

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

**Task Force on Public Participation in Decision-Making**

**Fifth meeting**

Geneva, 23-24 February 2015

Item 2 of the provisional agenda

**SELECTED CONSIDERATIONS, FINDINGS AND REPORTS OF THE AARHUS  
CONVENTION COMPLIANCE COMMITTEE RELATING TO AGENDA ITEM 2**

Background paper<sup>1</sup>  
Prepared by the secretariat

This background paper is not intended to be exhaustive but to outline a selection of considerations, findings and reports of the Aarhus Convention Compliance Committee<sup>2</sup> (hereinafter – the Committee) in regard to item 2 of the agenda of the fifth meeting of the Task Force on Public Participation in Decision-Making under the Aarhus Convention relating to identification and notification of the public concerned, early public participation, the role of private actors and project developers, and due account of comments and outcomes of public participation.

Participants are invited to consult this document in advance of the meeting in order to gain an overview of agenda item 2, the challenges encountered by the Parties in implementation, and to discuss good practices and further needs to be addressed under the auspices of the Task Force on Public Participation in Decision-Making.

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<sup>1</sup> The document was not formally edited.

<sup>2</sup> Available from <http://www.unece.org/env/pp/cc.html>

Case/Report	Consideration and evaluation by the Committee (for cases) / Comments (for Committee Reports to MOP)	Findings and recommendations of the Committee
<p data-bbox="73 323 443 411"><i>Report by the Committee to the third session of the Meeting of the Parties ECE/MP.PP/2008/5<sup>3</sup></i></p> <p data-bbox="73 464 297 587"><b>Notification</b> <b>Early participation</b> <b>Role of developers</b></p>	<p data-bbox="483 323 835 347"><b>Effective means of notification</b></p> <p data-bbox="483 371 1597 584">As demonstrated by the national reports submitted by the Parties, there are a significant number of good practices and several advanced practical solutions to effective notification of the public concerned with regard to decision-making. These include notification in several newspapers, using local authorities as mediators, individual notification based on mailing lists, and notification in the locality of the planned activity or at places frequently visited by the public concerned. Unfortunately, countries usually rely on only one of the means of notification. Simultaneous use of several methodologies would often be significantly more effective. <i>(See paragraph 56 of document ECE/MP.PP/2008/5)</i></p> <p data-bbox="483 603 680 627"><b>Multiple permits</b></p> <p data-bbox="483 651 1626 1110">One issue which has been raised by a number of different communications is the fact that for any given activity subject to article 6, a number of different permitting processes may be involved. The Committee has had to address the question as to whether the Convention requires the public participation procedures set out in article 6, paragraphs 2 to 10, to be applied in all, or all environment-related, permitting processes or just some of them.<sup>8</sup> The Committee's view is that not all the decisions required within national frameworks of regulatory control in relation to activities listed in annex I to the Convention should necessarily be considered as "decisions on whether to permit proposed activities" to which the full range of public participation procedures should apply. On the other hand it does not mean that it would necessarily be sufficient to provide for public participation according to article 6 in only one such decision. In fact, many national frameworks require more than one such permitting decision, and to limit public participation opportunities to only one such decision would not always be sufficient to fulfil the requirements of the Convention. Furthermore, development of large-scale projects often has long span and certain significant elements as projected at an early stage might later require substantial modification. While public participation at an early stage remains crucial, significant modifications of the project's elements might call for further consultations at later stages.</p> <p data-bbox="483 1129 1626 1308">The Committee therefore considers that the issue will have to be decided on a contextual basis, taking the legal effects of each decision into account. Of crucial importance in this respect will be to examine to what extent such a decision indeed "permits" the activity in question. If there are more than one such permitting decision, some kind of significance test seems to be the most appropriate way to understand the requirements of the Convention. The test should be: does the permitting decision, or range of permitting decisions, to which all the elements of the public participation procedure set out in article 6, paragraphs 2</p>	

<sup>3</sup> [http://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece\\_mp\\_pp\\_2008\\_5\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_e.pdf)

	<p>to 10, apply embrace all the basic parameters and main environmental implications of the proposed activity in question? If, despite the existence of a public participation procedure or procedures with respect to one or more environment-related permitting decisions, there are other environment-related permitting decisions with regard to the activity in question for which no full-fledged public participation process is foreseen but which are capable of significantly changing the above basic parameters or which address significant environmental aspects of the activity not already covered by the permitting decision(s) involving such a public participation process, this could not be said to meet the requirements of the Convention. (See paragraph 57-58 of document ECE/MP.PP/2008/5)</p> <p><b>Responsibility for providing for public participation</b></p> <p>The Committee notes that in some countries the developer is given responsibility for organising public participation, including for making available the relevant information and for collecting the comments. However, it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from the relevant public authority, and that comments should be submitted to the relevant public authority (art. 6, para. 2(d) (iv) and (v), and art. 6, para. 6). While direct communication between the developer and the public concerned is important and indeed promoted by the Convention (art. 6, para. 5), placing undue reliance on the developer to provide for public participation would not be in line with the Convention. (See paragraph 59 of document ECE/MP.PP/2008/5)</p>	
<p><i>Report by the Committee to the fifth session of the Meeting of the Parties ECE/MP.PP/2011/11<sup>4</sup></i></p> <p><b>Role of private actors and project developers</b></p>	<p><b>Private entities and public functions related to public participation</b></p> <p>In the context of public participation, national legislation sometimes makes the developer/investor responsible for the public participation process. The Committee recognizes that to ensure proper conduct of the public participation procedure the administrative functions related to its organization may be delegated to bodies or persons who are quite often specializing in public participation or mediation, are impartial and do not represent any interests related to the proposed activity being subject to the decision-making. This differs, however, from relying solely on the developer for public participation (see also ACCC/C/2009/37 and previous findings for ACCC/C/2006/16, para. 78). While developers (project proponents) may hire consultants specializing in public participation, neither the developers themselves nor the consultants hired by them can ensure the degree of impartiality necessary to guarantee proper conduct of the public participation procedure in compliance with the Convention. In this context the Committee finds the following features of such systems as being not in compliance with the Convention:</p> <ul style="list-style-type: none"> <li>(a) Making the developers (project proponents) rather than the relevant public authorities responsible for organizing public participation, including for making available the relevant information to the public and for collecting comments;</li> <li>(b) Not establishing mandatory requirements for the public authorities that issue the expertiza conclusion to take into account the comments of the public;</li> </ul>	

