

PECULIARITIES OF THE LEGAL REGULATION OF ENVIRONMENTAL CONTROL IN EU MEMBER STATES: A COMPARATIVE LEGAL STUDIES

ОСОБЛИВОСТІ НОРМАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ЕКОЛОГІЧНОГО КОНТРОЛЮ В ДЕРЖАВАХ-ЧЛЕНАХ ЄВРОПЕЙСЬКОГО СОЮЗУ: ПОРІВНЯЛЬНО-ПРАВОВИЙ АНАЛІЗ

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The article is devoted to a comparative legal analysis of environmental control in the European Union member states, specifically focusing on the Czech Republic, Sweden, and the Netherlands. For the proper implementation of EU standards in Ukraine regarding state environmental control, it is necessary to analyze the experience of implementing such standards at the level of EU member states. The research aims to identify critical elements of effective environmental control and to analyze the possibilities of integrating the experience of individual EU member states into Ukrainian state environmental control practices. It was found that, despite the EU legislative requirements regarding environmental control measures, each EU member state adopts directives and regulations to its own legal, economic, and social conditions.

The study proposes to improve the system of state environmental control in Ukraine by introducing more flexible and efficient response mechanisms, such as administrative appeals of decisions made by the state environmental control bodies, following state inspections, to the Ministry of Environmental Protection and Natural Resources of Ukraine. It also suggests applying administrative sanctions (publishing violations, i.e., "naming and shaming" as a reputational tool), and establishing mechanisms for environmental compensation for violators of environmental legislation in cases where environmental damage is inevitable but can be compensated through restorative measures.

In conclusion, the experience of implementing environmental legislation in the EU, particularly in Sweden, the Czech Republic, and the Netherlands, can be valuable for Ukraine both in the process of reforming the institution of state environmental control and in shaping state environmental policy.

Key words: environmental control, State Environmental Inspectorate, environmental monitoring, environmental function, public administration, environmental governance, environmental legislation, European Union.

Стаття присвячена порівняльно-правовому аналізу систем екологічного контролю в державах-членах Європейського Союзу, зокрема на прикладі Чеської Республіки, Швеції та Нідерландів. Для належної імплементації в Україні стандартів Європейського Союзу у сфері здійснення державного екологічного контролю необхідно проаналізувати досвід впровадження таких стандартів на рівні держав-членів ЄС. Дослідження спрямоване на виявлення ключових елементів ефективного екологічного контролю, а також на аналіз можливостей інтеграції досвіду окремих держав-членів Європейського Союзу в українську практику здійснення державного екологічного контролю. З'ясовано, що незважаючи на визначені законодавством ЄС вимоги щодо здійснення заходів екологічного контролю, кожна держава-член ЄС адаптує директиви та регламенти до своїх правових, економічних та соціальних умов.

У межах дослідження запропоновано вдосконалити систему державного екологічного контролю в Україні шляхом впровадження більш гнучких та оперативних механізмів реагування через адміністративне оскарження рішення органу державного екологічного контролю за результатами проведення заходів державного нагляду (контролю) до Міністерства захисту довкілля та природних ресурсів України, застосування адміністративних санкцій (публікація порушень ("naming and shaming") як засіб репутаційного впливу), а також запровадження механізмів екологічної компенсації для порушників природоохоронного законодавства в випадках, коли екологічна шкода є неминучою, але може бути компенсована відновлювальними заходами.

Підсумовано, що досвід впровадження положень довкілцевого законодавства ЄС, зокрема Швеції, Чехії та Нідерландів, може стати корисним для України як у процесі реформування інституту державного екологічного контролю, так і загальних засад державної екологічної політики.

Ключові слова: екологічний контроль, Державна екологічна інспекція, екологічний моніторинг, екологічна функція, державне управління, екологічне управління, екологічне законодавство, Європейський Союз.

Problem Statement. In the context of Ukraine's European integration process and the implementation of European Union (EU) environmental directives, there is an increasing need to refer not only to the EU's legal acts but also to the case law of the Court of Justice of the European Union and the experience of EU member states. With Ukraine's integration into the EU, state environmental control has moved beyond purely national regulation and now requires consideration of both EU legal norms and the judicial practice and experiences of EU member states.

