streams - PAMs and projections - are suggested to be in place. Besides, responsible authorities for the process behind the selection of assumptions, methodologies and models used shall also be defined in a legal document. With the above-said in view, Ukraine is encouraged to adopt amendments to the existing bylaws and/or introduce new ones

that determine roles, functions and competences of respective state bodies [e.g. MEPR Regulation]. Namely, the said rules are advised to:

- 1) define respective state authorities entrusted with the reporting on PAMs and projections of anthropogenic GHG emissions by sources and removals by sinks, including their functional and hierarchical interactions as well as determining a lead entity/state body within the national system for PAMs and projections;
- 2) establish clearly differentiated functions and roles of responsible entities between two reporting streams - PAMs and projections;
- 3) designate responsible authorities for the process behind the selection of assumptions, methodologies and models used, including for the implementation of quality assurance and quality control activities and sensitivity analysis in line with Article 39(2) of the Governance Regulation 2018/1999.

In order to comply with the transposition deadline of the Governance Regulation 2018/1999, the proposed changes should happen by the end of 2022.

4. Action 2: Develop and submit to the ECS Ukraine's National Energy and Climate Plan

Unlike the MMR, the Governance Regulation 2018/1999 imposes an explicit obligation on CPs to draft and submit its integrated NECP to the ECS (Articles 3, 9 and 14 of the Governance Regulation 2018/1999). NECP should cover the period from 2025 to 2030 considering the long-term perspective and should provide an overview of the current energy system and policy situation. The subsequent plans shall cover the ten-year period following the end of the period covered by the previous plan. NECP should set out national objectives for each of the five dimensions of the Energy Union and corresponding policies and measures to meet those objectives and have an analytical basis.

Background note: NECP preparation and adoption has been on Ukraine's agenda for some time already. As of January 2018, as per Recommendation 2018/01/MC-EnC and Policy Guidelines (PG 03/2018) all CPs, including Ukraine, were encouraged to set up necessary institutional and regulatory preconditions for NECP preparation and adoption entailing the period from 2021 to 2030. The deadline for the draft NECP submission by CPs to the ECS was March 2020. The submission of first draft NECP was to be followed by a consultation with other CPs and MS. Subsequently, the ECS would issue opinions on draft NECPs. Final NECPs were encouraged to be submitted to the ECS by October 2020, taking into account consultations with other CPs and MS, ECS's opinion and relevant legislation. CPs were also invited to ensure comprehensive public participation in the preparation of NECPs, including informing thereof the ECS, accordingly. In this regard, Ukraine was invited to submit its draft NECP to the ECS by March 2020 and final NECP – by October 2020.

Building on the existing EnC Recommendation adopted by the Ministerial Council the NECP suggested timeline for Ukraine, considering deadlines of the Governance Regulation 2018/1999 adapted version, is as follows:

- Draft NECP submission to ECS [period from 2021 – 2030] by 1Q 2022
- Final NECP submission by June 30, 2024

- Integrated national energy and climate progress report on *inter alia* the implementation of the NECP by March 15, 2025 and every two years after
- New draft NECP submission to ECS [period from 2031-2040] by January 1, 2028
- Final new NECP [period from 2031-2040] by January 1, 2029.

4.1. Recommendation 1: Finalize process of preparation and submission of first draft NECP (as per EnC MC Recommendation) to the ECS

The first draft NECP (as per EnC MC Recommendation) has not been submitted yet, but reportedly it is in an advanced stage. According to the 2021 ECS Implementation Report it is currently being discussed within the Ministry of Energy of Ukraine.

NECP (as per EnC MC Recommendation) development and adoption was listed among Ukraine's 2020-2021 priority measures adopted at the level of state authorities' by-laws. In particular, as per 2030 Climate Change Concept Action Plan¹⁶, Ukraine was expected to submit it to the ECS by end of 2020. In line with Presidential decree [on Priority measures against challenges and threats to national security of Ukraine in the environmental sphere]¹⁷ CMU is instructed to

develop and adopt NECP by Fall 2021. NECP preparation is also part of key tasks of the Intergovernmental Working Group on Climate Change Coordination.

Therefore, it is therefore recommended that the draft NECP (as per EnC MC Recommendation) covering the period from 2021 until 2030 and based on the existing Recommendation 2018/01/MC-EnC as supplemented by Policy Guidelines (PG 03/2018) is submitted in 1Q 2022.

The findings from this current NECP will be instrumental for an improved next iteration of the NECP covering the period 2025-2030.

4.2. Recommendation 2: Start planning the process of the NECP in line with the Governance Regulation 2018/1999

In the light of the recently adopted Governance Regulation 2018/1999 Ukraine shall start planning the process of preparing the NECP (as per the Governance Regulation 2018/1999) for the period from 2025 – 2030. According to the EnC MC adapted timelines [to the Governance Regulation 2018/1999] the proposed submission timeframe to the ECS is June 30, 2023. That plan could build on the NECP (as per EnC MC Recommendation) that

Ukraine is encouraged to submit to the ECS as per Recommendation 4.1.

