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Implementation of water sector acquis in Ukraine

Serhiy Vykhryst

PhD in Law, Associate Professor of the Department of State and Law at the Economics and Law "KROK" University (Ukraine);

serhiy.vykhryst@gmail.com

Abstract

This paper provides an overview and analysis of the progress made by Ukraine in implementing Water Sector acquis listed in the EU-Ukraine Association Agreement. The paper concludes that for the most part the transposition of the respective Directives is complete. It is argued, however, that extra effort is required under the Nitrates Directive and the Drinking Water Directive. Notwithstanding tangible gains in the development of River Basin Management Plans, Flood Risk Management Plans and the adoption of the Marine Environmental Strategy of Ukraine, the implementation of the State Water Monitoring Program suffers obvious difficulties caused by the unprovoked and unjustified russia's military aggression against Ukraine, especially in the areas of active warfare. Massive destruction of infrastructure including centralized water supply and sewerage systems is likely to hinder implementation of the Drinking Water Directive and the Urban Waste Water Treatment Directive in Ukraine.



Implementation of water sector acquis in Ukraine

Serhiv Vvkhrvst

Introduction 1

The EU-Ukraine Association Agreement¹ was signed and ratified by Ukraine² in 2014 and entered into force on 01 September 2017³. Article 363 of its Chapter 6 (Environment) provides for "gradual approximation of Ukrainian legislation to EU law and policy on environment", which "shall proceed in accordance with Annex XXX⁴ to this Agreement".

Before the EU-Ukraine Association Agreement entered into force, a number of its provisions, including Article 363 and Annex XXX, were applied on a provisional basis⁵ from 1 November 2014.

Annex XXX to the EU-Ukraine Association Agreement lists the following water sector acquis:

- 2000/60/EC 23 October establishing a framework for Community action in the field of water policy (hereinafter - Water Framework Directive);
- Directive 2007/60/EC of 23 October 2007 on the assessment and management of flood risks (hereinafter –Floods Directive);
- Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (hereinafter – Nitrates Directive);
- Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (hereinafter - Urban Waste Water Treatment Directive):
- Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (hereinafter - Drinking Water Directive); and
- Directive 2008/56/EC of 17 June establishing a framework for community action in the field of marine environmental policy (hereinafter - Marine Strategy Framework Directive).

Water Framework Directive (WFD)

It is argued that the river basin approach for water management has been initially introduced into the water-related legal framework of Ukraine by the

State-wide Target Program on the Development of Water Management and Environmental Rehabilitation of the Dnipro River Basin until 20216, adopted by the Law of Ukraine of 24 May 2012 #4836-VI7. The program, inter alia, provided for the development of river basin management plans (RBMP) for 9 river basins of Ukraine⁸ by the year of 2021⁹. The ambitious target would have most likely remained declaratory if concrete steps aimed at implementation of the WFD were not taken.

2.1 Principal amendments to the Water Code

The transposition of the WFD in Ukraine began with the adoption of the framework Law of Ukraine on Amending Certain Legal Acts of Ukraine Concerning the Implementation of Integrated Approaches to the Water Resources Management Pursuant to the [River] Basin Principle of 04 October 2016 #1641-VIII¹⁰, which in substance embedded the main provisions of the WFD into the Water Code of Ukraine.

Thus, Article 13-1 of the Water Code assigned the river basins of Ukraine to 9 individual river basin districts¹¹, established the procedure for delineation of their boundaries, provided for the identification, as appropriate, of sub-basins 12 and other water management units corroborated with the relevant administrative arrangements. Article 13-2 of the Water Code provided for the production of a RBMP for each river basin district and outlined its main elements. Article 13-3 of the Water Code clarified the role of the river basin councils in the system of river basin management and Article 13-4 institutionalized the procedure for the development of water balances.

Amendments to Article 21 and the new Articles 21-1 and 21-2 of the Water Code revised the fundamentals of the state water monitoring system and introduced classifications of ecological and chemical status for surface waters, quantitative and chemical status for

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Association Agreement between the European Union, European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part.

