

Roadmap for the EU4Climate support to Ukraine in the alignment with EU *acquis* included in bilateral agreements on Climate Action and/or Energy Community Treaty (Lot 3)

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as part of the contract assignment with the Energy Community Secretariat

Project number: 00115652

11 March 2020

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Table of Contents

List of abbreviations	3
1. Introduction	4
2. Executive Summary	5
2.1. Timeline for the Roadmap outlining EU4Climate support to Ukraine in alignment with its obligations under the AA and EnCT	8
3. Action 1: Develop secondary legislation in alignment with F-gases and ODS Regulations	9
3.1. Recommendation 1: Adopt necessary secondary legislation under ODS and F-gases law in line with F-gases and ODS Regulation	9
3.2. Recommendation 2: Define competent authorities responsible for implementation of ODS and F-gases law	10
4. Action 2: Continue the process of aligning Ukrainian legislation with the Directive 2003/87/EC	10
4.1. Recommendation 1: Adopt secondary legislation reflecting MRV-related provisions of Directive 2003/87/EC	11
4.2. Recommendation 2: Designate a competent authority responsible for implementation of MRV law	12
4.3. Recommendation 3: Develop and subsequently adopt a legal framework for establishing an emission trading system in Ukraine	12
4.4. Recommendation 4: Consider revising Annexes XXX and XXXI to the AA so to update the EU <i>acquis</i> on ETS and climate-related policies	14
5. Action 3: Develop Ukraine National Energy and Climate Plan and set up a single climate-related law in line with Recommendation 2018/01/MC-EnC	14
5.1. Recommendation 1: Start the process on preparation and submission of NECP to the ECS	15
5.2. Recommendation 2: Foresee updating the NECP during the period from 2021 to 2030	15
5.3. Recommendation 3: Establish a comprehensive single law on climate-related policies and planning processes	16
6. Action 4: Revise the ODS and F-gases law by introducing stricter rules in alignment with the AA obligations, including with applicable in the EU rules on ODS and F-gases	16
6.1. Recommendation 1: Include separate provisions on ending the usage of HCFCs and envisage stricter rules on its importing and exporting	17
6.2. Recommendation 2: Introduce stricter exemption rules on products and equipment containing or relying on CSs	19
6.3. Recommendation 3: Strengthening rules on the usage, placement on the market, import and export of CSs	20
6.4. Recommendation 4: Include stringent F-gases rules in line with those currently applicable in the EU	20
6.5. Recommendation 5: Consider revising the Annex XXX to update EU climate <i>acquis</i> on ODS and F-gases	22
7. Action 5: Align its secondary legislation to bring compliance with key elements of Regulation (EU) 525/2013 in line with the Recommendation 2016/02/MC-EnC	22
7.1. Recommendation 1: Adjust its GHG monitoring and reporting requirements in line with Regulation (EU) 525/2013	23
8. Conclusion	25

List of abbreviations

AA	EU-Ukraine Association Agreement
CMU	Cabinet of Ministers of Ukraine
CO ₂	Carbon Dioxide
CPs	Contracting Parties
CSs	Controlled Substances
EBRD	European Bank for Reconstruction and Development
EnC	Energy Community
EnCT	Energy Community Treaty
ETS	Emissions Trading System
EU	European Union
F-gases	Fluorinated greenhouse gases
GHG	Greenhouse Gas
HCFCs	Hydrochlorofluorocarbons
HFCs	Hydrofluorocarbons
KP	Kyoto Protocol
LEDS	Low Emission Development Strategy
MEEP	Ministry of energy and environment protection of Ukraine
MRV	Monitoring, Reporting and Verification
MS	Member State
NECP	National Energy and Climate Plan
NIR	National Greenhouse Gas Emission Inventory Report
ODS	Ozone Depleting Substances
PA	Paris Agreement
UNFCCC	United Nations Framework Convention on Climate Change

1. Introduction

Ukraine's recent climate changes affected by global warming included significant rise of air temperatures and increased number of hazardous meteorological phenomena affecting the country's population and various sectors of the economy. 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 shape its legal framework in line with EU climate *acquis*, made applicable under the EU-Ukraine Association Agreement (AA) and the Energy Community Treaty (EnCT).

As part of its obligations under the AA Ukraine has undertaken to align its legislation with *Directive 2003/87/EC*¹ aimed at establishing a comprehensive emission trading system based on a robust and transparent monitoring, reporting and verification system. Also, domestic rules shall be in place to limit, control or ban to the extent necessary the consumption of controlled substances (CSs), including Hydrochlorofluorocarbons (HCFCs), in line with the *ODS Regulation*.² In order to meet the requirements on the usage and reporting on F-gases covered by Annex A to the Kyoto Protocol, specific provisions of *F-gases Regulation*³ are to be transposed into Ukrainian national legal framework.

As a Contracting Party to EnCT, Ukraine is encouraged to approximate its domestic legislation with a number of *acquis* made applicable under it. This includes preparing legal and institutional preconditions on

launching a mechanism for monitoring and reporting on GHG emissions as envisaged in Regulation (EU) 525/2013 in accordance with *Recommendation 2016/02/MC-EnC*. Also, to satisfy the requirements of *Recommendation 2018/01/MC-EnC*, Ukraine should strive to prepare and submit by October 2020 its National Energy and Climate Plan (NECP), addressing five key Energy Union dimensions.

The analysis conducted under Deliverable 2 illustrated that the transposition of the above-mentioned EU *acquis* in overall terms is deemed to be positive and satisfactory. This conclusion is supported by compliance review of the existing and newly adopted climate-related legislation *vis-à-vis* Ukraine's commitments under the AA and EnCT conducted as part of assignment under Deliverable 2.

In particular, the findings of the previous deliverables have shown that the newly adopted *Law of Ukraine "On Monitoring, Reporting and Verification of GHG Emissions"* (hereinafter – *MRV law*)⁴ establishes a regulatory regime for monitoring, reporting and verification system (MRV system), in compliance with MRV-related provisions of Directive 2003/87/EC. At the same time, the *Law of Ukraine "On the regulation of economic activities with ozone-depleting substances and fluorinated greenhouse gases"* (hereinafter – *the ODS and F-gases law*)⁵ sets out a common legal framework for controlled substances (being both F-gases and ODS), reflecting certain EU rules on operating with CSs under ODS Regulation. Whereas full transposition is observed as regards provisions of F-gases Regulation.

Nevertheless, the process of adoption of secondary legislation and implementation

¹ Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Directive 96/61/EC as amended by Directive 2004/101/EC.

² Regulation (EC) 2037/2000 on substances that deplete the ozone layer as amended by Regulations (EC) 2038/2000, (EC) 2039/2000, (EC) 1804/2003, (EC) 2077/2004, (EC) 29/2006, (EC) 1366/2006, (EC) 1784/2006, (EC) 1791/2006 and (EC) 2007/899 and Decisions 2003/160/EC, 2004/232/EC and 2007/54/EC.

³ Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases.

⁴ The Law of Ukraine "On Monitoring, Reporting and Verification of GHG Emissions" of 12.12.2019 No. 377-IX.

⁵ The Law of Ukraine "On the regulation of economic activities with ozone-depleting substances and fluorinated greenhouse gases" dated 12.12.2019 No. 376-IX.

thereof shall start with no delay. Ukraine shall proceed further with its gradual approximation of provisions of Directive 2003/87/EC relating to the creation of and functioning of an emission trading system. Incompliances established in the findings of Deliverable 2 as regards placement on the market and usage of CSs, including products and equipment containing or relying on CSs, are also to be removed in compliance with the provisions of ODS Regulation.

As for the climate *acquis* under the EnCT, the newly updated legislative framework brings Ukraine to closer compliance with Recommendation 2016/02/MC-EnC. For instance, the legal set-up for Ukrainian MRV registry of GHG emissions and registry for CSs operators is generally in line with Regulation (EU) 525/2013. However, existing Ukrainian legislation on national GHG emission system shall be aligned with the secondary legislation expected to be

2. Executive Summary

The present Roadmap 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 2015 Paris Agreement on Climate Change.

