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ECOLOGICAL INSURANCE: THE UKRAINIAN ASPECT

For the last decade, public and business attention is focused more to problems connected with environmental problems. It is explained by growing human destructive impact on the environment.

The rapid growth of the mankind and increasing of total industrial production associated with this, great number of vehicles, high population density leads to large natural ecosystems areas destruction. Permanent increase in environment losses, and therefore deterioration of the human environment, necessitates the introduction of effective financial mechanisms that would allow fast and fully compensate the damage caused by environmental incidents for individuals and legal persons and restore to the regulatory indicators environment needed for the people healthy existence.

This mechanism, in many countries, is the environmental insurance it should be the leading economic mechanism of ecological transformations in Ukraine compensation.

The importance of environmental insurance for Ukraine is especially increased today on the stage of economic reforms based on enterprises privatization and restructuring, which is „critical” for environmental safety.

It should be noted that in the text at least six Ukrainian laws, namely: „On Waste”¹, „On Nature Reserve Fund”², „On Environmental Protection”³, „On Ecological Audit”⁴, „On Production Sharing Agreements”⁵, „On Objects of

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¹ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=187%2F98-%E2%F0>.

² <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1456-12>.

³ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1264-12>.

⁴ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1862-15>.

High Risk”⁶ the term „ecological insurance” is found. Despite that, today in Ukraine there is no regulatory definition of this concept, and there is no consensus among scientists on national interpretation of the concept essence.

A bill „On ecological insurance” N° 1046 is carried out by the Verkhovna Rada of Ukraine (Ukrainian parliament) on May 21, 2002. The definition of „ecological insurance” as „liability insurance objects – potential perpetrators of emergency, accidental pollution insurance and their own losses arising from such pollution sources”⁷ is proposed in this bill. It was expected to introduce environmental insurance as a form of compulsory liability insurance for enterprises which activities have high range of danger in cases of causing them harm to others because of accidental pollution of the environment. However, this bill was not adopted.

Environmental insurance definition is proposed by S.V. Makar shown much of identities with definition in abovementioned bill. Author believes that environmental insurance means „liability insurance objects – potential perpetrators of emergency, accidental pollution insurance and their own losses arising from such pollution sources”⁸, and with definition proposed by G.A. Motkin who determines the environmental insurance as „insurance liability of enterprises – the source of increased danger to the environment for the injury to citizens and legal persons as a result of accidental contamination of the environment”⁹.

O.M. Vilenchuk has other vision of environmental insurance. He defines it as „the process of financial responsibility insurance, which involves shifting responsibility for unpredictable environmental damage on insurance companies”¹⁰.

Understanding of environmental insurance by R.T. Davydova is quite similar to abovementioned opinion. It defines this kind of insurance as „relations for the protection of property liability insurer for damages caused to third parties in various types of insurance, and responsibility for risks associated with natural resource and environmental law”¹¹.

⁵ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1039-14>.

⁶ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2245-14>.

⁷ http://gska2.rada.gov.ua:7777/pls/zweb_n/webproc4_2?id=&pf3516=1046&skl=5.

⁸ С.В. М а к а р. *Основы экономики природопользования* (С.В. Макар. – М.: Институт международного права и экономики им. А.С. Грибоедова 1998. – С. 59).

⁹ Г.А. М о т к и н. *Основы экологического страхования* / Г.А. Моткин. – М.: Наука 1996. – С. 20.

¹⁰ О.М. В і л е н ч у к. *Концептуальні засади розвитку екологічного страхування в лісовому господарстві* / О.М. Віленчук // *Фінанси України* 2007 N° 5. – С. 108.

¹¹ Р.Т. Д а в ы д о в а. *Экологическое страхование – часть экономического механизма природопользования* / Р.Т. Давыдова // *Страховое дело* 2002 N° 3. – С. 49.

As for us, the definition of the last two researchers should be used as the basis for the introduction of environmental insurance in Ukraine. Losses caused by ecological incidents damage touch not only human health and property of individual and legal entities, but the environment and ecosystems, which legally can not be considered as a third party. In this cases state must protect citizens from habitat degradation.

Nowadays there are two types of insurance related to environmental risks:

first – environmental risk insurance, which covers the third persons damages because of sudden and accidental pollution of the environment – environmental insurance (a form of insurance designed to cover losses and liabilities arising from damage to property caused by pollution)¹²;

second – ecosystems insurance from natural disasters and ecological catastrophes, according to the rules provided for property insurance, but taking into account the specifics of these objects – ecological insurance (a form of insurance designed to preserve ecosystem damages¹³);

Taking it to our consideration, we can note that modern understanding of environmental insurance objectives consist in environmental risk management and protection of their manifestations, namely from:

– material damage to the property of individuals and entities, and damage associated with the loss of income, profits, business interruption – in Ukraine are subject to the of property insurance and insurance liability contracts;

– human life, health and disability rights damage – in Ukraine is the subject of personal insurance contracts;

– natural elements environmental damage (soil, surface and underground waters, natural habitats of plants and animals directly by living organisms) – is not subject to insurance in Ukraine now, and compensated with public funds.

Introducing the environmental insurance in Ukraine attention is paid to such feature as a very large scale damages to be compensated. To cover the large losses it is expedient to create special insurance pools, which have sufficient financial reserves. While in Ukraine today ecological insurance is

¹² <http://www.compuquotes.com/insurance-definition-environmental-impairment-liability-coverage.html>.