² Law of Ukraine of 16 September 2014 # 1678-VII (accessible <u>here</u>).

See https://zakon.rada.gov.ua/rada/show/v1713321-17#Text.

See https://zakon.rada.gov.ua/laws/file/text/26/f431629n31.doc.

See, Article 486 of the EU-Ukraine Association Agreement and the Note Verbale of the General Secretariat of the Council of the European Union.

Yara et al., 2018.

See https://zakon.rada.gov.ua/laws/show/4836-17#Text.

Khilchevskyi, 2021.

In 2011 with international financial support and technical assistance under the auspices of the Danube River Protection Convention and the International Commission for the Protection of the Danube River (ICPDR) the RBMP for Tysa River was developed. Likewise, with international financial support and technical assistance the RBMP for Southern Bug River was developed in 2014. Both RBMPs have been scheduled for the update as part of the implementation of the WFD before 2024.

¹⁰ See https://zakon.rada.gov.ua/laws/show/1641-19#n6.

⁸ river basin districts belong to the Black Sea marine region and 1 river basin district belongs to the Baltic Sea marine region.

Khilchevskyi et al., 2019.



groundwaters, and ecological potential for artificial and heavily modified surface water bodies.

2.2 Supporting secondary legislation

Based on the above Law and aimed at its implementation, a comprehensive set of secondary legislation was adopted. The main legal acts included:

- Order of the Ministry of Environment of Ukraine on Identification of Sub-Basins and Water Management Units within the Established River Basin Districts of 26 January 2017 # 25¹³;
- Order of the Ministry of Environment of Ukraine on Delineation of River Basin Districts, Subbasins and Water Management Units of 03 March 2017 # 103¹⁴;
- Order of the Ministry of Environment of Ukraine on Approving the Methodology for Identification of Surface and Groundwater Bodies of 14 January 2019 # 4¹⁵;
- Order of the Ministry of Environment of Ukraine on Approving the List of Priority Substances for the Definition of Chemical Status of Surface and Ground Waters and Ecological Potential of Artificial and Heavily Modified Surface Water Bodies of 6 February 2017 # 45¹⁶;
- Order of the Ministry of Environment of Ukraine on Approving the Methodology for Classification of Surface Water Bodies Pursuant to Their Ecological and Chemical Status of 14 January 2019 # 5¹⁷;
- Order of the Ministry of Environment of Ukraine on Approving the Procedure for the Development of Water Balances of 26 January 2017 # 26¹⁸.

Elaborating more in detail on the above provisions of the amended Water Code of Ukraine, the new Procedure for the State Water Monitoring¹⁹, Model Regulation on River Basin Councils²⁰ and the Procedure for the Development of River Basin Management Plans²¹ were approved. Pursuant to the Procedure for the Development of River Basin Management Plans draft RBMPs are, *inter alia*, subject to strategic environmental assessment (SEA).

All of the above pieces of secondary legislation were developed following relevant provisions of the WFD and taking due account of the guidance documents developed under the WFD Common Implementation Strategy.

Despite the fact that the EQS Directive 2008/105/EC and Directive 2013/39/EU of the European Parliament and of the Council of 12 August 2013 amending Directives 2000/60/EC and 2008/105/EC as regards priority substances in the field of water policy are not listed in Annex XXX to the EU-Ukraine Association Agreement, relevant provisions thereof were transposed into the legislation of Ukraine together with the provisions of the WFD²².

2.3 WFD implementation in Ukraine

Since early 2017²³ Ukraine has identified surface and ground water bodies, delineated river basin districts, sub-basins and water management units, re-organised River Basin Directorates as the structural units of the State Agency for Water Resources of Ukraine (SAWR), supports activities of 13 River Basin Councils as advisory bodies to the SAWR, launched the state water monitoring²⁴ corroborated with strengthened laboratory capacities²⁵, and adopted the timetable for the development of RBMPs for all 9 river basin districts²⁶.