The present Roadmap outlines a list of specific priority actions and recommendations for the EU4Climate support, targeted at facilitating Ukraine's gradual approximation with EU climate *acquis* as per its obligations undertaken under the AA and EnCT. The objective of the document is to provide the reader with a concise but detailed guidance on necessary actions to be taken to i) consolidate

adopted under the MRV law and ODS and F-gases law.

At the time of writing this Roadmap, by a governmental decision a working group has been officially established in Ukraine for preparing a comprehensive 2021 – 2030 National Energy and Climate Plan (NECP). Further actions are thus to be taken for submission of NECP to the ECS by October 2020 in compliance with Recommendation 2018/01/MC-EnC.

With the view of above, the present Roadmap based on findings of previous deliverables provides with a comprehensive and thorough overview of key recommendations and actions to be taken as part of EU4Climate support to Ukraine in line with suggested timeframes to facilitate its legal approximation with EU climate *acquis* applicable under the AA and EnCT.

Ukraine's efforts on climate change processes; ii) translate the necessary legislative approximation arising from its international climate obligations into a concrete set of actions, ensuring efficiency and alignment. For efficient and sound reflection of the above obligations, the suggested actions and recommendations are to be aligned with a reasonable timeline, duly accounting the deadlines indicated in the national legislation and respective multilateral and bilateral agreements.

The present Roadmap is based on the findings of previous deliverables (Deliverable 1 and Deliverable 2), resulting from a conducted detailed gap analysis of existing national legislation in Ukraine *vis-à-vis* its individual commitments enshrined in the AA and EnCT.

With this in mind, the present Roadmap envisages five actions to be taken by Ukraine within specific timeframes and in line with respective recommendations

thereto. The said actions are defined below and encourage Ukraine to:

Action 1) Develop secondary legislation in alignment with F-gases and ODS Regulations - as Ukraine's ODS and F-gases is in full transposition of the F-gases Regulation the adoption of necessary bylaws should start with no delay by June 2020, in order to make domestic legislation functional. This process shall be supplemented by the functioning of competent bodies in the field of ODS and F-gases;

Action 2) Continue the process of aligning Ukrainian legislation with the Directive 2003/87/EC – Ukrainian Government shall proceed with adopting respective bylaws reflecting MRV-related provisions and designating competent authority responsible for the implementation of MRV law in line with Directive 2003/87/EC by September 2020. The said action also envisages the development and subsequent adoption by December 2021 of a legal framework for establishing an emission trading system in Ukraine, as required under the AA. Ukraine is encouraged to leverage on the support provided by the ECS within the launched carbon pricing design study. The EU4Climate support in this regard should account on already existing technical assistance provided by the World Bank and EBRD.

Action 3) Develop Ukraine National Energy and Climate Plan and set up a single climate-related law in line with Recommendation 2018/01/MC-EnC – at the time of writing this deliverable, the Working Group on Climate Change Coordination has been officially established at the governmental level in Ukraine. With this in view, the process of preparation and submission of the NECP by October 2020 to the ECS shall start with no further delay. In addition, Ukraine is encouraged to foresee updating its NECP during the period from 2021 until 2030.

Action 4) Revise the ODS and F-gases law by introducing stricter rules in alignment with the AA obligations, including with applicable in the EU rules on ODS and F-gases by end of 2022 – as established in the previous Deliverable 2, the newly adopted ODS and F-gases law shall be revised so to remove incompliances existing *vis-à-vis* provisions of the ODS Regulation. This can be achieved through the inclusion of separate provisions on ending the usage of HCFCs and envisaging stricter rules on its importing and exporting. Ukrainian law should contain stricter exemption rules on products and equipment containing or relying on CSs, together with applying a more stringent approach on CSs usage, placing on the market, importing and exporting. Besides, introducing enhanced rules on F-gases reflecting those currently applicable in the EU MS will ensure consistency of Ukraine's approximation efforts with the current EU *acquis*.

Action 5) Align its secondary legislation to bring compliance with key elements of Regulation (EU) 525/2013 in line with Recommendation 2016/02/MC-EnC – given the non-binding nature of ECS recommendations, Ukraine is encouraged to ensure consistency and alignment of the respective data and methods reported under the MRV and ODS and F-gases laws with those under the existing legislation on the national inventory system no later than by end of 2020.

The outlined recommendations to the said Actions 3) and 5) envisage the creation by the end of 2022 of a single comprehensive climate law that would: i) ensure greater harmonization of NECP with Ukraine's existing climate and energy policies, as well as would ii) allow complying with the one of the key elements of Regulation (EU) 525/2013.

On a separate note, in the light of on-going EU-Ukraine negotiations on the revision of Annexes XXX and XXXI to the AA, Actions 2) and 4) also suggest updating by December 2021 the versions of Directive

2003/87/EC, ODS Regulation and F-gases Regulation enshrined in the Annex XXX to the AA. The rationale behind is to reflect the substantial evolution of the EU energy *acquis* that took place in the EU since the completion of negotiations on the AA. Besides, other climate-related provisions in

the AA, enshrined in Annex XXXI, shall be updated by end of 2021 as well so to keep abreast with the times considering the signing of the Paris Agreement (PA), attaining the objectives of which shall also fall under the scope of EU-Ukraine cooperation.

2.1. Timeline for the Roadmap outlining EU4Climate support to Ukraine in alignment with its obligations under the AA and EnCT

Roadmap outlining EU4Climate support to Ukraine in alignment with EU climate <i>acquis</i> included in Bilateral Agreements on Climate Action and Energy Community Treaty				
SHORT TERM				MEDIUM TERM
2020		2021	2022	2030
Action 1: Develop secondary legislation in alignment with F-gases and ODS Regulations				
Adopt necessary secondary legislation under ODS and F-gases law in line with F-gases and ODS Regulation	Deadline 27 June 2020			
Define competent authorities responsible for implementation of ODS and F-gases law				
Action 2: Continue the process of aligning Ukrainian legislation with the Directive 2003/87/EC				
Adopt secondary legislation reflecting MRV-related provisions of Directive 2003/87/EC	Deadline 26 September 2020			
Designate a competent authority responsible for implementation of MRV law				
Develop and subsequently adopt legal framework for establishing an emission trading system in Ukraine			Deadline 31 December 2021	
Consider revising Annexes XXX and XXXI to the AA so to update the EU <i>acquis</i> on ETS and climate-related policies				
Action 3: Develop Ukraine National Energy and Climate Plan and set up a single climate-related law in line with Recommendation 2018/01/MC-EnC				
Start the process on preparation and submission of NECP to the ECS	Deadline 30 October 2020			Deadline end of 2030
Foresee updating the NECP during the period from 2021 to 2030				
Establish a comprehensive single law on climate-related policies and planning processes				Deadline 31 December 2022
Action 4: Revise the ODS and F-gases law by introducing stricter rules in alignment with the AA obligations, including with applicable in the EU rules on ODS and F-gases				
Include separate provisions on ending the usage of HCFCs and envisage stricter rules on its importing and exporting				
Introduce stricter exemption rules on products and equipment containing or relying on CSs				
Strengthening rules on the usage, placing on the market, importing and exporting the CSs				
Include stringent F-gases rules in line with those currently applicable in the EU				Deadline 31 December 2022
Consider revising the Annex XXX to update the EU climate <i>acquis</i> on ODS and F-gases			Deadline 31 December 2021	
Action 5: Align its secondary legislation to bring compliance with key elements of Regulation (EU) 525/2013 in line with Recommendation 2016/02/MC-EnC				
Adjust its GHG monitoring and reporting requirements in line with Regulation (EU) 525/2013		Deadline by 31 December 2020		

3. Action 1: Develop secondary legislation in alignment with F-gases and ODS Regulations

Given that the AA requires not only transposition, but implementation of the F-gases and ODS Regulations, indispensable bylaws are to be drafted and adopted at both ministerial and governmental levels so to make the ODS and F-gases law become functional. Those include detailed rules and procedures for issuing certificates for personnel involved in installation, maintenance or servicing of the equipment and systems in the field of CSs as per

Article 5 of F-gases Regulation. Laying down a procedure for reporting systems of CSs operators, as envisaged in the Ukrainian legislation, is also required to comply with Article 6 of F-gases Regulation. In addition, detailed procedures are to be put in place for using technologies for destruction of the CSs in compliance with obligations to recover, recycle, reclaim and destruct the used CSs as enshrined in Article 16 of the ODS Regulation.

