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Ensuring the Balance of Interests in Environmental Resource Use: A Comparative Legal Analysis

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ABSTRACT:
The interrelation between public and private interests lies at the core of sustainable natural resource management. Although the legal systems of different countries may contain similar formal provisions, the actual balance between these interests is often determined by deeper conceptual, cultural, and political factors. In the field of environmental law and policy, the definition of the concept of "public interest" plays a key role—not only in the distribution of responsibility but also in shaping societal attitudes toward nature. This article explores how public interest in the sphere of environmental resource use is formed and implemented by comparing the approaches of Ukraine and Germany. Despite largely similar private interests and legal regulation, these countries demonstrate fundamentally different environmental outcomes. The article argues that the key difference lies not in the content of legal norms, but in the fundamental political approach and environmental philosophy, particularly in the presence or absence of adaptive governance models. Based on a comparative analysis of four sectors—water use, forest use, subsoil use, and land use—it is shown that Germany applies a more ecocentric, ecosystem-based, and adaptive model of public interest formation. Drawing on this experience, the article examines the possibilities for introducing elements of adaptive environmental policy in Ukraine—in the context of post-war recovery and ecological modernization.

Keywords: adaptive governance, public interest, sustainable development, environmental policy, environmental resource use

1. Introduction

Sustainable development and the rational use of natural resources are among the key challenges of contemporary environmental policy. The realization of the principles of sustainable resource use is possible only under the condition of maintaining a balance between public and private interests. In Ukraine, the current legislation regulating the sphere of environmental resource use remains insufficiently effective in ensuring sustainable development. In contrast, the countries of the European Union (hereinafter – the EU) apply comprehensive mechanisms for the preservation and restoration of natural resources, which have already led to a reduction in harmful emissions, a decrease in water pollution, and the degradation of soils.
In the process of Ukraine's European integration, the adaptation of European standards to national legal realities acquires particular significance. However, the effective implementation of international norms requires not only the ratification of legal acts but also their transformation into an organic part of Ukrainian legislation, taking into account specific challenges. One of the most pressing problems remains the insufficient provision of balance between public and private interests in the field of environmental resource use.

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The absence of an effective mechanism for such balance leads to the destruction of the natural environment and ecological degradation.

In order to prevent environmental harm, it is important to clearly define the boundaries between public and private interests in the field of environmental resource use. This will allow the implementation of preventive measures for environmental protection. Achieving sustainable resource use is possible only when the interests of the state, society, and the individual are properly coordinated. In international environmental law, the clear delineation between social, public, state, and private interests holds fundamental importance for ensuring the principles of sustainable development in the field of environmental protection. Such differentiation enables the establishment of the boundaries of competence and responsibility among various actors, facilitates effective environmental governance, and ensures a balanced consideration of interests in decision-making processes affecting the state of the natural environment.

The concepts of public and private interests are widely used in various branches of law. Scholars also employ the concept of "social interest," sometimes as a synonym for public interest. For example, the concept of "social interest" is viewed by M. M. Pochtovyi as the benefit of society as a whole, something that motivates actions for the common good. According to the scholar, the content of social interest must be expressed through its goals, and the ways to achieve them should be reflected in its tasks (Pochtovyi, 2020, p. 216). Despite frequent identification of the two, social interest is broader than public interest: it includes not only the needs officially recognized by the state but also those that arise independently—through public activism, initiatives, or social movements. The social interest may be understood as a collective position arising from environmentally significant demands of communities, articulated in the course of exercising guaranteed rights enshrined in the Aarhus Convention (1998), in particular the right of access to environmental information (Art. 4), public participation in decision-making (Art. 6), and access to justice in environmental matters (Art. 9) (United Nations Economic Commission for Europe [UNECE], 1998). A distinctive feature of the public interest lies in its formation through public hearings, petitions, and environmental activism. Its key characteristic is the presence of consensus or a high level of support among concerned communities regarding the preservation of a specific natural object or resource.

For instance, public opposition to the development of a green area, despite the presence of official permits, can serve as an example of social interest that contradicts the position of the state. In such a case, social interest exists outside the scope of state regulation. The social interest is not legitimized (although it arises from normatively enshrined rights); however, it can serve as a foundation for the formulation of normative decisions. Its legitimacy is grounded in the principles of intergenerational justice, equitable access to resources, as well as the requirement of effective public participation, enshrined, in particular, in Principle 10 of the Rio Declaration (1992) and the concept of the environmental rule of law (United Nations [UN], 1992; United Nations Environment Programme [UNEP], 2019). The Aarhus Convention requires not only the formal involvement of the public, but also the genuine consideration of public opinion — through institutional dialogue, transparent procedures, and the obligation of reasoned response from public authorities.

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Meanwhile, public interest is a social interest officially recognized and consolidated through public authorities. It takes the form of legal norms, administrative decisions, or judicial acts. Public interest is institutionalized—enshrined through legislative, political, and administrative mechanisms. It is precisely through the instruments of state coercion that public interest has the potential to influence the actions of private individuals. Therefore, this study focuses specifically on public and private interest in the context of preventive measures in environmental resource use.

In the scientific literature, public interest is defined as the collective generalized public needs of society, its individual social groups and members, the state, and territorial communities (administrative-territorial units), the satisfaction of which is necessary for the proper functioning and development of society, its individual social groups and members, the state, and territorial communities (administrative-territorial units). The above suggests that the satisfaction of public needs involves a combination of public interest with private interests. The realization of public interest is a condition for the realization of private interests, and conversely, public interest is determined by the specific interests of individuals (Dmytrenko, 2016, p. 91). In fact, public interest exists in correlation with private interests, which in one way or another influence the boundaries of public interest.

As A. Boot notes, the public interest as a legal concept acquires legitimacy only if it exhibits three characteristics: general applicability, normative justification, and formal implementation through law or administrative policy (Boot, 2024). At the same time, as Boot emphasizes, the public interest should not be regarded as merely the aggregate of the private interests of the majority. Such an approach, in his view, fails to distinguish the genuinely public interest from a merely dominant opinion: the interests of the majority are not identical to the public interest, which is that which all citizens share as members of a public community (Boot, 2024, p. 118). Thus, not every manifestation of civic activity (social interest) can be deemed a public interest.

