

# Part I: Compliance review and gap analysis of Ukrainian legislation against the EU climate *acquis* under the EU-Ukraine Association Agreement and the Energy Community Treaty

by Olga Yelisieieva  
As part of the contract assignment with the Energy Community Secretariat  
29 September 2020

# Ukraine is committed to adapt its national legislation in line with EU climate *acquis* under two major documents

***The EU-Ukraine Association Agreement*** (fully effective since 1 September 2017) requires gradual approximation of Ukrainian legislation to EU law and policy on environment to be proceeded in accordance with Annex XXX to this Agreement (Article 363)

***The Energy Community Treaty*** (fully effective since 1 February 2011) calls on creation a stable regulatory framework and improvement the environmental situation via complying with EU legislation made applicable under the EnCT (Art.2)

# EU climate *acquis* provisions under the Association Agreement shall be implemented within 2 years of its entry into force (Annex XXX to AA)

***Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading***

on setting up a comprehensive emission trading system based on a robust and transparent monitoring, reporting and verification system

***Regulation (EC) 842/2006 on certain fluorinated greenhouse gases (F-gases Regulation)***

on harmonizing the requirements on the usage and reporting mechanism for F-gases covered by Annex A to the Kyoto Protocol

***Regulation (EC) 2037/2000 on substances that deplete the ozone layer (ODS Regulation)***

on implementation of provisions of the Montreal Protocol on Substances that Deplete the Ozone Layer (ODS) phasing out ODS production and consumption

# What is EU climate *acquis* under the EnCT?

**Recommendation 2016/02/MC-EnC**

on preparation of legal and institutional preconditions for implementation of key elements of Regulation (EU) 525/2013 on a mechanism for monitoring and reporting of GHG emissions

**Recommendation 2018/01/MC-EnC**

on preparation and submission by 2020 a National Energy and Climate Plan (NECP)

**General Policy Guidelines on the 2030 targets**

on the establishment of three separate energy and climate targets (energy efficiency, contribution of renewable energy sources and GHG emission reduction target)



Recommendations and guidelines adopted by the Ministerial Council (MC) that **have no binding legal force** though CPs “shall use their best endeavours” to carry them out (Article 76 of EnCT)

# Key climate-related legislation of Ukraine

## Primary laws

- ❖ *Law of Ukraine “On Monitoring, Reporting and Verification of GHG Emissions” (MRV law) [applies from 1 January 2021] – establishes a regulatory regime for MRV system in line with Directive 2003/87/EC.*
- ❖ *Law of Ukraine “On the regulation of economic activities with ozone-depleting substances and fluorinated greenhouse gases” (ODS and F-gases law) – sets common legal framework for controlled substances in line with ODS and F-gases Regulations.*
- ❖ *Other laws: Law of Ukraine “On the Protection of Atmospheric Air”; Law of Ukraine “On foreign economic activity”; Law of Ukraine “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine through 2030”; Law of Ukraine “On Strategic Environmental Assessment”; Law of Ukraine “On environmental impact assessment”; Tax code of Ukraine.*

## Secondary laws (in place and in draft)

- ❖ *Bylaws related to MRV law: List of activities, which are subject to MRV of GHG emissions (newly adopted in September 2020); Draft Procedure for MRV of GHG emissions; Draft procedure for verification of reports of operators on GHG emissions; (pending approval)*
- ❖ *Rules on GHG accounting and registry: 2006 CMU Procedure for GHG Accounting; 2011 CMU Decree on National Center for GHG; 2008 CMU Decree on GHG Accounting Registry*
- ❖ *Action plans approved at governmental level: CMU Action Plan for AA implementation; 2030 Climate Change Concept Action Plan (envisages adoption of ETS legislation)*
- ❖ *Strategic documents: 2050 LEADS, 2035 Energy Strategy*

