



# European Commission

EuropeAid Co-Operations Office

## Framework contract Beneficiaries LOT 6 - Environment

### Ukraine

#### SUPPORT TO UKRAINE TO IMPLEMENT THE ESPOO AND AARHUS CONVENTIONS

Request for services N° 2008/164491

### Draft Final Report

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## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION</b>	<b>3</b>
<b>II.</b>	<b>ORGANIZATION OF THE PROJECT</b>	<b>3</b>
2.1	Approach and methodology	3
2.2	Contacts with beneficiary	3
2.3	Experts	4
2.4	Office	4
2.5	Meetings	4
<b>III.</b>	<b>WORK-PLAN: DEVELOPMENT AND IMPLEMENTATION</b>	<b>4</b>
3.1	Introduction	4
3.2	Development of the Work-plan	4
3.3	Implementation of the Work-plan	5
<b>IV.</b>	<b>RESULTS ACHIEVED</b>	<b>5</b>
<b>V.</b>	<b>CONCLUSIONS AND RECOMMENDATIONS</b>	<b>9</b>
<b>ANNEXES A - Tasks</b>		<b>11</b>
Annex to Task I - Aarhus Review		12
Annex to Task I - Espoo Review		23
Annex to Task I - Final decision under Espoo		34
Annex to Task II - Aarhus Strategy		36
Annex to Task II - Espoo Strategy		42
Annex to Task III - Bystroe Canal		49
Annex to Task III - State of play		56
Annex to Task IV - Aarhus Convention - JJ (April 2010)		61
Annex to Task IV - Aarhus Convention - JJ (April 2010)-ukr		78
Annex to Task IV - Aarhus Convention - Overview July 2010		95
Annex to Task IV - Aarhus Implementation in Ukraine - DS (Apr 2010)		98
Annex to Task IV - Espoo overview - JJ (March 2010)		103
Annex to Task IV - Espoo procedure step by step - JJ (March 2010)		117
Annex to Task IV - Espoo Strategy-Ukraine_March10		135
Annex to Task IV - Espoo Strategy-Ukraine Niras		139
Annex to Task IV - Focal Points		143
Annex to Task IV - General obligations - JJ (March 2010)		148
Annex to Task IV - Presentation - (JJ) 9 March 2010		159
Annex to Task IV - Presentation of the project - JJ (April 2010)		161
Annex to Task IV - Presentation of the project - JJ (Dec 2009)		164
Annex to Task IV - Presentation_Access_to_justice_TT		170
Annex to task V - Communication strategy 2010		192
Annex to Task V - Guidance on National Report		196
Annex to Task VI - Draft Decree		199
Annex to Task VII - List of elements		209
Annex to Task VIII - Ukraine as affected country		212
<b>ANNEXES B – Translations of official documents</b>		<b>216</b>
Cases1_2		216
Cases1_2 (translation)		220
IC letter of 7 April 2009-ukr_SV		225
Letter by Mr. Belka to Mr. Nemarya-ukr2008_SV		226
Letter by Mr.Kubis to Mr.Nemyrya Oct 09-ukr_SV		229
Letter to UKRReDesicion_SV		231

## **I. INTRODUCTION**

The Draft Final Report has been prepared by the Team Leader following part 5 of the TOR and following the Inception Report and Interim Reports of January and April.

The Report, as requested by TOR, provides a summary of the activities implemented, the problems encountered and solutions adopted, as well as a description of the results achieved in relation to implementation of the Work-plan as amended following the Interim Report of January. A number of documents evidencing implementation of the Project, including outputs produced by the project, are attached to the Report.

## **II. ORGANIZATION OF THE PROJECT**

### **2.1 Approach and methodology**

As already indicated in the Inception Report the general approach to implementing the project assumed that it should not only assist Ukraine in meeting its respective international obligations but also to the extent feasible accommodate ways of doing it preferred by Ukraine.

Therefore the development and implementation of the project Work-plan have been heavily influenced by deadlines and conditions imposed by relevant decisions of Espoo and Aarhus Conventions bodies and by requests from beneficiary (see Inception and Interim Reports).

Methodology applied for the project has followed the approved method of work. Throughout the project there have been regular 3 days meeting of all the experts and ad-hoc meeting of experts working on particular issues (see below). The team has been in regular contact with beneficiary (see below)

### **2.2 Contacts with beneficiary**

As already indicated in the Inception Report and Interim Reports the contacts with beneficiary have been significantly influenced by the presidential election and following change of the government, as well as the fact that during the implementation of the project there have been three persons performing the function of the Environment Minister, which resulted in some internal reorganizations.

Furthermore, the contacts and decision-making competence have been differentiated depending on the issue at stake. The general and administrative matters have been handled usually by the Head of International Department (originally Mr. Taras Trotsky, later on replaced by Mr. Oleg Schevchenko ) and the person who was nominated to co-ordinate contacts with the project on behalf of beneficiary (originally Ms Maryna Dyachenko, later on replaced by Mr. Roman Shakhmatenko).

The substantive matters have been delegated to be handled usually by the Espoo and Aarhus Focal Points. The contacts were additionally complicated by some changes of the persons performing these functions and the fact that for some time Ukraine had two persons performing the role of the Aarhus Focal Point.

Much of the operational contacts have been handled by the project experts (mainly Ms. Oksana Tarasova and Mr. Taras Tretyak) by way of oral communications with the Ministry officials.

## **2.3 Experts**

Not all the Ukrainian experts originally proposed by the Consultant have been approved by the beneficiary. On the other hand the beneficiary offered services of other experts.

It was agreed that the pool of experts would consist of 4 experts. Bearing in mind that TOR envisaged originally up to 3 experts a respective change in TOR was proposed by the Consultant and approved during the project implementation.

The pool of experts finally approved included:

- Mr. Dmitro Skrylnikov
- Mr. Taras Tretyak
- Mr. Serhiy Vykhryst
- Ms. Oksana Tarasova.

## **2.4 Office**

The Ministry has not designated any permanent project office. A room has been made available on ad hoc basis. Sometimes it was the office of the Head of International Department and sometimes any other room in the Ministry which happen to be available in given day. The Team Leader has not been provided with a permanent badge allowing entrance to the Ministry.

## **2.5 Meetings**

During the project implementation period the Project Team has had a number of working meetings internally and with the representatives of beneficiary, civil society and other stakeholders (for details see the Inception and Interim Reports).

# **III. DEVELOPMENT AND IMPLEMENTATION OF THE WORK-PLAN**

## **3.1 Introduction**

As already mentioned above the development and implementation of the project Work-plan has been heavily influenced by deadlines and conditions imposed by relevant decisions of Espoo and Aarhus Conventions bodies and by internal procedures and circumstances in Ukraine. In the light of the above factors there have been made a number of requests from beneficiary, which to the extent possible have been accommodated within the project. Some of the above were possible to be implemented under the original TOR but some needed changes in TOR which indeed were proposed by the Consultant and approved.

The above factors have had a great impact on the priorities applied and results achieved.

## **3.2 Development of the Work-plan**

As already indicated in the Inception Report, the project was initiated in situation where already some activities had been undertaken to meet the reporting deadlines imposed by Espoo/Aarhus bodies but also to introduce necessary legal reforms required to be undertaken.

During the implementation of the project the beneficiary made a number of requests towards the activities to be undertaken (see - Inception and Interim Reports).

The Team Leader had carefully considered all the requests. Some of them were found to be outside the ambit of the project. Some were found well worth pursuing but not feasible bearing in mind the time and resources available so perhaps being candidates for a possible follow-up project (see - Inception and Interim Reports).

Most however of the requests concerning specific activities to be undertaken have been accepted by the Team Leader as feasible to be undertaken within the resources available. The work on some of them had been initiated immediately. It was however considered useful to propose some changes in TOR to clearly reflect new activities. The changes has been approved.

### **3.3 Implementation of the Work-plan**

Following the above described approach the priorities have been assigned to activities clearly requested by the beneficiary, in particular those where some close deadlines, either international or national, were to be met.

On the other hand, implementation of the Work-plan included activities were the beneficiary was not particularly interested but which were considered important by the Contracting Authority.

Implementation of the Work-plan included elaboration of a number of documents presented to the beneficiary (see below Part IV) but also ad hoc advice provided to the Contracting Authority and to the beneficiary. The latter included participation in the meeting of the Intergovernmental Council on Espoo Convention held on 8 December 2009 as well as a number of consultations provided to the Focal Points for Espoo and Aarhus Conventions. Besides, a number of materials were distributed during the training seminars provided within the project (see below), including Power Point presentations prepared for the purpose as well as translated versions of the relevant documentation, including the respective decisions of the Aarhus and Espoo bodies.

## **IV. RESULTS ACHIEVED**

### **Task I - Espoo and Aarhus reviews**

#### **Review of the existing situation - Espoo**

The Meeting of the Parties of the Espoo Convention found Ukraine to be in non-compliance with its obligations under the Espoo Convention and requested the Government of Ukraine to ensure that its legislation and administrative measures were able to implement fully the provisions of the Convention, and agreed to support the Government of Ukraine in the undertaking of an independent review of its legal, administrative and other measures to implement the provisions of the Convention for consideration by the Implementation Committee in the first half of 2009.

The independent review was undertaken by a consultant nominated by the Committee.

Under the Task I of TOR for the current project, it was supposed to provide a detailed assessment of the legal, administrative and procedural aspects of the implementation of the Espoo Convention in Ukraine. Such an assessment was performed by the project experts and extensively discussed both internally and with the beneficiary as well as with the interested stakeholders, including officials and representatives of the civil society.

The final document evidencing performing the Review (see attached) takes into account the Independent Review and its recommendations but goes beyond the scope of the Independent Review and addresses and highlights the main legal, institutional and procedural aspects that need to be improved in order to fully implement the Espoo Convention. It includes also conclusions co-related with the corresponding Strategy for the Implementation of the Espoo Convention as prepared under Task II.

The Review is supplemented with a separate document called Final Decision under Article 6 of the Espoo Convention (see attached).

### **Review of the existing situation - Aarhus**

The Meeting of the Parties of the Aarhus Convention found Ukraine to be in non-compliance with its obligations under the Aarhus Convention and requested the Government of Ukraine to ensure that its legislation and administrative measures were able to implement fully the provisions of the Convention. To this effect the Aarhus Compliance Committee identified a number of particular features of the Ukrainian framework which needs improvement in this respect.

Under the Task I of TOR for the current project, it was supposed to provide a detailed assessment of the legal, administrative and procedural aspects of the implementation of the Aarhus Convention in Ukraine. Such an assessment was performed by the project experts and extensively discussed both internally and with the beneficiary as well as with the interested stakeholders, including officials and representatives of the civil society.

The final document evidencing performing the Review (see attached) takes into account the findings and recommendations of the Aarhus Compliance Committee but goes beyond them and addresses and highlights the main legal, institutional and procedural aspects that need to be improved in order to fully implement the Aarhus Convention. It includes also conclusions co-related with the corresponding Strategy for the Implementation of the Aarhus Convention as prepared under Task II.

The Review is based on most recent publicly available reports and information on deficiencies in implementation of the Aarhus Convention in Ukraine as well as opinions of the experts involved in preparation of this review.

### **Task II Strategies (action plans) for Espoo and Aarhus Conventions**

**Strategy for Espoo** framework, (see attached) was prepared by the Project experts and then included in the Ukrainian submission to the Espoo Implementation Committee as a supplement to the Action Plan.

The Strategy was extensively discussed both internally and with the beneficiary as well as with the interested stakeholders, including officials and representatives of the civil society.

The Strategy addresses and highlights main legal, institutional and procedural aspects that are planned to be improved in order to fully implement the Espoo Convention in Ukraine. It includes detailed description of provisions in planned legislation and of training and other planned actions. The precise time schedule and responsibilities for implementation are defined in the Action Plan that has been adopted by the Cabinet of Ministers of Ukraine.

**Strategy for Aarhus (see attached)** is strictly co-related with the corresponding Review of the Implementation of the Aarhus Convention as prepared under Task I and provides clear description of the proposed actions.

The Strategy was extensively discussed both internally and with the beneficiary as well as with the interested stakeholders, including officials and representatives of the civil society.

### **Task III Bystroe Canal**

The main output of this task is the document „**Identification of specific measures and timetables needed to bring the Bystroe Canal Project implementation into compliance with Ukraine’s obligations under the relevant Conventions**” (see attached).

The document was prepared by the Project experts and extensively discussed internally. It was submitted in draft form to ECD. Bearing in mind lack of interest in this respect on the part of beneficiary - the document

has not been subject to discussions with the beneficiary and any other stakeholders. The document is supplemented with a separate background document presenting Current State of Play (see attached). Additionally, upon request of ECD, it was provided by the Team Leader with some advice concerning the issues related to the Bystroe Canal.

#### **Task IV Capacity building**

Under the Task IV the Project organised 4 training seminars:

##### **1. Training seminar on Espoo**

The seminar was held on 9 March 2010 in the premises of the Environment Ministry. The seminar was attended by about 30 participants from various ministries, agencies and institutions.

The seminar was meant to gather the officials from both the Environment Ministry and other potentially involved ministries and agencies in Ukraine in order to make sure that the awareness of the obligations and rights under the Espoo Convention is well distributed among the officials of all interested governmental bodies.

They were all provided with the folder with the relevant materials. The seminar included presentations of the project experts and of the representatives of the Ministry. The seminar was opened by the Deputy-minister Gourskiy. During the seminar a practical exercise with active involvement of participants was organised.

##### **2. Training seminar on Aarhus**

The seminar was held in Odessa on 27 April. The seminar was attended by about 30 participants from various environmental authorities and NGOs from the South-West of Ukraine. The seminar was meant to provide the officials at the local level with the detailed knowledge of the requirements of the Aarhus Convention.

The seminar was held in combination with the Parliamentary Project on the new provisions of the Waste Law, sponsored by USAID, which was held on 26 April. Such an arrangement has maximised efficiency, because the other project covered costs of travel and accommodation of the officials to be trained.

They were all provided with the folder with the relevant materials. The seminar included presentations of the project experts.

##### **3. Training seminar for lawyers on Aarhus**

The seminar was held on 1 June 2010 in the premises of the Environment Ministry.

The seminar was meant to provide lawyers from the Ministry and its regional offices as well as from other interested ministries and the Parliament, with up to date knowledge of the current status and activities under the Aarhus Convention, implementation of the convention in Ukraine, and experience with the implementation in other countries., as well as to discuss the draft Decree on Public Participation prepared by the Project experts.

During the seminar a practical exercise with active involvement of participants was organised.

The seminar was attended by about 30 participants. They were all provided with the folder with the relevant materials.

##### **4. Training seminar for Aarhus Centers**

The seminar was held on 2 June 2010 in the premises of the Environment Ministry.

The seminar was meant to provide the representatives of Aarhus Centers in Ukraine with the detailed knowledge of the requirements of the Aarhus Convention and public participation in decision making and to discuss the existing problems of Aarhus Centers and the ways for their solutions.

The seminar was opened by the Deputy-minister Mormul. During the seminar a practical exercise with active involvement of participants was organised.

The seminar was attended by about 30 participants

They were all provided with the folder with the relevant materials. The seminar included presentations of the project experts and of the representatives of the Ministry.

## **5. Participation in additional seminar**

In addition to organising the above 4 seminars the Project was involved in seminar for judges on Access to Justice in Environmental Matters organised on 21 March in Lviv. The seminar was co-organised by an organization of environmental lawyers called EPL and Academy for Judges and sponsored by USAID.

The seminar gathered about 30 judges and some other practicing lawyers and academics.

Two experts of the Project (Jerzy Jendroska and Dmytro Skrylnikov) participated in the seminar as speakers.

The speakers included also judge Petro Stetsiuk of the Constitutional Court, prof. Svitlana Kravchenko of the Oregon University and a number of EPL attorneys.

The seminar was presided by Ms. Iryna Voytiuk, Rector of the Academy for Judges, who at the end awarded the judges with the official certificates.

## **Task V Communication activities**

### **1. Guidance for Aarhus Reporting**

The specific guidance for report due to be delivered to the Aarhus Convention Secretariat in December 2009 was submitted to the beneficiary (see attached)..

### **2. Communication strategy**

The Communication Strategy was prepared by the project experts (see attached). As the responsible representatives of the beneficiary indicated that they were not particularly interested in any assistance in this respect. - the Strategy was not subject to thorough discussion with the beneficiary or other stakeholders.

## **Task VI Draft Order on Public Participation**

### **1. Preparation of the draft Order**

Draft provisions were prepared,(see attached) and submitted both in English and Ukrainian to beneficiary as agreed. The draft was supposed to be delivered by Ukraine to the Aarhus Compliance Committee but it was not delivered there. According to the official explanation it is still subject to discussion within the Ministry.

The project, despite requests and an offer to assist in clarifying doubts, have not been provided with any official explanations nor any indication as to the objections to the draft.

### **2. Public consultation of the draft Order**

The draft Order as prepared by the project have not been subjected to any official public consultations. Therefore assistance in this respect could not be provided.

## **Task VII Assistance in initiating bilateral negotiations**

Ukraine, further to the decisions IV.2 and IV.4 of the Espoo Convention Meeting of the Parties, was requested by the Implementation Committee to send to its neighbours being Parties to the Espoo Convention, an invitation to enter into negotiations concerning elaboration of a bilateral agreement , or any other arrangements, to support implementation of the provisions of the Convention.



1) Ad hoc advice in this respect was provided by the Team Leader to the responsible officials of the beneficiary. The advice was followed in practice in the official invitations sent to other countries to initiate the negotiations.

2) The list of elements to be considered before entering into negotiations with a view to elaborate the Ukrainian negotiation position was discussed briefly with the responsible officials of the beneficiary (see attached).

#### **Task VIII Preparation of a proposal for steps to be taken by Ukraine as the „Affected Party”**

During the implementation of the Project Ukraine has been notified by its neighbours about a couple of activities with potential transboundary impact on the territory of Ukraine. Bearing in mind lack of clear procedures and practical experience in this respect, there was a need to elaborate ad hoc solutions, in particular in relation to providing Ukrainian public with possibilities to participate in the transboundary procedure.

1. Ad hoc advice in this respect was provided by the Team Leader to the responsible officials of the beneficiary.

**2. Proposals for steps to be taken** to provide public participation in situation when Ukraine is the „Affected party” (see attached) has been prepared by the project experts.

#### **Task IX Draft Rules on the role of Focal Points**

The Project has been specifically requested by the beneficiary to assist in developing clear rules for the role and status of the Focal Points for environmental conventions.

The draft Rules (see attached) have been prepared and submitted to the beneficiary and approved officially by the Minister (see attached - in Ukrainian).

### **V. CONCLUSIONS AND RECOMMENDATIONS**

1. The project has turned out to be rather difficult to be carried out, mainly due to the personal changes in the Environment Ministry resulting from reorganizations in the government.
2. The relevant legal system in Ukraine is rather inconsistent internally and full of gaps. On the other hand, there seems to be sometimes quite formalistic approach to legal changes, while at the same time the practical implementation seems to be far from being perfect.
3. The Project identified a number of problems which hinder implementation of the obligations stemming from both the Espoo and Aarhus Conventions. The existing legal and institutional framework does not provide sufficient legal basis to achieve full compliance.
4. Quite detailed Strategies in relation to both Conventions have been prepared under the Project. Implementation of both Strategies require a carefully planned activities and significant resources to be put in particular to drafting concrete proposals for legislative changes, mainly in form of amending the existing laws in order to provide a clear and consistent framework.
5. While due to various capacity building efforts there seems to be a general awareness about some basic principles of the Aarhus Convention, in relation to the Espoo Conventions there is still very limited awareness even about general principles.

6. In relation to both Conventions there is very limited knowledge about the particular obligations. Both Conventions are widely misinterpreted, including by those claiming to have or even having some expertise in the field. The existing infrastructure, in particular in relation to legal expertise, does not seem to be sufficient to assure proper implementation of the Strategies, in particular when it comes to drafting necessary legislative and institutional changes. A significant foreign assistance in this respect seems unavoidable.
7. Apart from law-drafting, also capacity building activities, in particular in relation to officials, are required. This relates both to officials at the central and at the regional/local level. In particular the officials from Expertiza Department and Legal Department need a lot of training about both Conventions.
8. Issues related to developments of both Conventions, in particular in relation to the SEA Protocol to the Espoo Convention seem to be widely unknown and require a specific attention, both in terms of law-drafting and in terms of capacity building.
9. When planning any capacity building for regional and local authorities a budget must be carefully planned bearing in mind the size of the country. The budget must include funding available to cover travel and accommodation costs of participants.
10. Any follow up projects need to be developed in close cooperation with the beneficiary and also other stakeholders, including NGOs active in the field, with a view to assure a precise and agreed upon description of tasks and clear division of responsibilities, including upon the beneficiary.

## ANNEXES A

### Tasks

Annex to Task I - Aarhus Review

Annex to Task I - Espoo Review

Annex to Task I - Final decision under Espoo

Annex to Task II - Aarhus Strategy

Annex to Task II - Espoo Strategy

Annex to Task III - Bystroe Canal

Annex to Task III - State of play

Annex to Task IV - Aarhus Convention - approaches to implementation July 2010

Annex to Task IV - Aarhus Convention - JJ (April 2010)

Annex to Task IV - Aarhus Convention - JJ (April 2010)-ukr

Annex to Task IV - Aarhus Convention - Overview July 2010

Annex to Task IV - Aarhus Convention - status and developments July 2010

Annex to Task IV - Aarhus Implementation in Ukraine - DS (Apr 2010)

Annex to Task IV - Espoo overview - JJ (March 2010)

Annex to Task IV - Espoo procedure step by step - JJ (March 2010)

Annex to Task IV - Espoo Strategy-Ukraine\_March10

Annex to Task IV - Espoo Strategy-UkraineNiras

Annex to Task IV - Focal Points

Annex to Task IV - General obligations - JJ (March 2010)

Annex to Task IV - Presentation - (JJ) 9 March 2010

Annex to Task IV - Presentation of the project - JJ (April 2010)

Annex to Task IV - Presentation of the project - JJ (Dec 2009)

Annex to Task IV - Presentation\_Access\_to\_justice\_TT

Annex to task V - Communication strategy 2010

Annex to Task V - Guidance on National Report

Annex to Task VI - Draft Decree

Annex to Task VII - List of elements

Annex to Task VIII - Ukraine as affected country

Annex to Task IX - Draft TOR for Focal Point

## **Annex to Task I:**

### **Review of the existing problems with the insufficient framework for implementation of the Aarhus Convention (Ukraine)**

At its third meeting in June 2008 in Riga the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter – the Aarhus Convention or the AC) adopted the decision III/6f on compliance by Ukraine with its obligations under the Convention. Through paragraph 5 of decision III/6f, the Meeting of the Parties decided to issue a caution to the Government of Ukraine, to become effective on 1 May 2009, unless the Government fully satisfied certain conditions set out in that paragraph and notified the secretariat of this fact by 1 January 2009. The successful fulfilment of the conditions was to be established by the Compliance Committee of the AC.

At its twenty-third meeting the Compliance Committee, in light of the steps taken by Ukraine, found that Ukraine has fulfilled the conditions set out in paragraph 5 of decision III/6f of the Meeting of the Parties to the extent that the caution issued by the Meeting of the Parties shall not become effective. However, the Committee found that Ukraine is not yet fully in compliance with its obligations under the AC. The Committee therefore reserved its right to make further recommendations to the Meeting of the Parties, including to recommend to the Meeting to issue a new caution, if the Committee finds that its concerns have not been satisfactory met.

In particular, the Committee wanted to review, at the earliest appropriate opportunity, the draft legislation on the following points:

- a. The proposed wording requiring that public authorities obtain environmental information relevant to their functions, including those functions on which they base their decisions;
- b. The proposed wording requiring that information within the scope of article 4 of the Convention is provided, regardless of its volume;
- c. The proposed wording concerning the detailed requirements for informing the public, as required under article 6, paragraph 2, of the Convention, about the initiation of the procedure and possibilities for the public to participate. In particular:
  - (i) The required form of the public notice;
  - (ii) The required contents of the public notice (as compared with the requirements specified in para. 2 (a)–(d) of art. 6);
  - (iii) How, in case of projects having transboundary impact, the public concerned abroad is to be notified, in accordance with paragraph 2 (e) of article 6;
- d. The proposed wording setting specific timeframes for the public consultation process. In particular:
  - (i) The time for the public study the information on projects and to prepare to participate effectively;
  - (ii) The time for the public to prepare and submit comments;
- e. The proposed wording requiring that sufficient time is available for the public officials to take any comments into account in a meaningful way;
- f. How the Government will prevent the use of short cuts in the decision-making procedure, i.e. parts of EIA being provided for evaluation and approval by the decision-making authority prior to any information being made publicly available;
- g. The proposed wording requiring that public authorities do not limit the provision of information under article 6, paragraph 6, and article 4 of the Convention to publication of the environmental impact

statement but include other relevant information to ensure more informed and effective public participation;

- h. The proposed wording clarifying that information that applicants are required to provide in the course of the public authorities' decision-making on decisions under article 6 is generally not exempt from disclosure;
- i. The proposed wording requiring disclosure of EIA studies in their entirety as the rule (with the possibility for exempting parts being an exception to the rule);
- j. The proposed wording requiring that texts of decisions, along with the reasons and considerations on which they are based, are publicly available.

This review was prepared under the project "Support to Ukraine to implement the Espoo and Aarhus Conventions, Ref. 2008/164491" (LOT 6). The review covers all three pillars of the Aarhus Convention which represent the structure of this review. The review is based on most recent publicly available reports and information on deficiencies in implementation of the Aarhus Convention in Ukraine as well as opinions of the expert(-s) involved in preparation of this review.

For the purpose of this review an **English** text of the Aarhus Convention (AC) was used. There is a general expert opinion that the **official Ukrainian translation of the AC is far from being adequate** to its original authentic texts. However, it is unclear and was not subject to any separate expert review whether Ukrainian official text leads to any deficiencies in practical implementation of the AC.

## I. ACCESS TO INFORMATION

### Introduction

There seems to be a general opinion that the access to environmental information framework is rather well developed in Ukraine. Nevertheless there are still deficiencies and gaps. Some specific problems occur in individual areas, such as access to information in relation to decision-making, and those problems are related to both legislative (or quasi-legislative) and practical deficiencies. There are also reported problems with active dissemination of environmental information including deficiencies of legislative framework and the need to develop technical capacities and practical experience. Furthermore, of outmost importance is to build understanding of the needs for active dissemination of information by some public authorities. Some of the issues have been identified by the Compliance Committee of the Aarhus Convention in the course of dealing with communication ACCC/C/2004/03 and submission ACCC/S/2004/01.

### 1.1. Definition of environmental information

There are no reported problems related to the definition of environmental information in practical application of the access to environmental information. Currently the legislation is using various terms, including "information about state of the environment" (Art.50 of the Constitution of Ukraine, Art.8 of the Law on State Secret, Art. 30 of the Law on Information), "information about state of the natural environment" (various articles of the Law on Environmental Protection), "ecological information" (Art. 21, 25 of the Law on Environmental Protection, various bylaws, including specific orders of the Minister of Environmental Protection).<sup>1</sup> In addition, the Law on Environmental Protection is using both terms as equal in the title of Article 25 (by using brackets).

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<sup>1</sup> In fact, the first group of laws uses in Ukrainian language a term "довкілля", while all other use "наркопишне природне середовище"; both in the meaning of "the environment". Some experts argue that currently use of two different words does not pose a problem but may lead to some in the future.

The definition of the term “ecological information” is given in the Art.25 of the Law on Environmental Protection. It reflects – with minor deficiencies related to subparagraph c) of the Art.2 (3) of the AC – the definition contained in the Art.2 of the AC.

Recently proposed changes by the Ministry of Environment need to be revised both in light of conformity with the Aarhus Convention, and in light of ensuring homogenous national legal framework on environmental information. Proposed changes should be supported in part of adding information related to subpara c) of the Art.2 (3) of the AC (yet, specific wording should be subject to adjustment since proposed amendments misinterpret meaning/wording of subparagraph c) by using “if” instead of “inasmuch”). However, proposed introduction of unified term “ecological information” must be subject to further analysis due to inevitable link with other laws and the Constitution. In this regard, proposed changes decrease conformity with Constitution and other laws that could cause further conflicts and misinterpretations and may have the opposite result – adversely affecting the right on access to environmental information.

#### **Conclusions:**

- There is a need to review the proposed amendments
- Amendments to the Art.25 of the Law on Environmental Protection are needed to bring it in conformity with subparagraph c) of the paragraph 3 of Article 2 of the Aarhus Convention.
- Non-conformity between the Constitution of Ukraine, the Law on Information, the Law on State Secret and the Law on Environmental Protection in the usage of terms covering “environmental information” (in the meaning of the AC) may pose a problem in future practical application (i.e. “information about state of the environment” or “ecological information”).

#### **1.2. Access to information upon request (Article 4)**

Several most common problems are reported in this area:

- a. no response to requests or inadequate (incomplete, untimely) responses by relevant authorities;
- b. inadequate access to information held by local authorities, especially related to settlements and land planning;
- c. classifying environmental information by environmental authorities (restricting access to environmental information by making it ‘for official use only’ (DSK – dlya sluzbovogo korystuvannya);
- d. denial in access to information upon request on the grounds of protection of intellectual property rights of third parties (mostly due to lack of knowledge and improper interpretation of intellectual property law);
- e. inadequate access to information related to decision-making process; and
- f. limited access to draft policies, plans, programs.

In addition, the Compliance Committee of the Aarhus Convention found deficiencies in the legal framework on the issue and suggested that the Government of Ukraine addresses the following:

- ensure that environmental information within the scope of Article 4 of the AC is provided regardless of its volume.

Most of these issues are rather adequately dealt with by relevant legislation in fields of information, citizen’s requests, state secrets, planning and policy development. One of the exceptions is the Regulation on the procedure for providing access to environmental information, approved by the Order of the Ministry of Environmental Protection of December, 18, 2003 No.169.

In light of this, problems identified in paragraphs (a) and (b) can hardly be dealt within a single project. Difficulties described in (a) result from a general failure of the Government to ensure transparency and compliance with existing regulations and, therefore, are not environment-specific. Inadequacies described in (a), (b), and (d) may be addressed through a comprehensive training program or adequate law-enforcement and, again, are not environment-specific.

Classifying of environmental information and denial in access to information upon request on the grounds of protection of intellectual property rights of third parties (identified in (c) and (d)) by the environmental authorities indeed poses a problem in light of implementation of the AC in Ukraine. Numerous studies support that the current practice in Ukraine is not homogeneous (uniform) and is not in compliance with the AC as well as with national legislation itself. This problem is also relevant in the context of decision-making.

Regulation on the procedure for providing access to environmental information, approved by the Order of the Ministry of Environmental Protection of December, 18, 2003 No.169, does not comply with several key requirements of the AC as well as national laws (e.g. it contains a provision restricting each request for the environmental information to only three questions on a certain environmental problem) and should be either revised or annulled.

Problems identified in paragraphs (e) and (f) would be most effectively dealt in the context of decision-making procedures and active dissemination of information (see below).

Restricting access to environmental information on the basis of its volume cannot be justified under the AC. There are several possibilities to address this issue in practice, as explained by the Compliance Committee in its case law. The provision prohibiting the restriction of access to environmental information based on its volume could be additionally introduced into the relevant legislation (e.g. the Law on Environmental Protection, the Law on Information, etc.).

### **Conclusions:**

Most of the reported problems may be addressed through an adequate law-enforcement as well as comprehensive training programs for relevant authorities including all of those who should provide environmental information relevant to their functions (not only the Ministry of Environmental Protection) as well as for the law enforcement agencies. Classifying of environmental information by environmental authorities is not homogeneous nor in compliance with the AC. There is a need to review current practice (including revision of previously classified information (“for official use only”), and ensure its compliance with the Convention. Regulation on the procedure for providing access to environmental information (Order No.169, 2003) does not comply with the AC and should be either revised or annulled. Other problems related to provision of information upon request are either not specific for environmental matters or are more relevant to active dissemination or decision-making procedures and practices.

### **1.3. Collection and dissemination of environmental information (Article 5)**

The following problems are identified in this area:

- a. Need to develop legislative framework and practice ensuring that public authorities collect and possess and update environmental information relevant to their functions;
- b. Deficiencies of legislative framework for dissemination of environmental information, need to develop technical capacities and practical experience;
- c. Reporting about state of the environment;
- d. Limited public access to the lists and registers of environmental information;

- e. Need to develop meta-data (information about information);
- f. Need to develop understanding of the needs for active dissemination by some public authorities;
- g. Need to develop support to the public seeking environmental information.

In addition, the Compliance Committee of the Aarhus Convention found deficiencies in the legal framework on the issue and suggested that the Government of Ukraine addresses the following:

- ensure that public authorities possess information relevant to their functions, including that on which they base their decisions, in accordance with Art.5(1) of the AC, and make it available to the public;

There is a need to improve legislative framework and practice ensuring that public authorities collect, possess, update and disseminate environmental information relevant to their functions. Some problems are also related to technical capacities and practical experience of public authorities.

According to the Action Plan on Implementation of the Decision of the Parties to the Aarhus Convention № III\6f adopted by the decree of the Cabinet of Ministers of December 27, 2008 № 1628-p, it was planned to draft and adopt the regulations on dissemination of the information on the state of environment as well the regulation on the network of the state environmental automated informational-analytical system for provision of the access to environmental information. No such drafts have been provided yet. Instead, Draft Decree of the Cabinet of Ministers on Dissemination and Provision of Environmental Information was provided. It was supposed to cover both provision of information upon request as well as active information dissemination, however it did not provide solutions to the problems identified above (see also p. 1.5 below).

Contrary to the issue of provision of information upon request, the issue of collection, processing and dissemination of environmental information needs development of detailed and comprehensive legal framework.

Regular reports about state of the environment: the challenges include irregular preparation of reports, limited access of the public to the process of preparation of national reports, need to develop broad informing about the status of preparation of national reports, drafts, effective distribution of the national reports (especially of printed copies).

Most of the lists and registers of environmental information are not publicly accessible. Improvement of the situation may require not only amending the legal framework, but also changing the technical design of existing ones (and in some cases even establishing such registers).

There is also limited information about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained (including the need for more information of this kind on the official web-pages of relevant authorities).

The official web-pages of the Ministry of the Environmental Protection and some of its local offices as well as web-pages of some other relevant authorities are not very user-friendly, complicated as regards the 'search' function and not always possess relevant updated information.

The improvement of understanding of the needs for active dissemination as well as a need to provide support to the public seeking environmental information can be achieved by training and other capacity building activities.



One of the problems relates to the need to ensure that during and after decision-making takes place, relevant authorities possess information on which decisions are based (and make it available).

### **Conclusions:**

There is room to improve access to information provided without requests. Some problems may amount to non-compliance with the AC, some may also result in poor implementation of the requirements on public participation in decision-making. Further analysis is needed as to how to ensure that public authorities possess and make available information on which they base their decisions. The issue of collection, processing and dissemination of environmental information contrary to the issue of provision of the information on the request needs development of detailed and comprehensive legal framework. Improvement of technical and institutional capacity is also needed. Besides, it could be recommended to Ukraine to ratify the Protocol on PRTRs in the nearest future and establish the respective legislation framework for its proper implementation.

### **1.4. Access to information related to specific decision-making**

#### ***In relation to Article 6***

Typical problems reported lie within EIA system which, from the perspective of the AC, include restricted access to information. Need to ensure practical access is largely due to poor implementation of existing legislation in the applicable area. In addition, a special order establishing the procedures for performing SER was repealed by the Ministry of Environment in 2004. There is also a need for clear regulations on procedures for public participation.

Restricted access to information is largely related to the issue of classifying certain information related to decision-making, unlawful grounds for refusal to provide documents for examination including denial in access to information upon request on the grounds of protection of intellectual property rights of third parties.

Further development is needed as regards transparency in the permitting process including access to such permits (environmental permits: permits on use of natural resources, permits for emission (air, water), etc) and documents upon which such permits are granted.

### **1.5. Draft Decree of the Cabinet of Ministers on Dissemination and Provision of Environmental Information**

In December 2009 the Ministry of Environment of Ukraine has put for public comments draft decree on procedures for providing and disseminating environmental information. The draft is available at <http://www.menr.gov.ua/cgi-bin/go?node=ProektRegAkt>. The Ministry also informed about this the Compliance Committee of the AC (letter dated Dec 29, 2009).

The draft decree needs substantial improvement and does not seem to adequately address any of the practical problems related to access to information pillar of the Convention in Ukraine (as described above). In addition, if adopted it may limit in fact access to environmental information compared to current legal framework, as indicated in legal analysis by non-governmental organization EPL (Ukraine), see [http://www.unece.org/env/pp/compliance/MoP3decisions/Ukraine/correspondence/FrEPL\\_CommentsAfterC26\\_14Jan2010.doc](http://www.unece.org/env/pp/compliance/MoP3decisions/Ukraine/correspondence/FrEPL_CommentsAfterC26_14Jan2010.doc).

## **Conclusions:**

Draft decree on access to environmental information cannot be considered as a necessary and effective means to solve practical or legal deficiencies in access to environmental information in Ukraine. It is recommended not to focus on further development/improvement of the current draft.

