

that is an elaborate digital identification tool. The digital signature individual key is ordered from certified providers and is stored on cloud services or special devices.

A digital signature is a mathematical scheme for verifying the authenticity of digital messages or documents. A valid digital signature on a message gives a recipient confidence that the message came from a sender known to the recipient.

Digital signatures are a standard element of most cryptographic protocol suites, and are commonly used for software distribution, financial transactions, contract management software, and in other cases where it is important to detect forgery or tampering.

from Wikipedia

6. In October 2023 with the entrance into force of the Law of Ukraine on National PRTR the Party concerned invited the operators to register their facilities in the ‘Ecosystem’ and submit their first reports using the PRTR module. In early 2024 the operators fed in the information via their electronic user accounts, and the respective data on facilities and their respective pollutant releases and transfers of the reporting year of 2023 was thus collected. The PRTR module currently allows to browse and sort through the two lists that are being automatically generated with the information submitted by the operators (one of facilities reporting under the Law on National PRTR and another of reports submitted by the operators). It also includes individual electronic applications and reports submitted by the operators.

7. Currently EcoSystem contains a single web-page related to PRTR³. Access to the PRTR module is allowed only after identification and authorisation.

8. For the purpose of a direct public access to the data on pollutant releases and transfers, the ‘Ecosystem’ provides two links that allow downloading two excel files (one of facilities reporting under the Law on National PRTR and one of reports submitted by the operators). The two files include data provided by the operators and links to respective operators’ electronic applications and reports. The links to the documents provided in the two files are not hyperlinks and must be manually copied from the downloaded files and inserted in the browser to open the respective electronic documents. There is no aggregated data whatsoever.

9. We allege that the respective excel files put out for the public inspection do not comply with the following requirements of the Protocol, namely that the PRTR

- Accommodates reporting on diffuse sources (Article 4.1 (b));
- Is coherent and designed to be user-friendly (Article 4.1 (h));
- Is a structured, computerized database or several linked databases maintained by the competent authority (Article 4.1 (j)).
- Holds the data presented in aggregated form (Article 5.1);
- Holds the data allowing releases and transfers to be searched and identified according to:
 - Facility and its geographical location;
 - Activity;
 - Owner or operator, and, as appropriate, company;
 - Pollutant or waste, as appropriate;

³ <https://eco.gov.ua/registers/natsionalnyi-reiestr-vykydiv-ta-perenesennia-zabrudniuvachiv>

- Each of the environmental media into which the pollutant is released; and
- the destination of the transfer and the disposal or recovery operation for waste (Article 5.1).
- Includes the information on:
 - (c) Releases of pollutants from diffuse sources required under article 7, paragraph 4 (Article 6.1 (c)).
- Contains data that was a subject to quality assessment by the competent authority, in particular as to their completeness, consistency and credibility (Article 10.2).

10. With regard to Article 3.1 of the Protocol on taking necessary legislative, regulatory and other measures to establish and maintain a publicly accessible national PRTR, we agree that some legislative, regulatory and implementing measures have been taken. Nevertheless, other measures necessary to establish and maintain a national PRTR, as required by the Protocol, have not. Thus, we maintain that the Party concerned fails to comply with Article 3 (1) in conjunction with the Article 4.1 points (b), (h), (j), Article 5.1, Article 6.1 points (c), Article 10.6 of the Protocol.

B. Regarding an authorisation by a digital signature to access the PRTR module

11. We submit that a limitation of direct electronic access through the Internet to the PRTR module by requiring a digital signature is not in line with both the Aarhus convention (Article 5) and the PRTR Protocol (Articles 4, 5, 11 and 12).

12. According to the recommendations⁴ of the Aarhus Convention Compliance Committee issued at the request for advice from Ukraine provided in the specific context of the current war, *there are no specific provisions in the Convention providing for a different legal regime applicable during time of war. This means that even during time of war the Convention, and the obligations incumbent upon a Party thereunder, continue to apply (para 16).*

13. PRTR Protocol does not contain such provisions either, thus we submit that even during time of war the Protocol and all its provisions continue to apply. Any other interpretation would be in disagreement with the abovementioned recommendations of the Aarhus Convention Compliance Committee.

