

COUNTRY REPORT: UKRAINE

Biodiversity Policy and Legislation in Forestry of Ukraine: Implementation and Main Features

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Introduction

Solving the urgent global issue of biodiversity conservation takes on special significance for Ukraine. It occupies 6% of Europe's territory, and is home to at least 35% of the continent's biodiversity. The woodland territory of Ukraine hosts 43.2% of European species of flora and fauna. The forests occupy the 16% of Ukrainian territory in general, per inhabitant, this amounts to approximately 0.18 hectares of forested land, and 16.4 m² of timber resources. The negative impact of anthropogenic activity in forestry, has led to a significant reduction in populations and species numbers of flora and fauna in Ukrainian forests. The current situation with regards to biodiversity is distressing and drastic measures are required.

The provisions concerning the operation of the state forest cadastre and the initial accounting of such forests states that biodiversity in Ukraine is only protected in Natural Reserves. Such reserves make up only 17% of all forest land within Ukrainian territory. This indicates that the approach to forest management in 83% of area of the total forested land within Ukraine takes virtually no account of the conservation of biodiversity.

Laws Applicable to the Protection of Biodiversity and Implementation Challenges

At the World Summit on Sustainable Development, Ukraine declared its intention to preserve biodiversity as one of its national policy priorities. Biodiversity in the forests of Ukraine is regulated by a large number of provisions, which can be divided by specific groups:

Legal acts which concern the basic requirements of environmental protection and biodiversity conservation, for example Law of Ukraine 'On Environmental Protection', Resolution of KМУ 'The concept of biodiversity conservation in Ukraine';

Legal acts governing ecological networks, for example Laws of Ukraine 'On the Ecological Network of Ukraine' and 'On the National Program for National Ecological Network Development in Ukraine for 2000-2015;'

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Legal acts that protect flora and fauna, for example Laws of Ukraine 'On Flora' and 'On Fauna', and Law of Ukraine 'On the Red Data Book of Ukraine' and 'On the Green Data Book of Ukraine';

Legal acts regulating the creation and organization of environmental protection facilities, for example Law of Ukraine 'On the Nature Reserve Fund of Ukraine', Resolution of KМУ 'On the program of perspective development of protected areas (nature reserves) in Ukraine to 2020';

Draft Laws aimed at implementing EU law on biodiversity into national law, for examples Law of Ukraine 'On the Conservation of Natural Habitat Types as the Basis for the Protection of Native Flora and Fauna'.

There is also a separate group of regulations based on international instruments ratified by Ukraine, e.g.: New EU forestry strategy for forests and the forest-based sector (2013); 'EU Biodiversity Strategy to 2020' (2011); Directive 2009/147/EC on the conservation of wild birds (2009); Framework Convention on the Protection and Sustainable Development of the Carpathians (2003); Protocol to the Carpathian Convention (2008); Declaration on Environment and Sustainable Development in the Carpathian and Danube Region (2001); European Landscape Convention (2000), Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention, 1979); The Convention on Migratory Species (Bonn Convention, 1979); CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington Convention, 1973); The Convention On Wetlands of Interational Importance (Ramsar Convention, 1971); and others.

Six Ministerial Conferences on the protection of forests in Europe have adopted 21 resolutions, 20 of which have been signed by Ukraine. Several of these resolutions directly related to the conservation of biodiversity, such as H1 'Sustainable forest management in Europe', H2 'Preservation of forest biodiversity', and L2 'Pan-European criteria, indicators and practical recommendations on sustainable forest management'.

The principal activities for the conservation of biodiversity in Ukraine are outlined in Decree of the Cabinet of Ministers 'On the Concept of Biodiversity Conservation in Ukraine' of 12 May 1997 g. № 439.¹ Despite the existence of a large number of regulations in the field of biodiversity conservation, the degree to which these measures are effective and properly implemented is unclear. As a result of the desire for strong economic growth, the status of the biota in the country has undergone catastrophic change: unique steppes has been plowed; large areas of forest have been uprooted and replaced by farmland; and many marshes have been drained.

In terms of the scale and intensity of use of resources, Ukraine is ahead of all developed countries and undoubtedly ranks first in Europe. Such a powerful interference with nature has put the survival of many species of animals, plants and birds at risk. The problem of biodiversity

¹ Preservation of coastal and marine ships and flood plains, lake and marsh, meadow and steppe, forest and mountain ecosystems; Recovery of agricultural landscapes and other territories intensive economic activities; Conservation of species and populations; The establishment of a national ecological network.

conservation in Ukraine has become, as never before, urgent and it is vital for certain species that are endangered that steps are taken to prevent further biodiversity loss.

