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# The Legal Landscape of Climate Change in Ukraine: Challenges and Prospects

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## ABSTRACT

When climate change is one of the most urgent, complex and challenging planetary problems of the present, threatening the global economy and international security, it has to be primarily regulated domestically at the level of a State. The present article aims to examine the status quo of legal regulation of climate change issues in Ukraine. Accordingly, the critical analyses of the national climate legislation and whether it corresponds with the State policy's strategic aims are conducted; the provisions of strategic documents on climate change adaptation and mitigation in Ukraine are examined and the evaluation of such regulatory mechanism's efficiency and effectiveness is performed. As a result, the author points out the drawbacks of climate national policy and law and offers a set of suggestions for its improvement.

**Keywords:** Climate change; State policy; State climate policy; UNFCCC; Association Agreement; European Integration; European Green Deal

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## 1. INTRODUCTION

When climate change is one of the most urgent, complex and challenging global problems of the present it has to be primarily regulated locally, at the level of a State. This is due to the fact that climate change poses an immediate threat to the national security of the country and the well-being of its citizens, such as an increase in natural disasters, a threat to food security, water shortage, economic losses, etc., and thus it is the local governance that has to respond promptly. Article 16 of the Constitution of Ukraine proclaims that ensuring environmental safety and maintaining ecological balance in the territory of Ukraine is the responsibility of the State.<sup>1</sup>

Ukraine has already faced climate-driven changes in various spheres and sectors. Increased incidence of strong floods in the last 20 years has affected nearly one-third of the population, especially in the Carpathian Mountains and its foothills. Droughts now occur on average once every three years, causing a 35-trillion-litre deficit of water for Ukraine. In 2021, the situation was critical as the probability of restricting Ukraine's citizens' constitutional water use rights was considered high.<sup>2</sup>

As a result of climate change analysis in some regions of Ukraine, it was found that, over the past decade, thermal mode, moisture, wind frequency, etc., have changed significantly, leading to the increased number of wildfire cases. Extreme weather events also inflicted significant damage on energy infrastructure, like a severe windstorm in July 2019 damaged power lines in Ukraine and left around 600 towns and settlements temporarily without electricity. The vulnerability of the population is magnified by infrastructure deficiencies such as an ageing and fragile housing stock and limited potable water supply.

The full Russian-scale invasion of 2022 has drastically exacerbated the situation when economic shocks and the humanitarian crisis are likely to divert resources from climate strategies and planning. Notably, total emissions linked to Russia's war on Ukraine are estimated

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<sup>1</sup> Constitution of Ukraine (1996) <<https://zakon.rada.gov.ua/laws/show/254r/96-bp#Text>> accessed 25 March 2021.

<sup>2</sup> 'The Risk of Water Shortage and Implications for Ukraine's Security' (*Jamestown*, 2021) <<https://jamestown.org/program/the-risk-of-water-shortage-and-implications-for-ukraines-security/>> accessed 1 April 2023.

to have already amounted to 150 million tons of CO<sub>2</sub> equivalent as of September 2023 - representing \$9.6 billion in global climate damage<sup>3</sup>.

The modelled projections of further increase in average annual temperatures in Ukraine (1.1 °C by 2040 and 4.3 °C by the end of the century, subject to excessive anthropogenic impact) will lead to significant economic losses, negative impact on public health and labour productivity, reduced yields and deterioration of air quality, increased risk of forest fires, significant water shortages due to reduced water resources, increased number of natural disasters, threats to food security (reduced yields, shortages or significant rise in food prices), reduction of territories due to coastal flooding, forests degradation and loss of ecosystems and biodiversity, and loss of territories due to flooding of coastal areas<sup>4</sup>.

According to the 2022 Environmental Performance Index, Ukraine's climate performance was rated at 69.2 out of 100, ranking it 26th out of 180 countries worldwide<sup>5</sup>. Despite the overall positive assessment, the intensity and amount of greenhouse gases per capita in Ukraine are high and significantly higher than in most EU member states. This is, among other things, due to the fact that in 2018-2019, Ukraine provided €750 million in direct subsidies to support electricity production from coal, which is the largest amount of subsidies allocated to electricity production from hard and brown coal among all Energy Community member states. In addition, in 2020, Ukraine was the largest source of sulphur dioxide (SO<sub>2</sub>) emissions in Europe, with coal-fired power plants accounting for the majority of emissions. In turn, emissions from Ukrainian coal-fired power plants exceed EU standards by 40 times, as flue gas cleaning from sulphur and nitrogen oxides is virtually non-existent at Ukrainian coal-fired power plants.

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<sup>3</sup> L de Klerk, L and others, 'Climate damage caused by Russia's war in Ukraine' (Initiative on GHG accounting of war). <[https://en.ecoaction.org.ua/wp-content/uploads/2023/12/20231201\\_ClimateDamageWarUkraine18monthsEN\\_1.pdf](https://en.ecoaction.org.ua/wp-content/uploads/2023/12/20231201_ClimateDamageWarUkraine18monthsEN_1.pdf)> accessed 8 February 2024.

<sup>4</sup> Law of Ukraine 'On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030' (2019) <<https://zakon.rada.gov.ua/laws/show/2697-19>> accessed 25 March 2021.

<sup>5</sup> The Environmental Performance Index 2022 (EPI) is based on data that reflects the state of compliance with the Sustainable Development Goals and assesses national progress towards their achievement. Using 40 performance indicators divided into 11 categories, the index analyses the performance of 180 countries in the areas of climate change, environmental protection and ecosystem resilience. <<https://epi.yale.edu/epi-results/2020/country/ukr>> accessed 8 February 2024.

Moreover, according to the assessment of Ukraine's first Nationally Determined Contribution, the climate commitments are defined as "grossly insufficient". This means that the measures envisaged under Ukraine's climate policy in 2030 may lead to an increase rather than a reduction in greenhouse gas emissions, and contradict the Paris Agreement's goal of limiting the global temperature rise to less than 1.5°C.

In turn, the absence of a comprehensive regulatory framework on climate change and a national cross-sectoral policy to achieve carbon neutrality, as well as underdeveloped instruments to stimulate greenhouse gas emission reductions, low level of regulation of activities and liability of business entities, significantly hinder the country's ability to tackle the climate crises.

