

СЕКЦІЯ 6 БУХГАЛТЕРСЬКИЙ ОБЛІК, АНАЛІЗ ТА АУДИТ

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OVERCOMING BARRIERS TOWARDS ENVIRONMENTAL POLICY CONVERGENCE OF UKRAINE AND EU

There have been identified the main aspects of incompliance of environmental legislation of Ukraine with EU norms. There have been revealed potential institutional, legal and cost barriers on the way of environmental policy convergence of Ukraine with EU. Taking into account international experience of countries in the sphere of convergence of national environmental policies with EU legislation, there has been proposed a set of organizational-and-economic instruments for elimination disadvantages in environmental legislation of Ukraine and coping with revealed potentials barriers.

Keywords: environmental policy convergence, EU, Ukraine, environmental legislation, environmental concerns, barriers.

Вовк М.С. ПОДОЛАННЯ БАР'ЄРІВ НА ШЛЯХУ КОНВЕРГЕНЦІЇ ЕКОЛОГІЧНОЇ ПОЛІТИКИ УКРАЇНИ ТА ЄС

У статті виокремлені головні аспекти невідповідності екологічного законодавства України нормам ЄС. Виявлені потенційні інституціональні, законодавчі та цінові бар'єри на шляху конвергенції екологічної політики України та ЄС. Враховуючи міжнародний досвід країн у сфері конвергенції національних екологічних політик до законодавства ЄС, була запропонована система організаційно-економічних інструментів для усунення недоліків у екологічному законодавстві України та подолання виявлених потенційних бар'єрів.

Ключові слова: конвергенція екологічних політик, ЄС, Україна, екологічне законодавство, екологічні проблеми, бар'єри.

Вовк М.С. ПРЕОДОЛЕНИЕ БАРЬЕРОВ НА ПУТИ КОНВЕРГЕНЦИИ ЭКОЛОГИЧЕСКОЙ ПОЛИТИКИ ЕС И УКРАИНЫ

В статье выделены главные аспекты несоответствия экологического законодательства Украины нормам ЕС. Раскрыты потенциальные институциональные, законодательные и ценовые барьеры на пути конвергенции экологической политики Украины и ЕС. Учитывая международный опыт стран в сфере конвергенции национальных экологических политик с законодательством ЕС, была предложена система организационно-экономических инструментов для устранения недостатков в экологическом законодательстве Украины и преодоления потенциальных барьеров.

Ключевые слова: конвергенция экологических политик, ЕС, Украина, экологическое законодательство, экологические проблемы, барьеры.

Statement of a problem. As one of today's prioritized goals of Ukraine is establishing productive collaboration with EU there is a need in elaboration effective mechanisms of policy convergence in all spheres. Historically environmental concerns have never been the core priority in development of Ukraine. But nowadays environmental challenges and actual political trends in Ukraine force to pay a special attention to environmental area and view the problems of environmental policy convergence of Ukraine with EU. Since the most common definition of policy convergence is «any increase in the similarity between one or more characteristics of a certain policy (e.g. policy objectives, policy instruments, policy settings) across a given set of political jurisdictions (supranational institutions, states, regions, local authorities) over a given period of time» [1], the successful policy convergence can be achieved if an effective strategy is constructed. Thus, first of all it is important to identify the initial problems of actual environmental legislation of Ukraine and reveal potential legal, institutional and cost barriers that may prevent effective convergence process and then taking into account international experience of other countries while adapting to EU environmental policy to develop a set of instruments for solving existing environmental problems and avoid potential barriers.

Analysis of recent research and publications. The works of K. Holzinger, C. Knill, T. Sommerer [2],

S. Green, E. Turner [3] were devoted to an experience of developed countries in the sphere of convergence of national environmental policies with EU law. Domestic factors of environmental policy convergence have been investigated by A. Lenschow, D. Liefferink, J. Albrecht, S. Veenman [4]. The models of environmental convergence in Europe have been studied by A. Jordan, Wurzel R. K.W., Zito, A. [5]. Environmental policy as an instrument of convergence Ukraine and EU has been studied by T. Perga [6]. But it can be concluded that there is a lack of literature considering potential barriers of the environmental policy convergence process of Ukraine with EU.

The aim of the article is to develop a set of instruments to overcome weak gaps in environmental legislation of Ukraine and avoid potential barriers of environmental policy convergence of Ukraine and EU.

