



Analysis of the Law of Ukraine
“About the main principles of state climate policy”

by the Energy Community Secretariat

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PURPOSE STATEMENT

Assessment of the Law of Ukraine No.3991-IX “About the main principles of state climate policy” adopted on 8 October 2024 (hereinafter “the Law No.3991”).

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Ukraine Energy Market Observatory

Assessment 17/24

Analysis of the Law of Ukraine “About the main principles of state climate policy”

Introduction

The present document provides an assessment of compliance of the Law No.3991¹ with the Energy Community climate acquis, focusing primarily on its compliance with the climate elements of the adopted and adapted Governance Regulation 2018/1999² (hereinafter “Governance Regulation”) and other supplementing Regulations as adapted and adopted in the Energy Community acquis³. The effective transposition of the Governance Regulation, along with the supplementing Regulations, form an overall climate and energy framework, which constitutes the basis for further action in these fields. Principal documents, such as the National Energy and Climate Plans and Long-Term Strategies, are embedded in the Governance Regulation, describing the content and process forward with regard to energy and climate. This assessment builds on the Ukraine Energy Market Observatory Assessment 11/24 “Analysis of the draft Law of Ukraine on the main principles of state climate policy”⁴ published by the Energy Community Secretariat in July 2024.

Background

a) The Law No.3991

In the Law No.3991 itself, as was already provided in the draft, it is stipulated that it aims to implement in particular the Governance Regulation and Regulation (EU) 2021/1119 establishing a framework for achieving climate neutrality. The latter is not yet covered by the Energy Community acquis, however, setting economy wide target of climate neutrality by 2050 remains the Secretariat’s recommendation and strategic political objective for the Energy Community as a whole. Thus, the Secretariat welcomes the commitment to achieve climate neutrality by 2050, which is enshrined in the Law.

The Law No.3991 defines the legal and organizational framework of the State climate policy of Ukraine, defining the governance structure with main institutions involved as well as strategic documents, which outline climate policies. These documents include, among others, a Long-Term Strategy, nationally determined contribution to the Paris Agreement (NDC), integrated National Energy and Climate Plan (NECP) and a Climate Change Adaptation Strategy.

¹ <https://zakon.rada.gov.ua/laws/show/3991-20#Text>

² Adopted and adapted by Ministerial Council Decisions 2021/14/MC-EnC and 2022/02/MC-EnC

³ Commission Implementing Regulation (EU) 2020/1208 of 7 August 2020 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) 2018/1999 and Commission Delegated Regulation 2020/1044 of 8 May 2020 supplementing Regulation (EU) 2018/1999 of the European Parliament and of the Council with regard to values for global warming potentials and the inventory guidelines and with regard to the Union inventory system and repealing Commission Delegated Regulation (EU) No 666/2014

⁴ <https://www.energy-community.org/dam/jcr:5ac29fe7-3c7e-4652-8087-4e3d136f1f59/Note11-24.pdf>

In comparison to the draft Law, some improvements were noted in the Law No.3991, such as the inclusion of the 2030 emission reduction target and the addition of an article with the public consultation requirement for the Long-Term Strategy. However, the deletion of some key transposition elements limits the transposition of the Governance Regulation, such as the outline of the Long-Term Strategies. In addition, some of the previously issued recommendations remain valid, as described in the section below.

b) Energy Community acquis on climate

In the Energy Community, there is the following list of adapted EU climate acquis in force:

- Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action⁵,
- Regulation (EU) 2020/1044 of 8 May 2020 supplementing Regulation (EU) 2018/1999 of the European Parliament and of the Council with regard to values for global warming potentials and the inventory guidelines and with regard to the Union inventory system and repealing Commission Delegated Regulation (EU) No 666/2014⁶,
- Regulation (EU) 2020/1208 of 7 August 2020 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) 2018/1999⁷,
- Regulation (EU) 2018/2066 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) 601/2012⁸,
- Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC⁹,
- Directive 2003/87/EC of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC¹⁰.

Compliance assessment

As part of the Ukraine Energy Market Observatory Assessment 11/24, the Secretariat has issued some recommendations, as the draft Law was found to be partially compliant with the Governance Regulation and further transposition was required. These recommendations remain valid for the adopted Law No.3991. Nonetheless, significant progress has been made by the inclusion of the 2050 climate neutrality objective and the 2030 greenhouse gas emission reduction target in the Law No.3991.

1) Long-Term Strategy

The Law provides the legal basis for the Long-Term Strategy with a 30-year timeframe and a 5-year review and update cycle. However, the framework content of the Long-Term Strategy has now been removed from the previous draft of the Law, thus, further limiting compliance and transposition of Article 15 and Annex IV of the Governance Regulation, which outline the content of the Long-Term

⁵ Incorporated and adapted by the Ministerial Council Decision 2022/02/MC-EnC and Decision 2021/14/MC-EnC

⁶ Incorporated and adapted by the Ministerial Council Decision 2021/14/MC-EnC

⁷ Incorporated and adapted by the Ministerial Council Decision 2021/14/MC-EnC

⁸ Incorporated and adapted by the Ministerial Council Decision 2022/05/MC-EnC

⁹ Incorporated and adapted by the Ministerial Council Decision 2022/05/MC-EnC

¹⁰ Incorporated and adapted by the Ministerial Council Decision 2022/05/MC-EnC

Strategy. There is also no reference to the Governance Regulation submission cycle of the Long-Term Strategy to the Energy Community Secretariat (that is by 1 January 2029 and every 10 years after that).