In light of the abovementioned considerations, the present article aims to examine the current state of legal regulation of climate change issues in Ukraine. Accordingly, the underlying tasks are: to carry out the critical analysis of the national legislation concerning climate change regulation and whether it corresponds with the State policy strategic aims; to analyse the provisions of approved strategic documents on climate change adaptation and mitigation in Ukraine; to evaluate how efficient and effective such regulatory mechanism is; to find and illuminate the current legislative and State policy's gaps; and formulate theoretical and practical suggestions for their further improvement and development.

## **2. LEGAL FRAMEWORK FOR CLIMATE CHANGE IN UKRAINE**

The discussion on the legal protection of climate arose in the middle of the twentieth century, accompanied by research activities of scientists and jurists to study the climate system, its variability, sensitivity, external and internal factors. In the recent decade, there have been theoretical debates on climate law and whether it has already been formed as a new field of law. Dernbach and Kakade stated that 'climate change law is a new and rapidly developing area of law'<sup>6</sup>; Peel defined

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<sup>6</sup> John C Dernbach and Seema Kakade, 'Climate Change Law: An Introduction' (2008) 29 Energy Law Journal, <<http://johndernbach.com/wp-content/uploads/2013/08/DernbachKakade-ClimateChangeLawIntro2008.pdf>> accessed 21 April 2023.

climate change law as a distinctive body of legal principles and rules.<sup>7</sup> Meanwhile, other scholars expressed doubts about ‘the feasibility of addressing climate law as a new field of law’<sup>8</sup>, or that ‘it is a discrete body of law with its own sources, methods of law-making, and principles, or that it is a self-contained regime’<sup>9</sup>. Turning to the legal doctrine of Ukraine, it substantiates the need to develop legal measures to protect the climate within a completely new area of policy and law, while underlining that it requires further scientific and theoretical justification.<sup>10</sup>

Summing up all the aforementioned, it is worth highlighting that the urgency of combating climate change and its impacts was declared by the international community in 2015 with the adoption of the 2030 Agenda for Sustainable Development by all United Nations Member States (the Sustainable Development Goal No. 13).<sup>11</sup> Thus, from author’s point of view, it is obvious that the legal protection of climate has already become the objective reality of the law.

However, currently, in Ukraine, there is no framework law which shall determine the legal and organizational bases for mitigating climate change and adapting to its impacts, while the legal framework on climate change is fragmented and mainly comprises secondary legislation. Overall, climate change is mainly considered in the context of the international climate obligations of Ukraine.

Additionally, climate is not defined as an object of legal regulation, either by environmental law or any other area of national law. This is a significant legislative drawback that introduces imbalance and ambiguity in defining such concepts as climate change, climate mitigation, etc., which complements the legislative inability to develop effective measures to address climate-related issues.

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<sup>7</sup> Jacqueline Peel, 'Climate Change Law: The Emergence of a New Legal Discipline' (2008) 32 Melbourne University Law Review 922.

<sup>8</sup> Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani, *International Climate Change Law* (Oxford University Press, 2017).

<sup>9</sup> J Ruhl and James E Salzman, 'Climate Change Meets the Law of The Horse' [2012] SSRN Electronic Journal, <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3376&context=dlj>> accessed 19 April 2021.

<sup>10</sup> Hanna Anisimova, 'Pravove Zabezpechennya Okhorony Atmosferneho Povitrya, Ozonovoho Sharu ta Klimatu' in AP Getman and others (eds), *Pravova okhorona dovkillya: suchasnyy stan ta perspektyvy rozvytku: monohrafiya* (Pravo 2014).

<sup>11</sup> UN General Assembly 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) A/RES/70/1 <<https://www.refworld.org/docid/57b6e3e44.html>> accessed 26 March 2023.

It is noteworthy that Ukrainian jurists in the field of environmental law have repeatedly underlined that climate should be determined as an object of legal regulation along with the so-called 'classical objects' of environmental law. According to Malysheva, overcoming anthropocentrism in the regulation of environmental safety should also become an important reserve for the ecological and legal development of Ukraine in the future. New technologies, the latest social phenomena, and climate change affect the subject of regulation of environmental law and are designed to ensure its development more widely.<sup>12</sup> Krasnova also notes that a number of environmental objects of environmental law is expanding, in particular, by including (*inter alia*, with the ratification of acts of international environmental law) to them such objects as climate, ozone layer, biodiversity, ecological network, etc.<sup>13</sup>

In this context, it is important to pay attention to the Climate Programme of Ukraine, which was one of the first legal documents to be developed and approved (back in 1997) in response to recognizing the problem of anthropogenic climate change and as part of the World Climate Programme.<sup>14</sup> The document referred to the climate as one of the main natural resources upon which living conditions, human activities, directions and level of economic development depend. It was also stated that climate is one of the main factors shaping the natural environment, and even minor changes in it, along with overall poor environmental conditions in Ukraine, can cause significant socio-economic damage in case no measures for their prevention are taken. However, no official definition of climate change was introduced neither in the Climate Programme of Ukraine, nor in any other documents that were adopted later.

Moreover, there is no formed and unified approach to understanding the nature and characteristics of climate as an object of environmental protection even in the legal doctrine of Ukraine. In most of the sources, the term "climate" is characterized through the prism of

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<sup>12</sup> Nataliya Malysheva, 'Novi horyzonty ekolohichnoho prava', *Modern tendencies and prospects of development of agrarian, land and environmental law* (Publishing Center of NULES of Ukraine, Kiev, 22–23 May 2015).

<sup>13</sup> Mariia Krasnova, 'Stan ta Perspektyvy Rozvytku Vchennya pro Ob'yekty Ekolohichnoho Prava: Naukovo-Metodolohichni Aspekty' (2013) 2 Bulletin of Taras Shevchenko National University of Kyiv. Legal Studies 8.