# Compliance review against Directive 2003/87/EC

Provision of Directive 2003/87/EC	Concordance level	National legislation	Comment
- adoption of national legislation and designation of competent authority/ies	<b>Partially transposed</b>	Art. 1(17) of MRV law	ETS rules are not enshrined.
- establishment of a system for identifying relevant installations and for identifying greenhouse gases (Annex I and II)	<b>Partially transposed</b>	Art. 1(1)(7) of MRV law; Art.1(1)(4) of MRV law; para 1 and 2 of Procedure for GHG Accounting; para 1 of Decree on GHG Accounting; para 1 of Draft List of MRV activities	MRV law lays down rules on establishment of single registry for MRV of GHG emissions. List of activities subject to MRV of GHG is adopted. However secondary legislation on the functioning of above is to be adopted.
- development of a national allocation plan to distribute allowances to installations (art. 9);	<b>Not transposed</b>		Planned under para 2(7) of 2030 Climate Change Concept.
- establishment of a system for issuing GHG emissions permits and issuance of allowances to be traded domestically among installations in Ukraine (art. 4, 11-13);	<b>Not transposed</b>		Existing permitting system fails to cover all GHG defined in Annex II to the Directive 2003/87/EC. Adoption of permitting system procedure for GHG emission is envisaged in paragraph 1730 of the AA Implementation Plan and paragraph 2(8) of 2030 Climate Change Concept Action Plan.
- establishment of monitoring, reporting, verification (MRV) and enforcement systems and public consultations procedures (art. 9, 14–17, 19, 21).	<b>Partially transposed</b>	Art.7, 8, 10(3, 5-6), 19(1), 29(3), 16, 17 of MRV law; para 7,8, 22 of Draft verification procedure.	Verification system is envisaged in the MRV law, however in the absence of ETS rules full compliance cannot be established.

# Compliance review against F-gases Regulation

Provision of F-gases Regulation	Concordance level	National legislation	Comment
- adoption of national legislation and designation of competent authority/ies	<b>Partially transposed</b>	Art. 3 of ODS and F-gases law	Necessary secondary legislation is required to make the ODS and F-gases law fully functional
- establishment/adaptation of national training and certification requirements for relevant personnel and companies (art. 5)	<b>Transposed</b>	Art. 10 and 11 of ODS and F-gases law	
- establishment of reporting systems for acquiring emission data from the relevant sectors (art. 6)	<b>Transposed</b>	Art. 3(3) and (2), 14 and 15 of the ODS and F-gases law	The production of F-gases in Ukraine is absent and prohibited by virtue of Article 6 of the ODS and F-gases law. In addition, unlike the F-gases Regulation the ODS and F-gases Law imposes reporting obligations on all operators of controlled substances irrespectively of their annual quantities.
- establishment of an enforcement system (art. 13)	<b>Transposed</b>	Art.16 of the ODS and F-gases law and Art. 4 of Final and transitional provisions of the ODS and F-gases law	

# Compliance review against ODS Regulation

Provision of ODS Regulation	Concordance level	National legislation	Comment
- adoption of national legislation and designation of competent authority/ies	<b>Partially transposed</b>	Art. 3 of ODS and F-gases Law	Necessary secondary legislation is required to make the ODS and F-gases law fully functional
- establishment of bans for controlled substances including ending the use of virgin hydrochlorofluorocarbons by 2010 and of all hydrochlorofluorocarbons by 2020 (art. 4 and 5)	<b>Partially transposed</b>	Art. 1(1)(9) and (13), 6 and Art. 7(1-3) and (6) of ODS and F-gases Law; Para 2 of Final and transitional provisions of ODS and F-gases Law; Art. 16 of the FEA Law	However: 1) allowing importing the ODS goods and equipment for purposes of quarantine and pre-shipment treatment are not in line with the EU law; 2) Article 5 is not transposed as regards ending the usage of all HCFCs
- 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) by 1 September 2019	<b>Transposed</b>	Art. 7(7) of ODS and F-gases Law	
- phasing out of the placing on the market of virgin hydrochlorofluorocarbons by 2015 (art. 4)	<b>Transposed</b> (however with delay)	Para 3 of Title VII of Final and transitional provisions of ODS and F-gases Law	Placing on the market of virgin HCFCs is forbidden from 1 January 2021.
- establishment of obligations to recover, recycle, reclaim and destruct used controlled substances (Art. 16)	<b>Transposed</b>	Art. 8(1) and 9 of ODS and F-gases Law	
- establishment of procedures for monitoring and inspecting leakages of CSs (Art. 17)	<b>Transposed</b>	Art. 8 (2) and (3) of ODS and F-gases law	



