

PROPOSALS

to the Law of Ukraine “On Strategic Environmental Assessment”

The Law of Ukraine “On Strategic Environmental Assessment” adopted by the Verkhovna Rada of Ukraine on 04 October 2016 may not be signed in view of the following.

The Law submitted for signing proposes to introduce strategic environmental assessment as a compulsory component of drafting, adoption and enforcement of state planning documents (strategies, plans, schemes, urban planning documentation, national special-purpose programs, other programs and program documents and amendments thereto to be adopted by a public or a local self-governing authority) (Section VI, Article 1, point 2(4)). Thus, the Law introduces the requirement to conduct strategic environmental assessment while drafting almost all state planning documents, except those aimed at serving the needs related to defence or emergencies, as well as financial or budgetary documents (Article 2 paragraph 2).

Therewith, the Law also defines subjects to strategic environmental assessment, which include area-specific draft state planning documents of which the enforcement involves types of activities subject to environmental impact assessment according to the laws, as well as draft state planning documents subject to assessment in view of potential consequences for nature reserve fund and environmental network territories and areas (Article 4).

Differences in approaches to definition of the scope of and the subject to regulation of the Law complicate the state planning process. This, in turn, affects coherence of the system of project and program documents for the socio-economic development of Ukraine, particular sectors of economy and administrative territories.

The Law does not set out clear criteria for classifying state planning documents as such that do not require strategic environmental assessment to be adopted. This uncertainty may cause arbitrary application of the Law, selectivity of strategic environmental assessment measures in the course of state planning, i. e. documents, which are not financial and budgetary planning documents being directly related to the budget process, will be subject to strategic environmental assessment, while state planning documents, which significantly influence the environment and are only indirectly related to the needs of defence and civilian protection, will not be subject thereto.

Moreover, the Law does not envisage efficient mechanisms for taking into account comments and proposals of the public and executive bodies received in the course of public discussions (Article 13) and consultations with executive bodies (Article 14).

At the same time, according to the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context ratified by the Law of Ukraine of 1 July 2015 No. 562-VIII, Ukraine committed to create rational and efficient mechanisms to ensure high level of protection of the environment and public health that could guarantee efficient

public participation in strategic environmental assessment and taking account of the public opinion in documents aimed at ensuring further sustainable development.

What is more, most provisions of the Law are declarative, unclear and contradictory; they are not fully coherent with other regulations. This will compromise efficient implementation of the state strategic environmental assessment policy.

An approach to regulation of relations in the area of strategic environmental assessment of draft state planning documents proposed by the Law is inconsistent with the principle of legal certainty, which is a component of the constitutional rule of law principle (Article 8 paragraph 1 of the Constitution of Ukraine), requiring certainty, clarity and unambiguity of legal provisions.

In view of the aforesaid, I cannot uphold the decision to introduce strategic environmental assessment in the process of drafting, adoption and enforcement of state planning documents in the way envisaged by the Law and propose to revise the Law taking into account the comments presented above and the international commitments of Ukraine in the area of strategic environmental assessment.

President of Ukraine

PETRO POROSHENKO