NECP (as per the Governance Regulation 2018/1999) shall cover elements set out in

Article 3(2) and Annex I to the Governance Regulation 2018/1999, in particular, but not limited to, a description of national objectives, targets and contributions relating to the EU five dimensions being: (1) security, solidarity and trust; (2) a fully integrated internal energy market; (3) energy efficiency; (4) decarbonising the economy; and (5) research, innovation and competitiveness. Moreover, NECP (as per the Governance Regulation 2018/1999) shall cover description of the public consultation and involvement of stakeholders and their results, including regional cooperation with other MSs and CPs.

Besides, formulating national rules identifying respective state bodies responsible for contributing, preparing and submitting the NECP (as per the Governance Regulation 2018/1999) as well as necessary follow-ups would strengthen the process. This is particularly important as in practice, that role is assigned to the Ministry of Energy of Ukraine though not legally prescribed. Whereas as per Presidential decree the responsibility for NECP adoption and development lays with the CMU [Presidential decree on Priority measures against challenges and threats to national security of Ukraine in the environmental sphere of March 23, 2021].

With this in mind and considering the deadlines outlined in the Governance Regulation 2018/1999, Ukraine is advised to submit its draft NECP (as per the Governance Regulation 2018/1999) covering the period from 2025 – 2030 by June 30, 2023. Following the ECS assessment, expected to be conducting no later than within six months (before June 30, 2024), Ukraine is suggested to then submit its final NECP (as per the Governance Regulation 2018/1999) by June 30, 2024 to the ECS.

4.3. Recommendation 3: Foresee the submission to the ECS of the integrated NECP report

As per the adapted version of the Governance Regulation 2018/1999 by 15 March 2025, and every two years thereafter, each CP shall report to the ECS on the status of implementation of its integrated national energy and climate plan by means of an integrated national energy and climate progress report covering all five dimensions of the Energy Union.

Pursuant to Article 17 of the Governance Regulation 2018/1999 [as adapted by the MC Decision 2021/14/MC-EnC] the integrated national energy and climate progress report shall cover the following elements:

(a) information on the progress accomplished towards reaching the objectives, including progress towards the EnC's climate-neutrality objective, targets and contributions set out in the integrated national energy and climate plan, and towards financing and implementing the policies and measures necessary to meet them, including a review of actual investment against initial investment assumptions;

(b) where applicable, information on the progress in establishing the multilevel climate and energy dialogue as referred to in Article 11;

(c) the information on integrated reporting on renewable energy, on energy efficiency, on energy security, on the internal energy market Reporting on Energy Poverty on research, innovation and competitiveness as referred to

in Articles 20 to 25, and, where appropriate, updates on PAMs, in accordance with those articles;

(d) information on adaptation in accordance with point (a)(1) of Article 4;

(e) as far as possible quantification of the impact of the PAMs in the NECP on air quality and on emissions of air pollutants.

The integrated national energy and climate progress report shall also cover the information contained in the final GHG inventory data and preliminary data reports referred to in Article 26(3) and the information on PAMs and projections of anthropogenic GHG emissions by sources and removals by sinks contained in the integrated reports on GHG PAMs and on projections reports referred to in Article 18 of the Governance Regulation 2018/1999. The report will also be made available to the public.

Respective national rules related to NECP progress report preparation and submission are suggested to be in place, including the assigned state bodies.

Proposed timeframe for the first integrated NECP report, in line with the provisions of the Governance Regulation 2018/1999 is March 15, 2025.

5. Action 3: Enhance and introduce primary legal rules on national GHG inventory system

In line with key elements the Governance Regulation 2018/1999 Ukraine has secondary rules in place for establishing and operating a national inventory system for GHG emissions, as well as on preparation and submission of Ukraine's National Inventory Report (NIR). Competent authorities are also defined being MEPR and GHG Inventory Institution, subordinated to MEPR. Rules are also in place allowing sufficient degree of involvement of the said bodies in the future creation and functioning of reporting systems provided for in the MRV law [both the GHG Inventory Institution and MEPR] and ODS and F-gases law [MEPR]. However, the absence of explicit primary rules deprives competent authorities from obtaining information and data, being essential for NIR preparation. Besides, it leads to distortion of coordination, jeopardizes quality and transparency as well as leads to uncertainty in GHG emission estimation. Ukraine, therefore, should ensure that its GHG Inventory Institution and MEPR have necessary legally defined authority to access information essential for NIR.

