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## LEGAL REGULATION OF THE EMERALD NETWORK: NATIONAL AND GLOBAL ASPECTS

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**Abstract.** The article is devoted to the definition of the legal nature of the Emerald network, as well as to the issues of the formation of the Emerald Network in the context of Ukraine's international obligations. In particular, the history of the appearance of the term "Emerald Network" in international acts, the criteria and the procedure for designating territories of the Emerald Network is investigated. In addition, the article deals with the problems connected with the legal provision of the formation of the Emerald Network in Ukraine. It is emphasized that the adoption of the relevant legislation is foreseen by the international obligations of Ukraine as a Member State of Convention on the Conservation of European Wildlife and Natural Habitats and Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. The provisions of the draft Law of Ukraine "On the Territories of the Emerald Network" are analyzed.

**Keywords:** Emerald Network, Areas of Special Conservation Interest, Convention on the Conservation of European Wildlife and Natural Habitats, legal framework.

### 1. INTRODUCTION

One of the most urgent issues of environmental law of Ukraine in recent years is the implementation of EU legislation. Ukraine is obliged to gradually bring its legislation closer to EU legislation in various spheres.

According to item "f" Article 361 chapter 6 "Environment" of Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (hereinafter – the "Agreement") cooperation shall aim at preserving, protecting, improving, and rehabilitating the quality of the environment, protecting human health, prudent and rational utilisation of natural resources and promoting measures at international level to deal with regional or global environmental problems, inter alia in the areas of nature protection, including conservation and protection of bio and landscape diversity (eco-networks).

Both ecosystems and processes that affect biodiversity and landscape are usually not confined to state boundaries. Due to this circumstance, measures taken at the local, regional or national level are often inadequate, if not entirely ineffective. An international system for coordinating and supporting initiatives for the conservation of biodiversity and landscapes is necessary [9].

Ecological networks can help to preserve the natural habitat and species in fragmented natural areas and in the anthropogenic landscapes of Europe [9]. Part of the Pan-European Ecological Network is the Emerald Network.

The legislation of Ukraine contains such a term as “ecological network”. Pursuant to the Law of Ukraine “On the ecological network of Ukraine” dated June 24, 2004 ecological network is a unified territorial system created with the purpose of improvement of conditions for forming and renewal of environment, increase of natural resource potential of Ukrainian territory, saving landscape and biological diversity, places of settlement and growth of valuable kinds of flora and fauna, genetic fund, ways of migration of animals through joining territories and objects of nature reserve fund, as well as other territories which are especially valuable for environmental protection and in accordance with laws and international obligations of Ukraine are subject to special protection. According to the Article 5, the structural components of ecological network are: territories and objects of nature reserve fund; lands of water fund, water and marsh grounds, water protective zones; lands of forestry fund; forest shelter belts and other protective plants; health-improving lands; recreational lands; territories which are the places of stay or growth of types of flora and fauna recorded in the Red Book of Ukraine, etc.

But it is important to outline that Ukrainian legislation introduces somewhat different criteria for the formation of the ecological network than those criteria for the Emerald Network formation. In particular, the approach is based not on the criterion of the allocation of habitats as the basis for choosing the constituent elements of the econet, however the ecological network is created on the basis of the territories and objects of the nature reserve fund as the basis of the ecological network with the further involvement of protected areas of another status (water protection, recreation, etc.).

The necessity of the approximation of Ukraine's existing legislation to that of the European Union arouses attention to international acts in this field of study. Simultaneously there is little published data on legal nature of the Emerald Network in Ukrainian environmental law literature [1, 7]. And this is the main aim of the research – to discover the legal nature of the Emerald Network.

## 2. ANALYSIS AND DISCUSSION

The subject and goal of conduct scientific research oblige to refer to the legal issues of development of such territories as the Emerald Network. Its implementation was launched by the Council of Europe on the basis of the provisions of Convention on the Conservation of European Wildlife and Natural Habitats (hereinafter – the “Bern Convention”). The Bern Convention was open for signature on 19 September 1979 and came into force on 1 June 1982. In 2014, the Bern Convention has been ratified by 51 Contracting Parties.

Since the Berne Convention was ratified by the Law of Ukraine dated on October 29, 1996, the issues of legal regulation of the Emerald Network formation and functioning are relevant for Ukraine. Therefore, the actuality of the issue to determine the legal basis for the Emerald Network formation arose before the signing of the Agreement by Ukraine. Thus, the Strategy for the implementation of the Framework Convention on the Protection and Sustainable Development of the Carpathians (which was adopted and signed by the seven Parties in May 2003 in Kyiv and entered into force in January 2006), approved by the Order of the Cabinet of Ministers of Ukraine dated on January 16, 2007 No. 11-r, provide for in the sphere of international cooperation the encouragement of the execution of international treaties where Ukraine is a party, in particular the requirements of the Berne Convention (the development of the regional network of special conservation areas – the Emerald Network of Europe).