The main material. The analysis of structural and substantive compliance of Ukrainian environmental legislation with EU law has shown that there are a lot of weak places in Ukrainian legal acts [7-12]:

- lack of implementing regulations, procedures and guidance. One of the most striking examples in this context is the environmental impact assessment process, which is based on the Soviet system of State Environmental Reviews (SER). It has to be undertaken for almost all new industrial projects. This requirement puts a strain on administrative resources, in turn

Table 1

Stakeholders, their roles and related challenges

Stakeholder	Role	Challenge
Politicians at national, regional and local levels of government	Decision-making and option making	<ul style="list-style-type: none"> • Environment lacks importance and thereby «influence» at the political level. • Environment lacks «visionary» politicians to draw attention and eventually support improvements. • Lack of clear set of external drivers for change; • Lack of clear strategy and priorities. • Lack of information to and awareness by politicians, of long-term costs of inaction. • Difficulty in being seen to «reduce» existing standards.
Legislators	Proposing and drafting legislation	<ul style="list-style-type: none"> • Legislators lack knowledge of modern and integrated approaches such as laid out in EU legislation. • Legislators lack a clear «mandate» to converge. • Legislators lack the political backing to «soften legislation and standards that are too strict and generally not complied with.
Regulatory authorities (permitting and enforcement)	Permitting, monitoring and enforcing implementation of environmental regulations	<ul style="list-style-type: none"> • Regulatory authorities have no mandate to do other than to adopt strict legislation and standards in force on projects. • Lack of co-ordination between the different regulatory authorities. • Monitoring and inspections are often weak and may not produce data that reflect the reality. • Personnel financial incentives may be in place to produce data that not reflect reality, given the general level of salaries in this area. • The judicial system is unable to prosecute violations and set examples.
Implementing agencies at national, regional and local levels (waste management or water treatment companies/ service providers)	Implementing, maintaining and operating utility services and facilities	<ul style="list-style-type: none"> • Lacks often understanding of the real costs of service provision and efficiency
The private sector (Public/Private Partnership, joint-ventures, suppliers, contractors)	Providing know-how, services and sometimes capital for planning, implementation, maintenance and operation of utility services and facilities	<ul style="list-style-type: none"> • Some utility services have been subjected to «easy» take-overs by private operators. • Decision-makers and civil servants could be targeted by marketing of unproven technologies. • The local consultancy market is undeveloped with attention to theory rather than practice. Foreign consultants are expensive and not adapting solutions to local conditions.
Industry		<ul style="list-style-type: none"> • Lack of funds for improvements. • Lack of and uncertainty of business. • Lack of management skills/information systems. Many enterprises operate utilizing old state performance standards. • Shortage of local capacity with experience of implementing cleaner production and waste minimization programs. • Lack of local suppliers of plant and equipment. • Bureaucratic attitudes and management structures within enterprises have been a barrier to rising awareness and involving key staff in an enterprise to give them ownership of problems and solutions. • Lack of respect for the rule of law and general careless attitude to the environment
NGOs and organizations representing particular interests	Opinion-making	<ul style="list-style-type: none"> • Often NGOs have a bad image with both government and the public and are seen as opponents instead of potential project partners. • Some NGOs are too theoretical in their view on solutions in environmental policy and management. • Most NGOs lack real technical expertise. • General lack of developed civil society.
The general public	Opinion-making	<ul style="list-style-type: none"> • Lacks awareness of the real issues and scale of problems. • Lack of respect for the rule of law, values and general careless attitude to the environment.
Financing institutes	<ul style="list-style-type: none"> • Developing projects. • Providing financing and grants for projects 	<ul style="list-style-type: none"> • The comprehensive «international planning concept» applied by IFIs is alien to decision-makers. • IFIs may require too high standards in implementation. • Lack of clear focus to reform.

Source [15; 16]

reducing the effectiveness of the system, as each SER receives less attention from the environmental government. Furthermore, different offices in the same authority (water, emissions to air, soil) or sometimes different authorities (technological safety, water abstraction,) are responsible for issuing permits for different activities and communication between them that is often not effective enough or even poor. In these conditions it becomes problematic to develop an integrated approach to regulation. The latter results in accent being placed on pollution control rather than pollution prevention. Finally, the fact that permits are usually not available for public review, reduces the transparency of the regulatory process significantly and enhances the spread of corruption;

- unrealistic environmental quality standard setting and the number of substances regulated. The standards apply stringent controls on lots of pollutants without any acknowledgement of the practical concerns or inability of meeting such standards. As a result, the regulatory agencies can't monitor or impose the full range of standards. Besides, the regulated community finds it technically unachievable or financially prohibitive to meet these standards, and furthermore is unwilling to do so as they are perceived to be unjust and burdensome;

- the policy instruments are not focused on the creation of incentives for the regulated community to achieve better targets. It should be noted that there are no any financial, fiscal, organizational incentives for the economic agents for meeting environmental standards. As a result takes place a shadow documentation representing incorrect data on environmental compliance of production activity to national legislation;

- legislation is often merely declarative and poorly designed. It should be noted that the quantity of legal acts in EU exceeds several times the analogous quantity in Ukraine and additionally in most such acts in EU there is significant number of annexes, compliance with which is imperative. Besides, there is absent a number of important sections in Ukrainian legislation, such as: waste management, chemicals and genetical-

ly modified organisms, industrial pollution control and risk management and others.