## **II. PUBLIC PARTICIPATION**

### **2.1 Subject to Article 6**

Public participation in environmentally-significant decisions is regulated by EIA and other legislation. Principles of public participation in environmental decision-making, including participation in OVNS<sup>2</sup>, are laid down in laws, including those on: Environmental Protection, Environmental Review (SER), the Principles of Regulatory Policy in Economic Activity, and the Planning and Development of Territories.

The principles of public participation in OVNS are detailed in the Construction Standard and in the Regulations on Public Participation in Decision-making in Environmental Matters.

The problems reported so far lie within EIA system which, from the perspective of the AC, includes the need to provide practical opportunities for public participation and ensure access to information.

Limited practical opportunities for public participation are largely due to poor implementation of existing legislation in the applicable area. In addition, a special order establishing the procedures for performing SER was repealed by the Ministry of Environment in 2004. The absence of such procedural document as well as clear and detailed regulation on procedures of public participation indeed complicates practical implementation of the public participation requirements.

Typical specific practical problems include: late or no public notice, inadequate or unclear timeframes, limited possibilities to submit comments, due account is not taken of outcomes of public participation, the public is not informed about the final decision and the reasons and considerations on which the decision is based.

Restricted access to information basically relates to the issue of classifying certain types of information, including the conclusions of the SER, not publishing such conclusions, and the absence of a uniform register of such conclusions.

The Compliance Committee of the AC found deficiencies in the legal framework on the issue and suggested that the Government of Ukraine addresses the following:

- ensure that timeframes for the public consultation process are sufficient for the public to study the information on projects and prepare and submit comments;
- ensure that sufficient time is available to the relevant public officials to take any comments into account in a meaningful way, as required under article 6, para.8 of the AC;

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<sup>2</sup> Hereafter in this Review the term “OVNS” or “EIA (OVNS)” is used to identify the process of development by proponent of project EIA documentation while “EIA” is used for the entire process including the relevant stages of environmental review. The State Environmental Review (SER) is used as it is used in the Independent Review to avoid further confusions and misinterpretations. In practice state authorities, experts and public also use the term “Ecological expertiza”.

- prevent shortcutting in the decision-making procedure whereby part of the Environmental Impact Assessment are provided for evaluation and approval by the decision-making authority throughout the course of EIA development and prior to any information being publicly available;
- ensure that public authorities responsible for environmental decision-making do not limit provision of information under article 6, para.6 and Article 4 of the AC to publication of an environmental impact statement but that they provide the public concerned with an opportunity to examine relevant details so that public participation is informed and therefore more effective;
- clarify that information provided by developers to public authorities in the course of decision-making and while being under obligation to do so is not protected from disclosure based on the “ownership” and that disclosure of EIA studies in their entirety is considered as a rule, with possibility for exempting parts of them being an exception to the rule; and
- ensure that texts of the decisions, along with reasons and considerations on which they are based, are publicly available.

The main decision-making procedure which covers permitting decisions under Article 6 of the AC in Ukraine is *OVNS* and *SER* (legal basis: *State Construction Norms DBNA.2.2-1-2003* and *Law on Environmental Expertiza, 1995*, respectively). These two procedures together are widely considered as decision-making procedure in the meaning of Article 6 of the Convention. *OVNS* alone is a process for preparation of environmental impact study by the developer and cannot be thus considered as decision-making procedure in the meaning of Article 6 of the AC.

It is necessary to assess two of abovementioned elements jointly (*OVNS* + *SER*) and to compare them with common EIA procedure, specified in relevant international instruments both for the purposes of this review and in general.

The considerations of the Compliance Committee set above can be dealt with in this context (*OVNS* and *SER* procedures), as explained below.

### **Public notice (Article 6(2))**

This includes public notice requirements and timeframes for consultation process itself.

The developer is responsible for public notice both in *OVNS* and *SER* procedures (by publishing *Declaration of Intent* and *Statement of Environmental Impacts* respectively). In both cases the notice must be disseminated through the mass-media (Art. 10 of the Law on Environmental Expertiza and para. 1.6 of DBN A.2.2-1-2003). There are no clear requirements on the timing for the dissemination of public notice, as well as no relevant provisions that would ensure effective dissemination. Content of the Declaration of Intent need to be amended to comply with the requirements of Art.6(2).

The legislation also envisages public consultations through meetings and other forms of interaction. The outcomes of public participation should be submitted to *SER* together with other *OVNS* materials. Furthermore, the public should be informed through the media of the *SER* resolution (conclusion). The organisation of the public participation at the stage of *OVNS* is fully under responsibility of the investor (developer, proponent). In practice usually such procedure is organised not in a proper way or formally and it causes conflicts between public and investor. The competent authority responsible for the *SER* being not involved at this stage is not able to provide proper and efficient control.

### **Consultation timeframes (Article 6(3))**

Neither *OVNS*, nor *SER* legislation sets any timeframes for public consultation process. This is true for both examining project documents and time period for providing comments themselves.

### **Sufficient time to take comments into account (Article 6(8))**

Since no timeframes are set for public consultation process, compliance with this requirement can be hardly assessed. The only benchmarks for timing are: (1) Statement of Environmental Impacts shall be published before SER starts (as it is part of OVNS documents submitted for SER, para.2.1 of DBN A.2.2-1-2003) and (2) maximum time periods established for SER which are from 45 to 120 days, depending on complexity of a project; 30 days in case of re-evaluation (Article 38 of the Law on Environmental Expertiza).

### **EIA documents submitted for expertiza prior to being made public**

This can be most effectively solved by establishing procedures for SER and including specific requirement that no SER can start if EIA documents were not made publicly accessible.

### **Access to EIA is not limited to environmental impact statement (Articles 6(6) and 4(4))**

In course of OVNS the developer (proponent) is already obliged to provide access to project documentation (para.1.9 of DBN A.2.2-1-2003).

In the course of *SER* there is only general obligation, put on the developer, to ensure “openness” of SER process (Article 8 of the Law on Environmental Expertiza). There is no specific requirement as to access to project documentation. This can be solved by amending Article 11 (or 15) of the Law on Environmental Expertiza with relevant provision stating that documents submitted for SER should be made accessible to the public.

### **Denial of disclosure based on the “ownership” & disclosure of EIA studies in their entirety is considered as a rule**

This is not relevant for OVNS, as explained above.

As for *SER*, such denial is already not in line with national legislation. It can be further clarified by amending Article 11 or 15 of the Law on Environmental Expertiza stating that EIA documents submitted for SER shall be accessible to the public. It would also solve disclosure of EIA studies.

### **Texts of the decisions to be publicly available**

In course of *SER*, final conclusions must be made public through the mass media (Article 10 of the Law on Environmental Expertiza). This provision is rarely implemented in practice. Some regional offices publish only one sentence on their web-pages as to whether a certain activity was permitted or not. It might be solved by creating a registry of conclusions of SER. Article 11 of the Law on Environmental Expertiza requires that the conclusions of SER take account of public opinion. However, there is no requirement on including into final decision consideration of public comments.

It is difficult to define precisely the single type of decisions that can be considered as the final decision for all cases. It looks that for different activities that are subject to EIA different decisions should be considered as the final. For most of activities (mostly activities related to construction) it looks that the final decision is the decision (conclusion) of the Integrated State Expertisa. The Integrated State Expertisa is defined and regulated by the Decree of the Cabinet of Ministers “On procedure of adoption of investment programs, construction projects and their state examination” № 1269 of 31 October 2007. For some other activities (non-construction type e.g. deforestation, etc.) other types of decisions (e.g. permit for the use of natural resources) could be considered as the final ones. Therefore, the texts of such final decisions should be also made publicly available. This issue might require additional studies when preparing further legislative provisions.

There is also a need to ensure transparency in the permitting process including access to such permits (environmental permits: permits on use of natural resources, permits for emission (air, water), etc) and documents upon which such permits are granted, as well as possibilities for public participation during the permitting process.

More detailed elaboration of provisions for public participation is planned to be done under the work on implementation of the Resolution of the Cabinet of Ministers on the Endorsement of the Action Plan for the Implementation of the Decision of Parties to Aarhus Convention III/6f, No. 1626-I of 27 December 2008. It could be recommended to also address the issues mentioned above when implementing the said Action Plan.

### **Conclusions:**

Typical problems lie within practical application of existing legislation. There is limited application of the existing public participation requirements during EIA/SER. There is a need to re-introduce a separate document on procedures for carrying out SER.

It is also recommended to elaborate and adopt new Decree on public participation (it is planned to be done according to the Resolution of the Cabinet of Ministers on the Endorsement of the Action Plan for the Implementation of the Decision of Parties to Aarhus Convention III/6f, No. 1626-I of 27 December 2008).

The responsibility to organize public participation during both OVNS and SER stages (e.g. hold the public consultations and hearings) needs to be moved from the developer to the public authority (or specially authorised organisation). This also may require additional changes to the Law of Ukraine on Environmental Expertiza and to the State Construction Standard DBN A.2.2.-1-2003 on Structure and Contents of the Materials on Assessment of Impacts on the Environment (OVNS) for Designing and Construction of Production Facilities, Buildings and Structures, No. 214 of 15 December 2003.

New public participation regulation should also provide detailed and clear procedure to address issues identified by Compliance Committee, including public notice content and form, consultation timeframes, access to project documents as well as some other issues, including the form of public consultation, public participation in the environmental permitting process, etc. Additional amendments to the Law of Ukraine on Environmental Expertiza, the Decree of the Cabinet of Ministers "On procedure of adoption of investment programs, construction projects and their state examination" № 1269 of 31 October 2007 and some other regulations might be also needed.

Classifying of final decisions shall be subject to serious revision. Unavailability of final decisions leads to non-compliance with the AC.

## **2.2 Subject to Article 7 and 8**

The legislation in place allows, to some extent, for public participation in the development and adoption of the plans and programs (including in environmental area). However, there are no clear procedures for public participation, or even a guidance document in this field.

The Cabinet of Ministers recently launched a comprehensive web-portal to improve transparency and public participation in adoption of the executive regulations, policies and other legal instruments ([civic.kmu.gov.ua](http://civic.kmu.gov.ua)). Unfortunately, the Ministry of Environment does not participate in this activity. There is no developed legal framework for SEA which might have helped to deal with public participation at the level of plans and programs.

**Conclusions:**

Main problems lie within practical application of existing legislation. There is a need to improve public participation in adoption of policies, plans, programs by establishing clear procedures. No clear SEA framework is developed in Ukraine. The Ministry of Environment should participate in the government-wide public consultation process available at Cabinet of Ministers' web site. Internal decision-making at the Ministry of Environment on future legislative priorities shall be more transparent.

**III. ACCESS TO JUSTICE**

Ukraine has a well established court system. Most problems reported in the context of Article 9 of the AC result from a general failure of the court system to ensure effective protection of citizen's rights and enforcement of the law.

However, two specific issues can be highlighted for the purpose of this review and project itself:

- a) availability of court decisions in the area of environmental protection, the AC, other MEAs;
- b) capacity of judges to deal with environmental issues.

Recently introduced Registry of court decisions in Ukraine (<http://www.reyestr.court.gov.ua>) provides for no possibility to search thematic issues (e.g., environmental law, water law, etc). This decreases practical importance of the database and availability of court decisions in environmental area.

At a regional judges workshop on application of environmental legislation (Lviv, 2003) and workshop on the AC (Kyiv, 2007) Ukrainian judges recognized the need to improve their knowledge and skills to apply the AC.

**Conclusions:**

There is a need to increase capacity of judges to deal with the AC-related issues. Access to court decisions related to the environment remains restricted from practical point of view.

**FINAL CONCLUSIONS**

Experts report various problematic issues related to all three pillars of the implementation of the Aarhus Convention in Ukraine.

For the purpose of future action a set of priorities and strategic goals shall be established to deal with issues highlighted. There is a need for clear commitments by the Government of Ukraine to deal with the issues identified.

For the purpose of the project itself, a set of priority actions can be identified, taking into account available resources and time (subject to a separate expert review). In this context, public participation stands clearly as a key issue, especially in relation to public participation provisions of the Espoo Convention.

Ad hoc solution in relation to public participation can be provided by adopting the Order on Public Participation as proposed by the project (see Annex to task VI). Adoption of the Order should however be treated only as interim measure pending legislative changes. The long term solution aiming at full compliance with the Aarhus Convention could be achieved only by adopting the necessary legislative changes as proposed in the Aarhus Strategy (see Annex to Task II).

## **Annex to Task I:**

### **Review of the existing problems with the insufficient framework for implementation of the Aarhus Convention (Ukraine)**

At its third meeting in June 2008 in Riga the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter – the Aarhus Convention or the AC) adopted the decision III/6f on compliance by Ukraine with its obligations under the Convention. Through paragraph 5 of decision III/6f, the Meeting of the Parties decided to issue a caution to the Government of Ukraine, to become effective on 1 May 2009, unless the Government fully satisfied certain conditions set out in that paragraph and notified the secretariat of this fact by 1 January 2009. The successful fulfilment of the conditions was to be established by the Compliance Committee of the AC.

At its twenty-third meeting the Compliance Committee, in light of the steps taken by Ukraine, found that Ukraine has fulfilled the conditions set out in paragraph 5 of decision III/6f of the Meeting of the Parties to the extent that the caution issued by the Meeting of the Parties shall not become effective. However, the Committee found that Ukraine is not yet fully in compliance with its obligations under the AC. The Committee therefore reserved its right to make further recommendations to the Meeting of the Parties, including to recommend to the Meeting to issue a new caution, if the Committee finds that its concerns have not been satisfactory met.

In particular, the Committee wanted to review, at the earliest appropriate opportunity, the draft legislation on the following points:

- k. The proposed wording requiring that public authorities obtain environmental information relevant to their functions, including those functions on which they base their decisions;
- l. The proposed wording requiring that information within the scope of article 4 of the Convention is provided, regardless of its volume;
- m. The proposed wording concerning the detailed requirements for informing the public, as required under article 6, paragraph 2, of the Convention, about the initiation of the procedure and possibilities for the public to participate. In particular:
  - (i) The required form of the public notice;
  - (ii) The required contents of the public notice (as compared with the requirements specified in para. 2 (a)–(d) of art. 6);
  - (iii) How, in case of projects having transboundary impact, the public concerned abroad is to be notified, in accordance with paragraph 2 (e) of article 6;
- n. The proposed wording setting specific timeframes for the public consultation process. In particular:
  - (i) The time for the public study the information on projects and to prepare to participate effectively;
  - (ii) The time for the public to prepare and submit comments;
- o. The proposed wording requiring that sufficient time is available for the public officials to take any comments into account in a meaningful way;
- p. How the Government will prevent the use of short cuts in the decision-making procedure, i.e. parts of EIA being provided for evaluation and approval by the decision-making authority prior to any information being made publicly available;
- q. The proposed wording requiring that public authorities do not limit the provision of information under article 6, paragraph 6, and article 4 of the Convention to publication of the environmental impact

statement but include other relevant information to ensure more informed and effective public participation;

- r. The proposed wording clarifying that information that applicants are required to provide in the course of the public authorities' decision-making on decisions under article 6 is generally not exempt from disclosure;
- s. The proposed wording requiring disclosure of EIA studies in their entirety as the rule (with the possibility for exempting parts being an exception to the rule);
- t. The proposed wording requiring that texts of decisions, along with the reasons and considerations on which they are based, are publicly available.

This review was prepared under the project "Support to Ukraine to implement the Espoo and Aarhus Conventions, Ref. 2008/164491" (LOT 6). The review covers all three pillars of the Aarhus Convention which represent the structure of this review. The review is based on most recent publicly available reports and information on deficiencies in implementation of the Aarhus Convention in Ukraine as well as opinions of the expert(-s) involved in preparation of this review.

For the purpose of this review an **English** text of the Aarhus Convention (AC) was used. There is a general expert opinion that the **official Ukrainian translation of the AC is far from being adequate** to its original authentic texts. However, it is unclear and was not subject to any separate expert review whether Ukrainian official text leads to any deficiencies in practical implementation of the AC.

## IV. ACCESS TO INFORMATION

### Introduction

There seems to be a general opinion that the access to environmental information framework is rather well developed in Ukraine. Nevertheless there are still deficiencies and gaps. Some specific problems occur in individual areas, such as access to information in relation to decision-making, and those problems are related to both legislative (or quasi-legislative) and practical deficiencies. There are also reported problems with active dissemination of environmental information including deficiencies of legislative framework and the need to develop technical capacities and practical experience. Furthermore, of outmost importance is to build understanding of the needs for active dissemination of information by some public authorities. Some of the issues have been identified by the Compliance Committee of the Aarhus Convention in the course of dealing with communication ACCC/C/2004/03 and submission ACCC/S/2004/01.

### 4.1. Definition of environmental information

There are no reported problems related to the definition of environmental information in practical application of the access to environmental information. Currently the legislation is using various terms, including "information about state of the environment" (Art.50 of the Constitution of Ukraine, Art.8 of the Law on State Secret, Art. 30 of the Law on Information), "information about state of the natural environment" (various articles of the Law on Environmental Protection), "ecological information" (Art. 21, 25 of the Law on Environmental Protection, various bylaws, including specific orders of the Minister of Environmental Protection).<sup>3</sup> In addition, the Law on Environmental Protection is using both terms as equal in the title of Article 25 (by using brackets).

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<sup>3</sup> In fact, the first group of laws uses in Ukrainian language a term "довкілля", while all other use "навколишнє природне середовище"; both in the meaning of "the environment". Some experts argue that currently use of two different words does not pose a problem but may lead to some in the future.



The definition of the term “ecological information” is given in the Art.25 of the Law on Environmental Protection. It reflects – with minor deficiencies related to subparagraph c) of the Art.2 (3) of the AC – the definition contained in the Art.2 of the AC.

Recently proposed changes by the Ministry of Environment need to be revised both in light of conformity with the Aarhus Convention, and in light of ensuring homogenous national legal framework on environmental information. Proposed changes should be supported in part of adding information related to subpara c) of the Art.2 (3) of the AC (yet, specific wording should be subject to adjustment since proposed amendments misinterpret meaning/wording of subparagraph c) by using “if” instead of “inasmuch”). However, proposed introduction of unified term “ecological information” must be subject to further analysis due to inevitable link with other laws and the Constitution. In this regard, proposed changes decrease conformity with Constitution and other laws that could cause further conflicts and misinterpretations and may have the opposite result – adversely affecting the right on access to environmental information.

#### **Conclusions:**

- There is a need to review the proposed amendments
- Amendments to the Art.25 of the Law on Environmental Protection are needed to bring it in conformity with subparagraph c) of the paragraph 3 of Article 2 of the Aarhus Convention.
- Non-conformity between the Constitution of Ukraine, the Law on Information, the Law on State Secret and the Law on Environmental Protection in the usage of terms covering “environmental information” (in the meaning of the AC) may pose a problem in future practical application (i.e. “information about state of the environment” or “ecological information”).

#### **4.2. Access to information upon request (Article 4)**

Several most common problems are reported in this area:

- g. no response to requests or inadequate (incomplete, untimely) responses by relevant authorities;
- h. inadequate access to information held by local authorities, especially related to settlements and land planning;
- i. classifying environmental information by environmental authorities (restricting access to environmental information by making it ‘for official use only’ (DSK – dlya sluzbovogo korystuvannya);
- j. denial in access to information upon request on the grounds of protection of intellectual property rights of third parties (mostly due to lack of knowledge and improper interpretation of intellectual property law);
- k. inadequate access to information related to decision-making process; and
- l. limited access to draft policies, plans, programs.

In addition, the Compliance Committee of the Aarhus Convention found deficiencies in the legal framework on the issue and suggested that the Government of Ukraine addresses the following:

- ensure that environmental information within the scope of Article 4 of the AC is provided regardless of its volume.

Most of these issues are rather adequately dealt with by relevant legislation in fields of information, citizen’s requests, state secrets, planning and policy development. One of the exceptions is the Regulation on the procedure for providing access to environmental information, approved by the Order of the Ministry of Environmental Protection of December, 18, 2003 No.169.

In light of this, problems identified in paragraphs (a) and (b) can hardly be dealt within a single project. Difficulties described in (a) result from a general failure of the Government to ensure transparency and compliance with existing regulations and, therefore, are not environment-specific. Inadequacies described in (a), (b), and (d) may be addressed through a comprehensive training program or adequate law-enforcement and, again, are not environment-specific.

Classifying of environmental information and denial in access to information upon request on the grounds of protection of intellectual property rights of third parties (identified in (c) and (d)) by the environmental authorities indeed poses a problem in light of implementation of the AC in Ukraine. Numerous studies support that the current practice in Ukraine is not homogeneous (uniform) and is not in compliance with the AC as well as with national legislation itself. This problem is also relevant in the context of decision-making.

Regulation on the procedure for providing access to environmental information, approved by the Order of the Ministry of Environmental Protection of December, 18, 2003 No.169, does not comply with several key requirements of the AC as well as national laws (e.g. it contains a provision restricting each request for the environmental information to only three questions on a certain environmental problem) and should be either revised or annulled.

Problems identified in paragraphs (e) and (f) would be most effectively dealt in the context of decision-making procedures and active dissemination of information (see below).

Restricting access to environmental information on the basis of its volume cannot be justified under the AC. There are several possibilities to address this issue in practice, as explained by the Compliance Committee in its case law. The provision prohibiting the restriction of access to environmental information based on its volume could be additionally introduced into the relevant legislation (e.g. the Law on Environmental Protection, the Law on Information, etc.).

### **Conclusions:**

Most of the reported problems may be addressed through an adequate law-enforcement as well as comprehensive training programs for relevant authorities including all of those who should provide environmental information relevant to their functions (not only the Ministry of Environmental Protection) as well as for the law enforcement agencies. Classifying of environmental information by environmental authorities is not homogeneous nor in compliance with the AC. There is a need to review current practice (including revision of previously classified information ("for official use only"), and ensure its compliance with the Convention. Regulation on the procedure for providing access to environmental information (Order No.169, 2003) does not comply with the AC and should be either revised or annulled. Other problems related to provision of information upon request are either not specific for environmental matters or are more relevant to active dissemination or decision-making procedures and practices.

### **4.3. Collection and dissemination of environmental information (Article 5)**

The following problems are identified in this area:

- h. Need to develop legislative framework and practice ensuring that public authorities collect and possess and update environmental information relevant to their functions;
- i. Deficiencies of legislative framework for dissemination of environmental information, need to develop technical capacities and practical experience;
- j. Reporting about state of the environment;
- k. Limited public access to the lists and registers of environmental information;

- l. Need to develop meta-data (information about information);
- m. Need to develop understanding of the needs for active dissemination by some public authorities;
- n. Need to develop support to the public seeking environmental information.

In addition, the Compliance Committee of the Aarhus Convention found deficiencies in the legal framework on the issue and suggested that the Government of Ukraine addresses the following:

- ensure that public authorities possess information relevant to their functions, including that on which they base their decisions, in accordance with Art.5(1) of the AC, and make it available to the public;

There is a need to improve legislative framework and practice ensuring that public authorities collect, possess, update and disseminate environmental information relevant to their functions. Some problems are also related to technical capacities and practical experience of public authorities.

According to the Action Plan on Implementation of the Decision of the Parties to the Aarhus Convention № III\6f adopted by the decree of the Cabinet of Ministers of December 27, 2008 № 1628-p, it was planned to draft and adopt the regulations on dissemination of the information on the state of environment as well the regulation on the network of the state environmental automated informational-analytical system for provision of the access to environmental information. No such drafts have been provided yet. Instead, Draft Decree of the Cabinet of Ministers on Dissemination and Provision of Environmental Information was provided. It was supposed to cover both provision of information upon request as well as active information dissemination, however it did not provide solutions to the problems identified above (see also p. 1.5 below).

Contrary to the issue of provision of information upon request, the issue of collection, processing and dissemination of environmental information needs development of detailed and comprehensive legal framework.

Regular reports about state of the environment: the challenges include irregular preparation of reports, limited access of the public to the process of preparation of national reports, need to develop broad informing about the status of preparation of national reports, drafts, effective distribution of the national reports (especially of printed copies).

Most of the lists and registers of environmental information are not publicly accessible. Improvement of the situation may require not only amending the legal framework, but also changing the technical design of existing ones (and in some cases even establishing such registers).

There is also limited information about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained (including the need for more information of this kind on the official web-pages of relevant authorities).

The official web-pages of the Ministry of the Environmental Protection and some of its local offices as well as web-pages of some other relevant authorities are not very user-friendly, complicated as regards the 'search' function and not always possess relevant updated information.

The improvement of understanding of the needs for active dissemination as well as a need to provide support to the public seeking environmental information can be achieved by training and other capacity building activities.

One of the problems relates to the need to ensure that during and after decision-making takes place, relevant authorities possess information on which decisions are based (and make it available).

#### **Conclusions:**

There is room to improve access to information provided without requests. Some problems may amount to non-compliance with the AC, some may also result in poor implementation of the requirements on public participation in decision-making. Further analysis is needed as to how to ensure that public authorities possess and make available information on which they base their decisions. The issue of collection, processing and dissemination of environmental information contrary to the issue of provision of the information on the request needs development of detailed and comprehensive legal framework. Improvement of technical and institutional capacity is also needed. Besides, it could be recommended to Ukraine to ratify the Protocol on PRTRs in the nearest future and establish the respective legislation framework for its proper implementation.

#### **4.4. Access to information related to specific decision-making**

##### ***In relation to Article 6***

Typical problems reported lie within EIA system which, from the perspective of the AC, include restricted access to information. Need to ensure practical access is largely due to poor implementation of existing legislation in the applicable area. In addition, a special order establishing the procedures for performing SER was repealed by the Ministry of Environment in 2004. There is also a need for clear regulations on procedures for public participation.

Restricted access to information is largely related to the issue of classifying certain information related to decision-making, unlawful grounds for refusal to provide documents for examination including denial in access to information upon request on the grounds of protection of intellectual property rights of third parties.

Further development is needed as regards transparency in the permitting process including access to such permits (environmental permits: permits on use of natural resources, permits for emission (air, water), etc) and documents upon which such permits are granted.

#### **4.5. Draft Decree of the Cabinet of Ministers on Dissemination and Provision of Environmental Information**

In December 2009 the Ministry of Environment of Ukraine has put for public comments draft decree on procedures for providing and disseminating environmental information. The draft is available at <http://www.menr.gov.ua/cgi-bin/go?node=ProektRegAkt>. The Ministry also informed about this the Compliance Committee of the AC (letter dated Dec 29, 2009).

The draft decree needs substantial improvement and does not seem to adequately address any of the practical problems related to access to information pillar of the Convention in Ukraine (as described above). In addition, if adopted it may limit in fact access to environmental information compared to current legal framework, as indicated in legal analysis by non-governmental organization EPL (Ukraine), see [http://www.unece.org/env/pp/compliance/MoP3decisions/Ukraine/correspondence/FrEPL\\_CommentsAfterC26\\_14Jan2010.doc](http://www.unece.org/env/pp/compliance/MoP3decisions/Ukraine/correspondence/FrEPL_CommentsAfterC26_14Jan2010.doc).

## **Conclusions:**

Draft decree on access to environmental information cannot be considered as a necessary and effective means to solve practical or legal deficiencies in access to environmental information in Ukraine. It is recommended not to focus on further development/improvement of the current draft.

## **V. PUBLIC PARTICIPATION**

### **2.3 Subject to Article 6**

Public participation in environmentally-significant decisions is regulated by EIA and other legislation. Principles of public participation in environmental decision-making, including participation in OVNS<sup>4</sup>, are laid down in laws, including those on: Environmental Protection, Environmental Review (SER), the Principles of Regulatory Policy in Economic Activity, and the Planning and Development of Territories.

The principles of public participation in OVNS are detailed in the Construction Standard and in the Regulations on Public Participation in Decision-making in Environmental Matters.

The problems reported so far lie within EIA system which, from the perspective of the AC, includes the need to provide practical opportunities for public participation and ensure access to information.

Limited practical opportunities for public participation are largely due to poor implementation of existing legislation in the applicable area. In addition, a special order establishing the procedures for performing SER was repealed by the Ministry of Environment in 2004. The absence of such procedural document as well as clear and detailed regulation on procedures of public participation indeed complicates practical implementation of the public participation requirements.

Typical specific practical problems include: late or no public notice, inadequate or unclear timeframes, limited possibilities to submit comments, due account is not taken of outcomes of public participation, the public is not informed about the final decision and the reasons and considerations on which the decision is based.

Restricted access to information basically relates to the issue of classifying certain types of information, including the conclusions of the SER, not publishing such conclusions, and the absence of a uniform register of such conclusions.

The Compliance Committee of the AC found deficiencies in the legal framework on the issue and suggested that the Government of Ukraine addresses the following:

- ensure that timeframes for the public consultation process are sufficient for the public to study the information on projects and prepare and submit comments;
- ensure that sufficient time is available to the relevant public officials to take any comments into account in a meaningful way, as required under article 6, para.8 of the AC;

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<sup>4</sup> Hereafter in this Review the term “OVNS” or “EIA (OVNS)” is used to identify the process of development by proponent of project EIA documentation while “EIA” is used for the entire process including the relevant stages of environmental review. The State Environmental Review (SER) is used as it is used in the Independent Review to avoid further confusions and misinterpretations. In practice state authorities, experts and public also use the term “Ecological expertiza”.

- prevent shortcutting in the decision-making procedure whereby part of the Environmental Impact Assessment are provided for evaluation and approval by the decision-making authority throughout the course of EIA development and prior to any information being publicly available;
- ensure that public authorities responsible for environmental decision-making do not limit provision of information under article 6, para.6 and Article 4 of the AC to publication of an environmental impact statement but that they provide the public concerned with an opportunity to examine relevant details so that public participation is informed and therefore more effective;
- clarify that information provided by developers to public authorities in the course of decision-making and while being under obligation to do so is not protected from disclosure based on the “ownership” and that disclosure of EIA studies in their entirety is considered as a rule, with possibility for exempting parts of them being an exception to the rule; and
- ensure that texts of the decisions, along with reasons and considerations on which they are based, are publicly available.

The main decision-making procedure which covers permitting decisions under Article 6 of the AC in Ukraine is *OVNS* and *SER* (legal basis: *State Construction Norms DBNA.2.2-1-2003* and *Law on Environmental Expertiza, 1995*, respectively). These two procedures together are widely considered as decision-making procedure in the meaning of Article 6 of the Convention. *OVNS* alone is a process for preparation of environmental impact study by the developer and cannot be thus considered as decision-making procedure in the meaning of Article 6 of the AC.

It is necessary to assess two of abovementioned elements jointly (*OVNS* + *SER*) and to compare them with common EIA procedure, specified in relevant international instruments both for the purposes of this review and in general.

The considerations of the Compliance Committee set above can be dealt with in this context (*OVNS* and *SER* procedures), as explained below.

### **Public notice (Article 6(2))**

This includes public notice requirements and timeframes for consultation process itself.

The developer is responsible for public notice both in *OVNS* and *SER* procedures (by publishing *Declaration of Intent* and *Statement of Environmental Impacts* respectively). In both cases the notice must be disseminated through the mass-media (Art. 10 of the Law on Environmental Expertiza and para. 1.6 of DBN A.2.2-1-2003). There are no clear requirements on the timing for the dissemination of public notice, as well as no relevant provisions that would ensure effective dissemination. Content of the Declaration of Intent need to be amended to comply with the requirements of Art.6(2).

The legislation also envisages public consultations through meetings and other forms of interaction. The outcomes of public participation should be submitted to *SER* together with other *OVNS* materials. Furthermore, the public should be informed through the media of the *SER* resolution (conclusion). The organisation of the public participation at the stage of *OVNS* is fully under responsibility of the investor (developer, proponent). In practice usually such procedure is organised not in a proper way or formally and it causes conflicts between public and investor. The competent authority responsible for the *SER* being not involved at this stage is not able to provide proper and efficient control.

### **Consultation timeframes (Article 6(3))**

Neither *OVNS*, nor *SER* legislation sets any timeframes for public consultation process. This is true for both examining project documents and time period for providing comments themselves.

### **Sufficient time to take comments into account (Article 6(8))**

Since no timeframes are set for public consultation process, compliance with this requirement can be hardly assessed. The only benchmarks for timing are: (1) Statement of Environmental Impacts shall be published before SER starts (as it is part of OVNS documents submitted for SER, para.2.1 of DBN A.2.2-1-2003) and (2) maximum time periods established for SER which are from 45 to 120 days, depending on complexity of a project; 30 days in case of re-evaluation (Article 38 of the Law on Environmental Expertiza).

### **EIA documents submitted for expertiza prior to being made public**

This can be most effectively solved by establishing procedures for SER and including specific requirement that no SER can start if EIA documents were not made publicly accessible.

### **Access to EIA is not limited to environmental impact statement (Articles 6(6) and 4(4))**

In course of OVNS the developer (proponent) is already obliged to provide access to project documentation (para.1.9 of DBN A.2.2-1-2003).

In the course of *SER* there is only general obligation, put on the developer, to ensure “openness” of SER process (Article 8 of the Law on Environmental Expertiza). There is no specific requirement as to access to project documentation. This can be solved by amending Article 11 (or 15) of the Law on Environmental Expertiza with relevant provision stating that documents submitted for SER should be made accessible to the public.

### **Denial of disclosure based on the “ownership” & disclosure of EIA studies in their entirety is considered as a rule**

This is not relevant for OVNS, as explained above.

As for *SER*, such denial is already not in line with national legislation. It can be further clarified by amending Article 11 or 15 of the Law on Environmental Expertiza stating that EIA documents submitted for SER shall be accessible to the public. It would also solve disclosure of EIA studies.

### **Texts of the decisions to be publicly available**

In course of *SER*, final conclusions must be made public through the mass media (Article 10 of the Law on Environmental Expertiza). This provision is rarely implemented in practice. Some regional offices publish only one sentence on their web-pages as to whether a certain activity was permitted or not. It might be solved by creating a registry of conclusions of SER. Article 11 of the Law on Environmental Expertiza requires that the conclusions of SER take account of public opinion. However, there is no requirement on including into final decision consideration of public comments.

It is difficult to define precisely the single type of decisions that can be considered as the final decision for all cases. It looks that for different activities that are subject to EIA different decisions should be considered as the final. For most of activities (mostly activities related to construction) it looks that the final decision is the decision (conclusion) of the Integrated State Expertisa. The Integrated State Expertisa is defined and regulated by the Decree of the Cabinet of Ministers “On procedure of adoption of investment programs, construction projects and their state examination” № 1269 of 31 October 2007. For some other activities (non-construction type e.g. deforestation, etc.) other types of decisions (e.g. permit for the use of natural resources) could be considered as the final ones. Therefore, the texts of such final decisions should be also made publicly available. This issue might require additional studies when preparing further legislative provisions.

There is also a need to ensure transparency in the permitting process including access to such permits (environmental permits: permits on use of natural resources, permits for emission (air, water), etc) and documents upon which such permits are granted, as well as possibilities for public participation during the permitting process.

More detailed elaboration of provisions for public participation is planned to be done under the work on implementation of the Resolution of the Cabinet of Ministers on the Endorsement of the Action Plan for the Implementation of the Decision of Parties to Aarhus Convention III/6f, No. 1626-I of 27 December 2008. It could be recommended to also address the issues mentioned above when implementing the said Action Plan.

### **Conclusions:**

Typical problems lie within practical application of existing legislation. There is limited application of the existing public participation requirements during EIA/SER. There is a need to re-introduce a separate document on procedures for carrying out SER.

It is also recommended to elaborate and adopt new Decree on public participation (it is planned to be done according to the Resolution of the Cabinet of Ministers on the Endorsement of the Action Plan for the Implementation of the Decision of Parties to Aarhus Convention III/6f, No. 1626-I of 27 December 2008).

The responsibility to organize public participation during both OVNS and SER stages (e.g. hold the public consultations and hearings) needs to be moved from the developer to the public authority (or specially authorised organisation). This also may require additional changes to the Law of Ukraine on Environmental Expertiza and to the State Construction Standard DBN A.2.2.-1-2003 on Structure and Contents of the Materials on Assessment of Impacts on the Environment (OVNS) for Designing and Construction of Production Facilities, Buildings and Structures, No. 214 of 15 December 2003.

New public participation regulation should also provide detailed and clear procedure to address issues identified by Compliance Committee, including public notice content and form, consultation timeframes, access to project documents as well as some other issues, including the form of public consultation, public participation in the environmental permitting process, etc. Additional amendments to the Law of Ukraine on Environmental Expertiza, the Decree of the Cabinet of Ministers "On procedure of adoption of investment programs, construction projects and their state examination" № 1269 of 31 October 2007 and some other regulations might be also needed.

Classifying of final decisions shall be subject to serious revision. Unavailability of final decisions leads to non-compliance with the AC.

## **2.4 Subject to Article 7 and 8**

The legislation in place allows, to some extent, for public participation in the development and adoption of the plans and programs (including in environmental area). However, there are no clear procedures for public participation, or even a guidance document in this field.

