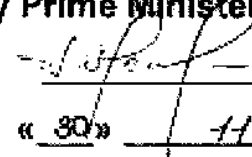


APPROVED

Deputy Prime Minister of Ukraine


H. Nemyria

« 30 » 11 2009

Report of the Government of Ukraine

**on the state of implementation of the decision of the Parties to Aarhus
Convention III/6f , adopted at the third Conference of Parties to the
Aarhus Convention (June 8-13, 2008, Riga, Latvia)**

Convention (June 8-13, 2008, Riga, Latvia)

Kyiv 2009

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Introduction

Pursuant to the decision III/6f of the Conference of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in matters relating to the environment (hereinafter - the decision of the Parties to the Convention) and taking into account the conclusions of the twenty-third meeting of the Compliance Committee of the Convention on 3 April 2009, the Government of Ukraine provides step by step, but concrete measures to implement decisions of the Parties and provides the annual report on the implementation of the Convention Action Plan in Ukraine. In order to implement the provisions of the Aarhus Convention the Cabinet of Ministers of Ukraine approved Action Plan to implement the decision the Parties to the Aarhus Convention III/6f dated 27 December 2008 № 1628-p.

The main part
Legislative changes

Pursuant to the recommendations of the Committee and in order to comply with Aarhus Convention the Government of Ukraine has taken the following measures:

- **Developed and sent for the re-approval the draft Law of Ukraine "On ratification of the amendment to the Convention on Access to Information, Public Participation in decision-making and Access to Justice in Environmental Matters" (Aarhus Convention) (on genetically modified organisms)".**

It should be noted these issues are partly regulated by national legislation of Ukraine. The Cabinet of Ministers of Ukraine Resolution dated April 2, 2009 № 308 "On approval of the licensing for approbation (testing) of genetically modified organisms in open system" takes into account the requirements of the Convention amendment.

- **Developed and sent to re-approval the draft Law of Ukraine "On Amendment to Article 25 of the Law of Ukraine on Environment Protection".**

The current wording of article 25 of the Law of Ukraine dated 25.06.1991 № 1264-XII "On Environment Protection" provides definition of the "information on the state of the environment (environmental information)", and identifies the notion of "information about the state of the environment" and "environmental information", which does not fully meet the requirements of the Convention. In order to eliminate the mentioned discrepancies, the Ministry of Environmental Protection has been requested to amend the Act in the following way:

1) the title and paragraph one of the words "Information about the state of the environment (environmental information)", replace with the words environmental information".

2) To amend paragraph two, after the word "bosoms" to "soil and landscapes".

3) To amend paragraph sixth after the word "environment" with "agreements in the field of environment".

4) To amend article 25 with the paragraph eighth as follows: "The health and safety of people, living conditions of people, the state of cultural venues,

infrastructure and other facilities, if they affect or may affect the state of the environment or its facilities.”

- Pursuant to paragraph 6 of the Action Plan to implement the decision of the Parties to the Aarhus Convention III/6f approved by the Cabinet of Ministers of Ukraine on 27.12.2008 by the Decree № 1628, the Ministry of Environmental Protection of Ukraine established an Interministerial working group to ensure implementation of the decision of the Parties to the Aarhus Convention comprising representatives of 16 central authorities.

- Developed and is in the process of expert consultations the draft of the Decree of the Cabinet of Ministers of Ukraine “On approval of the provision and dissemination of environmental information”. In particular, the draft contains the following wording:

1) The executive authorities and its agencies on the ground, enterprises, institutions and organizations collect and systematically-analytical process the environmental information in their possession pursuant to the mandate and its objectives.

2) The executive authorities, enterprises, institutions and organizations that have environmental information, provide, in the frame of mandate and tasks assigned to them, the formation and continuous updating of electronic databases of environmental information and provide public access to them via Internet, as well as providing direct access to the inquirer at their request. Information, access to which should be provided via Internet, should include:

- a) National and regional reports and reports on the state of the environment to highlight the dynamics of change;
- b) the list of texts and draft regulations in the field of environmental protection, and reports on compliance with environmental legislation;
- c) documents on policy issues in the sphere of environmental protection, plans for environmental protection, programs and projects;
- d) international agreements in the sphere of environmental protection and the status of their implementation;

- e) other information about the status of individual objects environment, if it could affect the public;
- f) information on the environmental emergency in terms defined by the Law of Ukraine dated 13.07.2000 № 1908-III "On the emergency environmental area".
- g) enterprises, institutions, organizations and business entities whose activities are determined in the manner prescribed by law as environmentally dangerous, disclose to the public through the media about the negative impacts on the environment annually (emissions, discharges of pollutants, wastes in the environment, other factor of negative impact on the environment), arising from the implementation of their economic activity;
- h) intention to place the enterprises of high environmental risks that require the environmental impact assessment, and materials of the EIA, including non-technical opinion.

