



**ЕКОЛОГІЯ
ПРАВО ЛЮДИНА**

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To: Chairperson: Mr. Veit Koester,
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
Secretariat of the Convention)

From: Environment-People-Law, former Ecopravo-Lviv
(EPL), a non-governmental organization, Ukraine

November 20th of 2009

**Regarding fulfillment of Decision III/6f on compliance
by Ukraine with its obligation under the Convention**

Dear Mr. Koester,

Environment-People-Law (EPL) is a Ukraine based NGO pursuing nature protection and environmental democracy. Since its communication and initiation of the case by the Aarhus Convention Compliance Committee with regard to Ukraine, EPL was monitoring all the stages of implementation of the Compliance Committee's Findings and Recommendations as well as COP-2 and COP-3 decisions. EPL is deeply concerned with bringing Ukraine in compliance with its obligations under the Aarhus Convention and thus strives to facilitate the Compliance Committee. EPL prepared an independent Assessment of Fulfillment of Decision III/6f by Ukraine and Implementation of the Action Plan Approved by the Decree of Cabinet of Ministers of Ukraine on December 27th, 2008 to be compared by the Compliance Committee with the submission of the Government of Ukraine pursuant to paragraph 6 of the Decision III/6f regarding detailed information on progress in implementing the Action Plan. Hence, EPL kindly asks the Compliance Committee:

- To accept and consider EPL's Assessment of Fulfillment of Decision III/6f by Ukraine and Implementation of the Action Plan Approved by the Decree of Cabinet of Ministers of Ukraine on December 27th, 2008;
- Upon consideration of such Assessment to recommend to the 4-th Meeting of the Parties to the Convention to issue a caution to the Government of Ukraine, to become effective on the day the decision is made by the COP-4.

Yours sincerely,
Elizaveta Alexeyeva

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Assessment of fulfillment of decision III\6f by Ukraine and implementation of the Action Plan approved by the Decree of Cabinet of Ministers of Ukraine on December 27th, 2008

Prepared by

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As it was required by the Decision III\6f, on December 27th of 2008 the Government of Ukraine adopted by its decree an Action Plan aimed to implement the Aarhus Convention in Ukraine. EPL considers implementation of the actions stipulated by the Action Plan as well as the Action Plan itself to be inadequate to fully address the recommendations set out in decisions II/5b and III\6f of the Meeting of the Parties and bring Ukraine in compliance with the Convention.

I. Inadequacy of the action plan

EPL considers that only one requirement set out in the paragraph 5 of the Decision III\6f — to transpose the Action Plan through a governmental normative act ensuring its implementation by all ministries and other relevant authorities (5d) — has been fully fulfilled by the Government.

The major deficiency of the Action Plan is its incapability to resolve the problems identified by the Compliance Committee in its findings and recommendations (ECE/MP.PP/C.1/2005/2/Add.3), and in particular in paragraphs 29 to 35 of the latter document including with respect to issues of clear domestic regulation of time frames and procedures for public consultation, commenting and making available to the public the information on which decisions are based (5a). An implementing regulation that would set out clear timeframe and procedure of public participation to bring Ukraine into compliance with the provisions of the Convention has not been adopted since MOP-2 decision with regard to Ukraine.

The Action Plan does not incorporate capacity-building activities (5b). The measures # 5, 6 and 7 of the Action Plan set out some educational activities, however they do not provide any training for those officials involved in decision-making but only for those who work with mass media and public. The measure # 6 is too general and does not contain any clear activities for resolving problems identified by the Compliance Committee whereas measure # 7 is not related to the Aarhus Convention at all since it provides for education of executives of enterprises.

Contrary to the requirement (5c), the Action Plan does not establish any procedure which would ensure its implementation in a transparent manner and in full consultation with civil society. Draft Action Plan was submitted for public commenting, the majority of essential recommendations made by the public were not taken into account. Furthermore, there is no information on the progress of implementation of the Action Plan neither on the official governmental web-page, nor in any media or press. Draft laws and regulations designed pursuant to the Action Plan are submitted for commenting on their final stage; insufficient time period which is every time different is given due to absence of any regulations for preparation and submission of comments. No response on comments provided, as to whether they were taken into account or not, and if not why, have ever been given to the public.

II. Inadequacy of fulfillment of the actions set out in the action plan

Action plan sets out seven measures to be fulfilled by the end of 2009 or during 2009.