In accordance with Article 4 of the Berne Convention, each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild flora and fauna species, especially those specified in Appendices I and II, and the conservation of endangered natural habitats. The Contracting Parties in their planning and development policies shall have regard to the conservation requirements of the areas protected under the preceding paragraph, so as to avoid or minimise as far as possible any deterioration of such areas. Thus, setting-up the Emerald

Network at national level is considered as one of the main tools for the Contracting Parties to comply with their obligations under the Bern Convention.

The Emerald Network consists of territories that are called Areas of Special Conservation Interest (ASCIs). In June 1989 the Standing Committee to the Bern Convention held an extraordinary meeting exclusively devoted to habitat conservation within the Convention. At the meeting the Committee adopted an interpretative resolution [Resolution No. 1 (1989) on the provisions relating to the conservation of habitats] and three operative recommendations [Recommendations Nos. 14, 15 and 16 (1989)] aimed at the development of a network of areas under the Convention [8, p. 4]. The Recommendation advocates Contracting Parties to take, either by legislation or otherwise, steps to designate areas of special conservation interest to ensure that necessary and appropriate conservation measures are taken for each area situated within their territory or under their responsibility. The Network is to be set up in each Contracting Party or observer state to the Convention. It, thus, involves all the European Union states, some non-Community states and a number of African states.

It is worth mentioning that the European Union, as such, is also a Contracting Party to the Bern Convention. In order to fulfil its obligations arising from the Convention, particularly in respect of habitat protection, it produced Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (amended by Directive 97/62/EC, 2006/105/EC and Regulation (EC) 1882/2003) in 1992, and subsequently set up the Natura 2000 network. The Natura 2000 sites are therefore considered as the contribution from the EU member states to the Emerald Network.

It is necessary to outline that till 1996 there was not such a term as “Emerald Network”. In January 1996 a sufficient number of States of Central and Eastern Europe, which were not members of the European Union, became Parties to the Bern Convention and were requesting the development of the network of ASCIs. So the term “Emerald Network” was first used in 1996. The Standing Committee adopted its Resolution No. 3 (1996), in which it resolved to set up a network (Emerald Network) which would include the Areas of Special Conservation Interest designated following its Recommendation No. 16; it furthermore encouraged Contracting Parties and observer states to designate Areas of Special Conservation Interest and to notify them to the Secretariat. Resolution No. 3 (1996) was, in a sense, a second act of birth of the network, after its first creation in 1989. More precisely it was an act of baptism as the network had not been given a name in 1989 and it had proved rather awkward to promote a network under the name of “network to develop Recommendation No. 16 (1989) of the Standing Committee of the Convention on areas of special conservation interest” [3, p. 25]. Nonetheless, the real implementation of the Emerald Network only started in 1998, through the adoption by the Standing Committee of Resolution No. 5 (1998), concerning the rules for the Network of Areas of Special Conservation Interest (Emerald Network).

As the analysis shows, the legal framework of the Emerald Network forms the relevant resolutions and recommendations of the Standing Committee of the Berne Convention: Resolution No. 1 (1989) of the Standing Committee on the provisions relating to the conservation of habitats, Recommendation No. 14 (1989) of the Standing Committee on species habitat conservation and on the conservation of endangered natural habitats, Recommendation No. 15 (1989) of the Standing Committee on the conservation of endangered natural habitat types, Recommendation No. 16 (1989) of the Standing Committee on areas of special conservation interest, adopted by the Standing Committee on 9 June 1989; Resolution No. 3 (1996) of the Standing Committee concerning the setting up of a Pan-European Ecological Network, adopted by the Standing Committee on 26 January 1996; Resolution No. 4 (1996) of the Standing Committee listing endangered natural habitat requiring specific conservation measures, adopted by the Standing Committee on 6 December 1996; Resolution No. 5 (1998) concerning the rules for the Network of Areas of Special Conservation Interest (Emerald Network), adopted by the Standing Committee on 4 December 1998; Resolution No. 6 (1998) of the Standing Committee listing the species requiring specific habitat conservation measures, adopted by the Standing Committee on 4 December 1998; Recommendation No. 157 (2011) on the status of candidate Emerald sites and guidelines on the criteria for their nomination, adopted by the Standing Committee on 2 December 2011; Revised Criteria for assessing the National Lists of proposed Areas of Special Conservation Interest (ASCIs) at

biogeographical level and procedure for examining and approving Emerald candidate sites, adopted on 6 December 2013 by the Standing Committee; Resolution No. 8 (2012) of the Standing Committee on the national designation of adopted Emerald sites and the implementation of management, monitoring and reporting measures, adopted by the Standing Committee on 30 November 2012.

