УВЕА
УКРАЇНСЬКА
ВІТРОЕНЕРГЕТИЧНА
АСОЦІАЦІЯ

SPACES MAIDAN PLAZA
площа Майдан Незалежності, 2
Київ, 01012, Україна

Тел.: +38 (044) 223 29 96
Е-пошта: uwea@i.ua
www.uwea.com.ua

To:
Mr. Volodymyr Zelenskyy
President of Ukraine

Copy:

Mr. Oleksii Honcharuk
Prime Minister of Ukraine

Mr. Dmytro Razumkov
Speaker of Verkhovna Rada of Ukraine

Mr. Andriy Gerus
Head of the Parliamentary Committee on Energy,
Housing and Utilities Services

Ms. Oksana Kryvenko
Chairman of the National Commission for
State Regulation of Energy and Public Utilities

Mr. Olexandr Danilyuk
Secretary of the National Security Council

Mr. David Arahamiya
Secretary of the National Investment Council

#38-09/2019
23.09.2019

Dear Mr. President!

Dear Sirs!

The Public Union "Ukrainian Wind Energy Association" (UWEA), which unites all wind energy producers of Ukraine, is extremely concerned about information that some members of the Ukrainian Parliament have the initiative to revise the legal guarantees for investment partners of Ukraine, namely, a retrospective review of feed-in tariffs for electricity produced from renewable energy sources.

Such information, even at the level of ideas and discussions, adversely affects the investment activities in the energy environment and the investment climate in Ukraine as a whole. It presents the country and its leaders as unreliable partners, who can change the rules of the "game" after investors made a decision to invest in the development of the energy sector of the Ukrainian economy and made commitments both to Ukraine and international credit, financial and other institutions under the conditions they previously were aware of and understood.

According to Art. 9^1 of the Law of Ukraine "On Alternative Energy Sources", **the state guarantees that the procedure for stimulating electricity production from alternative**

energy sources will be applied to business entities producing electricity from alternative energy sources for **commissioned electricity objects. on the date of commissioning of electricity facilities**. All renewable producers rely on this guarantee of the state.

If the information on the retrospective revision of feed-in tariffs for green energy has a real basis and will continue in legislative initiatives and changes to the current legislation of Ukraine, such inconsistent policy will have a potentially high level of negative consequences for the Ukrainian economy. In particular, those negative consequences are such as:

- a risk of termination of current green energy investment projects;
- potentially excessive amount of compensation that could be imposed on Ukraine on the investors' benefit as a result of negative development of "scenario" of feed-in tariffs regulation for the projects that have been started implementation;
- as well as the negative image of Ukraine as for existing and potential investors who are currently considering the possibility of investing in the economy of Ukraine.

These consequences are traced in the examples of the European Union countries, where similar actions of political leaders were accompanied by large-scale arbitration compensation to investors from the state and suspension of activities in the field of development of renewable energy sources.

In addition, Ukraine is a party to a number of international treaties and agreements ratified by the Ukrainian Parliament, which are part of the national legislation under the Constitution of Ukraine. Thus under the Energy Charter Treaty Ukraine has committed itself to take steps to create a stable and open legal framework that provides conditions for the development of energy resources, and to provide at the state level the creation of a stable and open legal framework for foreign investment in accordance with existing international rules and regulations on investment and trade.

Ukraine is also a party to agreements on the promotion and mutual protection of investments with foreign countries, the terms of which include Ukraine's obligation to take appropriate measures for the further improvement of the investment climate in its territory for the benefit of investors of the other counterparty and their investments.

As of the current date, the legislation of Ukraine on the introduction of the new model of the electricity market, the by-laws, as well as the power purchase agreements under the feed-in tariff guarantee purchase of the "green" electricity under feed-in tariff until 2030.

In addition, the position of the leaders of the country, expressed during public events, including those, which were held on international platforms, certifies that Ukraine is taking all possible measures to facilitate investment in the country's economy.

However, discussing the idea of retrospective revision of "green" energy tariffs, and especially taking any measures to implement it, is a violation of both the above-mentioned norms of international agreements and national legislation of Ukraine and it nullifies all the statements made by the leaders of the country about welcoming investments.

Such inconsistent policy is a negative signal that the regulation of the country's economy is unstable and may unexpectedly change in the direction of deteriorating business conditions in the country as for investors who have already started operations in Ukraine, and for prospective owners of investments.

In addition, the position of international institutions, such as the European Bank for Reconstruction and Development and the Energy Community, is unambiguous: the main condition for investing in the Ukrainian economy is the country's refusal of the possibility of retrospective tariff reductions.

The problem of retroactive changes as one of regulatory risks faced by investors is emphasized by the European Bank for Reconstruction and Development and the Energy Community Secretariat in Policy Guidelines on Competitive Selection and Support for Renewable Energy[1]. According to this document implementation of the auction mechanism aims to avoid the problem of retroactive changes, including the retroactive reduce of feed-in tariffs.

It should be additionally noted that such measures are in breach of the principles of European legislation, which Ukraine has also committed to implement. EU lawmakers ask EU Member States to avoid retrospective changes in the economic environment of investing, and note the importance of preventing retrospective changes in renewable energy support mechanisms.

According to Directive (EU) 2018/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 on the promotion of the use of energy from renewable sources, **policies supporting renewable energy should be predictable and stable and should avoid frequent or retroactive changes.** Taking into account that Ukraine intends to integrate its electricity market into the EU electricity market, it is important to take these provisions of directive into account.

In addition, there are other more attractive measures for competitive business conditions and which do not cause such large-scale economic and reputational losses for the country and are aimed to improve the financial results of renewable energy projects implementation in Ukraine.

Thus, in order to ensure competitive conditions for RES electricity production, an auction mechanism for the allocation of support quotas has been introduced in Ukraine.

Therefore, the only possible way to take sound and effective steps to build energy security in Ukraine is to hold an open and comprehensive discussion of issues related to the problematic situations in the country's economy and of measures affecting investor activity in the green energy sector.

Given the high level of business community concern and the importance of the issue raised in this letter, we offer any possible measures, information and expert assistance, which you may consider necessary for the identified problem resolution in the framework of the Public Union "Ukrainian Wind Energy Association" activity. Currently, UWEA unites 75 leading companies engaged in all stages of implementation of wind energy projects – from designing and wind turbine transportation to wind power plant commissioning and providing legal support to domestic and foreign investors. **Based on a survey conducted by UWEA in September 2019, wind energy projects with a capacity of 6,395.65 MW have been registered on the website of the Ministry of Ecology and Natural Resources of Ukraine, with 3,007.5 MW worth deals already having positive findings of the Environmental Impact Assessment and anticipating issuance of construction permits. Total investments in these projects could be around EUR 7.6 bn. According to NERC projections, 1,136 MW wind energy facilities will be installed in Ukraine by the end of this year.**

Sincerely yours,

Andriy Konechenkov,
Chairman of the Board,
Vice-president WWEA

[1] https://www.energy-community.org/dam/jcr:4ab03f8c-de3d-4783-931d-4766f643fe7b/EBRD_EnCS_PC_RE_Auction_032018%20.PDF