Pursuant to the implementation timelines of the EU-Ukraine Association Agreement²⁷ and the synchronised therewith national timetable RBMPs for all river basin districts of Ukraine shall be approved by the Cabinet of Ministers of Ukraine by 01 November 2024.

3 Floods Directive

The transposition of the Floods Directive in Ukraine began with the adoption of the framework Law of Ukraine on Amending Certain Legal Acts of Ukraine Concerning the Implementation of Integrated Approaches to the Water Resources Management

¹³ See https://zakon.rada.gov.ua/laws/show/z0208-17#Text.

¹⁴ See https://zakon.rada.gov.ua/laws/show/z0421-17#n14.

¹⁵ See https://zakon.rada.gov.ua/laws/show/z0287-19#Text.

¹⁶ See https://zakon.rada.gov.ua/laws/show/z0235-17#Text.

¹⁷ See https://zakon.rada.gov.ua/laws/show/z0127-19#n14.

¹⁸ See https://zakon.rada.gov.ua/laws/show/z0232-17#Text.

¹⁹ Procedure for the State Water Monitoring, approved by the Resolution of the Cabinet of Ministers of Ukraine of 19 September 2018 #758. Accessible here.

Order of the Ministry of Environment of Ukraine on Approving Model Regulation on River Basin Councils of 26 January 2017 #23, https://zakon.rada.gov.ua/laws/show/z0231-17#Text.

Procedure for the Development of River Basin Management Plans, approved by the Resolution of the Cabinet of Ministers of Ukraine of 18 May 2017, #336, Accessible here.

See, in particular, Order of the Ministry of Environment on approving the list of priority substances of 06 February 2017 #45, https://zakon.rada.gov.ua/laws/show/z0235-17#n13.

²³ Strokal, 2021.

The State Water Monitoring Programs (including the surveillance and operational monitoring for surface waters, groundwaters and marine waters) were approved by the Orders of the Ministry of Environment of 5 January 2022 #1, #2, and #3 respectively.

²⁵ Odnorih et al., 2020.

Paragraph 10 of the Procedure for the Development of a River Basin Management Plan, supra note 21. Order of the Ministry of Environment on Approving the Timetable for the Development of River Basin Management Plans of 27 November 2020 #313, see https://mepr.gov.ua/documents/3149.html.

Annex XXX establishes that provisions of Articles 13 and 14 of the WFD, namely, preparation of river basin management plans, consultations with the public and publication of these plans, shall be implemented within 10 years of the entry into force of the Agreement, see https://zakon.rada.gov.ua/laws/show/994 b50#n2.



Pursuant to the [River] Basin Principle of 04 October 2016 #1641-VIII²⁸, whereby Chapter 21 of the Water Code was amended to introduce a preliminary flood risk assessment, flood hazard and flood risk maps, flood risk management plans (FRMPs) and appropriate administrative arrangements.

Based on the above Law and aimed at its implementation the following main pieces of secondary legislation were adopted:

- Order of the Ministry of Internal Affairs of Ukraine on Approving the Methodology for a Preliminary Flood Risk Assessment of 17 January 2018 # 30²⁹;
- Order of the Ministry of Internal Affairs of Ukraine on Approving the Methodology for the Preparation of Flood Hazard Maps and Flood Risk Maps of 28 February 2018 # 153³⁰;
- Resolution of the Cabinet of Ministers of Ukraine on the Procedure for the Development of a Flood Risk Management Plan of 4 April 2017 # 247³¹.

All of the above pieces of secondary legislation were developed following relevant provisions of the Floods Directive and taking due account of the respective guidance documents developed under the EU WFD Common Implementation Strategy.

As concerns implementation of the Floods Directive in Ukraine the preliminary flood risk assessments ³² were conducted, flood hazard maps and flood risk maps prepared and draft FRMPs developed for individual areas belonging to all 9 river basin districts of Ukraine. The draft FRMPs have undergone strategic environmental assessment (SEA), including public consultations, and were submitted for the interagency consent procedure. The established timeline requires that the draft FRMPs shall be submitted to the Cabinet of Ministers of Ukraine for approval by 1 August 2022.