Unlike the social interest, the public interest does not necessarily originate from grassroots civic initiative. Its sources may include expert assessments, scientific data, or international obligations that set priorities for state environmental policy (e.g., emission reduction, biodiversity protection). As previously noted, the Aarhus Convention enables the possibility of transforming social interest into public interest—through decision-making mechanisms that incorporate public initiatives into the norm-setting process. At the same time, international law lacks clear criteria for determining when exactly a societal interest can or should be transformed into a public one. This creates a risk of selective recognition of bottom-up initiatives, or their dismissal if they conflict with the prevailing political agenda.

According to H. V. Moroz, public interest in environmental law lies in the preservation of natural ecosystems and natural resource reserves; in maintaining ecological balance, biological and landscape diversity; in ensuring equal access to natural resources; in maintaining a safe environmental condition; in preventing negative climate change, and so on (Moroz, 2022, p. 348). Thus, the public interest in environmental law performs a system-forming function, ensuring a balance between environmental preservation, equitable access to natural resources, and intergenerational responsibility. It serves as a normative foundation for the development of environmental policy, legislation, and judicial practice.

V. V. Halunko notes that "what the authorities perceive as the common good may in fact diverge from the interests of a significant portion of the population. Nevertheless, the requirements imposed on the objects of public administration must ensure the common good of the people of Ukraine and cannot reflect the private interests of the subjects of public administration" (Halunko, 2010, p. 181). In other words, the scholar argues that the vision of the authorities may diverge not only from the interests of a specific individual—going beyond the boundaries of private interest—but also from those of a group of individuals.

In this context, it is appropriate to draw attention to the state interest. The state interest refers to the interest of the state as a subject of law, reflecting its political, economic, or strategic priorities. In domestic law, the state interest is often equated with the public interest; however, at the international level, a conflict may arise between them. For example, the support of environmentally hazardous infrastructure (such as thermal power plants or extractive projects), the issuance of permits for logging for economic purposes, or the subsidization of the chemical industry may be justified from the perspective of the state interest, but contradict international obligations — particularly in the fields of climate change, environmental protection, or intergenerational justice.

According to scholars, the public interest is inseparable from the interests of the state, but it may not coincide with private interests (Pasichnyk & Raimov, 2018, p. 152). That is, state interest is part of the public interest. In order to ensure sustainable use of natural resources, states must align their policies with global environmental principles and implement proper governance. In this context, international environmental law applies a range of fundamental principles: the Precautionary Principle (Rio-92, Principle 15), the Polluter Pays Principle (Principle 16), among others (UN, 1992; United Nations [UN], 1966).

An example of public interest intervening in the private sphere can be seen in the situation during preparations for Euro 2012, when the state expropriated land plots on the grounds of public necessity to build stadiums and transport infrastructure. Later, some of the planned infrastructure was not constructed, which led to public dissatisfaction due to the disruption of the balance of interests. This situation illustrates the limitation of private interests (even if not of a single person) by the state interest. Hosting Euro 2012 was a strategic decision for the state aimed at attracting investments and tourists from other countries. This approach is still recalled with criticism, although it partially paid off. Thus, the private interests of Ukrainian citizens were limited because the state interest required exceeding these boundaries and disrupting the balance of interests.

Another example is the influence of private interest on the boundaries of the public interest, particularly through the case of *Zelenchuk and Tsytsyura v. Ukraine*, Nos. 846/16 and 1075/16, and the judgment of the European Court of Human Rights dated 22 May 2018. In this case, the ECHR concluded that Ukraine had overstepped its wide margin of appreciation in this area and had failed to strike a fair balance between the general interest of society and the property rights of the applicants (European Court of Human Rights, 2018). Examining the circumstances of the case, owners of agricultural land were unable to alienate their land due to an existing moratorium. In effect, several representatives of private interests influenced the boundaries of public interest in the sphere of land use. In 2020, a law lifting the moratorium on the sale of agricultural land

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was adopted. Thus, the boundaries of public interest were altered based on socio-economic changes in society and the private interests of individuals who owned agricultural land.

These examples demonstrate that public interest is not a static category independent of individual demands. On the contrary, under certain circumstances, private interests may alter the content of the public interest, allowing us to speak of its interdependence with societal and individual needs. As rightly noted in the literature, public interest can be regarded as the quintessence of private interests that have reached a certain level of public significance (Melnychenko, 2023, p. 400). After all, the public interest reflects the interests of society and its development.

At the same time, the formation of the public interest must not become a tool for legitimizing short-term or narrowly corporate goals. To prevent its opportunistic distortion under pressure from private interests, it is necessary to embed stabilizing legal mechanisms and value-based orientations into national and international legislation. One such safeguard is the principle of non-regression, enshrined in contemporary international environmental law. This principle prohibits the lowering of the level of environmental protection already achieved, even in cases of economic or political expediency, thereby ensuring the resilience of the public interest (Global Pact Coalition, n.d.).

Jurisdictional mechanisms—both national and international—play a constraining role in the process of balancing interests. In particular, courts are obligated to examine the proportionality of intrusions into the private sphere, the legal justification for changes in environmental policy, and the conformity of such changes with the public interest grounded in the principles of sustainable development. Judicial practice requires mandatory compensation in cases where private rights are restricted for ecologically justified public purposes, serving as a guarantee of fair balance. In addition, a crucial element in ensuring the stability of the public interest is the establishment of institutional safeguards against situational political influence. Such bodies may include environmental ombudspersons, climate advisory councils, and public oversight bodies affiliated with ministries. Their role is to preserve institutional memory, long-term environmental priorities, and to ensure democratic participation in the formation of the public interest.

The public interest in legal theory and practice does not have a single, fixed meaning. Scholarly literature identifies at least three approaches to its conceptualization: institutional, conflict-based, and substantive. Each of these represents different views on the sources, content, and legitimacy of interference in the private sphere in the name of the common good.