3.1. Recommendation 1: Adopt necessary secondary legislation under ODS and F-gases law in line with F-gases and ODS Regulation

The ODS and F-gases law has entered into force as of 27 December 2019, while its full application is scheduled for 27 June 2020.⁶ Paragraph 5 of the Final and Transitional Provisions of the ODS and F-gases law requires establishing secondary legislation (as explicitly referred to in the law) within 6 months from its entry into force. Therefore, by 27 June 2020, the following secondary laws shall be developed and adopted taking utmost account of the specific provisions of the F-gas and ODS Regulations:

1) *Procedure for the establishment and maintenance of the Unified state register of controlled substance operators* - includes rules on setting up of a registry for CSs operators, which are to be adopted at the ministerial level in line with ODS and F-gases law. It must be noted that, albeit the establishment of a CSs operators registry is not obligatory under the AA and F-gases regulation, it will however allow reaching compliance with Regulation (EU) 525/2013 in line with Recommendation 2016/02/MC-EnC of the Energy Community.

2) *CMU resolution approving the template for the report on operations with controlled substances and MEEP Decree on approval of Procedure for conducting the reporting by operators of controlled substances supplied through the customs territory of Ukraine, placement on the market, usage of controlled substances and goods* – both bylaws are to be adopted within the framework of establishing a reporting system for acquiring emission data from the relevant sectors as required under the AA in line with Article 6 of the F-gases Regulation.

3) *Procedure for issuing of the qualification document (certificate) for the purposes of ODS and F-gases Law* - to be adopted at the ministerial level to accelerate the implementation process of transposed national training and certification requirements for relevant personnel and companies in the field of F-gases in line with Article 5 of the F-gases Regulation.

4) *List of technologies for destruction of controlled substances* - detailed rules for using technologies for the destruction of controlled substances. This would bring additional clarity in the fulfillment of obligations to recover, recycle, reclaim and destruct used CSs as enshrined in Article 16 of the ODS Regulation.

⁶ The difference between “entry into force” and “application” of the law consists in the implementation process, which starts from the date of legal application of the law, while entry into force only means that the law has a binding legal force. Usually, the law enters into force and becomes applicable on the same date, unless provided otherwise.

5) Other rules and procedures as referred to in the ODS and F-gases law, with regards to procedures on allocation of annual national quota shares for import of CSs, list of activities for the reduction of CSs consumption, rules on CSs labelling,

including goods and equipment containing or relying on them are in conformity with provisions of F-gases Regulation, to which however, no references are made in the AA.

Deadline: 27 June 2020.

3.2. Recommendation 2: Define competent authorities responsible for implementation of ODS and F-gases law

Unlike the MRV law, the ODS and F-gases law, does not entail a separate definition of competent authority. Instead, it defines responsibilities for respective state bodies that are functioning in the field of ODS and F-gases (Article 3 of the ODS and F-gases law). It follows from the ODS and F-gases law that the said state bodies performing their respective roles of competent authorities in their respective fields include: CMU, MEEP and State Environmental Inspection of Ukraine. It must be noted that, as of now, the process of liquidation of State Environmental Inspection of Ukraine has been withdrawn by CMU resolution dated 12.10.2019 No. 873. Albeit, formal designation of State Environmental

Inspection of Ukraine as one of the state bodies which functions as a competent authority in the field of ODS and F-gases requires introducing amendments to its Regulation by 27 June 2020, as the latter fails to account the said competences.

In addition, given that the Ukrainian Ministry is thus having defined competences in both fields - MRV and ODS and F-gases - to preclude generation of administrative burden, it is suggested to attribute respective competences related to ODS and F-gases to separate divisions of the MEEP.

Deadline: 27 June 2020.

4. Action 2: Continue the process of aligning Ukrainian legislation with the Directive 2003/87/EC

The newly adopted MRV law, for the time being, is the main piece of legislation transposing MRV-related provisions in line with Directive 2003/87/EC.

The law focuses on establishing a regulatory regime for Ukrainian MRV system, being a crucial pre-condition for setting up an ETS. It lays down rules for designating a competent authority, establishing a registry system for GHG emissions and installations as well as penalty rules in compliance with the Directive 2003/87/EC. Moreover, the MRV Law goes beyond the commitments undertaken by Ukraine under the AA by reflecting provisions of EU Regulation 600/2012 on for verification of emissions and accreditation of verifiers and EU Regulation 601/2012 on rules for monitoring

and reporting of GHG emission, analysis of which, however, falls outside the scope of this report.

Nevertheless, the implementation of MRV law requires sufficient bylaws to be in place laying down rules and procedures in conformity with EU *acquis*. In particular, this relates to rules on defining categories of activities, emissions of which falls under the scope of monitoring, verification and reporting as per Article 2 and Annex I of the Directive 2003/87/EC as well as procedure for monitoring and reporting of GHG emissions to comply with principles and provisions for monitoring and reporting set out in Article 14 and Annex IV of the Directive 2003/87/EC. Adopting a procedure for verification of operator's report on GHG emissions will ensure compliance with

4.1. Recommendation 1: Adopt secondary legislation reflecting MRV-related provisions of Directive 2003/87/EC

The MRV law enters into force on 26 March 2020, and is expected to be applicable as of 1 January 2021.⁷ At the same time, it explicitly requires Ukrainian Government to adopt necessary bylaws within 6 months from the entry into force of this law, i.e. by end of September 2020. It must be noted that most of necessary secondary legislation as envisaged by the MRV law already exists in draft and is generally in line with Directive 2003/87/EC and include the following:

1) *Draft CMU resolution “On approval of the list of activities subject to monitoring, reporting and verification of greenhouse gas emissions” (hereinafter - Draft List of MRV activities)* - the adoption of categories of MRV activities is envisaged under Article 6(1)(2) of MRV law and required under Article 2 and Annex I to the Directive 2003/87/EC. It is important to emphasize that analysis of Draft List of MRV activities conducted under Deliverable 2 has established its full consistency with Directive 2003/87/EC. Thus, CMU is encouraged to accelerate the process of its adoption.

2) *Draft CMU resolution of “On approval of the procedure for monitoring and reporting of greenhouse gas emissions” (hereinafter – Draft procedure for monitoring and reporting)* – is a fundamental document

developed on the basis of Article 6(1)(3) of MRV law, which lays down rules on principles for monitoring and reporting, methodology (calculation-based or measurement-based approaches), coefficient calculation, reporting requirements, key elements for inclusion in the monitoring plan, control system, which are to be used by an operator while carrying out monitoring of GHG emissions from its installation. It must be noted that general principles for monitoring and reporting of GHG emissions enshrined in the Directive 2003/87/EC are duly reflected in the Draft procedure for monitoring and reporting.

3) *Draft CMU resolution “On approving the verification procedure of the operator's report on greenhouse gas emissions” (hereinafter – Draft verification procedure)* – according to Article 6(1)(3) of the MRV law and Article 15 of the Directive 2003/87/EC the reports submitted by operators shall be verified in accordance with the criteria set out in Annex V, including that the competent authority is informed thereof. To date, the existing Draft verification procedure (the development of which is envisaged under Article 6(1)(4) of the MRV law) is in overall compliance with Annex V of Article 15.