<sup>14</sup> Resolution of the Verkhovna Rada of Ukraine No 650 'On Climate Programme of Ukraine' (1997) <<https://zakon.rada.gov.ua/laws/show/757-14#Text>> accessed 26 March 2023.

the institution of general (climatic conditions) or special (climatic resources) nature. The climatic resource is also referred to in the legal category of "intangible natural resources" along with ambient air, airspace, wind energy, solar radiation, radio frequency resources, etc. They are defined as natural resources of a special kind and legal regulations for their protection and/or use are mainly in the process of their formation. Thus, climate is currently considered within the framework of the environmental law of Ukraine as a part of the legal protection of ambient air and the ozone layer.

Meanwhile, the basis of legal regulation of climate change in Ukraine has been mainly formed as a response to international climate obligations. Such obligations are posed by the ratification of the following international documents: United Nations Framework Convention on Climate Change, 1992 (hereinafter UNFCCC)<sup>15</sup>, the Kyoto Protocol, 1997<sup>16</sup>, Paris Agreement, 2015<sup>17</sup> and Association Agreement between the European Union and Ukraine, 2014<sup>18</sup>. To ensure the implementation of these international treaties, a number of legislative and regulatory documents have been developed and approved.

From one point of view, this is quite logical, as the legal protection of climate as an international universal object is the subject of international cooperation. Ukraine has identified the issues of climate change as the priority of the State's environmental policy. In particular, by signing and ratifying the UNFCCC, Ukraine has committed to protecting the climate system for the benefit of the present and future generations, as well as to fulfill individual obligations as a Party to the Convention. Thus, as an Annex I Party<sup>19</sup>, Ukraine has committed to adopt and implement policies and measures aimed at mitigation of climate change by limiting its anthropogenic emissions of greenhouse gas emissions (hereinafter GHG) and protecting and enhancing its

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<sup>15</sup> Law of Ukraine 'On Ratification of the UN Framework Convention on Climate Change' (1996) <<https://zakon.rada.gov.ua/laws/show/435/96-Бп#Text>> accessed 26 March 2021.

<sup>16</sup> Law of Ukraine 'On the Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change' (2004) <<https://zakon.rada.gov.ua/laws/show/1469-19#Text>> accessed 26 March 2021.

<sup>17</sup> Law of Ukraine 'On the Ratification of the Paris Agreement' (1996) <[https://zakon.rada.gov.ua/laws/show/995\\_801](https://zakon.rada.gov.ua/laws/show/995_801)> accessed 26 March 2021.

<sup>18</sup> Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (29 May 2014) OJ L 161.

<sup>19</sup> United Nations Framework Convention on Climate Change (1992) 1771 UNTS 107, 165.



greenhouse gas free sinks and reservoirs, taking into consideration the real socio-economic conditions of the country. As Annex B Party to the Kyoto Protocol<sup>20</sup>, Ukraine had an obligatory target until 2020 to reduce its GHG emissions levels by 20% below 1990 levels.

Furthermore, Ukraine was one of the first European countries to ratify the Paris Agreement<sup>21</sup>, a legally binding international treaty on climate change, which requires Ukraine (as a signatory to the Agreement) to take measures to reduce the impact on the climate, e.g., by cutting greenhouse gas (hereinafter GHG) emissions and adapting to the already existing impacts of climate change. Therefore, Ukraine has committed to its obligations under the Paris Agreement with first Intended Nationally Determined Contribution (first NDC), which sets a GHG emission target not to exceed 60% of 1990 GHG levels in 2030.<sup>22</sup>

However, it is quite questionable that the formation of legal regulation of climate change issues solely through the implementation of international obligations can be effective without adopting a framework legal act of national law. The primary development of strategic documents (mainly aimed at meeting international obligations) within the climate state policy of Ukraine, which is not supported by a framework act of national legislation, is declarative in nature and looks a lot like political promises rather than an effective system of binding legal measures.

This statement is substantiated by the fact that despite all the efforts to reduce overall national GHG emissions through its policies and measures, Ukraine has failed to meet international commitments a number of times. In particular, in 2010 Ukraine failed to establish an initial report demonstrating compliance of its national systems with the procedures under the Kyoto Protocol.<sup>23</sup> In 2016, Ukraine failed to

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<sup>20</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998) 37 ILM 22.

<sup>21</sup> Paris Agreement aims to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius. Conference of the Parties, Adoption of the Paris Agreement (2015) UN Doc FCCC/CP/2015/L9/Rev/1.

<sup>22</sup> NDC Registry, 'Party: Ukraine' ([www4.unfccc.int](http://www4.unfccc.int), 2016) <<https://www4.unfccc.int/sites/NDCStaging/pages/Party.aspx?party=UKR>> accessed 11 April 2023.

<sup>23</sup> The Compliance Committee of the Kyoto Protocol, 'Non-Compliance Procedure of Ukraine under the Kyoto Protocol - Climate Change Litigation' (*Climate Change Litigation*, 2010) <<http://climatecasechart.com/climate-change->

establish a true-up period report demonstrating compliance with the Kyoto Protocol, and apart from violating it was found that Ukraine did not retire sufficient units to cover its total GHG emissions as required under the Kyoto Protocol (not in formal compliance with Article of the Kyoto Protocol).<sup>24</sup> Additionally, recent poor performance of Ukraine in reaching its commitment under the Paris Agreement, which is rated as 'Critically insufficient' (as from 30 July 2020)<sup>25</sup>, demonstrates that current policy trends lead to ineffective, inconsistent and not systematic formation of the legal regulation of climate change.

To sum up, it is reasonable to mention the statement of K. Prokhorenko that climate is a new, special object of environmental law, which meets the vital, natural environmental rights, interests and needs of the subjects, and, thereby, is subject to comprehensive protection aimed at preventing deterioration of climate balance systems.<sup>26</sup>

Thus, defining the climate as a special object of law is theoretically and scientifically substantiated. This should be primarily done within the environmental law of Ukraine, e.g., by introducing the definition into existing legislative acts. In particular, Article 5 of the Law of Ukraine 'On Environmental Protection'<sup>27</sup> should be amended to include the climate in the list of objects of environmental protection. Also, a special article should be developed on the protection of the climate, as well as the prevention and mitigation of the negative effects of climate change. Additionally, the provisions of the sectoral Law of Ukraine 'On Air Protection'<sup>28</sup> should be complemented with the definition of climate, the content of its protection, and the list of basic

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litigation/non-us-case/non-compliance-procedure-of-ukraine-under-the-kyoto-protocol/> accessed 11 May 2023.