The measure #1 planned the following actions:

- By the end of September of 2009 to design and submit to the Cabinet of Ministers law drafts aiming to amend legislation in order to implement Aarhus convention;
- By the end of November of 2009 — a draft law “On ratification of GMO Amendments to Aarhus Convention”;
- By the end of June 2009 — draft regulation “On Public Participation in Environmental Decision-making” and “On Access to Environmental Information”;
- By the end of August 2009 — draft regulation “On a Network of National Environmental Automatic Informational and Analytical System for Providing Access to Environmental Information”.

By the end of November of 2009 the only law draft regarding implementation of the Aarhus Convention that was designed and submitted for public comments is a draft law “On Amendments to Article 25 of Law of Ukraine “On Environmental Protection” (regarding definition of environmental information). EPL considered this draft law to be poorly written because it fails to include all types of environmental information listed in the Convention, and thus submitted essential comments and recommendation. EPL still does not know to what extent its comments were taken into account. The draft law has not been adopted by the Parliament yet.

As to draft regulations “On Public Participation in Environmental Decision-making”, “On Access to Environmental Information”, and “On a Network of National Environmental Automatic Informational and Analytical System for Providing Access to Environmental Information” — they have not been submitted for public comments until November 16th, 2009. The Ministry of Environmental Protection announced to hold public hearing on these drafts on November 17th of 2009 and gave public one (!) day to provide comments. Both draft regulations — “On Public Participation in Environmental Decision-making” and “On Access to Environmental information” are of a very low quality. They provide for procedures in even more general manner than laws or similar regulations adopted by the Ministry for Environmental Protection in 2003. There are also a lot of contradictions within 4-page long draft regulations.

The draft regulations fully ignore Findings and Recommendations of the Compliance Committee adopted at its 23-rd meeting. The regulations do not contain provisions **(a)** requiring that public authorities obtain environmental information relevant to their functions **(b)** requiring that information within the scope of article 4 of the Convention is provided, regardless of its volume; **(d)** setting specific timeframes for the public consultation process, in particular **(ii)** the time for the public to prepare and submit comments; **(e)** requiring that sufficient time for public officials to take any comments into account in a meaningful way; **(f)** how the Government will prevent the use of short cuts in the decision-making procedure, i.e. parts of EIA being provided for evaluation and approval by the decision-making authority prior to any information of the project or plan being made publicly available; **(g)** requiring that public authorities do not limit the provision of information under article 6, paragraph 6, and article 4 of the Convention to publication of the environmental impact statement but include other relevant information to ensure more informed

and effective public participation; **(h)** clarifying that information that applicants are required to provide in the course of the public authorities' decision-making under article 6 is generally not exempt from disclosure; **(i)** requiring disclosure of EIA studies in their entirety as the rule (with the possibility for exempting parts being an exception to the rule); **(j)** requiring that texts of decisions, are publicly available, along with the reasons and considerations on which they are based.

The **measure #2** lays down an intention to design and adopt Model regulation on regional Aarhus center. By the end of November no such draft was posted on governmental web-page or submitted for public commenting in any other way.

The **measure #3** obliges Ministry of Environmental Protection and its regional departments to post on a regular basis statements of impact and conclusion of state environmental expertise (EIA) on their official web-pages and in the magazine "Ecotyzhden". By the end of November 2009 there are only five conclusions of state environmental expertise on the web-page of the Ministry (a few hundred are issued every year) whereas some regional departments not only fail to post, but also deny public access to such documents upon requests considering **all the conclusions of state environmental expertise to be a confidential information either of a state, or a developer**. No statements of impact are available on the Internet.

By the **measure #4** the Government planned to create Intergovernmental Working Group on Implementation of Aarhus Convention. By the end of November 2009 such body has not been created. A decree on its establishment has not been adopted yet.

The **measures # 5, 6 and 7** set out some educational activities. There is no information on official governmental web-page or in media regarding implementation of these activities. They either have not been fulfilled or the Government conducted them in a non-transparent way so the public is not aware of implementation of these measures of the Action Plan.

Conclusions

EPL considers that actions taken by the Government of Ukraine by the end of November 2009 are not sufficient to fulfill the decision III\6f and bring Ukraine in compliance with its obligations under the Aarhus Conventions since Ukraine fully ignored the main requirements of paragraph 5 of decision III\6f which is to create clear domestic regulations of time frames and procedures for public consultations, commenting and making available to the public information on which decisions are based and also did not fulfill even the activities listed in the Action Plan.