

# ПОВІТРЯНЕ, КОСМІЧНЕ, ЕКОЛОГІЧНЕ ПРАВО

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## PARTICULAR ISSUES OF ADAPTATION OF NATIONAL LEGISLATION IN THE FIELD OF ATMOSPHERIC AIR PROTECTION TO THE REQUIREMENTS OF THE EUROPEAN UNION

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*The purpose of the article is to characterise certain issues of adaptation of national legislation in the field of atmospheric air protection to the requirements of the European Union. **Research methods:** the chosen topic of scientific research requires the use of various scientific methods and approaches to obtain high-quality results. Therefore, the following research methods were used to solve the tasks: analysis; systematic method; analytical method, etc. **Results:** in accordance with the provisions of the current regulatory legal acts in the field of atmospheric air protection, the main legal mechanisms of state regulation of atmospheric air protection are regulation and standardisation in the field of atmospheric air protection. **Discussion:** regulation of the location of facilities and sources of air pollution, conducting state environmental and other examinations of facilities that have a significant impact on the environment and human health, the permitting procedure for state authorisation of activities that may be accompanied by emissions into the environment, establishment of sanitary protection zones around enterprises that are a source of impact on the environment and people.*

*The author concludes that an important place in the protection of atmospheric air is occupied by technical standards. In many cases, environmental legislation contains references to technical regulations, sanitary norms, environmental quality standards, maximum permissible concentrations of pollutants in natural objects, etc...*

***Key words:** instruments of the administrative and legal mechanism; ensuring atmospheric air protection; airspace safety.*

**Problem statement and its relevance.** Determination of air quality standards is carried out on the basis of special principles that apply to all issues regulated by EU environmental law [1, p. 82]. These principles are enshrined in the founding treaties of the European Communities and the European Union and in secondary law regulations.

It is important to note that it is the best achievable levels of impacts associated with the use of the best available technologies that are of practical importance for the rationing process. The list of the

best available technologies only justifies and confirms the achievability of such levels. At the same time, the establishment of mandatory standards based on the best available technologies does not cancel the requirements for compliance with environmental quality standards.

**Summary of the main research material.** The basis of European legislation in the field of air quality is the directives of the Council and the decisions of the Council of the EU. These tools can be rough-

ly broken down into: a) ambient air quality standards (limit values and guidelines); b) requirements for product quality control and material handling; c) Monitoring and exchange of information.

Ambient air quality standards include [2]: Framework Directive 96/62/EC (and daughter Directives 2004/107/EC, 2002/3/EC, 2000/69/EC and 1999/30/EC) establishes the basic principles of a general strategy for determining and setting ambient air quality targets in order to avoid, prevent or reduce harmful effects on the human body and the environment, as well as the basic principles for assessing ambient air quality in the Member States of the European Union, informing the public, especially about dangerous limit values, and improving air quality where it is unsatisfactory. The directive aims to revise European legislation on the presence of pollutants that pose a risk to human health. Subsidiary Directive 1999/30/EC repeales Directives 80/779/EEC, 82/884/EEC and 85/203/EEC. Subsidiary Directive 2002/3/EC repeales Directive 92/72/EEC; Directive 2001/81/EC sets national emission quotas for pollutants leading to acidification and eutrophication, as well as harmful to the ozone layer, in order to ensure more complete protection environment and human health from negative consequences; Directive 96/61/EC (as amended) deals with Comprehensive Measures for the Prevention and Control of Pollution (IPPC). This Directive aims to prevent and minimise emissions into the air, water and soil, as well as emissions of waste from agricultural and industrial activities in the countries of the European Community. It provides for measures aimed at achieving a high level of environmental protection. This document regulates the types of industrial and agricultural activities that result in significant environmental pollution, such as energy, production and processing of metals, mining, chemical industry, waste management and disposal, animal husbandry, etc.