<sup>24</sup> The Compliance Committee of the Kyoto Protocol, 'Non-Compliance Procedure of Ukraine under the Kyoto Protocol II - Climate Change Litigation' (*Climate Change Litigation*, 2016) <<http://climatecasechart.com/climate-change-litigation/non-us-case/non-compliance-procedure-of-ukraine-under-the-kyoto-protocol-ii/>> accessed 11 April 2023.

<sup>25</sup> Climate Action Tracker 'Ukraine | CAT' (*Climateactiontracker.org*, 2020) <<https://climateactiontracker.org/countries/ukraine/>> accessed 12 April 2021.

<sup>26</sup> Kateryna Prokhorenko, 'Climate as an Object of Legal Environmental Protection in Ukraine' (PhD thesis, Taras Shevchenko National University of Kyiv 2013).

<sup>27</sup> Law of Ukraine 'On Environmental Protection' is a framework domestic law in the field of environmental protection (amended as of 01 January 2021) <<http://zakon0.rada.gov.ua/laws/show/1264-12>> accessed 25 March 2023.

<sup>28</sup> Law of Ukraine 'On Air Protection' determines legal and organizational basis and ecological requirements in the field of protection of ambient air (amended as of 20 September 2019) <<https://zakon.rada.gov.ua/laws/show/2707-12#Text>> accessed 25 March 2023.

measures to protect the environment from adverse effects of climate change. These amendments should lay the grounds for the formation of a domestic legal framework on climate change. This will create the legal basis for developing and adopting a framework legal act in the sphere of climate change (Climate law of Ukraine), which shall be aimed at introducing legal measures to achieve net zero emissions, protect the natural environment and Ukrainian citizens from the adverse impacts of climate change.

Overall, the legal protection of climate as a natural object should involve the development and implementation of a set of measures aimed at mitigating climate change and ensuring adaptation to it, which is reflected in the relevant areas of legal regulation: reduction of anthropogenic greenhouse gas emissions, review of existing scientific and legislative approaches to standardization in this area, rational use, protection and reproduction of the quality of natural absorbers of greenhouse gases, like forests, lands, soils, vegetation, etc., and ensuring the adaptation of ecological systems and humans to the adverse impacts of climate change.

Consequently, the development of fully-fledged environmental legislation to ensure the efficient and effective legal protection of climate is of fundamental importance for Ukraine. The priority tasks are: to identify contradictions and fill gaps in the current environmental legislation, e.g., by defining climate as an object of legal protection; to improve existing national legislation on international commitments and obligations of Ukraine under international climate change framework; to develop and adopt a framework legal act (e.g. Climate Law of Ukraine) in the sphere of climate change, which shall be aimed at developing legal measures to achieve net zero greenhouse gas emissions, protect the natural environment and Ukrainian citizens from the adverse impacts of climate change.

### **3. ADDRESSING CLIMATE CHANGE ISSUES WITHIN STATE POLICY OF UKRAINE**

Currently, climate change regulatory provisions in Ukraine are mainly based on the provisions of strategic documents. Noteworthy, following the specifics and scope of issues covered, it is suggested that climate state policy of Ukraine is conditionally divided into two areas: mitigating climate change (e.g., by reducing greenhouse gas emissions)

and adapting to climate change impacts. The fundamental strategic documents are the Strategy of the State Environmental Policy of Ukraine for the period up to 2030<sup>29</sup> and the Concept on State Climate Policy Implementation till 2030<sup>30</sup>.

The Strategy of the State Environmental Policy of Ukraine for the period up to 2030 (hereinafter Environmental Strategy), is the fundamental document that defines the national priorities in the field of environmental protection. The Strategy points out that to improve the quality of the atmospheric air and to strengthen its response to the effects of climate change and to achieve the goals of sustainable low-carbon development in all sectors of the economy, Ukraine must ensure that ratified international instruments on climate change and the quality of the atmosphere are fulfilled.<sup>31</sup>

In general, the Strategy is aimed at the energy saving and energy efficiency, increasing the production of clean energy, introducing the best available low-carbon, resource-saving production technologies, as well as modern building technologies for heat and energy saving, which will significantly reduce the emissions of greenhouse gases and pollutants into the atmospheric air as well as the discharge of pollutants into water bodies.

It should be noted that the Strategy, as a fundamental policy act on environmental issues, is expected to define the national priorities in the sphere of climate change. Thus, it looks reasonable that it is the Strategy that must be the reference point for further development and legislative support for combating climate change on the national level. However, the Strategy does not consider climate change as a separate sphere of environmental policy, addressing it within the framework of legal protection of atmospheric air and mainly in the context of fulfilling international obligations. This is seen as a definite drawback, which results in underestimation of climate change issues on the national level, shifts strategic priorities and inhibits the development and adoption of the framework legislation in the sphere of climate change.

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<sup>29</sup> Law of Ukraine ‘On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030’ (2019) (Environmental Strategy 2019) <<https://zakon.rada.gov.ua/laws/show/2697-19>> accessed 25 March 2023.

<sup>30</sup> Approved on 7 December 2016 by Resolution of the Cabinet of Ministers of Ukraine ‘On approval of the Concept on State Climate Policy Implementation till 2030’ (2016) <<https://zakon.rada.gov.ua/laws/show/932-2016-p#Text>> accessed 27 March 2023.

<sup>31</sup> Environmental Strategy 2030.

The Concept on State Climate Policy Implementation till 2030 (hereinafter Climate Policy Concept)<sup>32</sup> is the first national strategic document aimed at combating climate change by defining the grounds to develop legislation, strategies and action plans for various areas of State policy in this area. Its aim is stated as improving State policy on climate change in order to achieve sustainable development, create legal and institutional preconditions for a gradual transition to low-carbon development in terms of economic, energy and environmental security and improve the welfare of citizens. Its main areas cover the following: strengthening the institutional capacity for the development and implementation of State policy on climate change; prevention of climate change by reducing anthropogenic emissions and increasing greenhouse gas absorption to ensure the gradual transition to low-carbon development of the country; adapting to climate change, increasing the resilience and reducing the risks linked to climate change.