Continuous improvement of national inventory system as per Article 37(1) of Governance Regulation 2018/1999 is envisaged in the

CMU resolution 2006 and the 2030 Climate Change Concept Action Plan and falls under the competence of the GHG Inventory Institution and MEPR. The said rules include, inter alia, quality control and application of best practices and recommendations of international experts in the national inventory system.

The existing legislation in Ukraine broadly covers all activities that lead/might lead to anthropogenic emissions of GHG into the atmosphere from sources as well as those related to the absorption of GHG (para 2 of CMU resolution 2006). Nevertheless, from legal perspectives to avoid any data distortion or overlapping, Ukraine is encouraged to reflect the list of GHGs in a legal document.

In addition, accounting on extensive requirements imposed by a legally binding Governance Regulation 2018/1999 [comparing to the MMR's provisions as per Recommendation 2016/02/MC-EnC] specific legal rules are suggested to be in place as referred to in the Recommendation 5.2 to reach compliance with requirements of the Governance Regulation 2018/1999.

5.1. Recommendation 1: Introduce primary law rules as regards collection of data and information for NIR compilation, including confidential information

As per Articles 37 and 26 of the Governance Regulation 2018/1999 CPs shall have in place the national inventory system to estimate GHG anthropogenic emissions by sources and removals by sinks [by January 1, 2023] and annually report to the ECS its approximated GHG inventory for the year X-1 [as of July 31, 2025]. The report on the *final GHG inventory data* shall also include a complete and up-to-date *national inventory report* (Article 26(3) of the Governance Regulation 2018/1999).

Countries shall, inter alia, ensure that GHG inventories are transparent, complete, accurate and consistent (Article 37(1) of Governance Regulation 2018/1999).

By partially reflecting the respective Governance Regulation 2018/1999 provisions Ukraine has a national inventory system for GHG emission in place established under the CMU resolution 2006.¹⁸ The system is operated by the MEPR.¹⁹ The NIR preparation is jointly conducted by MEPR and GHG Inventory Institution (established by Governmental decision).²⁰ The national inventory system consists of organizational measures conducted via planning, annual inventory of anthropogenic emissions and removals of GHG as well as submission of data and information necessary for estimation of GHG emissions by the ministries, other

central executive bodies, enterprises and institutions.

Rules are also in place allowing sufficient degree of involvement of the said bodies in the future creation and functioning of reporting systems provided for in the MRV law and ODS and F-gases law partially complying with certain elements of Article 37(2) of the Governance Regulation 2018/1999.

Given that existing legal basis is composed of governmental by-laws, its practical implementation gives rise to significant difficulties and inconsistencies.

In the light of the Constitution of Ukraine, state bodies and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner as prescribed by the Constitution and the laws of Ukraine (Article 19). The laws of Ukraine [primary legislation] are adopted by the Parliament - Verkhovna Rada of Ukraine (Article 85 of the Constitution). Whereas legal acts [secondary legislation] are adopted at the level of executive state bodies being CMU³, others state bodies in Ukraine that have the respective authority prescribed by laws (e.g., ministries²¹ and local authorities in Ukraine).²²

Namely, legally speaking state authorities/entities might refuse to provide any information for NIR compilation, inter alia, by relying on its confidentiality, unless otherwise provided for in the primary legislation. In practice, most of data required for NIR compilation contains restricted information; either confidential information and/or commercially sensitive data.⁴

It is, therefore, recommended that primary rules are introduced indicating that MEPR and GHG Inventory Institution (where relevant) are entitled to obtain any information and data necessary for NIR compilation, including the confidential and commercially sensitive ones. This can be supplemented by respective rules defining the technical side for

preserving the confidentiality of data i.e., using of security techniques, encryption techniques, ensuring that the data is only accessible to the party for which it was intended and that no data can be intercepted by unauthorized parties.

On a separate note, Ukraine might also account on practice of EU MS (e.g., Latvia) where confidential information for NIR preparation is collected by means of concluding an interdepartmental agreement between the state statistical service and respective environmental state authority (such activity data is therefore reported as “C” in the NIR).²³ Nonetheless, the practice of concluding such agreements between state authorities for purposes of collection of data and information in Ukraine is unknown. Therefore, to be functional, the said approach shall firstly be clearly enshrined in a primary law [given the limited deadlines it is suggested to opt for any draft primary law being on Ukraine’s legislative agenda as referred to in Recommendation 3.1].

Nevertheless, to comply with the annual reporting obligations - *GHG inventory, including a complete and up-to-date national inventory report* - stemming from the Article 26, Ukraine is advised to clearly define the scope of the necessary data and information to be obtained by the national inventory authorities.

It is thus suggested to adopt to the extent possible the detailed information at the level of primary legislation. This refers to information to be included in the GHG inventory report, final inventory data and preliminary data, including the GHG and the inventory information as listed in Annex V and Article 26 to the Governance Regulation 2018/1999.

