



## ENVIRONMENTAL PROTECTION FUND AS A PRINCIPAL ELEMENT OF FINANCING MEASURES IN THE SPHERE OF ECOLOGICAL LEGAL RELATIONS IN UKRAINE

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### Summary

Present paper analyses the problem of legal regulations in financing of measures in the sphere of ecological relations as one of the main elements of economic-legal mechanism in the ecological sector. Legal analysis of the peculiarities of environmental protection funds' functioning, sources of their formation, aims, directions, and ways of their exploitation was conducted in order to study causes of insufficient financial resourcing of ecological measures and ways of its improvement.

**Key words:** economic-legal mechanism, funds of environmental safety protection, ecologic funding.

### Аннотация

В статье анализируется проблема правового регулирования в финансировании средств в сфере экологических отношений как одного из основных элементов экономико-правового механизма в экологическом секторе. Правовой анализ особенностей функционирования фондов охраны окружающей среды, источники их формирования, цели, направления и способы их эксплуатации были рассмотрены с целью изучения причин нехватки финансовых ресурсов экологических средств и способов их устранения.

**Ключевые слова:** экономико-правовой механизм, фонды защиты окружающей среды, экологическое финансирование.

**Problem setting.** Nowadays the issues of disorganization in financial regulations of environmental activities and low effectiveness of managerial system in the sphere of ecological law become all the more obvious. Under such conditions paramount becomes a problem of necessity for new alternative sources of funding of ecological measures. The solution lays in solving problems of economic development, environmental protection, and insurance of ecological safety in complex, taking into account financial potential of society. Regarding the limited amount of budget resources today, it is crucial that government finds opportunities of exploitation of new perspective forms and methods to engage financial resources for the ecological aims, improvement of the existent system of forming and exploitation of ecological funds, entrepreneurs' encouragement for taking part in the ecological measures.

**Actuality of theme.** Background research insufficiently confirmed by the theme and modern problems of legal provision of funding in the sphere of ecology. Taken Ukraine course on introduction to its legal system internationally recognized concept of sustainable development, and deployment of comprehensive process of approximation with the EU require the establishment of an effective economic

and legal mechanism for funding in the environment, finding new sources of funds and their rational use.

**State study.** The study various aspects of the economic and legal mechanism in the sphere environmental and legal support financing of the industry engaged in both domestic and foreign scientists. Among them should be called work V. Andreytsev, N. Brinchuk, L. Voronova, V. Kostetskiy, S. Kravchenko, S. Kuznetsova, N. Malysheva, Y. Shemshuchenko. Study of aspects of financial security in the area of environmental protection are reflected in the works of local scientists economists A. Veklich, L. Melnyk, M. Hvesyk, G. Pohrlichuk etc.

The research aim and objective is to study conceptual approaches toward financial-legal coverage in the sphere of ecological relations. The results of the present study would be crucial for the formation of state ecological politics, stimulation of the environmental situation improvement, increase in the economic effectiveness of environmental activities, and development of environmental infrastructure in our country.

**Main body.** Ecological problems of present days, namely: environmental degradation, exhaustion of environmental resources, energy crisis, constant natural and ecological cataclysms, and extraordinary ecological situations require effective economic measures of environmental protection, exploitation

of natural resources, and insurance of ecological safety.

Until 2010 Strategy of National Ecological Politics [8] determined the following issues as few of the major causes of ecological problems in Ukraine: heritage of resources and energy sector orientated economy (the negative influence of which was magnified by transition to market economy) and amortization of the main funds of industrial sector and transport infrastructure. That is why, national ecological politics aims to stabilize and improve environmental conditions in Ukraine through integration of ecological politics into social-economic development of Ukraine in order to guarantee environmental ecological safety for life and health of citizens, as well as launching of balanced ecological system of resource usage and preservation of natural systems.

Still, statistical data states that the quota of environmental spending in the GDP keeps decreasing. In 1995 it comprised 5,1% of the GDP value in Ukraine, while in 2010 it went down reaching 1,21%, and starting in 2011 remained more or less stable (1,4%). The same expenses in developed countries comprise 1,5–4% of the GDP, which is determined by the level of environmental quality [3, p. 2]. While developed European countries, USA, Canada, and Japan spend their national funds to support already existing levels of environmental quality, Ukraine



must spend enormous sums to overcome consequences of ecological catastrophes and reach a level of ecological safety that would be sufficient for life and health of its citizens, as well as suite European criteria of ecological quality [3, p. 2]. It requires, first of all, a proper governmental financial regulation of ecological measures and natural resources exploitation.