# Key findings on compliance with climate *acquis* under the AA



*The Monitoring, Reporting and Verification of GHG Emissions Law* transposes provisions of *Directive 2003/87/EC* related to the creation of a monitoring, reporting and verification (MRV) system being fundamental for an emission trading system (ETS). The law and draft MRV bylaws (e.g. Draft CMU procedure for monitoring and reporting) reflect some elements of Monitoring and Reporting EU Regulation 601/2012 and Accreditation and Verification EU Regulation 600/2012



MRV secondary legislation in place (newly adopted in September 2020 List of activities, which are subject to MRV of GHG emissions) and draft - reflects rules of *Directive 2003/87/EC* . Basic rules for functioning of registry system for GHG and installations are in place



*The ozone-depleting substances and fluorinated greenhouse gases Law (ODS and F-gases law)* fully transposes provisions of *F-gases Regulation (EC) 842/2006* and most of *ODS Regulation (EC) 2037/2000* provisions as required under the AA



Incompliances are to be addressed as regards the ending of usage and other operations with all HCFCs, the exemptions rules for CSs and rules on products and equipment containing or relying on them



Provisions stipulated in the AA on emission trading system are missing

# Compliance review against Recommendation 2016/02/MC-EnC, Recommendation 2018/01/MC-EnC and General Policy Guidelines on the 2030 targets

Provision	Concordance level	National legislation	Comment
<b>1) Recommendation 2016/02/MC-EnC</b>			
The Contracting Parties should prepare legal and institutional preconditions for the implementation of core elements of Regulation (EU) 525/2013 in their jurisdictions (Article 1): national legislation defining national systems for policies, measures and projections; consistency of reported data with the activity data, background data; setting national inventory systems for delivering transparent, accurate, consistent and complete GHG inventories. [...] access to 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	<b>Partially transposed</b>	Para 1 of Procedure for GHG Accounting and Decree on GHG Accounting; Decree on National Center for GHG; Art. 1(1)(7) of MRV law; Art. 4 of F-gases and ODS law	Legal basis for national GHG inventory (CMU resolutions 2006 and 2008) is to be aligned with legislative package scheduled for adoption under the MRV and ODS-F-gases laws.
<b>2) Recommendation 2018/01/MC-EnC (Art. 1,3, 4 and 5)</b>			
[...] The Contracting Parties should prepare the analytical, institutional and regulatory preconditions for the development and adoption of integrated national energy and climate plans ('national plans') for the period from 2021 to 2030. [...] Progress Report on the implementation of national plans should be submitted by Contracting Parties to the Secretariat every two years and where appropriate on an annual basis, with a view to align the timescales for domestic, EU and international reporting. [...]	<b>Partially transposed</b>	Art. 1(1) of Presidential Decree No. 837/2019; 2030 Climate Change Concept Action Plan; CMU resolution dated 24 January 2020 No. 33	The approval by Ukrainian Government of a comprehensive NECP for the period of 2021-2030 is scheduled by 30 September 2020. However legislation in place does not foresee updating the NECP.
<b>3) General Policy Guidelines on the 2030 targets</b>			
Three distinct 2030 energy and climate targets should be established: a target for energy efficiency, a target for the contribution of renewable energy sources, and a greenhouse gas emission reduction target. These targets should be in line with the EU targets for 2030, represent an equal ambition for the Contracting Parties and take into account relevant socio-economic differences, technological developments and the Paris Agreement on Climate Change. [...]	<b>Partially transposed</b>	2050 LEDS	Ukraine has set up an ambitious target for GHG emission reduction to 31-34% by 2050 of the 1990 levels (2050 LEDS). A target to cut emissions in the EU amounts to 40% below 1990 levels by 2030.

