

Comments of the Applicant on the questions to the Party concerned

- 1 Does the Party concerned accept that the proposed waste incineration plant was to be “an installation for the incineration of municipal waste with a capacity exceeding 3 tons per hour” as referred to in the second bullet of paragraph 5 of Annex I to the Convention?**

According to the para 3.3. of the Chapter 3 of the Evaluation of influence on environment (OVNS) and to Chapter 2 of the Technical and Economical Statements (TEO) the capacity of the incineration plant was planned to be 1 440 tons per 2 lines per 24 hours, which is obviously 60 tons per hour per 2 lines (or 30 tons per hour per 1 line).

- 2 Does the Party concerned consider that EcoEnergy Donetsk OOO was a legal person within the scope of article 2 (c) of the Convention?**

“EcoEnergy Donetsk”, LLP was and still is a legal person, which is grounded on its Statute, issued on 21Dec09 and registered by the Party concerned (Annex 14 to my application).

- 3 Does the Party concerned have an alternative procedure (other than the courts) for a member of the public to challenge the act of the public authority if a request for environment information was ignored, wrongfully refused, whether in part or fully, inadequately answered, or otherwise not dealt with in accordance with the provisions of the Article 4 of the Convention?**

There is no other effective remedy available for a member of the public to challenge the act of public authority if a request for environment information was ignored, wrongfully refused, whether in part or fully, inadequately answered, or otherwise not dealt with in accordance with the provisions of the Article 4 of the Convention, except appeal to the administrative court.

- 4 What time-frame is foreseen under national legislation for the Ukraine Parliamentary Commissioner for Human Rights (Ombudsman) to provide a response to the request from the public?**

There is no time-frame foreseen under national legislation for the Ukrainian Parliamentary Commissioner for Human Rights (Ombudsman) to provide a response to the request from the public specifically as Article 17 of the Law “On the Ukrainian Parliamentary Commissioner for Human Rights” provides only time-frame for a request from public. However, in theory, *mutatis mutandis* it may be applied the Laws “On requests of the citizen” (according to Article 20 of it, the maximum term of consideration is 45 days) or “On access to public information” (according to Article 20 of it, the maximum term of consideration is 20 days). Nevertheless, the Ombudsman is not an effective remedy in Ukraine, as the Ombudsman can only ask the authorities to reduce the violation of rights, but *de facto* there is no practical responsibility for ignoring his requests.

- 5 What is the current state of the project of construction of a waste incineration plant in the Proletarsky District?**

Obviously neither me, nor the Party concerned at the moment can state without any doubt anything about the current status of the project of construction of a waste incineration plant in the Proletarskiy District, as Donetsk city (including Proletarskiy District) remains occupied by pro-Russian terrorists and Ukraine has no effective control on it. However, I would like to highlight that I lodged application in May 2015, and Party concerned had at least 1 year (till May, 2014, when ant-terrorist operation started in Donetsk) to provide the Committee its statement. Moreover, I provided the Committee all the annexes, I had, which are obviously enough either for the Party concerned to provide its comments even in the situation of occupation of Donetsk city. And still, while my application is not finally considered, “EcoEnergy Donetsk”, LLP is able either to build the incineration plant, dealing with terrorists, or wait until Ukraine will renew its control on Donetsk city and build the plant then.

- 6 Please explain the extent to which you consider the actions taken by the Donetsk City Council (in particular actions listed by the High Administrative Court of Ukraine (Decision of 12/08/2014) and Donetsk Appellate Administrative Court (Decision of 13/05/2014): organization of one round table, creation of working group, two meetings and discussions within the working group, placement of answers to the questions of the working group on the website of the company EcoEnergy Donetsk OOO, placement of some information on the result of the working group on the website of the Donetsk City Council) are sufficient to comply with all requirements under the Article 6 of the Convention? If these actions were not in themselves intended to fulfill all the requirements of article 6 of the Convention, please explain which other actions were taken to meet the requirements of Article 6 of the Convention on the decision-making on the waste incineration plant.**

Obviously, the actions taken by the Donetsk City Council, which ended without any result (as working de facto refused to allow the construction of the incineration plant), were not enough to comply with all requirements under the Article 6 of the Convention. The Donetsk City Council was able to use at least 4 effective remedies, allowed by national legislation at that moment: 1) local referendum; 2) local counsel survey of citizen; 3) common meeting of the citizen; 4) public hearings, mentioned in all my claims and appeals to the national courts. However, no one of the above-listed remedies were used on unknown reason.

- 7 Does the Party concerned consider that the State Building Standards of Ukraine ДБН А.2.2-1-2003 Composition and content of the environment impact assessment (EIA) in the design and construction of plants, buildings and structure (State Building Standards ДБН А.2.2-1-2003) are a measure through which to implement article 6 of the Convention? If so, are the State Building Standards ДБН А.2.2-1-2003 currently in force?¹**

I would like to point the attention of the Committee that the State Building Standards ДБН А.2.2-1-2003 were amended by Amendment 1 on 20Nov2009 (came in power on 01July2010). The current text is available at: <http://dbn.at.ua/load/normativy/dbn/1-1-0-242>

However, it is obvious that this act are not effective measure through which to implement article 6 of the Convention, as national Law “On planning and building the territory” after amendments made in 2010 does not obligate the construction companies to organize public hearings or any other measures of the public participation in decision making.

- 8 If the State Building Standards ДБН А.2.2-1-2003 are in force, does the Party concerned consider that the obligations set out in these Standards provide full compliance with all requirements in article 6 of the Convention?**

As above.

- 9 If the Party concerned considers that the State Building Standards ДБН А.2.2-1-2003 do not provide full compliance with all requirements of article 6 of the Convention, which other additional legislative acts ensure compatibility with article 6 of the Convention?**

As was mentioned above, Law “On planning and building the territory” *de facto* contradicts the Article 6 of the Convention.

- 10 Please provide English translations of the relevant national legislation through which the Party concerned implements articles 4 and 6 of the Convention.**

According to para 16 of the Article 1 of the Status of the Ministry of Justice of Ukraine, approved by the Ruling of the Cabinet of Ministers of Ukraine # 228 issued on 02July14, the only Ukrainian body authorized to provide official texts and translations of the national legislation is the Ministry of Justice of Ukraine, so I obviously am not able to provide it.

¹ These building standards are referred to in the EIA for the waste incineration plant.