Participation in the Emerald Network is therefore optional, as Contracting Parties and Observer States benefit from the “soft law” approach characteristic of Council of Europe recommendations and resolutions. However, it is important to note that the obligations on the Contracting Parties to protect natural habitats are rigorous requirements clearly set out in the Convention and forming part of binding international law [8, p. 5]. The Standing Committee recommended Contracting Parties to implement their obligations regarding natural habitats through a number of measures, among which the designation of the Areas of Special Conservation Interest (ASCIs) that form the Emerald Network.

The conducted research allows proceeding to the definition of the Areas of Special Conservation Interest. Point 1 of Recommendation No. 16 (1989) defines the Areas of Special Conservation Interest as those designated by states where that area fits one or several of the following conditions:

- a. it contributes substantially to the survival of threatened species, endemic species, or any species listed in Appendices I and II of the convention;
- b. it supports significant numbers of species in an area of high species diversity or supports important populations of one or more species;
- c. it contains an important and/or representative sample of endangered habitat types;
- d. it contains an outstanding example of a particular habitat type or a mosaic of different habitat types;
- e. it represents an important area for one or more migratory species;
- f. it otherwise contributes substantially to the achievement of the objectives of the convention.

As for definition of the Emerald Network, it appears in Article 1 of Resolution No. 5 (1998) concerning the rules for the Network of Areas of Special Conservation Interest (Emerald Network): any area, whether land or sea, where that area fits one or several of the conditions established in Recommendation No. 16 (1989), point 1, may form part of the Emerald Network.

According to Article 2 Areas of Special Conservation Interest (ASCIs) to be included in the Emerald Network shall be designated by the governments. The Standing Committee may advise the government concerned on the advisability of designating one or more ASCIs that are of a particular interest to the Emerald Network. At that the use of the term “governments” in this resolution means the governments of the States Contracting Parties to the Convention, of other Council of Europe States and of other States which are observer States in the Standing Committee of the Convention. As it was mentioned above considering that for Contracting Parties which are Member States of the European Union, Emerald Network sites are those of the Natura 2000 Network the Emerald Network is designated by European states which are not members of the European Union and some African states.

For now it is necessary to determine the criteria and procedure for designating of the Emerald Network.

Resolution No. 3 (1996), Recommendation No. 16 (1989) and Resolution No. 5 (1998) have provided general guidance on how the ASCIs should be designated. They encourage Contracting Parties and observer States to designate ASCIs and to notify them to the Secretariat. Thus, the responsibility for designating ASCIs lies with the government of the States concerned.

In order to ensure a full complementarity and consistency between the EU Natura 2000 and the Emerald networks, the Group of Experts on Protected Areas and Ecological Networks (GoEPAEN) recommended that any evaluation of the proposed Emerald sites should be based on the same rules and procedures as developed for Natura 2000, i.e. using a biogeographic approach. It means that before being officially adopted as Emerald sites, all sites proposed to join the Network are thoroughly assessed at biogeographical level for their sufficiency to achieve the ultimate objective of the Network. This objective is the long term survival of the species and habitats of the Bern Convention requiring specific protection measures [4]. At the same time, in full recognition of the resources and time needed

to implement such a process, the GoEPAEN called for a simplified approach without losing the essence of the evaluation.

After several years of discussion, in 2010, the Standing Committee adopted the “Criteria for assessing the National Lists of proposed ASCIs at biogeographical level and procedure for examining and approving Emerald candidate sites” [8, p. 6]. This document provides the fundamental basis for the identification and scientific evaluation of the sufficiency of the sites proposed by the Contracting Parties for joining the Emerald Network. The document was revised in 2013, in order to include additional criteria for the evaluation of sites proposed for bird species. In the document on the Revised Criteria for assessing the National Lists of proposed Areas of Special Conservation Interest (ASCIs) at biogeographical level and procedure for examining and approving Emerald candidate sites (Adopted on 6 December 2013 by the Standing Committee) for the assessment of proposed ASCIs, the Emerald Network constitution process was described as composed of three different stages or “Phases” of implementation:

- Phase I: Participating countries assess their natural resources and identify species and habitats to be protected according to the relevant resolutions of the Bern Convention listing them [Resolution No. 4 (1996) and Resolution No. 6 (1998)]. They subsequently select potential sites which are suitable for ensuring the long-term survival of the “Emerald” species and habitats and they send a database containing scientific information on the proposed sites to the Bern Convention’s Secretariat. The proposed sites can be officially nominated candidate Emerald sites by the Standing Committee, as provided for in Recommendation No. 157 (2011) on the status of candidate Emerald sites and guidelines on the criteria for their nomination;

- Phase II: An evaluation of the efficiency of the proposed sites is done on a species by species and habitat by habitat base for each biogeographical region. An evaluation of the efficiency of the proposed sites which has to be done on a species by species and habitat by habitat base. Ideally the evaluation would only start if a complete inventory of proposed sites exists for a certain area. Realistically, this would mean that over 80 % of the finally proposed sites would already be available for the evaluation. This exercise is to be conducted in co-operation with the European Environment Agency. Once the scientific value of the proposed sites is assessed, the candidate sites will be submitted to the Standing Committee and will eventually be approved so to formally integrate the Emerald Network. For EU member states an approved Natura 2000 Network of sites will automatically fulfil the parties’ obligations towards the Bern Convention and the Emerald Network;

- Phase III: National designation of the adopted ASCI’s and implementation of management, reporting and monitoring measures, under the responsibility of national authorities.

In order to designate its ASCIs, any government should deposit a Standard Data Form for each individual site proposed with the Secretariat of the Council of Europe, through the Common Data Repository (Reportnet) of the European Environment Agency.

In December 2012, for the first time in the history of the Network, the Standing Committee to the Bern Convention officially adopted as Emerald sites, 37 areas in Switzerland [4]. Since 8 December 2017, five countries, Belarus, Georgia, Norway, Switzerland and Ukraine, have officially adopted Emerald sites on their territories [5]. During the 36th meeting of the Standing Committee of Berne Convention, held on November 15–18, 2016, the lists of the Emerald Network of Europe for Ukraine, Belarus and Switzerland were approved [2]. In particular, the Ukrainian list consists of 271 nature protection objects [5].

Consequently these sites have successfully passed the biogeographical assessment for their sufficiency, as foreseen in Phase II of the Network constitution process. Once the areas proposed are officially adopted as Emerald Network sites, they have to be designated and managed at national level. The national designation and management measures are decided and put in place to contribute to the main objective of the Network and their efficiency will be regularly monitored. They equally continue identifying additional areas suitable to join the Network on their territories.

As stated above the issue of legal regulation of the Emerald Network formation for Ukraine became especially topical after the signing of the Agreement. According to Article 362 of the Agreement the

Parties shall, inter alia implement joint activities at regional and international level, including with regard to multilateral environmental agreements ratified by the Parties and joint activities in the framework of relevant agencies as appropriate. The Parties shall pay special attention to transboundary issues. Gradual approximation of Ukrainian legislation to EU law and policy on environment shall proceed in accordance with Annex XXX to this Agreement (Article 363, item “d”).

In accordance with Annex XXX to Chapter 6 “Environment” Ukraine undertakes to gradually approximate its legislation to the Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora as amended by Directive 97/62/EC, 2006/105/EC and Regulation (EC) 1882/2003 (hereinafter – the “Directive”) within the stipulated timeframes:

- adoption of national legislation and designation of competent authority/ies. Timetable: these provisions of the Directive shall be implemented within 2 years of the entry into force of this Agreement;

- preparation of inventory of sites, designation of these sites and establishing priorities for their management (including completion of the inventory of potential Emerald sites and establishment of protection and management measures for these sites) (art. 4). Timetable: these provisions of the Directive shall be implemented within 4 years of the entry into force of this Agreement;

- establishment of measures required for the conservation of such sites (art. 6). Timetable: these provisions of the Directive shall be implemented within 4 years of the entry into force of this Agreement;

- establishment of a system to monitor conservation status of habitats and species (art. 11). Timetable: these provisions of the Directive shall be implemented within 2 years of the entry into force of this Agreement;

- establishment of a strict species protection regime for species listed in Annex IV as relevant for Ukraine (art. 12). Timetable: these provisions of the Directive shall be implemented within 2 years of the entry into force of this Agreement.

