

## **PROPOSALS**

### **to the Law of Ukraine “On Environmental Impact Assessment”**

The Law of Ukraine “On Environmental Impact Assessment”, passed by the Verkhovna Rada of Ukraine on 4 October 2016, may not be signed in a view of the following:

The Law submitted for signing provides for the introduction of the environmental impact assessment in the decision-making process as regards carrying out economic activity likely to have a major effect on the environment, taking account of state, public and private interests.

Supporting the overall need for improvement of legislative control over assessment of the impact of an economic activity on the environment in compliance with Ukraine’s international commitments as well as for ensuring that public opinion is taken into account in the decision-making process, I cannot agree with the way to achieve this goal as proposed by the Law.

In accordance with the Law, the types of planned activities and facilities subject to environmental impact assessment (Article 3) shall include activities carried out in nearly all sectors of economy. However, the Law does not take into account some peculiarities of certain types of economic activity aimed at satisfying the needs of national security and defence, of the activity carried out in the Exclusion Zone and the Unconditional (Compulsory) Evacuation Zone of the territory subjected to radioactive contamination as a result of the Chernobyl accident as well as the need for immediate implementation of large-scale infrastructure projects, including those in the area of construction, being of major significance for reviving the economic capacity of the state and of some of its regions.

In accordance with the Law, the planned activities subject to the environmental impact assessment shall include new construction, reconstruction, technical re-equipment, major repair of construction facilities, extension, conversion, demolition (dismantling) of facilities as well as other intervention in the natural environment (Article 1). However, such types of activity as reconstruction, technical re-equipment, major repair of construction facilities, extension, and conversion may involve no change in design characteristics of facilities or in material conditions for carrying out relevant activities resulting in the increased effect of the impact of such activities on the environment. Therefore, the requirement for the environmental impact assessment established by the Law without an account taken of the factors mentioned will create additional barriers for doing business, resulting in unjustified financial and other losses incurred by economic operators.

The Law stipulates that, based on the results of the environmental impact assessment, a competent authority shall issue an environmental impact assessment decision establishing whether the planned activity is permissible and determining environmental conditions for its implementation, being a basis for issuing or refusing to issue a decision on implementation of the planned activity (Article 9). If a decision on implementation of the planned activity is issued depending on the availability of the environmental impact assessment decision, included on the list of authorization documents for economic activity as referred to in the Law (point 37,

paragraph 4, Article 17), the time limits will increase and authorisation procedures required to start the planned activity will become more complicated. It contradicts one of the main principles of the state policy related to the authorization system in the field of economic activity, which provides for reducing the level of state intervention in the process of economic activity (Article 3 of the Law of Ukraine “On the Authorisation System in the Field of Economic Activity”). In addition, such proposal may result in the increased number of corruption factors influencing the decision-making process in the field of economic activity as the Law does not set an exhaustive list of grounds for refusal to issue an environmental impact assessment decision as well as the criteria and the procedure for determining environmental conditions in such decision.

The Law provides for the right of the central executive body implementing the state policy related to the state supervision (control) in the field of environmental protection, sustainable use, recovery and protection of natural resources and its territorial bodies to take decisions on restriction of operation of enterprises in case of violation of the environmental impact assessment legislation (Article 16). Such regulatory approach to restriction of planned activities does not comply with general requirements to state supervision (control) in the field of economic activity as established by the Law of Ukraine “On Fundamental Principles the State Supervision (Control) in the Field of Economic Activity”, being a special law which regulates relations arising in connection with state supervision (control) in the field of economic activity. In accordance with these requirements, an economic operator’s activity may be suspended as a result of a measure, in the course of which a body of state supervision (control) identified a violation of legislative requirements, only by court decision (Articles 4, 7).

The Law provides for new forms and methods for involvement of the public in the process of assessment of impact produced by the planned activity on the environment. They shall promote timely, appropriate and efficient public information, identification, collection and taking account of public comments and proposals in the decision-making process as regards the planned activity. However, the mechanisms for reviewing, summarizing and taking account of public proposals in the process of the environmental impact assessment as referred to in the Law need improvement.

Certain provisions of the Law are not backed up with unambiguous and clear mechanisms for their implementation, which does not comply with the principle of legal certainty, being an integral part of the constitutional principle of the rule of law (paragraph 1, Article 8 of the Constitution of Ukraine). In particular, the Law introduces administrative liability for officials and sole traders for offences in the field of the environmental impact assessment (paragraph 4, Article 17), but it does not designate a body (official) authorized to handle cases involving such offences. In addition, the Law stipulates the need to obtain a positive opinion of an ecological expert assessment as a ground for issuing a decision as regards carrying out certain types of economic activity (points 8, 13, 31, paragraph 4, Article 17), but it does not set the mechanism for such assessment.

In consideration of the foregoing, I deny my support to the environmental

impact assessment procedure as proposed by the Law in view of its inappropriate regulation, creation of artificial barriers for exercising the constitutional right to business activity (Article 42 of the Constitution of Ukraine), and possible adverse consequences for economic development of our country.

Therefore, I propose the Law to be finalized to develop a balanced, efficient and appropriate environmental impact assessment procedure in the decision-making process as regards carrying out economic activity, taking account of state, public and private interests.

**President of Ukraine**

**PETRO POROSHENKO**