# Key findings on compliance with climate provisions under the EnCT



Legal basis is in place and governmental working group (January 2020) for purposes of preparation of the National Energy and Climate Plan (NECP) as per *Recommendation 2018/01/MC-EnC* is officially established



Rules for setting up a registry for CSs operators enshrined in the F-gases and ODS law allow reaching compliance with Regulation (EU) 525/2013 in line with *Recommendation 2016/02/MC-EnC*



Ukraine is in overall compliance with the key elements of *Regulation (EU) 525/2013* in line with *Recommendation 2016/02/MC-EnC* with formally communicated 2050 Low Emission Development Strategy to the UNFCCC (in July 2018) and the national inventory system for GHG emission in place



Preparation and submission of its NECP to the ECS in compliance with *Recommendation 2018/01/MC-EnC* and *Policy Guidelines (PG 03/2018)*.



The national inventory system for GHG emission is to be strengthened through the creation of MRV registry for GHG emissions and a registry for operators of controlled substances. Ukraine is also lacking a comprehensive climate legislation defining national systems for policies, measures, and projections in line with rules of Regulation (EU) 525/2013.

# PART II

# Roadmap for the EU4Climate support to Ukraine in alignment with EU *acquis* included in Bilateral Agreements on Climate Action and/or Energy Community Treaty

By Olga Yelisieieva

as part of the contract assignment with the Energy Community Secretariat

29 September 2020

# The Roadmap for the EU4Climate support to Ukraine:



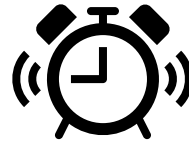
defines a list of specific priority actions and recommendations



aims facilitation of Ukraine's gradual approximation with EU climate *acquis* as per its obligations under the AA and EnCT



provides concise but detailed guidance on necessary actions to be taken to consolidate Ukraine's efforts on climate action



suggests reasonable timeline accounting on deadlines indicated in the national legislation and AA, EnCT

# List of priority actions and recommendations

**ACTION 1** Develop secondary legislation in alignment with F-gases and ODS Regulations

**Recommendation:** adopt necessary secondary legislation under ODS and F-gases law in line with F-gases and ODS Regulation

**ACTION 2** Continue the process of aligning Ukrainian legislation with the Directive 2003/87/EC

**Recommendations:**

- adopt secondary legislation reflecting MRV-related provisions of Directive 2003/87/EC
- develop and adopt a legal framework for establishing an ETS in Ukraine
- consider revising Annexes XXX and XXXI to the AA for updating the EU *acquis* 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

**Recommendations:**

- start the process on preparation and submission of NECP to the ECS
- foresee updating the NECP during the period from 2021 to 2030
- establish a comprehensive single law on climate-related policies and planning processes

#### 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 2018/01/MC-EnC

#### Recommendations:

- 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, placement on the market, import and export of CSs
- Include stringent F-gases rules in line with those currently applicable in the EU
- Consider revising the Annex XXX to update EU climate *acquis* on ODS and F-gases

#### 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

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



# Roadmap outlining EU4Climate Support to Ukraine in Alignment with EU Climate Acquis Included in Bilateral Agreements on Climate Action and Energy Community Treaty

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

# Roadmap in a nutshell

by end of 2020



- Adopt secondary legislation under the MRV law and ODS and F-gases in line with *Directive 2003/87/EC, ODS and F-gases Regulations*
- Prepare and submit Ukraine's NECP to the ECS as per *Recommendation 2018/01/MC-EnC*
- Align secondary legislation on GHG monitoring and reporting requirements with the Regulation (EU) 525/2013 as per *Recommendation 2016/02/MC-EnC*

by end of 2021



- Develop and adopt necessary legal framework for establishing a domestic ETS in compliance with the *Directive 2003/87/EC*
- Update Annexes on the AA

by end of 2022



- Revise the *ODS and F-gases law* in line with the *ODS Regulation*
- Adopt a single comprehensive climate law to ensure greater harmonization of NECP with Ukraine's existing climate and energy policies in line with *Recommendation 2018/01/MC-EnC* and compliance with Regulation (EU) 525/2013 as per *Recommendation 2016/02/MC-EnC*.

Thank you for  
attention!