To: The Government of Ukraine
12/2 Gryshevskogo Street, Kyiv, 01008, Ukraine

The Ministry of Ecology and Natural Resources
39 Urytskogo Street, Kyiv, 03035, Ukraine

The Aarhus Convention Compliance Committee
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The European Commission
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The public and press

May 28, 2012

EPL’s position for the forthcoming Aarhus Convention Compliance Committee meeting which is to decide whether the caution imposed on Ukraine be lifted

It has been over seven years since the Aarhus Convention Compliance Committee made its first findings on non-compliance by Ukraine with its access to information and public participation obligations under the Aarhus Convention. In a few weeks (June 26-29, 2012) the same Committee will establish whether Ukraine has implemented the requested measures and consequently whether the caution imposed on Ukraine by the last Meeting of the Parties (MOP) to the Convention last summer in Chisinau be lifted. This document expresses and justifies EPL’s position on the matter.

One day before the MOP in Moldova made its decision with regard to Ukraine, the Deputy Minister of the Environment of Ukraine solemnly announced that the Government of Ukraine had just passed a new act (Resolution of the Cabinet of
Ministers #771) regulating public participation in environmental decision-making implementing and introducing the Aarhus principals and provisions into the domestic legislation hoping that this would persuade the MOP not to impose international sanctions on Ukraine. No wonder that the MOP could not change its draft decision based on such new and not verified information, but the MOP none the less noted this fact and amended the operative part of its decision accordingly.

By its decision the MOP issued caution to Ukraine, but also decided that the caution would be lifted on 1 June 2012, if the Party concerned had fully implemented the measures requested by the Meeting of the Parties decision II/5b and had notified the secretariat of this fact, providing evidence, by 1 April 2012.

The normative act on public participation adopted by the Government on the eve of the MOP's decision was a great quality document drafted within the project sponsored by the European Commission by a team of national and foreign experts. The Ministry of the Environment made everything within its powers to get it passed by the MOP4, and they succeeded in this. It was adopted and signed on the meeting of the Government on June 29th, 2011, which was announced in Chisinau. However, after its adoption and signature its text was heavily changed (a 23 pages solid document was reduced to 6 pages of incoherent and contradictory passages) under the pressure of a few powerful ministers. As the result the document made meaningful public participation even less possible then before.

In February 2012 EPL challenged the act in court based on violation of the procedure for adoption of such acts. (After a document is signed by the Government no changes even grammatical are allowed. If there is a need to change something in a draft, it shall go through the meeting of the Government again, but not be rewritten behind the curtain by two or three influential officials). The court agreed. On April 25, 2012 by the decision of

У своєму рішенні НС винесла попередження Україні, але також ухвалила, що попередження буде скасовано 1 червня 2012 року, якщо Сторона повною мірою реалізує заходи, передбачені рішенням Наради Сторін II/5b, повідомить секретаріат про цей факт та представить відповідні підтвердження до 1 квітня 2012 року.

Нормативний акт про участь громадськості, прийнятий урядом напередодні рішення НС, був якісним документом, підготовленим в рамках проекту фінансованого Європейською Комісією групою вітчизняних і зарубіжних експертів. Міністерство охорони навколишнього природного середовища України зробило усе можливе в межах своїх повноважень, щоб він був ухвалений до НС4, що і було досягнуто. Він був прийнятий і підписаний на засіданні уряду 29 червня 2011 року, про що було оголошено в Кишиневі. Проте, після його прийняття і підписання, його текст був сильно змінений (логічний і послідовний документ на 23 сторінки був скорочений до 6 сторінок суперечливих положень) під тиском кількох впливових міністрів. В результаті документ зробив змістовну участь громадськості ще менш можливою, ніж раніше.

У лютому 2012 року ЕПЛ оскаржила цей акт в суді, спираючись на порушення процедури прийняття подібних актів. (Після того, як акт був підписаний урядом жодні зміни, навіть граматичні, не допускаються. Якщо є необхідність змінити проект, він повинен пройти засідання уряду ще раз, а не переписуватися «під столом» двома або трьома впливовими чиновниками). Суд
the court the Resolution of the Cabinet of Ministers # 771 was annulled.

However, long before April the Government forgot about the act adopted with the only goal – to buy time and avoid international sanctions. Since November 2011 the same group of experts was assigned to draft a new Law of Ukraine on Environmental Impact Assessment (the Law on EIA) fully reflecting the problems identified by the Aarhus Compliance Committee. As the draft Regulation mentioned above, the draft law, currently posted on the governmental web-page for public commenting, is a solid and coherent piece of legislation, but it has not been even introduced to the Parliament yet, not to say adopted. This draft law was submitted to the Secretariat of the Aarhus Convention after the April 1st deadline that is why it will be evaluated by the Committee at the end of June 2012.

In April 2012 a new Minister of Ecology and Natural Resources was appointed - Eduard Stavytskyi. With his appointment and the continuing reluctance of the rest of the Government to truly implement the Aarhus Convention, EPL does not see the Law on EIA adopted in a foreseeable future.

Based on the above EPL urges

A. The Aarhus Convention Compliance Committee

1. To evaluate the draft law and make its findings establishing whether all the measures requested from the party concerned were fully implemented.

2. Even if the evaluation proves full implementation of the MOP decision II/5b, not to lift the caution imposed on Ukraine, given that the document is just a draft, and there is no guarantee it will be adopted as drafted or adopted at all.

B. The Government of Ukraine

1. Upon evaluation of the Compliance Committee to take all necessary measures insuring the actual and urgent adoption of the Law on EIA as drafted

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by the experts and accordingly to the evaluation of the Committee;

2. Keep in mind that failure to actually implement all the measures requested by the MOP decision II/5b (including to adopt the appropriate legislation) will result in suspension of the special rights and privileges accorded to Ukraine under the Convention by the decision of the MOP5.

C. The European Commission

1. To take appropriate measures persuading the Government of Ukraine to make use of the results of the two technical support projects funded by the EC;

2. Address the Prime Minister of Ukraine and the newly appointed Minister of Ecology and Natural resources with a note urging Ukraine to adhere to its commitments under the Aarhus Convention.

C. Європейську Комісію:

1. Прийняти відповідні заходи для переконання уряду України, використати результати двох проектів технічної підтримки фінансованих ЄС.

2. Звернутися до прем'єр-міністра України та новопризначеного міністра екології та природних ресурсів із нотою, закликаючи Україну дотримуватися своїх зобов'язань, що випливають із Орхуської конвенції.

Executive director of Environment-People-Law Olena Kravchenko,

Виконавчий директор МБО «Екологія-Право-Людина» Олена Кравченко

Head of legal department of Environment-People-Law Yelyzaveta Aleksyeyeva

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