¹³ А.Л. Б а ж а й к и н (Анатолий Леонидович). *Экологическое страхование: Теория, практика правового регулирования*: Автореферат диссертации на соискание ученой степени кандидата юридических наук. Специальность 12.00.06 – Природоресурсное право; Аграрное право; Экологическое право /А.Л. Бажайкин; Науч. рук. А.К. Голиченков. – М. 2002. – С. 14.

still in its infancy, but in 2009 six insurers became the founders of Environmental insurance pool: „UASK ASKA”, „UNIKA”, „Prosto-Strakhuvannya” (Just-Insurance), „Brokbiznes”, „Illichivs’ke”, „Ukrainian Fire Insurance Company”. The representatives of the Academy of Ecological Sciences is also included to this pool. It is expected that the pool main task will be co-insurance and reinsurance in order to ensure financial soundness of insurers-members, assistance to pool members in organizing of re-admission to the environmental risks from foreign insurance pools and other reinsurers.

Ukrainian state should play a role of great importance in the introduction of environmental insurance by forming ecological reserve funds and by direct participation in the insurance of particularly dangerous enterprises. State must develop and implement targeted environmental programs, aimed at preventing environmental disasters, creating environmental statistics and supporting of this sphere scientifically.

Taking into account abovementioned we come to the conclusion that environmental insurance in Ukraine should be implemented as the sum of environmental and ecological insurance and mandatory participation of the state as guarantor of environmental quality, fully meets its obligation, proclaimed in the art. 50 of the Ukraine's Constitution, to ensure common right to a safe and healthy environment and for reimbursement of the violation of this right¹⁴.

Analysis of the above mentioned approaches to identify substantive concept of „ecological insurance” allows us to formulate a definition of this concept: ecological insurance – a set of economic relations that arises between the insurer and the insured person (the owner, operator sources of high danger, state) on pollution and on the latter property protection interests in the case of citizens injury, property of individuals and legal persons and the environment damages in the cases of sudden and accidental pollution. It requires the payment of policyholder premiums that are relevant to the degree of risk sources of high danger and insurer liabilities to an insurance payment if defined insurance case.

Proceeding from the proposed definition of „ecological insurance” we will specify its characteristic features:

- at first, guaranteeing of individuals rights having affected by the accident of potentially dangerous sites, obtaining compensation for damage caused to their health and property;

¹⁴ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

- in the second place, protecting of proprietary interests of the increased danger source in connection with presenting their claims by persons affected by accident (state compensation, if losses suffered ecosystem environment);
- thirdly, having ability to prevent bankruptcy of large enterprises in the case of the accident;
- at the fourth time, promoting the prevention of accidents, increasing safety of potentially hazardous objects by introducing a differential amount of insurance payments, audits, preventive measures, developing of environmentally friendly enterprises and technologies;
- at the fifth time, use of ensuring and restoring of environmental regulatory quality as an effective instrument.

Certainly, with the exception of purely declarative measures, such as adoption of a law, implementation of effective system of environmental insurance in Ukraine it is very important to establish an effective system of the environmental monitoring; continuous introducing of environmental auditing of enterprises; implementing of scientific and methodological bases for regulation and planning activities and means of endogenous natural security; creating of automated risk assessment and emergency forecasting their possible consequences; developing of normative and methodical system of accident prevention and overcoming their consequences; working out of scientific, institutional and economic foundations of analysis and environmental risk management, which involves the development of the concept of environmental risk, environmental risk classification, identifying and adopting country's environmental and social security criteria, elaborating of methodological apparatus of risk analysis, implementation of scientific, technical and investment projects aimed at mitigating environmental risks, etc.

So the abovementioned information gives us possibility to make following conclusions.

1. The development of insurance business in Ukraine and the situation with the quality of the environment certainly requires the introduction of a new type of insurance for Ukraine – Environmental.

2. Environmental insurance should include, among other things, compensation for ecosystems environmental damage at levels that ensure their restoration to the intact condition, which should be reflected in the legislation of Ukraine.

3. Usually, because of a large amount of damages evoking by environmental incidents it is reasonable to establish environmental insurance pools, to involve government as an insurer of last resort, for massive damages caused by environmental catastrophes compensation.

4. The environmental insurance introduction will provide compensation to insured environmental damage and reduce the burden on state and local budgets, will enable insurance companies to enlist resources for damage protection activity and compensation damages caused by environmental incidents.

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S u m m a r y

The different points of view are brought in the article on determination of concept „ecological insurance”. Authorial interpretation of this concept is offered. Indicated features for ecological insurance introduction in Ukraine.

Key words: ecological risks, ecological insurance, insurance of responsibility, personal insurance, property insurance.

EKOLOGICZNE UBEZPIECZENIE: ASPEKT UKRAIŃSKI

S t r e s z c z e n i e

W artykule zaprezentowano, jak badacze problemu rozumieją pojęcie „ubezpieczenie ekologiczne”. Zaproponowano autorski punkt widzenia tego określenia. Wskazano właściwości wprowadzenia ubezpieczenia ekologicznego na Ukrainie.

Słowa kluczowe: ekologiczne ryzyka, ekologiczne ubezpieczenie, ubezpieczenie odpowiedzialności, osobowe ubezpieczenie, majątkowe ubezpieczenie.