14. In accordance with Article 4 of the PRTR Protocol, each Party shall establish and maintain a publicly accessible national pollutant release and transfer register that: (h) is designed to be user-friendly and publicly accessible, including in electronic form.

15. Article 5.4 requires that 1) the register is designed for maximum ease of public access through electronic means, such as the Internet; 2) the PRTR design allows that, under normal operating conditions, the information on the register is continuously and immediately available through electronic means.

16. Article 11 requires Parties to ensure public access to information contained in its PRTR primarily by ensuring that its register provides for direct electronic access through public telecommunications networks.

⁴ https://unece.org/sites/default/files/2023-06/A3_Ukraine_advice_adv_unedited.pdf

17. Article 12 allows Parties to keep information held on the register confidential where public disclosure of that information would adversely affect: (a) international relations, national defence or public security.

18. As was described in paras 4-6 above, the Party concerned at the moment operates the PRTR module, yet access to its data, features and services is only allowed after identification and authorisation using an electronic signature.

19. The PRTR Compliance Committee suggested that Ukraine operates its national PRTR not under the normal operating conditions and that requiring electronic signature during the martial law is in line with the Protocol.

20. We strongly disagree. First, the Ecosystem and the PRTR module within were in operation at least half a year before February 24, 2022 (when the martial law was imposed) and from the day one the system was based on user accounts that required digital signature. Nothing has changed in terms of the access to EcoSystem services with the introduction of martial law. Second, both the Law of Ukraine on PRTR and the Procedure for Maintaining the National PRTR⁵ – requiring direct and unauthorised public access to the PRTR – were adopted after the full-fledged aggression against Ukraine in February 2022. Neither of these documents include any transitional provisions on the limited or suspended application of any of its provisions during the martial law, as many other laws and regulations do.

21. Furthermore, we allege that the martial law is new “normal operating conditions” in Ukraine. In our opinion, the clause on “normal operating conditions” of Article 5.4 allows the Parties not to be in breach of the Protocol in cases of power cuts, cyber-attacks or other short term and unexpected events disturbing the normal operations of the electronic PRTR. However, the martial law is a new reality for Ukraine that has lasted for 2 and a half years and is expected to last for the years to come and thus could not be considered as not normal operating conditions in the meaning of Article 5.4.

22. In its response to the Secretariat from April 10, 2024, the Party concerned stated that *“Due to the fact that Ukraine is under martial law, the information in the NPRTR is available after passing identification using the electronic digital signature of the person. Such an event is carried out to provide environmental information taking into account the security situation in the country.”* This, however, directly contradicts the both the Law of Ukraine on PRTR and the Procedure for Maintaining the National PRTR that were adopted long after the imposition of the martial law.

23. In accordance with the 2022 Law of Ukraine on the National Pollutant Release and Transfer Register (the Law on PRTR) the public has a right of a free, unlimited in time and unauthorized access (hereinafter - general access) to data contained in the Register, except for information with limited access (Article 12). According to Article 13 the purpose of the Register is to provide free general access to the public (except for information with limited access) to confirmed and reliable data on emissions and transfers of pollutants and waste and free use of such data. Furthermore, pursuant to Article 14 along with the electronic user accounts that allow interaction between the operators and public authorities, the Register also ensures the functioning of a web portal that provides public access to the Register's data.

24. In accordance with the Resolution No. 560 dated 2 June 2023 “On the Approval of the Procedure for Maintaining the National Pollutant Release and Transfer Register” the Ministry of Environment provides unlimited and unauthorized public access to the data

⁵ Resolution No. 560 dated 2 June 2023 “On the Approval of the Procedure for Maintaining the National Pollutant Release and Transfer Register”

contained in the Register by means of EcoSystem software without the use of the electronic user account of EcoSystem with the possibility of viewing, copying and saving such data.

25. More importantly, nothing is gained in terms of the security situation by limiting access to the PRTR module by the digital signature. The two publicly accessible excel files (para 8) contain geospatial data and coordinates of all facilities registered in the Ecosystem. The same numbers of facilities and reports are listed in the respected excel files and in the PRTR module. The question arises what other sensitive information could possibly be protected by requiring a digital signature. Furthermore, anyone who's digital competences are above average can create the electronic signature and access the data directly in the PRTR module. Only a valid Ukrainian passport and tax ID number is required for that. The digital signature is issued by accredited key certification centers including some banks. No security checks of any sort are carried out in the process of issuance of a digital signature.