However, an improvement is noted in relation to the draft Law, as a new addition was made in the Law No.3991 to include the requirement to inform the public, allowing for their participation and access to information, and thus transposing Article 10 of the Governance Regulation.

Overall, the requirements of the Long-Term Strategy (Article 15.4 and Annex IV of Governance Regulation) are only partially transposed. No legally mandated process is established to supplement the Long-Term Strategy content through a secondary act.

2) Climate reporting to Energy Community Secretariat

The Governance Regulation establishes a climate reporting process by Contracting Parties to the Energy Community Secretariat. According to Articles 18 and 19 of the Governance Regulation, Contracting Parties shall report to the Secretariat information on:

- their national GHG policies and measures or group of measures as set out in Annex VI of the Governance Regulation;
- their national projections of anthropogenic greenhouse gas emissions by sources and removals by sinks, organised by gas or group of gases listed in Part 2 of Annex V;
- their national climate change adaptation planning and strategies;
- financial and technology support provided to developing countries;
- any revenues generated from carbon price mechanisms, including the information specified in Part 3 of Annex VIII of the Governance Regulation.

These are new and cyclical obligations introduced by the Governance Regulation with specified timeframes.

Similarly to the draft Law, the Law No.3991 lacks reporting provisions on the above, nor is there a process described for establishing them through a secondary act. Thus, the legal basis for the provision of information required by the Governance Regulation, within the designated timeframes, remains unclear.

3) National reporting on approximated and final greenhouse gas inventories

An annual reporting framework is established in Article 26 of the Governance Regulation, which outlines the required information for the greenhouse gas inventory with the submission timelines to the Energy Community Secretariat. The Law No.3991, sets a legal basis for the greenhouse gas inventory with the scope, preparation and update of the inventory to be determined by a secondary legal act.

However, there appear to be conflicting provisions in the Law on the timing of submissions of greenhouse gas inventories. On the one hand, the Law provides that the greenhouse gas inventory is developed and updated in accordance with the requirements and methodologies determined by, among others, the Council of Ministers of the Energy Community. This, in accordance with Article 26 of the Governance Regulation, would be on an annual basis. On the other hand, the submission date of the greenhouse gas inventory to the Energy Community Secretariat is established on a biannual basis (Article 29 of the Law No.3991). This provides for an inconsistency in the Law No.3991 and an unclear submission timeline.

4) National inventory system and system for policies and measures and projections

The Governance Regulation through articles 37 and 39 obliges Contracting Parties to establish, operate and seek to continuously improve national inventory systems to estimate anthropogenic emissions by sources and removals by sinks of green-house gases listed in Part 2 of Annex V, as well as operate and seek to continuously improve the national system for reporting on policies and measures and for reporting on projections of anthropogenic greenhouse gas emissions by sources and removals by sinks. Both systems are established in the Law, similarly to the draft Law, supplemented by a procedure for drafting secondary legislation, where necessary.

Conclusions and recommendations

The adopted Law No.3991 constitutes an important step towards transposing the climate elements of the Governance Regulation. Setting a legally binding 2050 climate neutrality objective, as well as the 2030 greenhouse gas emission reduction target, provides political guidance and aligns with the requirement of the Governance Regulation. The Law No.3991 also establishes the national inventory system and the system for reporting on policies, measures and projections, supplemented by secondary legislation procedures.

A legal basis is formed for the Long-Term Strategy and greenhouse gas inventory. Nonetheless, the lack of content for the Long-Term Strategy constitutes a key drawback in the transposition of the Governance Regulation and is a setback compared to the draft version of the Law. Moreover, the process of climate reporting, especially of non-greenhouse gas inventory-related information to the Energy Community Secretariat, within a designated timeframe, is still lacking, and the Secretariat's previously issued recommendation has not been taken onboard. In addition, the timeline for the submission of greenhouse gas inventories should be clarified and made compliant with the Governance Regulation.

Overall, similarly to the draft Law, the adopted Law No.3991 partially transposes the climate elements of the Governance Regulation.

Therefore, the Energy Community Secretariat:

- Strongly welcomes the reference to the 2050 climate neutrality objective and the 2030 target in the Law, as well as the new provision providing an obligation to ensure information and participation of the public in the development of policies and measures to mitigate the consequences of climate change;
- underlines that the Law No.3991 constitutes a good foundation for the transposition of the climate elements of the Governance Regulation;
- recognizes the establishment of the national inventory system and the system for reporting on policies and measures and projections, supplemented by secondary legislation procedures;
- recommends transposition of the requirements related to the Long-Term Strategy in terms of its content and process, including concrete timelines for submission to the Energy Community Secretariat;
- underlines the need for clarification of the greenhouse gas inventory submission timelines to the Energy Community Secretariat;
- recalls the importance of establishing a process for climate reporting to the Energy Community Secretariat in accordance with Articles 18 and 19 of the Governance Regulation and recommends the establishment of such a process;

- highlights the need to develop secondary legislation that would allow for the full transposition of Article 26 of the Governance Regulation on annual reporting as well as of the Regulation 2020/1044, with particular attention to transposing, as precisely as possible, such supplementary Regulations.