The Cabinet of Ministers recently launched a comprehensive web-portal to improve transparency and public participation in adoption of the executive regulations, policies and other legal instruments ([civic.kmu.gov.ua](http://civic.kmu.gov.ua)). Unfortunately, the Ministry of Environment does not participate in this activity. There is no developed legal framework for SEA which might have helped to deal with public participation at the level of plans and programs.



**Conclusions:**

Main problems lie within practical application of existing legislation. There is a need to improve public participation in adoption of policies, plans, programs by establishing clear procedures. No clear SEA framework is developed in Ukraine. The Ministry of Environment should participate in the government-wide public consultation process available at Cabinet of Ministers' web site. Internal decision-making at the Ministry of Environment on future legislative priorities shall be more transparent.

**VI. ACCESS TO JUSTICE**

Ukraine has a well established court system. Most problems reported in the context of Article 9 of the AC result from a general failure of the court system to ensure effective protection of citizen's rights and enforcement of the law.

However, two specific issues can be highlighted for the purpose of this review and project itself:

- c) availability of court decisions in the area of environmental protection, the AC, other MEAs;
- d) capacity of judges to deal with environmental issues.

Recently introduced Registry of court decisions in Ukraine (<http://www.reyestr.court.gov.ua>) provides for no possibility to search thematic issues (e.g., environmental law, water law, etc). This decreases practical importance of the database and availability of court decisions in environmental area.

At a regional judges workshop on application of environmental legislation (Lviv, 2003) and workshop on the AC (Kyiv, 2007) Ukrainian judges recognized the need to improve their knowledge and skills to apply the AC.

**Conclusions:**

There is a need to increase capacity of judges to deal with the AC-related issues. Access to court decisions related to the environment remains restricted from practical point of view.

**FINAL CONCLUSIONS**

Experts report various problematic issues related to all three pillars of the implementation of the Aarhus Convention in Ukraine.

For the purpose of future action a set of priorities and strategic goals shall be established to deal with issues highlighted. There is a need for clear commitments by the Government of Ukraine to deal with the issues identified.

For the purpose of the project itself, a set of priority actions can be identified, taking into account available resources and time (subject to a separate expert review). In this context, public participation stands clearly as a key issue, especially in relation to public participation provisions of the Espoo Convention.

Ad hoc solution in relation to public participation can be provided by adopting the Order on Public Participation as proposed by the project (see Annex to task VI). Adoption of the Order should however be treated only as interim measure pending legislative changes. The long term solution aiming at full compliance with the Aarhus Convention could be achieved only by adopting the necessary legislative changes as proposed in the Aarhus Strategy (see Annex to Task II).

## Annex to Task I

### **Final decision according to Art. 6 of the Convention on Environmental Impact Assessment in Transboundary Context (hereinafter – the Espoo Convention)**

For the objects included to the Annex 1 of the Espoo Convention and subject to mandatory Integrated State Expertiza and State Environmental Review (Ecological Expertiza) the final decision is considered to be the conclusion of the Integrated State Expertiza. This statement is supported by the provision of part 2 Art. 15 of the Law of Ukraine "On investment activity" of 18.09.1991 № 1560-XII that stipulates that State Review of investment programs and projects is performed by the specialized enterprise Central Service of Ukrainian State Construction Expertise "with participation of expert divisions of the organizations that are co-executors of the Integrated State Expertiza". Therefore, the State Environmental Review (Ecological Expertiza) is part of the Integrated State Expertiza and its executors are co-executors of the Integrated State Expertiza.

This idea is more clearly stated in paragraph 3 of point 7 of the Procedure for adoption of investment programs and construction projects and execution of their State Review adopted by the Decree of the Cabinet of Ministers of Ukraine of 31.10.2007 № 1269. This point contains the following provision "Programs and projects of constructing objects that pose technogenic, high environmental, nuclear and radiation danger are subject to review of environmental, technogenic, nuclear and radiation safety. ***The relevant conclusions are part of the conclusion of the Integrated State Expertiza***".

The right to realization of a project is granted only by the conclusion of the Integrated State Expertiza (part 1 Art 15 of the Law of Ukraine 'On investment activity'). Moreover, the conclusion of State Environmental Review does not fully include the analysis of issues related to health protection against adverse impact of an object. Assessment of certain environmental parameters of projects is included also into the conclusion of the review of energy saving and energy efficiency, fire safety, emergency, occupational safety issues and others. All this leads to the conclusion that the conclusion of the State Environmental Review does not approve all environmental parameters of an object.

In its turn, the conclusion of State Sanitary and Epidemiological Review does not contain assessment of environmental impact of an object (if it is not directly related to human health). Nor is environmental impact assessment included into conclusions of State Reviews of energy saving and energy efficiency, fire safety, emergencies and occupational safety.

This means that parameters of an object according to conclusion of State Environmental Review (as well as other components of the Integrated State Expertiza) can be changed if this is required by conclusion of another review which is part of the Integrated State Expertiza. As mentioned by the Espoo Convention Implementation Committee in point 21 of the Report of the sixteenth session that took place on 10-12 March 2009<sup>5</sup> in Berlin "if the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the "final decision" in the meaning of the Convention".

In view of the abovementioned, we can conclude that none of the conclusions which are part of the Integrated State Expertiza can be considered as final decision in the meaning of Art. 6 of the Espoo Convention.

The p. 32 of the Independent Review of legal, administrative and other measures taken by Ukraine with the purpose to realize provisions of the Convention prepared according to points 7 – 14 of the Decision of the

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<sup>5</sup> Report of the sixteenth session that took place on 10-12 March 2009 in Berlin – [Electronic resource]. – Access regime. - [http://www.unece.org/env/eia/implementation/implementation\\_committee\\_meetings\\_r.htm](http://www.unece.org/env/eia/implementation/implementation_committee_meetings_r.htm)

Meeting of the Parties IV/2 (ECE/MP.EIA/IC/2009/5) (hereinafter – Independent Review) proposed to recognize as final decision the permit to undertake construction works. This conclusion was made on the basis of the fact that this permit is issued after all procedures are completed and that prior decisions (including the conclusion of the Integrated State Expertiza) do not allow to undertake activity without permit for construction works. Moreover, point 32 of the Independent Review stipulates that the permit for construction works can envisage conditions that are more rigid (in environmental sense) than conditions defined by the previous decisions.

Unfortunately, the last statement cannot be accepted. The form of permit for construction works has been approved as Annex 1 to the Procedure of issuing permits for construction works. This form does not include any environmental parameter. It only records name (last name, first name, patronymic) of the person who is issued the permit, type of construction works, project documentation, indicates the persons authorized to perform author and technical supervision, the executor bearing the responsibility and expiry date of the permit. Thus, this permit does not set any environmental parameters of an object and is aimed only at ensuring safety of construction works within the project and is not related to parameters of the project itself.

City construction substantiation is not the final decision in the meaning of Art. 6 of the Espoo Convention either. This is reasoned by the fact that in the process of its approval by village or town councils only initial data for the project are provided. On the basis of these data the project is developed in which initial data are checked and which is subject to the Integrated State Expertiza. As a result of the latter the project can be rejected despite the fact that the city construction substantiation was approved.

***Therefore, as a general rule and in the meaning of Art. 6 of the Espoo Convention, conclusion of the Integrated State Expertiza is regarded as final decision. However, there are exceptions to this rule.***

## **Annex to Task II**

### **Strategy**

#### **to address the problems in the implementation of the Aarhus Convention (Ukraine)**

This strategy was prepared under the project "Support to Ukraine to implement the Espoo and Aarhus Conventions, Ref. 2008/164491" (LOT 6). The strategy covers all three pillars of the Aarhus Convention which represent the structure of this review. The strategy is based on the *Review of the existing problems with the insufficient framework for implementation of Aarhus Convention (Ukraine)* as prepared within the project itself. Additionally, this strategy addresses recent AC-related initiatives in Ukraine and steps to address cross-cutting issues.

Each of the three parts of this strategy include overall concept for the efficient framework and steps needed to be taken in short run and/or long run

#### **I. ACCESS TO INFORMATION**

##### **OVERALL CONCEPT:**

There seems to be a general opinion that the access to environmental information framework is rather well developed in Ukraine. Some specific problems occur in individual areas. Some issues are more relevant to the decision-making. There are also reported problems with active dissemination of environmental information including deficiencies of legislative framework, need to develop technical capacities and practical experience. Other problems are not AC-specific and, therefore, cannot be addressed under the AC implementation strategy.

**Problem-oriented response is needed (solutions to specific individual problems identified).**

**The framework needs no basic/general changes (1.1-1.2).**

**The framework needs basic/general improvements (1.3- 1.4)**

##### **1.1. Definition of environmental information**

###### ***Problem(-s) identified:***

There are no reported problems related to the definition of environmental information in practical application of the access to environmental information. Minor amendments to Art.25 of the Law on Environmental Information are needed to ensure conformity with the definition of environmental information under the Aarhus Convention. Proposed draft law introduces the unified term "ecological information", which should be put for further analysis due to inevitable link with other laws and the Constitution. Changes suggested in the draft law decrease conformity with the Constitution and other laws.

###### **DESCRIPTION OF THE PROPOSED ACTION(-S):**

**Further analyze and re-draft proposed amendments to Article 25 of the Law on Environmental Protection.**

## 1.2. Access to information upon request (Article 4)

### ***Problem(-s) identified:***

- no response to requests or inadequate (incomplete, untimely) responses by relevant authorities;
- inadequate access to information held by local authorities, especially related to settlements and land planning;
- inadequate access to information related to decision-making process;
- lack of access to draft policies, plans, programs;
- denial in access to information upon request on the grounds of protection of intellectual property rights of third parties (mostly due to limited awareness and improper interpretation of intellectual property law).

### DESCRIPTION OF THE PROPOSED ACTION(-S):

#### **Adequate law-enforcement;**

**Conduct comprehensive training programs for relevant authorities including all of those who should provide environmental information relevant to their functions (not only the Ministry of Environmental Protection) as well as for the law-enforcement agencies.**

- classifying environmental information by environmental authorities (restriction of access by making it 'for official use only' (DSK – dlya sluzbovogo korystuvannya);
- denial in access to information upon request on the grounds of protection of intellectual property rights of third parties.

### DESCRIPTION OF THE PROPOSED ACTION(-S):

**Review current practice (including revision of previously classified information ("for official use only"), and ensure its compliance with the Convention.**

- Regulation on the procedure for providing access to environmental information (Order No.169, 2003) does not comply with the AC.

### DESCRIPTION OF THE PROPOSED ACTION(-S):

**Annul (or revise) the Regulation on the procedure for providing access to environmental information (Order No.169, 2003).**

- proposed regulation on access to environmental information (draft decree of the Cabinet of Ministers) is unnecessary and inadequate.

### DESCRIPTION OF THE PROPOSED ACTION(-S):

**Withdraw draft and further analyze the need for such document at all**

- restricting access to environmental information on the basis of its volume.

### DESCRIPTION OF THE PROPOSED ACTION(-S):

**Introduce a provision into the relevant legislation (e.g. the Law on Environmental Protection, the Law on Information, etc.) clearly prohibiting restricting access to environmental information because of its volume.**

### 1.3. Collection and dissemination of environmental information (Article 5)

- There is room for improvement of collection and active dissemination of environmental information. Some problems may amount to non-compliance with the AC, some may also result in failure to implement requirements on public participation in decision-making.

#### DESCRIPTION OF THE PROPOSED ACTION(-S):

**Develop a detailed and comprehensive legal framework on the issue of collection, processing and dissemination of environmental information;**

**Develop and adopt the regulations on dissemination of the information on the state of environment as well the regulation on the network of the state environmental automated informational-analytical system for provision of the access to environmental information as it was planned according to the Action Plan on Implementation of the Decision of the Parties to the Aarhus Convention № III\6f adopted by the decree of the Cabinet of Ministers of December 27, 2008 № 1628-p;**

**Ensure availability of meta-data including on the official web-pages of relevant authorities;**

**Properly maintain and where appropriate establish publicly available lists and registers of environmental information;**

**Improve preparation and dissemination of reports on the state of environment;**

**Improve access to environmental information via official web-pages including access to draft policies, plans and programs;**

**Improve technical and institutional capacity of relevant authorities;**

**Conduct comprehensive training programs for relevant authorities including all of those who should disseminate environmental information relevant to their functions (not only the Ministry of Environmental Protection);**

**Ratify the Protocol on PRTRs in the nearest future and establish the respective legislation framework for its proper implementation.**

### 1.4. Access to information related to specific decision-making

#### *In relation to Article 6*

- Restricted access to information is largely related to the issue of classifying certain information related to decision-making, unlawful grounds for refusal to provide documents for examination including denial in access to information upon request on the grounds of protection of intellectual property rights of third parties. Restricting access to documents related to specific decision-making is not regulated by clear rules.

#### DESCRIPTION OF THE PROPOSED ACTION(-S):

**Ensure adequate law-enforcement;**

**Conduct comprehensive training programs for relevant authorities including all of those who should provide environmental information relevant to their functions (not only the Ministry of Environmental Protection) as well as for the law-enforcement agencies;**

**Consider introducing amendments to relevant legislation specifying that all public authorities shall possess, keep and make available to the public information (documents, plans, etc) on which they base their decisions as well as address this issue in the proposed new Decree on public participation (see 2.1 below);**

**Establish and properly maintain publicly available registers of final decisions.**

**See also Part II below.**

*In relation to Articles 7 and 8*

There is a need to provide access to draft policies, plans, programs and international instruments.

DESCRIPTION OF THE PROPOSED ACTION(-S):

**To be addressed in the context of decision-making on policies plans, programs, other instruments (see below)**

## **II. PUBLIC PARTICIPATION**

### **OVERALL CONCEPT:**

Typical problems reported so far lie within EIA system which, from the perspective of the AC, includes limited practical opportunities for public participation and restricted access to information. It is highly important to address public participation issues when developing changes to the current EIA system.

**Comprehensive response is needed (solution to general failure). The framework needs basic/general improvements.**

### **2.1 Subject to Article 6**

Limited practical opportunities for public participation are due to poor implementation of existing legislation in the applicable area. In addition, a special order establishing the procedures for performing SER was repealed by the Ministry of Environment in 2004. The absence of such procedural document indeed complicates practical implementation of the public participation requirements. Specific practical problems include: late or no public notice, inadequate timeframes, limited possibilities to submit comments, due account is not taken of outcomes of public participation, the public is not informed about the final decision and the reasons and considerations on which the decision is based.

DESCRIPTION OF THE PROPOSED ACTION(-S):

It is recommended to elaborate and adopt new Decree on public participation (it is planned to be done according to the Resolution of the Cabinet of Ministers on the Endorsement of the Action Plan for the Implementation of the Decision of Parties to Aarhus Convention III/6f, No. 1626-I of 27 December 2008).

The responsibility to organize public participation during both OVNS and SER stages (e.g. hold the public consultations and hearings) needs to be shifted from the developer to the public authority (or specially authorised organisation). This also may require additional changes to the Law of Ukraine on Environmental Expertiza and to the State Construction Standard DBN A.2.2.-1-2003 on Structure and Contents of the Materials on Assessment of Impacts on the Environment (OVNS) for Designing and Construction of Production Facilities, Buildings and Structures, No. 214 of 15 December 2003.

New public participation regulation should also provide detailed and clear procedure to address issues identified by the Compliance Committee, including public notice content and form, consultation timeframes, access to project documents as well as some other issues, including the form of public consultation, public participation in the environmental permitting process, etc. Additional amendments to the Law of Ukraine on Environmental Expertiza, the Decree of the Cabinet of Ministers "On procedure of adoption of investment programs, construction projects and their state examination" № 1269 of 31 October 2007 and some other regulations might be also needed.

Classifying of the conclusion of SER shall be subject to serious revision.

There is a need to re-introduce a separate document on procedures for carrying out SER.

- Restricted access to information related to the issue of classifying certain information, including the conclusions of SER, no publishing of such conclusions, absence of a uniform register of such conclusions.

DESCRIPTION OF THE PROPOSED ACTION(-S):

**Detailed modalities shall be developed to ensure that the conclusions of SER are made public when they are adopted;**

**Develop state register of the conclusions of SER available to the public;**

**Analyze practical possibilities for publishing conclusions of SER.**

## **2.2. Subject to Article 7 and 8**

- Typical problems lie within practical application of existing legislation. There is a need to improve public participation in adoption of policies, plans, programs by establishing clear procedures.

DESCRIPTION OF THE PROPOSED ACTION(-S):

**Address within actions listed in 2.1, in particular by including applicability provisions as to plans, programs, etc.**

- The Cabinet of Ministers recently launched a comprehensive web-portal to improve transparency and public participation in adoption of the executive regulations, policies and other legal instruments ([civic.kmu.gov.ua](http://civic.kmu.gov.ua)). Unfortunately, the Ministry of Environment is not involved in this activity, yet.

DESCRIPTION OF THE PROPOSED ACTION(-S):

**Establish internal procedure for compulsory use of the existing civil society consultations portal at the web-site of the Cabinet of Ministers ([civic.kmu.gov.ua](http://civic.kmu.gov.ua))**

- There is no clear legal framework for SEA which might have helped to deal with public participation at the level of plans and programs.

DESCRIPTION OF THE PROPOSED ACTION(-S):

**Develop legal framework for SEA;**

**Ratify the SEA Protocol.**



### III. ACCESS TO JUSTICE

#### OVERALL CONCEPT:

Ukraine has a well established court system. Most problems reported in the context of Article 9 of the AC result from a general failure of the court system to ensure effective protection of citizen's rights and enforcement of the law.

**Low-scale cost-efficient response is possible. General framework needs no basic/overall changes.**

Recently introduced Registry of court decisions in Ukraine (<http://www.reyestr.court.gov.ua>) provides for no possibility to search thematic issues (e.g., environmental law, water law, etc.). This decreases practical importance of the database and availability of court decisions in environmental area.

#### DESCRIPTION OF THE PROPOSED ACTION(-S):

**Introduce changes into the database to allow search for thematic issues and use of environmental law tags (e.g., “environmental expertiza”, “public participation”, “Aarhus Convention”, etc.).**

- There is a need to increase capacity of judges to deal with the AC-related issues.

#### DESCRIPTION OF THE PROPOSED ACTION(-S):

**Introduce topics on the AC-related issues into regular training curriculum at the Academy of Judges of Ukraine.**

#### FINAL REMARKS

Taking into account duration and resources available under the project some actions listed above could be implemented within the project. However, further prioritization is needed. In this context, public participation stands clearly as a key issue.

Taking into account difficulties Ukraine faced in previous years in coordinating implementation of the Aarhus Convention and participation in relevant activities under the Convention, it is highly recommended to provide assistance in setting up legal/institutional framework for the focal point(s).

## **Annex to Task II**

### **Strategy of the implementation of the Espoo Convention in Ukraine**

#### *Explanatory note*

#### **Introduction**

This Strategy addresses and highlights main legal, institutional and procedural aspects that are planned to be improved in order to fully implement the Espoo Convention in Ukraine. It includes detailed description of provisions in planned legislation and of training and other planned actions. The precise time schedule and responsibilities for implementation are defined in the Action Plan that is adopted (*will be adopted*) by the Cabinet of Ministers of Ukraine.

The system of Environmental Impact Assessment in Ukraine, as well as in the main part of EECCA countries includes such main elements as (1) development by proponent<sup>6</sup> of project documentation, which includes EIA documentation (OVNS<sup>7</sup>) and (2) assessment of this documentation, its completeness and correspondence to the legislation and others instruments, which is carried out by certain authorized state bodies.

The law regulates and describes the procedure of assessment (review) of EIA documentation by the state bodies. Such assessment is named as State Ecological Expertise<sup>8</sup> or State Environmental Review (hereinafter SER).

Whereas the SER procedure is regulated by the Law on Environmental Review, the OVNS procedure is guided by the State Construction Standard No. 214.

The process of elaboration of documentation and its OVNS part which direct translation is “EIA” sometimes lead to confusions and misunderstanding when it is compared with EIA process in EU or USA. In some cases OVNS is only compared with or State Environmental Review (ecological expertise) elements are only considered as EIA.

For the purpose of this Strategy and in general it is necessary to consider both elements jointly (OVNS + Environmental review) when comparing them with the EIA procedure, specified in relevant international instruments.

#### **Legal acts to be improved**

On 2 April 2008, the Government of Ukraine established the Intergovernmental (strictly interdepartmental) Coordination Council on the Implementation of the Espoo Convention in Ukraine. The Chairman of the Council is the Deputy Prime Minister and the Deputy Chairman is the Minister of Environmental Protection. The Council includes 10 Deputy Ministers, a representative of the National Defence and Security Council and a representative of the Academy of Sciences. The Council meets at least twice a year and main goals of the Council are:

1. Developing proposals for implementing the Convention;

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<sup>6</sup> The term ‘proponent’ is used rather than ‘developer’ or ‘investor’, where there is no change in meaning;

<sup>7</sup> Direct translation of OVNS from Ukrainian is EIA (Environmental Impact Assessment).

<sup>8</sup> The Ukrainian name of the Law is ‘the Law of Ukraine on Ecological Expertisa’.

2. Coordinating activities of various authorities related to the implementation of the
3. Convention;
4. Monitoring the application of the Convention and analysis of its effectiveness.

Despite its important role, the Council is not supposed to be the competent authority as defined by the Convention. It appears that Ukrainian legislation does not define such an authority: the Resolution of the Cabinet of Ministers on the Procedure for Participation of the Central Authorities in the Activities of the International Organisations in which Ukraine Participates does not mention the Convention in the list of international conventions and organizations.

Following the recommendations of the Independent review where the lack of clear legal designation of the competent authority and definition of its responsibilities was mentioned as one of disadvantages (*p. 40, 71 of the Independent Review*) it is planned to designate authority responsible for implementing the Convention (as required by art. 1(ix) and other articles of the Convention), both as a Party of origin and as an affected Party. For this purpose it is planned to amend of the Resolution of the Cabinet of Ministers on the Procedure for Participation of the Central Authorities in the Activities of the International Organisations in which Ukraine Participates, No.1371, 13 September 2002. The Ministry of Environment is planned to be designated as the competent authority.

The responsibilities of the competent authority are planned to be defined in the Decree of the Cabinet of Ministers "On adoption of the Procedure of environmental impact assessment in transboundary context" by which it is planned to adopt the Procedure of EIA in transboundary context as well as to define the role of the competent authority. (*See time schedule and responsible bodies in the Action Plan, p.1*) To develop the separate procedure for transboundary EIA and adopt it at the level of the Cabinet of Ministers was also recommended by the Independent Review (*p. 82 of the Independent Review*). The Draft Decree of the Cabinet of Ministers "On adoption of the Procedure of environmental impact assessment in transboundary context" will be elaborated later and it will include the issues of responsibilities, mandate of the competent authority as well as other issues such as:

- procedure of transboundary EIA in both cases when Ukraine is a Party of Origin and an Affected party;
- consultations and public participation;
- financial mechanisms;
- post-project analysis and monitoring;
- list of activities that trigger procedure of transboundary EIA.

With regards to the list of activities that will trigger transboundary procedure it is also planned to establish the special expert group (with possible involvement of the international experts) which will elaborate such list.

It is expected that the main key requirements of the Espoo Convention, where Ukraine has been found non-compliant, will be covered by the Decree, including in particular the following:

- requirements for notification, transmission of information and public participation.
- requirements for the preparation of EIA documentation and distribution of the EIA documentation for the purpose of participation of authorities and public of the affected country
- provisions for consultation between the Parties on the basis of the EIA documentation
- the final decision and the transmission of final decision documentation to the affected Party along with the reasons and considerations on which it was based.

The resolution of the Cabinet of Ministers On the Intergovernmental Coordination Council on the Implementation of the Espoo Convention in Ukraine. No.295, 2 April 2008 shall be amended accordingly after adoption of the Procedure of environmental impact assessment in transboundary context taking into account the responsibilities and mandate of the competent authority and need for coordination of its work and responsibilities with the Council. *(See time schedule and responsible bodies in the Action Plan, p.1)*

As it was pointed by the experts, just to draft and adopt abovementioned Decree on transboundary EIA may not be enough to improve the system in order to fully implement the Espoo Convention in Ukraine. Some of issues are not in the competence of the Cabinet of Ministers, for example, according to the Art.18 of the Law on Environmental Review (Ecological Expertiza) it is the competence of the Parliament of Ukraine to define the principles and procedure of the Environmental Review (Ecological Expertiza). The Cabinet of Ministers according to this law sets the procedure of submitting of documentation for the State Environmental Review and adopts the list of activities. (Art. 21)

Therefore it is also needed to amend the Law of Ukraine on Environmental Review. *(See time schedule and responsible bodies in the Action Plan, p.1)*

The following amendments to the Law are planned:

1. First of all the law shall define the responsibility of the Cabinet of Ministers to adopt the transboundary EIA procedure and introduce the legal ground for the adoption of the Decree of Cabinet of Ministers "On adoption of the Procedure of environmental impact assessment in transboundary context"
2. It is important to ensure is that all planned activities with potentially significant transboundary impact shall appear "on the radar" of the competent authority early in the planning process (e.g. when the declaration of intent is prepared). *(p. 73,74 of the Independent Review)* In the current system in most of cases the competent authority are involved in the process of EIA at the stage of State Environmental Review, when developer submits the EIA documentation for the review. This stage can not be considered as the early stage in the planning process as before that proponent had already designed main documentation, hold public hearings, selected alternatives etc.

The planned amendments shall extend the role of the competent authority and provide obligation for the proponent to submit the Statement of Intent to the competent authority (and/or is regional bodies) at the beginning of process. In such case the competent authority can decide whether such activity may have significant transboundary impact or not, and in case it may have such impact apply the procedure that will be defined by the abovementioned Decree on the Procedure of environmental impact assessment in transboundary context.

Content of the Statement of Intent and other relevant provisions can be set in the new article.

3. Additional provisions to amend the process of the SER and to include the cases of significant transboundary impact when Ukraine is the affected party. (apparently art. 13) If the Party of Origin sends the documentation to Ukraine as the affected party, this documentation shall be the object of environmental review.

The issue when Ukrainian authorities receive information of any activity that might have significant transboundary environmental impact, but no notification from the Party of origin had been received, will be addressed as well.

4. Some other amendments are needed such as timing, content of EIA documentation and financial issues.

It is planned to amend relevant provisions on funding (apparently art. 47) including the issue of funding in case of transboundary procedure. (*p. 80-81 of the Independent Review*).

Also, as the competent authority is planned to be involved at the stage of the Statement of Intent as well as the responsibilities to organise public participation are planned to be put on the competent authority it will also lead to changes in timing and other financial arrangements.

It may also require to develop and adopt special provisions or regulation on financial mechanisms of transboundary EIA in a form of special provisions in the law, chapter in the Decree of the Cabinet of Ministers On adoption of the Procedure of environmental impact assessment in transboundary context, or separate regulation. (Will be decided later when the transboundary EIA procedure will be defined)

It is also planned to amend the List of Activities and Objects Prone to Causing Higher Environmental Risks adopted by the Resolution of the Cabinet of Ministers on List of Activities and Objects Prone to Causing Higher Environmental Risks, No. 554, 27 July 1995, with relevant amendments. This list shall trigger the national review procedure of the State Environmental Review while the one proposed in the Decree on transboundary EIA has the purpose to trigger transboundary procedure. But if any activity will not “come on radar” of the national procedure it automatically could not be screened for transboundary EIA.

Therefore the List of activities shall be amended in line with the Espoo Convention. One of the main gaps of such list is that it lists construction activities only but does not include such activities as, for example, deforestation of large areas. (The new draft of the list was prepared recently and sent for comments and preliminary approval to the relevant authorities. It needs to be revised and the abovementioned issues shall be addressed before the final adoption)

More detailed elaboration of provisions for public participation in national context will be done under the work on implementation of the Resolution of the Cabinet of Ministers on the Endorsement of the Action Plan for the Implementation of the Decision of Parties to Aarhus Convention III/6f, No. 1626-I, 27 December. This work will be coordinated to take into account transboundary procedure. The responsibility to hold the public hearings need to be moved from the developer to the public authority (or specially authorised organisation), including the OVNS stage.

It is difficult precisely to define the single type of decisions that can be considered as the final decision for all cases. It looks that for different activities that are subject to EIA (and Annex I of the Espoo Convention) different decisions should be considered as the final. For most of activities (mostly activities related to construction) it looks that the final decision is the decision (conclusion) of the Integrated State Expertisa. The Integrated State Expertisa is defined and regulated by the Decree of the Cabinet of Ministers “On procedure of adoption of investment programs, construction projects and their state examination” № 1269, 31 October 2007. For some other activities (non-construction type e.g. deforestation, etc.), other types of decisions could be considered as the final. This issue requires additional studies that will be done when preparing further legislative provisions.

In order to incorporate accordingly abovementioned amendments (as well as include the issue of the final decision) and extend the terms of examination as well as incorporate relevant financial mechanisms in case of transboundary EIA, the Decree of the Cabinet of Ministers “On procedure of adoption of investment programs, construction projects and their state examination” № 1269, 31.10.2007 needs to be amended. (*See time schedule and responsible bodies in the Action Plan, p.1*)

State Construction Standard DBN A.2.2.-1-2003 on Structure and Contents of the Materials on Assessment of Impacts on the Environment (OVNS) for Designing and Construction of Production Facilities, Buildings

and Structures, No. 214, 15.12.2003 shall be also amended accordingly taking into account changes to the Law on Environmental review and other regulations. *(See time schedule and responsible bodies in the Action Plan, p.2)*

### **Other activities**

It is also planned to initiate the process of elaboration and negotiation of bi-lateral and multilateral agreements with neighbouring countries *(See time schedule and responsible bodies in the Action Plan, p.5).*

As number of changes to legislation will be introduced it is crucial to elaborate the guidance on EIA in transboundary context including both cases when Ukraine is Party of Origin and Affected Party. *(See time schedule and responsible bodies in the Action Plan, p.4)*

Specific trainings for the competent authority at well as other educational and capacity-building activities will be organised for other relevant stakeholders *(See time schedule and responsible bodies in the Action Plan, p.3)*

*See the List of regulations to be drafted or amended and other planned activities below*

**List of regulations to be drafted or amended and other planned activities**  
*(with short explanations)*

- 1. Amendment of the Resolution of the Cabinet of Ministers on the Procedure for Participation of the Central Authorities in the Activities of the International Organisations in which Ukraine Participates, No.1371, 13 September 2002.**

To designate authorities responsible for implementing the Convention (as required by art. 1(ix) and other articles of the Convention), both as a Party of origin and as an affected Party. (*p. 71 of the Independent Review*)

- 2. Draft Decree of the Cabinet of Ministers “On adoption of the Procedure of environmental impact assessment in transboundary context”**

- in addition to the p.1 to designate authorities responsible for implementing the Convention and define responsibilities, mandate and resources to implement the Convention. (*p. 71 of the Independent Review*) as well as define following issues:
- procedure of transboundary EIA in both cases when Ukraine is Party of Origin and Affected Party;
- consultations and public participation;
- financial mechanisms;
- post-project analysis and monitoring;
- list of activities that trigger procedure of transboundary EIA.

The special expert group shall be established to elaborate such list.

- 3. Amendments to the resolution of the Cabinet of Ministers on the Intergovernmental Coordination Council on the Implementation of the Espoo Convention in Ukraine. No.295, 2 April 2008.**

- 4. Amendments to the Law of Ukraine on Environmental review.**

- to include the provisions that introduce the legal ground for the adoption of the Decree of Cabinet of Ministers “On adoption of the Procedure of environmental impact assessment in transboundary context” ;
- to add the relevant article on the Statement of Intent which shall be submitted to the competent authority (and/or its regional bodies) to ensure that all planned activities with potentially significant transboundary impact appear “on the radar” of the competent authority early in the planning process and trigger the transboundary procedure. (*p. 73 of the Independent Review*);
- to amend the process of the SER and to including the cases of significant transboundary impact when Ukraine is the affected party. (apparently art. 13)
- to amend the content of EIA documentation; (*p. 63 of the Independent Review*)
- to amend provisions on the terms of SER (apparently art. 38) to enable the extension of the terms of SER in case of transboundary procedure;
- to amend relevant provisions on funding (apparently art. 47) including the issue of funding in case of transboundary procedure. (*p. 80-81 of the Independent Review*). It may also require to

develop and adopt special provisions or regulation on financial mechanisms of transboundary EIA in a form of special provisions in the law, chapter in the Decree of Cabinet of Ministers “On adoption of the Procedure of environmental impact assessment in transboundary context”, or separate regulation;

- detailed modalities shall be developed to ensure that the conclusions of SER are made public when they are adopted.

**5. Amendment of the Resolution of the Cabinet of Ministers on List of Activities and Objects Prone to Causing Higher Environmental Risks, No. 554, 27 July 1995, with amendments in No. 142 of 14.02.2001.**

- to amend the list activities in line with the Espoo Convention.

**6. Amendment of the Decree of the Cabinet of Ministers “On procedure of adoption of investment programs, construction projects and their state examination” № 1269, 31.10.2007.**

- to be amended in order to address the issue of final decision, extend the terms of examination and incorporate relevant financial mechanisms in case of transboundary EIA.

**7. Amendment of the State Construction Standard DBN A.2.2.-1-2003 on Structure and Contents of the Materials on Assessment of Impacts on the Environment (OVNS) for Designing and Construction of Production Facilities, Buildings and Structures, No. 214, 15.12.2003.**

- to amend provisions related to the Statement of intent, role of the competent authority, public participation and others, incorporating new amendments to the law on Environmental Review and the Decree of Cabinet of Ministers “On adoption of the Procedure of environmental impact assessment in transboundary context” (see. P. 2, 4)

**8. More detailed elaboration of provisions for public participation in national context will be done under the work on implementation of the Resolution of the Cabinet of Ministers on the Endorsement of the Action Plan for the Implementation of the Decision of Parties to Aarhus Convention III/6f, No. 1626-I, 27 December. This work will be coordinated to take into account transboundary procedure.**

**9. Initiation of the process of negotiation of bi-lateral and multilateral agreements with neighbouring countries.**

**10. Elaboration and approval of the guidance for EIA in transboundary context including both cases when Ukraine is Party of Origin and Affected Party.**

**11. Capacity-building activities.**

- trainings for the competent authorities on the Espoo Convention and new legislation;
- for other relevant authorities and stakeholders.



## **Annex to Task III:**

### **Identification of specific measures and timetables needed to bring the Bystroe Canal Project implementation into compliance with Ukraine's obligations under the relevant Conventions**

#### **I. SCOPE OF THE ANALYSIS**

The current paper was made within the frame of Task III of the Project "Support to Ukraine to implement the Espoo and Aarhus Conventions".

The analysis focuses on legal aspects of the Project "Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta" (hereinafter – Bystroe Canal Project or Project) and does not cover neither the political aspects nor the technical and economical aspects of the Project.

Bearing in mind the attitude of the beneficiary towards the entire Task III of the project, the current paper, as agreed, provides an expert analysis of the existing situation taking into account the decisions and opinions of the relevant Convention's bodies.

The issue of Bystroe Canal Project was subject of interest to various international bodies. Two of them, namely the Meeting of the Parties of the Convention on Environmental Impact Assessment in a Transboundary Context (hereinafter – Espoo Convention) and Meeting of the Parties of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter – Aarhus Convention), decided to issue a caution to Ukraine.

The Decision III/6f of the Meeting Parties to the Aarhus Convention and respective opinions of the Aarhus Compliance Committee relate to the overall Ukrainian framework for the Aarhus Convention and do not address any specific requirements regarding implementation of the Bystroe Canal Project. Therefore they are of relevance for the Task I and Task II but not for the current analysis under Task III. The current analysis is focused on the requirements stemming from the Decision IV/2 of the Espoo Meeting of the Parties and respective opinions of the Espoo Implementation Committee.

#### **II. OBLIGATIONS UNDER THE DECISION IV/2 OF THE ESPOO MOP AND RESPECTIVE OPINIONS OF THE ESPOO IMPLEMENTATION COMMITTEE.**

In its ***Decision IV/2 the Meeting of the Parties to the Espoo Convention***:

- Endorsed the findings of the Implementation Committee that Ukraine has been in non-compliance with its obligations under the Convention, in particular Articles 2, 3, 4, 5 and 6;
- Decided to issue a declaration of non-compliance to the Government of Ukraine;
- Urged the Government of Ukraine to repeal without delay the final decision of 28 December 2007 concerning the implementation of the Project and not to implement Phase II of the Project before applying fully the provisions of the Convention to the Project, taking into account the findings of the Implementation Committee, and to report to the Committee at its fifteenth meeting (October 2008) and at subsequent meetings if necessary;
- Decided to issue a caution to the Government of Ukraine to become effective on 31 October 2008 unless the Government of Ukraine stops the works, repeals the final decision and takes steps to comply with the relevant provisions of the Convention;

- Invited the Government of Ukraine to enter into negotiations with its neighbouring Parties to cooperate in the elaboration of bilateral agreements or other arrangements in order to support further the provisions of the Convention, as set out in Article 8, and to seek advice from the secretariat. The Government of Ukraine was invited to report on progress with the elaboration of such agreements, particularly with Romania, to the Implementation Committee by the end of 2010 and to the fifth meeting of the Parties.