4 Nitrates Directive

The term 'eutrophication' and the general objective of preventing eutrophication and water pollution caused by nitrates were introduced into the Water Code of Ukraine by the Law of Ukraine on Amending Certain Legal Acts of Ukraine Concerning the Implementation of Integrated Approaches to the Water Resources Management Pursuant to the [River] Basin Principle of 04 October 2016 #1641-VIII³³. Furthering transposition, the structure of RBMP³⁴ provided for

identification and mapping of protected areas, including areas designated as vulnerable zones under the Nitrates Directive. Relevant provisions of the Nitrates Directive dealing with monitoring were also accommodated in the new Procedure for State Water Monitoring in Ukraine³⁵.

The Methodology for the Identification of Nitrate Vulnerable Zones was approved by the Order of the Ministry of Environment of Ukraine of 15 April 2021 #244³⁶. The Methodology was developed following relevant provisions of the Nitrates Directive and taking due account of the respective guidance documents developed under the EU WFD Common Implementation Strategy.

To date no nitrate vulnerable zones have been designated in Ukraine. Draft code of good agricultural practice bearing on relevant requirements of the Nitrates Directive has been developed and awaits approval.

5 Urban Wastewater Treatment Directive

Main approaches of the Urban Wastewater Treatment Directive (UWWTD) were transposed into the legislation of Ukraine by the Law of Ukraine on Amending the Law on Drinking Water and Drinking Water Supply of 18 May 2017 #2047-VIII³⁷. Building on its provisions, the Ministry of Environment of Ukraine adopted the Order on Approving the Procedure for Determining the Population Equivalent of a Settlement and the Criteria for Identification of Sensitive and Less Sensitive Areas of 14 January 2019 #638. Pursuant to the above criteria, decisions concerning sensitive and less sensitive areas are vested with the local self-governance authorities of Ukraine. The Order also transposed UWWTD requirements for discharges from urban waste water treatment plants to sensitive areas, which are subject eutrophication. Furthering transposition, the structure of RBMP³⁹ provided for identification and mapping of protected areas, including sensitive and less sensitive areas identified under the UWWTD. In addition, the Ministry of Regional Development of Ukraine updated its Rules for Accepting Waste Water into the Centralized Sewerage Systems and the Procedure for Calculating the Payment for the Excessive Waste Water Discharge into the Centralized

²⁸ Supra note 10.

²⁹ See: https://zakon.rada.gov.ua/laws/show/z0153-18#Text.

³⁰ See: https://zakon.rada.gov.ua/laws/show/z0350-18#Text.

³¹ See: https://zakon.rada.gov.ua/laws/show/247-2018-%D0%BF#Text.

³² Kozytskyi et al., 2019.

³³ Supra note 10.

³⁴ See Annex I to the Procedure for the Development of a River Basin Management Plan, supra note 21.

³⁵ Yermolenko et al., 2021.

Registered in the Ministry of Justice of Ukraine on 10 June 2021 under the # 776/36398, see https://mepr.gov.ua/news/37575.html.

³⁷ See https://zakon.rada.gov.ua/laws/show/2047-19#Text.

³⁸ See https://zakon.rada.gov.ua/laws/show/z0126-19#n4.
https://zakon.rada.gov.ua/laws/show/z0126-19#n4

³⁹ See, Annex I to the Procedure for the Development of a River Basin Management Plan, supra note 21.



Sewerage Systems⁴⁰ and approved the Procedure for the Re-use of Treated Waste Water and Sludge Subject to Compliance with Limit Allowable Concentrations of Pollutants⁴¹. On a wider scale of countering eutrophication the Government of Ukraine adopted amendments to the Technical Regulation limiting the content of phosphates and other phosphorus compounds in detergents⁴².