26. In our opinion, any restrictions on access to PRTR data due to the security concerns shall be considered under Article 12 of the PRTR Protocol that allows the Parties to keep information held on the register confidential where public disclosure of that information would adversely affect: (a) international relations, national defence or public security. Article 12, however, does not allow the Parties to limit access to the PRTR when the limitation does not in fact protect the respective interests, in this case - national defence and public security.

27. Since anyone holding a valid digital signature may access the PRTR module, the imposed limitation does not add any value in terms of national defence. It does however discriminate against individuals with lower levels of digital competences. According to the official data of the Ministry of Digital transformation of Ukraine⁶ the proportion of individuals with below-basic digital skills in Ukraine as of 2023 constitute 40,4 % of the adult population (18-70 years). We argue thus, that over 40% of the adult population of Ukraine is incapable to access to the PRTR module.

28. The same data allegedly is disclosed to the public by virtue of the abovementioned excel files which makes the limitation for security reasons argument totally pointless.

29. Furthermore, we allege that the martial law is new "normal operating conditions" in Ukraine. In our opinion, the clause on "normal operating conditions" of Article 5.4 allows the Parties not to be in breach of the Protocol in cases of power cuts, cyber-attacks or other short term and unexpected events disturbing the normal operations of the electronic PRTR. However, the martial law is a new reality for Ukraine that has lasted for 2 and a half years and is expected to last for the years to come and thus could not be considered as not normal operating conditions in the meaning of Article 5.4.

30. Based on the above, we allege that by requiring an authorisation with a digital signature to access the PRTR module the Party concerned is in breach of Article 3.1, Article 4, Article 5.4, Article 11 and Article 12.

31. Finally, we believe that this is a wider issue directly linked to Article 5 of the Aarhus Convention. Issuing a recommendation allowing dissemination of environmental information covered in Article 5 of the Aarhus Convention to be limited only to digitally competent individuals does not seem to serve the aim and be consistent with the general principles of the Convention.

⁶ https://osvita.diia.gov.ua/uploads/1/8864-presentation_ua_2023.pdf

Excerpts from the Law of Ukraine the National Pollutant Release and Transfer Register

Article 12. Public

Rights of the public in the field of registration of emissions and transfer of pollutants and waste: **free, unlimited in time and unauthorized access (hereinafter - general access)** to data contained in the Register, operator reports, references on diffuse sources, except for information with limited access.

Article 13. Creation of the Register

The Register is intended to provide **free general access to the public** and other Register users (except for information with limited access) to confirmed and reliable data on emissions and transfers of pollutants and waste and free use of such data.

Article 14

9. The Register ensures the functioning of an electronic user accounts for electronic interaction between operators, involved bodies, an authorized body, a controlling body, a specially authorized central body of executive power that implements state policy in the field of statistics, a central body of executive power that implements state tax policy, state policy for the administration of a single contribution to mandatory state social insurance, including for the submission of documents for facility registration, operator reports, certificates on diffuse sources, as well as the **functioning of a web portal that provides public access to the Register's data.**

Excerpts from the Resolution No. 560 dated 2 June 2023 “On the Approval of the Procedure for Maintaining the National Pollutant Release and Transfer Register”

5. The register is a functional module of EcoSystem.
6. Access to the Register is granted through EcoSystem.
7. The Ministry of Environment provides **unlimited and unauthorized public access** to the data contained in the Register and their use in accordance with Articles 12 and 14 of the Law by means of EcoSystem software **without the use of the electronic user account of EcoSystem** and in the premises of the Ministry of Environment with the possibility of viewing, copying and saving such data.
12. Creation and submission of data (information) to the Register is carried out through the electronic user account of EcoSystem.
14. The electronic user account of EcoSystem ensures interaction between operators, involved bodies, the Ministry of Environment, the State Environmental Inspection, the State Statistics Service, the DPS and the centers for providing administrative services.
15. Access to the electronic user account of EcoSystem is provided after the users undergo **electronic identification and authentication** in accordance with the Regulation on the Unified Ecological Platform "EkoSystem", approved by the Resolution of the Cabinet of Ministers of Ukraine dated October 11, 2021 No. 1065.