In its follow-up to decision IV/2 *at its fifteenth session*, held on 28-30 October 2008, the *Implementation Committee* considered that the first condition related to all works had been fulfilled for Phase II, but it was concerned that the Government of Ukraine had not taken steps to apply the Convention to continuing works for Phase I. In this respect, the Committee agreed to remind the Government of Ukraine of the Committee's findings and recommendations endorsed by the Meeting of the Parties, which require, as a minimum, that no further works, including operation and maintenance works, should be undertaken for Phase I without taking steps to comply with the relevant provisions of the Convention.

The Committee also agreed that the second condition of the decision IV/2 had been fulfilled by the Government of Ukraine in its repeal of the final decision on 11 June 2008.

The Committee welcomed the steps taken by the Government of Ukraine and agreed that the third condition had been broadly satisfied. However, the Committee agreed to request the Government of Ukraine to ensure that: (a) The steps taken to comply with the relevant provisions of the Convention cover also any further works related to Phase I of the Project, including operation and maintenance works; (b) The EIA documentation for the Project addresses, inter alia: (i) possible alternatives to the whole Project discussed with the affected Party, including the no-action alternative; (ii) the combined impact of the two phases of the Project; and (iii) the mitigation measures to minimize this combined impact.

The Committee consequently decided to request the Government of Ukraine to report in writing to the Committee on steps taken to apply the relevant provisions of the Convention to: (a) Any further works related to Phase I of the Project, including operation and maintenance works; (b) Phase II of the Project.

*The Committee decided that, in the light of the above, the caution should not become effective.*

*At its sixteenth session*, held on 10-12 March 2009, the *Implementation Committee* reviewed the report received from the Government of Ukraine. The Committee observed that the report did not confirm that: (a) Works, including operation and maintenance, on Phase I had stopped; (b) Steps had been taken to apply the relevant provisions of the Convention to any further works related to Phase I of the Project. On the contrary, section 2.3.1 of the report, together with a press release by the Ministry of Transport and Communications of Ukraine dated 7 February 2009, seemed to suggest that works under Phase I had continued on (a) dredging and (b) extension of the protective wall to a length of 1,040 metres (the length specified for Phase I). In the understanding that the information in the press release was correct, *the Committee considered that this would be contrary to the requirements imposed by the Committee when deciding that the caution should not become effective. Furthermore, this would represent a continuing breach of the Convention*, as explained in paragraphs 69 (b) and 73 of the Committee's findings and recommendations. Moreover, the Committee was concerned that the above-mentioned press release stated that works have been carried out under Phase II pertaining to the extension of the offshore protective wall from 1,040 to 1,600 metres in length, and that the report of the Government of Ukraine omitted mention of these Phase II works. The Committee was of the opinion that this would represent a further breach of Ukraine's obligations under the Convention, as the transboundary EIA procedure for the "full-scale development" of the Project (Phases I and II) was ongoing and, as declared by the Government of Ukraine, no final decision on Phase II was in force.

In addition, the Government of Ukraine provided the Committee with a summary report on the assessment of the likely transboundary environmental impacts of the Project. The Committee was grateful for receiving the summary report but, on the basis of an initial review, was concerned by some of the conclusions contained therein, in particular with respect to fauna and flora. The Committee was concerned about the way in which the project was presented in the light of international obligations, especially with regard to the transboundary EIA procedure. The Committee, when reviewing the documents received in relation to the follow-up to decision IV/2 regarding Ukraine, noted that it still had no clear view of what decision in the Ukrainian legal framework should be considered the “final decision” in the meaning of the Convention. It also noted that the findings of the summary report on the assessment of the likely transboundary environmental impacts of the Project seemed to be focused on showing no actual impact. In this context, the Committee drew two more general conclusions regarding application of the Convention by Parties. Firstly, the Committee was of the opinion that if the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the “final decision” in the meaning of the Convention. Secondly, the Committee wished to make it clear that the opinion of an inquiry commission that an activity is likely to have a significant adverse transboundary impact is final inasmuch as it decides that the transboundary EIA procedure foreseen in the Convention must be applied in full, beginning with the immediate notification of the affected Party. Any subsequent studies or analyses, including findings of the EIA documentation prepared in accordance with article 4 and appendix II to the Convention, by no means have any effect on the validity of the respective opinion of the inquiry commission, even if they show no actual significant adverse transboundary impact of the activity in question.

At its *seventeenth session*, held on 14–18 September 2009, the Committee reaffirmed that decision IV/2 requested Ukraine to stop all works related to Phases I and II of the Project, including construction, operation and maintenance. Therefore, *the Committee considered that the documents submitted by Ukraine by the time of the session failed to confirm clearly and unambiguously that the conditions imposed in the decision of the Meeting of the Parties have been met*. In particular, the documents submitted by Ukraine failed: (a) To demonstrate that all works, including operation and maintenance, on Phase I have stopped; (b) To show, separately for Phase I and for Phase II, that the Convention is being applied fully to the Project.

Further to its deliberations at its sixteenth session, and in the light of the above, *the Committee decided that:*

- a. *The continuation of works under Phase I of the Project was contrary to the requirements imposed by the Committee when deciding that the caution should not become effective, and represented a continuing breach of the Convention*, as explained in paragraphs 69 (b) and 73 of the Committee’s findings and recommendations;
- b. *The carrying out of works under Phase II of the Project represented a further breach of Ukraine’s obligations under the Convention*, because the transboundary EIA procedure for the “full-scale development” of the Project (Phases I and II) was ongoing and because, as declared by the Government of Ukraine, no final decision on Phase II was in force.

Moreover, the Committee disagreed with the interpretation by the Government of Ukraine that the EIA only need address Project elements identified by the Inquiry Commission as likely to have significant adverse impact. The environmental impact assessment procedure, including the preparation of the EIA documentation, must cover the environmental impact of the entire proposed activity, and not address only the likely significant adverse transboundary impacts identified by the Inquiry Commission. The Committee emphasized that the Inquiry Commission’s role was to determine whether the whole Project required application of the Convention, and not to determine the scope of the assessment.

The Committee thus found that Ukraine remains in non-compliance with its obligations under the Convention with respect to both phases of the Project and agreed that this should be communicated to the next session of the Meeting of the Parties. *The Committee concluded that its earlier decision that the caution should not become effective (ECE/MP.EIA/IC/2008/2, para. 34) had been based on information that proved not to be comprehensive. Therefore the caution should have become effective on 31 October 2008. The Committee decided that this conclusion should be communicated to the next session of the Meeting of the Parties, with a recommendation that the Meeting of the Parties either bring into effect the caution issued in its fourth session or issue a new caution.*

*The Committee closed consideration of the submission pending a decision by the Meeting of the Parties and will no longer consider information provided by the concerned Parties regarding the Project.*

### III. FINAL DECISION

On 9 February the UNECE was provided by the Ukrainian Permanent Mission with the document called **Final Decision of Ukraine on the implementation of the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development” (Phase II of the Project) on the implementation of Article 6 of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).**

The document (**hereinafter – Official Final Decision**) announces successful completion of the procedure and permits works to be continued. The Official Final Decision raises a number of doubts as to its compliance with the requirements of the Espoo Convention and as to its legal nature in Ukrainian legal system (the latter was indicated in the legal analysis submitted to Espoo Secretariat by the organization Environment-People-Law).

According to the meaning of the final decision under the Espoo Convention it should satisfy a number of criteria, among which the main ones are: the final decision authorizes or permits to undertake certain activities (see: para.3 of Art.2 of the Espoo Convention, which, inter alia, refers to “a decision to authorize or undertake a proposed activity”) and the final decision establishes ecological parameters of a corresponding project (see: para. 21 of the Report, stating that: “...if the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the “final decision” in the meaning of the Convention”<sup>9</sup>).

Taking into account that the Official Final Decision in the absence of positive conclusion of State Ecological Expertisa and positive conclusion of Integrated State Expertisa (which are able to establish other ecological parameters) does not authorize or permits to undertake works towards implementation of Phase II of the Project, such a decision can not be considered as a final decision within the meaning of the Espoo Convention and does not entail any legal consequences of a final decision. A conclusion of Integrated State Expertisa should be considered as a final decision. Therefore, until the conclusion of Integrated State Expertisa of Phase II of the Project (or complete Project) is issued – there has not been taken any final decision concerning Phase II of the Project within the meaning of Art. 6 of the Espoo Convention.

The Official Final Decision does not provide sufficient evidence that all the procedural details required by the Espoo Convention were followed in the procedure conducted after the Espoo MoP decision to issue a caution. Ukraine followed only certain steps and has not provided evidence that they comprehensively followed the entire procedure in order to eventually take the final decision. Relevant Espoo procedures, started by Ukraine, did not lead to any changes in the process of decision-making which originally led to the

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<sup>9</sup> Report of the Implementation Committee to the Espoo Convention [ECE/MP.EIA/IC/2009/2] at: [http://www.unece.org/env/eia/implementation/implementation\\_committee\\_meetings\\_r.htm](http://www.unece.org/env/eia/implementation/implementation_committee_meetings_r.htm)

decision to construct Bystroe Canal. In other words, the Official Final Decision was taken on top of the normal decision-making procedure which has been in clear contradiction to the requirements of the Espoo Convention. Therefore, Official Final Decision is premature (in a sense that it was taken before completing the procedure) and deficient in terms of meeting the formal requirements under Article 6 of the Espoo Convention.

#### IV. POSSIBLE MEASURES TO BE TAKEN

In the light of the above Ukraine appears to be still not in compliance with the requirements of the Espoo Convention. The key factor here is continuation of maintenance works under Phase I of the Project, which in the view of the Espoo Implementation Committee represents a continuing breach of the Convention.

There might be a number of alternative courses of action in order to bring compliance with the requirements of the Espoo Convention including abandoning the project altogether or choosing other options to achieve the goals of the Bystroe Canal (see WWF Report "Sustainable Navigation in Ukraine: Alternatives in and around the Ukrainian Danube Delta" of September 2009),

It must be stressed that whatever course of action Ukraine is going to choose it must involve halting (at least temporarily) any works related to the Canal (including maintenance dredging under Phase I).

Furthermore, in case of whatever course of action is chosen Ukraine should consider undertaking an assessment of any damage to the environment (at least in the transboundary context), resulting from already implemented works related to the Project. Such an assessment should be followed by the development of a plan for compensatory and mitigation measures. Both the assessment and a plan should be carried out in close cooperation with all the affected Parties and in an open and transparent manner.

As far as continuation of the Bystroe Canal Project is concerned, one can envisage resuming works under Phase I and Phase II after having fulfilled all the procedural requirements of the Espoo Convention. It must be stressed here **that the Espoo Convention itself does not envisage any right of veto for the affected Parties**, therefore having properly carried out the procedure, Ukraine would be in a position to carry out the Bystroe Canal Project provided the activity is not likely to cause any significant harm in other countries. As the International Court of Justice put it "Existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States ... is now part of the corpus of international law"<sup>10</sup>.

If Ukraine decides to continue with the Bystroe Canal Project, in order to ensure implementation of the Decision IV/2 of the Meeting of the Parties to the Espoo Convention as regards Phase I of the Project the following measures (in order of sequence) shall be applied:

1. The Central Service of Ukrinvestexpertisa shall repeal the conclusion of Integrated State Expertisa of Phase I of the Project;
2. The Ministry of Environment shall repeal the conclusion of State Ecological Expertisa of Phase I of the Project (this, *inter alia*, will make it impossible from legal point of view to carry out further works under the Project, including dredging activities under Phase I of the Project);
3. The State Ecological Inspection shall issue decision ceasing any works under Phase I of the Project;

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<sup>10</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, International Court of Justice Reports 1996, para. 29

4. The Ministry of Environment shall notify any potentially affected Parties<sup>11</sup>, and the notification shall follow the provisions of Art. 3.2 of the Espoo Convention. In the light of related Espoo procedures already followed by Ukraine under Phase II in relation to one affected Party, the notification might additionally request the affected Party, to clearly indicate whether it consider procedures followed under Phase II to also cover Phase I of the Project. In case of the affirmative answer, Ukraine will be required to complete only those Espoo procedures under Phase I which have not been accomplished under Phase II. If, otherwise, the affected Party considers that the relevant Espoo procedures, undertaken under Phase II of the Project, do not cover Phase I, Ukraine will be required to follow all of the procedures foreseen by Espoo Convention. In that case along with the notification the Ministry of Environment shall provide the affected Party, with: a) relevant information regarding the EIA procedure, including an indication of the time schedule for transmittal of comments; and b) relevant information on the proposed activity and its possible significant adverse transboundary impact, and shall request the affected Party to provide information relating to the potentially affected environment under its jurisdiction;
5. The Ministry of Environment shall negotiate with the affected Parties the time-frame for the duration of the procedures, foreseen by the Espoo Convention; including participation of the public and authorities in the areas likely to be affected in all the affected Parties that replied positively to the notification and including consultations under Article 5 of the Convention.
6. The Ministry of Environment shall furnish the affected Parties with EIA documentation and - possibly in co-operation with such Parties - ensure the possibility for the public and relevant authorities in the areas likely to be affected in the affected Parties to participate in the EIA procedure, including possibility to submit comments;
7. Delta Pilot shall amend the EIA documentation accordingly taking due account of possible transboundary impact and shall hold State Ecological Expertisa and Integrated State Expertisa of the amended Project documentation of Phase I of the Project pursuant to the requirements of State Construction Norms A.2.2-1-2003, approved by the Order of the State Construction Committee of 15 December 2003 № 214. EIA documentation shall include materials reflecting public opinion (both in Ukraine and the affected Parties );
8. The Cabinet of Ministers of Ukraine shall establish a commission composed of representatives of the Ministry of Environment, Ministry of Healthcare and other authorities (as appropriate) aiming into entering into consultations with the affected Parties, concerning the Project pursuant to Art. 5 of Espoo Convention;
9. The Ministry of Environment shall provide to the affected Parties, the conclusion of Integrated State Expertisa along with the reasons and considerations on which it was based, as well as shall inform the public in Ukraine via the mass media of the Final Decision within the period of not more than 30 days after the approval of the conclusion of Integrated State Expertisa;
10. The Ministry of Environment shall consider entering into consultations with the affected Parties concerning the measures of post-project analysis pursuant to Art. 7 and Appendix V of the Espoo Convention.

Failure to apply the mention measures would mean that, firstly, any works under Phase I of the Project remain unlawful, and, secondly, Ukraine failed to implement Decision IV/2 of the Meeting of the Parties to the Espoo Convention, likely leading to new measures imposed against Ukraine. Possible fulfilment of obligations under Espoo as regards Phase II of the Project would not mean or entail automatic compliance with requirements of the convention as regards Phase I of the Project and would not waive the obligation to implement them properly.

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<sup>11</sup> Following the provisions of Espoo Convention the Ministry of Environment shall notify not only Romania, which already considered itself as the “affected party” but additionally consider notifying other upstream riparian countries of the Danube River, which might be affected by the Project implementation.

**In order to ensure full implementation of the Decision IV/2 of the Meeting of the Parties to the Espoo Convention as regards Phase II of the Project, all the measures, identified in points 7 – 10 above, shall be applied to Phase II of the Project.**

### **Annex to Task III**

## **Current state of play regarding the decisions made by Ukraine on the Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta<sup>12</sup>**

### **I. INTRODUCTION**

The list and substance of decisions made by Ukraine on the Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta is provided as of 16 July 2010. All data and documents, mentioned herein, were obtained from publicly available sources.<sup>13</sup> The list is presented in the chronological order. Important elements of the substance of the decisions as well as a reference to the relevant source of information are provided where applicable.

### **II. THE DECISIONS**

«Pursuant to the protocol order of the First Deputy-Prime-Minister of Ukraine (of 01 December 2000) and the Order of the Ministry of Transportation of Ukraine (of 15 December 2000 №710) the state owned entity «Delta-pilot» was assigned to design and construct the Danube-Black Sea Navigation Route».<sup>14</sup>

- Order of the President of Ukraine N 502/2003 of 10 June 2003 «On the decision of the National Security and Defence Council of Ukraine of 6 June 2003 "On the status of implementation of the Order of the President of Ukraine of 10 August 1998 N 861 "On the establishment of the Danube biosphere reserve" and perspectives for construction of the Danube-Black Sea navigation route"»:  
"In relation to the decision of the National Security and Defence Council of Ukraine: ... following the established procedure and on the grounds of results of the integrated state review ensure within a three-month term the identification of the most reasonable from environmental, economic, technical and other points of view alternative for the Danube-Black Sea navigation route and with due account of the decision made establish a pilot navigation route as well as undertake other tests, additional scientific research aiming at preventing adverse environmental impacts of the navigation route construction, raising funds, required for project implementation;"
- Conclusion №105 of the State Environmental Review (SER) on revision of investments feasibility study for the "Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta" of 10 July 2003.  
«According to the Conclusion №105 of 10 July 2003 and amendments thereto of 23 March 2004 the «Bystroe arm» alternative was identified as the most optimal».
- «Within the Feasibility Study (of 31 July 2003 №14/03) positive conclusion of the Integrated State Review was made. It states that Ukrinvestexpertiza recommends the establishment of the Danube-

<sup>12</sup> Translated from Ukrainian. Titles of documents, officially submitted by Ukraine to IGOs in English, are stated as they appear therein.

<sup>13</sup> Additional information regarding the retrospective of EIA materials development of the Danube-Black Sea Navigation Route and protective structures of the Danube-Black Sea Navigation Route, provided in the Attachment to the Final Decision of 25 January 2010, see at the end of this paper.

<sup>14</sup> Environmental Impact Statement on Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta pursuant to the Detailed Design Documentation for full development. – "Golos Ukrainy" Newspaper №223 (3973) of 24.11.2006.



Black Sea navigation route through the Bystroe arm alternative as the most appropriate from environmental, economic, technical and hydrological points of view».<sup>15</sup>

- Order of the Cabinet of Ministers of Ukraine of 13 October 2003 N 598-p «On approval of Feasibility Study for construction of the Danube-Black Sea navigation route in the Ukrainian part of the Danube delta» (with amendments made pursuant to the Order of the Cabinet of Ministers N 643-p of 27 October 2003)

«1. Approve the Feasibility Study for construction of the Danube-Black Sea navigation route in the Ukrainian part of the Danube delta recommended by the Central Service of Ukrinvestexpertiza through the Bystroe arm alternative with the following dimensions:

  - navigation route length - 162,2 km
  - seaward access channel length - 3,1 km
  - project vessels draught - 7,2 m
  - including in phase I - 5,85 m»
- Order of the President of Ukraine N 117/2004 of 2 February 2004 «On expanding the territory of the Danube biosphere reserve»:

«4. Aiming at renovation of navigation in the Ukrainian part of the Danube delta ascribe riverside protection lands of its canals and adjacent parts of the Black Sea water area within the territory of the Danube biosphere reserve to the zone of anthropogenic landscapes restricting business activities therein pursuant to Articles 89 and 90 of the Water Code of Ukraine (Annex 2)».
- Conclusion №191 of SER on the Detailed Design Documentation for the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Phase I” of 19 April 2004.
- Order of the Cabinet of Ministers of Ukraine of 12 May 2004 N 283-p «On approval of the Detailed Design Documentation for the Project and title of construction “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Phase I”»

«1. Approve the Detailed Design Documentation for the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Phase I”, submitted by the Ministry of Transportation and developed by Design-research and construction-technology institute of river transportation (Kyiv) and recommended for approval by the Central Service of Ukrinvestexpertiza with the following dimensions:

  - navigation route length - 170,36 km
  - seaward access channel length - 3,3 km
  - project vessels draught - 5,85 m»
- «Integrated State Review of this Project was performed pursuant to the procedure, approved by the Cabinet of Ministers of Ukraine (Decision №483 of 11 April 2002) and it consists of the State Investments Review (Consolidated Integrated Conclusion of Ukrinvestexpertiza №116/04 of 26 October 2006); the State Sanitary-Hygiene Review (Conclusion of the Ministry of Healthcare of Ukraine №61 of 22 November 2004); SER (Conclusions of the Ministry of Environment of Ukraine №290 of 30 August 2005, №324 of 22 February 2006, №345 of 19 April 2006); the State Labour Safety Review (Conclusion of the Black Sea Expert-Technical Centre of the State Department for Labour Safety Supervision of Ukraine № 51-01-31-2477.04 of 26 November 2004); the State Fire Safety Review (Conclusion of GU NS of Ukraine in Odessa Region №15-46-2775/10710 of 26

<sup>15</sup> Environmental Impact Statement on Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta pursuant to the Detailed Design Documentation for full development. – “Golos Ukrainy” Newspaper №223 (3973) of 24.11.2006.

November 2004). Consent for sea soil dump obtained from the State Inspection for the Protection of the Black Sea (№300/5 of 16 February 2004)»<sup>16</sup>.

- SER reviewed the Project from 10 August 2004 until 19 April 2006<sup>17</sup>
- «The Consolidated Integrated Conclusion on the Detailed Design Documentation for the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development” (positive) of 26 October 2006 №116/04 states that the Central Service of Ukrinvestexpertiza “Ukragroinvestexpertiza” recommend to approve the Detailed Design Documentation for the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development” with the following dimensions:
  - navigation route length – 172,36 km
  - seaward access channel length – 3,432 km
  - estimate vessels draught – 7,20 m»<sup>18</sup>
- Order of the Cabinet of Ministers of Ukraine of 30 May 2007 N 351 "On approval of the Detailed Design Documentation for the Project and title of construction “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development” (With amendments made pursuant to the Order of the Cabinet of Ministers N 1346-p of 11 November 2009).

«1. Approve the Detailed Design Documentation for the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development”, submitted by the Ministry of Transportation and Communications of Ukraine and recommended for approval by the Central Service of Ukrinvestexpertiza of the Ministry of Regional Development and Construction of Ukraine with the following dimensions:

  - navigation route length - 172,36 km
  - seaward access channel length - 3,432 km
  - project vessels draught - 7,2 m

3. In implementing the Detailed Design Documentation for the Project take due account of recommendations made by the Inquiry Commission, established pursuant to Article 3.7 of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, Finland, 25 February 1991).»
- The Final decision on the implementation of the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development” of 28 December 2007 was repealed (pursuant to para. 1 of the Protocol №3 of 10 June 2008 of the Intergovernmental Coordination Council on the Implementation of the Provisions of the Espoo Convention) (Letter of repeal signed by respective Ministers and approved by the Deputy-Prime-Minister of Ukraine, registered in the Ministry of Environment of Ukraine under the N 10577/18/10-08 of 11 August 2008)
- Order of the Cabinet of Ministers of Ukraine of 11 November 2009 N 1346-p «On approval of the corrected title of the construction “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development”

<sup>16</sup> Environmental Impact Statement on Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta pursuant to the Detailed Design Documentation for full development. – “Golos Ukrainy” Newspaper №223 (3973) of 24.11.2006.

<sup>17</sup> [http://www.gsh.delta-pilot.ua/index.php?mode=danube\\_presentation&doc\\_id=663](http://www.gsh.delta-pilot.ua/index.php?mode=danube_presentation&doc_id=663)

<sup>18</sup> Environmental Impact Statement on Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta pursuant to the Detailed Design Documentation for full development. – “Golos Ukrainy” Newspaper №223 (3973) of 24.11.2006.

- Final Decision of Ukraine on the implementation of the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development” (Phase II of the Project) on the implementation of Article 6 of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) of 25 January 2010.
- Attachment (in 2 Volumes) to the Final Decision on the implementation of the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development”, which forms an integral part thereof (Assessment of Likely Transboundary Environmental Impacts of the Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. The 2nd Draft. Annex to the EIA Report Produced as Part of the Detailed Design Documentation for the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development”, updated and amended to take into account the Comments expressed by the Romanian Party on the Transboundary EIA for the Project (Articles 3.8 and 2.4 of the Espoo Convention) and outcomes of Consultations (Article 5 of the Espoo Convention).

**Table 1.1 – Retrospective of EIA materials development of the Danube-Black Sea Navigation Route<sup>19</sup>**

Stage		EIA Report, year developed	EIA Developer	Objective	Conclusion of SER, year, institution responsible for env. expert analysis
<b>Investments Feasibility Study (TEO)</b>		EIA Report on Investments Feasibility Study for construction of the navigation route in the Ukrainian part of the Danube delta. 2001	InBSS of the National Academy of Sciences, Odessa branch, Odessa.	Selection of navigation route alternative under environmental criteria. Comparison – alternative routes through Bystroe, Tsyganka and Starostambulskiy arms.	<b>Sent back for revision on the condition that alternative routes would be considered.</b> 2001. Ukrainian Scientific Centre of Sea Ecology (UkrSCSE), Odessa <sup>20</sup>
		EIA Report on alternative Black Sea – Danube navigation routes: on lock canal Solomonov arm – Zhebriyanska bay and the Bystroe arm. 2002	USRIEP, Kharkiv	Selection of navigation route alternative under environmental criteria (primarily, on impact on the Danube biosphere reserve). Comparison: canal Solomonov arm – Zhebriyanska bay and the Bystroe arm.	<b>Positive conclusion, Bystroe arm alternative approved.</b> 2003. KNU
<b>Detailed Design</b>	Phase I	EIA Report Produced as Part of the Detailed	USRIEP,	EIA of the Navigation Route of the identified	<b>Positive conclusion.</b> 2004.

<sup>19</sup> Assessment of Likely Transboundary Environmental Impacts of the Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. The 2nd Draft. Annex to the EIA Report Produced as Part of the Detailed Design Documentation for the Project “Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development”, updated and amended to take into account the Comments expressed by the Romanian Party on the Transboundary EIA for the Project (Articles 3.8 and 2.4 of the Espoo Convention) and outcomes of Consultations (Article 5 of the Espoo Convention). Volume 1. – Ukrainian Scientific Research Institute of Ecological Problems (USRIEP). – 2009. – p. 5.

<sup>20</sup> «Pursuant to the Conclusion of SER of 14 December 2001 materials of this Feasibility Study (TEO) were sent back for revision».

<b>Documentation for the Project</b>		Design Documentation for the Project "Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Phase I". 2003	Kharkiv	alternative with Phase I dimensions.	KNU
	Full Development	EIA Report Produced as Part of the Detailed Design Documentation for the Project "Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development". 2004	USRIEP, Kharkiv	EIA of the Navigation Route with dimensions foreseen for full development, emphasising on impacts of Phase II works.	<b>Positive conclusion after revision.</b> 2006. KNU and the Ministry of Environment of Ukraine, Kyiv <sup>21</sup> .

**Table 3.3 – Protective structures of the Danube-Black Sea Navigation Route** <sup>22</sup>

Sections of the navigation route and objects	Length of structures, m		Nature protection function of hydro-technical protective structures with due account of transboundary aspect
	Phase I	Full Development	
Vylkove – sea			
Flow guide dam	–	350	Restriction of flow discharge and siltation along the Bystroe arm, prevention of riverbank degradation and siltation of the riverbed, reduction of the volume of maintenance dredging. Compensation of seaward access channel impact on reduction of flow discharge in Starostambulske arm below the Bystroe arm separation.
Bank strengthening (sections 1–4)	–	2107	Prevent riverbank erosion along the Bystroe arm and possibility of future redistribution of flow discharge between the lower part of Starostambulske arm and Bystroe arm in favour of the latter.
Sandbar part			
Retaining dam	1040	2730	Reduction of siltation of seaward access channel and volume of maintenance dredging, reduction of waves impact on Ptashyna Spit, and therefore, reduction of likelihood of adverse transboundary impact caused by suspended sediments shift toward Romania

<sup>21</sup> «EIA Report on the Project for full development, which has been developed back in 2004 due to SER results was sent back for revision twice, for the last time in 2006 aiming at proper amendment pursuant to the final Report of the Inquiry Commission.

The general SER Conclusion (of 19 April 2006 №345) states that the Detailed Design Documentation for the Project is assessed positively from environmental viewpoint and it could be implemented with due account of national and international norms.

Only on the grounds of positive conclusions of the SER and other special reviews the «Consolidated Integrated Conclusion №116/04 of State Review on the Detailed Design Documentation for the Project "Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development" (positive)» was issued».

<sup>22</sup> Assessment of Likely Transboundary Environmental Impacts of the Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. The 2nd Draft. Annex to the EIA Report Produced as Part of the Detailed Design Documentation for the Project "Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta. Full development", updated and amended to take into account the Comments expressed by the Romanian Party on the Transboundary EIA for the Project (Articles 3.8 and 2.4 of the Espoo Convention) and outcomes of Consultations (Article 5 of the Espoo Convention). Volume 1. – Ukrainian Scientific Research Institute of Ecological Problems (USRIEP). – 2009. – p. 28.

## Legal effect

- Findings and recommendations of CC
  - Findings
    - compliance or non-compliance
  - Recommendations
    - steps to be taken Party concerned
    - steps to be taken by MOP
- Adoption by MOP
  - conditional caution imposed on Ukraine



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## Key issues

- Template for complaint
- Criteria for admissibility
- Exhaustion of domestic remedies
- Possibility to be represented at CC
- Substance of cases
  - General legislative failures
  - Specific instances of noncompliance



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## Compliance procedure

- Triggers
  - Submission by Party about another Party
  - Submission by Party about itself
  - Referrals by secretariat
  - Communications by the public (30 hitherto)



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## Compliance Committee

- Nine independent members (eight before MoP-3 in 2008)
- Elected to serve in personal capacity
- Regional balance
- Nomination by MOP



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## Monitoring compliance mechanism

- Implementation reports
- Compliance Committee
- Compliance procedure



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## Publicising the decision- art.6.9

- Requirement
  - to notify the public promptly (ACC-8 Armenia)
    - about the decision
    - where it can be made available
  - to make it accessible to the public (ACC-3 Ukraine )
    - publicly accessible registers
    - publicly accessible records of decisions
- Together with a statement on:
  - reasons
  - considerations



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## Due account– art.6.8

- Due account must be taken of public comments
  - obligation to read and consider seriously
  - but not always to accept all comments
- Any comments vs „reasoned or motivated comments”
- Sufficient time for authorities to consider comments ((ACC/C/3 Ukraine )



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**NIRAS**<sup>27</sup>

## Possibility to submit comments – art.6.7

- Two equal methods
  - In writing
  - In public hearing
  - as appropriate
- Any comments - no need to be motivated (ACCC-16 Lithuania)



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**NIRAS**<sup>26</sup>



## Art 6.6 - content of relevant information

- All information relevant to decision-making
  - Description of site, effects and measures
  - Non-technical summary
  - Outline of main alternatives
  - Reports and advice
- Problematic issues
  - EIA Documentation and copyright (case ACC-15 Romania)



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## Art.6.6 - making available relevant information

- Free of charge
- As soon as available
- Exemption from general rules on access to information under art.4
- Relation to art 6.2



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## Art.6.4 - „early public participation”

- „Each Party shall provide for early public participation, when all options are open and effective public participation can take place”



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## „Reasonable time-frames” - II

- *„the announcement of the public inquiry...provided a period of approximately 6 weeks for the public to inspect the documents and prepare itself for the public inquiry ...the public inquiry ...provided 45 days for public participation and for the public to submit comments, information, analyses or opinions relevant to the proposed activity... The Committee is convinced that the provision of approximately 6 weeks for the public concerned to exercise its rights under article 6, paragraph 6, and approximately the same time relating to the requirements of article 6, paragraph 7.. meet the requirements of these provisions in connection with article 6, paragraph 3, of the Convention”(Case CCC/C/22 France)*



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## „Reasonable time-frames” - I

- „The time-frame of only ten working days, set out in the Lithuanian EIA Law, for getting acquainted with the documentation, including EIA report, and for preparing to participate in the decision-making process concerning a major landfill does not meet the requirement of reasonable time-frames” (Case CCC/C/16 Lithuania)



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## Art.6.3 - „reasonable time-frames

- „The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making”



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## „Effective” - II

- Therefore, if the chosen way of informing the public about possibilities to participate in the EIA procedure is via publishing information in local press, much more effective would be publishing a notification in a popular daily local newspaper rather than in a weekly official journal, and if all local newspapers are issued only on a weekly basis, the requirement of being “effective” established by the Convention would be met by choosing rather the one with the circulation of 1,500 copies rather than the one with a circulation of 500 copies. ” (Case CCC/C/16 Lithuania)



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## „Effective” - I

- „The requirement for the public to be informed in an “effective manner” means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned would have a reasonable chance to learn about proposed activities and their possibilities to participate” (Case CCC/C/16 Lithuania)



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## „Adequate”

- „it has been clearly shown that what the public concerned was informed about were possibilities to participate in a decision-making process concerning “development possibilities of waste management in the Vilnius region” rather than a process concerning a major landfill to be established in their neighbourhood. Such inaccurate notification cannot be considered as “adequate” and properly describing “the nature of possible decisions” as required by the Convention.” (Case CCC/C/16 Lithuania)



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## Notification - specific requirements in Poland

- Public notice
  - webpage - (in Public Information Bulletin)
  - notice board in the seat of competent authority
  - notice in the vicinity of project (bus stop, church, local shop etc)
  - press (local or national)
- Individual notification (letter) - to immediate neighbours



*Support to Ukraine to implement the  
Espoo and Aarhus Conventions*



## Notification – specific requirements in EIA Directive

- Timely („sufficient time for informing the public and for the public.. to prepare and participate effectively” – compare with the previous version of EIA Directive!)
- Adequate („nature of possible decisions”)
- Effective („bill posting, electronic means...or publication in local newspapers”)



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**NIRAS**<sup>15</sup>

## Elements of notification

- Proposed activity and application
- Nature of possible decisions or draft decision (Dutch approach)
- Responsible public authority
- Envisaged procedure
  - How to participate
  - Where and which information is available
- Transboundary EIA – if applicable



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**NIRAS**<sup>14</sup>

## Notification – art 6.2

- Public notice or individually (case C-15 Romania)
- Early in decision-making
- Manner:
  - Adequate
  - Timely
  - Effective



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## Art.6.2 - notification of the public

- „The public concerned shall be informed...in an adequate, timely and effective manner..”



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Partners; www.jjb.com.pl*



## **Necessary features of public participation procedure**

- Reasonable time-frames allowing sufficient time for
  - Informing the public
  - For public to prepare and participate effectively
- Early in decision-making (question of scoping - Case C-15 Romania)
  - When all options are open
  - When public participation can be effective



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## **Who is responsible for public participation procedure**

- Primary responsibility
  - „competent public authorities”
- Practical arrangements
  - special officers (commissaires enqueteurs)
  - specialised private consultants (sometimes NGOs)
  - local authorities
- Role of developers (project proponents) - case C-16 Lithuania



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## Public participation procedure

- Notification –art 6.2
- Access to information – art.6.6
- Possibility to submit comments – art.6.7
- Due account taken of public comments – art.6.8
- Decision taken notified and accesible to the public- art.6.9



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## Specific decisions – activities covered

- Art.6.1 a) - activities in Annex I
  - list of categories (usually those subject to to EIA)
  - any other activity subject to domestic EIA (point 20)
- Art. 6.1 b) - other activities „which may have a significant effect on environment”
  - „Parties shall determine...” = screening
- Changes and extensions



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## Public participation

- Decisions on individual projects – art 6
- GMO decisions – art 6 bis
- Plans and programs – art 7
- Policies – art 7
- Normative acts/legally binding rules – art 8



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## General provisions

- Obligation to take necessary measures
- Officials shall assist the public
- Convention as floor and not a ceiling:  
Parties may give broader rights
- No penalization, persecution or harassment
- No discrimination



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## Definitions - public and public concerned

- Public
  - One or more
  - Natural or legal persons
  - Including NGOs
- Public concerned
  - Affected or likely to be affected, or
  - Having an interest
  - Including NGOs:
    - Promoting environmental protection
    - Meeting any requirements under national law



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## Definitions - Public authority

- Government at all levels
- Natural or legal persons performing public administrative functions or providing public services
- Institutions of regional economic integration organization – European Community



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## 3 pillars

- Access to information
  - passive disclosure – Art. 4
  - active disclosure – Art. 5
- Public participation
  - Decisions on individual projects „which may have a significant effect on the environment” – Art. 6
  - GMO decisions – Art. 6 bis
  - Plans/programs „relating to environment” – Art. 7
  - Policies „relating to environment” – Art. 7
  - Normative acts/legally binding rules „that may have a significant effect on the environment” – Art. 8
- Access to justice – Art. 9



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## Structure of the Convention

- Objective – right to environment (art. 1)
- Definitions (art. 2)
- General provisions (art. 3)
- Operative provisions – 3 pillars (art. 4-9)
- Meeting of the Parties (art.10)
- Compliance mechanism (art.15)



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Jerzy Jendrośka

# Aarhus Convention - overview and key issues in public participation

Odessa 27 April 2010



*Support to Ukraine to implement the  
Espoo and Aarhus Conventions*



### 3 стовпи Конвенції

- Доступ по інформації
  - Пасивний – Ст. 4
  - Активний – Ст. 5
- Участь громадськості
  - Рішення про окремі проекти, “які можуть мати значний вплив на довкілля” – Ст. 6
  - Визначення ГМО – Ст. 6
  - плани/програми, „що стосуються довкілля” – Ст. 7
  - Політика, „що стосується довкілля” – Ст. 7
  - Нормативні акти/юридично закріплені правила, „що можуть мати значний вплив на довкілля” – Ст. 8
- Доступ до правосуддя – Art. 9



### Структура Конвенції

- Мета – права на доступ до інформації, що стосуються навколишнього середовища (Ст. 1)
- Визначення (Ст. 2)
- Загальні положення (Ст. 3)
- Принципи функціонування – 3 стовпи (Ст. 4-9)
- Нарада Сторін (Ст.10)
- Контроль за дотриманням (Ст.15)



Єжі Єндроска

# Орхуська Конвенція – огляд та основні аспекти залучення громадськості

Одеса, 27 квітня 2010 р



*Надання Україні підтримки у  
впровадженні Конвенції Еспоо та  
Орхуської Конвенції*



## Ст. 6.2 – інформування громадськості

- „Зацікавлену громадськість слід інформувати.. відповідно, вчасно і ефективно..”