4) *Procedure for state registration of installations in the Unified Register and the procedure for operation of the Unified Register* – Article 1(1)(7) of MRV law provides for establishing a single registry that ensures the collection, accumulation, processing and accounting of information on installations and documents in the field of monitoring, reporting and verification of GHG emissions. Further rules and procedures on the functioning and installation of the mentioned registry as per Article 7(1)(3) of MRV law shall be adopted by the MEEP. It is to be recalled that setting

⁷ The difference between “entry into force” and “application” of the law consists in the implementation process, which starts from the date of legal application of the law, while entry into force only means that the law has a binding legal force. Usually, the law enters into force and becomes applicable on the same date, unless provided otherwise. MRV law enters into force (i.e. becomes binding) on 26 March 2020 and applies (i.e. becomes subject to implementation) from 1 January 2021. However, paragraph 4 of Article 20 of the MRV law says that within 6 month from its entry into force of the law (i.e. 6 month from 26 March 2020), Ukrainian government shall adopt secondary legislation to make the law functional. That is to say, that despite that the law is applicable only from 1 January 2021, Ukraine is legally bound to adopt secondary legislation until 26 September 2020.

up the said registry system is an explicit obligation of Ukraine pursuant to the AA.

5) *Standard forms of the standardized and simplified monitoring plan, the improvement report and the operator's report, as well as the requirements for their completion* – Article 7(1)(4) of the MRV law mandates the MEEP to approve templates for monitoring plan and improvement reports (containing

information on improvements to the monitoring process). The mentioned draft templates are in conformity with Article 14 of Directive 2003/87/EC on guidelines for monitoring and reporting of emissions and therefore shall be adopted with no delay.

Deadline: 26 September 2020.

4.2. Recommendation 2: Designate a competent authority responsible for implementation of MRV law

The MRV law entails a separate definition of competent authority, including clear set up of its responsibilities. It defines that the functions of the competent authority in the field of MRV are to be attributed to MEEP. This means that MEEP is expected to cover the formation and implementation of the policies and measures in the area of monitoring, reporting and verification of GHG emissions.

Still, formal designation of MEEP as competent authority for the mentioned field requires amendments to the MEEP Regulation dated 21.01.2015 No. 32 (as amended by CMU resolution dated 18.09.2019 No. 847), as the latter fails to

account for the said ministerial competences. The deadline for inclusion of the said amendments as per Article 20(4) of MRV law is 26 September 2020.

On a side note, the laid down rules of secondary legislation should not generate administrative burden; inter alia, given that MEEP is also expected to be in charge of the field of ODS and F-gases, it is suggested to attribute respective competences related to MRV to a separate division of MEEP.

Deadline: 26 September 2020.

4.3. Recommendation 3: Develop and subsequently adopt a legal framework for establishing an emission trading system in Ukraine

The MRV law sets legal ground for consistent, transparent and accurate monitoring and reporting of GHG emission system, being the cornerstone for an effective carbon market. Nevertheless, as illustrated in the previous Deliverable 2, the MRV law is missing fundamental provisions of Directive 2003/87/EC in respect of the creation of an Emission Trading System (ETS).

Ukraine's obligations under the AA include: 1) rules on development of national allocation plan to distribute allowances to installations; 2) rules on establishing and maintaining of a publicly accessible registry

in order to ensure the accurate accounting of the issuance, holding, transfer and cancellation of allowances; as well as 3) establishment of a system for issuing GHG emissions permits and issuance of allowances to be traded domestically among installations in Ukraine.

The recently amended AA Implementation Plan (by CMU resolution of 4 December 2019 No. 1065) and the 2030 Climate Change Concept Action Plan in Ukraine both call for the implementation of the above-said provisions of Directive 2003/87/EC, defining key measures and actions to be taken, together with appointed

responsible authorities. On its turn, the 2030 Climate Change Concept Action Plan, explicitly envisages the development of a legal basis for establishing an ETS. Moreover, creating a domestic emission trading system, including establishing rules for its functioning, forms part of Ukraine's 2035 Energy Strategy.

It is to be stressed, that since 2011 Ukraine has been leveraging on substantial international support provided through dedicated project by the World Bank and EBRD.⁸ The purpose of the said technical support was enhancing Ukraine's capacity to build market readiness components and implement market-based instruments - domestic ETS. Besides, as emphasized during the EU4Climate Regional Workshop held in Vienna on February 2020, the World Bank will provide further technical assistance to Ukraine on development of MRV and ETS in Ukraine.⁹

With the above in view, when deciding on delivering the EU4Climate support in the ETS area the above-mentioned technical assistance shall be taken into account.

Moreover, it is suggested for Ukraine to leverage on the on-going carbon pricing design study launched by the ECS in early 2020, which would allow for transitional carbon pricing by each Contracting Party, including Ukraine, and prepare them for joining the EU ETS in the future. Ukraine is therefore encouraged to duly account on the results of the ECS study, which are expected to be available by September 2020.¹⁰

In the view of the above, Ukraine shall with no further delay lay down rules on ETS by December 2021.

Deadline: by 31 December 2021.

⁸ The World Bank Partnership for Market Readiness (PMR) Project and the EBRD Preparedness for Emissions Trading in the EBRD Region (PETER).

⁹ The World Bank Partnership for Market Implementation (PMI) Project:

<https://www.worldbank.org/en/topic/climatechange/brief/partnership-for-market-implementation>

¹⁰ Information on the carbon pricing design study launched by the ECS is available at: <https://energy-community.org/news/Energy-Community-News/2020/02/03.html>

4.4. Recommendation 4: Consider revising Annexes XXX and XXXI to the AA so to update the EU *acquis* on ETS and climate-related policies

In the light of the on-going EU-Ukraine negotiations on the revision of Annexes XXX and XXXI of the AA it is suggested to consider including the latest version of Directive 2003/87/EC as adopted at the EU level.

Updating the version of Directive 2003/87/EC in Annex XXX will bring Ukraine closer to substantial evolution of the EU climate *acquis* that took place in the EU since the completion of negotiations on the AA, and thus will ensure consistency of Ukraine's approximation efforts with the current status of the EU *acquis*.

Moreover, other provisions related to climate planning processes in the AA enshrined in Annex XXXI shall be updated to keep abreast with the times considering the signing of the Paris Agreement (PA), attaining the objectives of which shall also fall under the scope of EU-Ukraine cooperation. Climate-dedicated Annex XXXI of the AA shall be updated so that it clearly illustrates both Ukraine's and EU's cooperation objectives to combat climate change taking into account their existing commitments in this area under the PA, including promoting measures at international level. EU-Ukraine cooperation shall aim at mitigating and adapting to

climate change, including in the areas of carbon trading, sustainable development, sectorial climate policies.

The EU-Ukraine Association Council is one of the joint bodies established by the AA, which is entitled to periodically review the functioning of the AA in light of its objectives (Article 465 of the AA). It has the power to take decisions within the scope of the AA concerning the update or amendment of the Annexes to the AA, which are binding on the Parties. The Association Council meets at ministerial level in all necessary configurations, consisting of members of the Council of the European Union, members of the European Commission and members of the Government of Ukraine, at regular intervals, at least once a year and where circumstances require.

It is therefore recommended no later than by the year of 2021 complete the revision process of Annexes XXX and XXXI of the AA within the EU-Ukraine bilateral dialogue in the Association Council format. This revision process shall also account on updating the ODS and F-gases Regulations as suggested under Action 4 of this report.

Deadline: by 31 December 2021.

5. Action 3: Develop Ukraine National Energy and Climate Plan and set up a single climate-related law in line with Recommendation 2018/01/MC-EnC

In January 2018, the 15th Ministerial Council of the Energy Community adopted Recommendation 2018/01/MC-EnC on preparing for the development of integrated National Energy and Climate Plans (NECPs), encouraging countries to use their best endeavours to streamline multiple monitoring and reporting obligations on climate and energy, also fostering regional cooperation and enhancing transparency of all energy actors. Recommendation

2018/01/MC-EnC is supplemented by Policy Guidelines (PG 03/2018), offering guidance to CPs during the process of developing their NECPs. In view of the above and by virtue of its obligations under the EnCT, Ukraine shall duly account on Recommendation 2018/01/MC-EnC and Policy Guidelines (PG 03/2018) in the preparation and submission of its NECP to the ECS.