- legislation is too far removed from implementation goals. The problem is in absence appropriate mechanisms for achieving separate environmental goals, provisions and norms sometimes are too generalized and not directed to narrow needful aspects. As environmental goal should correspond appropriate environmental concerns, there is a need in elaboration such environmental legislation that will be able not only to solve the prioritized problems, but also be able to manage the appropriate monitoring, checking actual results according to stated objectives. Mechanisms for environmental monitoring and reporting are extremely weak. A main reason for the systems' powerlessness is the dispersal of functions between a range of different agencies;

- lack of public involvement in policy making and legislative development – the public is not encouraged to participate in the decision-making. The influence of public on environmental decision-making is absent. Thus, the Law «On regulation of urban development» [13] doesn't realize compliance with the relevant legal procedures by which public participation would be determined in the decision-making on urban development, that in turn eliminates the provisions of the Aarhus Convention «On Access to Information, Public Participation in decision-making and Access to Justice in environmental Matters» [14].

- insufficient awareness due to a lack of publicity and dissemination of the regulations that do exist. This problem is significantly caused by lack of priority status of environmental policy in the state policy system.

- overlap between laws, decrees and regulations, as well as responsibilities of government agencies. This gap is mostly caused by the absence of definite obligations for every separate agency.

- weak institutional structures. This problem is in fact that a great number of institutions engaged in environmental monitoring creates inefficiencies (as some data are collected more than once, and may not be transportable across different agencies' databases) and

Table 2

Potential legal barriers in the process of environmental policy convergence

Barrier	Characteristic
Divergences between different national laws	Convergence can only be implemented successfully when divergences between different laws have been resolved. It is not always clear which regulations apply in a definite case. Many important sections of the legal framework need to be redefined and brought into line with national legislation addressing to other fields. Without solving these conflicts, much convergence would be unsuccessful
Lack of clarity in the delineation of responsibilities or authority in the laws	This barrier often makes implementation impractical. These institutional inconsistencies in the legislation will have to be tackled for any convergence to be successful
Rare defining implementing procedures by actual legislation framework	It is mostly dependent on implementing regulations to have effect. Convergence needs to spotlight, mainly, on the development of this secondary legislation, but within the environmental framework legislation presently in place. Where there are clear gaps or inconsistencies between the new rules and the framework legislation, the framework legislation may have to change as well. The latter may be more complex and take more time
Convergence may cause more legislative confusion	Where a choice is made to converge a part of the legislative frame towards EU directive, but not all, this may cause more legislative confusion as to which rules apply
Inherited pollution and standards	There can be identified the main difficulties in meeting EU-type environmental standards which stemming from the history of the Soviet system which left (1) a legacy of historic pollution and (2) a structure based on high standards which were unenforceable. The first puts on a major cost burden for clean up and for setting quality objectives and the second creates a political problem in adapting to more practical and enforceable standards
Lack of legal alternative	Effective enforcement often requires alternative to the legal system to make obligatory the payment of fines on large companies who ignore regulations. Sometimes the legal systems remain insufficient to meet environmental enforcement needs

Source [17; 18]

reduces transparency and simplicity. It also contributes to the complexity of adopting an integrated approach to regulation as data may not be easy to gather and cumulative impacts may go unrevealed.

When delving into environmental policy convergence process, a group of potential barriers takes place, such as institutional, legal and cost barriers. The characteristic of barriers concerning the activity of different institutional stakeholders is represented in table 1.

Thus, as can be seen from the table 1 it is rather difficult to maintain a stable development in policy convergence if not take into account the scale of potential challenges for different institutional stakeholders.

The potential legal barriers are represented in the table 2.

The last group of mentioned above barriers concerns the cost of environmental policy convergence. Implementation of stricter environmental legislation aims