It is noteworthy that the Climate Policy Concept establishes the basis for the development of draft regulations, strategies and other documents required for the implementation of various components of state policy in the sphere of climate change. Thus, a number of planning and strategic instruments have been adopted, e.g., the Action Plan on the Execution of the Concept of Implementation of State Climate Change Policy until 2030 (hereinafter the Action Plan)<sup>33</sup>, Low Emission Development Strategy (hereinafter LEDS 2050)<sup>34</sup>, Energy Strategy of Ukraine until 2050 (hereinafter ESU 2050)<sup>35</sup>, etc.

The Action Plan contains 49 measures aimed at preventing and adapting to climate change. Such measures include taking into account the factor of increasing the frequency and intensity of dangerous and natural hydrometeorological phenomena due to climate change in

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<sup>32</sup> Climate Policy Concept 2016.

<sup>33</sup> Approved on 6 December 2017 by Resolution of the Cabinet of Ministers of Ukraine ‘Action Plan on the Execution of the Concept of Implementation of State Climate Change Policy until 2030’ (2017) (Action Plan 2017) <<https://zakon.rada.gov.ua/laws/show/878-2017-p#Text>> accessed 27 March 2023.

<sup>34</sup> Approved on 18 July 2018 by Protocol Decision of the Cabinet of Ministers of Ukraine ‘Ukraine 2050 Low Emission Development Strategy’ (2018) (LEDS 2018) <[https://mepr.gov.ua/files/docs/Projekt/LEDS\\_ua\\_last.pdf](https://mepr.gov.ua/files/docs/Projekt/LEDS_ua_last.pdf) > accessed 27 March 2023.

<sup>35</sup> Approved on 18 September 2017 by Resolution of the Cabinet of Ministers of Ukraine ‘Energy Strategy of Ukraine until 2035 “Safety, Energy Efficiency, Competitiveness”’ (2017) <<https://zakon.rada.gov.ua/laws/show/605-2017-p#n2>> accessed 27 March 2023.

Ukraine in the process of managing the risks of man-made and natural emergencies, developing and approving a plan of measures to adapt to climate change, implementation of pilot projects for the development and implementation of local plans for adaptation to climate change at the regional level, as well as cities, towns and villages.<sup>36</sup>

Special attention should be given to the LEDES 2050, which was developed and approved by the decision of the Interdepartmental Commission for Enforcement of the UN Framework Convention on Climate Change, according to which Ukraine will make efforts to achieve by 2050 the level of 31-34% of greenhouse gas emissions compared to 1990<sup>37</sup>. It should be noted that LEDES determines national stakeholders' agreed vision on decoupling further economic and social growth and its social development from the growth in greenhouse gases emissions. Thus, on the one hand, LEDES is based upon the national priorities for sustainable development and current sectoral strategies, while, on the other, it determines a potential pathway for economic development with due account of the goals for the state policy on emission reduction and greenhouse gases absorption<sup>38</sup>. Therefore, it is mainly seen as an instrument for public administration and shaping of climate responsible behavior of businesses and citizens. On 18 July 2018, the Government of Ukraine sent the LEDES to the Secretariat of the UNFCCC, which was later posted on the website of the Secretariat. By this, Ukraine demonstrated its commitment to combat global climate change and meet relevant non-mandatory requirements of the Paris Agreement in order to pursue the Climate Action Sustainable Development Goal. However, since then no legislative tool to implement this Strategy has been developed. Thus, LEDES was not enshrined in any of the legislative acts, and, in fact, is of a recommendatory nature only.

The updated Energy Strategy of Ukraine until 2050 is a programme document adopted by the Government of Ukraine on 21

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<sup>36</sup> Action Plan 2017.

<sup>37</sup> Taking into consideration international obligations of Ukraine LEDES 2017 is aimed at supporting a global target on stabilization of greenhouse gases concentration in accordance with the scenario of global average temperature increase confinement to well below 2°C of pre-industrial level.

<sup>38</sup> FAOLEX 'FAOLEX Database: Ukraine (National Level)' (*Fao.org*, 2017) <<http://www.fao.org/faolex/results/details/en/c/LEX-FAOC181201/>> accessed 23 April 2023.

April 2023<sup>39</sup>. It defines the strategic guidelines for the development of the energy sector of Ukraine, taking into account the consequences of a full-scale Russian War, reflects the goals of the European Green Deal, and is based on the principles of an integrated approach to the formation and implementation of energy policy, creating conditions for sustainable development of the Ukrainian economy.

The Strategy's key areas of focus, along with prioritising energy security and sustainability of energy systems, as well as deepening the integration of Ukraine's energy system into the pan-European market, include reducing greenhouse gas emissions, in particular through the development and implementation of the latest technologies (production and use of hydrogen, construction of small modular nuclear reactors and energy storage facilities). In terms of the climate component, the Energy Strategy 2050 is a qualitative declarative document that sets out the main goals and principles of the energy system transformation aimed at reducing greenhouse gas emissions. In particular, the Strategy sets ambitious targets for reducing hydrocarbon consumption and dependence on coal and envisages that Ukraine will achieve carbon neutrality in the energy sector by 2050. The priority role of energy efficiency defined in the Strategy demonstrates the recognition of its importance for reducing greenhouse gas emissions and increasing the sustainability of the energy system.

Thus, the updated Energy Strategy 2050 is an important step towards reducing the impact of the energy sector on climate change. However, its implementation requires specific and detailed measures, which require effective management, adequate resources, political will and cooperation of all stakeholders. It is also worth considering that the Strategy may undergo significant changes depending on the state of the energy sector at the end of the war. In particular, the ambitious targets for climate neutrality of the energy sector by 2050, as well as the fulfilment of international commitments to decarbonise the energy sector in the short and medium term, may be in question.

The development of all the above strategic documents demonstrates a strongly positive trend. However, thorough analysis of their provisions reveals the following drawbacks. Firstly, it is an exclusively declarative nature of all the strategic acts, which tend to be left on paper and never get implemented. The report of Ukrainian

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<sup>39</sup> ESU 2050.