Although item 256 of the Action Plan on Association Agreement Implementation for the period of 2014–2017, adopted by the Resolution of the Cabinet of Ministers No. 847-p dated September 17, 2014, provides for the development and submission to the Cabinet of Ministers of Ukraine of drafts of normative legal acts to implement the provisions of the Directive with the deadline December 2017, the draft law of Ukraine “On the Areas of the Emerald Network” was submitted for discussion by Ministry of Ecology and Natural Resources of Ukraine only on March 12, 2018 [6].

Thus, the draft law of Ukraine “On the Areas of the Emerald Network” is meant to be the legal basis for the allocation and conservation of the Emerald Network territory within Ukraine in accordance with the requirements of Bern Convention and taking into account the requirements of Directive. It has respect to the following issues: preparation of proposals for designating the Emerald Network, criteria for determining areas for inclusion in the list of proposed areas of the Emerald Network, definition of the Emerald Network areas, National Register of the Emerald Network areas, management plans for the Emerald Network, restrictions of current activities as regards the Emerald Network areas, compensation for losses caused by prohibitions or restrictions on activities in the Emerald Network, monitoring of the environmental conservation status of natural habitats and species of natural flora and fauna within the Emerald Network, reporting measures.

As it was emphasized, the drafting of such legal act should be accompanied by radical changes in legislative approaches. In the Implementation Plan of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, amended by Directives 97/62/EU, 2006/105/EC and Regulation (EC) 2003/1882, is stated that the legislation of Ukraine introduces somewhat different criteria for the formation of the ecological network defined in the Law of Ukraine “On the Ecological Network of Ukraine”, dated June 24, 2004. Hence it is necessary to amend the legislation on the nature reserve fund, the Green Book of Ukraine, the Red Book of Ukraine, land, water, forest legislation, etc. or to develop and approve new legislation on the ecological network and the protection of natural habitats, which would meet the requirements of the Directive, first of all, in terms of criteria for the formation of the ecological network.

### 3. CONCLUSIONS

To sum up the results of performed analysis, the following conclusions can be drawn up.

Ukraine is one of the five Contracting Parties to the Bern Convention which officially adopted Emerald Network sites on its territory – the so called “Areas of Special Conservation Interest (ASCI)”.

Once ASCIs have been designated by the states, it is considered to be not the end of the Emerald Network, but rather the start, as states are recommended to take a number of steps (by legislation or otherwise), to ensure that ASCIs are properly managed. They are asked in Recommendation No. 16 (1989) to ensure, wherever possible that ASCIs are the subject of an appropriate regime, designed to achieve the conservation of the factors responsible for the designation of the area. It is important to note that the obligations on the Contracting Parties to protect natural habitats are rigorous requirements clearly set out in the Convention and forming part of binding international law.

Based on the analysis, we conclude that for today in Ukraine already exist sites of the Emerald Network, at the same time, their legal regulation is virtually absent.

As follows from the above, Ukraine, as well as other countries, has a task to implement international agreements, including those related to the formation of legislation on the Emerald Network. These issues are particularly relevant for Ukraine in connection with the need to implement the Berne Convention, as well as the fulfilment of Ukraine's obligations under the Agreement.

As explained above, Resolution No. 5 (1998) establishes that for Contracting Parties to the Bern Convention which are member States of the European Union Emerald Network sites are those of the Natura 2000, so that criteria for choice of those areas will be those of the Directive. Therefore the formation of the Emerald Network is the first step in the formation of a common ecological network of Europe. And this, in its turn, is a necessary condition for preserving the biodiversity of not only Ukraine but also Europe.

It should be noted that for the development of the Emerald Network in Ukraine it is necessary to unite efforts not only of specialists in the field of ecology, biology, geography, but also lawyers regarding the creation of the legal basis for its formation and functioning.

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Стаття присвячена визначенню юридичної природи Смарагдової мережі, а також питанням формування Смарагдової мережі в контексті міжнародних зобов'язань України. Зокрема, досліджується історія появи терміну "Смарагдова мережа" в міжнародних актах, критерії і порядок віднесення територій до Смарагдової мережі. Крім того, в статті розглядаються проблеми, пов'язані з правовим забезпеченням формування Смарагдової мережі в Україні. Підкреслюється, що прийняття відповідного законодавства передбачено міжнародними зобов'язаннями України як учасниці Конвенції про охорону дикої флори та фауни і природних середовищ існування в Європі та Угодою про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони. Аналізуються положення проекту Закону України "Про території Смарагдової мережі".

**Ключові слова:** Смарагдова мережа, території особливого природоохоронного значення, Конвенція про охорону дикої флори та фауни і природних середовищ існування в Європі, правове регулювання.