## Ключові питання

- Форма подання жалоби
- Критерії допустимості
- Вичерпання внутрішніх засобів
- Можливість бути представленим у СС
- Зміст випадків
  - Загальні юридичні проколи
  - Специфічні приклади невідповідності



## Необхідні характеристики процедури участі громадськості

- Відповідний часовий графік, що дає достатньо часу для
  - інформування громадськості
  - Того, щоб громадськість могла підготуватися.
- На ранньому етапі прийнятті рішення (питання скопінгу - випадок С-15 Румунія)
  - Коли всі варіанти ще відкриті
  - Коли участь громадськості може бути ефективною





## Процедура дотримання

- Тригери
  - Подання стороною про іншу сторону
  - Подання стороною про себе
  - Направлення секретаріату
  - Інформування громадськістю (30)



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## Хто несе відповідальність за процедуру участі громадськості

- Первинна відповідальність
  - „компетентні органи влади”
- Практична організація
  - Спеціальні службовці (commissaires enqueteurs)
  - Спеціалізовані приватні консультанти (іноді НГО)
  - Місцеві органи влади
- Роль розробників проекту – випадок C-16 Литва



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## Комітет з дотримання Конвенції

- 9 незалежних членів (8 до Наради Сторін № 3 у 2008 р.)
- Вибрані особисто
- Регіональний баланс
- Номінація Народою Сторін



## „Помірковані строки” - II

- „оголошення громадського запиту... охоплював період приблизно у 6 тижнів для громадськості для вивчення документів та підготовки до громадського запиту... у громадському запиті... надано 45 днів для участі громадськості і для подання коментарів, інформації, аналізу чи думок, що стосуються відповідної діяльності... Комітет переконаний, що надання приблизно 6 тижнів для зацікавленої громадськості використати свої права відповідно до Ст. 6, параграфу 6, та приблизно такого ж часу для виконання вимог Ст. 6, параграфу 7.. Відповідає вимогам цих положень у зв'язку зі Ст. 6, параграф 3, Конвенції”(Випадок ССС/С/22 Франція)



## Специфічні рішення – які заходи включені?

- Ст.6.1 а) – заходи у додатку Annex I
  - Перелік категорій (зазвичай тих, які є предметом для ОВНС)
  - Будь-які інші заходи, предмет для внутрішнього ОВНС (пункт 20)
- Ст. 6.1 b) – інші заходи „які можуть мати значний вплив на довкілля”
  - „Сторони визначають...” = скринінг
- Зміни та розширення



## Участь громадськості

- Рішення про окремі проекти – Ст.6
- Рішення про ГМО – Ст. 6 далі
- Плани та програми – Ст. 7
- Політика – Ст.7
- Нормативні акти /юридично закріплені правила – Ст. 8



## Загальні положення

- Зобов'язання робити відповідні кроки
- Державні службовці мають допомагати громадянськості
- Конвенція як підґрунтя, а не як “стеля”:  
Сторони можуть мати більші права
- Нема штрафів, переслідувань чи утисків
- Нема дискримінації



## Процедура участі громадянськості

- Повідомлення – Ст. 6.2
- Доступ до інформації – Ст.6.6
- Можливість надати коментарі – Ст.6.7
- Врахування коментарів громадянськості –  
Ст.6.8
- Громадянськість повідомлена про прийняті  
рішення та має до них доступ - Ст.6.9



## Визначення – громадськість та зацікавлена громадськість

- Громадськість
  - одна або більше особи
  - фізична чи юридична особи
  - Включаючи НГО
- Зацікавлена громадськість
  - громадськість, на яку справляє або може справити вплив процес прийняття рішень з питань, що стосуються навколишнього середовища
  - яка має зацікавленість в цьому процесі
  - Включаючи НГО:
    - які сприяють охороні навколишнього середовища
    - відповідають вимогам національного законодавства



## „Помірковані строки” - I

- „Строк у тільки 10 робочих днів, визначений у законі про ОВНС Литви, для ознайомлення з документацією, включаючи звіт ОВНС і підготовки до участі у процесі прийнятті рішення щодо головного сміттєзвалища не відповідає вимогам поміркованих строків” (Випадок ССС/С/16 Литва)



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## Ст. 6.3 - „помірковані строки”

- “Процедури участі громадськості передбачають помірковані строки для різних етапів, що забезпечують достатній час для інформування громадськості у відповідності до пункту 2 і підготовки та ефективної участі громадськості в процесі прийняття рішень з питань, що стосуються навколишнього середовища.”



## Можливість надати коментарі – Ст.6.7

- Два рівнозначні методи
  - У письмовій формі
  - На громадських слуханнях
  - Як це потрібно
- Будь-які коментарі – нема потреби мотивувати (АССС-16 Литва)



## Повідомлення – специфічні вимоги в Польщі

- Громадське повідомлення
  - Інтернет-сторінка - (в громадському інформаційному бюллетені)
  - Повідомлення на дошці у приміщенні компетентного органу
  - Повідомлення поблизу проекту (автобусна зупинка, церква, місцевий магазин тощо)
  - Преса (місцева чи національна)
- Індивідуальне повідомлення (лист) до безпосередніх сусідів



## Механізм моніторинг дотримання

- Звіти з впровадження
- Комітет з дотримання
- Процедура дотримання



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## „Ефективний” - II

- Тому, якщо обраний шлях інформування громадськості про можливості брати участь в процедурі ОВНС – це шляхом публікування інформації у місцевій пресі, набагато ефективніше публікувати повідомлення у популярній щоденній місцевій газеті, а ніж у тижневому офіційному журналі, і якщо всі місцеві газети виходять раз на тиждень, вимога забезпечення ефективності полягає у виборі газети з тиражем 1500 копій замість газети з тиражем 500 копій”” (Випадок ССС/С/16 Литва)



## Ст. 6.6 - зміст відповідної інформації

- Вся інформація, що стосується прийняття рішення
  - Опис місця, впливу та заходів
  - Не технічний узагальнений звіт
  - Опис головних альтернатив
  - Звіти та поради
- Проблемні питання
  - Документація ОВНС та авторські права (випадок АСС-15 Румунія)





## Повідомлення – специфічні вимоги у Директиві ОВНС

- Вчасне („достатньо часу для інформування громадськості і для того, щоб громадськість мала час підготуватися і взяти ефективно участь” – порівняйте з попередніми версіями Директиви ОВНС!)
- Відповідне („природа можливих ”)
- Ефективне („розміщення на дошці об'яв, електронні засоби ... чи публікація у місцевих газетах”)



**NIRAS**<sup>45</sup>

## Врахування– Ст.6.8

- Врахування громадських коментарів
  - Зобов'язання прочитати та серйозно розглянути
  - Але не завжди прийняти всі коментарі
- Будь-які коментарі та „вмотивовані коментарі”
- Достатній час для органів влади для розгляду коментарів ((АСС-3 Україна )



**NIRAS**<sup>27</sup>

## „Відповідний”

- „було чітко показано, що зацікавлену громадськість було проінформовано про можливість взяти участь у процесі прийнятті рішення щодо “можливостей розвитку управління відходами в районі Вільнюса”, а не про процес щодо створення сміттєзвалища в їх районі. Таке нечітке повідомлення не можна назвати “відповідним” і таким ,“що відповідно описує природу майбутніх рішень”, як це вимагається Конвенцією. ”  
(Випадок ССС/С/16 Литва)



## Повідомлення – Ст. 6.2

- Публічне повідомлення чи індивідуальне (випадок С-15 Румунія)
- На ранньому етапі прийнятті рішення
- як:
  - відповідно
  - вчасно
  - ефективно



## Юридичні наслідки

- Висновки і рекомендації Комітету з дотримання
  - Висновки
    - Дотримання чи недотримання
  - Рекомендації
    - Кроки, які має зробити відповідна сторона
    - Кроки наради сторін
- Прийняття Народою Сторін
  - Умовне попередження, накладене на Україну



## Ст.6.4 - „рання участь громадськості”

- „Кожна із Сторін забезпечує участь громадськості вже на ранньому етапі, коли відкриті всі можливості для розгляду різних варіантів, і коли участь громадськості може бути найбільш ефективною”



## Публікація рішення- Ст.6.9

- Вимога

- Вчасно проінформувати громадськість (АСС-8 Армения)
  - про рішення
  - Де про нього можна почитати
- Надати доступ до нього громадськості (АСС-3 Україна )
  - реєстри, доступні для громадськості
  - Записи рішень, доступні для громадськості

- Разом з заявою:

- причини
- аргументи



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**NIRAS**<sup>28</sup>

## „Ефективний” - I

- „Вимога інформувати громадськість  
“ефективно” означає, що органи влади повинні  
знайти засоби інформування громадськості, які  
забезпечують, що потенційно зацікавлені  
особи можуть мати певний шанс отримати  
інформацію про запропоновані заходи та їх  
можливості взяти участь” (Випадок ССС/С/16  
Литва)



**NIRAS**<sup>18</sup>

## Ст.6.6 - надання відповідної інформації

- Безкоштовно
- Як тільки вона є
- Виключення з загальних правил щодо доступу до інформації згідно Ст. 4
- Зв'язок з Ст. 6.2



## Елементи повідомлення

- Запропонована діяльність та заявка
- Природа майбутніх рішень чи проектів рішень (голландський підхід)
- Відповідальний орган влади
- Визначена процедура
  - Як брати участь
  - Де і я взяти інформацію
- Транскордонний ОВНС – якщо потрібно



## **Визначення – державний орган влади**

- урядовий орган на національному, регіональному та іншому рівні;
- фізичні, чи юридичні особи, які виконують державні адміністративні функції згідно з національним законодавством, включаючи конкретні обов'язки, види діяльності та послуги, що мають відношення до навколишнього середовища;
- заклади будь-якої регіональної організації економічної інтеграції, які є Стороною цієї Конвенції.



## Current status

- The Convention -
  - 44 Parties
  - Ukraine ratified 18 Nov 1999
- GMO Amendment -
  - 23 Parties (Ukraine not ratified yet)
- PRTR Protocol -
  - entered into force 8 October 2009
  - 25 Parties (Ukraine not ratified yet)



*Jendroška Jerzmański Bar &  
Partners; [www.jjb.com.pl](http://www.jjb.com.pl)*



## Developments

- MOP III Riga 2008
  - Riga Declaration
  - Strategic Plan for the Convention
  - Task Force on Public Participation



*Support to Ukraine to implement the  
Espoo and Aarhus Conventions*



## Developments

- MOP I Lukka 2001
  - compliance mechanism adopted
  - GMO Guidelines
- MOP extra –Kiev 2003
  - PRTR Protocol
- MOP II Almaty
  - GMO amendment
  - PPFiF Guidelines
  - decisions concerning compliance



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## Adoption and entry into force

- Adopted and signed in Aarhus in 1998
- Entered into force in 2001



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Jerzy Jendrośka

# Aarhus Convention - status and current developments

Kiev, July 2010



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## Clearinghouse

- <http://aarhusclearinghouse.unece.org/>
- Implementation Guide
  - text <http://www.unece.org/env/pp/acig.pdf>
  - revised Guide in preparation



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## Рекомендації: участь громадськості

- долучити Мінприроди до використання порталу КМУ з консультацій з громадянським суспільством
- провести підготовчу роботу до ратифікації Протоколу СЕО
- забезпечити прозорість процесу адаптації екологічного законодавства України до норм ЄС



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## Рекомендації: участь громадськості

- вдосконалити нормативно-правове регулювання порядку проведення ОВНС / державної екологічної експертизи
- розробити доступний для громадськості державний реєстр дозволів, заяв про екологічні наслідки діяльності, висновків державної екологічної експертизи, тощо
- забезпечити механізм опублікування заяв про наміри, про екологічні наслідки діяльності та висновків державної екологічної експертизи



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## Рекомендації: доступ до інформації

- вдосконалити порядок підготовки та поширення звітів про стан довкілля
- надати доступ до проектів планів, програм, політики та міжнародних інструментів з питань довкілля
- розробити керівництво для МЗС з питань надання доступу до проектів двосторонніх міжнародних угод
- систематично проводити тренінги



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## Рекомендації: доступ до інформації

- переглянути пропозиції щодо внесення змін до ст. 25 ЗУ “Про охорону навколишнього природного середовища”
- привести діяльність з засекречування екологічної інформації у відповідність зі ст. 50 Конституції України
- скасувати/внести зміни до Положення про порядок надання екологічної інформації



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## Огляд сучасного стану: доступ до правосуддя

- складність доступу до судових рішень, що стосуються питань довкілля
- недостатня підготовленість суддів розглядати справи, пов'язані з питаннями охорони довкілля
- недосконалість судової системи як такої



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## Огляд сучасного стану: участь громадськості

- відсутність практичної можливості брати участь в ОВНС / державній екологічній експертизі
- проблеми з інформуванням та доступом до інформації в контексті участі громадськості в прийнятті рішень
- відсутність чіткої процедури участі громадськості у розробці і затвердженні проектів планів, програм, політики та міжнародних інструментів з питань довкілля



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## Огляд сучасного стану: доступ до інформації

- неузгодженість понятійного апарату
- проблеми з отриманням інформації у відповідь на запит
- засекречування екологічної інформації
- недоліки звітів про стан довкілля
- відсутність доступу до проектів планів, програм, політики та міжнародних інструментів з питань довкілля



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## Виконання положень Орхуської Конвенції в Україні: огляд сучасного стану та рекомендації

Одеса, 27 квітня 2010 року



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## Рекомендації: доступ до правосуддя

- вдосконалити систему пошуку в Реєстрі судових рішень
- включити спеціальні курси з екологічного права, міжнародного екологічного права та Орхуської Конвенції, зокрема, в програми підготовки суддів



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## **Approaches to implementing Espoo Convention into national legislation**

- Western EIA Model
- Ecological Expertiza model



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## **Synergies with other conventions**

- Conventions requesting EIA to be conducted
  - Water Convention
  - Biodiversity Convention
- Industrial Accidents Convention
- Aarhus Convention



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## SEA Protocol

- Adopted in 2003 in Kiev to cover strategic decisions (plans, programs and policies)
- Content
  - mostly about national framework
  - transboundary procedure in Article 10
- Status
  - Parties - 14 (including EU)
  - not yet in force



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**NIRAS**<sup>25</sup>

## Dispute settlements

- Negotiations or other mechanism accepted (Art.15.1)
  - Permanent Court of Arbitrage
- Compulsory methods (Art.15.2)
  - International Court of Justice
  - Ad hoc arbitration (Appendix VII)
- Inquiry procedure



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**NIRAS**<sup>24</sup>



## Inquiry procedure

- Fact-finding role
- Procedure in Appendix IV
- Inquiry Commission
  - ad hoc nominated scientific/technical experts
  - experts nominated by Parties concerned elect an independent expert to chair
  - Parties pay all costs



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## Review of compliance

- Legal basis
  - MOP Decisions
  - Article 14bis (added in 2004 by MOP III)
- Implementation Committee
- Reporting system
- Compliance procedure



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## Compliance mechanisms

- Review of compliance
  - reporting
  - compliance procedure
- Inquiry procedure
- Dispute settlements



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## Espoo bodies

- Meeting of the Parties (MOP)
  - overall competence
- Secretariat
  - regular activities
  - role in compliance mechanism
- Compliance bodies and mechanisms
  - Implementation Committee
  - dispute settlement bodies



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## Bilateral (or multilateral) agreements

- Provided in Article 8
- Content - arrangements to implement obligations
  - elements in Appendix VI
  - in practice also:
    - establish points of contacts
    - decide who pays for translation
    - make arrangements for public participation



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**NIRAS**<sup>49</sup>

## Conducting national EIA procedure in practice II

- In case such activity is likely to cause a significant transboundary impact
- appropriate arrangements are made to ensure that
  - potentially affected Party is duly notified
  - if potentially affected Party so wishes - transboundary EIA is conducted
  - in the final decision due account is taken of the results of transboundary EIA



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**NIRAS**<sup>48</sup>

## Conducting national EIA procedure in practice - I

- Party of origin must ensure that before taking a decision to authorise or undertake any activity
  - listed in Appendix I, and
  - other activity if so agreed under Article 2.5
- a national EIA is conducted in a way that allows to identify whether such activity is likely to cause a significant transboundary impact



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## Proper framework for national EIA procedure - II

- Within such procedure the opportunity to participate provided for the public of the affected Party must be equivalent to that provided to its own public (Article 2.6)
- Such national EIA procedure shall be so constructed to permit conducting transboundary EIA procedure and taking due account of its results (Article 6.1)



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## Proper framework for national EIA procedure - I

- Article 2.2 and 2.3 requires to establish national EIA procedure before a decision to authorise or undertake any activity
  - listed in Appendix I, and
  - other activity if so agreed under Article 2.5
- Such national EIA procedure shall permit
  - public participation
  - preparation of EIA documentation described in Appendix II



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## Obligations related to national EIA procedure

- Establishing proper framework for national EIA procedure
- Conducting in practice national EIA procedure



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## Obligations as Party of origin

- Related to national EIA procedure
- Related to initiating transboundary EIA procedure - notification
- Related to conducting transboundary EIA procedure in co-operation with the affected Party



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## Espoo obligations and sovereign rights

- „initiation of the transboundary procedure under the Convention does not prevent the Party of origin from undertaking such proposed activities after having carried out the transboundary procedure, provided that due account is taken of the transboundary procedure’s outcome in the final decision”  
(EIA/IC/S/1, para 56 - ECE/MP.EIA/10 )



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## General obligation

- Article 2.1 requires
- „*The Parties shall,*
- *either individually or jointly,*
- *take all appropriate and effective measures*
- *to prevent, reduce and control*
- *significant adverse transboundary environmental impact from proposed activities*”



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## Basic obligations

- General obligation
- Obligations as Party of origin
- Obligations as affected Party



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## Definition of competent authority

- Under Art.1 (v) of the Espoo Convention
- „competent authority” means:
- *„national authority or authorities*
- *designated by a Party as responsible for performing the tasks covered by this Convention*
- *and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity”*



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## Definition of the public

- Under Art.1 (v) of the Espoo Convention
- „the public” means:
- Original definition
  - *„one or more natural or legal persons”*
- Amended definition
  - *„one or more natural or legal persons and,*
  - *in accordance with national legislation or practice*
  - *their associations, organizations or groups ”*



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## Definition of EIA

- Under Art.1 (v) of the Espoo Convention
- „environmental impact assessment” means:
  - „national procedure
  - for evaluating the likely impact
  - of a proposed activity on the environment”



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## Activities covered by Espoo

- Activities listed in Appendix I
  - mandatory
  - amended by II amendment
- Other activities
  - subject to bilateral agreements
  - criteria in Appendix III
- Level
  - project - mandatory
  - plans, programs, policies –
    - recommendation
  - mandatory under SEA Protocol



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## Definition of proposed activity

- Under Art.1 (v) of the Espoo Convention
- „proposed activity” means:
  - any activity or any major change to an activity
  - subject to a decision of a competent authority
  - in accordance with an applicable national procedure



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## When transboundary EIA is required?

- Espoo Convention requires transboundary EIA for
  - proposed activity
  - which may have impact
    - significant
    - adverse
    - transboundary
- Prior to a decision to authorize or undertake a proposed activity



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## Status and developments

- Adopted and signed in Espoo in 1991
  - entered into force 10 September 1997
  - status: 44 Parties
- First amendment - MOP II
  - definition of the public
  - open to non-UNECE countries
- Second amendment - MOP III
  - scoping
  - extended list of activities on Appendix I
  - review of compliance



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## Structure of the presentation

- Status and developments
- Scope of application and basic obligations
- Possibilities to initiate a transboundary procedure
- Bilateral agreements
- Espoo Convention bodies
- SEA Protocol



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## **Espoo Convention - overview**

Kiev 9 March 2010



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## Post-project analysis

- Non mandatory activity
  - may be requested by the affected Party
- Objectives - Appendix V
- May be conducted jointly on territories of both Parties (ECE/MP.EIA/8)



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## Final decision cd

- „if the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the ‘final decision’ in the meaning of the Convention” (ECE/MP.EIA/IC/2009/2, para. 21)
- „concerned Parties should agree, at the latest during the EIA procedure, on the whether the final decision will be translated and, if so, whether the whole final decision or only specific parts;
- The final decision should always be submitted as a paper document but, if the affected Party so requests, the final decision should also be transmitted electronically” (ECE/MP.EIA/IC/2009/2, para. 26)



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## Final decision cd

- Parties are free to decide which of the multitude of decisions required within their regulatory framework should be considered final for the purpose of the Convention, their discretion in this respect is limited to those decisions that in real terms set the environmental conditions for implementing the activity” (ECE/MP.EIA/10, decision IV/2, annex I, para. 61)



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## Final decision

- Content - Art.6.1
  - due account taken of the outcome of the procedure
    - EIA documentation
    - comments from the public and authorities
    - consultations under Art.5
  - reasons and considerations on which the decision is based
- Must be provided
  - to the affected Party (Art.6.2)
  - its authorities and the public (ECE/MP.EIA/IC/2009/2, para. 27)



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## Additional consultations

- **Post-decision consultations - Art.6.3**
  - new information
  - after decision but before work started
  - obligation to consult if decision needs revision
- **Consultations resulting from post-project analysis - Art.7.2**
  - reasonable grounds for concluding likely significant adverse transboundary impact
  - obligation to consult on measures to reduce or eliminate the impact



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## Consultations under Art.5 - issues

- potential transboundary impact
- measures to reduce or eliminate the impact
- possible alternatives, including the non-action alternative
- monitoring (at the expense of the Party of origin)
- any other appropriate matters



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## Consultations under Art.5 - timing and format

- Timing
  - start only after the EIA documentation is finalised (Polish-German example)
  - Parties shall agree on a reasonable time-frame for consultation period
- Format
  - authorised representatives of Parties concerned
  - level and venue to be agreed between parties



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## Participation of authorities

- Authorities „in the areas likely to be affected”
  - local or regional authorities
- Possibility to submit comments



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## Public participation cd

- Comments
  - concerning proposed activity
  - concerning EIA documentation
  - ‘any comments’ according to Aarhus
- Public participation at various stages
- Public to be informed about the final decision and possibilities to appeal (ECE/MP.EIA/8)



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## Public participation

- Public
  - national
  - from affected Party (from areas likely to be affected)
  - equivalent opportunities (Art.2.6)
- Joint responsibility of Parties concerned!
- Possibility to submit comments (Art.4.2)
  - directly to the competent authority in the Party of origin
  - through the Party of origin (for example via Point of Contacts)



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## EIA Documentation (EIA Study)

- Scoping
  - non-mandatory but recommended stage
  - opportunity for affected Party to participate in scoping (*Art.2. 11*)
- Content (*Art.4.1* and *App.II*)
  - alternatives
  - transboundary impact
  - mitigation measures



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## Information from the affected Party

- Requests for:
  - the scope of EIA Study (alternatives, impacts etc)
  - timing (deadlines)
- Transmittal of information requested by the Party of origin



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## Information from the Party of origin

- Information about the procedure (Art.3.5a)
  - authorities responsible for EIA
  - authorities that will be involved at the various stages of the EIA process (with an indication of who does what)
  - description (flow chart) of various stages and time frames of the national EIA process
- Relevant information about the proposed activity and its impact (EIA study) - (Art.3.5b)
- Request for information regarding the environment in the affected Party



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## Information exchange

- From the Party of origin
  - information (Art.3.5)
  - possible request for information (Art.3.6)
- From the affected Party
  - possible requests
  - information requested (Art.3.6)
- Agreement on the further procedure
  - deadlines, translation, contacts, responsible authorities or persons
  - identification of the public and authorities „likely to be affected”



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## Points of contact for notification - Decision I/3, para 1

- „Notifications of proposed activities likely to cause significant adverse transboundary impact shall be transmitted to the relevant points of contact
- ... unless otherwise provided for in bilateral or multilateral agreements or other arrangements
- Where no point of contact has been nominated, the notification shall be transmitted to the Ministry of Foreign Affairs of the affected Party or Parties"



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## Notification

- Timing (Art.3.1)
  - as early as possible
  - no later than when informing its own public
  - before scoping (2nd amend - Art 2.11)
- Target and form
  - Points of contact
  - written form
- Content (art. 3.2)
  - format (ECE/MP/EIA/12)



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## When screening is needed

- To determine significance of impact
- To determine if significant impact is
  - transboundary
  - adverse



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## Approaches to screening

- Categorical
- Ad hoc
- Mixed



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## What is screening

- Screening for national purposes
  - determining whether proposed activity may have a significant impact
- Screening for the purpose of Espoo
  - determining whether proposed activity may have a significant impact
    - adverse
    - transboundary



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## Screening

- What is screening
- Approaches to screening
- When screening is needed
- Criteria for screening



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## Significance criteria and thresholds

- Related to activity
  - character of activity
  - size
  - cumulation with other activities
  - risk of accidents
- Related to its location
  - shared resources
  - proximity to the border
- Related to its impact
  - geographical extent
  - irreversibility
  - probability



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## Significance - criteria and thresholds

- Appendix II
- ECE/CEP/9 - Annexes I-VIII
- EU - Annex III to EIA Directive
- National criteria and thresholds



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## Transboundary impacts

- Impact in neighbouring Parties
  - activities
  - area
- Long range impact (Guidance on Practical Application point 3.2)
  - activities
  - area
  - identification of „affected Parties”



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**NIRAS**<sup>13</sup>

## Definition of transboundary impact

- Under Art.1 (vii) of the Espoo Convention
- „transboundary impact” means:
  - any impact,
  - not exclusively of a global nature,
  - within an area under the jurisdiction of a Party
  - caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party



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**NIRAS**<sup>12</sup>



## Definition of impact

- Under Art.1 (vii) of the Espoo Convention
- „impact” means:
- any effect caused by a proposed activity on the
- environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures
- or the interaction among these factors;
- it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors



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## Impacts

- Impact and transboundary impact
- Transboundary
- Significance



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## Steps in full transboundary EIA procedure

- Information exchange (Art.3.5 and 6)
- Preparation of EIA documentation (Art.4 and App.II)
- Participation
  - public (Art.2.6, 3.8 and 4.2)
  - authorities (Art.4.2)
- Consultations (Art.5)
- Final decision (Art.6)
- Post-project analysis (Art.7)



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## Stage II – full transboundary EIA

- Full transboundary EIA initiated as a result of:
  - request under Art.2.5 or Art 3.7
  - positive opinion of the Inquiry Commission
  - positive response to notification



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## Procedure initiated by the affected Party - cd

- Art.3.7
  - need to clearly identify activity as listed in Appendix I
  - exchange of sufficient information
  - holding a discussion
  - possibility of referring the issue to an inquiry commission
- Art.2.5
  - holding a discussion
  - criteria in Appendix III
  - agreement of both Parties needed



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## Procedure initiated by the affected Party

- Two possibilities
  - Art.3.7 - for activity listed in Appendix
    - alleged to have significant adverse transboundary impact
    - which was not notified
  - Art.2.5 - for activity not listed in Appendix I
    - alleged to have significant adverse transboundary impact
- Different legal character



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## Procedure initiated by the Party of origin

- Screening
- Notification
- Response to notification
  - negative
    - lack of response or
    - response indicating no interest
  - positive response indicating interest in participating



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## Stage I - Initiation of the procedure

- „Normal” situation – procedure initiated by the Party of origin - - notification
- „Exceptional” situation – procedure initiated by the affected Party



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## Stages of the procedure

- Initiation of the procedure
- Full transboundary EIA procedure



*Jendroška Jerzmański Bar &  
Partners; [www.jjb.com.pl](http://www.jjb.com.pl)*



## Structure of the presentation

- Stages and initiation of the procedure
- Initial stage
  - Screening
  - Notification
- Steps in full transboundary EIA procedure
  - Information exchange
  - EIA documentation
  - Public Participation
  - Consultations
  - Final decision



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Jerzy Jendrośka

# **Espoo procedure step by step**

Kiev 8 March 2010



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## Інше

- Методичні рекомендації щодо практичного застосування конвенції Еспо
- Навчальні заняття та семінари з питань застосування конвенції Еспо для державних органів.



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- Зміни до Державних будівельних норм «Склад і зміст матеріалів оцінки впливу на навколишнє середовище (ОВНС) при проектуванні і будівництві підприємств, будинків і споруд. А.2.2.-1-2003»
- Зміни до постанови Кабінету Міністрів України “Про порядок затвердження інвестиційних програм і проектів будівництва та проведення їх державної експертизи”
- Зміни до Переліку видів діяльності та об'єктів що становлять підвищену екологічну небезпеку
- Розробка та затвердження КМУ положення про порядок врахування думки громадськості при прийнятті рішень, що стосуються довкілля (про участь громадськості) - в координації з роботою по Орхуській Конвенції
- Можливі зміни та доповнення щодо фінансових механізмів, порядку прийняття документації на експертизу, розробка інструкції про проведення держкоекспертизи.



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## Пропозиції щодо вдосконалення законодавства

- Зміни до Переліку центральних Органів виконавчої влади, відповідальних за виконання зобов'язань, що впливають із членства України в міжнародних організаціях, затвердженого постановою КМУ від 13.09.2002 №1371
- Зміни до Положення про Міжвідомчу координаційну раду з питань реалізації в Україні Конвенції про оцінку впливу на навколишнє середовище в транскордонному контексті, затвердженого постановою КМУ від 02.04.2008 №295
- Зміни до Закону України “Про екологічну експертизу”
- Розробка та затвердження Порядку проведення оцінки впливу на навколишнє середовище у транскордонному контексті. (КМУ)



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## Пропозиції щодо вдосконалення законодавства та практики

- Необхідно розглядати та вдосконалювати процес ОВНС + Держекоекспертиза
- Переміщення ролі компетентного органу на стадію Заяви про наміри
- Організацію інформування та участі громадськості покласти на державний орган
- Розробити та затвердити КМУ окремий порядок у випадках транскордонного впливу (як у випадках коли Україна Сторона походження так і зачеплена Сторона)
- Визначення щодо остаточного рішення
- Двосторонні чи багатосторонні угоди



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## Пробіли та проблеми з впровадженням

- Відсутність чітко визначеного компетентного органу його функцій та повноважень
- Внутрішні процедури ОВНС та екологічної експертизи (ЕЕ)
- Виявлення об'єктів з значним транскордонним впливом (Мінприроди довідується на пізній стадії, переліки)
- Інформування та участь громадськості
- Остаточне рішення
- Відсутність регулювання та практики у випадках коли Україна виступає як зачеплена Сторона



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**NIRAS**<sup>4</sup>

## Інші міжнародні угоди, що стосуються транскордонних питань та оцінки впливу на навколишнє середовище

- Конвенція про охорону біологічного різноманіття
- Конвенція з охорони та використання транскордонних водотоків та міжнародних озер
- Орхуська конвенція
- Конвенція про транскордонне забруднення повітря на великі відстані



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**NIRAS**<sup>3</sup>

Основні нормативно-правові акти, що стосуються ОВНС  
в транскордонному контексті:

- Закону України “Про екологічну експертизу”
- Державні будівельні норми «Склад і зміст матеріалів оцінки впливу на навколишнє середовище (ОВНС) при проектуванні і будівництві підприємств, будинків і споруд. А.2.2.-1-2003»
- Порядок затвердження інвестиційних програм і проектів будівництва та проведення їх державної експертизи”, затверджений постановою КМУ від 31.10.2007 № 1269
- Перелік видів діяльності та об'єктів що становлять підвищену екологічну небезпеку, затверджений постановою КМУ від 27.07.1995 №55
- Перелік центральних Органів виконавчої влади, відповідальних за виконання зобов'язань, що випливають із членства України в міжнародних організаціях, затверджений постановою КМУ від 13.09.2002 №1371
- Положення про Міжвідомчу координаційну раду з питань реалізації в Україні Конвенції про оцінку впливу на навколишнє середовище в транскордонному контексті, затверджений постановою КМУ від 02.04.2008 №295



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Дмитро Скрильніков  
Київ, 9 березня 2010

Ситуація в Україні: існуюча правова  
база, практика та пропоновані зміни

- прогалини та проблеми з впровадженням
- пропозиції щодо вдосконалення законодавства та практики



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- Переміщення ролі компетентного органу на стадію Заяви про наміри
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- Розробити та затвердити КМУ окремий порядок у випадках транскордонного впливу (як у випадках коли Україна Сторона походження так і зачеплена Сторона)
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## Пробіли та проблеми з впровадженням

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- Внутрішні процедури ОВНС та екологічної експертизи (ЕЕ)
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## Основні вимоги Конвенції Еспо, щодо яких було встановлено недотримання Україною Конвенції:

- **Стаття 2** визначає загальні положення щодо підготовки документації з ОВНС та встановлення процедури оцінки впливу на навколишнє середовище (ОВНС) яка дає можливість участі громадськості.
- **Стаття 3** визначає вимоги щодо оповіщення, передачі інформації та участі громадськості.
- **Стаття 4** стосується вимог щодо підготовки та розповсюдження документації ОВНС з метою участі державних органів та громадськості країни, яка може бути зачеплена впливом планованої діяльності.
- **Стаття 5** встановлює положення щодо консультацій між Сторонами на підставі документації з ОВНС.
- **Стаття 6** стосується остаточного рішення та повідомлення зачепленій Стороні остаточного рішення щодо запланованої діяльності разом з причинами та міркуваннями, на яких воно базується.