EU member states employ various approaches to structuring their environmental control systems, taking into account their national legal peculiarities. Despite the general standards set by EU directives and regulations, their implementation is carried out through national legislation, which reflects the historical, economic, and social specifics of each member state.

Analysis of Recent Research and Publications. The issue of compliance with environmental legislation by EU member states has been repeatedly addressed in academic circles. It has become a research subject by scientists such as L. Borsak, P. Davies, M. Hedemann-Robinson, L. Krämer, P. Wennerås, and others. In Ukraine, EU standards regarding state environmental control have been studied fragmentarily, mostly in sectoral aspects, by scholars such as O. V. Holovkin,

D. D. Ivanenko, M. M. Sirant, and others. However, the application of the experience of EU member states in the sphere of state environmental control in Ukraine remains insufficiently explored and requires further doctrinal research in the context of reforming this institution.

The article's purpose is to conduct a comparative legal analysis of the regulatory framework for environmental control in EU member states (the Czech Republic, Sweden, and the Netherlands) and to identify opportunities for integrating effective practices from these countries into Ukraine's system of state environmental control.

Main Findings. Specific sectoral EU environmental directives provide instead general requirements, allowing member states to choose the means and procedures to achieve the established goals. This is confirmed by the decisions of the Court of Justice of the European Union. In this context, it is particularly important to examine the experience of countries such as the Czech Republic, Sweden, and the Netherlands, which have successfully implemented the provisions of EU environmental directives, adapting them to their national legal frameworks and environmental conditions.

Czech Republic. The state environmental control system in the Czech Republic is implemented through the activities

of the Czech Environmental Inspectorate (CEI), a specialized administrative body under the Ministry of the Environment. CEI operates under the Czech Environmental Inspectorate Act and is key in monitoring compliance with environmental legislation in forest protection, water resources, climate, nature, landscapes, and waste management [4].

CEI conducts three types of inspections: scheduled inspections, citizen-requested inspections, and inspections in cases of industrial accidents. On average, 40–45% of the inspectors' working time is devoted to regular inspections, while the rest is allocated to unscheduled inspections and monitoring the enforcement of sanctions. The main tasks of the Inspectorate include monitoring environmental conditions at sites (including repeat inspections), reviewing documentation, measuring pollution levels, and applying sanctions for violations [7].

Importantly, CEI inspectors have the authority to conduct inspections without prior notice, impose fines, suspend the operations of facilities, and demand the correction of identified violations. Under Czech law, decisions made by the Environmental Inspectorate can be appealed to the Ministry of the Environment as an appellate body. If a party disagrees with the Ministry's decision, they have the right to appeal to an administrative court to have the decision annulled or declared invalid [6].

Unlike the Czech Republic, Ukraine's system of state environmental control also provides for the possibility of inspections. However, these inspections are typically conducted with prior notification, which can potentially reduce the efficiency of response to environmental violations. Like the Czech model, Ukrainian environmental inspectors are authorized to impose fines and require the elimination of violations. However, their powers to suspend the operations of business entities are more limited. The appeal process for decisions made by the state environmental control authorities is also possible in administrative proceedings. However, the procedure in Ukraine is more complicated and less regulated than in the Czech system. For example, when a state environmental control body issues a directive to a business entity to eliminate environmental law violations, the appeal of such a directive – either fully or partially – is only possible through administrative judicial proceedings.

The Czech Environmental Inspectorate (CEI) also reports on compliance with international obligations, particularly EU directives in waste management, water resource protection, and nature conservation. CEI's annual reports contain data on inspections carried out, violations identified, and measures taken to ensure compliance with legislation, reflecting specific violations and the outcomes of CEI's work as a supervisory body. CEI collaborates with other state and international organizations to ensure compliance with EU standards, including through regular inspections and monitoring the fulfillment of obligations [6].

Ukraine's state environmental control system also includes reporting and fulfilling international obligations, but it is less developed compared to the Czech Republic. Ukraine has commitments to international organizations within the framework of implementing EU directives, particularly under the EU-Ukraine Association Agreement. However, the reporting on fulfilling these obligations needs to be more structured, which limits the ability of the public and international partners to monitor compliance with environmental standards.

