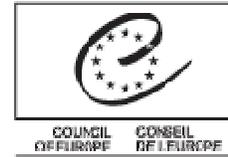


SECRETARIAT GENERAL

**DIRECTORATE GENERAL OF DEMOCRACY AND
POLITICAL AFFAIRS**

DIRECTORATE OF DEMOCRATIC
INSTITUTIONS



Strasbourg, 19 March 2009
(English only)

DPA/LEX 3/2009

**Appraisal of the draft Law of Ukraine
On Development of Mountain Territories**

The present report was prepared by the DGDAP - Directorate of Democratic Institutions, in cooperation with the CoE experts, Professor Gérard Marcou (France), Professor Paweł Swianiewicz (Poland) and Dr Paul Hildreth (United Kingdom).

The comments also take into account the Round Table discussion of the Draft Law, which took place at the Ministry of Regional Development in Kyiv on 17 February 2009.

I. GENERAL REMARKS

The present draft law, although its title refers to the Ukrainian mountainous territories, is targeted to fostering sustainable development of the Carpathian mountain region only¹.

The new law would replace the existing one from 1995 "On Status of Mountainous Settlements". While building on the provisions of this earlier law, the present draft appears to be more ambitious and broadly based. It outlines the priorities for development and the areas for which state support will be provided, and it includes proposals for the funding of state policy in this respect.

The main potential area for support is infrastructure development. The State would also support economic, social and ecological activities consistent with the priorities identified in the Framework Convention on the Protection and Sustainable Development of the Carpathians.

This support will be provided independently from the system to be established by the Law on the Principles of State Regional Policy. In this sense, the draft law makes an exception of mountain territories in the Carpathians for economic, social and ecological support.

The draft appears to be generally consistent with the provisions of the Carpathian Convention². The Principles set out in Article 2 (Principles of Mountain Policy) are in line with those of the Convention and with the national and international legislation on the development of mountain territories³.

¹ Crimean mountains are not included in the draft. According to the Ministry, this is because the living conditions are not "severe" there, compared to the conditions in the Carpathian mountains. However, issues such as the conservation of cultural and natural heritage remain.

² The Framework Convention on the Protection and Sustainable Development of the Carpathians (May 2003) is an international treaty aimed at conserving the wildlife, landscape and cultural heritage of the Carpathian Mountains. It required four countries to ratify the Convention to bring it into force. This was achieved in 2006 when Hungary joined Ukraine, the Czech Republic, Slovakia and Hungary in ratifying the Convention. Other countries covered by the Convention are: Poland, Romania, Serbia and Montenegro. The Convention lays down principles to promote collaboration between the countries concerned and their local authorities and civil society. These include actions to:

- Conserve biological and landscape diversity and use it sustainably
- Coordinate spatial planning in border areas
- Ensure "integrated" management of water resources and river basins
- Promote sustainable agriculture and physical infrastructure
- Create sustainable tourism
- Advance environmentally sound industry and energy
- Preserve cultural heritage and traditional knowledge
- Assess and monitor the environment
- Raise public awareness and education about the issues

³ Examples of international legislation on mountains can be found here: <http://www.mountainpartnership.org/issues/resources/keydoc.html>

However, the draft raises a number of questions below, which would deserve further consideration.

Is it sound to have a separate law dealing with the development of mountainous regions?

The first general question to discuss is whether Ukraine needs a separate law on the development of mountain areas. Support to the mountain areas should not be discussed separately from the general regional policy goals and from the means allocated to other types of “problematic” regions and to other development policies. The Council of Europe experts and those representing international partners at the Round Table discussion, all supported the view that the issues covered by the present draft law could be incorporated into the legislation on Regional Development, which is currently being prepared. Such a solution would make regulations in this area more comprehensive and more transparent: mountain regions would be treated as a specific case of regions which require state support and the law would provide for better integrated mechanisms and resources to support balanced development of the country.

The need to ensure coordination with other legislation

Even though the Ukrainian policy makers will decide to prepare a separate law, it is not clear how this law and its implementation will relate to the wider legislative framework of regional development of Ukraine and with the basic laws on local government. The relevant legislation (e.g. the new Draft Law on the Principles of State Policy, Budget Code, planning legislation) has to be considered. For example, for a better coordination with the draft Law on the Principles of State Regional Policy, the draft Law on mountainous territories should include provisions on the definition of mountainous territories as priority territories, as indicated in Article 20 of the current draft Law on the Principles of State Regional Policy. Otherwise, the result of the drafting process will be an improved version of the previous Law, which will be well-intended but difficult to implement.

