

# TOWARDS TRANSPARENCY AND PUBLIC PARTICIPATION IN THE DECISION-MAKING PROCESS ON SUBSOIL USE UNDER PRODUCTION SHARING AGREEMENTS



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# **Towards Transparency and Public Participation in the Decision-Making Process on Subsoil Use under Production Sharing Agreements**

## *Summary Version*

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This document examines Ukraine’s progress in fulfilling its European integration commitments regarding access to environmental information and public participation in environmental decision-making. It specifically focuses on transparency and participatory mechanisms related to granting authorization for mineral extraction under production sharing agreements (PSAs), particularly regarding the Ukrainian government's compliance with decision VII/8r of the Aarhus Convention Meeting of the Parties concerning Ukraine’s failure to meet obligations in the context of PSAs.

The document reviews the situation that brought the issue to international attention, summarizes the conclusions and recommendations of the Aarhus Convention Compliance Committee and the Meeting of the Parties, analyses Ukraine’s progress in implementing the recommendations, and offers proposals for an action plan and concrete steps to bring Ukraine back into compliance with the Convention on matters related to PSAs.

## **Abbreviations Used**

StateGeoSubsoil – State Service of Geology and Subsoil of Ukraine

EPL – ICO “Environment-People-Law”

CMU – Cabinet of Ministers of Ukraine

Convention, Aarhus Convention – UNECE Aarhus Convention on Access to Information,

Public Participation in Decision-making, and Access to Justice in Environmental Matters

Committee – Aarhus Convention Compliance Committee

Meeting of the Parties – Aarhus Convention Meeting of the Parties

PSA(s) – production sharing agreement(s)

## 1. Background

In January 2013, the Cabinet of Ministers of Ukraine (CMU) signed a production sharing agreement (PSA) with Shell granting the company exclusive rights to extract hydrocarbons on the Yuzivska field (approximately 8,000 km<sup>2</sup>) for 50 years.

Although the PSA text did not mention extraction technology, Shell campaigned in favour of hydraulic fracturing (“fracking”), raising environmental concerns. Civil society organisations raised concerns regarding potential environmental harm, state share of the PSA being channelled through a company linked to high-ranking officials and the confidentiality clause included in the PSA. Similar concerns arose about Chevron’s PSA on the Oleska field. In numerous occasions the public requested the PSAs and to be involved in decision-making processes.

Despite the constitutional principle that subsoil belongs to the people, the agreements were signed without any public consultation and made secret. The confidentiality clauses were included into the agreements, the Yuzivska PSA was classified as “for official use only.” Neither draft or signed texts of Yuzivska or Oleska PSA have ever been disclosed to the public. The CMU failed to conduct a mandatory state environmental expertiza (an instrument somewhat similar to environmental impact assessment prescribed by the legislation in force in the times of the events) for the Yuzivska PSA. The state environmental expertiza for Oleska PSA was conducted without any public participation.

In June 2013, ICO “Environment-People-Law” (EPL) filed a lawsuit against the CMU demanding disclosure of Yuzivska PSA, relying on the Constitution, the Law on Access to Public Information, and the Aarhus Convention. Courts of all instances dismissed the claims, applying exclusively the special PSA legislation lacking disclosure obligations.

In August 2013, EPL requested the StateGeoSubsoil for the special permit of subsoil use; the request was denied citing confidentiality. The court initially supported this position, but in 2015 the appellate court and the Supreme Administrative Court of Ukraine ordered the StateGeoSubsoil to provide the permit. The agency delayed implementation until after enforcement proceedings in June 2016.

EPL challenged the CMU’s failure to carry out a mandatory state environmental expertiza for Yuzivska PSA and failure to ensure public participation in a state environmental expertiza for Oleska PSA, but courts rejected the lawsuit on grounds that EPL lacked standing.

Having exhausted domestic remedies, EPL appealed to the Aarhus Convention Compliance Committee in Geneva (Committee).

## **2. Committee's findings on compliance**

### *2.1 Environmental Information*

The Committee found that PSAs are “administrative measures” affecting or likely to affect the environment (soil, landscape, etc.) and thus contain environmental information under paragraph 3(b) of Article 2 of the Convention.

Under Article 4, such documents must be fully disclosed on request, except for confidential information under paragraphs 3 and 4 of Article 4. Confidentiality by agreement with third parties does not exempt the state from disclosure obligations.

Ukraine's refusal to provide the full or redacted PSA texts upon request from the public breached paragraph 1 of Article 4.

### *2.2 Public Participation*

The Committee stated that PSAs and subsoil use permits are interconnected decisions requiring public participation under Article 6. Public participation must occur early when all options are open and effective public participation can take place.

2019 amendments to the Law on PSAs allowing public participation only once a PSA is already at the implementation stage violate paragraph 4 of Article 6. Thus, Ukraine failed to ensure timely public participation and thus is not in compliance with paragraph 4 of Article 6.

### *2.3 NGO Legal Standing*

EPL is a legally registered NGO with statutory environmental protection goals, thus entitled to file complaints under paragraph 2 of Article 9.

Ukraine's courts' refusal to consider EPL's lawsuit for lack of “personal interest” violates access to justice rights guaranteed by paragraph 2 Article 9 of the Convention.

### *2.4 Enforcement of Court Decisions*

The Committee noted a 16-month delay in enforcing a court ruling on subsoil use permit disclosure, showing ineffective remedies for review of requests for environmental information.

Ukraine violated paragraph 4 of Article 9 requiring prompt and effective access to justice in cases related to disclosure of environmental information.

