

## To the Secretariat of the Aarhus Convention

The Ministry of Ecology and Natural Resources of Ukraine presents compliments to the Secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and has the honour to inform of the following.

The Director of Environmental division of United Nations Economic Commission for Europe by his letter of 2 of May 2013 № ENV/2013/100 (hereinafter – Letter) suggested the Ukrainian Party to submit its comments to the observance’s comments stated on the fifth meeting of the Compliance Committee of the Aarhus Convention (25-28 of March 2013, Geneva). The Ukrainian Party was also suggested to submit the advance copy of the draft law devoted to the public participation in the decision making, after its approval by all relevant ministers, and before it is submitted for Verkhovna Rada of Ukraine (i.e. the Parliament) for approval.

In the observer’s opinion the draft law “On amending certain laws of Ukraine in connection to implementation of the Convention on Environmental Impact Assessment in a Transboundary Context” (has been registered with Verkhovna Rada of Ukraine on 21 of June 2012 registration № 10651) (hereinafter - the Draft 10651) was not open for public comment. In response to the comment Ukrainian Party would like to inform as follows. The Draft 10651 was registered on 21 of June 2012. The Draft 10651 was set into agenda of Verkhovna Rada on 6 of September 2012. Thus, the draft had been available on the official web-site of Verkhovna Rada since 21 of June till 6 of September 2012 ([http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=43793](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=43793)). Article 20.1 of the Law of Ukraine “On Citizens’ Application” dated 2 of October 1996 entitled the citizens to appeal (including submission of the comments to the public authorities) and obliges the public authority to consider and solve the issues the citizens’ application arises, within the period of one month. Therefore the public was provided with the possibility to become know the text of the Draft 10651, the public had the opportunity to submit the comments, and the legal mechanism for taking the comments into account was created. Hence the mentioned above observer’s comment isn’t valid.

The observer also stated there were currently no draft legal acts before the parliament with respect to public participation. According to the article 95.1 of the Law of Ukraine “On Regulation of Verkhovna Rada of Ukraine” dated 10 of February 2010 “the draft legal acts was not taken as a basis by Verkhovna Rada of previous convocation in first reading, the drafts are deemed to be withdrawn and are not being under consideration by the Verkhovna Rada of Ukraine”. Therefore, all drafts legal acts had not considered by the Verkhovna Rada of Ukraine of VI convocation till 6 of December 2012, were excluded from the consideration. Thus,

the pause in consideration of the drafts was caused by the scheduled parliament election and by the forming of the Parliament's committees.

The draft Law of Ukraine "On amending certain laws of Ukraine in connection to implementation of the Convention on Environmental Impact Assessment in a Transboundary Context" was registered in the Verkhovna Rada on 23 of May 2013 (registration № 2109a ([http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=47080](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47080)) (annex 1) (hereinafter – Draft law 2109a). The Draft law 2109a was approved by the Committee of Verkhovna Rada of Ukraine of environmental policy, natural resources use and the consequences of the Chernobyl catastrophe liquidation. The Draft law 2109a has been inserted in the Parliament agenda of second session of the Verkhovna Rada of seventh convocation, by the Decree of the Verkhovna Rada of Ukraine on 4 of July 2013 № 390-VII.

The third observer's comment is that the public participation procedure had been deteriorated, while at the same time the scope of review by the competent authorities was much more limited. The result of the adoption of the Law of Ukraine "On Regulation of Urban Development" on 17 of February 2011 and further practice realization thereof is the provision of article 13 of the Law of Ukraine "On Environmental Expertise" on 9 of February 1995 has been partly blocked. The article 13 obliges to conduct the environmental expertise of each objects and types of activity which are environmentally hazard. The procedure of the expertise in the course of developing and approval of the construction documentation are regulated by the article 31 and the others of the Law of Ukraine "On Regulation of Urban Development". As at 25 of March 2012 (the data of the fifth meeting of the Compliance Committee of the Aarhus Convention) article 31.1.3 of the Law of Ukraine "On Regulation of Urban Development" the applicants are obliged to add "the results of the environmental impact assessment (the documentation of the assessment and the reports on assessment and public participation)" to the design documentation for construction of the objects, which are environmentally hazard as well as to the object submitted to the environmental impact assessment in transboundary context. Thus the article 31.1.3 of the mentioned above law, on the law level, obliges the applicants to conduct the public participation and submit the environmental impact statements to the public authorities. The final decision is, as a general rule, the construction permit being issued by the public authority entitled to undertake the construction control (State architectural-construction inspection). State architectural-construction inspection shall take each its decisions (including to issue of the permit or to refuse the application) reasonably (i.e. taking into account all circumstances relevant for the decision) and proportionally (i.e. striking the balance between each adverse consequences for the rights and interests of the applicant and goal pursued by the decision) (article 2.3.3 and 2.3.8 of the Administrative Court Procedure Code of Ukraine of 06.07.2005).

Thus, despite the fact that the order of the public participation doesn't observe all Compliance Committee of Aarhus Convention recommendations, the order of the public participation, as at 25 of March 2013, was not deteriorated in comparison with the order, which existed under the Law of Ukraine "On Environmental Expertise" and before the Law of Ukraine "On Regulation of Urban Development" had been adopted.

Using the opportunity, we would like to submit a copy of the Law of Ukraine “On amending certain laws of Ukraine in connection to implementation of the Convention on Environmental Impact Assessment in a Transboundary Context”, which was registered in the Verkhovna Rada on 23 of May 2013 (registration № 2109a (annex 1), which intended to solve the shortcomings of the public participation procedure, identified by the decision II/5b of the Meeting of the Parties of Aarhus Convention.

The Draft law 2109a was submitted by Deputy Onishenko O.R. and is in the Verkhovna rada of Ukraine, it makes it impossible to send the draft law, after its approval by all relevant ministers, and before it is submitted for parliamentary approval as the Director of Environmental division of United Nations Economic Commission for Europe asked to do in the Letter.

Ministry avails itself of this opportunity to renew the assurances of the highest consideration.

**Sincerely,**

**Minister**

**O. Proskuriakov**