

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

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

**Cc:** Ministry of Environmental Protection and  
Natural Resources of Ukraine  
[info@mepr.gov.ua](mailto:info@mepr.gov.ua)

**From:** Yelyzaveta Aleksyeyeva, Environment-  
People -Law

### **Regarding the request for advice from Ukraine (2022)**

Based on the scope of the questions from the Committee to Ukraine Environment-  
People -Law would like to provide the following additional information:

1. The Constitution of Ukraine (Article 64) allows temporary restrictions of certain constitutional rights (including the right to information (Article 34) and the right to environmental information (Article 50) during martial law.
2. The Law of Ukraine “On Martial Law” in Article 8 lists the measures of martial law and lays the legal foundations for temporary restrictions of constitutional rights and freedoms during wartime. Article 8, in particular, allows the introduction of compulsory labor, the forced alienation of private property, the establishment of a special border entry and exit regime, restrictions on the freedom of movement of citizens, and much more. Clause 11 of Part 1 of Article 8 allows to regulate by decision of the Cabinet of Ministers of Ukraine the transfer of information through computer networks, and Clause 22 - to take additional measures to strengthen the protection of state secrets. However, none of the measures in Article 8 refer to additional restrictions on access to previously unclassified public information or public participation in the process of decision-making.
3. The laws of Ukraine “On access to public information”, “On EIA”, “On state secret” have not been amended since February 2022 to limit access to previously unclassified information or to widen the scope of state secret or any other information with limited access. Effectively the legal regime of information originated in the course of EIA procedure has not been changed.
4. By its Resolution No. 263 of March 12, 2022, the Cabinet of Ministers of Ukraine allowed ministries, other central and local bodies of executive power to stop or limit the operation of information, information and communication and electronic

communication systems, as well as public electronic registers. MENR based all its decrees on access to the EIA Register on the governmental Resolution No. 263.

5. However, the most recent decree on partial resumption of operation of the EIA Register dated 15 June 2022 limited not only operation of the EIA register, but also access to the EIA documentation as such.

5.1. First of all, “the old” EIA cases (where EIA conclusions were issued prior Feb 2022) are not available to the public neither via the Register, nor upon a request. A letter from MENR dated July 21, 2022 denying NGO Ukrainian nature conservation group, UNCG access to the EIA case based on its decree dated 15 June 2022 and on the fact the EIA conclusion in the said case was issued in April 12, 2021 is attached (due to the time constraint it was not possible to provide translation at this point).

5.2. Furthermore, MENR's decree dated 15 June 2022 limits access to Google maps, which in each EIA case show the approximate location of the planned activity. Based on this provision when providing EIA documentation on pending EIA cases, the public authorities carrying out EIA procedures erase all information related to the location of the proposed activity (all coordinates, maps and all references to geographic location) making it effectively impossible to comment on the scope, depth and quality of the EIA report. A copy of such circumcised EIA report is attached.

6. Prior to the imposition of martial law on 24 February 2022 the EIA Register fulfilled the following requirements of article 6 (2) – (10) of the Convention: 1) notification of the public (article 6 (2)); 2) access to the information relevant to the decision-making (article 6 (6)).

Submissions of comments by the public (article 6 (6)) have never been done through the Register. The written comments are collected via mail and email; and oral – at public hearings. Notification of the final decision (article 6 (9)) etc.) was not done via the Register either, only EIA conclusions were communicated to the public via the EIA Register. According to the EIA Law Article 11 the authorities taking the final decision have to submit information on the final decision to the environmental authority carrying out EIA who then uploads it to the EIA Register. This, however, has never been implemented in practice.

In its current “limited form” the EIA Register fulfills none of the requirements of article 6 (2) – (10) of the Convention. The “limited form” the EIA Register only gives information on how many EIA procedures are pending in the state, what regions of Ukraine and what types of activities they relate to and what authorities are carrying out these procedures.

7. In its official note to the public MENR explained that the public may access the EIA documentation for the purpose of public discussion in pending EIA cases upon request after identification of a person requesting the information. MENR produced and published on its web-page two special forms to be filled in by the public in order to request access to the EIA documents. See below

[Translated by EPL]

Sample letter

Ministry of Environmental Protection and of natural resources of Ukraine/ or  
\_\_\_\_\_ Regional State Administration

### **Request**

In order to process the environmental impact assessment documentation and to provide comments and suggestions within the framework of the public discussion, please provide the EIA Report (specify which documents you want to receive) on EIA registration case No. \_\_\_\_\_.

Consent to the processing of personal data is attached.

Contact phone number \_\_\_\_\_

Email: \_\_\_\_\_

IP address: \_\_\_\_\_

Appendix: on \_\_ sheet in 1 copy

Signature/ date

First name, Surname

[Translated by EPL]

### **CONSENT**

#### **For the processing of personal data**

I, \_\_\_\_\_, born in \_\_\_\_\_, passport series \_\_\_\_\_ No. \_\_\_\_\_, issued by \_\_\_\_\_ (by whom, when) in

accordance with the Law of Ukraine "On the Protection of Personal Data", taking into account the security situation in the regions of Ukraine and for the purpose of recording the list of persons who request environmental impact assessment documentation with specification of technical characteristics, I give my consent to:

processing and use of my personal data specified in the request, which provides for any actions of the owner of personal data to process such data, their protection, as well as actions to grant partial or full right to process personal data to other subjects of relations related to personal data carried out with the consent of the subject of relations related to personal data carried out with the consent of the subject of personal data or in accordance with the law (Article 10 of the said Law);

dissemination of personal data, which involves the transfer of information about a natural person with the consent of the subject of personal data (Article 14 of the said Law).

\_\_\_\_\_ (signature)

8. The Law “On access to public information” setting the requisites of a public request for information does not require to provide a consent for the processing of personal data, passport detail, date of birth, telephone number and the IP address.

9. Failure to submit an IP address or any other personal information required by the forms leads to a denial in access. A letter from MENR denying access to EIA report based on lack of IP address attached (due to the time constraint it was not possible to provide translation at this point).

10. According to the EIA Law the Internet (the EIA register in practice) is the only mean of notification by public authorities to notify the public of planned activities. According to the EIA Law the obligation to notify the public via other means (the mass media, notice boards of local self-government bodies, other public places) lies with the proponents of planned activities.

11. In its official information published on the web-page<sup>1</sup> MENR announced that members of the public may submit comments and suggestions regarding the planned activity within 25 working days on EIA cases, EIA reports on which have been uploaded to the Register after 03/22/2022. However, according to the EIA Law the public has 20 business days for submission of comments during the scoping stage and from 25 to 35 business days for submission of comments on the EIA report starting from the date the respective documents were uploaded to the Register for the public inspection. The new scheme of accessing the EIA documents requires the public to submit a request, and then it takes at least 5 business days for the public authority to provide access to the document via email. That effectively robs the public of at least 5 working days of public consultation period.



Yelyzaveta Aleksyeyeva,  
July 22<sup>th</sup>, 2022

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<https://mepr.gov.ua/news/39302.html?fbclid=IwAR1wX1Mq75seIL7BSqqbwEpBAAtQhr4Z1ElhFA39zNGTAlCK17Fke7laou0>