

**Compliance Committee for the
Convention on Access to Information,
Public Participation in Decision-making
and Access to Justice in Environmental
Matters**

With reference to the information being provided

The Ministry of Ecology and Natural Resources of Ukraine presents its compliments to the Compliance Committee for the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, and has the honour to inform it of the following.

In the aim of implementing the provisions of the Aarhus Convention, the Ministry of Ecology and Natural Resources of Ukraine is providing information in response to the Compliance Committee's questions in Case ACCC/C/2013/87 (appended).

Because the planned site of the waste incineration plant is temporarily outside Ukraine's control, in view of the ongoing anti-terrorist operation and as a result of the impossibility of obtaining original documents and additional information materials held by the Government Administration in Donetsk Oblast, we wish to request termination of the proceedings concerning Mr A.A. Lapin's complaint, that is, of Case ACCC/C/2013/87.

The Ministry avails itself of this opportunity to renew assurances of its highest regard.

Acting Minister

S. I. Kurykin

Comments on questions concerning Case ACCC/C/2013/87

- 1. Does the Party concerned accept that the proposed waste incineration plant was to have been equipped as “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?**

The Environmental Impact Assessment materials submitted to the Committee by Mr Lapin, in particular according to Chapter 3, subparagraph 3.3., indicate the desired production capacity of the plant to be 1 440 tons of waste per 24 hours on two production lines, or 720 tons per 24 hours with one line out of service for repairs. Therefore these materials show that the capacity of the installation is 30 tons per hour and thus the waste incineration plant is an activity provided for by the second indent of paragraph 5 of Annex I to the Convention.

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

EcoEnergy Donetsk OOO is a legal person in accordance with the Unified State Register of Legal Entities and Individual Entrepreneurs (Natural Persons).

- 3. Does the Party concerned have an alternative procedure (other than the courts) for a member of the public to challenge the act (decision) 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?**

Article 23 of Ukraine’s Access to Public Information Act provides for an alternative procedure to challenge decisions of governmental authorities so far as concerns access to information. Appeals against information providers’ decisions, actions, or lack thereof may be lodged with the head of the providing entity or a higher authority.

The applicant has the right to appeal against: 1) rejection of an information request; 2) deferral of an information request; 3) failure to provide information on request; 4) provision of unreliable or incomplete information; 5) failure to provide information in a timely manner; 6) non-compliance by information providers with the Act’s requirements for disclosure of information; 7) other decisions, actions, or lack thereof by information providers which have impaired the applicant’s legal rights and lawful interests.

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

Under Article 17 of the Act on the Ukrainian Parliamentary Commissioner for Human Rights, the Commissioner shall receive and consider communications from citizens of Ukraine, foreigners, persons without citizenship or persons acting in their interests, in accordance with Ukraine's Citizens' Communications Act.

Under Article 20 of the Citizens' Communications Act, communications shall be considered and resolved within a period not exceeding one month from the date when they were submitted; communications that do not require additional examination shall be considered immediately, but no later than fifteen days from the date when they were submitted. If the issues raised in the communication cannot be resolved within one month, the head or deputy head of the relevant body, enterprise, institution, organization shall set a time limit for reviewing the communication; the person who submitted the communication must be notified accordingly. However, the total time taken to resolve the issues raised in the communication may not exceed 45 days. On the basis of a well-founded written request from a citizen, the review period may be brought to an end before expiry of the time limit laid down.

5. What is the current state of the project of construction of a waste incineration plant in the Proletarsky District of the city of Donetsk?

The Proletarsky District of the City of Donetsk, where construction of the waste incineration plant was planned, is an area affected by the ongoing anti-terrorist operation under Ukraine's Act on Temporary Measures for the Period of Anti-Terrorist Operations, and is temporarily outside the control of Ukraine; therefore we are not able to provide the Committee with information on the state of this construction project.

The Ministry has written to the Civil-Military Administration of Donetsk Oblast to obtain comments on the situation with construction of the waste incineration plant, but no reply has been received.

6. Please explain the extent to which you consider the actions undertaken 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 results of the working group on the website of the Donetsk City Council) are sufficient, and compliant with all requirements under the Article 6 of the Convention?

If these actions were not in themselves intended to fulfil 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 in the process of decision-making on the waste incineration plant.

Taking into account the materials submitted to the Aarhus Convention Compliance Committee by Mr Lapin and in the light of article 6 of the Convention,

we consider that the actions taken by Donetsk City Council are sufficient and compliant with the requirements of the Convention.

- 7. Does the Party concerned consider that the State Building Standards of Ukraine ДБН А.2.2-1-2003 Composition and content of environmental impact assessment (EIA) in the design and construction of buildings, facilities and structures (State Building Standards ДБН А.2.2-1-2003) are a sufficient 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?**

Implementation of article 6 of the Convention in Ukraine is ensured not only by State Building Standards ДБН А.2.2-1-2003, but also by the Urban Development Regulation Act, the Environmental Review Act and other laws and regulations, which are to be construed as a whole.

In order to obtain official comments on this, the Ministry wrote to the then Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine – the main central government executive body responsible for making and implementing government policy in the regions, government housing policy and policies related to construction, architecture, urban development and housing and communal services, as well as government policy-making in the areas of architectural and construction monitoring and oversight, monitoring municipal housing and public utilities, informatization, e-government, provision and use of national electronic information resources, development of the information society, best practice in the use of energy resources, energy efficiency, renewable energy sources and alternative fuels, topographical, geodetic and cartographical activities, land law matters, spatial planning, land conservation (excluding the use and conservation of land designated for agriculture) and issues relating to the State Land Cadastre and to regeneration of Donetsk and Lugansk Oblasts (the Donbass).

However, to date, no reply has been received.

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

Implementation of article 6 of the Convention in Ukraine is ensured not only by State Building Standards ДБН А.2.2-1-2003, but also by the Urban Development Regulation Act, the Environmental Review Act, Cabinet of Ministers' Decision No. 808 of 28 August 2013 approving a List of types of activities and projects that present an increased environmental risk, and Cabinet of Ministers' Decision No. 771 of 29 July 2011 approving a Procedure for involving the public in discussion of decision-making matters that may have an environmental impact.

- 9. If the Party concerned considers that the State Building Standards –**

specifically, ДБН А.2.2-1-2003 – do not ensure compliance with all requirements of article 6 of the Convention, are there other additional legislative acts which ensure compatibility with article 6 of the Convention?

Implementation of article 6 of the Convention in Ukraine is ensured not only by State Building Standards ДБН А.2.2-1-2003, but also by the Urban Development Regulation Act, the Environmental Review Act, Cabinet of Ministers' Decision No. 808 of 28 August 2013 approving a List of types of activities and projects that present an increased environmental risk, and Cabinet of Ministers' Decision No. 771 of 29 July 2011 approving a Procedure for involving the public in discussion of decision-making matters that may have an environmental impact.

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

Given the economic situation in Ukraine, we have to inform you that there are no financial resources available for official translation of the relevant national legislation into English.