<sup>4</sup> [http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/ece\\_mp.pp\\_2011\\_11\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/ece_mp.pp_2011_11_eng.pdf)

	<p>(c) Not establishing appropriate procedures to promptly notify the public about the environmental expertiza conclusions and not establishing appropriate arrangements to facilitate public access to these conclusions.</p> <p>The observations of the Committee regarding the role of the developers should not be read as excluding the involvement of any private entities in the process. The public authorities should maintain control of the involvement of such private entities in the organization, for instance, of public hearings, or imposing fees to cover the costs related to public participation. <i>(See paragraphs 84-85 of document ECE/MP.PP/2011/11)</i></p>	
<p><i>Report by the Committee to the fifth session of the Meeting of the Parties ECE/MP.PP/2014/9<sup>5</sup></i></p> <p><b>Early participation</b></p> <p><b>Role of private actors and project developers</b></p>	<p><b>Early public participation, when all options are open</b></p> <p>Once the decision to permit a proposed activity has been taken without public involvement, providing for such involvement at a following stage could under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide for “early public participation when all options are open”. This is the case even if a full EIA procedure is subsequently to be carried out. It is not in accordance with the Convention to provide for public participation only at the stage of the EIA procedure if the decision to permit the activity has already been taken, as it results in reducing the public’s input to only commenting on how the environmental impact of the project could be mitigated and precludes the public from having any input on the decision on whether the installation should be at the selected site in the first place (ACCC/C/2009/44).</p> <p>The Committee emphasizes that article 6, paragraph 4, of the Convention requires “early public participation, when all options are open and effective public participation can take place”, both in relation to activities under article 6 of the Convention and in relation to plans and programmes under article 7. If the adoption of local investment plans or other developments were to prejudice public participation in the planning procedure, as envisaged by article 6, paragraph 4, in relation to article 6 or 7 of the Convention, this would engage the responsibilities of the Party concerned under these provisions of the Convention. If this were the case, the Party concerned would also be obliged to ensure all inclusive public participation, i.e., not limited to the involvement of private sector, in this early stage of planning (ACCC/C/2010/45 and ACCC/C/2011/60). <i>(See paragraphs 80-81 of document ECE/MP.PP/2014/9)</i></p> <p><b>Role of private actors/developers in carrying out public participation procedures</b></p> <p>When the private sector is involved in elements of planning processes early on in that process, which may prejudice early participation as required by article 6, paragraph 4, of the Convention, this would engage the responsibility of the Party concerned. In particular the Party concerned would be obliged to ensure all-inclusive public participation, i.e., not limited to the involvement of private sector, in this early stage of</p>	

<sup>5</sup> [http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category\\_II\\_documents/ECE\\_MP.PP\\_2014\\_9\\_ENG.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category_II_documents/ECE_MP.PP_2014_9_ENG.pdf)