The institutional approach considers the public interest as an officially recognized and codified category that acquires legal force through laws, administrative acts, or judicial decisions. This approach dominates in practice, where the public interest is defined by the state and used as a basis for interference with property rights or other aspects of private autonomy. For example, in the case of Zelenchuk and Tsytsyura v. Ukraine, the European Court of Human Rights recognized that Ukraine pursued the public interest through the institutional approach—by introducing a legal moratorium on the sale of agricultural land. However, the Court emphasized that the formal codification of the public interest was not sufficient: the absence of a proportional balance between the societal aim and private rights resulted in a violation of Article 1 of Protocol No. 1 to the Convention (ECtHR, 2018).

This indicates that the institutional approach requires supplementation with elements of effectiveness evaluation, legitimacy, and dynamic review. Similarly, in the case of Hamer v. Belgium (European Court of Human Rights, 2007), the Court deemed justified the demolition of a house illegally constructed in a protected natural area, as the public interest in environmental protection was clearly enshrined in national legislation. In Ukraine, an example of institutional interference in the environmental sphere is the legislated moratorium on clear-cut logging in the Carpathians, adopted as an official measure for the protection of the natural environment (Verkhovna Rada of Ukraine, 2019).

The conflict-based approach is based on the notion that this interest is not an objectively given category but is formed through ongoing interaction, contradictions, and compromises between private and public demands. As Cass Sunstein notes, public law not only implements the common good but also functions as an arena of struggle among organized interests, where legal decisions reflect a temporary balance of power and values (Sunstein, 1985, pp. 33–36). In a similar vein, Frank Michelman argued that the issue of compensation in the field of public regulation cannot be resolved solely from the standpoint of utilitarian expediency. He raised an ethical question: whether it is fair to place the burden of social losses on individuals who have randomly suffered harm, or whether such costs should be "socialized" through public compensation mechanisms (Michelman, 1967, pp. 1168–1171). According to Michelman's approach, the issue of compensation cannot be considered only in terms of economic expediency, but must take into account the principle of justice and equitable distribution of environmental burdens. Thus, public interest does not automatically justify intervention into the private sphere without compensation. For example, the case of James and Others v. United Kingdom, in which the nationalization of housing in favor of tenants was deemed permissible in the public interest, despite criticism from former owners: the Court's decision acknowledged a conflict between economic equality and the right to private property, and effectively legitimized a temporary balance of interests within the framework of a lawful aim (European Court of Human Rights, 1986).

The substantive approach offers an alternative perspective, in which the public interest is not reduced to the outcome of political negotiations or regulatory expediency. Instead, it is understood as an ethical and legal category encompassing fundamental values — intergenerational justice, ecological balance, and the rights of nature. One of the most vivid examples of the substantive approach to public interest is the concept proposed by Christopher Stone in his work *Should Trees Have Standing?* (1972). Stone argues for granting legal status to natural objects based on their intrinsic moral value, and not merely for their utilitarian benefit to humans. He emphasizes that the expansion of the circle of legal subjects always occurs through the evolution of perceptions regarding the moral significance of certain beings or phenomena. Accordingly, public interest in the field of environmental resource use should be regarded not as a sum of human needs, but as a value-based category that includes ecological balance, the rights of nature, and intergenerational responsibility (Stone, 1972).

This approach was reflected in the decision of the Federal Constitutional Court of Germany of 24 March 2021 concerning the Federal Climate Protection Act (BVerfG, 1 BvR 2656/18 and others), where the Court found a violation of the principle of intergenerational justice due to the imposition of a disproportionate burden of emission

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reductions on future generations. The constitutional body obliged the government to specify climate targets beyond 2030, emphasizing that the public interest in the climate domain is not a matter of political compromise, but a moral obligation (Federal Constitutional Court of Germany [Bundesverfassungsgericht], 2021). A similar position was adopted by the court in Urgenda Foundation v. Netherlands (2019), where the Supreme Court of the Netherlands held that the government has a moral and legal duty to protect the climate in the interests of present and future generations, even in the absence of direct political consensus (Supreme Court of the Netherlands, 2019).

From the above, three main approaches to the understanding of public interest can be identified. The institutionalized approach regards it as officially recognized and enshrined through state mechanisms—laws, administrative decisions, judicial practice; it has binding force and the capacity to influence the boundaries of private interests at the will of the state. The substantive approach emphasizes the value-based content of public interest through ensuring ecological balance, recognition of the rights of nature, which may exist independently of state recognition and rely on moral and ethical foundations. In contrast, the conflict-based approach interprets public interest as the result of dynamic interaction between private, social, and state demands. It is seen not as a stable category but as a compromise between competing interests formed in the process of struggle for influence, and it requires consideration of principles of justice and compensation for private losses.

The typology of institutional, conflict-based, and substantive approaches enables a deeper understanding of the modes through which the public interest is legitimized in environmental policy. It opens the way for a critical evaluation of situations in which formal references to the public good are not accompanied by genuine mechanisms of justice, participation, and compensation. This is particularly relevant in the environmental context, where decisions have long-term consequences and affect the rights of not only present but also future generations. Therefore, it is essential to account for the value-laden and dynamic nature of the public interest. Accordingly, the public interest in the field of natural resource use should be viewed not merely as a legal construct, but as a tool for shaping a more just, sustainable, and ethically responsible environmental policy.

Judicial practice also reflects the distinction between public and private interests. According to the ruling of the Cassation Administrative Court within the Supreme Court dated 18 May 2022 in case No. 280/988/19, the maintenance of the necessary (fair) balance between social (public) and private interests (the principle of proportionality) is an important requirement of civil society, a democratic, social, and rule-of-law state, and a component of the rule of law principle. The criteria for ensuring such balance are: intervention by a public authority in an individual's private right is justified only when it is extremely necessary for the protection of social (public) interests; the ability of public authorities to amend or revoke certain administrative decisions solely in the public interest, if necessary, but taking into account the rights and interests of private individuals; the existence of obligatory and fair compensation to the individual in case of interference with their private right due to public necessity; and the mandatory adherence to a reasonable proportion (proportionality) between the goal to be achieved for the protection of social (public) interest and the means used to achieve it (Bernaziuk, 2024).