3) Executive authorities, enterprises, institutions and organizations provide the disclosure of information through the media about:

- a) state of the environment, the dynamics of its changes, sources of pollution, wastes;
- a) ecological emergency situations and measures for their elimination and pollution sources;
- b) development and adoption programs, action plans, national, regional and local as well as documents on policy issues that affect the environment;
- c) environmental problems of the industry or region and possible solutions to attract people to participate in decision making process concerning the environment;
- d) The intention to place the enterprise of high environmental risk that requires environmental impact assessment;
- e) Intention to issue the relevant documents on the use of natural resources, excluding those of local significance, as well as environmental pollution, which are issued within their powers;
- f) Registered modified organisms in accordance with international agreements that can be imported into the country;

g) experience of cooperation with the public in the field of environmental protection, rational use of natural resources and environmental security;

f) other environmental considerations or factors that are important to public in carrying out its public environmental review or implementation of other environmental rights;

c) Information about the environmental emergency in terms defined by the Law of Ukraine "On the emergency environmental area".

4) Environmental information is provided in full, regardless of the volume, **not later than one month after the request**, unless the volume and complexity of gathering the requested information does not justify an extension of this period to two months after the request. If necessary, extension of the person concerned must be notified **no later than ten days** after receipt of the request.

5) A request for environmental information may be refused in case:

a) the information requested is not in the public body;

b) the requested information is the classified information, but without violating Article 52 of the Constitution of Ukraine;

c) information relates to internal information exchange between public authorities;

d) the request is obviously frivolous;

e) information concerning the materials that are in the final stage of their completion;

f) disclosure of information may adversely affect: the confidentiality of public bodies, if such confidentiality is provided by applicable law, international relations, national defense or national security, according to the Law of Ukraine "On state secret"; the exercise of justice, the opportunity for people to be committed during the trial or the ability of state authorities to investigate criminal, administrative or disciplinary cases; intellectual property rights; environment, in which such information is distributed, particularly in the area that is a habitat and places of breeding for specially valuable, rare and that endangered species.

6) When the undisclosed information could be separated from other information without compromising confidentiality of information which is not subject to disclosure, the state body of executive authorities, enterprises, institutions and organizations regardless of ownership, public associations or official are obliged to provide another part of the requested information.

- Developed and is in the process of expert consultations the draft Decree of the Cabinet of Ministers of Ukraine "On approval of public participation in decision-making in the field of environmental protection." In particular, the draft Decree contains the following provisions:

1) Statement of the draft decision on the activities defined by Annex 1 to the Aarhus Convention or the draft legal act, policy or plan relating to the environment, should be placed in nationwide printed media.

2) Observations and comments on the draft decision sent in writing to the decision-maker.

3) Where within forty-five days from publication of a statement about the need for public discussion is received from the public concerned, the coordinator of the draft decision should ensure its implementation. In the absence of such statement the decision-maker is entitled to choose any form of public participation in decision-making in the field of environmental protection.

4) The coordinator of the public discussion appoints a date and venue for public debate and informs the subjects of public debate, **not later than 45 days prior** to its conduct through the media, which in its circulation and the location is appropriate with the volume and location of the interested public (as an alternative can be the national media).

5) Do not appoint a public discussion for working days and working hours or otherwise, which would make it impossible to public participation in public discussion.

6) Notification of a public discussion is conveyed to the public concerned in the same manner as the statement of the draft decision.

7) The coordinator of the draft decision determines the duration of public discussions, depending on the type of target solution. Duration of public discussion, unless otherwise provided by applicable law, may not exceed:

3 months - for international, national, regional programs, plans, strategies, concepts, projects, regulations, activities, which make or may have a negative impact on the environment, or decisions on the costs associated with implementation of environmental measures through the State Fund for Environmental Protection;

2 months - for local programs, plans, strategies, decision-making regarding the costs associated with implementation of environmental activities by local funds of Environmental Protection;

1 month - for the issuance of relevant documents on the use of natural resources on the deliberate release of genetically modified organisms into the environment as well as decisions on activities that make or may have a negative impact on the environment.

On its own initiative or at the request of the public entity that decision may extend the public discussion, if any data, information or evidence received during the public discussion led to radically new circumstances, for a period necessary to take account of these circumstances but not more than 1 month.