6 Drinking Water Directive (DWD)

The Law of Ukraine on Drinking Water, Drinking Water Supply and Sewerage⁴³ was amended in 2017 to, *inter alia*, transpose relevant provisions of the DWD, including the notion of the point of compliance. Other requirements of the DWD including its revisions of December 2020 (Directive (EU) 2020/2184) were embodied into the amendments to the State Sanitary Norms and Rules 'Hygienic requirements for drinking water intended for human consumption'⁴⁴ awaiting approval.

7 Marine Strategy Framework Directive

Aimed at implementing its EU-Ukraine Association Agreement commitment under the Marine Strategy Framework Directive (MSFD), the Government of Ukraine listed the elaboration of the Marine Environmental Strategy among its mid-term priorities until the year of 2020⁴⁵. The following tasks connected thereto were identified:

- update of objectives and tasks of the national environmental policy, and the development of the Marine Environmental Strategy;
- initial assessment of marine waters (within the Ukrainian part of the Black and the Azov Seas), determination of environmental status and establishment of environmental targets and indicators;
- establishment of the monitoring programme for ongoing assessment and regular update of targets;
- preparation of a plan of measures to achieve good environmental status (GES) of marine waters ⁴⁶.

7.1 Initial assessment

Initial assessment of marine waters was accomplished with the support of a series of consecutive regional projects EU/UNDP **EMBLAS** (EMBLAS-I. EMBLAS-II and EMBLAS-Plus)⁴⁷ where the Joint Black Sea Surveys (JBSS 2016/2017/2019), National Pilot Monitoring Studies and Joint Open Sea Surveys (NPMS/JOSS 2016 - 2017) and the National Monitoring Studies (NMS/JOSS 2019) were carried out. The projects supported Ukraine in implementing the national and regional monitoring programmes, aligned with the reporting requirements under the Black Sea Integrated Monitoring and Assessment Programme (BSIMAP), MSFD and the WFD. Based on the results of the above initial assessment, the Marine Environmental Strategy of Ukraine determines a set of characteristics for GES of its marine waters (Annex 2) on the basis of the qualitative descriptors⁴⁸ corresponding to those of the MSFD.

The reformed Procedure for State Water Monitoring ⁴⁹ provides for state monitoring of marine waters as its essential component. Pursuant to Annex 3 to the Procedure, the Ministry of Environment of Ukraine is the authority responsible for the state monitoring of marine waters. The State Water Monitoring Program (including for the surveillance monitoring of coastal and marine waters) was approved by the Order of the Ministry of Environment of 5 January 2022 #3. Pursuant to the Order, the surveillance monitoring of coastal and marine waters shall be carried out by the Ukrainian Scientific Centre of Ecology of the Sea (UkrSCES), Odessa, Ukraine.

7.2 Marine Environmental Strategy

The draft Marine Environmental Strategy was published for public consultations on the official website of the Ministry of Environment of Ukraine on 26 November 2020⁵⁰. Pursuant to the Law of Ukraine on Strategic Environmental Assessment (SEA) the draft Marine Environmental Strategy was subject to SEA. Consultations on the scoping of SEA were held in early May 2021⁵¹. The draft Marine Environmental Strategy of Ukraine and supplementary documentation thereto along with the SEA Report were published by the Ministry of Environment of Ukraine for public consultations on 28 May 2021⁵². Following public consultations, consultations with environmental, healthcare and other authorities concerned, and completion of the interagency consent procedure, the

⁴⁰ Order of the Ministry of Regional Development, Construction and Housing of 01 December 2017 # 316, https://zakon.rada.gov.ua/laws/show/z0056-18#n15.

⁴¹ Order of the Ministry of Regional Development, Construction and Housing of 12 December 2018 #341, https://zakon.rada.gov.ua/laws/show/z0075-19#Text.

⁴² Resolution of the Cabinet of Ministers of Ukraine of 02 June 2021 # 575, https://zakon.rada.gov.ua/laws/show/575-2021-%D0%BF#Text.

⁴³ See https://zakon.rada.gov.ua/laws/show/2918-14#Text.

⁴⁴ DSanPiN 2.2.4-171-10 approved by the Order of the Ministry of Health of Ukraine # 400 of 12 May 2010, https://zakon.rada.gov.ua/laws/show/z0452-10#Text.