	<p>planning (ACCC/C/2010/45 and ACCC/C/2011/60).</p> <p>The Committee highlights that, if tasks in a public participation procedure are to be carried out by actors other than public authorities (e.g., consultants or the developer), responsibility for ensuring compliance with the Convention remains with the competent public authority.</p> <p>Making the documentation relevant to the decision-making available only on the website of the developer is not in accordance with the Convention, even if the developer is itself a public authority. Rather, the documentation should be made available to the public by the decision-making authority (ACCC/C/2011/59).</p> <p>While no provision of the Convention prevents organizers of the hearing from making arrangements to keep a certain order in distributing documents during the hearing, by no means are they entitled to be provided with the discretion as to whether to allow the</p> <p>public to submit their comments and corroborating documents in written form and to distribute them during the hearing. Article 6, paragraph 7, aims to ensure that the procedures for public participation allow for the submission of any comments, information, analyses or opinions from the public. It is for the public to judge the relevance of such comments for the activity (ACCC/C/2009/44).</p> <p>Where the developer is responsible for organizing public participation, such as under the OVOS expertiza system, the public authority responsible for taking the decision must be provided with the full comments submitted during a public participation procedure, and not just a summary (ACCC/C/2009/44). (<i>See paragraphs 82-86 of document ECE/MP.PP/2014/9</i>)</p>	
<p><i>ACCC/C/2004/2 (Document)</i> <i>ECE/MP.PP/C.1/2005/2/Add.2</i></p> <p><b>Notification</b></p> <p><b>Due account</b></p> <p><b>Early participation</b></p>	<p>The Committee considers that the procedures followed in January 2002 and July 2002 were not in line with the requirements of article 6, paragraph 2, of the Convention. The residents living along the proposed route of the power line were obviously among the “public concerned” and, as such, they should have received notice of the hearings, including all the details required under article 6, paragraph 2. Despite this, it appears that they were not invited to the July hearings.</p> <p>The Committee notes that the failure to notify members of the public concerned in accordance with article 2, paragraph 5, may also have effectively denied them the possibility to avail of the rights provided for under other provisions of article 6. If a key group of members of the public most directly affected by the activity was not informed of the process and not invited to participate in it, it follows that they did not receive notice in “sufficient time” as required under article 6, paragraph 3, and that in practice they did not have the opportunities for early and effective participation that should have been available in accordance with paragraph 4 or to provide input in accordance with paragraph 7. Similarly, if no public notice of the planned hearings or other participation opportunities was given, and if affected local residents were not invited to the hearing, whatever views they might have had to offer could not have been taken into account as required by article 6, paragraph 8.</p>	<p>Recommended, among other things, that the Party concerned:</p> <p>(i) Adopt and implement regulations setting out more precise public participation procedures covering the full range of activities subject to article 6 of the Convention, without in any way reducing existing rights of public participation;</p> <p>(ii) Ensure that public authorities at all levels, including the municipal level, are fully aware of their obligations to facilitate public participation;</p> <p>(iii) Consider introducing stronger measures to prevent any construction work going ahead</p>

	<p>Aside from any consequential problems arising from a failure to implement paragraph 2, some other provisions of article 6 may have been breached even with respect to those members of the public that did receive notification of the hearings in accordance with the requirements of paragraph 2. For example, the fact that construction started before the July hearings were held is clearly not in conformity with the requirement under article 6, paragraphs 3 and 4, for “reasonable time frames” and “early public participation, when all options are open.” Furthermore, it appears that the responsible authorities treated the outcome of the hearings as if it were the outcome of public participation. This would have been more acceptable if the hearings had genuinely involved all key groupings within the public concerned. As it was, the views of those who were not invited to participate in the hearings, which apparently were expressed in other ways and were well known to the authorities, do not appear to have been taken into account. (See paragraph 23-25 of document ECE/MP.PP/C.1/2005/2/Add.4)</p>	<p>prior to the completion of the corresponding permitting process, with the required level of public participation; (See paragraph 36 of document ECE/MP.PP/C.1/2005/2/Add.4)</p>
<p>ACCC/C/2004/03 (Document ECE/MP.PP/C.1/2005/2/Add.3)</p> <p><b>Notification</b></p> <p><b>Due account</b></p>	<p>The communicant is a non-governmental organization working in the field of environmental protection and falls under the definitions of the public and the public concerned as set out in article 2, paragraphs 4 and 5, of the Convention. Foreign or international nongovernmental environmental organizations that have similarly expressed an interest in or concern about the procedure would generally fall under these definitions as well.</p> <p>With regard to the facts included in paragraph 6 above, there is, in the opinion of the Committee, sufficient evidence that there were members of the public, both in the of the communicant country and in the Party concerned, interested in or concerned about the project that had to be notified in accordance with article 6, paragraph 2, of the Convention.</p> <p>Considering the nature of the project and the interest it has generated, notification in the nation-wide media as well as individual notification of organizations that explicitly expressed their interest in the matter would have been called for. The Party, therefore, failed to provide for proper notification and participation in the meaning of article 6 of civil society and specifically the organizations, whether foreign or international, that indicated their interest in the procedure.</p> <p>The Committee, however, notes that, generally speaking, there are no provisions or guidance in or under article 6, paragraph 2, on how to involve the public in another country in relevant decision-making, and that such guidance, seems to be needed, in particular, in cases where there is no requirement to conduct a transboundary EIA and the matter is therefore outside the scope of the Espoo Convention.</p> <p>The timeline, as reflected in paragraphs 15 and 16 above, failed to allow the public to study the information on the project and prepare and submit its comments. It also did not allow the public officials responsible for making the decision sufficient time to take any comments into account in a meaningful way, as required under article 6, paragraph 8. (See paragraphs 26-29 of document ECE/MP.PP/C.1/2005/2/Add.4)</p>	<p>Found, among other things, that by failing to provide for public participation of the kind required by article 6 of the Convention, the Party concerned was not in compliance with article 6, paragraph 1 (a), and, in connection with this, article 6, paragraphs 2 to 8, and article 6, paragraph 9 (second sentence). (See paragraph 38 of document ECE/MP.PP/C.1/2005/2/Add.4)</p>