### **3. Ukraine's Progress in Implementing the Meeting of the Parties' Decision (2021–2025)**

Per decision VII/8r, Ukraine was to submit an Action Plan by July 1, 2022, and gradually implement it in 2023–2024. However, as of October 2025, Ukraine has not developed the Plan despite forming a dedicated governmental working group. The Committee analysed two progress report submitted by Ukraine and concluded the following:

#### *3.1 Recommendation (a): Disclosure of PSA Texts on Request*

Ukraine enacted a 2021 law requiring publication of full PSAs signed after December 17, 2021, and key terms for earlier agreements. The Committee noted:

- for PSAs before 12/17/2021, partial disclosure of key terms is insufficient; full texts must be available on request;
- for PSAs after 12/17/2021, full disclosure (except where Article 4 exemptions apply) means the recommendation is met.

However, due to martial law, no PSAs are published, and Ukraine has not justified exceptions under Article 4. Therefore, recommendation (a) is unfulfilled.

#### *3.2 Recommendation (b): Early Public Participation*

Ukraine provided no information on measures to ensure public participation before PSA approval. Recommendation (b) remains unfulfilled.

#### *3.3 Recommendation (c): NGO Access to Justice*

The government cited current constitutional and procedural provisions, claiming recommendation (c) was met. EPL countered that legal framework remains unchanged since 2013–2014 and statutory rights are necessary. The Committee noted that the Government failed to submit any laws enable NGOs to litigate in the public interest. Thus, recommendation (c) is unfulfilled.

#### *3.4 Recommendation (e): Enforcement of Court Decisions*

Ukraine cited the creation of an online publicly accessible registry of subsoil use permits. The Committee clarified that recommendation (e) concerns prompt enforcement of all court decisions on environmental information, not just permits. EPL emphasized that past rules failed to ensure effective protection and no new measures have been taken. Recommendation (e) remains unfulfilled.

The Committee concluded Ukraine had not implemented any recommendations in decision VII/8r by 2025.

## **4. EPL's Proposals for an Action Plan to Restore Ukraine's Compliance**

### *4.1 Recommendation (a): Disclosure of PSA Texts on Request*

To ensure access per Article 4 it is necessary to

- remove the security label “for official use only” from the Yuzivska PSA, excluding it from the list of confidential information of StateGeoSubsoil (StateGeoSubsoil order No. 402, 10.08.2023);
- amend the Laws on PSAs and Transparency in Extractive Industries to mandate full contract disclosure on request;
- provide texts of Yuzivska and Oleska PSAs upon requests filed by EPL in 2013–2014 and later.

### *4.2 Recommendation (b): Public Participation before PSA Approval*

To ensure public participation in PSAs per Article 6 it is necessary to

- amend the Law on PSAs to mandate public participation at early stages before agreement is concluded;
- introduce additional safeguards as the pre-2019 law failed to guarantee meaningful public participation in a state environmental expertiza of Yuzivska and Oleska PSAs.

### *4.3 Recommendation (c): NGO Access to Justice*

Although the Supreme Court has applied the Aarhus Convention in some cases, the lack of statutory rights is problematic in a system without binding precedent. Therefore, to ensure access to justice per Article 9 it is necessary to

- amend the Law on Environmental Protection to grant NGOs standing in judicial procedures related to decisions affecting the environment.

### *4.4 Recommendation (e): Prompt Enforcement of Court Decisions*

The Committee criticized excessive delays (up to 16 months) in executing court rulings on environmental information access. Addressing this would require to

- amend Article 371 of the Code of Administrative Proceedings of Ukraine to require immediate enforcement of first-instance decisions on disclosure of environmental requests, even if appealed;
- strengthen enforcement mechanisms of court rulings to ensure appropriate and effective legal remedies to guarantee the prompt enforcement by public authorities of court decisions on the disclosure of environmental information.

## **5. Instead of Conclusions**

In September 2025, the Ministry of Economy, Environment, and Agriculture of Ukraine resumed work on the preparation of the Action Plan for the implementation of decision VII/8r. EPL welcomes this initiative and hopes for its prompt approval after public discussion.

Publication and public discussion of the Plan would send a positive signal to international partners and could be reflected upon during the Meeting of the Parties in November 2025.

The issue's urgency is growing: a new PSA tender was recently announced for the "Dobra" lithium deposit, and the respective PSA will be drafted and concluded in 2026. Furthermore, the U.S.-Ukraine mineral deal is projected to use the PSAs as its main instruments.

To avoid further violations and facilitate dialogue with the EU, Ukraine must promptly restore compliance with the Aarhus Convention by ensuring transparency, public participation, and access to justice in subsoil use.



The Ukrainian National Platform of the Eastern Partnership Civil Society Forum (UNP) (<http://eap-csf.org.ua/>) is a network of more than 150 non-governmental organizations in Ukraine that advocates Ukrainian interests within the framework of the Eastern Partnership. The platform is part of the Eastern Partnership Civil Society Forum (EaP CSF).

The Eastern Partnership Civil Society Forum (EaP CSF) is a unique multi-layered regional civil society platform aimed at promoting European integration, facilitating reforms and democratic transformations in the six Eastern Partnership countries - Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Serving as the civil society and people-to-people dimension of the Eastern Partnership, the EaP CSF strives to strengthen civil society in the region and boost pluralism in public discourse and policy-making by promoting participatory democracy and fundamental freedoms. The EaP CSF is a non-partisan bona fide non-governmental organisation”.

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