A too centralist approach which should be reconsidered

The current draft appears to be too centralist: it provides for an extensive degree of central control of programmes, and the emphasis on monitoring at the State level is very strong. For example, oblast councils are required to submit their proposals for the use of funds of mountain territories to central authorities on an annual basis. The Cabinet of Ministers approves the selected list of projects and programmes financed from the mountain territories development funds. Monitoring is undertaken by both the central executive body for regional policy and oblast state administrations.

Insufficient role of local government

There is almost no provision on the involvement of local government (municipal, district and regional councils) in the development of mountainous territories. It would be important, as a matter of principle, to emphasise the role of local councils at all levels to work out and implement development strategies. In all countries, the development of mountainous areas requires the mobilisation of local initiatives and resources because investment from outside is difficult to attract. Development

strategies need therefore to rely on indigenous factors and hence on local governments.

The institutional arrangements proper to mountainous areas should also be considered, taking into account the co-operation required by the geographical and hydrographical continuity. For example, in France, "*massif*" committees have been established with representatives from all local governments of the *massif*, whatever the region or department they belong to; the law has delegated to them specific planning and finance powers; they are co-chaired by the prefect of the main *département* concerned and an elected official appointed by the standing commission of the *massif* committee. This has proved to be a good way to support co-operation between local self-government units. The regional development councils provided for by the Draft Law on Principles of the State Regional Policy could be used to involve local councils in the governance of mountainous areas.

There is no provision for co-ordination between oblast councils in the development of an annual programme and projects for mountain territories and in monitoring: it is not clear from the draft law whether oblast councils would submit their project proposals individually, or whether a coordinated approach would be taken across the region. This should be clarified.

The lack of provisions on planning

There is no provision for planning. Many problems of economic development in mountainous areas relate to building activities, either for economic or for residential purposes, especially in areas of outstanding beauty, which are also usually the most fragile from an ecological point of view. Therefore, the recommendation is to complete the draft law with provisions on planning. This has to be coordinated with general planning legislation.

Provisions on funding remain vague

Several sources of funding are listed. These include state budget (investment projects and funds allocated for mountain territories), oblast budgets, profits from municipal enterprises and international projects focused around trans-national cooperation (which cannot be guaranteed). However, the amount of financial resources to be secured and how they are to be allocated remains undetermined. Therefore, financial provisions would need further factual information for a thorough assessment.

Other issues

The Law could be supplemented by an attached Action Programme. This would allow concentrating on the legally binding and normative provisions in the text of the law, whereas commitments to realise, build or spend would be recited with grounds and goals in the attachment. This would also improve the quality of the wording of the legal text.

If international experience is considered necessary for the preparation of the Law, it could be useful to organise a targeted conference on legislation and policies for the safeguard and sustainable development of mountainous areas. This could be based

on a short series of detailed questions drawn up by the Ukrainian government on the basis of key issues identified in the preparation of the draft law, in order to have papers precise enough to be directly useful. The selection of countries could be based on three criteria: 1) other Carpathian countries; 2) countries with developed legislation on mountain areas and experience on its implementation; 3) preferably unitary countries to facilitate institutional comparisons. These criteria would result, for example, in searching papers from France, Poland, Romania, Slovakia and Sweden. The Council of Europe could help prepare the set of questions to make sure that they are properly understood by the contributors.

II. SPECIFIC COMMENTS

The experts have also provided a number of more specific comments, which are interpolated in the text of the draft, **shaded in grey**.

Draft LAW OF UKRAINE On Development of Mountain Territories in Ukraine

This Law establishes the legal, economic and organizational basis for the State policy pertaining to environmentally balanced development of mountain territories, raising the living standards of the population, strengthening of local economies and communities, conservation and restoration of natural values and cultural heritage.

General provisions of the Law are framed in compliance with the purposes and tasks of integral, complex and balanced approaches to economic, social and ecological problems of mountain territories of the Ukrainian Carpathians determined by the Strategy of Implementation of the Framework Convention on the Protection and Sustainable Development of the Carpathians, and by national and international law on the development of mountain territories.