It is recommended that the respective legislation is introduced by end of December 2022.

³ The Cabinet of Ministers of Ukraine on the basis of and pursuant to the Constitution and laws of Ukraine, acts of the President of Ukraine, resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine, issues binding acts - resolutions and decrees

(Article 117 of the Constitution, Article 49 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine”).

⁴ In particular, this is the case of State Statistic Service of Ukraine

5.2. Recommendation 2: Revise the existing legal rules in line with the extensive requirements of the Governance Regulation 2018/1999

Before the entry into force of the Governance Regulation 2018/1999 (within the EnC), all CPs, including Ukraine, were encouraged to “prepare legal and institutional preconditions” in order to implement key elements of MMR under Recommendation 2016/02/MC-EnC.

Detailed MMR provisions suitable for incorporation within the EnC have not been identified so far. In the light of the EnCT and considering the original MMR version [applicable in the EU] its core elements, include, inter alia, recommendations to establish, operate and seek to continuously improve *national inventory systems* to estimate anthropogenic emissions by sources and removals by sinks of GHG [listed in Annex I to MMR] and ensure the timeliness, transparency, accuracy, consistency, comparability and completeness of their *GHG inventories* (Article 5).

MMR also entails *annual reporting on GHG inventory* to the EU Commission, which however, is not applicable to Ukraine (Articles 7 and 9 of the MMR).

Additionally, the MMR entails provisions that for the purpose of preparing national GHG inventories MS shall ensure that their *competent inventories authorities have access to* (1) data/methods reported for activities and installations under the **EU GHG Emission Trading Scheme (ETS) Directive** [Directive 2003/87/EC];⁵ (2) data collected through the reporting systems on fluorinated GHG (F-gases) in the various sectors set up pursuant to **EU F-gases Regulation** [Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases]; (3) emissions, underlying data and methodologies reported by facilities under **European Pollutant Release and Transfer Register (EPRT) Regulation** [Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register]; (4) data reported under the **EU Regulation on energy statistics** [Regulation (EC) No 1099/2008].

The said competent authorities shall make use of reporting systems established pursuant to **EU F-gases Regulation** to improve the estimation of F-gases in the national GHG inventories and are able to undertake the annual consistency checks as referred to in points (l) and (m) of Article 7(1) MMR.

By becoming legally binding for CPs, the Governance Regulation 2018/1999 [as adapted by MC Decision 2021/14/MC-EnC] has therefore extended the scope of applicable MMR requirements to CPs [and are now incorporated in the Governance Regulation 2018/1999]. Additional and specific obligations as regards the GHG inventory data and information to be reported are also imposed on CPs accounting on specific adaptations made for CPs to the EnCT. This relates to following obligations and requirements:

(1) report on annual GHG inventory to the ECS: of the approximated GHG inventory for the year X-1 [as of July 31, 2025]; final GHG inventory data for each year (year X) [by 15 March 15, 2025] and preliminary data [by 15 January each year], including the GHG and the inventory information listed in Annex V. The report on the final GHG inventory data shall also include a complete and up-to-date national inventory report (Article 26);

(2) include in the reports [as referred in point (1)] of GHG inventories information provided in Annex V, which covers, inter alia, anthropogenic emissions of GHGs [listed in Part 2 of this Annex V], anthropogenic GHG emissions by sources and removals of CO₂ by sinks resulting from LULUCF, for the year X-2 [in accordance with the methodologies specified in Part 3 of this Annex V]; information on indicators [as set out in Part 4 of this Annex] for the year X-2; information on the steps taken to improve inventory estimates; the actual or estimated allocation of the verified emissions reported by installation operators to the source categories of the national GHG inventory and the ratio of those verified emissions to the total reported GHG emissions in those source

⁵ In order to ensure consistency of the reported GHG emissions under the Union's emissions trading scheme and in the national greenhouse gas inventories.

categories, for the year X-2; where relevant, the results of the checks performed on the consistency of the data used to estimate emissions in preparation of the GHG inventories, for the year X-2, with the energy data reported pursuant to Article 4 of, and Annex B to **EU Regulation on energy statistics** [Regulation (EC) No 1099/2008 as adapted by MC decision];⁶

(3) ensure access of the competent inventory authorities to the information specified in Annex XII to this Regulation as follows: (i) data collected through the **reporting systems on fluorinated gases** in the relevant for the purpose of preparing national GHG inventories; (ii) data reported under **EU Regulation on energy statistics**⁷; (iii) data collected via the **geographical tracking of land areas in the context of existing Energy Community and Contracting Party programmes and surveys**, including the LUCAS Land Use Cover Area frame Survey and the Copernicus Programme (Article 37(2) of the Governance Regulation 2018/1999);

(4) ensure the conduction of annual consistency checks by competent inventory authorities: on the consistency of the data used to estimate emissions in preparation of the GHG inventories, for the year X-2, with the energy data reported pursuant to **EU Regulation on energy statistics** (Article 37(2)).⁸

(5) include information contained in the annual reports in integrated reports on NECP as referred in point (1) of Article 17.

