



**ENVIRONMENT
PEOPLE LAW**

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ANALYSIS of the RESOLUTION of the CABINET of MINISTERS of UKRAINE

**"ON AMENDMENTS TO THE PROCEDURE FOR CONDUCTING PUBLIC HEARINGS
REGARDING CONSIDERATION of PUBLIC INTERESTS DURING DEVELOPMENT
of CITY PLANNING DOCUMENTATION AT the LOCAL LEVEL"**



Analysis of the Resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Procedure for Conducting Public Hearings Regarding Consideration of Public Interests During Development of City Planning Documentation at the Local Level"

On October 21, 2022, the Cabinet of Ministers of Ukraine approved a new version of the Procedure for holding public hearings on developing city planning documentation at the local level, which was previously approved by the Resolution dated May 25, 2011.No. 555.

The changes, in particular, define the requirements for:

- participants of public hearings;
- notification about and recording of public hearings;
- consideration of public proposals;
- drawing up and publishing the minutes;
- storage of materials of public hearings.

It should be noted that back in 2021, a new type of urban planning documentation was introduced in Ukraine at the local level - a complex plan of spatial development of the territories of territorial communities. This documentation simultaneously performs urban planning and land management functions. Complex plans will simultaneously provide for planning of the territories of settlements (they will include general plans of settlements) and planning of territories outside settlements.

The Minister of Communities and Territories Development of Ukraine notes that the adoption of this resolution will ensure transparency of the process, allow to maximize the potential of a territory, and, therefore, to attract investments, while also taking into account the interests of residents. **In our opinion, the document contains a number of provisions that undermine the effectiveness of public participation and open the way to abuse.**

I. From the point of view of public participation in the SEA procedure

The key problem of legislation on SEA in terms of public participation is the inclusion in the law of the definition of the term "the public", which complies neither with the Aarhus Convention, the Protocol on SEA, nor the relevant EU Directives. In particular, according to Article 1 of the Law on Strategic Environmental Assessment (hereinafter referred to as the SEA Law), the concept of "the public" (p. 3) is limited to persons, their associations, organizations or groups registered in the territory to which the document of strategic planning applies, while, according to the international standard, it is actually any natural or legal person. Thus, the circle of persons who can submit written comments and proposals and participate in public hearings in the SEA procedure is significantly limited and narrower than required by Ukraine's international obligations in this area.

It's a shame that approving the draft law No. 5159 "On Amendments to Certain Laws of Ukraine Regarding the Introduction of Liability for Violation of the Procedure for Strategic Environmental Assessment" in November 2022, the Verkhovna Rada of Ukraine did not correct this deficiency.

Regarding public hearings. Such hearings took place during the approval of state planning documents long before the introduction of EIA and SEA procedures in Ukraine. In an attempt to optimize the procedures of reaching consensus by all participants in the process of development and approval of urban planning documentation, the Law on SEA established that public discussion in the process of strategic environmental assessment of draft urban planning documentation at the local level is conducted according to the procedure specified by the Law of Ukraine "On Regulation of Urban Planning Activities" for public discussion of draft urban planning documentation at the local level. On the basis of this provision, relevant changes were also made in Resolution 555 in order to meet the requirements for public participation in the SEA.

The updated version of Resolution No. 555, approved in October of this year, once again returns these hearings to the paradigm of "considering public interests" and moves them away from the standards of public participation in decision-making on environmental matters. The purpose of the first option is to find a compromise between the initiators of developing urban planning documentation, developers and the public; the purpose of the second option is to provide the public

with the opportunity to convey to the competent authority any important environmental considerations regarding the state planning document or the SEA report on environmental consequences of implementation of such a state planning document.

In our opinion, it should be noted that from October of this year, public participation in the SEA procedure is ensured only in the form of a possibility to submit written comments and suggestions, and only by persons who are registered in the territory covered by the state planning document.

II. From the point of view of public participation in the development of urban planning documentation

According to the procedure, the "public" is limited to individuals, their associations, organizations or groups registered in the territory covered by the strategic planning document. At the same time, the specified persons need to prove this by providing documents on residence registration, registration of real estate, location of the legal entity. A representative of the initiator of urban planning documents checks documents of the participants during the hearing and does not register proposals from members of the public who have not provided such documents.

When public hearings are held regarding sparsely populated or unpopulated territories, the civil society will not actually be able to express their opinion, and during the hearings regarding an industrial zone, such hearings will be attended only by business owners who are interested, for example, in changing the planning structure and functional purpose of territories to increase their own profit.

At the same time, para 4 defines the circle of participants of public hearings including representatives of self-organization of the population, deputies of local councils, people's deputies of Ukraine, and creates a conflict with the previous paragraph. However, according to para 9, the chair of the hearing must record proposals or comments (or their absence) precisely from the "public" in the sense of para 3. Only "the public" has the right to challenge in court any violations of the procedure of conducting public hearings.

Moreover, para 10 of the draft Procedure establishes that every participant of a public hearing sitting has the right to submit proposals, express comments, ask questions orally or in writing, but decisions are made by a simple majority of the participants having the right to vote. At the same time, the Procedure does not contain either a definition of a "participant having the right to vote" or criteria for defining the person that can be granted this right. This gives the initiator the opportunity to form a circle of such persons at his/her own discretion and to influence the outcome of the public hearing. At the same time, the provision regarding the approval commission was excluded from the previous version of the Procedure, thus enabling the initiator to make decisions on further development of drafts at his/her own discretion.

There was cancelled the requirement for initiators of urban planning documentation to ensure registration, consideration and account taken of public proposals and publication of the results of such consideration. Moreover, there was cancelled the requirement regarding the amount of materials to be made public, including those from "Environmental Protection" section or a SEA report. Therefore, initiators will be able to publish only some parts at their own discretion.

This act does not define the procedure for moving public hearings to another time or place. Also, the resolution envisages participation of representatives of at least three-fourths of the settlements or starosta districts to which they belong, for the community for which the complex development plan is being developed, and at least two representatives from each settlement for which urban planning documentation is being developed. However, the consequences of non-compliance with this requirement have not been established. Therefore, this creates another opportunity to artificially limit public participation.

Conclusions. Thus, the new Procedure enables holding fake hearings with wide opportunities for lobbying business interests and a controlled outcome and everything under the police protection (p. 15). Such an imitation of hearings will legalize the deryban (the process of distributing public or state-owned resources among a narrow circle of the elite, serving their private interests) of

sparsely populated areas, which often have great environmental value. It will allow promoting any harmful projects in depopulated and war-torn communities, where there are problems with transport and access to information, and where a significant part of the active population have left their homes.