5.1. Recommendation 1: Start the process on preparation and submission of NECP to the ECS

The development and submission of NECP is defined a priority action as per the 2030 Climate Change Concept Action Plan and President's Decree dated 8 November 2019 No. 837/2019. The approval by Ukrainian Government of a comprehensive NECP for the period of 2021-2030 is scheduled by 30 September 2020.

According to the Policy Guidelines (PG 03/2018) to Recommendation 2018/01/MC-EnC, draft NECP should be submitted to the ECS by March 2020. The submission of draft NECP is followed by consultations held with others CPs and MS and subsequent issuance of the ECS opinion.

The final NECP should be submitted to the ECS by October 2020, duly taking into account results of consultations with other CPs and MSs, ECS opinion and relevant legislation. The ECS will subsequently provide a first aggregate assessment of NECPs.

Ukrainian NECP should cover the period from 2021 to 2030, laying down the pathway to achieve the agreed 2030 targets, build upon what Ukraine should deliver in relation to its policies for 2020 (as a baseline), and include a perspective until 2050 in order to ensure consistency with long-term relevant policy objectives at EU, UNFCCC and Energy Community level. The NECP should take a holistic approach and address the five main dimensions of the Energy Union in an integrated way, namely: (1) security, solidarity and trust; (2) a fully integrated internal energy market; (3) energy efficiency; (4) decarbonizing the economy;

and (5) research, innovation and competitiveness.

By the time of writing this report, an Intergovernmental Working Group on Climate Change Coordination, under the European Green Initiative of the European Commission, has been officially established pursuant to Governmental resolution dated 24 January 2020 No. 33 (hereinafter - Governmental resolution No. 33). The said Working group is headed by the Vice Prime Minister for European and Euro-Atlantic Integration of Ukraine and includes representatives from the MEEP, other ministries, Ukrainian Parliament, National Security and Defence Council of Ukraine, international and independent experts, including representatives of public associations and non-governmental organizations. One of the key tasks of the said working group is to ensure the preparation of NECP.

In addition, as per PG 03/2018 NECP should cover the period from 2021 to 2030, including a perspective until 2050 in order to ensure consistency with long-term relevant policy objectives at EU, UNFCCC and Energy Community level. This is, however, not foreseen in the Governmental resolution No. 33.

With this in mind, the process of NECP preparation in line with the ECS shall start with no further delay, given that final submission date is October 2020.

Deadline: 30 October 2020.

5.2. Recommendation 2: Foresee updating the NECP during the period from 2021 to 2030

Pursuant to point 5 of the PG 03/2018 updating of NECP is foreseen once during the period from 2023 to 2030 to take account of changing circumstances and

amendments in view of delivering on the agreed objectives, in particular the 2030 targets for climate and energy. Additional updates may also be envisaged if

necessary as regards specific policy measures of the NECP. Nevertheless, after the submission of NECP on October 2020 Ukraine is suggested to envisage its earlier revisions during the period from 2021 to 2030.

In addition, CPs are encouraged to provide progress reports every two years on the implementation of NECP starting in 2022 so to observe the implementation process and results of the Energy Union objectives.

Deadline: within the period from 2021 until 2030.

5.3. Recommendation 3: Establish a comprehensive single law on climate-related policies and planning processes

As highlighted in the Policy Guidelines (PG 03/2018) to Recommendation 2018/01/MC-EnC, the NECP should address the five main dimensions of the Energy Union in an integrated way, which recognises the interactions between the different dimensions, including, inter alia, the contribution of renewable energies and energy efficiency to GHG emission reduction and the infrastructure needs arising from a greater use of renewables.

Each objective of the NECP shall be supplemented by a description of the policies and measures planned for meeting these objectives. This should also include an assessment of how these policies interact with each other to ensure policy coherence and avoid overlapping regulation.

Given that to date most of Ukrainian climate and energy-related provisions are fragmented throughout certain pieces of primary and secondary legislation (See for details Deliverable 1), Ukrainian government should envisage establishing a single, comprehensive legal framework for climate-related policies, planning and reporting. This will ensure greater

harmonization of NECP with Ukraine's existing climate and energy policies, allowing for exploiting synergies and mitigate inconsistencies.

Moreover, establishing a comprehensive climate legislation should also account on national systems for policies, measures and projections in line with one of core elements of Regulation (EU) 525/2013. This will facilitate the improvement of transparency, accuracy, consistency, completeness and comparability of information reported on policies and measures and on projections (See for details Action 5).

Therefore, the comprehensive climate legislation under this Action 2 should account on national systems for policies, measures and projections and shall be adopted no later than by December 2022.

Deadline: 31 December 2022.

6. Action 4: Revise the ODS and F-gases law by introducing stricter rules in alignment with the AA obligations, including with applicable in the EU rules on ODS and F-gases

It is internationally acknowledged that continued emissions of ozone-depleting substances (ODS) cause significant damage to the ozone layer. The Montreal

Protocol on ozone-depleting substances (hereinafter - Protocol), to which both the EU and Ukraine are parties, is the first international treaty to address the

destruction of the ozone layer. However, EU *acquis* on ODS goes beyond rules of the Protocol by laying down stricter and advances requirements for the operation with CSs. This, in particular, is the case for the prohibition of ODS usage, including those contained in products and equipment, with certain exceptions. The ODS Regulation also sets out licensing requirements for all exports and imports of ODS.

Ukraine has committed to adapt its domestic legislation in line with provisions of ODS Regulation made applicable under the AA. Those relate to the establishment of:

- (1) bans for CSs including ending the use of virgin hydrochlorofluorocarbons (hereinafter - HCFCs) by 2010 and of all HCFCs by 2020 (art. 4 and 5);
- (2) establishment of a quantitative limit for the use of methyl bromide for quarantine and pre-shipment applications at the level of the average use in the years 1996, 1997 and 1998 (art. 4);
- (3) phasing out of the placing on the market of virgin HCFCs by 2015 (art. 4);
- (4) establishment of obligations to recover, recycle, reclaim and destruct used controlled substances (art. 16);
- (5) establishment of procedures for monitoring and inspecting leakages of controlled substances (art. 17).

In fulfilment of the above, Ukraine prohibits the production of CSs and imposes a ban on import and export, including on products and goods containing or relying on them to non-State Parties to the Protocol (Art. 7(1) of the ODS and F-gases law). The import and export of CSs, including products and goods containing or relying on them, are however allowed to States Parties to the Protocol subject to licensing requirement

(Art. 7(2) of ODS and F-gases Law), whereas sole import of CSs is made subject to allocated quota corresponding to intended import (Art. 7(3) of ODS and F-gases Law).

Requirements on quantitative limits for the use of methyl bromide for quarantine and pre-shipment applications are fully transposed in line with the ODS Regulation. Necessary rules for monitoring and inspecting leakages of CSs as well as obligation to recover, recycle, reclaim and destruct used CSs are also enshrined in Ukraine's legislation.

However, no separate rules are envisaged for HCFCs, except for virgin HCFCs (prohibited from being placed on the market as of January 2021). While regulation on ending the usage, placing on the market, importing and exporting of HCFCs, including products and equipment containing or relying on them, are left blank.

Stricter exemptions rules shall be introduced for importing, exporting, using and placing on the market of CSs. Whereas existing rules on products and equipment containing or relying on CSs are to be revised and strengthened to reflect the EU requirements. Uncertainties are also observed as regards rules on importing of CSs in non-refillable containers.

In addition, given the evolving nature of EU law, Ukraine should account on current EU rules on ODS and F-gases as the implementation process of ODS and F-gases law has not started yet. This, inter alia, in the light of current negotiations on revision of Annex XXX to the AA would strengthen compliance of with the existing EU climate *acquis* applicable in the EU MS.

6.1. Recommendation 1: Include separate provisions on ending the usage of HCFCs and envisage stricter rules on its importing and exporting

EU rules regulating the use of ODS in specific applications concern phasing-out

the placing on the market and ending the usage of HCFCs. It must be recalled that

phasing out the placing on the market of virgin HCFCs and ending their use by 2010 and the use of all HCFCs by 2020 as per Articles 4 and 5 of the ODS Regulation is an explicit obligation undertaken by Ukraine under the AA.