Currently, Ukraine has rules in place allowing sufficient degree of involvement of MEPR and GHG Inventory Institution bodies in the future creation and functioning of reporting systems provided for in the MRV law [both the GHG Inventory Institution and MEPR] and ODS and F-gases law [MEPR].

For instance, GHG Inventory Institution participates in the establishment of the MRV system of monitoring, reporting and verification, including in the implementation

and evaluation of projects aimed at reducing GHG emissions and their absorption (GHG Inventory Institution Regulation).²⁴ MEPR is entitled to obtain information on controlled substances, that include F-gases, and goods and equipment, wastes containing controlled substances, including F-gases, reported by CS's operators (Article 15 of the ODS and F-gases law). In addition, MEPR is responsible to annually report information on the consumption of controlled substances to the Ozone Secretariat in accordance with the requirements of Article 7 of the Montreal Protocol on Substances that Deplete the Ozone Layer (para 73 of the MEPR Regulation).

Given that both – MEPR and GHG Inventory Institution are responsible for NIR compilation, this shall be deemed as sufficient to comply with Annex XII and Article 37(2) of the Governance Regulation 2018/1999.

Nevertheless, it is proposed for the existing legal rules to be revised [for instance by means of adopting changes to the CMU resolution 2006] to envisage MEPR and GHG Inventory Institution right to access the reported under Regulation (EC) No 1099/2008⁹; and data collected via the geographical tracking of land areas in the context of existing Energy Community and Contracting Party programmes and surveys, including the LUCAS Land Use Cover Area frame Survey and the Copernicus Programme (Article 37(2) of the Governance Regulation 2018/1999).

Also, according to the CMU resolution 2006, Ukraine's national GHG inventory system broadly covers all activities that can lead to anthropogenic GHG emissions (enterprises, units, installations, vehicles, etc.) as well as GHG absorption. The said legal basis operates with very generic provisions, failing to explicitly reflect the list of GHG of the Governance Regulation 2018/1999. This might lead to possible risks associated with distortion of coordination during data collection, quality control and transparency as

⁶ As adapted and adopted by Ministerial Council Decision 2012/02/MC-EnC, amended by Decision 2013/02/MC-EnC, amended by Decision 2015/02/MC-En

⁷ Ibid

⁸ Ibid

⁹ Ibid

well as uncertainty in GHG emission estimation.

One may argue that all the 7 GHGs of the said list, plus 4 indirect GHG in line with the UNFCCC are duly included in Ukraine's NIR.¹ Nevertheless, from legal perspectives to avoid any data distortion or overlapping, Ukraine is encouraged to reflect the list of GHGs in a

legal document by means of updating the existing CMU resolution 2006.

It is thus suggested that all domestic rules reflecting the above respective requirements for national GHG inventory system are revised by the end of 2022.

6. Action 4: Start the process of LTS preparation and submission to the ECS in line with the Governance Regulation 2018/1999

By the entry into force of the Governance Regulation 2018/1999 and subsequently by 1 January 2029 and every 10 years thereafter, Ukraine is obliged to prepare and submit to the ECS its long-term strategy with a 30 years perspective. Where necessary the long-term strategy might be updated every 5 years. It shall contribute to the fulfillment of Ukraine's commitments under the UNFCCC and the PA and is to be consistent with the NECP. The Governance Regulation 2018/1999 requires

the long-term strategies to be developed in an open and transparent manner and ensure effective opportunities for the public to participate in its preparation.

In order to ensure due and sound implementation of the international obligations under the EnCT, a new long-term strategy based on the existing 2050 LEDS needs to be prepared and submitted to reflect the mid-century climate neutrality target as per ECS.

6.1. Recommendation 1: Launch the submission process of Ukraine's LTS and reporting thereof

According to Article 15(1) of the EnC MC adapted version of Governance Regulation the long-term strategy (LTS) shall cover the 30 years perspective and be consistent with the EnC's climate neutrality objective. Moreover, the LTS shall cover elements, included in Article 15(4) and annex IV thereto.

The findings of Deliverable 2 have shown that Ukraine has in place its 2050 Low Emission Development Strategy (2050 LEDS) developed and submitted to the UNFCCC as part of its international obligations stemming from UNFCCC and PA, duly ratified by the respective laws. By reflecting some of the requirements of the Regulation Ukrainian 2050 LEDS covers 30-years perspective and contains a strategic vision and preconditions of transition towards low-carbon development, policies, and measures for de-carbonization.