Requirements for product quality control and material handling include the following documents [3]: Directive 99/13/EC on emissions of volatile organic compounds from the use of organic solvents; Directive 98/70/EC (as amended 2000/71/EC) on the quality of petrol and diesel fuel; Directive 93/12/EEC (as amended 99/32/EC) on the sulphur content of liquid fuels; Di-

rective 94/63/EC on emissions from the storage and marketing of petrol and motor fuels; Directive 99/94/EC on fuels and CO<sub>2</sub> emissions from new passenger vehicles; Decision 2002/159/EC on fuel quality data; Decision 2002/529/EC on the conduct of a survey on the implementation of Directive 99/13/EC; Decision 88/540/EEC on the Montreal Protocol on (on the thinning of the ozone layer); Directive 70/220/EEC (as amended) on the harmonisation of the legislation of the Member States in the field of measures to combat air pollution from vehicle emissions; Directive 88/77/EEC (as amended) on the harmonisation of the legislation of the Member States in the field of measures to counteract air pollution by gaseous emissions arising from the operation of diesel engines installed on vehicles; Directive 97/68/EC (as amended) on the harmonisation of the legislation of the Member States in the field of measures to counteract air pollution by gaseous and bulk emissions arising from the operation of internal combustion engines installed on non-vehicles; Directive 2000/25/EC (as amended) of the European Parliament and of the Council of 22 May 2000 on measures to prevent and counteract emissions of gaseous and bulk pollutants arising from the operation of engines of agricultural and forestry tractors; Directive 2001/80/EC laying limits on the emission of certain pollutants into the air by large combustion units.

Certain provisions of Directive 2008/50/EC are subject to legislative consolidation by Ukraine, including those related to the regulation of ambient air quality. Such a requirement was defined in Annex XXX to Chapter 6, Section V of the Association Agreement between Ukraine and the European Union, enshrined in the National Strategy for Approximation of Ukrainian Legislation to EU Law in the Field of Environmental Protection, which consists in bringing the country's legislation in line with the requirements of EU law and the practical implementation of EU requirements and standards, and detailed in the Order of the Ministry of Nature Protection and Natural Resources on EU Implementation Action Plans of 15 October 2014, No. 317 [4].

In accordance with paragraph 12 of this Order, the Ministry of Environment, the State Emergency

Service and the State Sanitary and Epidemiological Service are responsible for the development and submission to the Cabinet of Ministers of Ukraine of draft regulations in order to implement the provisions of Directive 2008/50/EC of the European Parliament and of the Council of May 21, 2008 on ambient air quality and cleaner air for Europe with a deadline of December 2017, in terms of measures by the end of 2017.

The Basic Approximation Plan, approved by the Order of the Ministry of Ecology and Natural Resources of Ukraine dated December 17, 2012 No. 659, issued two years earlier, contains a detailed list of areas to be amended accordingly in accordance with the provisions of Directive 2008/50/EC. One of these areas is the regulation of air quality.

This document stipulates that within three years after the entry into force of the Association Agreement between Ukraine and the EU, the authorized bodies are obliged to amend the current regulations regarding: assessment of air quality; creation of a system for assessing air quality in relation to pollutants and criteria for this assessment; establishment of limit indicators of pollutants about which the public must be informed; establishing indicators of pollutants to be achieved in the future; approval of measurement systems (methods, equipment, network of sampling points and laboratories); development of air quality plans for areas and agglomerations in which pollutant levels exceed or are at risk of such exceedance.

There are provisions in Ukrainian legislation on the implementation of measurements and ensuring their accuracy, but there are no fixed requirements for the need to constantly analyze the methods of evaluation. In the current legislation, there are no lower and upper thresholds for assessing the quality of atmospheric air in relation to sulfur dioxide, nitrogen dioxide and nitrogen oxides, particulate matter, lead, benzene and carbon monoxide. However, the current Ukrainian legislation does not currently contain all the requirements of Directive 2008/50/EC.

