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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

[redacted]
From: Environment-People -Law,
Yelyzaveta Aleksyeyeva

Regarding the request for advice from Ukraine

In addition to our positions submitted before, based on the MENRs answers to the questions from November 28, 2022, Environment-People-Law would like to point out the following:

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. However, the Decree of the President of Ukraine No. 64/2022 On the introduction of martial law in Ukraine dated Feb 24, 2022, when listing the constitutional rights to be restricted, does not mention the right to environmental information (Article 50). It does however mention the right to information (Article 34).

Section 3 of the said Decree reads:

3. *In connection with the introduction of martial law in Ukraine, the constitutional rights and freedoms of a person and a citizen, provided for in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine, may be temporarily limited during the period of the legal regime of martial law, as well as temporary restrictions may be introduced on the rights and legal interests of legal entities within the limits and to the extent necessary to ensure the possibility of introducing and carrying out measures of the legal regime of martial law, which are provided for by the first part of Article 8 of the Law of Ukraine "On the Legal Regime of Martial Law".*

4. The Article 50 of the Constitution of Ukraine reads:

Article 50. Everyone has the right to an environment safe for life and health and to compensation for damage caused by the violation of this right.

Everyone is guaranteed the right of free access to information about the state of the environment, about the quality of food products and household items, as well as the right to its distribution. Such information cannot be classified by anyone.

5. We believe that the decree on the 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 and possibilities of the public to participate in the EIA procedure. The later has no legal ground and contradicts provisions of the Constitution and the laws of Ukraine.

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 on April 12, 2021 was previously submitted.

5.2. MENR 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 was previously submitted.

5.3. Furthermore, although the MENR decree dated 15 June 2022 only limits access to three types of information (1) on EIA cases where EIA conclusion was issued prior February 24, 2022; (2) technical documentation, i.e. EIA report and other documents; (9) google map, which in each EIA case shows the approximate location of the planned activity – in practice the limitation introduced by the MENR on the Register went well beyond.

6. According to section 7 of the Order on Maintaining the Unified EIA Register, approved by the Decision # 1026 of the Cabinet of Ministers of Ukraine dated 13 December 2017, the following documents produced in the course of the EIA procedure are included in the Register and released via the Register portal to the public –

- An announcement of planned activity subject to EIA
- A proponent's request for scoping decision
- All public comments on the scoping phase
- A decision to carry out transboundary EIA
- A notification on commencement of the public consultation period
- Announcement of repeated public hearings
- EIA report
- Any other documents submitted by a proponent in addition to the EIA report
- A request for confidentiality of information included in the EIA report or other documents submitted by a proponent
- An EIA conclusion or a decision not to grant an EIA conclusion
- A decision on revocation of an EIA conclusion
- A report on public consultation period
- A decision on taking into account of the results of transboundary EIA
- Information on the final decision
- Any other documents submitted by proponent

7. Before the beginning of the war all the above-mentioned documents (except for the "Information on the final decision") were routinely and promptly submitted to the Register and made publicly available via its portal. None of the documents are available on-line now.

8. 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 (7)) have never been done through the Register. The written comments are collected via mail and email; and oral – at public hearings.

9. Notification of the final decision (article 6 (9)) etc.) was never done via the Register, yet 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.

10. In its current "limited form" the EIA Register fulfils 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 Ukraine, what regions of Ukraine and what types of activities they relate to and what authorities are carrying out these procedures.

11. Notification of the public

11.1. According to EIA Law (Article 4) the duty of informing the public in the course of the EIA procedure is shared between a public authority and a proponent. The EIA Register is the only tool by which a public authority notifies the public of a planned activity and the launch of the EIA procedure, as well as of their possibilities to participate, and of the EIA conclusion. Having suspended operation of the Register and later on having been operating the Register in "the limited form" the MENR effectively stopped notifying the public on the planned activity, the possibilities to participate and of EIA conclusion. To get access to an announcement of planned activity subject to EIA, a notification on commencement of the public consultation period, an announcement of repeated public hearings one has to submit a written request.

11.2. According to the EIA Law (Article 4) the obligation to notify the public via other means (the mass media, notice boards of local self-government bodies, other public places) lies solely with the proponents of planned activities. No amendments have been introduced to these rules in the EIA law and no directives been given by MENR to proponents on how are they to exercise public informing obligations in the times of war when the EIA Register no longer provides access to the documents (including notifications), printed mass media are not being printed, access to the premises of local self-government bodies and other public places – restricted.

12. Nevertheless, the MENR and local authorities carrying out the EIA procedure continue to issue the EIA conclusions. Since the beginning of the war public authorities had carried out/are carrying out almost 900 EIA procedures where either public consultation period overlapped with the beginning of the war or that were initiated after Feb 24, 2022. See <http://eia.menr.gov.ua/uk/cases>

13. Access to information – EIA report

13.1. According to the EIA law the EIA Register is one of two ways a public authority, performing an EIA procedure, makes EIA documentation available to the public. The other way is providing documentation for inspection on the premises of the respective public authority. This way of getting access to the EIA report even in peace times was only used by the representatives of the public residing in the capital (MENR) or in other regional centres (regional authorities performing EIA procedure). Needless to say, traveling across Ukraine in the times of war is complicated.

13.2. A duty to provide an EIA report on the premises of a proponent, other public places of the choice of a proponent and on the premises of the local authorities lies with the proponent. Due to the Covid and later due to the war, access to the premises of many local authorities remains restricted, in some cases fully restricted for years.

14. MENR claims it provides information upon a request via email. This in practice also poses a technical problem, because the size of a file of an average EIA report exceeds the limit of MB that could be sent via the governmental email server. EPL was not able to get an EIA report via an email from MENR. No proof could be submitted to the latter because we received no response. Only in the telephone conversation we found out that the MENR has the response in their outbox and they consider their duty fulfilled.

Sincerely,

Executive Director
Olena Kravchenko