On this, the sole reference to virgin HCFCs is found in paragraph 3 of Title VII Final and transitional provision of ODS and F-gases. The said paragraph provides that “from 1 January 2021, placing on the market of virgin ozone-depleting substances shall be forbidden”. Whilst within the meaning of the said Ukrainian law HCFCs fall under the scope of definition of ODS, it follows that placing on the market of virgin HCFCs is prohibited in Ukraine from 1 January 2021. Despite missing the transposition deadline, this fulfils one of the explicit commitments under the AA. However, the law says nothing about explicit ending of usage of virgin and all HCFCs.

It must be stressed that ODS Regulation lays down separate rules for importing, exporting, production, placing on the market and usage of HCFCs, including products and equipment containing or relying on HCFCs. Subject to certain conditions and exceptions, the ODS Regulation sets progressive phase-out dates for placing on the market and ending the use of virgin and all HCFCs.¹¹ Under Article 5(1)(v) of the ODS Regulation, as of January 2010, virgin HCFCs can no longer be used for the maintenance or servicing of refrigeration and air conditioning equipment, whereas usage of all HCFCs is prohibited from 1 January 2015.

The subsequently amended rules on ODS, starting from December 2014, banned the placing on the market and usage of reclaimed HCFCs for the maintenance or servicing of existing refrigeration, air-

conditioning and heat pump equipment, including the usage of recycled HCFCs. Placing on the market of HCFCs for repackaging and subsequent export is prohibited from 31 December 2019.¹² As of today, by way of derogation from applicable ODS rules, HCFCs may be placed on the market or used solely for laboratory and analytical uses.¹³

In addition, the usage and placing on the market of products and equipment containing or relying on HCFCs is severely prohibited subject to no derogation.¹⁴

It follows that the ODS and F-gases law by 31 December 2022 shall be revised and aligned with ODS rules in part related to the ending of placing on the market and usage of HCFCs as explicitly provided in for the AA, including products and equipment contained or relied on them.

On a separate note, the currently applicable EU legislation on ODS operates with more stringent rules by imposing a ban on HCFCs import and export (to date only with limited derogations for export of virgin or reclaimed HCFC).¹⁵ The absence of binding rules in the AA as regards HCFCs import or export, shall not preclude Ukraine from aligning its legislation to applicable EU rules on ODS.

In light of what mentioned above, including current EU trends on ODS regulation, it is also suggested to bring Ukraine’s legislation to closer compliance with current EU rules on ODS by introducing respective restrictions on importing and exporting of HCFCs.

Deadline: 31 December 2022.

¹¹ Article 5 of ODS Regulation refers to the usage of HCFCs in aerosols; as solvents (in specified uses), as refrigerants (in specified uses and equipment), for the production of foams (in specified uses), as carrier gas for sterilisation substances in closed systems (for specified equipment) and other applications with certain exceptions.

¹² Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (recast) (hereinafter - Regulation (EC) No 1005/2009).

¹³ Ibid, Article 11(2).

¹⁴ Article 5(4) of ODS Regulation and Article 11 of Regulation (EC) No 1005/2009. It is to be noted that specific exemption allowed under conditions as per Article 11(8) is not authorised for a period which extends beyond 31 December 2019.

¹⁵ Export of HCFC for refrigeration, foam blowing fire-fighting, solvent use and other uses.

6.2. Recommendation 2: Introduce stricter exemption rules on products and equipment containing or relying on CSs

Import and placement on the market of CSs is prohibited under the ODS Regulation; there are certain exception of products and equipment for critical uses of halon (listed in Annex VII of ODS Regulation) for which the use of the controlled substance has been authorised by the EU Commission under the conditions set out in Article 3(1) of the ODS Regulation. This includes if the use is deemed to be essential and only if no adequate alternatives or recycled or reclaimed CSs are available.

The export to State Parties to the Protocol of products and equipment containing or relying on CSs, by way of derogation, under ODS Regulation is allowed only if:

- (1) authorized by the competent authority (for the purpose of meeting the requests licensed under certain conditions);
- (2) products and equipment relying or containing CSs were imported for destruction (by specific technologies);
- (3) containing or relying on halon to satisfy critical uses.¹⁶

Following the revision of the ODS Regulation, the use of products and equipment that contain or rely on CSs was banned with no exceptions allowed, whereas their import and placement on the market was prohibited subject to certain derogations allowed.¹⁷

In the case of Ukraine, paragraph 2 of the Final and transitional provisions of ODS and F-gases Law stipulates that as of 27

December 2019 import and placement on the market of products and equipment containing or relying on ozone-depleting substances is prohibited, with certain derogations allowed for:

- 1) import and placement on the market of the goods and equipment containing or operating with the use of ozone-depleting substances, which had been imported prior to entry of this Law into effect, but not placed on the market;
- 2) for the purposes of quarantine treatment and pre-transportation treatment;
- 3) special cases provided for by the decisions of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer;
- 4) the application types of utmost importance as specified by separate decisions at the Meetings of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer.

While the exemptions 1), 3) and 4) are considered to be acceptable in the light of EU ODS exemption rules and Ukraine's commitments in the field of ODS, the derogation envisaged in point 2) is not. Moreover, the exempted usage, placement on the market and import for quarantine and pre-shipment application is only applicable to methyl bromide as clearly referred to in the provisions of ODS Regulation.

In addition, separate attention shall be paid to Article 7(6) of the ODS and F-gases law, stipulating that "*import and placing on the market of controlled substances in non-refillable containers except for import for laboratory and analytical uses shall be prohibited*". While Article 16(4) of ODS Regulation in this regards stipulates that controlled substances shall not be placed

¹⁶ New derogation was added following the revision of ODS allowing export of CSs to satisfy laboratory and analytical uses.

¹⁷ This included essential laboratory and analytical uses, (subject to registration and licensing); critical uses of halons by authorized undertakings; for purposes of destruction by specified technologies; or if authorized by EU Commission for specific essential uses under Article 3(1) of ODS Regulation (applicable only to the placing on the market).

on the market, except for essential uses.

That is to say, that exemption rules only apply to the placing on the market of CSs and not importing. It must be noted that the said provision in the Ukrainian law will become applicable within 3 years from its entry into force – by December 2022.

In the light of the above, it is suggested by 31 December 2022 to bring the respective

provisions of the ODS and F-gases law on exempted placement on the market, export and import of products or equipment relying or containing CSs in line with the rules of ODS Regulation. Besides, the currently existing and applicable EU rules on ODS might also be taken into account.

Deadline: 31 December 2022.

6.3. Recommendation 3: Strengthening rules on the usage, placement on the market, import and export of CSs

As described above, Ukrainian law prohibits importing and exporting CSs to non-State Parties to the Protocol. In other cases, the import and export is allowed subject to some limitations and licensing requirements. While, the import and export of CSs to non-State Parties to the Protocol is forbidden in the EU except for limited derogations (e.g. mostly related to essential or critical uses, uses as feedstock or process agents) Ukrainian law requires further revision.

In addition, no clear rules exist in the ODS and F-gases law on usage and placing on the market of CSs. The sole reference to their use is found in Article 8 of the said law relating to the recycling, recovery, regeneration and neutralisation for CSs contained in refrigeration equipment, air conditioning and heating pumping equipment, equipment containing solvents, fire protection systems and fire extinguishers, high-voltage switchgears.

It must be noted that ODS Regulation bans the usage and placement on the market of all CSs. Albeit, the use of CSs by way of derogation might be only allowed if used as feedstock, processing agent or for essential uses as determined by the EU Commission, or use and placement on the market of halons that have been recovered, recycled or reclaimed in existing fire protection systems (until 31 December 2002) under specified conditions set out in the ODS Regulation.

For unknown reasons, the above-mentioned prohibitions on the usage, placement on the market and import/export have not been included in Ukraine's obligations under the AA. However, this should not preclude Ukraine from bringing its legislation in line with EU legislation on ODS.