Section I GENERAL PROVISIONS

Article 1. Determination of notions

In this Law terms are used with the following meaning:

mountain territories – areas of earth surface considerably raised above the adjacent plains characterized by significant fluctuations of relative elevations and contrasting terrain, where elevation, terrain and climate create specific conditions affecting everyday life-sustaining activities;

mountain/high-mountain townships – cities, towns and villages located in mountain/alpine territories meeting the criteria of assigning townships to mountain/alpine ones;

environmentally balanced development – the development that ensures the guaranteed satisfaction of at least minimum needs of all society members provided that the integrity of the environment is preserved and gradually restored, and secures the balance between the natural potential and the needs of all human generations.

Article 2. Principles of mountain policy

Mountain policy is based on the principles of:

non-exhausting use – implies environmentally balanced use of natural resources and landscape potential of the mountains, conservation and restoration of biological and landscape diversity;

prevention – taking preventive measures aimed at averting environmental pollution and degradation ;

ecosystem approach – giving priority to consideration of ecological potential of mountain ecosystems in determining admissible economic activities capacity within administrative-economic and natural systems (village, rayon, oblast, water basin, etc.);

concentration of production – compact sitting of production and economic facilities, infrastructure, labor, raw materials and energy resources;

nature priority – securing the priority of biodiversity preservation in the course of production and other activities related to environmental management.

Most of terms/definitions used in this article are not referred to in any concrete form in the following articles, which makes it purely declarative.

Article 3. Mountain territories designation criteria

1. The territories enjoying the status of mountain territories include the Ukrainian Carpathians region delineated by continuous isoline 400 m above the sea-level excluding exclaves.

2. For the purposes of social protection, mountain townships (cities, towns, villages) include those that cover:

1) the territory located at altitudes 400 m and higher above the sea level;

2) fifty and more percent of territory located aslope with uphill gradient of 12 and more degrees;

3) the terrain broken by gills and water streams;

4) the territory with less than 0.60 hectares of agricultural land per resident. Not less than 50% of agricultural land must be of low quality with low site class (low humus content, high actual acidity, insignificant depth of root-containing horizon, low phosphorus and potassium mobile forms content), which negatively affects its agricultural use;

5) severe climate conditions:

a) cold and long winter (average duration – not less than 115 days, daily mean atmospheric temperature in January does not exceed 4 degrees below zero Centigrade),

b) cool short summer (average duration – not more than two months, daily mean atmospheric temperature in July does not exceed 20 degrees above zero Centigrade),

c) large amount of precipitation (average annual amount of liquid and solid precipitation – not less than 600 millimeters).

3. When designating townships as mountain ones, criteria 1)-4) and at least two of subparagraph 5), Part 2 of the present Article must be met.

4. A township meeting the abovementioned criteria and located at the altitude of 1200 m and higher above the sea level is an high-mountain township.

The areas covered by the draft law have been defined in terms of altitude, climatic conditions and in the case of mountain townships, other factors such as percentage of territory with uphill gradient of 12 or more degrees, terrain broken by gills and water streams and amount and quality of agricultural land. These definitions for mountain areas/settlements are too complicated and could be simplified. The alternative would be to designate a specific geographically bounded area (e.g. as for a National Park).

Article 4. Procedure of assigning mountain status to territories

1. The boundaries of a territory assigned the mountain status and the list of townships assigned mountain and alpine status are approved by the Cabinet of Ministers of Ukraine. The certificate of compliance to criteria defined in Part 2 of the preceding Article is issued by the authorized official responsible for hydro-meteorology service on the basis of observations over a period not less than 10 years.

2. Proposals concerning the assignment of mountain/alpine status to townships within the development boundaries are submitted by oblast state administrations to the Cabinet of Ministers of Ukraine.

3. In case of liquidation, change of name, fusion, division of townships assigned the mountain/high-mountain status, or of formation of new townships the said list is specified according to similar procedure.

It would be useful to see the statistics which show how many communities are affected, i.e. how many settlements would have a status of mountain and high-mountain (*vysokohors'ki*) territories. It would help to estimate the financial consequences of the law. Why does the lowest level of self-government authorities have no role in applying for mountain status? The whole authority is left for the oblast tier. These are mostly *miski* and *silski rady* (town and village councils) who would benefit from the Law, so they should have a role (although not a decisive one) in applying for the status.