⁴⁵ Mid-Term Plan of Priority Activities of the Government until 2020, approved by the Regulation of the Cabinet of Ministers of Ukraine of 03 April 2017 #275, https://zakon.rada.gov.ua/laws/show/275-2017-%D1%80#Text.

⁴⁶ Rubel et al., 2018.

⁴⁷ For more information on the projects their outputs visit: http://emblasproject.org/.

⁴⁸ Alexandrov et al., 2017.

⁴⁹ Supra note 19.

⁵⁰ See https://mepr.gov.ua/news/36344.html

⁵¹ See https://mepr.gov.ua/news/37342.html

⁵² See https://mepr.gov.ua/news/37465.html.



Marine Environmental Strategy of Ukraine was approved by the Regulation of the Cabinet of Ministers of Ukraine of 11 October 2021 #1240⁵³.

The overall strategic objective of the 2021 Marine Environmental Strategy is to achieve and, once achieved, maintain GES of Ukraine's marine waters of the Azov and the Black Seas pursuant to the MSFD and taking into account the 2030 Ukraine's SDGs 6 and 14⁵⁴.

The 2021 Marine Environmental Strategy takes into account Ukraine's commitments under the 1992 Convention on the Protection of the Black Sea Against Pollution (Bucharest Convention), activities of the Commission on the Protection of the Black Sea Against Pollution established under the Bucharest Convention, and other Black Sea regional cooperation initiatives, including those involving the EU Member States

The 2021 Marine Environmental Strategy, *inter alia*, provides for the development of:

- the Action Plan for achieving and maintaining GES of the Azov and the Black Seas for the period of 2022-2027;
- the Procedure for the Development and Approval of the Integrated Coastal Zone Management (ICZM) Action Plans;
- the Program of the State Environmental Monitoring of Seas for the period of 2022-2027;
- ICZM Action Plans for the Azov and the Black Seas.

8 Conclusion

For the most part the transposition of the EU Water Sector *acquis* listed in the EU-Ukraine Association Agreement is complete. Extra effort is required under the Nitrates Directive and the DWD⁵⁵. The development of RBMPs is underway. FRMPs are expected to be approved already this year. The 2021 Marine Environmental Strategy provides for a number of follow-up instruments which are also under development.

At the same time, to date no nitrate vulnerable zones have been designated in Ukraine. Likewise, no sensitive areas or less sensitive areas have been identified in Ukraine. Implementation of the State Water Monitoring Program suffers obvious difficulties caused by the unprovoked and unjustified russia's military aggression against Ukraine, especially in the

53 See https://zakon.rada.gov.ua/laws/show/1240-2021-%D1%80#Text.

areas of active warfare. Massive destruction of infrastructure including centralized water supply and sewerage systems is likely to hinder implementation of the DWD and UWWTD in Ukraine. Devastating impact on the environment including surface, ground and marine waters is still to be assessed.

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Approved by the Order of the President of Ukraine of 30 September 2019 #722/2019, see https://zakon.rada.gov.ua/laws/show/722/2019#Text, whereby: 2030 Ukraine's SDG 6 is to ensure availability (accessibility) and sustainable management of water resources and sanitation and 2030 Ukraine's SDG 14 is to conserve and rationally use the oceans, seas and marine resources for sustainable development

⁵⁵ Yermolenko et al., 2021.













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In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

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Three organisations currently share the organisational work of the network: Öko-Institut, Technische Hochschule Bingen (TH Bingen) and sofia, the Society for Institutional Analysis, located at the Darmstad University of Applied Sciences. The person of contact is Prof. Dr. Roller at TH Bingen.

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The elni Review is an English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. elni encourages its members to submit articles to the elni Review (info@elni.org) in order to support and further the exchange and sharing of experiences with other members.

The first issue of the elni Review was published in 2001. It replaced the elni Newsletter, which was released in 1995 for the first time.

The elni Review is published by Öko-Institut, TH Bingen and sofia.

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elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researches, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

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