In addition, for the time being, its 2050 LEDS sets up an indicative GHG emissions target to not exceed 31 - 34% of 1990 GHG emission level by 2050, i.e., reduction by 69-66 % of GHG emissions. Whereas, according to Article

15(1) of the Governance Regulation 2018/1999 [as adapted by the EnC MC] CPs long-term strategies shall be consistent with the EnC's climate neutrality objective. The readiness of the EnC to join the EU and other international partners intentions in achieving net zero GHG emissions by 2050 is expressed in the decision of the 19th MC of the EnC as of November 30, 2021. General Policy Guidelines on the adoption of a Decarbonisation Roadmap for the Contracting Parties of the Energy Community proposed by the EU were also adopted by the EnC MC.

To better reflect the said objectives, it is suggested for Ukraine to leverage on the support provided by the ECS, in particular, the Energy Community Energy and Climate Technical Working Group, the explicit scope of which covers the alignment process of CPs with MMR and now the Governance Regulation 2018/1999.

One should note, that Ukraine's climate neutrality intentions by 2070 are already illustrated in Ukraine's *2050 Green Energy*

Transition Concept (Ukraine Green Deal) as of January 2020²⁵. Nonetheless, the document is not framed as a draft or existing legal act, and thus falls outside the scope of this analysis. While, Ukraine's *National Economic Strategy until 2030* (March 3, 2021) calls for achieving "economic decarbonization" and "climate neutrality no later than by 2060".²⁶

According to the Governance Regulation 2018/1999 [as adapted by the EnC MC] CPs shall submit their strategies by its entry into force [by November 30, 2021] and subsequently by 1 January 2029 and every 10 years thereafter.

Having regard that Ukraine's 2050 LEDS, including state bodies assigned responsible thereof, were estimated in the 2018 legislative agenda, namely, *2030 Climate Change Concept Action Plan*²⁷ and *CMU 2018 priority actions*, it is recommended that similar legal provisions (adopted at the CMU level) are envisaged for LTS [updated based on the existing 2050 LEDS] required under the Governance Regulation 2018/1999. These could include, but not be limited to, provisions defining the process and responsible

authorities for LTS preparation, submission and approval (which however is not legally required under the Governance Regulation 2018/1999, but is highly advisable to ensure its proper implementation) and specify timeframes suggested by the present Recommendations.

In addition, as per Presidential decree²⁸ CMU is instructed to develop the *Draft law on the strategy of low-carbon development of Ukraine until 2050* [due by September 2021]. According to MEPR the draft law is expected to include national priorities and principles of state climate policy and low-carbon development in Ukraine, fundamental rules on appropriate climate governance and monitoring and progress evaluation requirements towards the transition to low-carbon development. Therefore, adoption of the said draft law will greatly contribute to the facilitation of the process of preparation and submission of its LTS.

In order to respect the EnC obligations, it is recommended that the process of preparing a new LEDS should follow the update of the existing 2050 LEDS and be submitted at the end of January 2023.

7. Conclusions

By acceding to the Energy Community Treaty, Ukraine has committed to shape its domestic legislation in line with the adapted EU climate rules.

Starting from October 2016, the EU climate legislation was incorporated within the Energy Community in forms of recommendations and policy guidelines. The Ministerial Council Recommendation 2016/02/MC-EnC of October 14, 2016 calls for the preparation of legal and institutional preconditions for the implementation of core elements of the Monitoring Mechanism Regulation (MMR). MMR aims at facilitating better monitoring and reporting of CPs GHG emissions and their progress towards their energy and climate targets.

The recently adopted 19th Ministerial Council's decision of November 30, 2021 marked a significant new step towards the decarbonisation dimension within the EnC. It has adopted the Governance Regulation

2018/1999 as part of key legislative acts stemming from the EU's Clean energy for all Europeans package. Adopted and adapted by Decision 2021/14/MC-EnC, the Governance Regulation 2018/1999 sets common rules for planning, reporting and monitoring on energy and climate policies and targets. Those include, inter alia, strong reporting rules, including on a biennial and annual basis, preparation of NECPs and long-term strategies, as well as enhanced rules on PAMs and projections. Unlike the MMR provisions, the Governance Regulation 2018/1999 specific adapted provisions are legally binding for the CPs, including Ukraine and shall be transposed and implemented by 31 December 2022.

As illustrated by the findings of the analysis conducted under Deliverable 2, Ukraine's domestic legislation, in overall, provides for partial transposition of both – the MMR and the Governance Regulation 2018/1999. Namely, Ukraine has legal preconditions adopted at the

governmental level and institutional framework for PAMs and projections of anthropogenic GHG emissions by sources and removals by sinks, national GHG inventory system, developing NECP as well as climate-related strategies and planning documents. Ukraine's non-binding 2050 LEDS reflects some of the elements of the Governance Regulation 2018/1999.