Sweden. The environmental control system in Sweden is considered one of the most effective in Europe, being well-structured and operating under the supervision of the Swedish Environmental Protection Agency (*Naturvårdsverket*) [1]. The Agency is responsible for ensuring compliance with the Swedish Environmental Code (*Miljöbalken*), the country's primary environmental law and forms the legal basis for environmental inspections and control. The Code outlines the obligations of businesses to comply with environmental standards. The

Agency's areas of authority include climate and air, land, biodiversity, contaminated sites, and waste management [19].

Inspections of businesses by the Swedish Environmental Protection Agency are carried out using a comprehensive approach that includes risk assessments, inspection planning, and the application of *Best Available Techniques* (BAT). Environmental inspectors focus on risk-oriented inspections, prioritizing businesses with the greatest environmental impact. These inspections include regular checks, monitoring activities, and providing recommendations to improve the environmental performance of businesses. Inspections can be both scheduled and unscheduled, depending on the availability of information about potential violations or public complaints [19].

Sweden has also implemented an *environmental compensation system*, which requires businesses that have caused environmental harm to prepare a *compensation plan*. This mechanism is aimed at restoring or improving similar natural resources to compensate for the environmental damage caused. It ensures the restoration or creation of equivalent resources to replace those lost, thereby maintaining ecological balance and mitigating the negative impact of human activities [18].

The legal basis for environmental compensation in Sweden is based on several key international and European law provisions. One of the primary principles is the *Polluter Pays Principle*, which holds that polluters should bear financial responsibility for the environmental harm they cause. This principle is enshrined in numerous European Union directives, including Directive 2014/52/EU of the European Parliament and of the Council of April 16, 2014, amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, which establishes requirements for environmental impact assessments and the possibility of introducing compensatory measures [8].

Furthermore, Directive 92/43/EEC of May 21, 1992, on the conservation of natural habitats and wild fauna and flora obliges member states to protect natural habitats and species, including provisions for compensating for adverse effects [2]. Additionally, Directive (EU) 2024/1203 of April 11, 2024, on the criminal protection of the environment, which replaces Directives 2008/99/EC and 2009/123/EC (Environmental Crime Directive), outlines liability for environmental damage and includes provisions for environmental compensation as a mechanism for ecosystem restoration [10]. Sweden's national legislation, particularly the Swedish Environmental Code, implements these international and European standards by establishing requirements for compensatory measures to restore biodiversity and natural resources.

The compensation plan must include specific measures to improve the affected areas, both environmentally and public health. For example, in the case of the *Nordic Iron Ore* project in the town of Ludvika, after environmental impacts from mining activities were identified, the company prepared a compensation plan that included restoration and improvement of forest and aquatic ecosystems. The compensation plan, developed by an independent environmental consulting firm, outlined measures such as biodiversity management on 25 hectares of forest, restoration of 10 hectares of aquatic environments, and preservation of 16 hectares of coastal forests and waterways. The compensatory measures' costs were estimated at 110,000–270,000 euros for land acquisition and 110,000–160,000 euros for conservation measures over 20 years, ensuring both the mitigation of negative impacts and the enhancement of biodiversity [12].

In this process, environmental courts in Sweden play a crucial role as judicial bodies overseeing compliance with environmental laws and reviewing complaints and disputes between businesses and state regulatory agencies. These courts' essential functions are reviewing appeals against decisions made by environmental control bodies, such as the Swedish Environmental Protection Agency (*Naturvårdsverket*). These courts adjudicate cases involving fines, business suspensions,

and other matters related to the enforcement of environmental legislation. Moreover, the courts decide on implementing environmental compensation plans, requiring companies that have caused environmental harm to restore ecosystems or compensate for the losses [19].

This approach could serve as a more effective alternative to the inspections currently conducted by state environmental control authorities in Ukraine. By enabling more rapid responses to violations and ensuring long-term improvements in environmental conditions, this method could increase the efficiency of Ukraine's state environmental control, reduce the administrative burden on oversight bodies, and strengthen business accountability for environmental impact.

However, despite its advantages, the environmental compensation system in Sweden needs help in implementation. One of the main issues is the high cost and complexity of developing effective compensatory measures. There are also difficulties in securing land for compensation projects and ensuring the long-term management of these areas.

Nevertheless, Sweden's environmental control system, which focuses on environmental compensation, is built on a strong legal foundation supported by EU directives and core EU environmental principles. The environmental compensation mechanism is a strategic policy tool increasingly applied across sectors to mitigate environmental impacts.