Fulfillment of the requirements for the adaptation of domestic legislation is impossible without harmonizing the terminological base, because it is a clear conceptual and categorical apparatus that en-

ures effective unification, harmonization or convergence of legislation, its compliance with European standards and traditions, and the development of a stable system of legal concepts and terms is a prerequisite, one of the priority areas of legal reform. Only such a system can ensure the approximation of legislation, its uniform interpretation, as well as the correct application of legal norms. When analyzing the specifics of the terminology of European legislation in the field of air regulation, first of all, attention should be paid to how the concepts of "standard" and "normative" correlate. Based on the results of the analysis of legislative norms, it is possible to identify a certain identification of these concepts, even some terminological synonymy.

It is the Directive 2008/50/EC on ambient air quality and cleaner air for Europe that can provide a more detailed idea of the peculiarity of the conceptual and categorical apparatus of the EU in the area under study.

A mechanism for providing information on the state of the environment has been created in Ukraine. However, the current legislation does not require informing the public about the concentrations specified in paragraph 1 of Art. 7 of Directive 2004/107/EC of substances. Therefore, it is necessary to regulate the procedure for bringing information to the attention of the population, as required by Art. 7 of Directive 2004/107/EC. A high level of environmental protection is one of the priority tasks in adapting the legislation of Ukraine to the legislation of the European Union. The requirements for the adaptation of the legislation of Ukraine to the EU legislation are determined by the Strategy of the State Environmental Policy of Ukraine for the period up to 2020 and the National Action Plan for Environmental Protection for 2011-2015, the Basic Plan for the Adaptation of Environmental Legislation of Ukraine to the Legislation of the European Union (Basic Approximation Plan), as well as the Association Agreement between Ukraine and the EU. The legislation of Ukraine in the field of air protection and quality partially complies with the provisions of EU legislation. Thus, despite different approaches to setting air quality standards, most of the pollutants regulat-

ed by European legislation are also enshrined in domestic legislation.

According to the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the List of the Most Common and Dangerous Pollutants, Emissions of Which into the Atmosphere Are Subject to Regulation" dated November 29, 2001, No. 1598, the most common pollutants are nitrogen oxide, dioxin and other sulfur compounds, carbon monoxide, ozone; Hazardous pollutants include metals and their compounds, organic amines, volatile organic compounds, persistent organic compounds, chlorine, bromine and their compounds, fluorine and its compounds, etc.

As already mentioned, the air quality standards in the legislation of Ukraine are represented by the MPC standards, which are enshrined in the State Sanitary Rules for the Protection of Atmospheric Air of Settlements.

However, despite a fairly extensive system of environmental quality standards, not all aspects are brought in line with the requirements of EU environmental legislation. In particular, according to the conclusions of the Ministry of Ecology and Natural Resources of Ukraine on the state of harmonization of Ukrainian legislation with the requirements of EU law, the content of particulate matter (PM 2.5) in the ambient air remains insufficiently regulated and there is no regulation of all types of dust defined by Directive 2008/50/EC.

It is worth emphasizing that the legal protection of atmospheric air in Ukraine is based on a fairly extensive system of normative acts of various legal force. The legal basis for the use and protection of atmospheric air is the Constitution of Ukraine, where Article 13 proclaims the right of ownership of the Ukrainian people to atmospheric air, as well as the right to use it. The norms of the Constitution are fundamental, general to those norms contained in environmental laws, first of all, in the Law of Ukraine "On Environmental Protection" dated 25.06.1991 № 1264-XII.

The above-mentioned norms belong to the general principles on which the ecological and legal protection of atmospheric air is carried out. The norms of the Constitution are the norms of direct action and it is on the basis of the norms of the Constitution of Ukraine and in strict accordance

with them that all other legislative acts, including those regulating the issues of legal protection of atmospheric air, are adopted. The Law of Ukraine "On Environmental Protection" is one of the complex environmental laws that contain norms for the protection of atmospheric air. It is decisive for the entire field of environmental law, since it contains many provisions of a fundamental nature, thereby establishing the main directions of state policy in the field of interaction between society and nature.