Deadline: 31 December 2022.

6.4. Recommendation 4: Include stringent F-gases rules in line with those currently applicable in the EU

The findings of the Deliverable 2 have shown full transposition in the ODS and F-gases law of specific provisions of F-gases Regulation made applicable under the AA.

Moreover, the ODS and F-gases law even goes beyond the commitments stemming

from the AA by transposing some of the revised F-gases rules applicable in the EU MS in line with the 2015 F-gases Regulation.¹⁸

¹⁸ Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated

In particular, Article 8 of the ODS and F-gases law prohibits F-gases emissions into the atmosphere and transposes the rules of Article 4 of 2015 F-gases Regulation on leak detection check in line with the new thresholds (5, 50 and 500 tonnes CO₂) for determining frequency of leak checks.

Nevertheless, it is suggested to extend the list of equipment subject to leakage detection in Ukrainian law in line with Article 4(2) of 2015 Regulation¹⁹ as well as envisage an obligatory leakage detection system as per Article 5 of the 2015 F-gases Regulation. Ukraine is also encouraged to include stricter derogation rules on F-gases leakage detection. For instance, the envisaged in the Ukrainian law exemption for leak checks for equipment that is hermetically sealed, accordingly labeled and contains less than 6 kg of F-gases should instead entail a specific and shortened derogation period (e.g. maximum 1 year from the date of full application of the Ukrainian law).

Moreover, Ukraine should consider introducing additional stringent rules through:

- 1) imposing a ban as per Article 11 and 13 of the 2015 F-gases Regulation on:
 - a) product and equipment listed in Annex III as per Article 11 (e.g. windows for domestic use that contain F-gases; stationary refrigeration equipment, that contains, or whose functioning relies upon, HFCs with GWP of 2 500 or more, etc);
 - b) use of sulphur hexafluoride (in magnesium die-casting and in the recycling of magnesium die-casting alloys; fill vehicle tyres); and F-gases with a global warming potential of 2 500 or more, to service or maintain refrigeration equipment with a charge size of 40 tonnes of CO₂ equivalent or more;
- 2) introducing the cap and phase down of hydrofluorocarbons (HFCs) supply:

- (i) for placing on the market of refrigeration, air conditioning and heat pump equipment charged with HFCs unless HFCs charged into the equipment are accounted for within the quota system (Article 14);

- (ii) by reducing the yearly quantity of HFCs placed on the market to maximum quantity (as calculated in Annex V of 2015 F-gases Regulation);

- (iii) producers (if there are any) and importers shall ensure that the quantity of HFCs (calculated in accordance with Annex V of 2015 F-gases Regulation) placed on the market does not exceed their respective quota allocated (pursuant to Article 16(5) or transferred pursuant to Article 18 of 2015 F-gases Regulation). It should be noted, that some derogations are allowed in the EU (e.g. for importing less than 100 tonnes of CO₂ equivalent of HFCs per year or if falls under categories of HFCs listed in Article 15).

In addition, the list of reportable F-gases entailed in the ODS and F-gases law should be extended to the unsaturated HCFC, fluorinated ethers and alcohols and other perfluorinated compounds in line with Annex II of the 2015 F-gases Regulation.

Thus, Ukraine is encouraged to account on the above-said EU trends on F-gases by introducing respective amendments to the ODS and F-gases law by December 2022.

Deadline: 31 December 2022.

greenhouse gases and repealing Regulation (EC) No 842/2006 (hereinafter – 2015 F-gases Regulation).

¹⁹ To include refrigeration units of refrigerated trucks and trailers; electrical switchgear; and organic Rankine cycles,

6.5. Recommendation 5: Consider revising the Annex XXX to update EU climate *acquis* on ODS and F-gases

The list of EU *acquis* outlined in the Annex XXX of the EU-Ukraine's AA, namely, the ODS Regulation, requires an update in order to reflect the substantial evolution of the climate *acquis* that took place in the EU since the completion of negotiations on the AA with Ukraine. The ODS Regulation listed in the AA is no longer in force in the EU after being repealed by Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (with latest amendments as of 19.04.2017). The same applies to the F-gases Regulation, which has been repealed by a new EU Regulation in 2015.

As outlined in the Action 4 and the above-mentioned recommendations thereto, the said revised EU rules on ODS and F-gases lay down stricter and advanced requirements, so to enhance the operation with CSs and products and equipment relying or containing them.

From the above-mentioned rationale and evolution stems the requirement to update the list of EU *acquis* in Annex XXX to the AA by including the Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (with latest amendments as of 19.04.2017) and Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse

gases and repealing Regulation (EC) No 842/2006.

The implementation timeframe shall be reasonable enough to allow Ukraine to leverage on a reasonable and sound gradual transition from 5 to 15 years to comply with its obligations. It must be noted that similar approach was applied in EU MS or in other bilateral agreements concluded between EU and Eastern Partnership countries. For instance, the Association Agreement concluded between EU and Georgia, obliges the latter to impose a ban on the placing on the market and use of CSs including reclaimed HCFCs, including duly accounting on the obligations of Georgia, within the timeframe of 15 years. Whereas, other obligations, related to the prohibition of production of CSs, definition of conditions on exempted producing, using and placing on the market, licensing conditions on import and export, shall be resolved within 5 years from the entry into force of the AA.

Therefore, to keep abreast with the time, it is suggested in the view of on-going negotiations between the EU and Ukraine within the Association Council format on amending Annex XXX to the AA, to include currently applicable in the EU ODS and F-gases rules no later than by 31 December 2021.

Deadline: 31 December 2021.

7. Action 5: Align its secondary legislation to bring compliance with key elements of Regulation (EU) 525/2013 in line with the Recommendation 2016/02/MC-EnC

Under *Recommendation 2016/02/MC-EnC* Ukraine is encouraged to “prepare legal and institutional preconditions” in order to implement key elements of *Regulation (EU) 525/2013*, which include: 1) adoption of Low-carbon development strategies (Art. 4);

2) development of National inventory system for GHG emission (Art. 5-12); and 3) introducing legislation defining national systems for policies, measures and projections (Chapter 5).

Ukraine has formally communicated its 2050 Low Emission Development Strategy (2050 LEDS) to the UNFCCC in July 2018. The 2050 LEDS sets up an indicative GHG emissions target to not exceed 31 - 34% of 1990 GHG emission level by 2050 and contains a strategic vision and preconditions of transition towards low carbon development, policies and measures for decarbonization of energy policies.

Ukraine has a national inventory system for GHG emission to fulfil its obligations under the UNFCCC. Its electronic registry system for GHG emission serves the purpose of gathering information from entities engaged in activities with GHG emissions. The MEEP is responsible for the functioning of the national inventory system and operation of

the national electronic registry of GHG emissions.

Nevertheless, Ukrainian national inventory system for GHG emission shall be enhanced through adoption of secondary rules under the new MRV and ODS and F-gases laws for further creation of MRV registry for GHG emissions and a registry for operators of controlled substances – ODS and F-gases.

Moreover, Ukraine should envisage introducing legislation defining national systems for policies, measures, and projections as per rules of Regulation (EU) 525/2013.

7.1. Recommendation 1: Adjust its GHG monitoring and reporting requirements in line with Regulation (EU) 525/2013

The inclusion of Regulation (EU) 525/2013 in the Energy Community *acquis* shall support the CPs, including Ukraine, to cut their GHG emissions as committed under the PA. With this in view, Regulation (EU) 525/2013 calls for the improvement of the quality of the reported data, which shall be consistent with the activity data, background data, and assumptions used to estimate emissions for GHG inventories.

The Regulation also calls for setting national inventory systems for delivering transparent, accurate, consistent and complete GHG inventories. For purposes of consistency and accuracy, respective competent inventory authorities shall be able to access all necessary information on data and methods reported for activities and installations under Directive 2003/87/EC or collected through the reporting systems on F-gases for the purpose of preparing national greenhouse gas inventories.