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## Огляд правових, інституційних та процесуальних аспектів імплементації Конвенції Еспо в Україні

- прогалини та проблеми з впровадженням
- пропозиції щодо вдосконалення законодавства та практики



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**ДЯКУЮ ЗА УВАГУ !**



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**NIRAS**<sup>10</sup>

**Звіт до Орхуської Конвенції та її Комісії  
з питань виконання положень Конвенції**

- Загальна частина щодо впровадження Плану дій КМУ
- Детальний опис заходів за переліком визначеним Комітетом з питань виконання положень Конвенції
- Заходи з питань посилення спроможності України до виконання положень Конвенції
- Опис порядку, за яким проходить виконання Плану Дій
- Опис порядку міжвідомчої взаємодії щодо Плану Дій
- Міжнародна співпраця та допомога від Орхуського Секретаріату
- Плановані заходи на наступний рік



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**NIRAS**<sup>9</sup>

## Звітування до Конвенції

- Національні звіти до зустрічі Договірних сторін Конвенції
- Звіти робочих груп
- Звіти про роботу Секретаріату
- Інші звіти відповідно до рішень Договірних сторін або їх робочих органів



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## Типове положення про контактну особу Конвенції має включати:

- Визначення
- Досвід роботи за напрямком
- Підпорядкування
- Обов'язки
- Права
- Термін призначення, але не менше 3 років
- Стимулювання
- Відповідальність



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## Проблеми контактних осіб в Україні

- невизначеність відповідального органу за координацію впровадження Конвенції
- плинність кадрів
- відсутність інституційної пам'яті
- додаткове навантаження до службових обов'язків
- відсутність мотивації
- значні обсяги роботи
- відсутність міжвідомчого механізму координації стосовно питань конвенції
- непрописаність обов'язків і прав осіб



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## Інституційна організація Бухарестської Конвенції

### Зустріч договірних сторін

- Чорноморська Комісія
- Дорадчі групи
- Експертні групи
- Секретаріат Конвенції

### Контакти особи Конвенції



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## Інституційна організація Еспу Конвенції

### **Зустріч Договірних Сторін**

- *Робоча група Конвенції з оцінки впливу на довкілля*
- *Зустрічі підписантів Конвенції*
- *Комісія з питань виконання положень Конвенції*
- *Комісія з питань дослідження запитів Конвенції*
- *Бюро Конвенції*
- *Секретаріат Конвенції*

### **Контактні особи Конвенції**



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## Інституційна організація Орхуської Конвенції

### **Зустріч Договірних Сторін**

- Бюро зустрічі Договірних Сторін*
- Комітет з питань виконання положень Конвенції*
- Робочі групи Конвенції*
- Експертні групи Конвенції*
- Секретаріат Конвенції*

### **Контактні особи Конвенції**



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**Україна є стороною понад 40 міжнародних конвенцій та угод природоохоронного спрямування, в тому числі:**

- **Конвенції про доступ до інформації, участь громадськості в процесі прийняття рішень та доступ до правосуддя з питань, що стосуються довкілля (1998, Орхус)**
- **Конвенції про оцінку впливу на навколишнє середовище в транскордонному контексті (1991, Еспу)**
- **Конвенції про захист Чорного моря від забруднення (1992, Бухарест)**



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## **Типове положення про контактну особу міжнародної угоди природоохоронного спрямування**

*О.Г.Тарасова*

*7 грудня 2009 р.*



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## AD-HOC BODIES

- Inquiry Commissions
  - Industrial Accidents
  - Espoo
- Fact finding role



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## NON-COMPLIANCE PROCEDURES

- Right to initiate
  - Standard
    - Party Concerned
    - Other Parties
    - Secretariat
  - Exceptions
    - NGOs and Public (Bern and Aarhus)
    - „any other source” (Espoo)
- Procedural steps
- Sanctions



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## SPECIAL PERMANENT COMPLIANCE BODIES

- Legal basis
  - Direct
  - Indirect
- Different names
- Advisory role - decisions taken by MOP
- Composition
  - Standard (representatives of Parties)
  - Exception (independent experts)



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## Dispute settlements

- Special provisions (Annexes)\_
- Means
  - Negotiations
  - Permanent Court of Arbitrage
  - International Court of Justice
  - Ad-hoc arbitration (American system)



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## Constitutional approaches to implementing international obligations

- Directly applicable (no need for domestic legislation)
- Needs implementing legislation (in doubts priority over domestic law)
- Implementation only via domestic law



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## Implementation

- *„All legal and other appropriate measures required to implement the agreement should be in place, in order to ensure that a Party is in a position to comply with its international obligations at the time of entry into force of the MEA for that Party.” (art 8 of UNECE Guidelines)*



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## Implementation

- *“Implementation” refers to, inter alia, all relevant laws, regulations, policies, and other measures and initiatives that contracting parties adopt and/or take to meet their obligations under an MEA and its amendments, if any (art.4b of UNECE Guidelines)*



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## Definition of compliance

- Compliance – *means fulfilment by the contracting parties of their obligations under an MEA and any amendments to it (art. 4a of UNECE Guidelines)*
- Compliance vs Implementation



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## Guidelines on Compliance

- UNEP Guidelines 2002
- UNECE Guidelines 2003



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## Vienna law of the Treaties (III)

- Art. 60.2 – “sanctions” - cont.
  - (b) *a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;*
  - (c) *any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.*”



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## Vienna law of the Treaties (II)

- Art. 60.2 – „sanctions”
  - *„A material breach of a multilateral treaty by one of the parties entitles:*
    - *(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:*
      - *(i) in the relations between themselves and the defaulting State, or*
      - *(ii) as between all the parties;*



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Partners; [www.jjb.com.pl](http://www.jjb.com.pl)



## Vienna law of the Treaties (I)

- Art. 26 - Pacta sunt servanda
  - *„Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”*



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Partners; [www.jjb.com.pl](http://www.jjb.com.pl)



# Obligations

- **Party of origin**
  - notification
  - provision of EIA documentation
  - transboundary procedure
  - consultations
  - provision of final decision
- **Affected Party**
  - provision of information if requested
- **Both concerned Parties**
  - public participation in affected party



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## Party of origin vs affected Party

- "Party of origin" means the Contracting Party or Parties to this Convention under whose jurisdiction a proposed activity is envisaged to take place;
- "Affected Party" means the Contracting Party or Parties to this Convention likely to be affected by the transboundary impact of a proposed activity;
- (iv) "Concerned Parties" means the Party of origin and the affected Party of an environmental impact assessment pursuant to this Convention;



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## Relevant international instruments

- Multilateral agreements
  - concerning shared natural resources
  - concerning transboundary impact
- Bilateral agreements
  - general co-operation in environmental protection
  - concerning shared natural resources
  - concerning transboundary impact



## Substantive vs procedural obligations

- Substantive obligations
  - avoiding/minimising harm
  - compensating damage
- Procedural obligations
  - notification
  - transboundary procedure



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## Principle 19

- States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.



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## Principle 18

- States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.



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## Rio Declaration - Principle 2

- States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.



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## General principles

- General principles of international law
  - Trail Smelter case - arbitration tribunal
  - Nagymaros-Gabcikovo case - ICJ
- Rio Declaration on Environment and Development
  - general responsibility for transboundary environmental damage - Principle 2
  - two secondary principles (18 and 19)



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## Structure of the presentation

- General principles of international law
- Substantive vs procedural obligations
- Types of relevant international instruments
- Implementation and compliance
- Dispute settlements procedures and bodies
- Sanctions
- „Party of origin” vs „Affected Party”



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## **General obligations to prevent environmental harm**

Kiev 9 March 2010



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## Main Tasks of the project

- Assistance in relation to implementation of Espoo and Aarhus conventions
- Tasks in relation to Espoo:
  - Review of legal, institutional and procedural aspects
  - Action plan (strategy) to reach compliance
  - Measures and timetables needed to bring the Bystroe Canal project into compliance
  - Espoo seminar
  - Bilateral agreements



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## Team Leader

- Member of the Permanent Court of Arbitrage in the Hague (since 2003)
- Espoo Convention
  - member of the Implementation Committee (since 2004)
  - former vice-Chair of SEA Protocol negotiations (2001-2003)
- Aarhus Convention
  - member of the Implementation Committee since (2005)
  - former vice-Chair of Aarhus negotiations (1996-98)
  - Secretary to the Convention (1998-99)
  - Chair (2002-2003) and vice-Chair (2003-2005) of the Convention



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# Presentation of the project: goals and expected products

Kiev 9 March 2010



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## Goals of the meeting

- Presentation of the Project
- Aarhus Convention - key issues
- Implementation of the Aarhus Convention in Ukraine
  - review of the framework
  - practical problems
- The draft legal instruments
  - on public participation
  - on access to information



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## Background - Aarhus Convention II

- Procedure
- Capacity building
- Problems
  - listed in para 5 a-d) of decision III/6f
  - listed in para 10 a-j) of CC findings (letter of 16 April 2009)



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## Background - Aarhus Convention I

- Case at Aarhus Compliance Committee
  - communication by EcoPrawo Lwiw
  - submission by Romania
- Decision II/5b
- Decision III/6f
  - caution
  - reporting -
- CC Decision at March 2009
  - caution not effective
  - still non-compliance



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Espoo and Aarhus Conventions*



## Main Tasks

- Review of legal, institutional and procedural aspects
- Action plan (strategy) to reach compliance
- Measures and timetables needed to bring the Bystroe Canal project into compliance
- Capacity building
- Communication activities



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## Presentation of the project

Odessa 27 April 2010



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## Goals of the meeting

- Presentation of the Project
  - experts involved
  - goals and tasks
- Discussion about the current issues
  - Aarhus
  - Espoo
  - role of Focal Points



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## Expected products - II

- Bystroe Canal
- Capacity building
  - trainings
  - role of Focal Points
  - ??
- Communication activities
  - guidance on reporting
  - ??



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## Expected products - I

- Espoo framework
  - Review - identification of problems
  - Action plan/Strategy - proposals
  - negotiations with neighbouring countries
- Aarhus framework
  - Review - identification of problems
  - Action plan/Strategy - proposals
  - draft decrees:
    - commenting
    - redrafting



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## Main Tasks

- Review of legal, institutional and procedural aspects
- Action plan (strategy) to reach compliance
- Measures and timetables needed to bring the Bystroe Canal project into compliance
- Capacity building
- Communication activities



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## Background - Aarhus Convention II

- Procedure
- Capacity building
- Problems
  - listed in para 5 a-d) of decision III/6f
  - listed in para 10 a-j) of CC findings (letter of 16 April 2009)



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## Background - Aarhus Convention I

- Case at Aarhus Compliance Committee
  - communication by EcoPrawo Lwiw
  - submission by Romania
- Decision II/5b
- Decision III/6f
  - caution
  - reporting -
- CC Decision at March 2009
  - caution not effective
  - still non-compliance



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## Background - Espoo Convention II

- Bystroe Canal
  - Phase I vs Phase II
- Framework
  - Independent review
  - Action Plan/Strategy
    - issues in letter of 7 April 2009
- Bilateral agreements



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## Background - Espoo Convention I

- Case at Espoo IC
  - submission by Romania
  - Inquiry Commission
- Decision IV/2
  - conditional caution
- IC decisions
  - Letter of 30 October 2008 - caution not effective conditionally
  - Letter of 16 October 2009 - Caution effective



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  - Chair (2002-2003) and vice-Chair (2003-2005) of the Convention



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## Structure of the presentation

- Introduction of the Team Leader
- Background of the Project
  - Espoo Convention
  - Aarhus Convention
- Five Main Tasks under the Project
- Expected products
- Goals of the meeting



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# Presentation of the project: goals and expected products

Kiev 7 December 2009



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## Article 7 – reasonable time-frames

- Bad practice
  - the law in Poland provides the same 21-days period for commenting most plans and programs
- Good practice
  - EU Water Framework Directive in relation to water management plans provides 6 months commenting period



*Environmental Law Center, Wrocław*



## Article 7- Identification of the public

- In programs for reducing water pollution from agriculture the law in Poland requires to consult the following:
  - Users of given waters
  - Users of given area of land
  - Organizations of farmers
  - Environmental organizations



*Environmental Law Center, Wrocław*



## Strategic decisions „relating to the environment”

- Those which „may have a significant effect on the environment” and require SEA
- Those which „may have a significant effect on the environment” but do not require SEA, for example:
  - those that do not set framework for development consent
- Those which „may have effect on the environment” but effect is not „significant” , for example:
  - those that determine the use of small areas
- Those aiming to help protecting the environment



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**NIRAS**<sup>41</sup>

## Due account– art.6.8

- Due account must be taken of public comments
  - obligation to read and consider seriously
  - but not always to accept all comments
- Any comments vs „reasoned or motivated comments”
- Sufficient time for authorities to consider comments ((ACC/C/3 Ukraine )



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**NIRAS**<sup>40</sup>

## Possibility to submit comments – art.6.7

- Two equal methods
  - In writing
  - In public hearing
  - as appropriate
- Any comments - no need to be motivated (ACCC-16 Lithuania)



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## Art 6.6 - content of relevant information

- All information relevant to decision-making
  - Description of site, effects and measures
  - Non-technical summary
  - Outline of main alternatives
  - Reports and advice
- Problematic issues
  - EIA Documentation and copyright (case ACC-15 Romania)



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## Art.6.6 - making available relevant information

- Free of charge
- As soon as available
- Exemption from general rules on access to information under art.4
- Relation to art 6.2



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## Art.6.5

- Relying on developers solely is not in line with the Convention (Case C-16 Lithuania and C-37 Belarus)
- Practice in Czech Republic of hiring special firms to:
  - Notify and make the public aware about the project
  - Facilitate submission of comments
  - Arranging public hearing



*Environmental Law Center, Wrocław*



## Art.6.4

- Early in decision-making when all options are open:
  - Public participation in screening projects for environmental assessment (Indonesia, some EU countries)
  - Public participation in defining the scope of environmental assessment (USA, many EU countries)



*Environmental Law Center, Wroclaw*



## Art.6.4 - „early public participation”

- „Each Party shall provide for early public participation, when all options are open and effective public participation can take place”



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## Reasonable time-frames

- minimum of 30 days between the public notice and start of public consultations is a reasonable time-frame (ACC-37 Belarus)
- 20 days for the public to prepare and submit comments is not reasonable if such period includes days of general celebration in the country like Christmas time (ACC-24 Spain)



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## Reasonable time-frames - examples

- 10 days for inspecting the EIA documentation and submitting comments regarding waste disposal site - is not reasonable (ACC-16 Lithuania)
- 6 weeks for inspecting the EIA documentation and 45 days for submitting comments regarding waste disposal site - is reasonable (ACC-22 France)



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## Art.6.3 time frames - issues for consideration

- Phases
  - Notification
  - Inspection of relevant documents
  - Submission of comments
  - Consideration of comments (ACC/C/3 Ukraine)
- Fixed vs diversified time frames(ACC/C/16 Lithuania)
- Minimum vs maximum time-frames (ACC/C/37 Belarus)
- Timing
  - traditional holiday season (ACC/C/24 Spain)



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## Art.6.3 - „reasonable time-frames

- „The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making”



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## „Effective” - II

- Therefore, if the chosen way of informing the public about possibilities to participate in the EIA procedure is via publishing information in local press, much more effective would be publishing a notification in a popular daily local newspaper rather than in a weekly official journal, and if all local newspapers are issued only on a weekly basis, the requirement of being “effective” established by the Convention would be met by choosing rather the one with the circulation of 1,500 copies rather than the one with a circulation of 500 copies. ” (Case CCC/C/16 Lithuania)



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## „Effective” - I

- „The requirement for the public to be informed in an “effective manner” means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned would have a reasonable chance to learn about proposed activities and their possibilities to participate” (Case CCC/C/16 Lithuania)



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## „Adequate”

- „it has been clearly shown that what the public concerned was informed about were possibilities to participate in a decision-making process concerning “development possibilities of waste management in the Vilnius region” rather than a process concerning a major landfill to be established in their neighbourhood. Such inaccurate notification cannot be considered as “adequate” and properly describing “the nature of possible decisions” as required by the Convention.” (Case CCC/C/16 Lithuania)



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## Notification - specific requirements in Poland

- Public notice
  - webpage - (in Public Information Bulletin)
  - notice board in the seat of competent authority
  - notice in the vicinity of project (bus stop, church, local shop etc)
  - press (local or national)
- Individual notification (letter) - to immediate neighbours



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## Notification – specific requirements in EIA Directive

- Timely („sufficient time for informing the public and for the public.. to prepare and participate effectively” – compare with the previous version of EIA Directive!)
- Adequate („nature of possible decisions”)
- Effective („bill posting, electronic means...or publication in local newspapers”)



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**NIRAS**<sup>25</sup>

## Elements of notification

- Proposed activity and application
- Nature of possible decisions or draft decision (Dutch approach)
- Responsible public authority
- Envisaged procedure
  - How to participate
  - Where and which information is available
- Transboundary EIA – if applicable



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**NIRAS**<sup>24</sup>

## Notification – art 6.2

- Public notice or individually (case C-15 Romania)
- Early in decision-making
- Manner:
  - Adequate
  - Timely
  - Effective



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## Article 6.2- legally required means of notification

- on notice board in the seat of competent authority
- bill-posting in the vicinity of the project
- publication in local press/customary way - if the seat of competent authority is in other community than location of the project
- on www home page
- individually (in written form) – those with legal interest



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## Notification – art 6.2

- Public notice or individually (case C-15 Romania)
- Early in decision-making
- Manner:
  - Adequate
  - Timely
  - Effective



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## Art.6.2 - notification of the public

- „The public concerned shall be informed...in an adequate...and effective manner..”
- journalists’ articles commenting on a project in the press, or television programmes do not constitute a public notice as required under article 6.2 (Case C-37 Belarus)



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## Who is responsible for public participation procedure

- Primary responsibility
  - „competent public authorities”
- Practical arrangements
  - special officers (commissaires enqueteurs)
  - specialised private consultants (sometimes NGOs)
  - local authorities
- Role of developers (project proponents) - case C-16 Lithuania



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## Art 5.3

- All documents of EU institutions shall be available electronically (EU Regulation 1049/2001)
- All public information shall be accessible through Internet (Poland)



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## Art.5.2

- Documents concerning environmental planning, permitting and enforcement are available for inspection in paper copies through
  - publicly accessible registers (Great Britain)
  - publicly accessible records Poland)
- Documents from publicly accessible registers are available the same day (Poland)



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## Art 5.1

- Authorities responsible for issuing the decisions should maintain and make accessible to the public: copies of such decisions (including conclusions of environmental expertiza) along with the other information relevant to the decision-making (Case C-37 Belarus)



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## Art.4.4

- In new EU Directive of 2003 information on emissions can not be exempted from disclosure under:
  - 4.4.d commercial secret
  - 4.4.f) personal data
  - 4.4 g) data submitted voluntarily
  - 4.4.h) environmental reasons



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## Art.4.3

- The law clearly does not allow to classify information about the state of the environment as the state secret (Tajikistan)
- Confidentiality of commercial information:
  - Difficult approach: officials have to classify it themselves
  - Good practice: classified as secret only if specifically requested (Poland)



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## Art 4.1 and 4.2

- Art.4.1- the law clearly does not allow officials to ask about the interest (Poland)
- Art.4.2 – information to be supplied
  - in 1 day – documents listed in public registers (Poland)
  - in 14 days – all documents (EU Regulation for EU institutions)



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## Access to information - implementation

- Directive 2003/4 on Access to Information
  - step forward
- Environmental information vs general information
- Copyright (Case CC-15 Romania)
- Practical problems
  - no reply (Case C-36 Spain)
  - info not supplied in the form requested (Case C-24 Spain)



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## Article 3.4

- Place for NGOs in
  - Official governmental delegations (Netherlands, Bulgaria, Tajikistan, Poland)
  - Supervisory Boards for Ecological Funds (Poland)
  - Advisory bodies
- Support:
  - Financial
    - 1% of tax (Hungary)
    - Budget line in Ecological funds (Poland)
  - Providing offices (some local authorities in Poland, Czech Republic, Hungary)
- Clear and transparent rules of financial support and participation in governmental bodies (Poland)



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## Article 1

- Right to the environment
  - Granted by the Constitution (e.g. Spain, Portugal)
  - Granted by the ordinary legislation (e.g. Tajikistan)
- Rights
  - To access to information
    - In Constitution (e.g. Mexico, Thailand, Poland)
    - In ordinary legislation (e.g. Tajikistan)
  - To participate
    - In Constitution (e.g. Tajikistan, Thailand)
    - In ordinary legislation (e.g. Poland, Tajikistan)
  - To access to justice (in Constitution in most countries)



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## **Approaches to implementing Aarhus into national legislation**

- Several laws address different issues
- One law to cover all 3 pillars
- Major implementing law supported by few others



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## **Constitutional approaches to implementing international obligations**

- Directly applicable (no need for domestic legislation)
- Needs implementing legislation (in doubts priority over domestic law)
- Implementation only via domestic law



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## Implementation

- *„All legal and other appropriate measures required to implement the agreement should be in place, in order to ensure that a Party is in a position to comply with its international obligations at the time of entry into force of the MEA for that Party.”(art 8 of UNECE Guidelines)*



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## Guidelines on Compliance

- UNEP Guidelines 2002
- UNECE Guidelines 2003



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## Vienna law of the Treaties (III)

- Art. 60.2 – “sanctions” - cont.
  - (b) *a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;*
  - (c) *any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.”*



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  - *„A material breach of a multilateral treaty by one of the parties entitles:*
    - (a) *the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:*
      - (i) *in the relations between themselves and the defaulting State, or*
      - (ii) *as between all the parties;*



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## Vienna law of the Treaties (I)

- Art. 26 - Pacta sunt servanda
  - „Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”



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## Content

- International obligations and sanctions
- Aim -art.1
- General provisions - art. 3
- Access to information - art. 4 and 5
- Public participation - art.6-8



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# Aarhus Convention - approaches to implementation

Kiev, July 2010



*Support to Ukraine to implement the  
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## **Annex to task V:**

### **Proposal for a Communication Strategy**

#### **Objective**

The overall objective of the communication strategy is to enhance further transparency and flow of information about Ukrainian activities related to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) vis-à-vis the domestic and international audience and strengthen the provision of the comprehensive information on the state of environment, impact of human activities on ecosystems, climate change and other environmental issues as well as efficiency of the measures adopted and implemented by the competent environmental authorities to the general public, public authorities and international community.

#### **Identification of information in view of disclosure obligations**

Initially the Ministry of Environment of Ukraine and other competent public authorities should consult and identify the types of information, which: (a) is the subject for collection and dissemination within the meaning of Article 5 of the Aarhus Convention and (b) should be made available to the public upon request within the meaning of Article 4 of the Aarhus Convention. Separate attention should be paid to types of information which should be either actively disseminated or provided upon request for the purposes of effective public participation as foreseen by Articles 6, 7 and 8 of the Aarhus Convention and corresponding provisions of Articles 2, 3 and 4 of the Espoo Convention.

Following the above, effective, timely and adequate means for collection and active dissemination of information and provision of information upon request should be identified and used. For the later purpose the Ministry and other competent authorities should provide sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained. Therefore, meta-information (information about information) is of crucial importance for both internal purposes and contacts with the public or foreign partners. Each authority should keep the list of documents relevant to its functions that would allow the public to easily identify the document. It should be made unambiguously clear where and how the document can be obtained; whether it has already been made available electronically or could be obtained only upon request; how this document is related to other documents (for example, related to the same company, like: expertiza conclusions, EIA documentation, reports from inspection, self-report from self-monitoring, information about sanctions etc.

Additionally, pursuant to Article 5 of the Aarhus Convention the Ministry and other competent authorities should ensure that they possess and update environmental information which is relevant to their functions; mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment; and that in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.



### Means of active dissemination of information

The Ministry and other competent authorities should use diversified means for active dissemination of information:

- a. Article 5.4 of the Aarhus Convention provides that each Party shall, at regular intervals publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment. For this purpose the Ministry and other competent public authorities involved should: develop and adopt nationally agreed and internationally compatible indicators and ensure availability and development of the methodologies for their production; develop and implement the mechanisms for inclusion scientific findings in the national reports on the state of the environment; develop and introduce the nationally adopted and internationally compatible methodologies for the assessment of impacts of the implemented political and managerial measures; ensure that the developed reports are printed in a number of copies sufficient to satisfy demands and requirements, including the requests of non-governmental sector. It is clear that posting the national report on the state of the environment on the respective website of the Ministry is not enough. Since the production of sufficient number of copies may involve additional costs considerations should be given as to ensuring the financing of the publication of information on the state of the environment from the state fund.
- b. Internet technologies for dissemination of information and communication with the public concerned should be used more actively. To this end the Ministry and other competent authorities should develop and implement an interactive system of Internet-based communication and develop and implement an Internet-based system for the intersectoral retrieval of environmental information on the state of the environment, decisions and decision-making in the field of environmental protection. Considerations should be given as regards the development of dedicated Aarhus and Espoo related websites, inter alia, containing:

#### For Aarhus Convention website:

- the text of the Aarhus Convention as well as Protocols and amendments to it;
- links to the Convention's website and Clearinghouse;
- guidance documents developed by the Convention's subsidiary bodies, IGO and NGOs, facilitating proper implementation of the Convention;
- texts and, as appropriate, draft texts of the National Implementation Reports of Ukraine under the Convention;
- official correspondence between Ukraine and subsidiary bodies established under the Convention concerning Ukraine's implementation and compliance with the Convention;
- recommendations and decisions to and on Ukraine made by the Convention's Compliance Committee and its Meeting of the Parties;
- reports from the Ministry officials on their participation in meetings under the auspices of the Convention;
- legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to implementation of the Aarhus Convention, and progress reports on their implementation, prepared at various levels of government;
- information on the performance of public functions or the provision of public services relating to the environment by government at all levels;
- information about the type and scope of environmental information held by the relevant public authorities; the basic terms and conditions under which such information is made available and accessible; the process by which it can be obtained;

- links to the most important publicly accessible lists, registers or files containing environmental information;
- identification of points of contact for the Convention, including the Focal Point for the Aarhus Convention, and within the meaning of Article 5.2 (b);
- explanatory material on dealings with the public in matters falling within the scope of the Aarhus Convention;
- facts and analyses of facts which are relevant and important in framing major environmental policy proposals;
- other information, to the extent that the availability of such information in this form would facilitate the application of national laws and regulations implementing the Aarhus Convention.

For Espoo Convention website:

- the text of the Espoo Convention as well as Protocols and amendments to it;
- links to the Convention's website;
- guidance documents developed by the Convention's subsidiary bodies, IGO and NGOs, facilitating proper implementation of the Convention;
- official correspondence between Ukraine and subsidiary bodies established under the Convention concerning Ukraine's implementation and compliance with the Convention;
- recommendations and decisions to and on Ukraine made by the Convention's Implementation Committee and its Meeting of the Parties;
- reports from the Ministry officials on their participation in meetings under the auspices of the Convention;
- legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to implementation of the Espoo Convention, and progress reports on their implementation, prepared at various levels of government;
- identification of points of contact for the Convention, including the Focal Point for the Espoo Convention;
- notifications forwarded by Ukraine as the Party of origin and received by Ukraine as the affected Party;
- EIA materials and other relevant documentation enabling effective public participation as required by the Convention;
- commentaries received from the public concerned in the course of public participation as required by the Convention;
- final decisions made by Ukraine or received from the Party of origin;
- other information, to the extent that the availability of such information in this form would facilitate the application of national laws and regulations implementing the Espoo Convention.

It should be stated, however, that the use of dedicated website or websites of the Ministry of Environment or other competent public authorities can not and should not be considered as sufficient and adequate means of active dissemination of information and can not by itself substitute other means referred to in this paper. Therefore, all or at least a number of the means should be used as complementary to each other.

- c. Capacities of the network of Aarhus centers established and functioning in Ukraine should be further built and their resources could be better used for the purposes of active dissemination of information within the meaning of the Aarhus and Espoo Convention as well as one of the possible effective means of facilitating public participation in the decision-making procedures

foreseen by the said Conventions. Premises of Aarhus centers may be used for trainings of officials, judges and the public concerned. However, it should be emphasised that the resources of Aarhus centers should be used as complementary to other means of dissemination of information.

- d. Using NGO communication networks can be useful, especially with active information dissemination and consultation processes while reporting under international environmental agreements or facilitating effective public participation in decision-making processes.
- e. Effective communication on the local level could be enhanced by: regular information of local communities on the environmental issues of local significance; regular information of the local communities on the environmental issues of the nationwide importance; regular and timely information of the local community on the issues of legislative changes with environmental implication, including on the relevant rights and responsibilities of local communities; regular and timely information of the local communities on the precautionary measures related to the environmental impacts of the human activities and environmental safety. It is important that in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the local public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected. For the purpose of enhancing effectiveness of dissemination of information on the local level local and/or the national press should be used and in order to facilitate effective public participation in decision-making announcements (notices) should be publicised in such way, which guarantees informing citizens of the relevant administrative-territorial unit or relevant territorial community, which can be affected as a result of implementation of the decision or activity. This includes placing information on notice boards, bust stops, in public buildings etc.
- f. Effective communication at the international level depends a lot on: timely and comprehensive reporting to the international environmental agreements and in particular on the Aarhus and Espoo Conventions; ensuring dissemination of the guidance documents and materials facilitating implementation in English language and their accurate translation into Ukrainian; revision of translations into Ukrainian language of the international agreements to ensure that they are equivalent to the authentic texts.
- g. Legal instruments include: improve and develop where necessary the rules and procedures for public participation in decision-making process in environmental matters, including mechanisms and procedures for public hearings and develop and implement mechanism for liability of the responsible authorities for untimely dissemination of environmental information or provision of untimely or incomplete information upon request.

## **Annex to Task V**

### **Guidance on Preparation of the National Report of Ukraine on the Progress in Achieving the Full Compliance with the Provisions of the Aarhus Convention**

#### **Introductory notes**

*This part shall contain the references to the decisions of the Compliance Committee and the Parties to the Aarhus Convention on Ukraine's non-compliance and Ukraine's obligation to report on progress in Implementing Action Plan*

#### **I. GENERAL PART**

##### **1. Activities undertaken by Ukraine in implementing the Action Plan**

*This part shall contain general description of activities undertaken by Ukraine for implementation of the Action plan, mentioning among others a comprehensive review of the legal and administrative framework for Aarhus and Espoo Convention undertaken with assistance of ECD Project and other activities started by the Project/*

#### **II. ACTIVITIES TO RESOLVE THE PROBLEMS IDENTIFIED BY THE COMMITTEE IN ITS FINDINGS AND RECOMMENDATIONS (ECE/MP.PP/C.1/2005/2/ADD.3), AND IN PARTICULAR IN PARAGRAPHS 29 TO 35 OF THE LATTER DOCUMENT**

This part shall describe existing timeframes for public consultation, commenting and making available to the public the information on which decisions were based and any steps undertaken for their improvement/changes if any, in particular

- a. The proposed wording requiring that sufficient timeframes for public consultations process (paragraph 1c of the letter of March 2009). In particular :
  - i) the time for the public study of information on the projects and to prepare to participate effectively; and
  - ii) the time for the public to prepare and submit comments
- b. The proposed wording requiring that sufficient time is available for the public officials to take any comments into account in a meaningful way (para2d of letter ( March 2009)
- c. The proposed wording requiring that sufficient time is available for the public officials

This part shall contain a brief description of public procedure on the above subject, existing problems with its application if any, and the steps undertaken for its amendment/improvement if any

- d. The proposed wording requiring that public authorities obtain environmental information relevant to their functions, including that on which they based their decisions (paragraph 2f of the secretariat's letter of 2 March, 2009)
- e. The proposed wording requiring that information within the scope of article 4 of the Convention is provided regardless of its volume (paragraph 2b of the secretariat's letter of March 2009)
- f. The proposed wording of requiring concerning the detailed requirements for informing the public, as required under article 6, paragraph 2 of the Convention
- g. The proposed wording concerning the detailed requirements for informing the public, as required under article 6? Paragraph 2 of the Convention? About initiation of the procedure and possibility for public to participate. In particular:
  - i) the required form of public notice
  - ii) the required contents of public notice (as compared with the requirements specified in paragraph 2a of Article 6: and
  - iii) how, in case of projects having transboundary impact, the public concerned abroad is to be notified, in accordance with paragraph 2e of article 6
- h. How the government will prevent short-cutting in the decision making procedure, i.g. parts of the Environmental Impact Assessment (EIA) being provided for evaluation and approval by decision making authority prior to any information being made publicly available (paragraph 2e of the letter March 2009)
- i. The proposed wording requiring that public authorities do not limit the provisions of information under Article 6
- j. The proposed wording requiring that public authority do not limit the provision of information under Article 6, paragraph 6, and Article 4 of the Convention to publication of the environmental impact statement but include other relevant information to ensure more informed and effective public participation (paragraph 2g of the letter of 9 March 2009)
- k. The proposed wording clarifying that information that applicants are required to provide in the course of the public authorities' decision-making on decisions under article 6 is generally not exempt from disclosure (paragraph 2g of the letter of 9 March of 2009)
- l. The proposed wording requiring the disclosure of EIA studies in their entirety as the rule (with possibility for exempting parts being an exception to the rule) (paragraph 2g of the letter of 9 of May 2009)
- m. The proposed wording requiring that texts of decisions? Along with the reasons and consideration on which they are based, are publically available ( paragraph 2h of the letter of 9 March of 2009)

### **III. CAPACITY-BUILDING ACTIVITIES, IN PARTICULAR TRAINING OF THE JUDICIARY AND OF PUBLIC OFFICIALS INVOLVED IN ENVIRONMENTAL DECISION-MAKING.**

**IV. A PROCEDURE THAT ENSURES IMPLEMENTATION IN A TRANSPARENT MANNER AND IN FULL CONSULTATION WITH CIVIL SOCIETY IMPLEMENTATION OF ACTION PLAN.**

The brief description of procedure or the process in developing such a procedure and deadline for its development shall be presented in this part

**V. TRANSPOSITION THROUGH A GOVERNMENTAL NORMATIVE ACT ENSURING THE IMPLEMENTATION OF ACTION PLAN BY ALL MINISTRIES AND OTHER RELEVANT AUTHORITIES**

This part shall describe a general procedure for interagency cooperation and give a practical example for other Ministries

**VI. ASSISTANCE RENDERED BY THE SECRETARIAT AND THE COMPLIANCE COMMITTEE OF AARHUS CONVENTIONS, RELEVANT INTERNATIONAL AND REGIONAL ORGANIZATIONS AND FINANCIAL INSTITUTIONS, TO UKRAINE IN THE IMPLEMENTATION OF THESE MEASURES**

This part of the report shall briefly describe assistance requested, assistance rendered and any other activities of relevance

**VII. PROVISIONED ACTIVITIES TO ENSURE SUSTAINABILITY OF THE PROCESS OF FULL COMPLIANCE WITH THE PROVISIONS OF THE AARHUS CONVENTION**

This part shall list the activities planned for the next reporting year and indicators by which the progress will be measured

## Annex to Task VI:

### DRAFT DECREE

APPROVED by the Decree  
of the Cabinet of Ministers of Ukraine  
from \_\_\_\_ # \_\_\_\_\_

## Order on Taking into Account of Public Opinion in Environmental Decision-Making process

### General Provisions

1. This Order defines the main requirements to organization of public participation in environmental decision-making process (further – public participation) in order to implement the rights of the public to participate in decision-making and to take due account of public opinion in environmental decision-making.
2. This Order shall be applied to relations in the field of implementation of public rights of participation in environmental decision-making.

Ensuring the transparency principle and taking due account of public opinion in legislative activities of the Verkhovna Rada of Ukraine are defined by the legislation on organization of activities of the Verkhovna Rada of Ukraine.

Public discussion of the drafts of local construction plans and drafts of town construction documentation shall be carried out following the procedure established by the Law of Ukraine “On Planning and Building Up of Territories”.

3. General principles of public participation:
  - Transparency and democracy;
  - Prohibition of discrimination based on political views, party, gender, age, religion, nationality citizenship, race, language;
  - Public information and participation from the earliest stage of decision-making, effectiveness of means of public information and participation;
  - Ensuring public access to information, on which the decision is based;
  - Ensuring equal opportunities for all participants of the process of public discussion;
  - Taking due account of public opinion in the final decision;
  - Encouraging public participation in decision-making.
4. This Order uses terms in the following meaning:
  - **The Public** shall mean one or more physical and legal entities, their unions, organizations or groups, acting according to current legislation.
  - **Public discussion** shall mean a procedure, directed to take into account public opinion in environmental decision-making
  - **Public hearings** shall mean a form of public discussion in environmental decision making.
  - **Permitting document** shall mean a permit, conclusion, decision, approval, certificate, or another document, which permitting body is obliged to issue to a business entity when authorizing it with a right to carry out certain actions of economic activity or types of economic activities and in the absence of which a business entity may not carry out certain actions of economic activity or types of economic activities.

- **Genetically modified organism** in this Order shall be used in the meaning established by the Law of Ukraine “On State System of Biological Safety in Creation, Testing, Transporting and Use of Genetically Modified Organisms”.
  - **Permit on environmental matter** shall mean any of a permitting document, in the absence of which a business entity may not carry out economic activity, related to:
    - Waste management;
    - Special use of subsoil;
    - Special water use;
    - Negative impact on air;
    - Production, storage, transportation, use, disposal, destruction and utilization of poisonous substances, including products of biotechnology and other biological agents;
    - Release of genetically modified organisms in open system.
  - **Decisions on environmental matters** shall mean:
    - Normative-legal acts, adopted by an authorized body, which - or certain provisions of which - are directed towards legal regulation of relations regarding impact on environment;
    - Other official written document, adopted by an authorized body, which establishes, amends or repeals legal norms, is used non-expendably and towards unrestricted number of persons and which - or certain provisions of which - are directed towards legal regulation of relations, related to impact on environment, whether this document is considered to be a normative-legal act under the law regulating a certain field;
    - Permitting document (a conclusion of state ecological expertise, permit for the actions affecting the environment, etc.)
    - Decisions on financing environmental and resource-saving measures on expense of environmental protection funds
  - **Environmental decision-making body (decision-making body)** shall mean a state executive authority or local self-government body, which is competent to adopt normative-legal acts, decisions on financing environmental and resource-saving measures on expense of environmental protection funds, to approve conclusions of state ecological expertise or to issue other permitting documents.
  - **Requester of a draft decision on environmental matters (requester of draft decision)** shall mean a person, applying for a permitting document for actions, affecting the environment
  - **Person, authorized to organize procedure of public discussion (organizer of public discussion)** shall mean a person, authorized according to legislation or by assignment of decision-making body to arrange public discussion in the process of environmental decision-making and who is not the decision-making body.
5. Types of decisions on environmental matters, in the process of decision-making for which public discussion is conducted:
- normative-legal acts
  - interstate, state, regional, local and other territorial programs, action plans, strategies and other program documents;
  - conclusions of state ecological expertise;
  - permitting documents for use of natural resources, for purposeful release of genetically modified organisms into the environment, as well as for activities related to environmental pollution, dangerous substances treatment, waste allocation;



- decisions to finance environmental and resource saving actions on expense of environmental funds;
  - other decisions, which can have significant impact on environment.
6. Procedure of public discussion shall obligatory include:
- informing public about the start of environmental decision making procedure and possibility to participate in it
  - provision of public access to the information (including to the draft decision and background documentation)
  - provision of possibility for public to provide proposals (comments), to participate in public hearings and other forms of public discussion
  - consideration of received comments and proposals and taking them into account
  - informing public about decisions and possibilities of access to decisions on environmental matters and their groundings
7. Organization of public discussion and incorporation of public opinion shall be done by decision-maker, and in cases, envisaged by legislation, by decision-maker and organizer of public discussion. The organizer of public discussion can be a state executive body, local self-government body, requester or drafter of draft decision and other persons, which according to legislation or by assignment is entrusted to organize public discussion (or some of its stages) and to incorporate public opinion in the decision making on environmental matters.
8. Persons, conducting public discussion shall ensure the following the procedure of public discussion, to prepare and keep materials of taking of public opinion into account.
9. Persons, putting draft decisions and other documentation for discussion, are responsible for their authenticity (relevance of the documentation, submitted for decision-making) as well as for compliance to legal requirements and state norms and standards.
10. Decision-maker and organizer of public discussion can involve by agreement a coordinator of public discussion, including at paid basis into organization of public discussion or some of its stages (informing, organization of public hearings etc.)
- A physical or legal person, a person with relevant experience in the field of environmental protection and organization of public participation can be a coordinator of public discussion.
- The following criteria should be used while selecting the coordinator:
- sufficient work experience in the field of environmental protection and organization of public participation;
  - work reputation in the field of environmental protection and public participation, namely all proved information about him, which allows to make conclusion regarding his professional capacities in the field of environmental protection and public participation, decency, and relevance of his activity to legal requirements;
  - statutory documents envisage types of activities in the field of environmental protection (for legal entities).
11. Responsibility for following the procedure of public discussion and requirements of this Order is laid upon the decision-maker and in the cases envisaged by legislation upon the organizer of public discussion.
12. Coordinator of the public discussion is liable to the person, on behalf of whom he organizes public discussion, according to the conditions, envisaged by agreement.
13. Main forms of public discussion are submitting proposals and comments (commenting) and public hearings.
- Any other forms of public discussion (speeches in media, "round tables", conference, inclusion of NGO representatives into the expert commissions, conduction of public environmental expertise) shall be additional only and can be conducted by initiative of decision-makers or public together with

the main forms of public discussion. Additional forms of public participation cannot replace main forms, defined above in this paragraph.