<p><i>ACCC/C/2004/04 (Document ECE/MP.PP/C.1/2005/2/Add.4)</i></p> <p><b>Early participation</b></p>	<p>The Convention does not in itself clearly specify the exact phase from which the EIA should be subject to public participation. Indeed to do so would be particularly difficult, taking into account the great variety of approaches to conducting EIA that exist in the region. However, article 6, paragraph 4, requires early participation when all options are open and the participation can be effective. This requirement would clearly apply to the decision-making in question. Indeed, removing this phase might lead to removing the important opportunity for the public to participate in identifying the criteria on which to base the detailed EIA. However, in the absence of practice in implementing Section 4, paragraph 9, of the Act, it is difficult for the Committee to evaluate whether the new abridged procedure meets the requirements of article 6, paragraph 4. <i>(See paragraph 11 of document ECE/MP.PP/C.1/2005/2/Add.4)</i></p>	<p>Found that while the contested new legislation on the development of the expressway network reduces the opportunities for public participation in decision-making on this type of specific activity as well as the opportunities for access to justice in this regard in comparison with previously existing legislation in this field, it does not, prima facie, fall below the minimum level of public participation and access to justice required by the Convention. However, the consequences of the new legislation as regards compliance with the Convention may also depend on its practical implementation. The Committee, therefore, suggests that the Party concerned should keep the matter under review. <i>(See paragraph 20 of document ECE/MP.PP/C.1/2005/2/Add.4)</i></p>
<p><i>ACCC/C/2004/08 (Document ECE/MP.PP/C.1/2006/2/Add.1)</i></p> <p><b>Public concerned</b></p> <p><b>Early participation</b></p>	<p>The communicants are NGOs that fall under the definition of “the public” as set out in article 2, paragraph 4, of the Convention. The Committee considers that all the communicants, being registered NGOs and having expressed an interest in the decision-making process, fall within the definition of “the public concerned” as set out in article 2, paragraph 5. <i>(See paragraph 18 of document ECE/MP.PP/C.1/2006/2/Add.1)</i></p> <p>Another question that arises is whether a further, more detailed permitting process, with public participation, is envisaged for the various specific activities. The information available to the Committee on this point is somewhat ambiguous. The communicants maintain that the legislation of the Party concerned requires that an EIA be carried out, with public participation, for such activities (see para. 10). If this takes place, it would certainly help to mitigate the lack of public participation in the formulation of the decrees. However, even if public participation is included at that stage, the scope of the decision on which the public would be consulted would be more limited than should be the case for article 6-type decisions, in the sense that some options (such as the option of not building any watch factory at a particular location) would no longer be open for discussion (cf. article 6, para. 4). <i>(See paragraph 29 of document ECE/MP.PP/C.1/2006/2/Add.1)</i></p>	<p>Found, among other things, that by failing to ensure effective public participation in decision-making on specific activities, the Party concerned did not comply fully with article 6, paragraph 1 (a); with annex I, paragraph 20, of the Convention; or, in connection with this, with article 6, paragraphs 2–5 and 7–9. It considers that the extent of non-compliance would be somewhat mitigated if public participation were to be provided for in further permitting processes for the specific activities in question, but it notes that the requirement under article 6, paragraph 4, to ensure that early public participation is provided for when all options are open would still have been breached. In this regard, the Committee notes, however, the information provided to it by the Party concerned regarding the new draft law on Environmental Impact</p>

		Assessment and understands that the drafters of the new law will take this opportunity to ensure its approximation with the requirements of the Convention. <i>(See paragraph 42 of document ECE/MP.PP/C.1/2006/2/Add.1)</i>
<p><i>ACCC/C/2005/12 (Document ECE/MP.PP/C.1/2007/4/Add.1)</i></p> <p><b>Notification</b></p> <p><b>Early participation</b></p> <p><b>Due account</b></p>	<p>No evidence of any notification of the public concerned, or indeed of any opportunities for public participation being provided during the process leading up to this decision, has been presented to the Committee by the Party concerned, despite repeated requests. The documents provided by the Party concerned do not demonstrate that the competent authorities have identified the public that may participate, as requested under article 7 of the Convention, and that they have undertaken the necessary measures to involve the members of the public in the decision-making. To the contrary, the evidence provided suggests that the opponents were not properly notified about the possibilities to participate. The Committee is therefore convinced that the decision was made without effective notification of the public concerned, which ruled out any possibility for the public to prepare and participate effectively during the decision-making process. <i>(See paragraph 73 of document ECE/MP.PP/C.1/2007/4/Add.1)</i></p> <p>Given the nature of the decision as outlined in the previous paragraph, even if public participation opportunities were to be provided subsequently with respect to decisions on specific activities within the industrial and energy park, the requirement that the public be given the opportunity to participate at an early stage when all options are open was not met in this case. Because of the lack of adequate opportunities for public participation, there was no real possibility for the outcome of public participation to be taken into account in the decision. Thus the Party concerned failed to implement the requirements set out in paragraphs 3, 4 and 8 of article 6, and consequently was in breach of article 7. <i>(See paragraph 74 of document ECE/MP.PP/C.1/2007/4/Add.1)</i></p> <p>Once a decision to permit a proposed activity in a certain location has already been taken without public involvement, providing for such involvement in the other decision-making stages that will follow can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide “early public participation when all options are open”. This is the case even if a full environmental impact assessment is going to be carried out. Providing for public participation only at that stage would effectively reduce the public’s input to only commenting on how the environmental impact of the installation could be mitigated, but precluding the public from having any input on the decision on whether the installation should be there in the first place, as that decision would have already been taken. The Committee has already expressed this view in some of its earlier findings and recommendations (see ECE/MP.PP/C.1/2005/2/Add.4, para.11 and ECE/MP.PP/C.1/2006/2/Add.1, para.29). <i>(See paragraph 79 of document ECE/MP.PP/C.1/2007/4/Add.1)</i></p>	<p>Found among other things that:</p> <p>With respect to the proposed industrial and energy park (paras. 72–75), that the decision to allocate territory for the Industrial and Energy Park (Decision No. 8 of 19 February 2003) falls within the scope of article 7 and is therefore subject to the requirements of article 6, paragraphs 3, 4 and 8. The Party concerned has failed to implement those requirements in the relevant decision-making process and thus was not in compliance with article 7.</p> <p>With respect to the proposed thermal electric power station (paras. 76–82), that the decision on the siting (Decision No. 20 of 19 February 2003) is subject to the requirements of article 6, paragraphs 3, 4 and 8. Although some efforts were made to provide for public participation, these largely took place after the crucial decision on siting and were subject to some qualitative deficiencies, leading the Committee to find that the Party concerned failed to comply fully with the requirements in question. <i>(See paragraphs 92-93 of document ECE/MP.PP/C.1/2007/4/Add.1)</i></p> <p>Recommended, among other things, that the Party concerned take the necessary legislative, regulatory, administrative and other measures to ensure that:</p> <p>(c) The public which may participate is identified;</p>