Ukrainian legislation determines that financing of environmental protection measures, exploitation of natural resources, and insurance of ecological safety is done in expense of State Budget of Ukraine, budget of Autonomous Republic of Crimea, and local budgets; funds of enterprises, establishments, and organizations; funds of environmental protection; charity investments, and other funds (art. 42 of Law of Ukraine "On Environmental Protection") [7].

Ecological funds primarily were primarily designed to create autonomous, independent, centralized financing of environmental activity. Extra funds were to compliment budget funds, not to substitute them [1, p. 297]. A range of non-budget ecological funds were organized and functioned in this mode, both on local, republic, and Ukraine-wide level, and specialized sectoral ecological funds. Afterwards, non-budget funds were eliminated and, apart from special funds, there was a separate chapter created in the State Budget – "Environmental Protection and Nuclear Safety".

In 2004 in agreement with the Directive of Cabinet of Ministers of Ukraine of 24.05.2004 a State Fund of Stimulation and Financing of Measure of Environmental Protection was formed in an attempt to improve funding of environmental protection and assist in launching economic mechanism of environmental protection insurance. Nevertheless, as soon as the next 2005 year it was liquidated following the proposition of the Ministry of Nature.

After the Budget Codex of Ukraine of 2001 was approved [6] funding of environmental protection has been done by means of general and special funds of Stated Budget of Ukraine in accordance with the requirements of the noted Codex, as well as the Law of Ukraine "On State Budget of Ukraine", which is to be approved every year [9]. On yearly bases this Law indicates the direction of State Budget expenses in the

environmental sphere according to their program qualification. It provides division of respective budget programs according to separate chief managers of budget funds, whose competence lays in certain issues of the environmental sphere. The proportion of environmental protection expenses in the state budget expenses for the last period is low and comprises around 1% [5, p. 184].

In order conduct ongoing funding, the following funds are created as a part of earlier-stated budgets: State, Republican, Autonomous Republic of Crimea, and local funds of environmental protection (art. 47 of the Law of Ukraine "On Environmental Protection") [7]. Apart from that, a reserve fund is formed to support unpredictable incidents, which could not have been foreseen while forming budget project (art. 24 of the Budget Codex of Ukraine of 08.07.2010) [6].

In order to research the reasons of insufficient effectiveness of environmental measures funding it is crucially to scrutinize the peculiarities of such funds' functioning, their sources, aims, directions, and ways of exploitation.

According to the art. 47 of the Law of Ukraine "On Environmental Protection" [7] the fulfilment of environmental protection funds is made in expense of: ecological tax; monetary penalties for the damage made as a result of breaking environmental law while conducting household and other activity in accordance with acting law; purposeful or other volunteer donations of enterprises, establishments, organizations, and citizens. The exploitation of funds is possible only within the scopes of purposeful appointment, indicated in existing law, for funding of protective measures, the list of which is proved by the Ministry of Ecology and National Resources of Ukraine of 12.06.2015 No 194 "On the Approval of Planning and Environmental Measures' Funding Order" [11].

Clause 3 of the Regulation of the State Fund of Environmental protection, adopted by the Directive of the Cabinet of Ministers of Ukraine of 07.05.1998 № 634 under the editorial of the Directive of the Cabinet of Ministers of Ukraine of 07.04.2006 № 462 [10] indicates that the funds are to be formed of the part of finances obtained from ecological tax paid

and other sources, provided by law. At the same time, there is no concrete indication as to which part of the tax finance must be used and which are those other sources of funds' formation. Exploitation of the Fund finances are indicated by the budget programs in accordance with approved plans of environmental protection and energy saving measures, and cost estimations [10, p. 4]. In addition, the priority and selection criteria of such measures, as well as purposeful funds expenditures control, are specifically indicated.

Aiming to improve the mechanism of planning and funding of environmental measures expenditures in accordance with the Budget Codex of Ukraine, the Directive of Cabinet of Ministers of Ukraine of 28.02.2011 № 163 "On the Approval of Order of Exploitation of Funds, Prevised in the State Budget for Environmental Measures" by the directive of Ministry of Nature of 12.06.2015 № 194 the order of planning and funding of environmental measures was indicated. This Order determines the procedure of planning and funding of environmental measures according to the representative budget program in expense of budget finances, and control over their exploitation. For example, the Order of Purposeful Projects Selection of Ecological Modernization of Enterprises, proved by the directive of the Cabinet of Ministers of Ukraine of 18.09.2013 № 756 [12], indicates the procedure of purposeful projects selection of ecological modernization of enterprises, the funding of which is made in expense of finances of State Fund of Environmental Protection within the sums, paid by the ecological tax payers.