International regulations that form the basis of global environmental policy on biodiversity are in fact adequately implemented in Ukraine, but the process in general is too slow. In addition, we can not eradicate the destructive practice of extensive deforestation. The most widespread, and at the same time, latent, environmental crime in Ukraine is illegal logging. Ukrainian legislation does not currently extend to a comprehensive approach to the preservation of biotic and landscape diversity. Thus, the approaches to establishing an ecological network described in Natura 2000 and in Ukrainian legislation are different.

Ukraine is a contractual party of the Convention on Biological Diversity (CBD), the Convention on Migratory Species and other relevant conventions, which oblige the country to monitor plant and animal wildlife. It is well known that the CBD identifies two principal methods for preserving forest biodiversity: by establishing a network of protected forest areas; and through the sustainable use of forest biodiversity. In line with the CBD, biodiversity conservation in forests in Ukraine is regulated by Article 85 of Forest Code of Ukraine through: the establishment, announcement and development of ecological networks in relation to prescribed areas of nature conservation; the selection, establishment and preservation of the valuable genetic fund of forest species; the use of environmentally targeted methods of reproduction of forests and use of forest resources - forestry on the principles of sustainable development, forest monitoring, forest certification, and keeping of a forest inventory; and the protection of rare and endangered species of fauna and flora, plant groupings, virgin forests and other valuable natural systems under environmental legislation.

Biodiversity conservation is also based on the Program of Perspective Development of Protected Areas in Ukraine (1994) and fifteen other legislative acts. All of these were taken into account in this Country Report. It is worth mentioning that the legal regime for any particular forest depends upon its categorisation. Article 39 of the Forest Code of Ukraine establishes the division of forests for environmental, social and economic importance.²

For Ukraine, in this context, the most important task is to develop sustainable forest management plans (projects in relation to the organization and development of forestry), which include the conservation of biodiversity as part of the management strategy. The presence of such a requirement in the EU of Biodiversity Strategy to 2020, and the new forest strategy, indicates that this will be the future direction of travel in the Ukraine and the EU as a whole. It is however worth

²*Protective forests* (mostly perform water protection, soil-protecting and other protective functions); *recreational and wellness forests* (performing mainly recreational, sanitary, hygienic and wellness functions); *forests for conservation, scientific, historical and cultural purposes* (perform special environmental, aesthetic, scientific functions, etc); *operational forests* // Cabinet of Ministers Resolution 'On approval of the forest division into categories and the allocation of specially protected forest areas' of 16 May 2007 r. № 733.

noting that the organization 'Forest Europe' is working on a Forest Convention, which will involve those countries which are currently not members of the European Union.

Legislative Changes and Developments in 2015

General Biodiversity protection

On 9 May 2015 the Law of Ukraine 'On Amendments to Some Legislative Acts of Ukraine on Protection of Biodiversity' came into force. This law implements the requirements of international conventions and agreements into Ukrainian legislation. The main provisions of this Act are prohibitions of: Complete felling and all kinds of gradual and continuous logging; sand mining and gravel extraction from river beds and other water bodies in protected areas within Biosphere Reserves or National Reserves; selective shooting of animals in nature reserves, or selective shooting of animals by hunters in the presence of a person who is authorized to carry out selective shooting where the hunters themselves do not have such authorisation; the use of bears and wolves for hunting on test stations, as well as for examinations, and competitions with hunting dogs; the use animals in bullfighting; the establishment and operation of traveling zoos and wildlife traveling exhibitions; and the operation of Dolphinariums with no natural seawater; and the protection of all species listed in Red Data Book of Ukraine by public authorities (Cabinet of Ministers of Ukraine, Environmental Inspection of Ukraine, Ministry of the environment and natural resources), local governments, and the owners and users of lands. These authorities and all individuals should protect rare and endangered species of flora and fauna listed in the Red Data Book of Ukraine and must send to the Ministry of the environment and natural resources all existing information on the distribution, abundance, and status of plant and animal species listed in the Red Book of Ukraine, and immediately inform such authorities of destruction, damage, death or illness.