However, current Ukraine's domestic rules setting up energy- and climate-related policies, strategies and planning documents lack consistency among each other and do not fully reflect the specific and detailed requirements for reporting information on PAMs and projections stipulated in the EU Regulation. Also, neither state authority for the time being in Ukraine is defined responsible for reporting to the ECS on PAMs and projections, nor on NECP and LTS, as well as on development and submission thereof.

Ukraine is also missing straightforward primary legislation to ensure that respective existing competent authorities obtain data and information, including the confidential ones, necessary for NIR preparation. In this regard, legal revisions (to the extent possible) are also required to comply with new rules on information and data to be reported as regards GHG inventory stemming from the Governance Regulation 2018/1999.

For the assumed legal obligations to be addressed adequately and in full compliance with the Governance Regulation the present Recommendations outline the following priority actions and recommendations for Ukraine to reinforce its legislative alignment foreseen under the EnCT.

As per Action 1: Enhance existing legal and institutional framework for national system for PAMs and projections to comply with obligations stemming from the Governance Regulation 2018/1999 – Ukraine is recommended to revise and streamline its current separate energy- and climate-related planning documents, policies, strategies adopted in form of legal acts and designate responsible authorities with overall responsibilities for requirements stemming from Governance Regulation 2018/1999 and reporting thereof [by December 31, 2022].

Under Action 2: Develop and submit to the ECS Ukraine's National Energy and Climate Plan Ukraine is advised to: (i) finalize the submission to the ECS of its first draft NECP (as per EnC MC Recommendation 2018/01/MC-EnC) [by 1Q 2022]; (ii) start drafting NECP (as per the Governance Regulation 2018/1999) based on the first draft NECP estimated under point (i) above and submitting it to the ECS [by June 30, 2023] and (iii) submit to the ECS the final NECP (as per the Governance Regulation 2018/1999) [by June 30 2024]. It is recommended to also include (iv) reporting on a biennial basis to the ECS.

For reasons of coherence and legal certainty *Action 3: Enhance and introduce primary legal rules on national GHG inventory system* is also recommended. This means introducing primary law rules extending the existing governmental by-laws governing the collection and exchange of information required for compilation of the National Inventory Report. It is therefore advisable for Ukrainian authorities to be entitled to gather all data and information, including the confidential ones, necessary for NIR compilation. In addition, it is recommended to revise the existing legal rules in line with the extensive requirements of the Governance Regulation 2018/1999.

To reflect one of the core elements of the Governance Regulation 2018/1999 Ukraine is suggested to implement *Action 4: Start the process of LTS preparation and submission to the ECS in line with the Governance Regulation 2018/1999*. Under the said action necessary legislation is recommended to be in place for assigning responsible bodies (for LTS preparation and submission) as well as launching [based on the existing Ukraine's 2050 LEDS] the preparatory work for Ukraine's long-term strategy drafting and subsequent submission to the ECS in line with rules of the Governance Regulation 2018/1999.

Considering the requirements of the adapted Governance Regulation 2018/1999 and the proposed timeframe, the Recommendations set key short-term actions for Ukraine for the year 2022. Those include: the submission of first draft NECP to the ECS [by 1Q] and revision of rules regarding the functioning of

the national GHG inventory system as well as revising, streamlining the existing climate- and energy-related policies, strategies and planning documents and defining responsible authorities for PAMs, projections and reporting rules [by December 31].

By 2023 it is recommended that Ukraine submits its long-term strategy [based on the existing 2050 LEDS] and the draft NECP

[based on the first draft NECP as per EnC MC Recommendation 2018/01/MC-EnC] in line with the Governance Regulation 2018/1999. It is also recommended that this is supplemented by final NECP submission to the ECS by June 2024. The mid-term priority actions include submission to the ECS the integrated NECP report by 2025.

8. References

¹ CMU resolution dated as of 30.07.2021 №868-p "On approval of the Renewed National Defined Contribution of Ukraine to the Paris Agreement", available at: <https://www.kmu.gov.ua/npas/pro-shvalennya-onovlenogo-nacionalno-viznachenogo-vnesku-ukrayini-do-parizkoyi-t300721>

² Text of Low Emission Development Strategy (2050 LEDS) available at: https://unfccc.int/sites/default/files/resource/Ukraine_LEDS_en.pdf

³ NC and BR available at: <https://unfccc.int/documents/199066>

⁴ NIR available at: <https://unfccc.int/ghg-inventories-annex-i-parties/2021>

⁵ Ukraine's 2050 Green Energy Transition Concept (Ukraine Green Deal), available at: [https://mepr.gov.ua/files/images/news_2020/14022020/eng_pdf_зелена%20концепція%20\(1\).pdf](https://mepr.gov.ua/files/images/news_2020/14022020/eng_pdf_зелена%20концепція%20(1).pdf)