14. During decision-making, envisaged by par.5 of the Order, decision-maker or organizer of discussion should provide adequate, timely and effective informing of public, depending on conditions by public announcing or on individual basis at the primary stage of the decision-making procedure on environmental matters, about, among others:
- proposed type of activity and application, using which a decision will be taken;
  - character of possible decisions or draft decision;
  - decision-making body;
  - envisaged procedure, including how and when such information can be provided (if it is not announced immediately), namely about:
    - Commencement of the procedure;
    - Possibilities for public participation;
    - Time and place of any planned public hearings;
    - State authority, where one can obtain relevant information and information about where relevant information was transmitted for public consideration;
    - Relevant state authority or any other official authorized person, to whom proposals, comments or questions can be sent, including the questions regarding the deadlines for inquiries, proposals and comments;
    - Existing environmental information regarding the proposed type of activity;
  - whether this type of activity is included in the national or transboundary environmental impact assessment procedure.
15. Announcement (notice) is publicized in such way, which guarantees informing citizens of the relevant administrative-territorial unit or relevant territorial commune, which can be affected as a result of implementation of the decision or activity and other stakeholders.

While identifying printed mass media, where announcements are published:

- preference is given to official printed mass media
- relevance of the field of possible impact on environment as a result of implementation of decision to the field of dissemination of printed mass media.

The announcement is placed at the information boards and official web-pages of decision-maker during all period, starting from publicizing till finalization of public hearings.

#### Making comments and proposals (commenting)

16. During public discussion, the public can provide any proposals and comments (comments, proposals, information, analysis or opinion etc.), which are relevant, in its opinion, to the draft decision and planned activity.
17. Proposals and commenting are presented within deadline, defined by the procedure of public discussion, despite the fact whether public hearings or other forms of public discussion are conducted.
18. Proposals and comments can be presented in written form, sent by email and presented orally.

All proposals and comments expressed in written, electronic or oral form (including the ones, expressed by phone) are fixed, obligatory mentioning, surname, middle name and name of the person, making proposals (comments) and his/ her address.

In case if proposals are received by email, a confirmation that the email was received should be sent to the person, making proposals (comments)

Legal entities present proposals and comments in written or electronic form, mentioning their title and legal address.

Anonymous proposals are not being registered and considered.

19. Proposals and comments can be submitted in whatever form, including without justification and reference to legal acts.
20. Publicizing of draft decision or statement (announcement) of intends to implement the activity (obtaining the permit) in order to obtain proposals and comments does not exclude possibility to conduct public hearings and any other forms of public discussion.

#### Public hearings

21. Public hearings are organized and conducted by decision-maker or organizer of public hearing.  
Conduction of public hearings is obligatory in the process of decision-making regarding implementation of types of activities and sites with high environmental danger and in other cases, defined by legislation.  
By initiative of decision-maker or organizer of public hearings, public hearings can be conducted in the process of public discussion of any environmental decision.  
There can be several public hearings in the process of public discussion.
22. Location and time of public hearings are determined depending on the type of decision and documentation to be discussed, taking into account capacity to participate of all potential participants.
23. The following persons can take part in public hearings:
  - physical persons of the full legal age, living in the area, covered by the decision or activity, described in the documentation;
  - legal entities, located in the area, covered by the decision or activity, described in the documentation; юридичні особи, by their authorized representatives;
  - owners and users of land, located in the area, covered by the decision or activity, described in the documentation;
  - representatives of NGOs,
  - representatives of bodies of population self-organization, active in the area, covered by the decision or activity, described in the documentation;
  - requester and drafters of draft decision or documentation;
  - authorities of Verkhovna Rada of Autonomous Republic of Crimea or local self-government of the area, covered by the decision or activity, described in the documentation;
  - elected representatives of Ukraine, elected representatives of the relevant Radas.

Specialists on the issues considered at the hearings can be invited to give explanations.

24. Decision-maker or organizer of public hearing, responsible for the public hearing, determines the date and place of the public hearings and informs the public about this not later than 15 days before its start by mass media (radio, TV, press, Internet, special magazines), by sending this information to potential participants of the hearings by regular post or e-mail, announcing in the public places and information centers, informing via representative consultative and advisory bodies.
25. Announcement (declaration) about conduction of public hearings is publicized in such a way, which guarantees informing citizens of the relevant administrative-territorial unit or relevant territorial commune and other stakeholders.

Announcement is also publicized in printed mass media, defined by the decision-maker and by placement at the official web-page of the decision-maker.

During identification of the printed mass media, where to publish the announcement (declaration):

- the preference is given to official printed mass media;
- relevance between the field of potential impact on the environment as a result of implementation of the decision and field of dissemination of the printed mass media.

The announcement is placed at the information boards and official web-pages of decision-maker during all period, starting from publicizing till finalization of public hearings.

26. Announcements about a public hearing include the following information:
- envisaged procedure, location, date and time of its conduction;
  - summary of the draft decision, strategy, program, local action plan, legal act or announcement of the contractor of the draft decision regarding intend to allocate, construct, reconstruct the site or conduct other activity, which influence or can influence negatively the environment;
  - decision-maker, addresses, where it is possible to get relevant documentation and additional information, ask questions and send proposals (comments) regarding the issued planned to be discussed;
  - deadlines for submission of proposals;
27. Public hearings are conducted under the chairmanship of the authorized representative of the decision-maker or organizer of public discussion. The obligations of the chair of public hearings include:
- provision for registration of participants of the hearings (with signature of each participants in the journal of registration);
  - announcing the agenda and proposals to it;
  - information about the order of making minutes of meeting, presentation of oral and written proposals (comments) regarding the subject of discussions;
  - giving opportunity for drafters to explain the main statements of the decision and documentations to be discussed and problematic issues, which need public attention;
  - informing participants of hearings regarding obtained proposals (comments) and order of their consideration;
  - allowing public representatives to ask questions and express their opinion;
  - provision for conduction of discussion and submission of proposals (comments) of the public, following time limits;
  - concluding public hearings and informing about the order of inclusions of public proposals (comments) of participants of the hearings.
28. Public hearings start from the presentation of the organizer of the hearings or requester (drafter) of the draft decision or documentation. The presentation should reflect the following issues:
- summary of the draft decision regarding the planned activity (or legal act);
  - possible negative impact on state of environment (or need to discuss the draft legal act);
  - actions to prevent and / or minimize such impact;
  - summary of public comments and proposals, received before public discussions started;
  - other information regarding the draft decision.
29. During conduction of the public hearings, public receives the opportunity to express freely orally and in written form its thoughts, comments and proposals regarding the discussed issues.
30. All participants of the hearings are provided with equal conditions to express their thoughts and submit proposals and comments.
31. Course of public hearing should be fixed using stenographic or audiovisual methods.
32. Persons, organizing public hearings, are obliged to answer the public questions orally during the public discussion and to put them into minutes of meetings or in written form after their end.
33. Course and results of public hearing are registered by minutes of meeting, signed by the head and his/her secretary, elected during the public hearing by its participants.
34. Proposals and comments, received during public hearings are fixed in the minutes of the public hearings.

35. In case of no public proposals (comments) or absence of public representatives at public hearings, the relevant act is being prepared.
36. Conduction of public hearings does not exclude the possibility to submit comments and proposals according to par.16-19 of the Order during all term, defined for public discussion.

#### Due account taken of results of public discussion

37. Decision-maker and in the cases envisaged by the legislation organizer of public discussion should consider all comments and proposals, received within the deadline.  
Following the results of such consideration, the mentioned above persons fully or partly include received comments and proposals or give grounds for not accepting them.
38. Materials of taking of public opinion into account shall include the information about publicizing (confirmation of placement in the mass media, at notice boards, sending of individual notices etc), list of materials presented for public consideration, received proposals (comments) and information about their inclusion or reasons for not accepting them (fully or partially) and in case of no proposals and comments a statement about their absence.

#### Informing about the decision taken and possible access to the decision and its grounding

39. Publicizing of normative-legal acts shall follow requirements in respective legislation.
40. Conclusions of state ecological expertise are publicized by publication in printed mass media of the authority, which approved the decision (if available) and/or placement at the official web-page of the relevant authority.
41. Information about the issued permits is publicized in printed mass media of the authority, which approved the decision (if available) and / or by placement at the official web-page of the relevant authority.
42. In case of written public inquiry, the public can get written records, audio, video records of the public hearings, full text of adopted decision with its grounding and other materials, relevant to the public discussion.
43. Decision-maker maintains all the materials of public discussions and documentations, which was the basis for decision-making, in the manner prescribed by legislation for the documents generated in the process of activity of government and local self-governments, other businesses and organizations.

#### Peculiarities of procedure of public discussion of acts of normative-legal character

44. Draft decisions, mentioned in points 1,2 of par. 5 of this Order are publicized in order to obtain and include public proposals and comments.
45. Drafter of the draft decision informs public about publicizing draft decision in order to obtain and include its proposals and comments.

Announcement about the draft decision should include:

- summary of the draft decision;
- postal address and email (if available) of the drafter of draft decision and other bodies, to which according to the legislation or by initiative of drafter the proposals and comments should be sent;
- information about the way of publicizing the draft decision (title of the printed mass media and / or web-page, where draft decision or information about another way of publicizing, envisaged by par. 49 of this Order;
- information about the deadline, within which public proposals and comments are accepted;
- information about the way for public to provide their comments and proposals.

46. Deadline of public discussion, within which public comments and proposals are accepted, are determined by the drafter of draft decision. It cannot be less than 30 days and longer than 90 days since the date of publicizing of the draft decision.
47. Announcement about publicizing of the draft decision in order to obtain comments and proposals and draft decision are publicized by publication in the printed mass media, defined by the drafter of the draft and / or by placement at official web-page of the developer of draft decision.

During identification of the printed mass media, where announcement and draft decision are published:

- the preference is given to official printed mass media;
- relevance between the field of potential impact on environment as a result of decision's implementation and field of dissemination of the printed mass media.

If within the limits of administrative-territorial unit or settlement, printed mass media are not disseminated, and local executive authorities, territorial authorities of the central executive bodies, bodies and officials of local self-government do not have their official web-pages, announcement about publicizing and draft decision can be publicized in any way, which guarantees informing the residents of the relevant administrative-territorial unit or relevant territorial community.

Local programs, action plans, strategies and other program documents are also placed at announcement boards of the relevant local authorities and self-governance bodies or in other public places.

The announcement about publicizing and draft decision are placed at announcement boards and official web-pages of the decision-maker from the moment of publicizing till end of public discussion.

48. Expenses, related to publicizing of the documents, mentioned in this paragraph, are financed at expense of the decision drafters or bodies, publicizing these documents.
49. Draft decision is publicized not later than five working days since the day of publicizing of the announcement about publicizing this draft.
50. Drafter of the draft decision is obliged to consider all comments and proposals regarding it, obtained within the deadline. Following the results of such consideration, the decision drafter fully or partly includes received comments and proposals or gives grounds for their dropping out.
51. Publicizing of draft decision in order to obtain comments and proposals does not exclude the possibility to conduct public hearings and other forms of public discussion.

Peculiarities of public discussion in the process of environmental impact assessment (EIA) and preparation of the conclusions of state ecological expertise

52. Public discussion in the process of decision-making regarding location, construction, reconstruction of a unit or conduction of another activity, having or which can have negative impact on state of environment is conducted during two main stages: stage of preparation of materials for EIA and stage of state ecological expertise.
53. Public discussion is conducted in form of commenting and public hearings. For types of activities and sites with increased environmental danger, conduction of public hearings at the stage of preparation of materials for EIA is obligatory.

Width of discussion should correspond to the scope of expected impact.

A number of hearings can be conducted during public discussion.

54. At the stage of preparation of materials for EIA, public hearings starts from the time of publication of letter of intend, composed according to requirements of the current legislation.

Duration of discussion (commenting and conduction of public hearings) at this stage cannot be shorter than 30 days since publication of the Statement of intend.

Obligatory public hearings are conducted not earlier than 15 days since provision of EIA documents and other documentation to the public for consideration and publicizing announcement regarding their conduction.

55. At the stage of state ecological expertise, public discussion continues since the time of presentation of the documentation to the authority, conducting state ecological expertise and publication by this authority of information (announcement) about conduction of the state ecological expertise.
56. In the process of state ecological expertise, public hearings and open discussions can be conducted. Public can also participate in the process of ecological expertise by making presentations in media, inclusion of public representatives into the expert commissions, groups for conduction of public ecological expertise etc.  
Duration of the discussion at this stage cannot be shorter than 15 days since the time of publication of information about the conduction of state ecological expertise.
57. Publication of Statement of intend and information about conduction of state ecological expertise is done according to the par. 14, 15 of this Order.
58. Public hearings are conducted according to requirements of the par. 21-36 of this Order.
59. During public discussion, organizer of public discussion and authority, which approves relevant conclusions of state ecological expertise should provide free of charge public access to all documentation regarding the decision-making process (EIA materials and other documentation, available at the moment of conduction of public discussion procedure and as soon as it comes), except exclusions, used in the access to the information.

Such information should at least include the following:

- description of the industrial unit, physical and technical characteristics of the proposed activities, including the assessment of expected waste and emissions;
- description of the most important factors, affecting the environment;
- description of activities, envisaged to prevent and / or mitigate impact, including waste;
- non-technical summary of the above mentioned;
- description of the main alternatives, considered by applicant, and
- other envisaged by legislation documentation, submitted to the authority, approving conclusions of the state ecological expertise and is available at the moment of public inquiry.

Public access to the information is provided by its allocation in the places accessible by public at the area, covered by the activity, mentioned in the documentation. Mentioned information can be placed in the premises of relevant local authorities and self-government, Aarhus centers and relevant territorial bodies, which approve conclusions of state ecological expertise and in Internet.

Public has an opportunity to make copies and extracts from the given documentation, as well as opportunity to inspect the information at the place of its location.

60. Materials of inclusion of public opinion in the EIA process and state ecological expertise should include:
  - information about publication in media of letter of intend and conduction of public discussions;
  - written public appeals and other documents of inquiries;
  - list of the documents, presented from the side of contractor and implementer of EIA for public consideration, list of public questions, proposals and comments of citizens, grounded responses;
  - summarized decisions about included part of public proposals (comments) and grounding regarding their not included part (in form of a table, where proposal and information regarding its inclusion is given );
  - decision of public expertise (if conducted).

61. Amendments to EIA materials by results of public discussion are done by contractor and general designer. Motives for leaving out of any decisions, proposals (comments) are presented to public.

Peculiarities of public discussion in the process of issuance of permits regarding the environment

62. Public discussion in the process of issuance of the permits regarding the environment is done according to this Order taking into account the procedures of issuance of separate permits defined by legislation.
63. Decision-makers provide publicizing of declarations (announcements) about intend to obtain permit taking into account the requirements of the par. 14,15 of this Order.
64. Decision-makers provide publicizing the issued permits taking into account par. 41 of this Order.
65. For effective provision of the information to the public, registers of declarations (announcements) about the intend to obtain a permit and issued permits can be established (including electronic ones)..

Appeals of decisions and responsibility for incompliance with requirements of the Order

66. Decision on environmental matters cannot be adopted or approved by authorized body or its authorized person, if draft decision or statement of intend to implement activity were not publicized.
67. If decision on environmental matters should be registered by the Ministry of Justice or its regional bodies, in case if such decision was not publicized, the Ministry of Justice or its regional body should reject to provide state registration of such act or not later than 10 days after finding this fact up cancels its decision about the state registration of such decision.
68. In case of violation of the order of conduction of public hearings, they can be considered as such which did not take place by decision-maker or court in order defined by law.
69. Decisions on environmental matters, taken with violation of the requirements of this Order can be appealed and cancelled by decision-maker, higher bodies or court in the order, defined by law.  
Cancellation of the decisions on environmental matters, taken with violation of the requirements of this Order is a ground to cancel further decisions, taken on the basin or with consideration of the cancelled decision.
70. Persons, guilty in violation of this Order incur a liability according to the current legislation.



## **Annex to Task VII:**

### **List of elements to be considered with a view to elaborate the Ukrainian negotiation position before entering into negotiations on a bilateral agreement**

#### **III. INTRODUCTION**

1. The Espoo Convention envisages in Article 8 that Parties may continue existing or enter into new bilateral or multilateral agreements or other arrangements in order to implement their obligations under the Convention.
2. Ukraine, further to the decisions IV.2 and IV.4 of the Meeting of the Parties, send to some of its neighbours being Parties to the Espoo Convention, an invitation to enter into negotiations concerning elaboration of a bilateral agreement , or any other arrangements, to support implementation of the provisions of the Convention.
3. Worth noting is that an agreement regarding transboundary procedure can also be concluded with a partner (country) which is not a party to the Convention (like for example the Russian Federation).
4. The Convention provides in Appendix VI a list of elements that can be included in any such agreement, whether with a Party to the Convention or with any other country. The list is neither mandatory (ie not all elements listed in Appendix VI have to be included in such agreements) nor it is exhaustive. There is a number of other specific elements that should be considered for inclusion into such an agreement.
5. The more details are being clearly regulated in such an agreement with given country the less problems of procedural nature will need to be handled when entering into the procedure concerning a concrete activity and therefore any such procedure could be faster and more efficient and be focused on substantive issues related to the actual transboundary impact of given activity.
6. Starting negotiations with a draft agreement proposed unilaterally by one partner may be risky for another partner because it puts the partner who proposed the draft into a bit privileged situation.
7. Much more advisable is starting negotiations with an initial meeting (could be at an expert level) during which the partners would:
  - present each other their own legal and institutional framework for national and transboundary procedure
  - agree upon the tentative list of issues to be regulated in a bilateral agreement (ie a general scope of the agreement)
  - agree upon the level, venue and procedure of further negotiations.
8. Thus, when entering into negotiations concerning a bilateral agreement it is worthwhile to prepare and propose initially a list of issues to be regulated in such an agreement ie to propose a general scope of such an agreement .
9. The list of issues to be regulated (ie the scope of a bilateral agreement) may vary a bit depending on the country with which an agreement is to be negotiated. There are two obvious factors that may have influence on the bilateral agreement:
  - whether a partner country have an expertiza/OVOS system (in which developer is responsible for OVOS) or whether a partner country has a Western-style EIA system where the responsibility for EIA procedure, including for public participation, is put on public authorities,
  - whether a partner country have a scoping phase in its national EIA procedure.
10. It is advisable, before starting any negotiations concerning bilateral agreement, to do some initial preparations including a research related to the existing obligations of the partner country under multilateral or bilateral environmental (or other) agreements, as well as legal and institutional

framework for national and transboundary procedure in the partner country. Worthwhile would be also looking at existing bilateral agreements, in particular at examples - if any- of agreements of this country with other countries. Useful in this respect might be consulting the dedicated UNECE website ( <http://www.org/env/eia/resources/agreements.html>)

#### **IV. SPECIFIC ELEMENTS TO BE CONSIDERED**

##### **1. Mandatory notification**

Bearing in mind the recent recommendation of the Espoo Implementation Committee (*ece.mp.eia.ic.2010.2*) it may be advisable to consider introducing to the bilateral agreement a list of activities (with thresholds, as appropriate) that should automatically be subject to notification between the two countries subject to the bilateral agreement. The list may include for example activities depending on their type (for example: all nuclear energy facilities) or on their location (for example: all activities on the common natural resource/s). The list can be different in agreements with different countries.

##### **2. Language**

It is necessary to clearly regulate in the agreement the language as to certain documents, in particular:

- of notification
- of EIA documentation
- of the final decision
- other information (for example - from monitoring).

The language may not necessarily be the same for all documents (for example: certain documents might be agreed to be transmitted only in national language or only in an international language like Russian or English).

It could be useful to require, in addition to translations, also the documents in the original language.

##### **3. Translation and interpretation**

Regardless of what language for what document is required under the agreement, there must be clearly solved the issues related to the translation and interpretation, in particular who is responsible for translation of which documents, and interpretation of which events (meetings or or public hearings), and - if different - who pays for it.

It could also be useful to provide a procedure for monitoring accuracy of the translation and for settlement of possible disputes related to the translation.

The usual practice in the bilateral agreements is that the country of origin is responsible for translation of the documents into the language of the affected country. This solution has clear disadvantage because translation into foreign language is more difficult therefore the translation of documents submitted is usually less accurate. Sometimes documents submitted are clearly illegible - therefore in particular in case of this option it is indispensable to have also all documents submitted in the original language.

##### **4. Contact point for notification and means of notification**

The agreement should clearly regulate who (on both sides) would serve as authorised contact point(s) for notification as well as what are the means of notification.

Identification of who is authorised for notification is of specific importance in case of expertiza/OVOS system whereby sometimes developer is responsible for the OVOS procedure, including for notification. In such case there must be clear arrangements for both sides regulated in the bilateral agreement how the notification is to be handled.

As for the means of notification - all means are possible under the Convention provided that both countries have a clear understanding of their role. In some countries there are very informal means (by email between

authorities of both countries involved) while in some other countries very formal means are being used (via Foreign Affairs Ministries). Informal means are usually used between countries where authorities has had a long tradition of co-operation and mutual trust.

## **5. Initial consultations about the timing**

It may be useful to envisage in the agreement that following positive response to the notification, each individual transboundary procedure starts with initial consultations setting the details of the further procedure, including setting the time-frames for consecutive steps.

## **6. Public participation**

The agreement should clearly regulate who is responsible for public participation. In particular it should be clear responsibility for :

- identification of the public concerned and local authorities in the areas affected
- informing the public concerned and local authorities in the areas affected about possibility to participate (including by what means they should be informed)
- providing the public concerned and local authorities in the areas affected with access to necessary information and documents
- providing the public concerned and local authorities in the areas affected with possibility to submit comments (by written submissions or at a hearing)
- providing the public concerned and local authorities in the areas affected with the information about the final decision and possibilities to have access to such decision.

For more about the above issues see Annex to Task VIII Ukraine as Affected Country

## **7. Consultations under Article 5**

The agreement may address the details regarding any future consultations under Article 5 of the Convention, in particular the level, venue and timing of initiation of such consultations. Worth addressing in this respect may also be the procedure for settlement of potential disputes related to issues under consultations.

## **8. Final decision**

The agreement may also address the details of the final decision under Article 6 of the Convention, in particular which decisions in each country should be considered as „final decision” for the purpose of triggering requirements of Article 6 of the Convention.

For more about the above issues in relation to Ukraine see Annex to Task I - Final Decision

## **9. Post-project monitoring and analysis**

The agreement may also address the issue of conducting, on a regular basis, any post-project monitoring and exchange of its results.

## **10. Regular meetings**

The agreement may envisage regular meetings between both countries to address the issues related to its implementation. In this respect the agreement may address the issues concerning: the level, venue, timing and subject of such meetings.

## **11. Exchange of information**

The agreement may envisage a requirement for exchange of information about developments in institutional and legal framework, either on a regular or ad hoc basis.

## **Annex to Task VIII:**

### **Proposal for steps to be taken to provide public participation in situations when Ukraine is the “Affected Party” under the Espoo Convention**

#### **BACKGROUND**

By the Law of Ukraine of 19 March 1999 № 534-XIV Ukraine has ratified the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). The Convention provides for the obligation of Parties, when undertaking activities which may cause adverse transboundary impact, to notify the affected Party on the planned activity, avail the public of the affected Party of the opportunity to participate in the decision-making process on such an activity and take due account of public comments in the final decision on the activity, which may cause adverse transboundary impact.

The legislation of Ukraine in force does not provide for a clear procedure in those cases when Ukraine is the affected Party. The lapse of deadlines foreseen by the Convention leads to significant legal consequences. For instance, pursuant to Article 3.4 of the Convention if the affected Party does not respond within the time specified in the notification, the provisions of Articles 4 to 7 of the Espoo Convention will not apply. The lack of adequate legal framework for cases when Ukraine is the affected Party may lead to uncertainty and shortcomings in actions required in such the situations.

The problem was identified in the Review of the legal, institutional and procedural aspects of the Espoo Convention and other related obligations under other relevant Multilateral Environment Agreements in relation to their current implementation in Ukraine, identifying legal, institutional and procedural gaps and shortcomings and proposing means to remedy to them, which was prepared under the Task I of the current Project((Espoo Review under Task I) to supplement the so called Independent Review prepared under the auspices of the Espoo Convention Secretariat. The Espoo Review under Task I , following the recommendations of the Independent Review to develop the separate procedure for transboundary EIA and adopt it at the level of the Cabinet of Ministers (p. 82 of the Independent Review) recommended to elaborate and adopt The Draft Decree of the Cabinet of Ministers “On adoption of the Procedure of environmental impact assessment in transboundary context”. Such Decree should clearly regulate the division of responsibilities, and the mandate of the competent authority (authorities) as well as other issues such as: procedure of transboundary EIA in both cases when Ukraine is a Party of origin and the affected Party; consultations and public participation; financial mechanisms; post-project analysis and monitoring; and the list of activities that trigger procedure of transboundary EIA.

Before the above recommendations are followed and before the above issues are clearly regulated in Ukraine, there is a need to react to the pending transboundary cases. Of special importance is to assure proper possibilities of Ukrainian public to participate in the relevant transboundary procedures, Present paper suggests the order of action for the Ministry of Environment of Ukraine (the Environment Ministry) to provide public participation for the cases when Ukraine is the affected Party, aiming at strengthening the effectiveness of public authorities in such the situations.

#### **PROCEDURAL STEPS**

The procedure foreseen by the Espoo Convention has distinct stages, each of which needs to be carried out in a way that serves the case in question and fulfils the requirements of the Convention. As indicated in the flow-chart below, the public may be involved in various stages of the transboundary procedure, including at

the very beginning of it. The precise requirements in this respect may be either regulated in the legal framework of the affected country, or in the bilateral agreement under article 8 of the Espoo Convention, or negotiated ad hoc in each case when the transboundary procedure starts.

Since in Ukraine as yet there is no respective legal framework, nor Ukraine has any bilateral agreements under article 8 of the Espoo Convention, it needs to elaborate the procedure separately for each case. For Ukraine, as the affected Party, an overall plan is needed for the entire procedure. Each step requires careful preparation before being carried out.

## **INITIATION OF THE TRANSBOUNDARY PROCEDURE**

According to the Convention, normally the transboundary procedure starts with a notification, in which the Party of origin informs the potentially affected Party (or Parties) about the proposed activity which is likely to cause a significant adverse transboundary impact. Pursuant to Article 3.2 of the Convention the notification shall contain, inter alia: (a) information on the proposed activity, including any available information on its possible transboundary impact; (b) the nature of the possible decision; and (c) an indication of a reasonable time within which a response to such a notification is required, taking into account the nature of the proposed activity. It may include also: (a) relevant information regarding the environmental impact assessment procedure, including an indication of the time schedule for transmittal of comments; and (b) relevant information on the proposed activity and its possible significant adverse transboundary impact. Normally the notification from the Party of origin, or at least a copy of it (in case the original notification is received by the Ministry of Foreign Affairs), would be received by the Point of Contact for the Espoo Convention, designated by the Environment Ministry, which should then pass the notification to the actually responsible authority within the Environment Ministry. It may be recommended that already at this stage the Point of Contact should post the notification and supporting materials on the website of the Environment Ministry.

According to Article 3.7 of the Convention in cases where a Party feels that it is likely that the Convention should be applied although it has not received a notification, such Party may initiate discussions on the issue of significance with the Party of origin. It may be recommended that the public in Ukraine could raise the issue of negative impacts from another Party's activity and make a request from the Environment Ministry demand Ukraine (as the affected Party) and the Party of origin to start exchanging information according to the Article 3.7 to Convention.

## **POSITIVE RESPONSE AND EXCHANGE OF INFORMATION**

It is crucial that the Ministry on behalf of Ukraine as the affected Party always responds to notifications within the time specified by the Party of origin. A negative response to the Party of origin is also important. If the Ministry on behalf of Ukraine as the affected Party decides not to participate and indicates this in its reply to the notification, the application procedure ends. On the other hand, if the Ministry wants either to be informed or to participate, the application procedure continues with further exchange of information. While responding to the notification and confirmation of participation, the time of carrying out environmental impact assessment specified in national legislation of Ukraine and the Party of origin, including the timeline for public participation, should always be taken into account.

Articles 3.8 and 4.2 the Convention makes both the Party of origin and the affected party responsible for providing the public in the affected party with possibility to participate in the environmental impact assessment process. This means that both Ukraine as the affected Party and the Party of origin shall ensure that the public in Ukraine is informed and provided with possibilities of making comments.

In order to avoid any future problems, a number of issues need to be decided in this respect. In situation where there is no as yet any bilateral agreement under article 8 of the Convention, Ukraine as the affected Party may want to insist to start the transboundary procedure with clarifying responsibilities regarding public participation.

## **ISSUES TO BE CLARIFIED BETWEEN PARTIES**

It is necessary to decide: (a) which parts of the documents are planned to be submitted to the Government of Ukraine as the affected Party; to the regional/local level in Ukraine as the affected Party, and the public in Ukraine as the affected Party; (b) which documents will be translated into which language; (c) in which language the responses can be given; (d) who is responsible for the translations and the quality both in given and received information; and (e) who covers the costs of translations both in given and received information. Another issue to be decided include the requirements on time allocated to translations and the timing of translations. Parties should also decide who is responsible for the interpretation at hearings, and clarify financial aspects such as: costs of special transboundary studies and costs of public hearings and other participatory procedures in Ukraine as the affected Party. The costs can be covered by (a) the developer; (b) Ukraine as the affected Party; (c) the Party of origin; or (d) by a combination of two or more of the above mentioned bodies.

It should be clarified who is responsible for informing the public of Ukraine and the way that comments of the public shall be transferred. It should be made clear how the information from the public is transferred to the Party of origin. It is possible that the public in Ukraine sends comments either directly to the competent authority of the Party of origin or through the Point of Contact or the Ministry in Ukraine or through other authorities or bodies, including regional and local authorities. Alternatively the responsibility for informing the public in Ukraine could be vested with the authority in the Party of origin (competent authority) or the proponent (developer). Similarly, the public of Ukraine may send comments directly to the competent authority of the Party of origin (or even directly to the proponent) and send copies of the comments to the Ministry.

## **TIME-FRAMES**

It is in the interest of everyone involved in a transboundary EIA that time schedules are specified as clearly as possible. It is also highly important to provide time limits for the submission of the documentation and especially for the public to respond. The time limits should be realistic both from the participants' and from the authorities' point of view, and should take into account the respective time limits foreseen by the national law of Ukraine and those of the Party of origin.

## **SCOPE OF PUBLIC PARTICIPATION**

To pass information in correct form, in relevant scope and in the most appropriate language, the stakeholders and the target groups need to be clearly defined. Thinking of areas or regions as geographical entities such as river basins, watersheds, mountain regions and waterways, and identifying the mechanisms through which impacts may occur, helps in dealing with the scale of impacts and therefore with identification of target groups. A crucial issue will be the magnitude of the impact due to the activity relative to other 'background' effects caused by other activities.

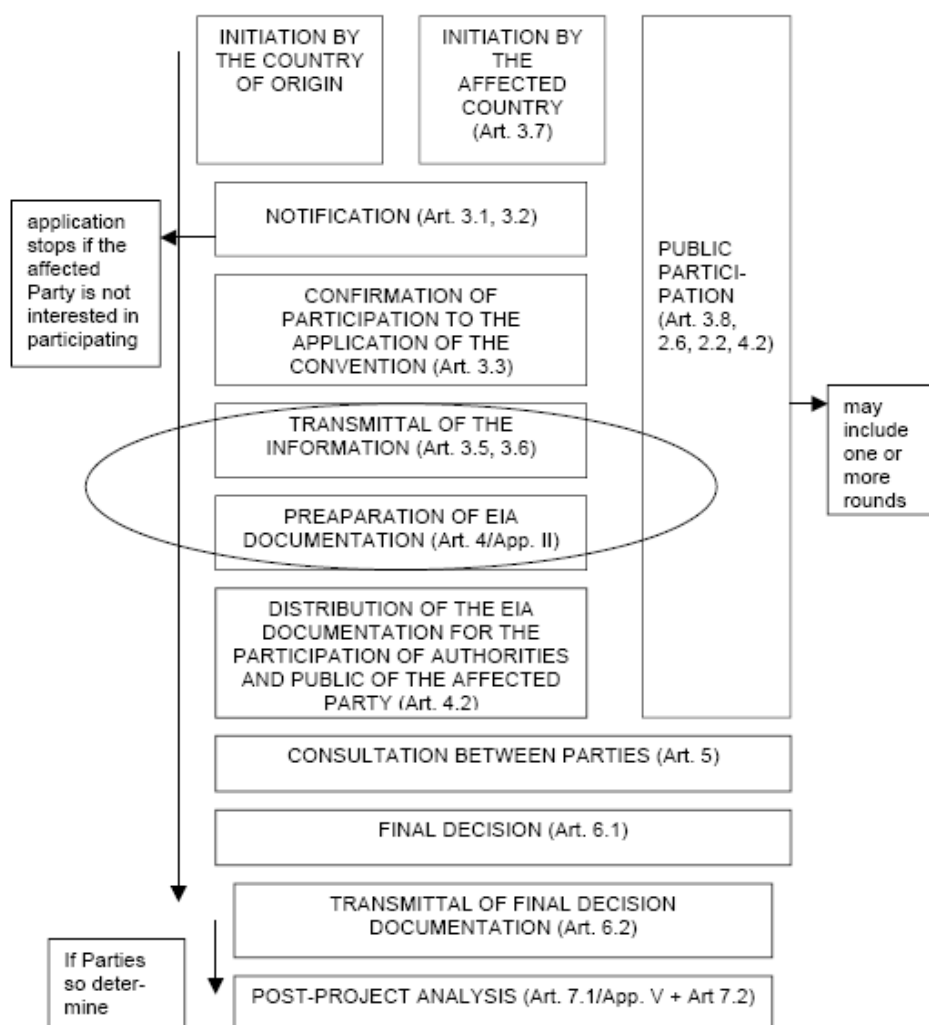
## INFORMING THE PUBLIC

If the activity in question may have impact on the entire territory of Ukraine – such information should be published in the “Governmental courier” newspaper; if the transboundary impact may affect only small territory – the publication of such information should be made in a manner, ensuring effective dissemination of such information to the affected public (publication in the local newspaper, or if the majority of the locals do not read the local newspaper – by placing the announcements in public places (notice boards, bus stops, etc.) in a manner, which ensures that the affected public will read it). Simultaneously, the above information along with with any EIA documentation on the Environment Minsitry website. The Environment Ministry should ensure that the information is non-biased and of adequate quality.

The public should be informed about:

- possibility to inspect the documentation
- possibility to submit comments, including in public hearings - if appropriate
- the final decision being taken and its availability for the public

Flow-chart of the stages of an assessment according to the Convention



See: Guidance on the Practical Application of the Espoo Convention [ECE/MP.EIA/8], UNECE, New York, Geneva, 2006.

## ANNEXES B

### Translations of official documents

#### Cases1 2

**Ministry of Environmental Protection of Ukraine  
Legal Department  
Department of International  
Cooperation and  
European Integration**

OFFICIAL NOTE

On 22.09.2009

№ \_\_\_\_\_

In order to implement decree of the Cabinet of Ministers on 27 December 2008 № 1628-p «On Approval of Action Plan to Implement Decision of the Parties of Aarhus Convention III/6f», Department of International Cooperation and European Integration developed draft decree of the Cabinet of Ministers of Ukraine on approval of Regulations on Order of Provision of Environmental Information attached.

We kindly ask you to provide proposals and comments to the mentioned above draft during 1 week.

**Attachement: \_\_\_\_\_pages.**

**Head of the Department of International  
Cooperation and European Integration T.Trotskyy**



draft

**Cabinet of Ministers of Ukraine**

**Decree**

on \_\_\_\_\_ № \_\_\_\_\_

Kyiv

**On Approval of Order of Provision of Ecological Information**

Cabinet of Ministers of Ukraine decrees:



To approve Order of Provision of Ecological Information.

