

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
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From: Yelyzaveta Aleksyeyeva,
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Regarding the request for advice from Ukraine (2022)

Environment-People -Law welcomes the Government of Ukraine's efforts to reach out to the Aarhus Convention Compliance Committee for advice regarding implementation of the Aarhus rights in the time of war. For the purpose of facilitating a well-informed ACCC investigation and subsequent advice, EPL would like to provide some additional information related to changes in legal framework for access to information and public participation in EIA procedure introduced in Ukraine since the beginning of the war.

1. Exclusion of all restoration works from the EIA by law

To speed up the reconstruction of the destroyed infrastructure the Parliament of Ukraine has passed the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Environmental Activities and Civil Protection for the Period of Martial Law" adopted on March 15, 2022 № 2132-IX. Among other things the Law amends the Law of Ukraine "On Environmental Impact Assessment" (the EIA Law) to exclude all restoration works to eliminate the consequences of armed aggression and hostilities during martial law and in the reconstruction period after the war from the scope of the Law of Ukraine "On Environmental Impact Assessment". The adopted Law automatically abolishes EIA procedure (and all public participation provisions within) for any restoration works both during the war and in an unspecified reconstruction period after the end of hostilities. The Law was signed by the President of Ukraine and entered into force on March 21, 2022.

The amended EIA Law of Ukraine reads as follows:

Article 3. Scope of application of environmental impact assessment

1. Carrying out an environmental impact assessment is mandatory in the process of making decisions on the implementation of the planned activity, defined in parts two and three of this article. Such a planned activity is subject to an environmental impact assessment before making a decision on the implementation of the planned activity.

Activities not directly provided for in parts two and three of this article, as well as planned activities aimed exclusively at ensuring the defense of the state, eliminating the consequences of emergency situations, the consequences of an anti-terrorist operation on the territory of the anti-terrorist

operation for the period of its implementation, in accordance with criteria approved by the Cabinet of Ministers of Ukraine, ***restoration works to eliminate the consequences of armed aggression and hostilities during martial law and in the reconstruction period after the end of hostilities*** – are not subject to environmental impact assessment.

2. A convenient use of the Covid amendment

In June 2020 the EIA Law of Ukraine was amended as follows -

“Temporarily, for the period of validity and within the quarantine territory established by the Cabinet of Ministers of Ukraine in order to prevent the spread of coronavirus disease in Ukraine, until its complete abolition and within 30 days from the date of quarantine cancellation, public discussion of the planned activity is carried out in the form of submission of written comments and suggestions.... During this period, public hearings shall not be scheduled or held....”

Due to this amendment public authorities conducting the EIA procedure held no public hearings in the EIA procedure for over two years in Ukraine.

Before the beginning of the war there had been a significant debate as to the restoration of the public hearings in the EIA procedure. First of all, because the COVID situation had significantly improved since the time that amendment was initially introduced, and second because of the introduction in 2021 of four different quarantine levels/zones: red, orange, yellow and green with respective criteria and restrictions - some of which would allow for public gatherings.

Even in the strictest red and orange zones where public gatherings were prohibited, the prohibition did not apply to any person with a valid Covid certificate (vaccination, recovery, antibody tests).

Furthermore, since the beginning of the war although the Government has prolonged the quarantine until 31 of May 22 and later on till 31 of August 2022, it also lifted all COVID restrictions; the zoning as such was abandoned too – Decree of the Government of Ukraine Dec 9, 2020 # 1236 (last amended in May 2022) *On the establishment of quarantine and the introduction of restrictive anti-epidemic measures in order to prevent the spread of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus on the territory of Ukraine*. As of today, public hearings in the EIA procedure remain the only type of public gatherings prohibited due to the COVID in Ukraine.

EPL would kindly request the ACCC to widen the scope of its advice to Ukraine to include the above-mentioned matters.



Yelyzaveta Aleksyeyeva,

July 4th, 2022