8) The notification of public discussion, unless otherwise provided by applicable law, must contain information about:

- (a) The proposed activity and the application on which a decision will be taken;
- (b) The nature of possible decisions or the draft decision;
- (c) The public authority responsible for decision-making;
- (d) The envisaged procedure, including, as and when this information can be

provided:

- (i) *The commencement of the procedure;*
- (ii) *The opportunities for the public to participate;*
- (iii) *The time and venue of any envisaged public hearing;*
- (iv) *An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;*

(v) *An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and*

(vi) *An indication of what environmental information relevant to the proposed activity is available; and*

(e) *The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.*

9) The coordinator, after determining the appropriate decision on the issue under consideration informs the public about the issue, taking into account the public comments, through the media **in the period which must not exceed 30 days.**

10) At the written request of the public, the transcript, audio, video, full text of the decision with its reasoning and other materials relevant to public discussion may be obtained.

11) In reviewing the draft regulations in the use of natural resources or the environment of their text to be published in the media **no later than 30 days prior to public discussion.**

- **Currently the draft order of the Ministry of Environment Protection of Ukraine on approval of provisions on the Aarhus Centers is under development.**

- **Currently the set of changes and amendments to the EIA legislation, with the aim of harmonization with the Convention is under development.**

Capacity Building

- **The first out of four regional workshops on the implementation in Ukraine of Aarhus Convention took place in October 2009, in Zaporizhzhia. It was organized by the Ministry of Environment Protection of Ukraine together with the USAID "Parliamentary Development Project for Ukraine".**

Experts from the public and territorial administrations of the Ministry of Environment were invited to participate in the workshops. The participants were presented with the analysis of the implementation of the Convention in Ukraine, the drafts of the Decrees of the Cabinet of Ministers of Ukraine "On approval of the

provision of environmental information” and “On approval of public participation in decision making on issues concerning the environment.”

- In November this year, the Ministry of Environmental Protection of Ukraine jointly with UNITAR conducted an introductory seminar on the implementation of the protocol PRTRs to the Aarhus Convention, aimed at spreading awareness among government officials, academics, industry and the public on PRTRs.

In order to raise the awareness in Ukraine of the abovementioned Protocol, the Ministry of Environment Protection of Ukraine jointly with the State Ecological Academy of Postgraduate Studies and Management and the United Nations Institute for Training and Research (UNITAR) have been working on defining the goals of the national system PRTR, namely:

1. establish contacts and gather information to enhance cooperation and coordination of key partners at national level.

2. summary of the National Report on PRTRs.

3. it holds an introductory seminar on the implementation of the protocol PRTR aimed at spreading awareness of government officials, academics, industry and the public on PRTRs.

The next year is scheduled for extensive discussion of the national system of PRTR public, a technical meeting of experts and developing a pilot system of reporting on PRTRs. Also in 2010 it is planned to develop the key elements of PRTRs and test reporting PRTR in test mode in the pilot regions of Ukraine. Upon completion of the planned activities, the Ministry of Environment Protection of Ukraine is going to be ready to provide proposals for the establishment of PRTRs in Ukraine, in parallel to these measures and considering the results of the pilot reporting system PRTR will be developed a draft law on ratification of the PRTR.

- The Ministry of Environmental Protection of Ukraine carries out active cooperation with international and Ukrainian independent experts as part of the Framework Contract provided by the European Commission “Support to Ukraine in implementation of the Aarhus Convention and Espoo Convention”.

Particularly expert team aims to provide independent analysis and implementation of the Convention in Ukraine, which will help to identify further concrete steps of the government. The expert group agreed to: develop a draft order on the National Coordinator for the implementation of the Convention in Ukraine, review for compliance with the Convention the draft decree of the Cabinet of Ministers of Ukraine "On approval of the provision of environmental information" and "On approval of public participation in decision-making in the field of environmental protection" assist in the development of model provisions "On the Aarhus Center". First results and conclusions of the project will be presented in early December 2009. It should be noted that the head of the expert group that provides cooperation with these issues is Jerzy Zhendroska, a member of the Compliance Committee of Aarhus Convention and Espoo Convention.

Conclusions

Government of Ukraine carries out a systematic and gradual steps to implement Aarhus Convention in Ukraine and comply with the decree of the Cabinet of Ministers of Ukraine dated 27.12.2008 № 1628-p on Approval of the Plan for implementation of the decision of the parties to Aarhus Convention III/6f.

**Minister of Environment
Protection of Ukraine**



Georgiy Filipchuk