		<p>(d) Notification of the public is made at an early stage for projects and plans, when options are open, not when decisions are already made;</p> <p>(e) Notification of the entire public which may participate, including NGOs opposed to the project, is provided, and notifications are announced by appropriate means and in an effective manner so as to ensure that the various categories of the public which may participate are reached, and records kept of such notifications;</p> <p>(f) The locations where the draft EIA can be inspected by the public before public meetings are publicized at a sufficiently early stage, giving members of the public time and opportunities to present their comments;</p> <p>(g) Public opinions are heard and taken into account by the public authority making the relevant decisions in order to ensure meaningful public participation (<i>See paragraph 96 of document ECE/MP.PP/C.1/2007/4/Add.1</i>)</p> <p>Having regard to paragraph 37 (d), in conjunction with paragraph 36 (b), of the annex to decision I/7, the Committee recommends the Party concerned to take particular care to ensure early and adequate opportunities for public participation in any subsequent phases in the permitting process for the industrial and energy park and the associated projects. (<i>See paragraph 97 of document ECE/MP.PP/C.1/2007/4/Add.1</i>)</p>
<p>ACCC/C/2006/16 (Document ECE/MP.PP/2008/5/Add.6)</p>	<p>It is not clear from the information provided to the Committee whether the public was properly notified about the possibility to participate in the “designing the EIA programme” (i.e. the scoping stage) as</p>	<p>Recommended, among other things, that the Party concerned taking the necessary</p>

<p><b>Notification</b></p> <p><b>Early participation</b></p> <p><b>Role of private actors and project developers</b></p> <p><b>Due account</b></p>	<p>envisaged in the law of the Party concerned. At the same time, it has been clearly shown that what the public concerned was informed about were possibilities to participate in a decision-making process concerning “development possibilities of waste management in the Vilnius region” rather than a process concerning a major landfill to be established in their neighbourhood. Such inaccurate notification cannot be considered as “adequate” and properly describing “the nature of possible decisions” as required by the Convention. <i>(See para 66 of document ECE/MP.PP/2008/5/Add.6)</i></p> <p>The requirement for the public to be informed in an “effective manner” means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned have a reasonable chance to learn about proposed activities and their possibilities to participate. Therefore, if the chosen way of informing the public about possibilities to participate in the EIA procedure is via publishing information in local press, much more effective would be publishing a notification in a popular daily local newspaper rather than in a weekly official journal, and if all local newspapers are issued only on a weekly basis, the requirement of being “effective” established by the Convention would be met by choosing rather the one with the circulation of 1,500 copies rather than the one with a circulation of 500 copies. <i>(See para 67 of document ECE/MP.PP/2008/5/Add.6)</i></p> <p>The Committee thus concludes that by not properly notifying the public about the nature of possible decisions, and by failing to inform the public in an effective manner, the Party concerned has failed to comply with article 6, paragraph 2 of the Convention. <i>(See para 68 of document ECE/MP.PP/2008/5/Add.6)</i></p> <p>The requirement for “early public participation when all options are open” should be seen first of all within a concept of tiered decision-making, whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, taking into account the particular needs of a given country and the subject matter of the decision-making, each Party has a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological details related to specific environmental standards. Within each and every such procedure where public participation is required, it should be provided early in the procedure, when all options are open and effective public participation can take place. <i>(See para 71 of document ECE/MP.PP/2008/5/Add.6) (See also para 51 of document ECE/MP.PP/2008/5/Add.10 for very similar phrasing)</i></p> <p>The law of the Party concerned envisages public participation in decision-making on plans and programmes. With this in mind and considering the structure of the consecutive decision-making and the legal effect of the different decisions in the Party concerned, the fact that certain decisions took place when certain options were already decided upon (e.g. landfill or waste incinerator) and when only two</p>	<p>legislative, regulatory, administrative and other measures to ensure that:</p> <p>(i) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner;</p> <p>(ii) There are reasonable time frames for different phases of public participation taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;</p> <p>(iii) There is a clear responsibility on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments;</p> <p>(iv) There is a clear possibility that any comments can be submitted by any member of the public, even if the comments are not “motivated”; There is a clear correlation between the time period(s) for informing the public about the decision and making available the text of the decision together with the reasons and considerations on which it is based with the time frame for initiating review procedures under article 9, paragraph 2, of the Convention;</p> <p>(v) For each decision-making procedure covered by article 6 of the Convention a public authority from which relevant information can be obtained by the public and to which comments or questions can be submitted is designated;</p> <p>(vi) All plans and programmes relating to the environment are subject to appropriate public</p>
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possible locations were discussed does not seem to exceed the above limits of discretion. *(See para 72 of document ECE/MP.PP/2008/5/Add.6)*