Section II.

STATE SUPPORT OF MOUNTAIN TERRITORIES DEVELOPMENT

Article 5. Priorities in mountain territories development

1. Priorities in mountain territories development are as follows:
- a) development and construction of infrastructure, primarily, communication routes and road facilities;
 - b) development of knowledge-intensive, energy-saving, high-technology and ecophile production sites that require ecologically clean environment;
 - c) restoration and development of traditional crafts and trades;
 - d) accomplishment of measures providing for conservation, sustainable use and restoration of biological and landscape diversity, ecological, natural and industrial safety;
 - e) development and environmentally balanced recreation and tourism management.

Article 6. State supported activities

1. For the purpose of securing environmentally balanced development of mountain territories, raising of the living standards of the population, conservation and restoration of natural values and cultural heritage the State supports projects conducted in the mountain territory and aimed at:

1.1) economic development

- a) developing and supporting the implementation of sector programs for environmentally balanced development of agriculture and forestry;
- b) development and construction of road infrastructure;
- c) tourism and recreation development programs;
- d) alternative electric power sources development and introduction;
- e) support for ecological and energy-saving technologies, including those applied in households;
- f) support for traditional crafts restoration and development;
- g) support for setting up clusters and other state-of-the-art organizational forms of production and economic activities;
- h) introducing knowledge-intensive and high-technology productions;
- i) support for scientific research facilities located in mountain territories;
- j) securing non-exhausting use of natural resources and/or their restoration;

1.2.) social sphere and infrastructure development

- a) transport, engineering, social and municipal infrastructure support;
- b) developing and supporting the implementation of natural values, cultural heritage and local traditions conservation and restoration programs;

1.3.) ecological, natural and industrial safety

- a) taking anti-flood and slope-strengthening measures;
- b) introducing environmental protection programs;
- c) setting up early warning systems, evacuation plans, and emergency supplies stocks;
- d) programs aimed at preventing the introduction of non-indigenous species and genetically modified living organisms, resulting from biotechnologies application, that threaten ecosystems, indigenous species or public health;
- e) transborder pollution prevention programs;
- f) support for measures aimed at forming the Ukrainian Carpathians ecological network as a part of the national ecological network.

2. In compliance with priorities defined by the present Law, the Cabinet of Ministers of Ukraine will take other measures aimed at the support for mountain territories development.

The whole article is too enumerative – every provision needs to be specified.

Article **6.1.** says that : "...the State supports projects..." What does this entail exactly? What are the rules/ criteria and **means** for this support? Following articles do not clarify it either.

Section III.
SOCIAL PROTECTION OF POPULATION

Article 7. Specific features of labor remuneration and retirement benefits for citizens residing and working in mountain/alpine townships

1. Employees of state-financed organizations funded from state and local budgets, who reside and work in mountain and alpine townships are entitled to additional payments in the following amounts:

- a) in mountain townships – in the sum equaling 20 percent of regular salary;
- 6) in high-mountain townships – in the sum equaling 40 percent of regular salary.

Additional payment sums are to be included into the estimated transfers to local budgets and into expenditures estimates of the relevant main administrators of state budget funds.

The special treatment for the remuneration of state employees and retired citizens living in mountain regions needs to be consistent with the remunerations in other “problem” parts of Ukraine.

These provisions on higher salaries could also be incorporated into the Budget Code, to avoid incoherency and non-transparency issues, which would be very dangerous for keeping tight budget constraint mechanisms.

2. According to the corresponding oblast council resolution, retired citizens residing in a mountain/alpine township may be granted additional pension payments in the sum not exceeding 50 percent of social retirement benefit, given that the general length of service in a mountain territory-based enterprise, institution or organization is not less than 15 years for males and 10 years for females.

For citizens disabled from childhood or those, who acquired disabled status at a mountain territory-based production facility, the above established length of service requirements are not applied.

Additional pension payments envisaged in the present paragraph are funded at the expense of relevant oblast budgets.

Additional pensions are funded by the relevant oblast budget – this provision should be co-ordinated with the pension fund legislation.