⁶ CMU resolution dated 03.03.2021 No.179 "On approval of the National economic strategy until 2025", available at: <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnoyi-eko-a179>

⁷ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0525>

⁸ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0525>

⁹ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0525>

¹⁰ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (Text with EEA relevance.), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.328.01.0001.01.ENG

¹¹ Commission Implementing Regulation (EU) 2020/1208 of 7 August 2020 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) 2018/1999 of the European Parliament and of the Council and repealing Commission Implementing Regulation (EU) No 749/2014 (Text with EEA relevance), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1208>

¹² Commission Delegated Regulation (EU) 2020/1044 of 8 May 2020 supplementing Regulation (EU) 2018/1999 of the European Parliament and of the Council with regard to values for global warming potentials and the inventory guidelines and with regard to the Union inventory system and repealing Commission Delegated Regulation (EU) No 666/2014 (Text with EEA relevance), available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32020R1044>

¹³ Priority measures against challenges and threats to national security of Ukraine in the environmental sphere adopted by Presidential decree of March 23, 2021

¹⁴ CMU decree dated 21.04.2021 No.443-r "On approval of the National Action Plan for Environmental Protection until 2025", available at : <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnogo-planu-dij-z-ohoroni-navkolishnogo-prirodnogo-seredovishcha-na-period-do-2025-roku-i210421-443>

¹⁵ CMU decree dated 20.10.2021 No.1363-r "On approval of the Strategy for environmental safety and adaptation to climate change until 2030", available at: <https://www.kmu.gov.ua/npas/pro-shvalennya-strategiyi-ekologichno-a1363r>

¹⁶ CMU decree "On Approval of Action Plan on implementation of Concept of realization of state policy in the area of climate change for the period up to 2030" dated 6 December 2017 No. 878-r, available at: <https://zakon.rada.gov.ua/laws/show/878-2017-%D1%80#Text>

¹⁷ Decision of the National Security and Defense Council "On challenges and threats to national security of Ukraine in the environmental sphere and priority measures to neutralize them" dated 23 March 2021, enacted by the Decree of the President of Ukraine No. No.111/2021, available at: <https://www.president.gov.ua/documents/1112021-37505>

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- ¹⁸ CMU resolution "On approval of procedure of operation of national anthropogenic emission assessment and absorption system for greenhouse gases not controlled by the Montreal Protocol on Substances that deplete the ozone layer" dated 21 April 2006 No. 554, available at: <https://zakon.rada.gov.ua/laws/show/554-2006-%D0%BF#Text>
- ¹⁹ CMU resolution "On adoption of MEPR Regulation" dated 25 June 2020 No.614, available at: <https://zakon.rada.gov.ua/laws/show/614-2020-%D0%BF#n168>
- ²⁰ MEPR order "On approval of the Regulation of the Budget Institution "National Center for GHG Emission Inventory" of 07.12.2020 No.339, available at: <https://zakon.rada.gov.ua/rada/show/v0339926-20#Text>
- ²¹ The Law of Ukraine "On central executive bodies", available at: <https://zakon.rada.gov.ua/laws/show/3166-17#Text>
- ²² The Law of Ukraine "On local self-government in Ukraine", available at: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>
- ²³ Latvia's NIR 2020, available at: <https://unfccc.int/sites/default/files/resource/lva-2020-nir-11may20.pdf>
- ²⁴ MEPR order "On approval of the Regulation of the Budget Institution "National Center for GHG Emission Inventory" of 07.12.2020 No.339, available at: <https://zakon.rada.gov.ua/rada/show/v0339926-20#Text>
- ²⁵ Ukraine's 2050 Green Energy Transition Concept (Ukraine Green Deal), available at: [https://mepr.gov.ua/files/images/news_2020/14022020/eng_pdf_зелена%20концепція%20\(1\).pdf](https://mepr.gov.ua/files/images/news_2020/14022020/eng_pdf_зелена%20концепція%20(1).pdf)
- ²⁶ CMU resolution dated 03.03.2021 No.179 "On approval of the National economic strategy until 2025", available at: <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnoyi-eko-a179>
- ²⁷ CMU decree "On Approval of Action Plan on implementation of Concept of realization of state policy in the area of climate change for the period up to 2030" dated 6 December 2017 No. 878-r, available at: <https://zakon.rada.gov.ua/laws/show/878-2017-%D1%80#Text>
- ²⁸ Decision of the National Security and Defense Council "On challenges and threats to national security of Ukraine in the environmental sphere and priority measures to neutralize them" dated 23 March 2021, enacted by the Decree of the President of Ukraine No. No.111/2021, available at: <https://www.president.gov.ua/documents/1112021-37505>