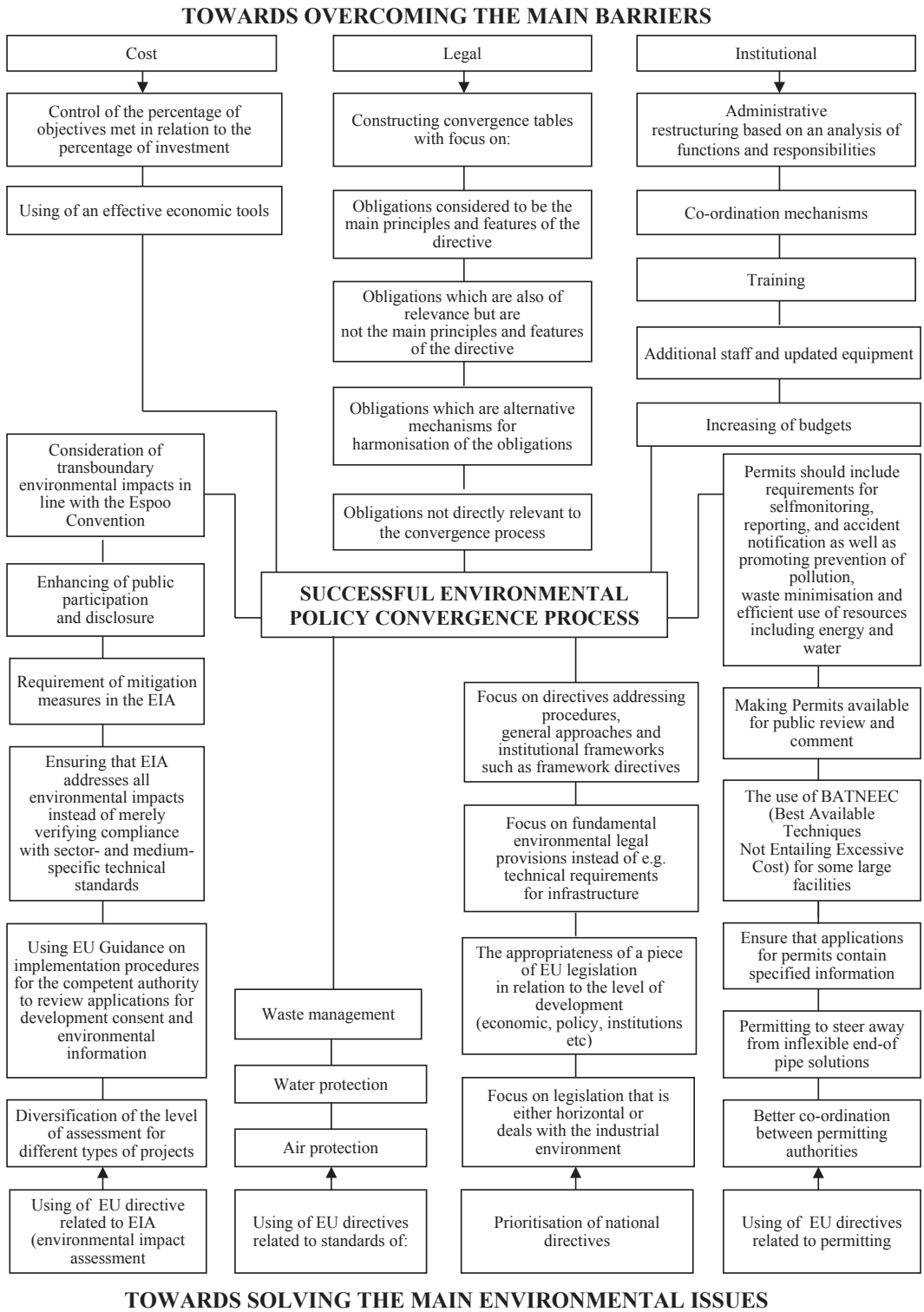


Figure 1. A set of instruments for successful environmental policy convergences of Ukraine and EU

at resource efficiency (production and consumption of raw materials at lower rates) and the escaping from pollution control. On the one hand this will require additional production costs on society, consumers and producers. On the other hand it can facilitate creation of the new markets (new environmental oriented jobs, environmental industries, recycling industry, training, etc.). Moreover, due to better environmental protection, all kinds of indirect payback flow to society including health, water production costs, agriculture, ecosystem benefits resource benefits, house prices, fisheries, recreation, etc.

As for Ukraine there could be outlined such the most considerable fields of investment costs:

- 1) industrial pollution control;
- 2) waste management;
- 3) waste water collection and treatment;
- 4) large combustion plants.

In all mentioned areas, large investments can be predictable, but the economic consequences may be different: stricter standards for large combustion plants will lead to higher costs of electricity production; industrial prevention and pollution control to higher production costs; the large investments in public waste water collection and treatment and waste management will mainly serve, and be financed by citizens.

Thus, taking into account international experience of other countries [3; 19-25] when adopting environmental EU legislation the following set of organizational-and-economic instruments to overcome weak gaps in environmental legislation of Ukraine and avoid potential barriers of environmental policy convergence of Ukraine and EU is proposed (figure 1).

Conclusions. Thus, there is a great potential for Ukraine to use efficient set of instruments to overlap the disadvantages in actual environmental legislation by using appropriate EU policy instruments. It should be noted that one of the most important points in policy convergence is permanent checking of gaps between legislation of Ukraine and EU law and obtained results of new policy instruments implementation. Also it should be noted that effective elimination of potential barriers facilitates constructing a good convergence strategy that is another important key for the successful result of any policy convergence. The further research will be devoted to investigating methodology of quantitative measurement of environmental policy convergence results by using methods of economic and mathematical analysis.

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