Based on the above, public interest in environmental resource use can be characterized as a set of generalized needs of society as a whole, the state, territorial communities, and certain social groups, aimed at sustainable development, conservation, and efficient use of natural resources, the satisfaction of which is a necessary condition for ensuring environmental security, public health, and economic well-being in the long term.

Public interest in environmental resource use is manifested through the following objectives: sustainable and prudent use of natural resources; environmental protection and maintenance of ecological balance; preservation of biodiversity and natural ecosystems; and prevention of environmental harm. Private interest in environmental resource use refers to specific individual or group needs and aspirations of natural or legal persons related to the use of natural resources for economic or other benefits, the realization of which must comply with legal requirements and not contradict the principles of sustainable development. The key criteria ensuring the balance between public and private interests in environmental resource use include: the justification and necessity of state intervention in private rights to meet the ecological needs of society; the possibility of reviewing governmental decisions with consideration for the interests of private individuals; fair compensation in cases of forced limitation of private rights; and proportionality between the means of intervention and the objectives of protecting public interests. It is important to emphasize that just as public interest can influence the boundaries of private interests, private interests—if they reflect the aspirations of a portion of the population—can also form the foundations of public interest.

2. Types of Natural Resource Use in the Context of Balancing Public and Private Interests

In the modern legal landscape of Ukraine and European countries, natural resource use encompasses various types, each of which raises the issue of harmonizing public and private interests. The specifics of the legal regime, designated purposes, and the societal significance of natural resources determine the differences in how these interests are regulated. This section examines four key types of natural resource use—water use, forest use, subsoil use, and land use—as examples of legal models for the interaction between the interests of the state, society, and individual actors. The analysis covers the regulatory framework and European approaches, as well as potential conflicts of interest arising in the process of utilizing natural resources. Within this article, it is proposed to examine the boundaries of public and private interests in various types of environmental resource use in accordance with the legislation of Ukraine and the Federal Republic of Germany (hereinafter – Germany).

2.1 Water Use

The main regulatory legal acts governing the use of water resources in Ukraine are the Water Code of Ukraine, the Law of Ukraine "On Drinking Water and Drinking Water Supply," which regulates issues of drinking water quality, and the Law of Ukraine "On Environmental Protection," which establishes the general principles of protection of water and other natural resources (Law of Ukraine "On Drinking Water and Drinking Water Supply", 2002; Law of Ukraine "On Environmental Protection", 1991). To ensure

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sustainable water use, a number of restrictions and control mechanisms are provided. According to Articles 18–23, 33–41 of the Water Code of Ukraine, the following control measures for water resources are in effect: state and public control over the use and protection of water and their reproduction; state monitoring of water resources; the procedure for environmental impact assessment; the establishment of water protection zones and sanitary protection zones. In addition, water use is regulated through a permit system, which includes: issuance of permits for special water use; regulation and limitation of water withdrawal and discharge of pollutants (Water Code of Ukraine, 1995). Despite these measures, the effectiveness of control remains low, and water resources continue to be polluted.

The EU implements comprehensive measures to preserve both the qualitative and quantitative characteristics of water resources. Due to climate change, floods, and droughts, ensuring sustainable water use is becoming an increasingly complex task. The main regulatory acts governing water policy in the EU are the Water Framework Directive, which sets standards for the protection of surface, groundwater, coastal, and transitional waters, and provides for measures to mitigate the effects of floods and droughts, and the Marine Strategy Framework Directive, aimed at protecting marine ecosystems and ensuring the sustainable development of coastal areas (Directive 2008/56/EC, 2008). According to Article 1 of the WFD, EU Member States are obliged to prevent the deterioration of the condition of aquatic ecosystems, improve their quality, and ensure the ecological balance of wetlands dependent on water resources (Directive 2000/60/EC, 2000). However, the process of adapting the Water Framework Directive in Ukraine remains incomplete. In particular, the main problems include unclear mechanisms for implementing control, lack of adequate monitoring of water resources, overlapping powers of local authorities (assigning identical responsibilities to different state and local government bodies), as well as the dominance of private interests over public ones.

Public interest in the exercise of water use in Ukraine is manifested in the formation of water-ecological legal order and the provision of environmental safety for the population of Ukraine, as well as in the scientifically grounded use of water and its protection from pollution, littering, and depletion. The satisfaction of the population's drinking water needs may also be attributed to the public interest. Private interests in Ukraine, depending on the type of water use—general or special—are aimed at meeting the needs of users (bathing, boating, amateur and sport fishing, watering animals, water intake from water bodies without the use of structures or technical devices and from wells), as well as the use of water for household, medical, recreational, agricultural, industrial, transport, energy, and fishery (including aquaculture) purposes (Water Code of Ukraine, 1995). It is worth noting that special water use serves the interests not only of individual users but also of business entities.

The public interest in water use in Germany lies in the protection of water as a component of the natural balance, a basis for human life, a habitat for animals and plants, as well as a natural resource—through a sustainable approach to water resource management. Private interests in Germany are also represented through general and special water use and share similar characteristics with Ukrainian practice (WHG, 2009). At the same time, a distinctive feature of Germany's approach is the perception of a water

body as part of a living ecosystem, which contrasts with the anthropocentric perspective in Ukrainian legislation, where the focus is primarily on meeting human needs.

2.2 Forest Use

In Ukraine, forest use is carried out in accordance with the Forest Code of Ukraine on the basis of forest and logging tickets. The legislation provides for a number of restrictions in the field of forest use: a ban on logging in protected areas and partial restrictions on logging in protective forests and forests within water protection zones (Forest Code of Ukraine, 1994). In Germany, federal and state laws prohibit clear-cutting on large areas. Forests are categorized with clear rules regarding the possibility of logging. In addition, Germany actively applies reforestation measures, including mandatory quality control of plantings, state funding, and subsidies for private landowners (Bundeswaldgesetz, 1975).