The existing domestic legal framework in Ukraine ensures more than satisfactory compliance with the above-mentioned key element of the Regulation (EU) 525/2013. Ukraine has a national inventory system for

GHG emissions established under *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* (hereinafter – CMU resolution 2006). The national inventory system consists of organizational measures conducted via planning, annual inventory of anthropogenic emissions and removals of GHG as well as submission by ministries, other central executive bodies, enterprises and institutions information necessary for estimation of GHG emissions. The national inventory system broadly covers all activities that can lead to anthropogenic GHG emissions (enterprises, units, installations, vehicles, etc.) as well as GHG absorption. Information from entities and individual entrepreneurs engaged in activities with GHG emissions is gathered through the electronic registry system for GHG emission and is operated by MEEP in accordance with *CMU resolution “On the formation and maintenance of national electronic registry of anthropogenic emissions and removals of greenhouse*

gases” of 28 May 2008 No. 504 (hereinafter – CMU resolution 2008). The preparation of the National Inventory Report is jointly conducted by MEEP and budget institution National Centre for GHG Emission Inventory established by Governmental decision.²⁰

Nevertheless, given that the said legal basis for national GHG inventory (CMU resolutions 2006 and 2008) operates with very generic provisions, this might lead to possible risks associated with distortion of coordination during data collection, quality control and transparency as well as uncertainty in GHG emission estimation.

Moreover, compliance with Regulation (EU) 525/2013 will require consistency and alignment of the respective data and methods reported under the MRV and ODS and F-gases laws with those under the existing legislation on the national inventory system.

The said laws establish rules for creating a registry for monitoring, reporting and verification of GHG emissions and a registry of operators of controlled substances (ODS and F-gases), including the respective reporting systems. After, the respective secondary bylaws setting detailed rules and procedures are in place, this might significantly contribute to improving the estimation of GHG falling under the MRV and ODS and F-gases in national GHG inventory. The designation of competent authorities in the field of MRV and CSs is also envisaged.

With this in view, CMU resolutions – 2006 and 2008 – no later than by end of 2020 are to be duly aligned with the secondary legislative package planning to be adopted under Action 1 and 2 of this Roadmap by June and September of 2020, respectively, in accordance with MRV and ODS and F-gases laws.

To better reflect the rules of Regulation (EU) 525/2013 in the national legislation it is suggested for Ukraine to leverage on the support provided by the Energy Community Secretariat, in particular, the Energy Community Energy and Climate Technical Working Group, the explicit scope of which covers the alignment process of CPs with Regulation (EU) 525/2013.

Ukraine is also missing one of the core elements of Regulation (EU) 525/2013 - national legislation in place defining national systems for policies, measures and projections. The Regulation (EU) 525/2013 demonstrates the need to improve transparency, accuracy, consistency, completeness and comparability of information reported on policies and measures and on projections. This means that CPs, including, Ukraine are encouraged to establish a system of institutional, legal and procedural arrangements established for reporting policies and measures and projections of anthropogenic emissions by sources and removals by sinks of GHG not controlled by the Montreal Protocol as required by Article 12 of this Regulation.

To date most of climate-related policies and planning processes in Ukraine are of fragmented nature, being scattered among various pieces of secondary legislation.

With this in view, the comprehensive climate legislation estimated under Action 2 (Recommendation 3) should also include provisions on national systems for policies, measures and projections within the aligned deadline (as indicated in Action 2 - by December 2022).

Deadline: by 31 December 2020.

²⁰ CMU decree “On establishment of budget institution “National Centre for GHG Accounting” of 7 November 2011 No. 1194-r

8. Conclusion

By signing the Association Agreement and the Energy Community Treaty, Ukraine has committed to shape its legislation in accordance with EU climate rules via developing and adopting an adequate and comprehensive regulatory framework. For the assumed legal obligations to be addressed adequately and in full compliance with EU *acquis*, the present Roadmap outlines priority actions and recommendations for Ukraine's EU4Climate support to enhance the legislative alignment foreseen under the AA and EnCT.

To achieve efficient and sound reflection of the above obligations, the suggested actions and recommendations are to be aligned with reasonable timeframes as provided in Timeline for the Roadmap outlining EU4Climate support to Ukraine in alignment with its obligations under the AA and EnCT (See Section 2.1).

Considering the deadlines indicated in the respective national legislation and applicable EU climate *acquis* and our proposed timeframe, the Roadmap sets key short-term actions for Ukraine to be achieved by end of 2020. Those include: **Action 1)** *Develop of secondary legislation in alignment with F-gases and ODS Regulations* – as to make the law functional necessary bylaws together with the competent authorities shall be in place by 27 June 2020; **Action 2)** *Continue the process of aligning Ukrainian legislation with the Directive 2003/87/EC*, this, in particular, relates to the recommendation for the Ukrainian Government to adopt secondary legislation reflecting provisions of Directive 2003/87/EC by 26 September 2020; **Action 3)** *Develop Ukraine National Energy and Climate Plan*, namely, accelerate the process of preparation and submission of Ukraine's NECP by October 2020 to the ECS, as the working group for preparation of which, has already been officially set-up by the Ukrainian Government in January 2020; and **Action 5)** *Align its secondary*

legislation to bring compliance with key elements of Regulation (EU) 525/2013 in line Recommendation 2016/02/MC-EnC – by end of 2020, by means of reflecting the rules of the legislative package scheduled for adoption under **Action 1)** and **Action 2)** pursuant to the MRV and ODS and F-gases law.

In line with recommendations under **Action 2)**, as part of priority actions until the end of the year of 2021, Ukraine shall develop and subsequently adopt a legal framework for establishing a domestic emission trading system, as required under the AA. To avoid overlapping the EU4Climate support in this regard shall take into account the technical assistance provided by the World Bank and EBRD. Ukraine is also encouraged to leverage on the on-going study on carbon pricing design launched by the ECS.

In the light of on-going negotiations on the revision of Annexes XXX and XXXI to the AA the outlined recommendations under **Actions 2) and 4)** suggest no latest than by end of 2021 considering updating the versions of the Directive 2003/87/EC, ODS and F-gases Regulations made applicable under the AA. This will allow reflecting the substantial evolution of the EU climate *acquis* that took place in the EU since the completion of negotiations on the AA. Similar suggestion and timeframe relate to the inclusion of climate cooperation and planning processes rules in the provisions of Annex XXXI of the AA. The rationale behind is to illustrate that EU-Ukraine bilateral cooperation also covers objectives and commitments in this area under the PA, including promoting measures at international level, such as, but not limited to mitigation and adaption to climate change, including in the areas of carbon trading, sustainable development, sectorial climate policies.

Subsequent steps shall focus on **Action 4)** *Revise the ODS and F-gases law by introducing stricter rules in alignment with*

the AA obligations, including with applicable in the EU rules on ODS and F-gases. As established in the previous Deliverable 2 the newly adopted ODS and F-gases law shall be revised to remove existing incompliances with the ODS Regulation. This can be achieved through inclusion of separate provisions on ending the usage of HCFCs and envisaging stricter rules on its importing and exporting. In addition, the law should contain stricter exemption rules on products and equipment containing or relying on CSs as well as more stringent rules on the usage, placing on the market, importing and exporting the CSs. In addition, given the imminent update of the Annex XXX of the AA, Ukraine is also encouraged to reflect the currently applicable rules of 2015 F-gases Regulation in its newly adopted ODS and F-gases law. The process of the ODS and F-gases law revision shall be completed by end of the year 2022.

On a side note, as part of recommendations referred to in **Action 3)** and **Action 5)** it is suggested to lay down by end of 2022 a comprehensive legal basis merging Ukraine's climate policies and planning processes, inter alia, stemming from its international climate commitment. This will facilitate the working process on NECP according to Policy Guidelines (PG 03/2018) and Recommendation 2018/01/MC-EnC as well as will enhance transparency, accuracy, consistency, completeness and comparability of information reported on policies and measures and on projections as per Regulation (EU) 525/2013 in line with Recommendation 2016/02/MC-EnC.