Protection of Forests

Forest planning and forest management is based on sustainable development principles (which are declared by Art. 34 and 48 of the Forest Code of Ukraine). At the same time, the provisions on biodiversity protection (Article 85), which are declared in the Forest Code of Ukraine, are not used in practice in forest zones outside of protected areas. As a result, valuable biodiversity features (species of plants, animals and fungi listed in the Red Data Book of Ukraine; plant communities from the Green Book of Ukraine; and the species that have to be protected under international Conventions) are not protected in all forest areas. In addition, the Forest Code means only 'valuable biodiversity' and the diversity of tree species will be ensured, thus narrowing the concept 'biodiversity protection'. As a result, both outside and inside of protected areas the diversity 'of all living organisms and their environment of existence' is not protected.

Currently, according to the website of the Verkhovna Rada of Ukraine, the government is in the process of developing specific legislation in the field of biodiversity in forests, such as an instruction on the protection of biodiversity in forests, which should include measures relating to

biodiversity in forests both inside and outside protected areas. Additional research is now being carried out in order to determine the purpose and role of forests in Ukraine, taking into account the environmental services they provide to the country and the population.³ The results of this research will be incorporated to relevant amendments to the Forest Code of Ukraine. It is also necessary to improve the protection of water and water-dwelling animals, and, to some extent, all aquatic living organisms by transferring duties for protection regarding all water bodies located within forest areas onto the State Forest Service.

An intermediate result of this is the development of a draft policy for reforming forestry and hunting in Ukraine⁴ from 30 of April 2015. Among the main provisions of this document are the following: the development of new provisions on timber trade, based on a set mechanism for concluding long-term agreements, and for conducting auctions in voice and electronic form, thus cancelling the order of the State Committee of Ukraine of 19.02.2007 N 42 'On improving procedures for the sale of unprocessed wood',⁵ and the development of the State Target Program of Forestry of Ukraine till 2020.

Conservation Principles and Ukraine

The main principle of Directive 92/43 / EEC is the selection of habitats characterized by the relevant biotic and abiotic components. In Ukraine, the approach to eco-network organization does not rely on the concept of habitats or on a habitats-based approach (when eco-network is established taking into account the settlements of species) as the basis for selection of the constituent elements of the ecological network. The ecological network is, instead, established on the basis of protected areas (nature reserves) with further inclusion of all nature conservation territories of other types, e.g. water conservation, forest, recreation, etc.⁶ Therefore, adoption of appropriate regulation is an important step in reforming the national approach to biodiversity and to the formation of an ecological network.

International instruments are also enshrined in the new approach to functional and territorial environmental protection, in particular:

³ Development of key legislative acts on the protection of biodiversity in forests: adaptation of Ukrainian legislation to EU requirements (draft), O.Kahalo, L.Protsenko, H.Bondaruk, D.Skrylnikov. - Access mode http://www.fleg.org.ua/wp-content/uploads/2015/07/Zvit_prom_Rozrobka_klyuchovyh_zakonodavchyh_aktiv_UKR.pdf

⁴ Concept of reforming the forestry and hunting in Ukraine. – *Main Legal Portal of Ukraine*. – Access mode http://search.ligazakon.ua/l_doc2.nsf/link1/NT1425.html

⁵ Registered by the Ministry of Justice of Ukraine on 26.02.2007 № 164/13431.

⁶ Ecological network according to the Law of Ukraine «On ecological network» (2004) is a unified territorial system, which includes natural landscape areas under special protection, territories and nature reserves, resorts, healing recreational, recreational, water protective, field shelter, which are the part of the territorial structural elements of ecological network - natural regions, natural corridors, buffer zones.

- the concept of environmental conservation of biotic and landscape diversity;
- the population approach to the analysis of the conservation status of native species of animals and plants in order to evaluate threats to their existence;
- the implementation of scientifically-based and balanced management and monitoring of biodiversity in protected areas and in areas involved in economic activity;
- taking into account in environmental practices a useful combination of environmental and social aspects; and
- an understanding that the future conservation of species diversity and coenotic biota are closely related to the preservation of certain types of natural or semi-natural habitats.
- As a result, the new approach to establishment of ecological networks that has been implemented, includes:
 - the concept of ecological network as a combination of natural, semi-natural and even anthropogenic and man-transformed territories;
 - the implementation of measures for the establishment of a system of natural and semi-natural areas, including natural systems which play a significant role for the survival of the most important components of European biodiversity at both the species and ecosystem levels within the Natura-2000 and Emerald Networks;
 - the fixing of a comprehensive approach to the preservation of biotic and landscape diversity, which meets the European and international criteria to the biodiversity protection (habitat concept / settlement concept) ;
 - the development and implementation of a system for monitoring biodiversity and the principles and methods of management of protected areas of different types at the legislative level;
 - the development of a system to help meet the needs of natural areas, natural flora and fauna in at the stage of policy creation and the development of territories, as well as land use management planning; and
 - the active implementation of an 'ecosystem services' approach.