**Prime Minister of Ukraine Yu. Tymoshenko**

**APPROVED**

by the Decree of the Cabinet of Ministers

Ukraine

on \_\_\_\_\_ № \_\_\_\_\_

**Order of Provision of Ecological Information**

**General**

1. This Regulations is developed according to the Law of Ukraine "On ratifying of Convention on Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" (Aarhus Convention)", "On Public Appeals", "On Environmental Protection", "On Zone of Emergency Environmental Situation" and establishes procedure regarding public involvement into discussion of issues regarding the environmental decision-making.

2. In this Regulations, mentioned above terms are used in the following meaning:

Inquiry fund of ecological information – all inquiry-search base, devoted to satisfy environmental informational needs

Systematic-analytic processing of ecological information – process of ecological data processing by means of analysis and synthesis of documents contains in order to obtain the needed data as well as by means of their classification, assessment, comparison and generalization.

Inquirer – physical or legal body or their entities, which send inquiry according to the current legislation of Ukraine.

Order of provision of ecological information – the defined by Ukrainian legislation and by this Order, procedure of required behavior of physical and legal bodies regarding provision and dissemination of existing ecological information without discrimination by citizenship, nationality and ethnicity or place of living, in case of legal body without discrimination by its registration location or factual center of activity.

3. Executive authorities and their local units, enterprises, institutions and organizations conduct systematic-analytical processing of ecological data, which they have according to the competencies and given tasks.

4. Sources of dissemination of ecological information are internet, media and other sources.

5. Executive authorities, enterprises, institutions and organizations, having ecological information, provide within their competencies and given tasks for establishment and regular update of electronic environmental database and provide free access to it for public via Internet. They also provide for direct answering on inquiries. The information, access to which should be provided via Internet should include:

a) national and oblasts reports on the state of environment with trends;

б) list, texts and draft of legal acts in the field of environmental protection and reports on compliance to environmental legislation;

в) documents on environmental policy, environmental action plans, programs and projects;

г) international agreement in the field of environmental protection and the state of their implementation;

д) other information about the state of some natural objects, if it can influence the public.

е) information on emergency environmental situations in terms, defined by law of Ukraine "On Zones of Emergency Environmental Situation".

ж) Enterprises, institutions, organizations and bodies of entrepreneurial activity, activity of which is defined in the order set up by the law as environmentally dangerous, should publicize via media data on negative impacts on environment (emissions, discharges of pollutants, waste disposal in the environment, other factors of negative impact on environment), appearing due to their economic activities.

Executive bodies, enterprises, institutions and organizations provide for publicizing of the following information via media:

- a) state of environment, trends, sources of pollution, waste disposal;
- a) emergency environmental situations and follow-up actions and sources of pollution;
- б) development and adoption of programs, national, regional and local actions plans and policy documents, affecting environment;
- в) environmental problems of branch or region and possible ways to solve them aimed at public involvement in environmental decision-making;
- г) intends to locate the structures of high ecological danger, requiring environmental impact assessment;
- д) intends regarding the issue of relevant documents on use of natural resources of local significance, as well as to pollute environment, issued within their competences;
- е) registered modified organisms according to international treaties, which can be imported in the country;
- е) experience of cooperation with public in the field of environmental protection, rational use of natural resources and provisional of ecological safety;
- ж) other ecological aspects or factors, important for public while conducting public environmental expertise or implementation of other ecological rights;
- з) information on emergency environmental situations in terms, defined by the Law of Ukraine "On Zones of Emergency Ecological Situations".

#### Order of provision of ecological information

7. Provision of ecological information by executive authorities and their local units, enterprises, institutions and organizations is done with the aim to implement the right of citizen their entities, state authorities and legal bodies to have information (further inquirers) by the means:

- a) obtaining, keeping and dissemination of ecological information orally, in written form or by other means;
- б) its systematic publication in internet, printed sources (bulletins, collections etc), reports on the state of environment, dissemination by informational services of state authorities and organizations, its dissemination via media, public speeches.
- в) its direct provision to inquirers according to the inquiry, including from automatic informational-analytical ecological systems, library and archive funds, lists, registers, cadasters etc.

8. Inquiry for provision of ecological information may not contain arguments regarding the interest of the inquirer and is provided in written form.

9. Ecological information is provided in terms, defined by the Law of Ukraine "On Information", but not later than one month since the inquiry is received, if only the volumes of complexity of collection of data inquired do not justify extension of this term up to two months since the inquiry is received. In case of need to extend the deadline, the stakeholder should be notified not later than 10 days from the moment when the inquiry is received.

10. The inquiry for provision of ecological information can be refused, if:

- state authority does not have the data inquired;
- the information inquired is the information with limited access;
- information concerns internal information exchange between state authorities;
- the inquiry is clearly not grounded;
- information concerns the materials at the final stage of their preparation.
- publicizing of the information can negatively affect confidentiality of activities of state authorities in case if such confidentiality is envisaged by current legislation, international relations, national defense or state safety according to the Law of Ukraine "On state secrets", renewal of justice, possibility for people to be under court or capacity of state authorities to conduct investigations of

criminal, administrative or disciplinary character, right of intellectual ownership; environment, for which such information is disseminated, especially at the territories which are habitats for reproduction of especially valuable, rare and endangered species of flora and fauna.

11. In case if executive body, enterprise, institution, organization independently on forms of ownership, entities of citizens or official do not have ecological information, asked in the request, this authority should act according to the Article 34 of Law of Ukraine "On information" ( [2657-12](#) ).

12. In cases when state authority does not have ecological information, asked in the inquiry, this state authority should in the shortest terms inform the inquirer about the state authority, which on its opinion should be approached to provide relevant information or to provide this inquiry to such an authority and properly inform about this the inquirer.

13. In case if the information with limited access can be separated from another information without damage to confidentiality of information, which cannot be open, executive authority, enterprise, institution, organization independently on forms of ownership, entities of citizens or official should provide another part of inquired information.

14. Refusal to satisfy the inquiry to provide ecological information or delay in review of the inquiry should be provided to the inquirer in written form.



draft

**Cabinet of Ministers of Ukraine**

**Decree**

on \_\_\_\_\_ № \_\_\_\_\_

Kyiv

**On Approval of the Order of Public Participation in Environmental Decision-Making**

Cabinet of Ministers of Ukraine decrees:

To approve the Order of Public Participation in Environmental Decision-Making

**Prime Minister of Ukraine Yu. Tymoshenko**

## **APPROVED**

By Decree of the Cabinet of Ministers of Ukraine

on \_\_\_\_\_ № \_\_\_\_\_

### **ORDER of Public Participation**

#### **in Environmental Decision-Making**

##### **General**

1. This Order regulates relations regarding the right of public in environmental decision-making.
2. The following terms are used in this Statement in such meaning:

Public – one or more physical or legal body, their union, organizations or groups, acting according to the current Ukrainian legislation and practice.

Interested public – public, affected or possibly affected by environmental decision making or public, interested in this process, for purposes of this definition non-governmental public organizations, supporting environmental conservation and acting according to the current Ukrainian legislation are considered stakeholders.

Public discussion is a procedure of clarifying of public opinion in order to take it into account during governmental decision-making on issues, causing or potentially causing negative impact on state of environment (purposeful release of genetically modified organisms; location, design, construction or reconstruction of objects; development of drafts of secondary legislation etc.)

Subjects of public discussion are as follows:

State executive authorities;

Enterprises, institutions, organizations independently of their form of ownership, subjects of entrepreneurial business, planning or conducting economic activity, media, interested public.

Decision-maker on issues causing or potentially causing an impact on the state of environment (further decision-maker) means: state executive authority, whose competence includes such decision-making; enterprises, institutions, organizations independently on their forms of ownership, which are empowered by Ukrainian legislation to execute informational or other service functions in the field of environmental protection.

Specifier of draft decision on issues causing or potentially causing an impact on the state of environment (further - specifier of draft decision) is appointed by decision-maker state central executive body, which competence includes conduction of public hearings and discussions.

**Coordinator of public discussions is state official, appointed by decision-maker from state executive body. Coordinator of public hearings coordinates the process of public discussion, identify the general reference points, approaches, directions and methods of organization of this task, conduct needed consultations taking into account the essence of the issue to be discussed; support informing about public consultations of local self-governmental bodies and interact with them in the process of conduction of public discussion; generalize the results of public discussion and after its end provide summary to the central executive body during two weeks. The summary includes:**

- interaction of state executive bodies, political parties, public organizations and other unions of citizens;
- forms and methods used to organize the public discussion;
- number of obtained proposals;
- summary of proposals, touching the essence of the issue to be discussed to be further used at work: which are not relevant to the discussed issue;
- public opinion regarding the issue to be discussed;
- general summary of public hearings.

Forms of public participation in decision-making:

Citizens' appeal according to the Law "On Citizens' Appeal"

public discussion is a process, during which state executive authorities together with public study, analyse, critically think and assess the events in the field of environmental protection.

Public discussions can be conducted by the means:

- 1) TV and radio program broadcasting;
- 2) Holding of discussions, round tables, conferences, workshops, gatherings with public participation, representatives of political parties, non-governmental organizations and other unions of citizens;
- 3) organization of dialogue "citizen – government" using telephone "hot lines", Internet (interactive regime) by creation of special buttons "feedback" etc.;
- 4) establishment of special pages (columns) in printed media, publishing of comments, clarifications, opinions, responses etc.;
- 5) study of public opinion by interviewing, questionnaire, focus-groups and by other means;
- 6) submission by citizens, political parties, public organizations and other unions of citizens of written and oral proposals.

Public opinion is a public (oral or written) expression of the citizens opinion to socially significant initiatives and actions of executive bodies, local self-government in the process of their public discussion.

3. Main principles of the public participation on issues causing or potentially causing negative impact on the state of environment: transparency and democracy, public access to the information for decision-making; incorporation of public opinion during the final decision; promoting of public participation in the decision-making.

4. Types of decisions on issues causing or potentially causing an impact on the state of environment, where public is being involved:

- a) development of interstate, state, regional, local and other territorial programs, action plans, strategies and other documents;
- b) preparation of draft legal and other secondary legal acts, which have or possibly have an impact on the state of environment;
- c) conduction of state ecological expertise with environmental impact assessment (further EIA) of dangerous units and types of activity;
- d) issue of relevant documents for use of natural resources, purposeful release of genetically modified organisms into environment as well as activity, related to the environmental pollution, handling of hazardous substances and their allocation.
- e) expenses, related to conduction of environmental activities using environmental conservation fund.

(OR RATIFIED ANNEX 1)

- f) other types of decisions, in which it is necessary to involve public according to the current national legislation.

Management of the process of public discussions:

1. **Executive body (decision maker) appoints the state official – coordinator of the process of discussion from the executive body;**
2. **Organizational and technical provision for conduction of the public discussion is placed on sub-division of executive authority, responsible for public relations or specially created working group, structural division of the executive body**
3. **During public discussion, executive body provides for taking notes of :**
  - a. **written proposals (comments), including the ones, sent by email;**
  - b. **oral proposals and comments (expressed by phone or in person);**
  - c. **data on results of study of public opinion;**
  - d. **information, gathered during conduction of conferences, round tables etc.**
  - e. **information, obtained during TV and radio programs;**
  - f. **resolutions, appeals and other decisions, adopted at public meetings, by NGOs, political parties, other unions of citizens;**
  - g. **publications in printed media.**

Public hearing is conducted in several stages:

- a) publicizing of needed information;
- b) discussion of the issue;
- c) analysis, assessment and inclusion of the results of the discussion;

**d) publicizing of the results of the discussion.**

## **Order of Conduction of Public Discussion**

### **Publicizing of needed information**

5. Draft decision specifier places note on draft decision in media.

**Note on draft decision is placed by means of:**

- publication in the printed all-state media (newspaper, journals, bulletins etc.)
- public announcement via audio and audiovisual media (radio, TV);
- direct informing of stakeholders (orally, in written form, by email);
- conduction of briefings, press-conferences;
- placement at the webpage of relevant executive body in Internet.

**Specifier of the draft decision selects the way of publicizing in such way to maximum inform interested public.**

**Note on draft decision should include:**

- a) which issue will be publicly discussed, summary of the contents of the draft documents, its practical character, goals, tasks and grounding of necessity of its adoption;
- b) decision-maker, responsible specifier: addresses, using which one can obtain additional information and send informational requests, proposals, comments and recommendations regarding the planned discussion of the issue;
- c) terms of sending of informational requests, comments and proposals;
- d) clear formulation of the goals of the discussions and expected results;
- e) in which way the text of draft document will be publicized;
- f) which population groups are affected or can be affected by adopted decision on the issue to be discussed; what is the mechanism of public participation in the process of discussion;
- g) form of notifying of public about the results of public discussion.

6. In case if during month since the publicizing of the note of draft decision, interested public sends the note on the need of conduction of public discussion, draft decision specifier should provide for its conduction.

In case of absence of such a note, specifier of the draft decision has a right to choose any form of public participation in environmental decision-making.

**7. Coordinator of the public discussion appoints the date and place for conduction of the public discussion not later than 30 days since the moment of its conduction via media, which by their circulation and location respond to number of location of interested public.**

**8. It is prohibited to appoint public discussions in working days and work hours or another way which would make impossible for public to participate in the public discussion.**

**9. Coordinator of public discussion informs population about the note on conduction of public discussion in the order by which placement of note on draft decision is done.**

10. It is prohibited for media to refuse to allocate the note on conduction of public discussion.

11. Decision-maker defines the duration of public discussion depending on the type of planned decision.

**Minimal duration of the discussion cannot be less than 2 months.**

Duration of public discussion, if another is not envisaged by current legislation, cannot exceed:

3 months – for interstate, state, regional programs, plans, strategies, draft of legal acts; conduction of activity, which has or can have negative impact on the state of environment or decisions regarding the expenses, related to conduction of environmental activities using State environmental fund;

2 months – for local programs, action plans, strategies, decisions regarding the expenses, related to conduction of environmental activities using local environmental funds;

1 month – for issuing of relevant documents on use of natural resources, purposeful release of genetically modified organisms into the environment as well as decisions on activities, causing or potentially causing negative impact on the state of environment.

By own initiative or public request, **decision-maker** can prolong the duration of public discussion, if any data, information or proofs, provided during the public discussion, led to principally new circumstances for the time, needed to take them into account, but not longer than 1 month.

**12. The note of conduction of public discussion, if another is not envisaged by current legislation should include the following information:**

- a) envisaged procedure, location, date and time of its conduction;
- b) short description of the issues to be discussed so that not to lose or change the sense of the issue;
- c) decision-maker, addresses where one can obtain additional information and send request for information, proposals, comments and recommendation concerning the planned review of the issue;
- d) deadlines for requests for the information, notes and proposals;
- e) clear formulation of the goals of the discussions and expected results;
- f) in which way the text of draft document will be publicized;
- g) which population groups are affected or can be affected by adopted decision on the issue to be discussed; what is the mechanism of public participation in the process of discussion;
- j) form of notifying of public about the results of public discussion
- i) possibility of public participation.

#### **Discussion of the draft decision**

13. Public discussion starts from the presentation of specifier of the draft decision. The presentation should highlight the following issues:

- a) contains of the draft decision on planned activity (or legal act);
- b) possible negative impact on the state of environment (or need to discuss the draft legal act);
- c) actions to prevent and / or mitigate such impact;
- d) short description of the draft decision (of draft legal act);
- e) contains of public comments and proposals, received prior public discussion;
- g) another information regarding the draft decision.

14. During the public discussion, public gets opportunity to express freely orally or in written form its thoughts, comments, proposals, recommendations regarding the concerned issues.

Materials of public discussions can be fixed using stenographic or audiovisual methods.

Representatives of specifier of draft decision are obliged to answer the questions, risen by public orally during public discussion or in written form after its end.

15. Order and results of public discussion are represented in the Minutes of meeting, signed by the head and secretary, elected for the time of public discussion by its participants.

Written (all) comments and proposals, expressed during the public hearings, should be included into the Minutes of meeting.

16. Comments and proposals of the public should be taken into account in the draft decision.

17. After making relevant decision on the issue discussed, decision-maker informs public about it via media in term not more than 30 calendar days.

18. On written public request, it can be provided with shorthand record, audio video records, full text of adopted decision with its grounding and other materials relevant to the public discussion.

19. While reviewing drafts legal acts in the field of use of natural resources or environmental protection, their text should be published in the media not later than 30 days prior the beginning of the public discussion.

20. Public receives the opportunity to send its comments and proposals to the representative consultative and advisory bodies in terms, defined in the press. Public proposals and comments concerning the draft legal acts should be considered and taken into account within the limits of current legislation of Ukraine.

21. Decision, taken with violation of the norms of this Order, can be appealed by stakeholders in the envisaged by legislation order.





**NATIONS UNIES**  
COMMISSION ÉCONOMIQUE  
POUR L'EUROPE

**ОБЪЕДИНЕННЫЕ НАЦИИ**  
ЭКОНОМИЧЕСКАЯ КОМИССИЯ  
ДЛЯ ЕВРОПЫ

**UNITED NATIONS**  
ECONOMIC COMMISSION  
FOR EUROPE

**IMPLEMENTATION COMMITTEE**  
**CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT**

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Ref. EIA/IC/S/1

07 April 2009

Dear Mr. Buchko,

I am writing to you on behalf of the Implementation Committee under the Convention on Environmental Impact Assessment (EIA) in a Transboundary Context (Espoo, 1991).

At its sixteenth session, held in Berlin from 10 to 12 March 2009, the Committee considered the draft independent review of Ukraine's legal, administrative and other measures to implement the provisions of the Convention, further to the decision of the Meeting of the Parties (ECE/MP.EIA/10, decision IV/2, para. 11). In discussing the draft review, the Committee emphasized the need for clearly-defined provisions on the screening procedure, on the competent authority or authorities, and on the final decision. The Committee agreed a timetable for finalization of the report, including a period for factual corrections by Ukraine until 24 April 2009. The finalized review will be sent to Ukraine by the end of May 2009, for the Government of Ukraine to use as the basis for its strategy to implement the Convention (decision IV/2, para. 12).

The Committee considered it important that the strategy to be submitted by the Government of Ukraine should provide substance as well as planned actions, including a detailed description of provisions in planned legislation and of training and other planned actions (decision IV/2, para. 12), a precise time schedule and responsibilities for implementation. The provisions in planned legislation should react to the Committee's findings and recommendations (decision IV/2, annex I). The Committee requests the Government of Ukraine to include in its strategy a point by point response to the independent review's recommendations, as well as setting out how Ukraine is fulfilling paragraph 14 of decision IV/2, regarding negotiation of bilateral agreements or other arrangements. The Committee also suggests that the strategy address each of the provisions of the Convention in turn. The draft strategy might be considered by the Committee at its next session, from 14 to 18 September 2009, with the finalized strategy due at the end of 2009.

Please also recall that, besides the written statement mentioned in the letter from the Executive Secretary of UNECE to Mr. Nemyrya, Deputy Prime Minister of Ukraine, dated 20 March 2009, the Committee expects to receive a report from the Government of Ukraine for its next session (ECE/MP.EIA/IC/2008/2, para. 33).

Yours sincerely,

Matthias Sauer

Chair, Implementation Committee,  
Convention on Environmental Impact Assessment  
in a Transboundary Context

Mr. Volodymyr A. BUCHKO, Deputy Director, Legal Department, Ministry of Environmental Protection  
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**UNITED NATIONS  
ECONOMIC COMMISSION FOR EUROPE**

**The Executive Secretary**

*Under-Secretary-General*

Ref: ECE/EHLMQ39/2008/L

30 October 2008

Sir,

Further to my letter of 19 June 2008, you recall that at the recent Fourth Meeting of the Parties to the UNECE Convention on Environmental Impact Assessment in a Transboundary Context, which was held in Bucharest from 19 to 21 May 2008, the Parties considered, inter alia, the findings and recommendations of the Convention's Implementation Committee with regard to the construction of the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian Sector of the Danube Delta (the "Bystroe Canal Project"). In this respect, the Meeting of the Parties decided to issue a caution to the Government of Ukraine to become effective on 31 October 2008 unless the Government of Ukraine fulfilled three conditions: first, stops the works; second, repeals the final decision; and, third, takes steps to comply with the relevant provisions of the Convention (ECE/MP.EIA/10, decision IV/2, para. 10)

I confirm that the secretariat has received the report on this issue prepared by the Government of Ukraine before 8 October 2008. The Convention's Implementation Committee at its meeting from 28 to 30 October 2008 has considered, inter alia, the information provided in the report.

.../

H.E. Mr. Hryhoriy NEMYRYA  
Deputy Prime Minister of Ukraine  
The Head of Intergovernmental Coordination Council  
On the Implementation of the Espoo Convention  
Kiev, Ukraine

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The Committee considered that the first condition in decision IV/2 related to all works, but recognized that this condition was ambiguously expressed in the decision and that Ukraine could have interpreted it to mean that it related only to works in Phase II of the Project. The Committee agreed that this first condition had been fulfilled for Phase II, but it was concerned that the Government of Ukraine had not taken steps to apply the Convention to continuing works for Phase I. In this respect, the Committee agreed to remind the Government of Ukraine of the findings in paragraphs 69(b) and (c) of the Committee's findings and recommendations further to a submission by Romania regarding Ukraine (decision IV/2, annex I), as endorsed by the Meeting of the Parties. These findings require, as a minimum, that no further works, including operation and maintenance works, should be undertaken for Phase I without taking steps to comply with the relevant provisions of the Convention.

The Committee considered that the second condition related to the final decision of 28 December 2007 on Phase II of the Project. The Committee agreed that this second condition had been fulfilled by the Government of Ukraine in its repeal of the final decision on 11 June 2008.

The Committee considered that the third condition related to the application of the Convention to both Phases I and II of the Project, and, more broadly, to Ukraine's implementation of the Convention. The Committee accepted that Ukraine's report to the Committee demonstrated that the Government of Ukraine had taken steps to:

(a) apply the Convention to Phase II, through its notification of Romania and its meetings with Romania; and

(b) improve the implementation of the Convention more broadly, including through the establishment under your leadership of an inter-ministerial council on the implementation of the Convention.

The Committee welcomed the steps taken by the Government of Ukraine and agreed that the third condition had been broadly satisfied. However, the Committee agreed to request the Government of Ukraine to ensure that:

(a) the steps taken to comply with the relevant provisions of the Convention cover also any further works related to Phase I of the Project, including operation and maintenance works; and

...



(b) the EIA documentation currently under preparation for the Project addresses, inter alia: (i) possible alternatives to the whole Project discussed with the affected Party, including the no-action alternative, (ii) the combined impact of the two phases of the Project, and (iii) the mitigation measures to minimize this combined impact.

The Committee consequently decided to request the Government of Ukraine to report in writing to the Committee on steps taken to apply the relevant provisions of the Convention to:

(a) any further works related to Phase I of the Project, including operation and maintenance works; and

(b) Phase II of the Project.

A first report on these steps should be submitted to the Committee by 28 February 2009, for the Committee's consideration at its 16<sup>th</sup> session in March 2009, and a second report by 31 August 2009, for the Committee's consideration at its 17<sup>th</sup> session in September 2009.

The Committee has also asked me to convey to you its satisfaction with the information provided. The Committee is convinced that the Government of Ukraine has made considerable progress in applying the relevant provisions of the Convention.

The Committee decided that, in the light of the above, the caution should not become effective.

Please accept, Sir, the assurances of my highest consideration.

Marek Belka





UNITED NATIONS  
ECONOMIC COMMISSION FOR EUROPE

The Executive Secretary

*Under-Secretary-General*

Ref.: ECE/EHLM/434/2009/L

16 October 2009

Sir,

I would like to thank you for your letter received on 15 April 2009 regarding the implementation of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context, further to decision IV/2 of the Meeting of the Parties to the Convention.

The Implementation Committee under the Convention met in Geneva from 14 to 18 September 2009. The Committee considered your letter, a report submitted by the Government of Ukraine on steps taken recently to apply the Convention and a "non-paper" submitted to the secretariat on 11 September 2009 by the Permanent Mission of Ukraine to the United Nations Office and other International Organizations having their Headquarters in Geneva. Further to its deliberations the Committee has asked me to convey to you the following:

"Taking into account paragraphs 7, 9 and 10 of decision IV/2 and recalling its deliberations in its fifteenth and sixteenth sessions (ECE/MP.EIA/IC/2008/2, paras. 22-32, and ECE/MP.EIA/IC/2009/2, paras. 9-18), the Committee reaffirmed that decision IV/2 requested Ukraine to stop all works related to Phases I and II of the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian Sector of the Danube Delta (the "Bystroe Canal Project"), including construction, operation and maintenance.

Therefore, the Committee considered that the documents submitted by Ukraine failed to confirm clearly and unambiguously that the conditions imposed in the decision of the Meeting of the Parties have been met, as requested in the Executive Secretary's letter. In particular, the documents submitted by Ukraine failed to:

(a) demonstrate that all works, including operation and maintenance, on Phase I have stopped; and

.../

His Excellency  
Mr. Hryhoriy NEMYRYA  
Deputy Prime Minister of Ukraine  
Head of Intergovernmental Council on the  
Implementation of the Espoo Convention  
Kiev, Ukraine

cc. His Excellency Mr. Nicolae NEMIRSCHI, Minister of Environment and Sustainable  
Development, Bucharest, Romania



(b) show, separately for Phase I and for Phase II, that the Convention is being applied fully to the Project.

Further to its deliberations at its sixteenth session (ECE/MP.EIA/IC/2009/2, paras. 9-18), and in the light of the above, the Committee decided that:

(a) the continuation of works under Phase I of the Project was contrary to the requirements imposed by the Committee when deciding that the caution should not become effective (ECE/MP.EIA/IC/2008/2, para. 31), and represented a continuing breach of the Convention, as explained in paragraphs 69 (b) and 73 of the Committee's findings and recommendations (ECE/MP.EIA/10, decision IV/2, annex I); and

(b) the carrying out of works under Phase II of the Project represented a further breach of Ukraine's obligations under the Convention, because the transboundary environmental impact assessment (EIA) procedure for the "full-scale development" of the Project (Phases I and II) is ongoing and because, as declared by the Government of Ukraine, no final decision on Phase II is in force.

Moreover, the Committee disagreed with the interpretation by the Government of Ukraine that the EIA only need address Project elements identified by the earlier Inquiry Commission as likely to have significant adverse impact. The environmental impact assessment procedure, including preparation of the EIA documentation, must cover the environmental impact of the entire proposed activity, and not address only the likely significant adverse transboundary impacts identified by the Inquiry Commission. The Committee emphasized that the Inquiry Commission's role was to determine whether the whole Project required application of the Convention, and not to determine the scope of the assessment.

The Committee thus found that Ukraine remains in non-compliance with its obligations under the Convention with respect to both phases of the Project and agreed that this be communicated to the next session of the Meeting of the Parties.

The Committee concluded that its earlier decision that the caution should not become effective (ECE/MP.EIA/IC/2008/2, para. 34) had been based on information that proved not to be comprehensive. Therefore the caution should have become effective on 31 October 2008. The Committee was uncertain of the legal consequences of such a conclusion after 31 October 2008 and of its mandate issued by the fourth session of the Meeting of Parties in this respect. Thus the Committee decided that this conclusion shall be communicated to the next session of the Meeting of the Parties, with a recommendation that the Meeting of the Parties either bring into effect the caution issued in its fourth session or issue a new caution.

The Committee closed consideration of the original submission pending a decision by the Meeting of the Parties and will no longer consider information provided by the concerned Parties regarding the Project."

Please accept, Sir, the assurances of my highest consideration.

  
Jan Kubiš

**Letter to UKRReDesicion SV**



**UNITED NATIONS  
ECONOMIC COMMISSION FOR EUROPE**

**The Executive Secretary**

*Under-Secretary-General*

Ref.: ECE/EHLM/199/2009/L

16 April 2009

Madam,

I write to you at the request of the Compliance Committee of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) which recently met to consider Ukraine's compliance under the Convention.

As you are no doubt aware, at its third meeting held from 11 to 13 June 2008 in Riga, the Meeting of the Parties to the Aarhus Convention adopted decision III/6f on compliance by Ukraine with its obligations under the Convention (ECE/MP.PP/2008/2/Add.14). Through paragraph 5 of decision III/6f, the Meeting of the Parties decided to issue a caution to the Government of Ukraine, to become effective on 1 May 2009, unless the Government fully satisfied certain conditions set out in that paragraph and notified the secretariat of this fact by 1 January 2009. The successful fulfilment of the conditions was to be established by the Compliance Committee.

At its twenty-third meeting held in Geneva from 31 March to 3 April 2009, the Compliance Committee reviewed the steps taken by Ukraine to fulfil the conditions set out in paragraph 5 of decision III/6f. In particular, the Committee considered the Report and Action Plan submitted by Ukraine on 31 December 2008, the letter from Ukraine dated 27 March 2009 and the oral statements made by representatives of the Government of Ukraine on 3 April 2009. Further to its deliberations, the Committee has asked me to convey to you its findings, which are enclosed.

I would like to draw your particular attention to paragraphs 10, 13 to 15 of the Committee's findings. In light of the steps taken by Ukraine, the Committee found that Ukraine has fulfilled the conditions set out in paragraph 5 of decision III/6f of the Meeting of the Parties to the extent that the caution issued by the Meeting of the Parties through decision III/6f shall not become effective.

However, the Committee found that Ukraine is not yet fully in compliance with its obligations under the Aarhus Convention.

.../

Her Excellency  
Mrs. Yulia TYMOSHENKO  
Prime Minister of Ukraine  
Kiev, Ukraine

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The Committee therefore reserved its right to make further recommendations to the Meeting of the Parties, including to recommend to the Meeting to issue a new caution, if the Committee finds that its concerns relating to the points set out in paragraph 10 (a) to (i) have not been satisfactorily met.

On behalf of the UNECE, I would like to express the willingness of the secretariat to work with the Government of Ukraine to assist it in meeting its obligations under the Aarhus Convention.

Please accept, Madam, the assurances of my highest consideration.

Ján Kubiš



**REPORT OF THE TWENTY-THIRD MEETING OF THE  
AARHUS CONVENTION COMPLIANCE COMMITTEE**

Geneva, 31 March to 3 April 2009

**FINDINGS**

with regard to the measures taken by Ukraine to fulfill the conditions set out in paragraph 5(a) to (d) of decision III/6f of the Meeting of the Parties (ECE/MP.PP/2008/2/Add.14).

Adopted by the Aarhus Convention's Compliance Committee on 3 April 2009

**Introduction**

1. At its third meeting held from 11 to 13 June 2008 in Riga, the Meeting of the Parties to the Aarhus Convention adopted decision III/6f on compliance by Ukraine with its obligations under the Convention (ECE/MP.PP/2008/2/Add.14).
  2. Through paragraph 5 of decision III/6f, the Meeting of the Parties decided to issue a caution to the Government of Ukraine, to become effective on 1 May 2009, unless the Government fully satisfied the conditions set out in paragraph 5 (a) to (d) and notified the secretariat of this fact by 1 January 2009.
  3. The successful fulfillment of the conditions was to be established by the Committee.
  4. By letter dated 31 December 2008, the Government of Ukraine provided a Report on fulfillment of the conditions of decision III/6f of the Meeting of the Parties and an Action Plan submitted pursuant to paragraph 5 of decision III/6f.
  5. By letter dated 9 March 2009 from the secretariat of the Aarhus Convention, the Committee noted with appreciation the Report and Action Plan submitted by the Government of Ukraine on or about 31 December 2008. However, the Committee indicated that, having considered on a preliminary basis the information contained in the Report and the Action Plan provided by Ukraine, the Committee was not convinced that the conditions set out in paragraph 5 (a) to (d) of decision III/6f had been fulfilled. In particular, the Committee had some concerns with regard to the very general nature of the Action Plan and lack of clarity as to the specific step-by-step activities that the implementation of the Plan might involve.
  6. Through the secretariat's letter of 9 March 2009, the Committee asked the Government of Ukraine to provide in advance of the 23<sup>rd</sup> meeting of the Committee, and at the latest by 27 March 2009, further clarification on the content of the Action Plan. Specifically, it requested the information listed in paragraphs (1) to (6) of the secretariat's letter.
-

7. By letter dated 27 March 2009, the Government of Ukraine responded to the secretariat's letter of 9 March 2009.

## I. CONSIDERATIONS AND EVALUATIONS

8. The Committee notes with appreciation the steps taken by Ukraine to fulfill the conditions set out in paragraph 5 (a) to (d) of decision III/6f of the Meeting of the Parties. In particular, the Committee welcomes the Report and Action Plan submitted by the Government of Ukraine on 31 December 2008, including:
    - (a) The draft laws and draft rulings of the Cabinet of Ministers specified in the Action Plan to resolve the problems identified by the Committee in its findings and recommendations (ECE/MP.PP/C.1/2005/2/Add.3), in accordance with paragraph 5 (a) of decision III/6f;
    - (b) The capacity-building activities specified in the Action Plan, including training of the judiciary and of public officials involved in environmental decision-making, in accordance with paragraph 5 (b) of decision III/6f;
    - (c) The public consultations on the the Action Plan specified in the Report, in accordance with paragraph 5 (c) of decision III/6f; and
    - (d) The transposition of the Action Plan through the Ruling of the Cabinet of Ministers of Ukraine dated 27 December 2008 #1628-p, in accordance with paragraph 5 (d) of decision III/6f.
  9. The Committee also notes with appreciation the letter from the Government of Ukraine sent on 27 March 2009 in response to the Committee's letter of 9 March 2009, which provides some additional clarity regarding the specific activities envisaged in the Action Plan.
  10. The Committee notes that the Ministry of Environment Protection is to draft legislation to fulfil the Ruling of the Cabinet of Ministers dated 27 December 2008 #1628-p. The Government of Ukraine has not advised however, specifically how it intends to address a number of the Committee's concerns set out in the secretariat's letter of 9 March 2009. In particular, the Committee would like to review, at the earliest appropriate opportunity, the draft legislation on the following points:
    - (a) The proposed wording requiring that public authorities obtain environmental information relevant to their functions, including that on which they base their decisions (paragraph 2 (a) of the secretariat's letter of 9 March 2009).
    - (b) The proposed wording requiring that information within the scope of article 4 of the Convention is provided regardless of its volume (paragraph 2 (b) of the secretariat's letter of 9 March 2009).
    - (c) The proposed wording concerning the detailed requirements for informing the public, as required under article 6, paragraph 2 of the Convention, about the
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initiation of the procedure and possibilities for the public to participate. In particular:

- (i) The required form of the public notice;
  - (ii) The required contents of the public notice (as compared with the requirements specified in paragraph 2 (a) to (d) of article 6); and
  - (iii) How, in case of projects having transboundary impact, the public concerned abroad is to be notified, in accordance with paragraph 2 (e) of article 6.
- (d) The proposed wording setting specific timeframes for the public consultation process (paragraph 2(c) of the letter of 9 March 2009). In particular:
- (i) The time for the public study the information on projects and to prepare to participate effectively; and
  - (ii) The time for the public to prepare and submit comments.
- (e) The proposed wording requiring that sufficient time is available for the public officials to take any comments into account in a meaningful way (paragraph 2(d) of the letter of 9 March 2009).
- (f) How the Government will prevent short-cutting in the decision-making procedure, i.e. parts of the Environmental Impact Assessment (EIA) being provided for evaluation and approval by the decision-making authority prior to any information being made publicly available (paragraph 2(e) of the letter of 9 March 2009).
- (g) The proposed wording requiring that public authorities do not limit the provision of information under article 6, paragraph 6, and article 4 of the Convention to publication of the environmental impact statement but include other relevant information to ensure more informed and effective public participation (paragraph 2(f) of the letter of 9 March 2009).
- (h) The proposed wording clarifying that information that applicants are required to provide in the course of the public authorities' decision-making on decisions under article 6 is generally not exempt from disclosure (paragraph 2(g) of the letter of 9 March 2009).
- (i) The proposed wording requiring disclosure of EIA studies in their entirety as the rule (with the possibility for exempting parts being an exception to the rule) (paragraph 2(g) of the letter of 9 March 2009).
- (j) The proposed wording requiring that texts of decisions, along with the reasons and considerations on which they are based, are publicly available (paragraph 2(h) of the letter of 9 March 2009).
11. The Committee urges the Government of the Ukraine to address the specific points set out in paragraph 10 (a) to (i) above.
12. The Committee expresses its willingness to continue to work with the Government of the Ukraine to guide it in its ongoing efforts to reach full compliance with its obligations under the Aarhus Convention.
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## II. FINDINGS

13. In light of the above, the Committee finds that Ukraine has fulfilled the conditions set out in paragraph 5 (a) to (d) of decision III/6f of the Meeting of the Parties to the extent that the caution issued by the Meeting of the Parties through decision III/6f shall not become effective.
  14. However, the Committee finds that Ukraine is not yet fully in compliance with its obligations under the Aarhus Convention.
  15. The Committee therefore reserves its right to make further recommendations to the Meeting of the Parties, including to recommend to the Meeting to issue a new caution, if the Committee finds that its concerns relating to the points set out in paragraph 10(a) to (i) have not been satisfactorily met.
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