Government on yearly progress in the sphere of environmental protection (from autumn 2019 till autumn 2020) showed that it mainly consists of strategies and plans (either already developed or still in process of their development) and few legislative acts entering into force not earlier than 2021.<sup>40</sup> Unfortunately, this looks more like the imitation of work that can be reported to international partners rather than the real progress.

Secondly, it is the lack of integration of climate change issues into other sectoral State strategies, as climate policy is strongly interconnected with a number of areas. In this context, it is worth noting that the vast majority of the world economy relies on energy sources or production technologies that release greenhouse gases at almost every stage of production, transportation, storage, supply and disposal. Consequently, this close interaction between climate change and economic viability affects almost all aspects of the national economy. Thus, climate policy issues cover the energy sector and energy efficiency, in particular, environmental protection, utilities, agriculture and food industry, construction and urban planning in the context of adaptation to climate change, health, water, forestry and transport, land issues, waste management, etc. However, climate issues are not taken into account in the agenda of the Ministry of Economy or the Ministry of Finance. The same applies to the agricultural sector, by which the risks should be assessed, and recommendations developed on how to organize its activities in consideration of climate change impact. It is also reasonable to integrate climate issues into the public health sector. This is due to the fact that the following questions should be foreseen and regulated: how does climate change affect public health? What diseases can be spread and how the burden on the health system would increase as a result of climate change? All of these must be taken into account in order to reduce future social and economic losses. There is also a big gap in social policy of Ukraine as it does not take into account how the climate crisis is deepening social injustice among vulnerable groups.

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<sup>40</sup> Cabinet of Ministers of Ukraine, 'Kabinet Ministriv Ukrainy - Yevropeys'ki Kolehy Vidznachyly Progres Ukrainy U Sferi Zakhystu Dovkillya Ta Klimatychnij Politytsi' (*Kmu.gov.ua*, 2020) <<https://www.kmu.gov.ua/news/yevropejski-kolegi-vidznachili-progres-ukrainyinu-sferi-zahistu-dovkillya-ta-klimatichnij-politici>> accessed 11 April 2023.



This problem was also highlighted by the report of the Ukrainian side of the EU-Ukraine Civil Society Platform, which stated that the crosscutting and integral character of a climate policy is the basis of its successful implementation.<sup>41</sup> Thus, the report substantiates that the climate policy should be implemented by taking climate change into account in all strategic documents and by coordinating climate change action taken by all central executive agencies.

Thirdly, there are no legislative acts to define State governance in the area of adaptation to climate change in Ukraine. It is worth mentioning that a draft National Plan for Adaptation to Climate Change for the period up to 2020 was developed in 2001, in pursuance of the national action plan for the implementation of the Kyoto Protocol to the UN Framework Conference on Climate Change. However, it was not adopted.

An attempt to develop regulatory act on adaptation to climate change has been repeated recently in pursuance of the updated National Security Strategy from 14 September 2020<sup>42</sup>, which points out that the ability to adapt the economy, livelihoods and civil protection to climate change is currently inefficient. Thus, following the goal of reducing the impact of climate change and increasing the level of environmental safety in Ukraine, the draft Strategy for Environmental Security and Climate Change Adaptation was posted on the official website of the Ministry of Environmental Protection and Natural Resources of Ukraine on 1 March 2021 for further public discussion<sup>43</sup>. According to the draft, the objectives of the Strategy include, *inter alia*, creation of organizational preconditions and scientific and methodological support for the implementation of the State policy of adaptation to climate change. Meanwhile, improving the regulatory and legislative basis for

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<sup>41</sup> Taras Bebeszko and others, 'Climate Change in the Context of Paris Agreement Commitments: Challenges and Cooperation Opportunities for the EU and Ukraine' (UA CSP 2018).

<sup>42</sup> Ministry of Environmental Protection and Natural Resources of Ukraine, 'Povidomlennya Pro Oprylyudnennya Proyektu Rozporyadzhennya Kabinetu Ministriv Ukrainy "Pro Skhvalennya Stratehiyi Ekolohichnoyi Bezpeky Ta Adaptatsiyi Do Zminy Klimatu Do 2030 Roku"' (*Mepr.gov.ua*, 2021) <<https://mepr.gov.ua/news/36922.html>> accessed 11 April 2023.

<sup>43</sup> Ministry of Environmental Protection and Natural Resources of Ukraine, 'Povidomlennya Pro Oprylyudnennya Proyektu Rozporyadzhennya Kabinetu Ministriv Ukrainy "Pro Skhvalennya Stratehiyi Ekolohichnoyi Bezpeky Ta Adaptatsiyi Do Zminy Klimatu Do 2030 Roku"' (*Mepr.gov.ua*, 2021) <<https://mepr.gov.ua/news/36922.html>> accessed 11 April 2023.

adaptation activities and fulfillment of relevant international obligations is identified among the priority tasks of the Strategy. However, the draft does not mention the development of a framework legal act in the sphere of climate change mitigation and adaptation, which is already seen as a weak point of the Strategy.

Considering all the above mentioned, it can be concluded that the current climate State policy of Ukraine shows the lack of coordination between the policy and the legislative and other regulatory acts in the climate change domain. Therefore, Ukraine has no officially adopted legal act that would define the goals, objectives and ways of public policies aimed at reducing emissions and increasing removals of greenhouse gases in Ukraine and adapting the country to climate change. This additionally substantiates the urgency of adopting framework legal act on the prevention of and adaptation to climate change, which was highlighted in the second part of the present article.

#### **4. DEVELOPING CLIMATE LAW AND POLICY IN THE CONTEXT OF EUROPEAN INTEGRATION**

According to the Association Agreement between European Union and its members and Ukraine (hereinafter the Association Agreement), it is assumed that Ukraine develops and strengthens cooperation with European countries, *inter alia*, in the sphere of climate change, thereby, contributing to the long-term goals of sustainable development and the green economy.<sup>44</sup> Therefore, ensuring the implementation of the provisions of the Association Agreement is identified as one of the main directions of State climate policy of Ukraine.<sup>45</sup> Climate commitments are set out in the section on economic cooperation (Chapter 6 ‘Environment’), which provides for institutional reforms in the field of environmental protection. Approximation of Ukrainian legislation to the European one is determined by the regulations and directives of Annex XXX of the Agreement. Two main spheres are identified: reducing greenhouse gas emissions and preventing the destruction of ecosystems. Thus, the areas

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<sup>44</sup> Article 365 lists ‘development and implementation of a policy on climate change, in particular as listed in Annex XXXI to this Agreement’. Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [2014] OJ L161/5.