In recent decades, Ukraine's forestry sector has been on the edge of balancing public and private interests. On the one hand, forests are a national asset, a significant portion of which has protected status (nature reserves, national parks), and on the other, they are subject to economic use. Some protected areas consist precisely of forest ecosystems. The State Forest Resources Agency declares a transition to sustainable forest management and a rejection of final felling, which is no longer practiced in EU countries. However, statistics show that from 2010 to 2021 the volume of final felling did not significantly decrease, while the volume of sanitary and formative felling increased. For example, in 2010, 10,297.1 thousand m³ of wood were harvested, and in 2021 — 10,535.4 thousand m³ (State Statistics Service of Ukraine, 2023, p. 103). There is also a decrease in the area of forest regeneration. At the same time, public authorities declare a move toward European standards in forest policy. This is partially accurate, but institutional problems persist: overlapping authorities, illegal logging, and lack of effective sanctions.

However, to fully reveal the problem of imbalance between public and private interests in the field of forest use in Ukraine, it is necessary to consider empirical data on illegal logging. In 2019, according to the State Forest Resources Agency of Ukraine, intensive inspections in two regions revealed approximately 110,000 m³ of illegally harvested timber, which was more than six times higher than the figure for 2018. This constituted the highest volume of illegal logging in the past two decades — 125,279 m³ (or 0.6% of the total volume of timber harvesting) (Pillai et al., n.d., p. 13). The concentration of such cases in only two regions raised questions about the representativeness of the data and highlighted the need for similar inspections across the entire territory of Ukraine to determine the actual scale of the problem .

In 2020–2021, a gradual decline in the volume of illegal logging was observed, which can partly be attributed to the implementation of electronic timber accounting and enhanced control measures. According to official statistics, 25,800 m³ of illegally harvested timber were detected in 2021.

In 2022, the downward trend continued. The volume of documented illegal logging amounted to 20,600 m³ (3,406 cases), which is 20% less compared to 2021. The overall level of illegal timber harvesting in Ukraine for that year amounted to at least 24,327 m³, representing only 0.2% of total harvesting — the lowest rate in the past four years (State Forest Resources Agency of Ukraine, 2023).

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At the same time, analytical materials from the NGO "ForestCom" indicate unevenness across different forest users. For instance, in the municipal enterprises "Halsillis" and "Ivano-Frankivskoblagrolis", there was a significant decline: from 905 m³ in 2021 to 687 m³ in 2022 (–31.7%) and from 276 m³ to 130.4 m³ (–52.7%), respectively. In contrast, in "Vinoagrolis", the volume of illegal logging nearly doubled (+48%). Moreover, data for many enterprises remain incomplete, and for institutions subordinated to the Ministry of Environmental Protection and Natural Resources, data for 2021 were not published at all. In 2023, the positive trend was disrupted — the volume of illegal logging increased by 7,958.9 m³, or by 38.7% compared to 2022. The main factors behind this increase were military operations, limited access to forests in frontline regions, and partial loss of control by state authorities. The highest increases in illegal logging were recorded in Kharkiv and Zaporizhzhia regions, while in Dnipropetrovsk region a significant decline was noted (Kaplia et al., 2023, p. 18; Kaplia, Karabchuk, & Pyvovar, 2024).

In 2024, according to the available report, the number of illegal logging incidents amounted to 4.6 thousand, slightly more than in 2023 (4.4 thousand) (State Forest Resources Agency of Ukraine, 2023). This indicates a continuation of the negative trend. At the same time, it should be emphasized that some of the recorded cases occurred in regions distant from the combat zone, pointing to a deeper, systemic problem. The total amount of damages from illegal logging for the year amounted to UAH 817 million (Slovo i Dilo, 2025). Recently, in Ivano-Frankivsk region, the State Environmental Inspectorate recorded damage worth UAH 17 million — more than 2% of the national figure for 2024 (Kucheruk, 2025). This demonstrates that even isolated violations can have significant financial consequences, and the territorial asymmetry in the scale of the problem should be taken into account when shaping national forest protection policy. The above data make it possible to understand how the imbalance between public and private interests in forest use, particularly under conditions of insufficient control, contributes to the spread of illegal logging — a matter of particular relevance for Ukraine in light of the empirical evidence presented above.

The public interest in forest use in Ukraine lies in ensuring forest management based on the principles of sustainable development, taking into account natural and economic conditions, the intended purpose, forest-growing conditions, species composition of forests, as well as the functions they perform. Private interests, depending on the type of forest use—general or special—include gathering of wild plants, mushrooms, berries, and nuts for personal use; timber harvesting; secondary forest use; utilization of the recreational potential of forests; hunting needs; and conducting scientific research.

The public interest in forest use in Germany lies in preserving forests as a resource with significant economic, ecological, and social functions: climate regulation, water balance maintenance, air purification, soil preservation, recreational and health functions. Private interests include recreation (provided it does not conflict with public interests), timber harvesting, hunting, and tourism (Bundeswaldgesetz, 1975). Germany's environmental policy is based on the principle: one may cut only as much as will regrow — a manifestation of responsibility in the field of natural resource use (Federal Government of Germany, n.d.).

2.3 Subsoil Use

Legal regulation of subsoil use in Ukraine is based on the Code of Ukraine on Subsoil. Ukraine possesses significant reserves of mineral resources; however, the majority of profits from extraction are directed toward export without the proper development of domestic industry. Among the key issues are the lack of investment in the modernization of mines, the low level of environmental control, and the absence of effective mechanisms to incentivize sustainable subsoil use. It is in the field of subsoil use that one can observe a clear imbalance of interests, where private interests prevail over public ones.