The overview of foreign literature in this area shows that the main peculiarity of ecological funds is their legal status, sources of formation, and forms of management. The majority of ecological funds has the status of legal body and does not relay on budget. As a legal body, ecological funds are active in Poland, Bulgaria, Czech Republic, Slovakia, Russian Federation, and Estonia.

There are general and special forms of ecological funds [1, p. 298]. General funds may be both, international (for instance, Global Ecological Fund) and national (for example, National Fund of Environmental Protection and Water



Management in Poland), while special funds may be national and regional (basin). The majority of ecological funds in the countries of Eastern Europe have general direction and are viewed as complemented to the general budget of environmental activities. Special funds finance certain ecological problems and programs, for example, agencies of water resources in France and “Superfund” in the USA (for hazardous waste disposal) [1, p. 299].

Impressive is the experience of such countries as Norway, Canada, and Switzerland. Those countries have created Future Generations’ Funds. In the United States some states have their own stabilization funds, created of profits from oil and gas industries. Chili also supplements its stabilization funds using finances from export of copper, which this country is reach in.

As of today, the Pension Fund of Norway is the largest of all national “Future Generations’ Funds” of the world. It was founded by the decision of Norwegian parliament in 1990, and until 2006 had the name of Oil Fund and Future Generations’ Fund. Its finances are formed of the incoming part of oil and gas industry taxes and rent for the right of resources exploitation, as well as dividends from governmental ownership of the 67% of Statoil stocks – the major oil and gas company of Norway. The general amount of funds in the Pension Fund of Norway reached 5,11 trillion krown. Respectively, the relevant per capita amount of available funds in the Pension Fund of Norway has exceeded 1 million krown for the first time in history. To compare, the aggregated amount of National Welfare Fund of Russian Federation, established with similar purpose, as of 1.12.2013 is 9,4 times smaller than that of Norway, while the per capita quota in the Fund of National Welfare comprises approximately 615 USD, which is 263 times smaller than that of Norway [4].

Name change is not accidental as well, and symbolizes the aim of the fund, namely – underlines the understanding of sustainable development, as well as the fact that natural resources are exhaustible and high demand for such funds will exist in the future. That is why, it is crucial to take into account three variables: ecological, economic, and social while

planning economic development of our country for the wellbeing of present and future generations.

According to expert calculations, every year Ukraine drops up to 10% of its GDP because of unsolved environmental problems. There is a stable tendency of uncontrolled and unpunished ruination and mass environmental degradation, irretrievable loss of natural resources without repayment of their value, and certain private practices of gaining huge profits by exploitation of natural resources, proclaimed as being in “possession of Ukrainian people” by the Constitution of Ukraine.

The Law of Ukraine “On Environmental Protection” [7] states that finances of local, Autonomous Republic of Crimea, and State Fund of Environmental Protection may be used solely for the purposeful funding of environmental protection and resource saving measures, including scientific research of these issues, management of state cadastres of territories and objects of natural-preservation funds, as well as measures to decrease the influence of environmental pollution on the health of citizens. Still, coming from the respective budgets those funds are defused in general funds and are used not in accordance with their genuine purpose.

Within the last years, Verhovna Rada of Ukraine has approved the whole range of State programs of ecological stream. The amount of funding for such programs exceeds the resources, incoming to the State Ecological Fund. One of the tasks of the National Ecological Politics Strategy until 2020 [8] is the task № 9: to reform the active system of environmental protection funds until 2015 in order to reinforce centralization of funds on regional level, in Autonomous Republic of Crimea, cities of Kyiv and Sebastopol.

Deputies of Zaporizhzhya regional council by the decision of 08.08.2013 № 45 in support of the appeal of the Lugansk regional council of 30.04.2013 № 18/28 approved the appeal to Verhovna Rada of Ukraine, Cabinet of Ministers of Ukraine, Pan Ukrainian Association of self-governance bodies “Ukrainian Association of District and Regional Councils” regarding the allocation of ecological tax funds. The appeal proposes a 50% increase in the rate of ecological payments to regional

funds while forming special ecological funds, as well as taking this into account during the possible reconsideration of draft law “On Introducing Amendments to the Budget Codex of Ukraine as for Deposit of Ecological Tax”, registered on 29.01.2013 № 2126. As of the end of 2015, there is no available information regarding the preparation and submission for approval of Cabinet of Ministers of Ukraine the draft law on the reformation of environmental protection funds.