Section IV.
FUNDING OF MOUNTAIN TERRITORIES DEVELOPMENT

Article 8. Sources of funding for mountain territories development

1. Activities aimed at mountain territories development shall be funded through:

- a) subventions allocated to oblast budgets;

Why are additional subventions for mountain regions to be allocated to oblast budgets? It is clear that they cannot go directly to the lowest level, since it is not incorporated into the Budget Code transfer system. However, these subventions

could go to the relevant rayons directly. This would be consistent with the logic of the Budget Code reform introduced a few years ago.

- b) investment projects funding directly from the state budget;
- c) attracting domestic and foreign investments, international funds and organizations grants;
- d) channeling land fees (or their portions) received from economic entities, and profit taxes received from municipal enterprises based in Zakarpatska, Ivano-Frankivska, L'vivska and Chernivetska oblasts under the resolutions passed by corresponding local self-governments concerning their budget funds;

If the land fees and profit taxes from municipal enterprises remain in the local budgets anyhow, in what way they may provide additional support for the mountain regions?

e) participating in joint international projects aimed at transboundary cooperation in environmental protection and environmentally balanced development of mountain territories, social and cultural development, infrastructure building up, etc.

2. The main administrator of State Budget of Ukraine funds allocated for the mountain territories development is the central executive body for regional policy.

3. The funding envisaged for financing measures aimed at mountain territories development in the form of subventions from the state budget shall not be less than the following percentage of enterprises profit taxes paid in corresponding oblast according to the previous accounting period:

- 25 – for Ivano-Frankivska oblast;
- 35 – for Zakarpatska oblast;
- 5 – for L'vivska oblast;
- 20 – for Chernivetska oblast.

Prior to June 15th of the year preceding the planned year, the oblast councils shall submit to the central executive body for regional policy their proposals with regard to the uses of funds allocated for mountain territories development within the sums defined by the present article for the corresponding oblast budget, in accordance with the mountain territories development priorities identified by the present Law.

The list of projects and programs financed from the mountain territories development funds is approved by the Cabinet of Ministers of Ukraine.

The regulation of the amounts of state subsidies to be transferred to relevant oblasts does not provide any mechanism of horizontal (territorial) redistribution. In other words, the more the oblast is in trouble (which results in the decrease of profits of enterprises), the less funds it would receive. Is this coherent with the regional policy of Ukraine assuming support for underdeveloped and depressed regions?

Section V.
MOUNTAIN TERRITORIES DEVELOPMENT MONITORING

Article 12. Forms and methods of mountain territories development monitoring

The following indicators of mountain territories development are subject to monitoring: the level of economic and social development, social security and environmental safety.

Mountain territories development indicators are monitored by the central executive body for regional policy and oblast state administrations on the basis of the state statistics reporting data and other data provided by central executive bodies.

The list of indicators, as well as the procedure and periodicity of monitoring are established by the Cabinet of Ministers of Ukraine upon recommendation of central executive bodies for economic policy and for regional development.

Based on the monitoring results, the Cabinet of Ministers of Ukraine identifies activities aimed at mountain territories development state support.

Section VI.
FINAL AND TRANSITIONAL PROVISIONS

1. The present Law enters into force on January 1st 2010.
2. Upon the day of the present Law entering into force the Law of Ukraine "On the status of mountain townships of Ukraine" becomes void.
3. Over the period of three years from the date of the present Law entering into force, social benefits and additional payments envisaged in the Law of Ukraine "On the status of mountain townships of Ukraine" are preserved at the following rates from the ones active on the date of the present Law entering into force:
 - For the first year - 75%,
 - For the second year - 50%,
 - For the third year - 25%.

The abovementioned benefits and additional payments are funded from the state budget and the Pension Fund of Ukraine. The subvention sums envisaged in the present Law are decreased by the sums of the abovementioned benefits and additional payments.

3. In the course of three months from the date of the present Law entering into force the Cabinet of Ministers of Ukraine shall:
 - draft and submit to the Verkhovna Rada of Ukraine proposals concerning harmonization of the active legislation with the present Law;
 - harmonize its regulatory legal acts with the present Law;
 - provide for the harmonization of other central executive bodies regulatory legal acts with the present Law.

The suggestion that the review and proposals concerning harmonization of the active legislation would be done within 3 months after the discussed Law enters into force is very questionable. This would mean three months of potential problems. Such a review should be carried out while the draft is being developed, and relevant provisions can be included in this part of the draft.