

**To:**

Compliance Committee  
of the UN ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

through the Secretary to the Aarhus Convention  
United Nations Economic Commission for Europe  
Environment and Human Settlement Division  
Room 332, Palais des Nations  
CH-1211 Geneva 10, Switzerland

**Cc:**

Ministry of Ecology and Natural Resources of Ukraine  
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**From:**

Yelyzaveta Aleksyeyeva,  
Environment-People-Law

**With regard to communication ACCC/C/2014/118 concerning compliance  
by Ukraine with the provisions of the Convention in connection to production sharing  
agreements**

In light of the recent events in Ukraine, EPL would like to bring to the Committee's attention the following information relating to the communication.

Hiding behind the need to regulate amber production the Government of Ukraine by its legislative initiative proposes to release investors from their obligation to undertake Environment Impact Assessment (hereinafter – EIA) and all associated public participation procedures in the course of negotiation of Product Sharing Agreements (hereinafter – PSA) for major oil and gas extraction (including off-shore). The draft Law on Amendments to Certain Legislative Acts of Ukraine on Regulation of Amber Extraction No. 2240 of 08.10.2019, proposes respective amendments to the Law of Ukraine on PSAs.

**1. Certain provisions of the draft law do not meet and go beyond the purpose stated in the explanatory note to the draft law**

According to the explanatory note, the purpose of the draft law No. 2240 is to regulate amber extraction, to stop illegal extraction, as well as to create favorable conditions and to attract investment and new technologies into this industry. At the same time, apart from amendments to various laws regarding amber, the draft law proposes amendments to the Law of Ukraine “On Production Sharing Agreements” (PSAs), which is unlikely to apply to amber extraction activities.

According to the Law on PSAs, PSAs could be negotiated in such cases as: unprofitable development, lack of resources for the development of new large deposits, the need to attract

special high-cost or new technologies, development of fields with extractive and depleted reserves, deposits in offshore waters. To date, all product-sharing agreements negotiated by Ukraine – three old ones (including scandalous shale gas deals in Yuzivska and Oleska fields 2013-2014) and ten new ones (2018-2019) relate solely to hydrocarbons.

The explanatory note to the draft law No. 2240 in no way explains or substantiates the need for any amendments to the Law on PSAs and its relation to amber extraction. It seems that the amendments to the Law on PSAs pursue a different purpose and are in no way related to the regulation of amber extraction.

## 2. PSAs and EIA

The Aarhus Convention, the EIA Directive as well as Espoo Convention all require EIA to be carried out **prior to a development consent is issued by a state**. Under the PSA regime all conditions of the planned activity are negotiated and set in the PSA, including the terms and conditions of the subsequent extraction permits. Thus, in this case, entrance into a PSA constitutes a development consent.

In order to ensure that the results of EIA procedure are considered in the decision of the parties to conclude a PSA, the new Law on EIA (2017) amended accordingly the Law on PSAs. Namely, the requirement to carry out an EIA before finalizing and concluding a PSA was inserted in Article 11. Apart from allowing for environmental considerations to be taken into account that also meant opening public access to PSA-related information and allowing public participation in the respective decision-making process.

As of December 2019, there has only been three PSAs signed in Ukraine's history, two of which (Yuzivska (Shell) of 2013 and Oleska (Chevron) of 2014 shale gas PSAs) were dissolved by the investors before any works started. In late 2018, the Government announced 10 new PSA tenders. In mid 2019 the winners on 9 tenders were announced, new PSAs' development and negotiation processes have started, five out of nine investors initiated respective EIA procedures.

The proposed draft law, however, proposes to postpone EIA until after a PSA is concluded and a respective extraction permit is issued. Section 5 subsection 3 of the proposed draft law No. 2240 amends Article 11 of the Law on PSAs and excludes a requirement to undertake an EIA of draft PSAs in the course of its negotiation and includes a new provision on carrying out an EIA **during the course of PSA implementation** (table with amendments attached). In our opinion, the proposed amendments diminish the purpose of EIA and would provide little of added value in terms of both ensuring environmental protection and participatory decision-making process. Furthermore, two new PSAs relate to offshore extraction, and the laying EIAs off until after the PSA is concluded for the two off-shore PSAs would also result in violation of the Espoo Convention, because a final decision would be taken prior to any assessment and consideration of transboundary environmental impacts.

We have already addressed both the Government and the Parliamentary Committee on Environmental Policy and Management raising these concerns, yet on November 12, 2019 the draft law was adopted in the first hearing. On December 10<sup>th</sup>, 2019 the draft law was approved

by the Parliamentary Committee on Environmental Policy and Management for the second hearing and sent to the Parliament of Ukraine for the final adoption.

17 December, 2019

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned to the left of the typed name.

Best regards,  
Yelyzaveta Aleksyeyeva