While the information available to the Committee is not sufficient to conclude whether indeed in this particular case the public had a chance to participate in the scoping (i.e. designing the EIA programme), the Committee welcomes the approach of the Party concerned's law which envisages public participation at the stage of scoping. This appears to provide for early public participation in EIA decision-making. *(See para 73 of document ECE/MP.PP/2008/5/Add.6)*

Once an installation has been constructed, political and commercial pressures may effectively foreclose certain technical options that might in theory be argued to be open but which are in fact not compatible with the installed infrastructure. A key issue is whether the public has had the opportunity to participate in the decision-making on those technological choices at one or other stage in the overall process, and before the "events on the ground" have effectively eliminated alternative options. If the only opportunity for the public to provide input to decision-making on technological choices, which is subject to the public participation requirements of article 6, is at a stage when there is no realistic possibility for certain technological choices to be accepted, then this would not be compatible with the Convention. *(See para 74 of document ECE/MP.PP/2008/5/Add.6) (See also para 54 of document ECE/MP.PP/2008/5/Add.10 for very similar phrasing)*

In the present case, the Committee is not convinced that those questions concerning technological choices which had effectively been ruled out by the de facto existence of the landfill installation (such as the major choice between landfill and incineration) did not fall within the scope of the earlier decisions in which there were opportunities for the public to participate. The deficiencies in the public participation opportunities identified elsewhere in these findings are not directly related to the fact that the IPPC phase starts after the construction has been completed. It may not be a politically realistic option for the authorities to permanently block the operation of the installation by indefinitely refusing to grant any operating permit might, as pointed out by the communicant. Yet it does not appear to be unrealistic that the authorities might reject a particular technological choice and thereby force the developer to submit a new application proposing a different technology.

A general conclusion from these considerations is that there is a need for clear and transparent sequencing of permitting decisions, so that it is clear to the public what is being decided and which options are under consideration at each stage. *(See para 75-76 of document ECE/MP.PP/2008/5/Add.6)*

The communicant's allegations with respect to the lack of engagement on the part of the developer (para. 44) do not seem to be justified bearing in mind that according to the law of the Party concerned the developer is in fact responsible for organizing public participation, including for making available the relevant information and for collecting the comments.

However, the above reliance on the developer in providing for public participation in fact raises doubts as

participation.

	<p>to whether such an arrangement is fully in line with the Convention. Indeed, it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from public authority, and that comments should be submitted to the relevant public authority (article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6). Accordingly, reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention. <i>(See paragraphs 77-78 of document ECE/MP.PP/2008/5/Add.6)</i></p> <p>With regard to the allegation as to the failure to publicize the final decision (para. 47), the Committee wishes to underline that the Convention does not require the decision itself to be published. It only requires that the public be informed about the decision and has the right to have access to the decision together with the reasons and considerations on which it is based. The public shall be informed “promptly” and “in accordance with the appropriate procedures”. The Convention does not specify here, as opposed to article 6, paragraph 2, any further requirements regarding informing the public about taking the decision thus leaving to the Parties some discretion in designing “the appropriate procedures” in their national legal frameworks. Similarly, the Convention does not set any precise requirements as to documenting “the reasons and considerations on which the decision is based “except for the requirement to provide evidence of taking due account of “the outcome of public participation” as required under article 6, paragraph 8. <i>(See paragraph 81 of document ECE/MP.PP/2008/5/Add.6)</i></p>	
<p><i>ACCC/C/2006/17 (Document ECE/MP.PP/2008/5/Add.10)</i></p> <p><b>Early participation</b></p> <p><b>Due account</b></p> <p><b>Notification</b></p>	<p>The Committee does not consider that article 6 necessarily requires that the full range of public participation requirements set out in paragraphs 2 to 10 of the article be applied for each and every decision on whether to permit an activity of a type covered by paragraph 1. First, the very title of the Convention (ending with the words “in environmental matters”) implies that even though it is not spelled out in article 6, the permitting decisions should at the very least be environment-related. Second, even within the environment- related permitting decisions that might be required before a given activity may proceed, there may be large variations in their significance and/or environmental relevance. Some such decisions might be of minor or peripheral importance, or be of limited environmental relevance, therefore not meriting a full-scale public participation procedure.</p> <p>On the other hand, nor does the Committee consider that where several permitting decisions are required in order for an activity covered by article 6, paragraph 1, to proceed, it is necessarily sufficient for the purposes of meeting the requirements of article 6 to apply the public participation procedure set out in just one of those permitting decisions. Where one permitting decision embraces all significant environmental implications of the activity in question, it might be sufficient. However, where significant environmental aspects are dispersed between different permitting decisions, it would clearly not be sufficient to provide for full-fledged public participation only in one of those decisions. Whether a system of several permitting decisions, where public participation is provided with respect to only some of those decisions, amounts to non-compliance with the Convention will have to be decided on a contextual basis, taking the legal effects of each decision into account. It is of crucial importance in this regard to examine to what extent such a decision indeed “permits” the activity in question</p>	