Another fairly new concept for Ukrainian legislation and theory is the idea of ecosystem services and the idea of requiring those relying directly on such services to pay for them. The concept is not entirely foreign to Ukraine in that the current tax code includes a number of taxes and duties (art. 9, 10), some of which, in fact, constitute payments for ecoservices. For example, there is an environment tax, rent for oil, gas, gas condensate extracted in Ukraine, a fee for subsoil use, a land fee, fees for special use of water and forest resources, and a local tourist tax. But all the money paid under these systems falls within the general budget and is not specifically directed at conservation and maintenance of ecosystems. Therefore, payments for ecoservices do in fact exist but the mechanism for payment for environmental services is not fully developed yet. Such a mechanism for the identification and assessment of environmental services; the definition of 'seller'

and 'buyer'; the definition of the economic relationship between them; compensation mechanisms; and the financial mechanisms for maintaining of ecosystems as well as of the relevant providers of environmental services, still need to be established. Besides using mandatory payments (taxes and fees), the mechanisms for payment for environmental services can be based on contractual payments for environmental services at the regional and local levels.

In late 2015 we⁷ carried out a scientific assessment of the draft law about the implementation of the obligation to maintain and repair of forest roads by forest users themselves. We critically analyzed these provisions and had concluded that: It contradicts Ukrainian legislation, which obliges financing of the maintenance and repair of roads by the State Road Service at the expense of state; mandatory taxes, such as this road tax, are charged from all citizens regardless of whether they are forest users or not. Forest users also pay a fee for special forest use; and forest usage varies from felling trees to collection of mushrooms and berries. The Bill raises the questions as to how to calculate who, how, how much, and in what way to finance a repair of roads when there is a mixture of users, ranging from riding on them by truck or a person on foot with a basket of berries?

It is therefore expedient to propose the following approach to help establish a mechanism for payment for environmental services in the forest sector: Identification and evaluation of the relevant eco-services; the inclusion of all identified eco-services with regards to the special use of forest resources; and the formation of special funds made up of payments received for the use of such natural resources, and development of a system relying on such funds to conserve and maintain the forest ecosystems.

In addition to improving the mechanisms for development and functioning of ecological networks, an effective mechanism for biodiversity protection in forests outside of protected areas is the introduction in practice of the concept of High Conservation Value Forest (HCVF) by making certain changes to the 'Procedure for division of forests into categories and determination of specially protected forest areas'.

Conclusion

In order to protect Ukraine's biodiversity it is necessary to ensure the implementation of integrated management in the formation, preservation and management of the ecological network, and management of Protected Areas. It will also be necessary to ensure the coordination of central and local executive authorities and local self-government in the formation, preservation and management of the ecological network.

The Ukrainian parliament is progressively moving towards the conservation of biodiversity. This is evident from a recent prohibition of logging activities within natural reserves (biosphere reserves, national parks, regional landscape parks and other protected areas), even sanitary

⁷Departament of labour, environmental and agrarian law of Law Institute of Vasyl Stefanyk Precarpathian National University.

logging.⁸ The next step should be to update and reform the main legislative biodiversity acts – the Laws of Ukraine ‘On the Red Data Book of Ukraine’, ‘On the Nature Reserve Fund of Ukraine’ and ‘On Ecological Network of Ukraine’.

Ukraine should also incorporate key environmental tools and concepts, such as eco-services, ‘green’ marketing, ecosystem approach to natural resources use, environmental state programs and scientific development of new nature saving technologies and methods of environmental use and protection. It would be also very important to pay attention to environmental education, behavior and psychology.

There are some economic measures that should be included in Ukrainian legislation and practice – strategic environmental assessment of quality and quantity of natural resources, monitoring of the condition of biological and landscape diversity and State Cadastre of the national ecological network and components and inventories of flora and fauna; economic incentives for land users in the territory of the nature reserves and ecological network and who lead environmentally sustainable economic activities (e.g. preferential taxation and loans on favorable terms). One of the most important issues is immediate increasing of penalties for environmental damage and loss and continuation of adaptation of Ukrainian legislation to EU and global standard

⁸ Resolution of the Cabinet of Ministers of Ukraine on 23 of March, 2016.