<sup>45</sup> Environmental Strategy 2019.

of cooperation on climate change include the development of an action plan for mitigation of and adaptation to climate change as well as and implementation of long-term measures to reduce greenhouse gases emissions (Annex XXXI to the Agreement). In addition, the Association Agreement includes energy transition and decarbonisation policies, which should allow Ukraine to follow the path towards a low greenhouse gas emissions economy, which is the vital part of climate policy and a vector of legislation development in the sphere of climate change mitigation.

However, the results of the monitoring of the implementation of the Association Agreement for the period from 2014-2022 showed that no significant progress has been made in the area of climate change and the ozone layer. Despite the practical work on the implementation of the relevant mechanisms (in particular, the introduction of a system of monitoring, reporting and verification of greenhouse gases), the main obligation to introduce an emissions trading system ‘remains without even outlined conceptual approaches to its implementation’<sup>46</sup>.

The above-stated issues were reflected in the Analytical Report of the European Commission on the Harmonization of Ukrainian Legislation with the EU Acquis of 1 February 2023, according to which the climate change area has an initial level of preparation, indicating that the level of harmonization with the climate acquis is low-medium, and implementation is at an early stage. In turn, the European Commission noted that the EU-Ukraine High-Level Dialogue on the implementation of the European Green Deal, launched in 2021, demonstrated a high level of interest and commitment of the Ukrainian government to the goals of the European Green transition and climate neutrality<sup>47</sup>.

Therefore, a number of studies and overviews have paid attention to the problems of implementing international obligations that are not further embodied in the national legislation. For instance, the position paper on prospects of updating and amending the Association Agreement

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<sup>46</sup> Ukrainian Centre for European Policy. Ukraine and the Association Agreement: Monitoring of implementation 2014 - 2022. <[https://ucep.org.ua/wp-content/uploads/2023/05/final\\_report\\_aa\\_ucep\\_2023\\_ukr-2.pdf](https://ucep.org.ua/wp-content/uploads/2023/05/final_report_aa_ucep_2023_ukr-2.pdf)> accessed 8 February 2024.

<sup>47</sup> Commission to the European Parliament, the European Council and the Council Commission ‘Opinion on Ukraine’s Application for Membership of the European Union’ Com/2022/407 final. <<https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Ukraine%20Opinion%20and%20Annex.pdf>> accessed 8 February 2024.

regarding environmental and climate change spheres pointed out that implementation of EU climate change law by Ukraine, which is not a member-State of the EU, has had a set of challenges. Among them, the fact that the national legislation of Ukraine does not have a legal provision enabling a possibility for direct effect of the EU regulations in Ukraine is highlighted. Additionally, it is mentioned that neither the Association Agreement, nor other bilateral or national instruments provide for a mechanism to review transposition into national legislation and implementation of the EU secondary legislation in Ukraine.<sup>48</sup>

On 23 June 2022, the European Council granted Ukraine the status of a candidate for EU membership. Accession to the EU is a lengthy and very complex process that requires candidate countries to transpose the entire *acquis communautaire* into their domestic law, as well as to establish administrative and legal structures responsible for its implementation. And the development of comprehensive and integrated national climate legislation through the adoption of regulations transposing the EU climate *acquis* is one of the components of this process. It is worth noting that the EU *acquis communautaire* in the field of environment and climate change totals about 1637 pieces of legislation, which include, in addition to secondary legislation (directives and regulations), EU policies, strategic and legislative documents within the framework of the European Green Deal. At the same time, such implementation should be complete, with all the requirements of directives and regulations implemented and providing for mechanisms of practical implementation, not just legislative approximation. Thus, to fulfill the conditions for EU membership, Ukraine's primary task is to implement the European Green Deal and develop policies within the Fit for 55 legislative package to achieve carbon neutrality by 2050.

The European Green Deal (hereinafter EGD) was adopted at the end of 2019, having declared that climate change is a top priority for the EU<sup>49</sup>. EGD is a roadmap of actions aimed at transforming Europe into the world's first climate-neutral continent by 2050 with the help of building an efficient, sustainable, and competitive economy. To achieve the

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<sup>48</sup> Resource & Analysis Center “Society and Environment”, *Updating and Amending Annexes XXX and XXXI to the Association Agreement Between the European Union and Ukraine (Environment and Climate Change)* (2019) <<https://www.rac.org.ua/uploads/content/549/files/aaupdate2019eng.pdf>> accessed 9 April 2023.

<sup>49</sup> Commission, ‘The European Green Deal’ (Communication) COM (2019) 640 final

ambitious goal of reducing emissions by at least 55% by 2030 compared to 1990 levels, the EGD sets the following sectoral targets: 1) clean, affordable and secure energy supply; 2) green and circular economy; 3) energy and resource efficient construction and renovation; 4) zero pollution; 5) preservation and restoration of ecosystems and biodiversity; and 6) accelerating the transition to sustainable and smart mobility.

To achieve these goals, sectoral strategies are being developed with a planning horizon of 2030 and 2050, and relevant legislation is being updated. In particular, in 2021, the European Climate Law came into force, and a package of legislative initiatives "Fit for 55 package" was adopted, aimed at bringing EU policies in the areas of climate, energy, transport, land use and taxation in line with the requirements of this Law to achieve a 55% reduction in greenhouse gas emissions by 2030 (compared to 1990 levels). By the time the EGD came into force, the EU Biodiversity Strategy 2030, the EU Forestry Strategy, the New EU Strategy on Climate Change Adaptation, strategies on soils, plastics, chemicals, Zero Pollution Action Plans, circular economy, organic production, and the EU system for emissions trading in energy, aviation, ships and land transport, the Carbon Adjustment Mechanism and the Climate Social Fund, etc. had also been adopted and/or developed.