	<p>The Committee therefore considers that some kind of significance test, to be applied at the national level on a case-by-case basis, is the most appropriate way to understand the requirements of the Convention. The test should be: does the permitting decision, or range of permitting decisions, to which all the elements of the public participation procedure set out in article 6, paragraphs 2 to 10, apply embrace all the basic parameters and main environmental implications of the proposed activity in question? If, despite the existence of a public participation procedure or procedures with respect to one or more environment-related permitting decisions, there are other environment-related permitting decisions with regard to the activity in question for which no full-fledged public participation process is foreseen but which are capable of significantly changing the above basic parameters or which address significant environmental aspects of the activity not already covered by the permitting decision(s) involving such a public participation process, this could not be said to meet the requirements of the Convention. <i>(See paragraph 41 -43 of document ECE/MP.PP/2008/5/Add.10)</i></p> <p><i>Paragraph 51 of document ECE/MP.PP/2008/5/Add.10 has very similar phrasing to that of paragraph 71 of document ECE/MP.PP/2008/5/Add.6 and is not repeated (see previous cell)</i></p> <p><i>Paragraph 54 of document ECE/MP.PP/2008/5/Add.10 has very similar phrasing to that of paragraph 74 of document ECE/MP.PP/2008/5/Add.6 and is not repeated (see previous cell)</i></p>	
<p><i>ACCC/C/2007/22 (Document ECE/MP.PP/C.1/2009/4/Add.1)</i></p> <p><b>Early participation</b></p> <p><b>Notification</b></p> <p><b>Role of private actors and project developers</b></p>	<p>Whether all options were in fact open to the Prefect and effective public participation could take place in the decision-making procedure, as required under article 6, paragraph 4 of the Convention, depends on many factors. The first issue to consider is whether the Prefect was in any way constrained by earlier decisions, so that all options were no longer open and, for that reason, effective public participation could not take place. <i>(See paragraph 36 of document ECE/MP.PP/C.1/2009/4/Add.1)</i></p> <p>In the present case, to meet the criteria that all options are open and effective public participation can take place, it is not sufficient that there is a formal possibility, de jure, for the Prefect to turn down the application. <i>(See para 39 of document ECE/MP.PP/C.1/2009/4/Add.1)</i></p> <p>From the viewpoint of compliance with article 6, paragraph 4, of the Convention, the decisive issue is whether “all options are open and effective participation can take place” at the stage of decision-making in question. This implies that when public participation is provided for, the permit authority must be neither formally nor informally prevented from fully turning down an application on substantive or procedural grounds. If the scope of the permitting authority is already limited due to earlier decisions, then the Party concerned should have also ensured public participation during the earlier stages of decision-making. <i>(See para 38 of document ECE/MP.PP/C.1/2009/4/Add.1)</i></p> <p>In the present case, the Prefect informed the public by a public inquiry notice in two local daily newspapers on 30 August 2005. Information about the decision-making procedure was also put on the</p>	<p>Found, among other things that:</p> <p>The Committee cannot see that the Prefect was already constrained during the procedures for public participation or was unable to take due account of the views of members of the public on all aspects raised. Thus, the Party concerned did not fail to comply with article 6, paragraph 4, of the Convention on this ground. <i>(See para 39 of document ECE/MP.PP/C.1/2009/4/Add.1)</i></p> <p>While the Committee stresses the importance of adequate public notice, based on the information provided by the communicant and the Party concerned, the Committee cannot conclude that the Party concerned failed to comply with the Convention. This form of public notice appears to the Committee to satisfy the requirements of article 6, paragraph</p>

	<p>Internet site of the prefectures. The notice contained information about the dates and locations for the inquiries as well as the places where the information was publicly available. It also provided information on the time frames. <i>(See para 42 of document ECE/MP.PP/C.1/2009/4/Add.1)</i></p> <p>The Committee notes that while the Parties may implement the Convention in different ways, e.g. by fully transforming the provisions through national legislation or by, to some extent relying on notions of direct effect, it is apparent that paragraph 5 of article 6 cannot be complied with unless it is fully reflected in the national law of the Parties. <i>(See para 49 of document ECE/MP.PP/C.1/2009/4/Add.1)</i></p>	<p>2, of the Convention. <i>(See para 42 of document ECE/MP.PP/C.1/2009/4/Add.1)</i></p>
<p><i>ACCC/C/2008/24 (Document ECE/MP.PP/C.1/2009/8/Add.1)</i></p> <p><b>Due account</b></p>	<p>The Committee recalls its earlier observation that the requirement in article 6, paragraph 8, of the Convention that public authorities take due account of the outcome of public participation does not amount to the right of the public to veto the decision, and that this provision should not be read as requiring that the final say about the fate and the design of the project rests with the local community living near the project, or that their acceptance is always needed.</p> <p>It is quite clear to the Committee that the obligation to take due account in the decision of the outcome of the public participation cannot be considered as a requirement to accept all comments, reservations or opinions submitted. However, while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received.</p> <p>The Committee recalls that the obligation to take “due account” under article 6, paragraph 8, should be seen in the light of the obligation of article 6, paragraph 9, to “make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based”. Therefore the obligation to take due account of the outcome of the public participation should be interpreted as the obligation that the written reasoned decision includes a discussion of how the public participation was taken into account.</p> <p>The Committee notes that a system where, as a routine, comments of the public were disregarded or not accepted on their merits, without any explanation, would not comply with the Convention. <i>(See paragraphs 98-101 of document ECE/MP.PP/C.1/2009/8/Add.1)</i></p>	
<p><i>ACCC/C/2009/37 (Document ECE/MP.PP/2011/11/Add.2)</i></p> <p><b>Role of private actors and project developers</b></p> <p><b>Notification</b></p>	<p>The conclusions of the environmental expertiza shall be considered as a decision whether to permit the project; OVOS and the expertiza in the Party concerned shall be considered jointly as the decision-making process constituting a form of an EIA procedure: the procedure starts with the developer submitting to the competent authorities the “declaration of intent”, which includes the development of the EIA documentation and the carrying out of the public participation process (see also paras. 22 and 23 above), and ends with the issuance of the conclusions by the competent authorities, which, together with the construction permit, is the decision of permitting nature. <i>(See paragraph 74 of document ECE/MP.PP/2011/11/Add.2)</i></p>	<p>Found, among other things, that:</p> <p>(b) By not providing for adequate, timely and effective public notice, according to the criteria of the Convention, it failed to comply with article 6, paragraph 2 (para. 86 above);</p> <p>And found that some general features of the Party concerned’s legal framework did not</p>

