The laws on EIA and SEA were adopted by the Ukrainian Parliament on 4 October 2016 but were vetoed by the President of Ukraine on 31 October 2016. The vetoes were imposed in violation of the timeframes established by the Constitution of Ukraine and were accompanied with unspecific and ungrounded commentaries formulated in very general terms, which we consider to be a deliberate maneuver to make the enactment of the above laws impossible.

The veto on the laws that are aimed to transpose the EU EIA and SEA Directives under the EU-Ukraine Association Agreement and bring Ukraine into compliance with a number of international obligations, including those under the UNECE Espoo and Aarhus Conventions and the Energy Community Treaty, closes the doors for the EU standards of environmental safety and for Ukraine's EU integration perspectives in the field of environmental protection. See. Comments below.

The Law of Ukraine on EIA

The main concern of the President is that the new EIA procedure will establish additional barriers for the business and therefore further economic development of Ukraine:" 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."
"

In general the comments formulated by the President demonstrate that the logic of the procedure and the substance of EIA have not been understood properly including in the context of the relevant EU procedures.

The majority of the present comments from the President represent a non-systematic compilation of some of those commentaries which have been discussed and duly taken into account either before the first or the second reading of the draft Law in the Parliament.

Proposals(comments) of President (informal translation)	*Comments*

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.*	The law on EIA fully considers these issues, to the extent they are related to the EIA, according with international obligations and national legislation. Moreover, pursuant to Article 58 of the Law on Environmental Protection the national security and defense objects are not excluded from the requirements related to environmental safety and environmental impact. The issue of Chornobyl zone is clearly regulated by Article 5(3) of the Law on EIA. Planned activity in such zone shall be considered by the Ministry of Environment (central environmental authority). The exclusion of the large-scale infrastructure projects from EIA clearly contradicts to the relevant international obligations of Ukraine, including those under the Energy Community and the Espoo Convention.
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 EIA law applies particularly to new (planned) activities. When comes to changes in the activities, the EIA law will only apply to activities and facilities that are defined by the Cabinet of Ministers of Ukraine. The EIA model enshrined in the Law acknowledges that some of the types of activities or changes thereto are not likely to cause significant impact on the environment. To this end and pursuant to the EU EIA Directive the Law on EIA provides for the list of types of activities and thresholds thereto subject to EIA, as well as point 22 of Article 3(2) of the Law and point 14 of Article 3(3) of the Law provide for the competence of the Cabinet of Ministers of Ukraine as regards the approval of the criteria for those changes to the types of activities listed in the Law which are not likely to cause a significant impact on the environment. Moreover such terms are included in accordance with current

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.	Ukrainian legislation to avoid misinterpretations during the development consent procedures. According to the Law of Ukraine "On Regulation of Urban Development", the term “construction” covers new construction, renovation, restoration, capital renovation of construction objects. (Part three of Article 10). Also according to the Law of Ukraine "On Architectural Activity. If to follow the proposal of the President and exclude any changes to the types of activities from EIA, – this will be contrary to the requirements of the EU EIA Directive as well as the Espoo Convention.
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	Such approach is fully corresponds to the approach of Articles 2 and 8a of the EIA Directive (amended in 2014). Moreover, a decision on EIA does not increase the number of permits because the EIA law repeals the Law "On Environmental Expertise" together with such a permit document as a conclusion of environmental expertise. The timeframes for environmental impact assessment established by the EIA law do not exceed the timeframes for the cancelled state environmental expertise and state expertise of urban planning documentation, and thus will neither delay nor complicate licensing procedures for starting the planned activity. In order to reduce the corruption factor, the procedure of obtaining a decision on EIA is designed to be clear, transparent and regulated in every detail. Thus, the EIA law introduces open, publicly accessible Unified register on EIA, which will contain all the records on EIA starting from notification on the planned activity subject to EIA and up to the information about the decision on implementation of the planned activity.

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).	*Comments of President are mainly related to the issue that Article 16 of the Law provides for the competence of the State Ecological Inspection to limit the activities of enterprises in the case of infringement of the legislation on environmental impact assessment.* It is line with Article 10a of the EIA Directive. Moreover, Article 16(5) of the Law on EIA stipulates that: “The decision to put a temporary ban (suspend) or terminate the activities of enterprises in violation of the legislation on environmental impact assessment shall be made exclusively by the court”. Therefore the Law on EIA clearly distinguishes between the powers to limit (Article 16 (4) of the Law) and the powers to suspend the activities, the later being vested with the court. The decision to limit the activities under Part. 1, Art. 16 means the establishment for a certain period (until fulfillment of environmental conditions as stipulated in the decision of the environmental impact assessment) of reduced levels of emissions and discharges of pollutants and waste in general or in specific departments (districts), and units of equipment. This decision may well be made in the form of administrative documents of state supervision (control) authority and do not necessarily entail the suspension of production (manufacturing) or sale of goods,

	works, services by economic entities. Thus, the EIA law is fully in line with the Law of Ukraine "On Principles of State Supervision (Control) of Economic Activity."
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 review, summarizing and consideration of proposals from the public in the course of environmental impact assessment as prescribed by the law are imperfect.	The Law on EIA does not provide for any additional forms of public participation in addition to those already envisioned by the legislation of Ukraine. The provisions of the Law on EIA on taking due account of the outcomes of public participation are in completely inline with the relevant provisions of the Aarhus and Espoo Conventions as well as the EIA Directive.
The law also binds the issuance of a decision to carry out certain types of economic activity with the need to obtain a positive environmental expert assessment (paragraphs 8, 13, 31, part four of Article 17), but the mechanism of this assessment is not specified.	Environmental expert assessment is not part of the procedure of EIA and it is not defined by it. In the EIA law these rules are necessary because of the abolition of the Law "On Environmental Expertise". The procedure of environmental expert assessment is stipulated by the valid legislation and is applied in practice.

The Law of Ukraine on SEA

The comments of the President are not specific, which proves that the SEA procedure is not fully understood. In fact they do not contain any recommendations, only general assumptions as regards the specific issues covered by the Law.	
Proposals(comments) of President (informal translation)	*Comments*
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	*This is just explanation of the law*

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.	Article 4 of the Law on SEA is more than clear as regards the objects of SEA. It should be read in conjunction with the definitions of Article 1 of the Law on SEA and not as alternative formulations thereto. The relevant provisions of the SEA Protocol, in particular Article 4(2), as well as the SEA Directive (Article 3 (2)) are completely misunderstood.
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	The definition of the scope of the Law is completely in line with the relevant provisions of the SEA Directive as well as SEA Protocol. Article 2(2) of the Law on SEA is sharp and clear in this regard: "This Law shall not cover draft public planning documents *the sole purpose of which is to serve national defence or civil emergencies, as well as financial or budget public planning documents."*

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.	The role of consultations with public and relevant authorities is fully misunderstood. The relevant provisions of the Law on SEA (e.g., Articles 13(8) and 14(5)) are completely inline with the established international standards and practice. The reference to the SEA Protocol is not relevant as the Law is fully in line with the Protocol.
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	Since there is not a single reference or example provided. Exactly the opposite can be also stated. Provisions of the law are clear, as they prescribe specific procedures e, list the criteria rather than defining abstract rights. Moreover, provisions of the law cannot be inconsistent with other laws, because in Ukraine there is no institute of strategic environmental assessment, and therefore there are no legislative provisions, which provisions of the SEA law could contradict.

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.	However, Ukraine is a Party to the SEA Protocol and has to establish mechanisms to implement its provision.