This approach could be useful for Ukraine in cases where environmental damage is unavoidable but can be compensated through restoration measures. This mechanism could become a crucial part of Ukraine's state environmental policy, helping to achieve environmental balance.

The Netherlands. Environmental compliance in the Netherlands is monitored by the Human Environment and Transport Inspectorate, which oversees businesses with significant environmental impacts [14]. If violations are detected during inspections, administrative measures such as fines or orders to rectify the violations may be imposed [20]. Competent authorities also have the power to close businesses or revoke their permits in cases of serious violations [11].

By the Netherlands Government Information (Public Access) Act, public authorities are permitted to publish information about environmental violations committed by businesses. This has led to the widespread adoption of the “naming and shaming” practice, where such published information may include inspection results, fines, and other administrative actions against businesses that breach environmental regulations [13].

As a result of environmental control in the Netherlands, administrative sanctions may be imposed on businesses, including the publication of violations as a reputational measure (“naming and shaming”). Fines or other enforcement measures sometimes accompany these violations. Experts consider this practice effective because harmful public exposure can significantly impact a company's reputation [17].

In Ukraine, existing legislation also allows publishing information about violations of environmental laws, but the practice of “naming and shaming” is neither widespread nor formally institutionalized. Under the Law of Ukraine “On Access to Public Information” the state has the right to disclose information about environmental law violations [2]. However, the publication of such violations is rarely used as a separate tool for exerting pressure on violators. Despite the public disclosure of inspection results by the State Environmental Inspectorate of Ukraine, the practical application of reputational measures, similar to “naming and shaming” is limited due to the lack of broad practice of reputational pressure. In Ukraine, administrative sanctions and fines remain the primary focus rather than reputational measures.

From a European integration perspective, it is worth noting that EU environmental directives do not explicitly require the use of “naming and shaming” as a sanction or administrative measure. However, EU member states are obligated to ensure the publication of environmental information and inspection results, which may include data on businesses' environmental violations. Although the directive does not mandate public exposure of violators, open access to such information can exert indirect reputational pressure on businesses.

An important example is Directive 2024/1203 of the European Parliament and Council of 11 April 2024, “On the Protection of the Environment through Criminal Law” which replaces Directives 2008/99/EC and 2009/123/EC. This directive states that in cases of serious violations of environmental standards or environmental pollution, businesses can be held liable. Additionally, the outcomes of such cases may be publicly disclosed, enhancing transparency and business accountability for environmental damage [9].

In conclusion, the comparative legal analysis of environmental control systems in EU member states reveals significant diversity in how these systems are structured and function, largely due to national legal traditions, economic conditions, and social particularities. Although common standards for state environmental control are established by EU directives, the national laws of member states adapt these requirements to their specific conditions while ensuring compliance with fundamental environmental protection principles. A prime example of this is the implementation of the “polluter pays” principle in Sweden, which introduced the concept of environmental compensation at the national level.

I. O. Yakovlev emphasizes the importance of avoiding blind replication of state control (supervision) models, as the differing initial conditions in each country require the adaptation of control models to specific circumstances. According to the scholar, it is necessary to use general principles as a foundation for legislation, taking into account practical experience when designing and transforming control systems, which will enhance their effectiveness as part of public administration [3, p. 92].

For example, the Czech Republic, Sweden, and the Netherlands demonstrate different approaches to organizing state environmental control. At the same time, the Ukrainian system of state environmental control, despite certain similarities in some measures with the practices of EU member states, has several significant shortcomings, particularly regarding the efficiency of response, legal mechanisms for suspending violators' activities, and improving environmental conditions as a result of inspections and reporting.

Conclusions. The comparative legal analysis confirms the relevance of considering the experience of EU member states when implementing the provisions of EU environmental directives in Ukraine. In the process of reforming the system of state environmental control in Ukraine, the following aspects should be considered:

1. The feasibility of introducing environmental compensation for those who violate environmental legislation in cases where environmental damage is unavoidable but can be offset through restoration measures.
2. The possibility of appealing decisions of state environmental control bodies in administrative proceedings to the Ministry of Environmental Protection and Natural Resources of Ukraine before resorting to judicial proceedings.
3. The practical application of reputational measures against violators of environmental legislation, similar to the “naming and shaming” mechanisms.

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