The public interest in subsoil use in Ukraine lies in ensuring the rational, integrated use of subsoil to meet the need for mineral raw materials, protection of subsoil, guaranteeing the safety of people, property, and the natural environment, as well as protecting the rights of enterprises, institutions, organizations, and citizens. Private interests in the field of subsoil use in Ukraine include: geological exploration (including pilot industrial development) of minerals with their subsequent extraction; industrial development of deposits; construction and operation of underground facilities not related to extraction (in particular, for storage of oil, gas, other substances and waste); disposal of hazardous substances and wastewater; extraction of geothermal energy; creation of geological territories and sites with scientific, cultural, or health-related significance; and performance of work under production sharing agreements (Code of Ukraine on Subsoil, 1994).

In Germany, subsoil use is regulated by the *Bundesberggesetz* (Federal Mining Act), which is based on the principle of balanced resource use taking into account ecological and social safety. The public interest in the field of subsoil use in Germany lies in ensuring a reliable supply of raw materials, regulation and promotion of exploration, extraction, and processing of mineral resources, protection of deposits, prudent use of land resources, safety of mining enterprises and workers, prevention of threats to life, health, and the property of third parties, as well as the improvement of compensation mechanisms for unavoidable damages. Private interests in the field of subsoil use in Germany include: the right to explore for mineral resources as specified in the permit; the right to extract and acquire ownership of the minerals; the right to construct and operate the necessary infrastructure for conducting mining operations (BBergG, 1980). In general, German legislation establishes a strict balance between economic needs and environmental safety—something that has not yet been fully achieved within Ukraine's legal system.

2.4 Land Use

The most pressing global issue in the field of land relations regulation is land degradation. Soils are being depleted due to monoculture cultivation and the neglect of crop rotation, leading to erosion and a decrease in humus content. According to official data in Ukraine, to maintain yields, agricultural producers have been increasing the use of fertilizers: compared to 2010, the amount of fertilizers used doubled by 2021 (State Statistics Service of Ukraine, 2023, p. 66). Excess fertilizer use causes water pollution, particularly nitrate contamination of groundwater and eutrophication of surface waters

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due to excessive phosphate runoff. As a result, frequent cases of eutrophication are recorded on rivers, especially in the Dnipro River basin.

The public interest in Ukraine's agricultural sector is represented by state land protection programs, such as measures to control soil degradation and to monitor water resources used for irrigation. Within the framework of environmental impact assessment procedures, large agricultural projects are also analyzed, including the construction of poultry and pig farms, which may affect air and water quality. However, existing measures are insufficient to eliminate the harm caused to land resources. Therefore, examining the balance between public and private interests in this area remains a relevant issue.

The public interest in land use in Ukraine includes: taking into account the specific use of land as a territorial base, a natural resource, and a key means of production; ensuring equality of land ownership rights among citizens, legal entities, territorial communities, and the state; non-interference by the state in the exercise of subjective rights to own, use, and dispose of land, except in cases provided by law; ensuring rational land use and protection; guaranteeing land rights; prioritizing ecological safety requirements (Land Code of Ukraine, 2001). Private interests in the field of land use include: ownership and disposal of land (sale and purchase, lease, inheritance, donation, exchange) in accordance with Article 41 of the Constitution of Ukraine, the Land Code of Ukraine, and the Civil Code of Ukraine; agricultural activity (personal peasant farming, farming, gardening, vegetable growing, commercial agricultural production); development of land plots (individual residential construction, construction of commercial real estate, industrial and service sector facilities); investment interests (use of land as an asset for generating income or capitalization); and the realization of personal domestic interests (residential property, household plots, summer cottage areas) (Land Code of Ukraine, 2001; Law of Ukraine "On Farming", 2003; Law of Ukraine "On Land Lease", 1998).

The public interest in land use in Germany lies in ensuring and restoring the sustainability of soil functions through the prevention of harmful alterations, land reclamation, and remediation of contaminated sites, including the elimination of related water pollution. Preventive measures are also envisaged to avoid negative impacts on the soil. In any land-related activity, harm to the natural functions of the soil and its ecological role must be avoided to the greatest extent possible. Private interests in land use include: the development of land plots (residential, commercial, industrial); the exercise of ownership rights (possession, use, disposal, the ability to sell, bequeath, lease); agricultural land use (agricultural production, crop cultivation, livestock farming); and investment in land resources (using land as an investment asset with the prospect of value appreciation) (Bürgerliches Gesetzbuch, 1896).

From the above, interim conclusions can be drawn regarding the achievement of a balance of interests in the compared countries. An analysis of the legal acts of Ukraine and Germany shows that private interests are characterized by similar features, which can be explained by the universality of basic human needs. At the same time, public interest differs in content—depending on the state's and society's approach to natural resource use. At first glance, the goals in both countries appear similar: the protection and conservation of natural resources. However, Germany's approach reflects an understanding of nature as a living ecosystem, with humans being only one of its components. In this context, the balance of interests allows for the effective preservation

of resources for future generations. In other words, it is not nature that should adapt to humans, but humans who must adapt to nature. Thus, the main problem of environmental resource use in Ukraine lies not only in the content of individual legal norms, but also in the absence of clear and coherent foundations of environmental policy, which creates gaps in the implementation of sustainable development.

3. Adaptive Policy of the Federal Republic of Germany

Germany is a developed industrial state of the EU, known for its progressive environmental approaches. In recent decades, German society and the state have paid special attention to the transition toward sustainable use of natural resources—this is reflected in the concepts of *Energiewende* (energy transition) and *Kreislaufwirtschaft* (circular economy). From the perspective of public interest, high recycling rates mean less environmental pollution, resource conservation, and reduced greenhouse gas emissions (since production from secondary raw materials is generally less energy-intensive). Germany, as an EU member, supports the ambitious goals of the European Green Deal regarding the transition to a circular economy and reducing per capita waste generation. For example, the *Resource Efficiency Program (ProgRess)* is being implemented, which aims to increase resource productivity and material reuse. However, private interests also play an important role: the transition to a circular model requires business investment in new recycling technologies, changes in product design (to facilitate recycling), and more.