Analysis of investment into the sphere of environmental protection concerning funding sources in the last years evidences that the major part of investments into environmental protection and rational exploitation of natural resources (96,3% in 2013) is done in expense of the enterprises’ own funds [5, p. 190]. An important source of funding of environmental protection activity is overseas technical aid. Today, ministries, administrations, self-governing bodies, and enterprises of Ukraine receive various technical assistance in the form of grants, discount loans, and their major share belongs to the sphere of energy-saving technologies.

**Conclusion.** Summing up the above-discussed issues we may conclude that the main reasons of low level of effectiveness of existing ecological funds are excessive centralization of funds, complete dependence on the state budget, inappropriate exploitation of financial resources, expenditures of funds solely in the form of grants (irreversible financial aid); inexistent coordination of politics on ecological program financing between regions; insufficient income base etc.

The necessity of a substantial increase in the efficiency of ecological funds exploitation requires higher purposeful concentration of such funds, strengthening of expenditures control, implementation of market competitive relations while taking ecological measures, exploitation of fund resources in reversible basis, reinforcement of foreign aid etc.

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## ПОТЕНЦИАЛ СОВЕРШЕНСТВОВАНИЯ ДОГОВОРА К ЭНЕРГЕТИЧЕСКОЙ ХАРТИИ КАК ПРЕДПОСЫЛКИ ФОРМИРОВАНИЯ ПРАВОВОГО СТАТУСА ГЕНЕРИРУЮЩИХ ПРЕДПРИЯТИЙ ВЕТРОЭНЕРГЕТИКИ

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### Summary

The article is dedicated to investigation of the Energy Charter Treaty as separate forming element of normative agreement and premise of formation of legal status of wind energy generative enterprises. The objective problem of the Energy Charter Treaty – contradictoriness at bottom and concerning the system of international-legal acts is considering. The lacks of indicated urgent act of international-legal regulation of energy, including wind energy, are revealed. The potential of improvement of the Energy Charter Treaty in force is determinate.

**Key words:** normative agreement, the Energy Charter Treaty, wind energy, generative enterprises, legal status, energy-safety, potential of improvement.

### Аннотация

Статья посвящена исследованию Договора к Энергетической хартии как отдельной составляющей нормативного договора и предпосылки формирования правового статуса генерирующих предприятий ветроэнергетики. Рассматривается объективная проблема Договора к Энергетической хартии – противоречивость по сути и относительно системы международно-правовых актов. Выявлены недостатки данного первоочередного акта международно-правового регулирования энергетики, в том числе и ветроэнергетики. Определен потенциал совершенствования действующего Договора к Энергетической хартии.

**Ключевые слова:** нормативный договор, Договор к Энергетической хартии, ветроэнергетика, генерирующие предприятия, правовой статус, энергетическая безопасность, потенциал совершенствования.

**Постановка проблемы.** Отдельной составляющей нормативного договора как самостоятельного источника права и одновременно ведущего элемента формирования нормативно-правовой основы правового статуса, в частности, генерирующих предприятий ветроэнергетики предстает принятый в 1994 году на основе и во исполнение Европейской энергетической хартии Договор к Энергетической хартии. Данный первоочередный акт международно-правового регулирования энергетики, в том числе ветроэнергетики, является единственным в своем роде юридически обязательным соглашением относительно межправительственного сотрудничества в энергетическом секторе, которое охватывает весь энергетический цикл (от производства до потребления), энергетические продукты и оборудование. В силу этого главной целью обозначенного Договора является укрепление

правовых норм по вопросам энергетики посредством создания единого свода правил, которых должны придерживаться все правительства, чтобы снизить уровень рисков в энергетической отрасли, тем самым обеспечив ее длительное развитие как на национальном, так и на международном уровнях. То есть, Договор к Энергетической хартии играет ключевую роль в контексте обеспечения усилий по созданию правового поля глобальной энергетической безопасности и его реализации, что предстает предпосылкой формирования соответствующего уровня правового статуса в том числе генерирующих предприятий ветроэнергетики, в частности относительно Украины, которая ратифицировала указанный Договор Законом от 06 февраля 1998 года.

Однако, учитывая вышеобозначенное, следует рассмотреть Договор к Энергетической хартии в целом, чтобы обратить внимание на его объективную