Legal, organizational and environmental requirements in the field of protection and use of atmospheric air are determined by the Law of Ukraine "On Air Protection" dated 16.10.1992, № 2707-XII [5], adopted in a new edition on 27.07.2022. The Law defines general provisions, as well as regulates issues of standardization and regulation in the field of air protection, organizational and legal measures for air protection, compliance with legal requirements in the design, construction and reconstruction of industrial facilities. A significant place in the law is given to the issues of regulation of relations in the field of air use, the economic mechanism for ensuring its protection and control, state accounting and monitoring of air protection, as well as issues of offenses in relation to atmospheric air and responsibility for them and international relations in this area. Thus, this law acts as a direct basis for the organization of air protection.

Norms for the protection of atmospheric air are contained in other specialized legislative acts. In particular, in the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" dated 19.11.1992 № 2801-XII [6] in terms of: establishing requirements for environmental protection as an important prerequisite for human life and health, establishing uniform sanitary and hygienic requirements in Ukraine for planning and development of settlements, cleaning and neutralization of industrial and municipal emissions, etc., in the Law of Ukraine "On the Fundamentals of Urban Planning" dated 16.11.1992 № 2780-XII [7] in terms of ensuring environmental safety in the implementation of planning and development of territories, in the Law of Ukraine "On Ensuring the Sanitary and Epidemic Welfare of the Population" in terms of establishing hygienic requirements for atmospheric

air in settlements, air in industrial and other premises, in the Law of Ukraine "On Transport" dated 10.11.1994 № 232/94-VR in terms of environmental protection, including atmospheric air, during the operation of transport, location of transport facilities, in the Law of Ukraine "On Road Transport" dated 05.04.2001 № 2344-III in terms of land use by road transport and standardization and certification in road transport aimed at environmental protection, in the Law of Ukraine "On Pesticides and Agrochemicals" dated 02.03.1995 № 86/95-VR in terms of establishing requirements for the safety of human health and the environment in the implementation of activities, related to pesticides and agrochemicals, in the Law of Ukraine "On Environmental Impact Assessment" of 23.05.2017 № 2059-VIII [8], which is carried out in order to prevent the negative impact of anthropogenic activities on the state of the environment and human health, as well as to assess the degree of environmental safety of economic activity and the environmental situation in certain territories and facilities.

A significant number of normative legal acts in the field of air protection are resolutions and orders of the Cabinet of Ministers of Ukraine. One of the main legal means of air protection is the state system of environmental quality monitoring - a system of observation, collection, processing, transmission, storage and analysis of information on the state of the environment, forecasting its changes and developing scientifically based recommendations for decision-making on prevention of negative changes in the state of the environment and compliance with environmental safety requirements. The Resolution of the Cabinet of Ministers of Ukraine dated 13.12.2001 № 1655 approved the Procedure for state accounting in the field of air protection.

The Procedure defines a unified system of state accounting in the field of air protection of objects (enterprises, institutions, organizations and citizens - subjects of entrepreneurial activity) that produce or may have a harmful impact on human health and on the state of atmospheric air, types and volumes of pollutants emitted into the atmosphere, types and degrees of influence of physical and biological factors on its state. The Resolution of the Cabinet of Ministers of Ukraine dated 13.03.2002 № 299 "On the Procedure for the Development and Approval of

Standards for Environmental Safety of Atmospheric Air" establishes a mechanism for the development and approval of scientifically based standards for environmental safety of atmospheric air in order to avoid, reduce or prevent the negative consequences of air pollution.

To assess the state of air pollution in places of permanent or temporary stay of people, standards of environmental safety of atmospheric air are established, which include: standards of air quality; maximum permissible levels of acoustic, electromagnetic, ionizing, and other types of influence of physical and biological factors on the state of atmospheric air in settlements. Standards are developed taking into account the requirements of international standards, norms, recommendations, taking into account the degree of influence of physical and biological factors on the population, their maximum permissible levels, concentrations of pollutants established by the Ministry of Health, climatic conditions, the possibility of transboundary transfer of pollutants, etc. As for the harmful effects of physical and biological factors on the atmospheric air, rationing is carried out in accordance with the Resolution of the Cabinet of Ministers of Ukraine dated 13.03.2002 No. 300 "On the Procedure for the Development and Approval of Standards for the Maximum Permissible Level of Influence of Physical and Biological Factors of Stationary Sources of Pollution on the State of Atmospheric Air".