In this regard, in order to ensure the implementation of the EGD, which envisages the transformation of all sectors of the economy to reduce greenhouse gas emissions, Ukraine must pursue a consistent not only climate policy, but also energy and economic policies, including such sectors as industry, agriculture, transport, and finance, and must clearly follow strategies and take into account the proposals of legal scholars.

As mentioned above, Ukraine's participation in the European Green Deal has been identified as one of the strategic priorities of the EU and Ukraine, but no significant progress has been made in this area so far. In particular, neither an action plan for the EGD implementation (the Roadmap for Ukraine's Climate Goals until 2030) nor draft regulations for the EGD implementation have been developed. Meanwhile, in order to implement the EGD, which provides for the transformation of all sectors of the economy to reduce greenhouse gas emissions, Ukraine must pursue consistent not only climate but also energy and economic policies, strictly adhere to strategies and take into account the suggestions of legal scholars.

In particular, sustainable finance plays a key role in achieving the EGD policy goals, ensuring that investments support a sustainable economy and will help direct public finance and private investment towards a transition to a climate-neutral and climate-resilient, resource-efficient and equitable economy as a significant step towards the next generation of sustainable development. The EU Sustainable Finance Action Plan includes, among other things, the introduction of the European Green Bonds standard and the EU Sustainable Finance Taxonomy, the alignment of which will help Ukraine mobilize public and private green finance and, among other things, may become a promising tool for raising funds for post-war recovery.

The European Emissions Trading System (EU ETS) is the foundation of the EU's climate change policy and a key instrument for cost-effective greenhouse gas emissions reduction. The EU ETS is the first and currently the largest carbon market in the world, which sets a price for carbon and targets for reducing greenhouse gas emissions. It promotes environmental development and strengthens the competitiveness of the European economy by stimulating investment in energy-saving measures, reducing energy costs and financial risks associated with rising energy prices, as well as investments in renewable energy technologies, reducing energy dependence on fossil fuel imports.

It is worth mentioning that in 2019 the European Union launched a regional initiative called EU4Climate, aiming to support the six Eastern Partnership countries (including Ukraine) to develop and implement climate-related policies based on the countries' commitments under the Paris Agreement, the Association and Partnership Agreements with the EU, the Eastern Partnership policy initiative '20 Deliverables for 2020' and the UN 2030 Agenda for Sustainable Development.<sup>50</sup> While the EU4Climate initiative aims to help Ukraine adopt climate change mitigation and adaptation measures to achieve greenhouse gas emission reductions and manage the effects of climate change and should include the technical support for implementing EGD<sup>51</sup>, it is currently on the stage of forming the basis

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<sup>50</sup> 'Home Page - Eu4climate' (*EU4Climate*, 2019) <<https://eu4climate.eu>> accessed 10 April 2023.

<sup>51</sup> EU4Climate, 'Climate Policy Development and Advancing Cooperation with the EU in Ukraine' (2021) <<https://eu4climate.eu/wp-content/uploads/countries/EU4Climate-UKRAINE.pdf>> accessed 10 May 2023.

for developing a National Adaptation Strategy for Ukraine, with no legislation to be developed and adopted yet.

One of the most important instruments for coordinating and implementing the EU's energy and climate policy is the integrated National Energy and Climate Plans (NECPs), through which Member States declare the measures they intend to take to achieve, among other things, the climate protection goals of reducing greenhouse gas emissions by up to 55% by 2030 compared to 1990 levels and achieving climate neutrality. The development of the National Energy and Climate Plan of Ukraine is an important basis for decarbonising Ukraine's energy sector, achieving climate neutrality and ensuring a green transition, which are the main principles of post-war recovery and, consequently, Ukraine's climate transformation.

The implementation of EU4Climate, CASE, and the EU LIFE Environment and Climate Action Programme, which focus on the implementation and development of environmental, climate change, and infrastructure development legislation, is essential to ensure the harmonization of Ukrainian legislation with EU climate legislation, which is particularly important for strengthening the capacity of regional and local authorities and ensuring their ability to effectively implement EU legislation.

Ukraine's inclusion in the LIFE programme, which took place on 24 June 2022, deserves special attention. LIFE is the European Union's programme dedicated exclusively to nature conservation and climate action, and aims to facilitate the transition to a sustainable economy, environmental protection and biodiversity conservation. It is expected that in the short term, the programme will help restore the environment affected by the military actions of the Russian Federation, and in the medium and long term, it will support the implementation of projects to develop and implement eco-innovative methods and approaches; promote best practices and behaviour change; support the development, monitoring and enforcement of laws similar to those in the EU, as well as plans and strategies that can facilitate the implementation of these laws.

In view of the above, it should be stated that only full implementation of EU climate legislation and policy will ensure that the conditions for Ukraine's full membership in the EU are met, which requires the implementation of the entire existing EU acquis

communautaire, the vast majority of which was not provided for in the Association Agreement.

## 5. CONCLUDING REMARKS

The absence of a legal definition of climate as an object of law slows down the process of developing and ensuring effective measures for combating climate change in Ukraine. The prevalence of declarative strategic acts and the absence of a framework legal act in this sphere demonstrates that the domestic legislative framework on climate change is underdeveloped and ineffective. This, combined with inconsistent and non-integrated climate change policy, makes it complicated, if not impossible, to ensure effective mechanisms for climate change mitigation and adaptation.

Consequently, the development of fully-fledged climate legislation is of fundamental importance for Ukraine. The author suggests that such development shall be carried out with the following steps: filling gaps in the current environmental legislation, e.g., by introducing the legal definition of the climate as an object of legal protection; improving current national legislation on international commitments and obligations of Ukraine under international climate change framework and European Green Deal, in particular; developing and adopting a framework legal act - Climate Law of Ukraine, which shall be aimed at the developing legal measures to achieve net zero emissions, protect the natural environment and Ukrainian citizens from the adverse impacts of climate change. These improvements, accompanied by ensuring integration of climate change issues into all spheres of state policy can create the grounds for Ukraine to become an economically successful and carbon-neutral State.

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Now it is the least developed world who are not responsible for this climate change phenomenon that bore the brunt of climate change consequences so it is morally and politically correct that the developed world who made this climate change be responsible by providing financial support and technological support to these people.

— *Ban Ki-moon* —

**AZ QUOTES**