A new direction in Germany's environmental policy is reflected in the *Federal Climate Change Adaptation Act*. According to Article 10 of this law, each federal state (as the country consists of federal entities—*Länder*) must present and implement its own preventive strategy for climate change adaptation. At the same time, it is necessary to consider measures from other sectoral plans that contain information for overcoming the consequences and risks of climate change. The national preventive adaptation strategy must be based on an interdisciplinary and integrated approach. Preventive strategies are formed on the basis of climate risk and impact assessments using current regional data. The *Federal Climate Risk Analysis* may serve as a foundation for regional assessments, which are to be refined or supplemented with local data. The goal of such a policy is to develop climate adaptation concepts at all levels of governance for the targeted implementation of measures and to ensure overall climate preparedness in the country (*Bundes-Klimaanpassungsgesetz*, 2023).

The Federal Act is characterized by the implementation of three main elements: the development and application of a climate change adaptation strategy; the creation of local strategies based on the federal one, taking into account the specific features of local ecosystems; and mandatory reporting to the federal government on the presence and status of these strategies. The *Länder* have flexibility in forming such strategies, for example, they may establish a requirement to develop them only for municipalities with a certain population size. At the first stage, a nationwide strategy is formulated, which serves as the foundation for local ones. Then, administrative centers create their own strategies, based on local data and the national approach. Upon the start of implementation of the adaptive strategies, administrations are required to report to central authorities on the effectiveness of the measures. The environmental strategy must be continuously updated and

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implemented. The analysis of the collected data will allow for more accurate prioritization and adjustment of instruments, which will contribute to increased policy effectiveness.

A distinctive feature of adaptive policy is the absence of rigid regulation in the law: instead, there is a strategic process involving citizens, the state, and businesses. In parallel with the Adaptation Act and the development of the strategy, the government and the federal states, within the framework of the Conference of Environment Ministers (UMK), discuss long-term approaches to effectively financing adaptation measures. In the scholarly article Legal and institutional foundations of adaptive environmental governance, the authors note that "adaptation typically emerges organically among multiple centers of agency and authority in society as a relatively self-organized or autonomous process marked by innovation, social learning, and political deliberation" (DeCaro et al., 2017, p. 1). In the ecopolitical context, adaptation usually occurs as a decentralized, self-organized process involving actors ranging from state institutions to local communities, businesses, and civil society. This approach ensures flexibility, innovation, and the capacity to respond to local environmental challenges. Adaptive environmental policy is shaped through constant adjustment to natural changes, allowing participants to respond preventively. At the same time, this process is accompanied by political discussion and the alignment of interests, making adaptation not only a technical but also a socio-political phenomenon. In Ukraine, however, civil society still lacks sufficient capacity to implement such changes. The reason lies not in a lack of will but in a lack of resources: people are forced to focus on basic needs (food, housing, security) before moving on to a higher – societal – level of participation. The war has deprived many of access to basic goods and displaced a significant number of people, limiting their involvement in decision-making processes.

In the article cited above, the authors emphasize that "legal systems affected by dynamic stressors like climate change need to emphasize standards and general principles… instead of specific rules… to guide decision making without specifying exact solutions that could become outdated or too rigid" (Craig et al., 2017, as cited in DeCaro et al., 2017, p. 12). In Germany, the state does not dictate specific methods of nature conservation but instead creates institutional frameworks that allow the Länder to act autonomously and respond quickly to problems. The legislative process, being complex and time-consuming, does not always keep pace with new environmental challenges. Overly rigid norms, as noted, "may confine, or box in, emergence," limiting flexibility and public participation (DeCaro et al., 2017, p. 7). To avoid this, it is necessary to clearly define the roles of all stakeholders. As emphasized: "environmental stakeholders… need some recognized authority to make decisions, carry out plans, and otherwise self-govern… Law and traditional centers of authority have a role to play in legitimizing and permitting more decision-making latitude for stakeholders" (Wheeler, 2000; Ostrom, 2010; Sarker, 2013; Cosens, 2013, as cited in DeCaro et al., 2017, p. 13). Law should not regulate every step, but rather provide legitimacy for participation.

Based on the above, the main characteristics of adaptive environmental policy can be identified as follows:

- Application of reflexive law – legislation is oriented not toward fixed rules but toward standards and principles that can be adapted depending on the circumstances;

- Legally binding authority – actors are granted the legal right to make decisions, act, and self-organize;
- Material support – local communities and organizations are provided with funding, data, and technical assistance to perform their functions;
- Public participation – decisions are made with the involvement of all stakeholders;
- Internal monitoring and conflict resolution – the existence of mechanisms for enforcing rules and resolving disputes at the community level is essential.

Thus, Germany's adaptive environmental policy is an example of how public interest is realized not through directives but through delegated responsibility, flexibility, institutional support, and citizen engagement.

Table 1 Comparison Criterion

Comparison Criterion	**Ukraine**	**Germany**
Legal approach to the public interest	Defined at the level of laws and the Constitution; the approach to sustainable natural resource use remains fragmented	Based on an ecocentric concept; a well-developed practice of the Constitutional Court shapes a holistic understanding of the public interest, including the rights of future generations
Type of legal model of natural resource use	Centralized system with elements of decentralization; characterized by normative inconsistencies and overlapping of competences	Decentralized, adaptive model with an ecosystem-based approach to natural resource management
Institutional interaction	Weak coordination between bodies due to overlapping functions and incomplete administrative reform	Institutionally coherent system focused on multi-level governance and environmental planning
Forest use	High level of illegal logging; limited control and conflicting division of competences	Management is based on the principle of sustainability; effective institutional structure and control
Water use	Insufficiently integrated management; low level of public involvement	Basin-based approach with citizen participation in decision-making enshrined in regulations
Subsoil use	Dominated by economic expediency; public interest is often displaced	Subsoil use is subject to strict control; the precautionary principle applies
Land use	Widespread conflicts between private,	Spatial planning integrates an ecosystem

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	social, and state interests; land is viewed as real estate rather than a natural resource	approach and ensures transparent public oversight

The table illustrates the differences in approaches to the public interest: in Ukraine, it is implemented through a fragmented regulatory framework and weak institutional coordination, whereas in Germany, it is realized through an ecosystem-based approach, established judicial practice, and multi-level governance. At the same time, both models face their own challenges, requiring continuous adaptation to environmental changes, market dynamics, and societal expectations.