**Conclusions.** An important place in the protection of atmospheric air is occupied by technical standards. In many cases, environmental legislation contains references to technical regulations, sanitary norms, environmental quality standards, maximum permissible concentrations of pollutants in natural objects, etc. A special group of legal acts consists of the State Standards of Ukraine (DSTU), State Sanitary Norms (SSN), industry standards, state construction norms and rules, etc. State standards are mandatory, and on their basis the relevant standards in the field of air protection are developed.

In accordance with the provisions of the current normative legal acts in the field of air protection, the main legal mechanisms of state regulation of air protection are rationing and standardization in the field of air protection, regulation of the location of

objects and sources of air pollution, state environmental and other examinations of objects that have a significant impact on the environment and human health, the licensing procedure for state authorization of activities, which may be accompanied by emissions into the environment, the establishment of sanitary protection zones around enterprises, which is a source of impact on the environment and people.

It is also possible to distinguish such tools as accounting and monitoring the quality of atmospheric air and monitoring the state of the air by the state and the polluters themselves. These mechanisms and instruments of state regulation make it possible to preserve atmospheric air from excessive exposure to pollutants and other interference, as well as to carry out state management of the use of atmospheric air. In general, the State Administration in the field of air protection is carried out by the Cabinet of Ministers of Ukraine, the Ministry of Ecology and Natural Resources of Ukraine, the Ministry of Health of Ukraine, and local self-government bodies. The legislation also provides for the possibility of applying organizational and economic measures for the protection of atmospheric air, which include environmental tax, compensation for losses caused as a result of violation of the legislation on air protection, provision of tax, credit and other benefits to business entities in case of introduction of low-waste, energy- and resource-saving technologies, implementation of other environmental measures aimed at reducing emissions in the atmospheric air and reduction of the level of influence of physical and biological factors on the air, participation of the state in the financing of environmental measures and construction of environmental facilities.

Summarizing the above, it is expedient to point out that the instruments of the administrative and legal mechanism for ensuring air protection and airspace safety include: rationing and standardization in the field of air protection; regulation of the location of objects and sources of air pollution; conducting state ecological and other examinations of objects that have a significant impact on the environment and human health; permissive procedure for state authorization activities that may be accompanied by emissions into the environment; es-

tablishment of sanitary protection zones around enterprises, which are a source of impact on the environment and people; accounting and monitoring of air quality and control over the state of the air, etc.

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Gordienko A. V.

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Артур Гордієнко

## ОКРЕМІ ПИТАННЯ АДАПТАЦІЇ НАЦІОНАЛЬНОГО ЗАКОНОДАВСТВА У СФЕРІ ОХОРОНИ АТМОСФЕРНОГО ПОВІТРЯ ДО ВИМОГ ЄВРОПЕЙСЬКОГО СОЮЗУ

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***Метою** статті є характеристика окремим питанням адаптації національного законодавства у сфері охорони атмосферного повітря до вимог Європейського Союзу. **Методи дослідження:** обрана тема наукового дослідження потребує застосування різноманітних наукових методів і підходів для отримання якісних результатів. Тому для вирішення поставлених завдань використано такі методи дослідження: аналіз; системний метод; аналітичний тощо. **Результати:** відповідно до положень діючих нормативно-правових актів в галузі охорони атмосферного повітря, основними правовими механізмами державного регулювання охорони атмосферного повітря є нормування та стандартизація в галузі охорони атмосферного повітря. **Обговорення:** регулювання розміщення об'єктів та джерел забруднення атмосферного повітря, проведення державної екологічної та інших експертиз об'єктів, що мають значний вплив на довкілля та здоров'я людей, дозвільний порядок санкціонування державою діяльності, що може супроводжуватися викидами в навколишнє середовище, встановлення санітарно-захисних зон довкола підприємств, що є джерелом впливу на довкілля та людей.*

***Ключові слова:** інструменти адміністративно-правового механізму; забезпечення охорони атмосферного повітря; безпека повітряного простору.*

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