4. Risks of Implementing Adaptive Policy in Ukraine

Adaptive governance involves a paradigm shift from an anthropocentric to an ecocentric approach. This means that nature is viewed not only as a resource for humans but as a value in itself. Accordingly, environmental law must be based not only on principles of harm prevention but also on the restoration of natural processes, consideration of ecosystem services, and the establishment of limits to permissible impact. Foreign investments will be attracted for the restoration of territories in Ukraine affected by military actions and for adaptation to European standards. This presents both opportunities and risks, which require prior analysis and appropriate response.

Tan, C., in the article Private investments, public goods: Regulating markets for sustainable development, notes that "the movement towards private investments and financial markets as key drivers of financing for sustainable development has two critical impacts on transnational governance: (a) the use of private markets… as quasi-regulatory tools…; and (b) the deployment of private regulatory regimes… to govern the social and environmental externalities…" (Tan, 2022, p. 243). Thus, investors may effectively become quasi-regulators, influencing political processes and priorities. There is a risk that the state may gradually become dependent on external capital and begin adjusting its legislation to meet investor needs, which could lead to the erosion of environmental sovereignty.

As the author emphasizes: "policy and operational interventions… focused on the use of financial and regulatory incentives to steer private capital into SDG sectors" (Tan, 2022, p. 248). This implies that states may use financial and regulatory incentives to direct private investment toward areas related to the Sustainable Development Goals. However, to make green development attractive to investors, a transparent and predictable environment must be created. Ukraine needs to transition toward adaptive policy by gradually strengthening environmental requirements: from basic standards to norms aligned with EU legislation. At the same time, a strong national regulatory system is needed—otherwise, investments may lead to a "dilution" of environmental safeguards.

Ukraine cannot wait for the perfect moment: adaptive policy can be implemented in stages. The first stage involves pilot projects with limited investment engagement and clearly defined basic standards. This will allow for testing adaptive regulatory mechanisms under low-risk conditions. In parallel, decentralization must be completed, transferring to communities the authority to develop local environmental strategies. Taking into account

regional specificities, zoning of activity types can be introduced, and even at this stage, expectations toward investors can be formulated.

The next stage involves the development of public-private partnerships with the gradual increase of requirements for transparency and ESG responsibility. Then follows the expansion of access to sustainable economy financial instruments: green bonds, state guarantees, co-financing. The final stage is the integration of Ukraine into European sustainable finance markets with full compliance with EU standards. This model will allow for a balance between economic benefit and the preservation of environmental sovereignty.

To prevent the dominance of short-term investment interests over environmental strategy, it is advisable to develop a legal model within which ESG criteria acquire legally binding status. Such an approach is feasible under the condition of combining several key elements: the normative establishment of minimum sustainability standards; the creation of an independent mechanism for monitoring the environmental impact of investments; ensuring transparent reporting in accordance with ESG principles; and systematic public involvement in the assessment of environmental risks. Aligning market objectives with long-term environmental goals within such a model allows for the preservation of elements of the state's environmental sovereignty without hindering the inflow of private capital. At the same time, it remains an open research question whether the proposed model can genuinely ensure economic development while preserving the environment. Further analysis is needed regarding both the legal boundaries of private capital's involvement in environmental governance and the mechanisms for protecting the public interest under conditions of transnational investment. Studying the experience of EU countries in integrating ESG principles into sectoral regulation may serve as a basis for more in-depth comparative research in this area.

In 1972, on the eve of the Stockholm Conference, participating countries received an invitation that emphasized: "the report encouraged many developing countries to participate in the Conference on the understanding that any environmentally protective measures resulting from it would not be used as the medium for inhibiting their economic development" (Birnie, Boyle, & Redgwell, 2021, p. 50). Principles 2 and 5 of the Stockholm Declaration call for the preservation of resources for future generations. It is evident that states cannot forgo economic development, but it is equally clear that long-term survival depends on the conservation of nature. Therefore, the only viable approach is strategic balancing of public and private interests through the implementation of adaptive policy and the decentralization of environmental governance.

Conclusions

This article analyzed mechanisms for ensuring the balance between public and private interests in the field of environmental resource use. Despite the presence of provisions in Ukrainian legislation that formally guarantee this balance, in practice there is a persistent imbalance of interests, caused by the fragmentation of environmental policy and the weak realization of public interest.

The key conclusion is that effective environmental legislation is impossible without rethinking the very essence of public interest. If this interest is reduced solely to

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economic expediency, it loses its ecological meaning. In contrast, a sustainable approach requires an ecocentric understanding of public interest, in which nature holds intrinsic value and policy is oriented toward long-term outcomes.

Germany's experience demonstrates that an adaptive model of environmental policy—based on multi-level coordination, community participation, and normative flexibility—can achieve a real balance. For Ukraine, this experience serves as a benchmark. It is necessary to develop a comprehensive strategy that includes: decentralized governance, the development of local eco-strategies, a gradual strengthening of standards, implementation of ESG approaches, as well as effective monitoring and public engagement.

The law must not remain merely a tool of control — it should serve as a space for innovation and responsible partnership between the state, society, and business. For Ukraine, it is not enough to simply import ready-made legal constructs; it is necessary to transform the legal culture, taking into account historical, political, and social realities. The implementation of an ecocentric understanding of the public interest is possible only through the gradual modernization of the legal system in the direction of strategic thinking — by strengthening the role of environmental principles in legal interpretation, creating law enforcement practices that recognize nature as a value in itself, and encouraging administrative and judicial approaches oriented toward intergenerational justice. At the same time, the realities of political expediency require gradualism and adaptability — in particular, through the launch of pilot mechanisms, public participation in the development of local environmental strategies, and the gradual introduction of ESG criteria into public governance. The institutionalization of such values is possible through the use of flexible legal instruments — primarily by enshrining general principles that grant courts and administrations the space to adapt to specific environmental situations without excessive formalism.

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