In sum, the specific features of the regulatory framework for development control and EIA procedure in the Party concerned are as follows: that in the OVOS/expertiza system it is usually the responsibility of the developer to organize public participation at the OVOS stage of the procedure, while at the expertiza stage the possibility for public participation is usually provided only through the public environmental expertiza. The organization of a public environmental expertiza is not a mandatory part of the decision-making, and therefore it cannot be considered as a primary tool to ensure implementation with the provisions of article 6 of the Convention. It may, however, play a role as an additional measure to complement the public participation procedure required as a mandatory part of the decision-making. In the OVOS/expertiza system, the mandatory public participation procedure is required at the OVOS stage and the developer is usually responsible for organizing the procedure, including for notifying the public and making available the relevant information and for collecting the comments (see also paras. 28 and 29 above).

The Committee has already noted (ACC/C/2006/16, para. 78) that such a reliance on the developer in providing for public participation raises doubts as to whether such an arrangement is fully in line with the Convention because it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from a public authority, and that comments should be submitted to the relevant public authority (art. 6, paras. 2 (d) (iv)–(v) and 6). (*See paragraphs 76-77 of document ECE/MP.PP/2011/11/Add.2*)

The above observations do not mean, however, that the responsibility for performing some or even all the above functions related to public participation should always be placed on the authority competent to issue a decision whether to permit a proposed activity. In fact, in many countries the above functions are being delegated to various bodies or even private persons. Such bodies or persons, performing public administrative functions in relation to public participation in environmental decision-making, should be treated, depending on the particular arrangements adopted in the national law, as falling under the definition of a “public authority” in the meaning of article 2, paragraph 2 (b) or (c).

To ensure proper conduct of the public participation procedure, the administrative functions related to its organization are usually delegated to bodies or persons which are quite often specializing in public participation or mediation, are impartial and do not represent any interests related to the proposed activity being subject to the decision-making. 80. While the developers (project proponents) may hire consultants specializing in public participation, neither the developers themselves nor the consultants hired by them can ensure the degree of impartiality necessary to guarantee proper conduct of the public participation procedure. Therefore, the Committee in this case finds that, similarly to what it has already observed in the past “reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention” (ACCC/C/2006/16, para. 78).

These observations regarding the role of the developers (project proponents) shall not be read as excluding their involvement, under the control of the public authorities, into the organization of the public participation procedure (for example conducting public hearings) or imposing on them special fees to

comply with the Convention, including:

(b) Not adequately regulating the public notice requirements: in particular by not providing for mandatory means of informing the public, setting insufficient requirements as to the content of public notice and not providing for a clear requirement for the public to be informed in an adequate, timely and effective manner (art. 6, para. 2);

(d) Making the developers (project proponents) rather than the relevant public authorities responsible for organizing public participation, including for making available the relevant information to the public and for collecting comments (art. 6, paras. 2 (d) (iv)–(v), 6 and 7);

(e) Not establishing mandatory requirements for the public authorities that issue the expertiza conclusion to take into account the comments of the public (art. 6, para. 8); (*See paragraph 103 of document ECE/MP.PP/2011/11/Add.2*)

Recommended that the Party concerned take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that: among other things that, among other things:

(iii) There are clear requirements regarding the form and content of the public notice as required under article 6, paragraph 2, of the Convention;

(vii) There is a clear responsibility of the relevant public authorities to take due account of the outcome of public participation and to provide evidence of this in the publicly available statement of reasons and

	<p>cover the costs related to public participation. Furthermore, any arrangements requiring or encouraging them to enter into public discussions before applying for a permit are well in line with article 6, paragraph 5, provided the role of such arrangements is supplementary to the mandatory public participation procedures. <i>(See paragraphs 78-81 of document ECE/MP.PP/2011/11/Add.2)</i></p> <p>With regard to the legislation and the general practice followed for public notification in the Party concerned, there is a legal obligation for the developer to notify the public about the conduct of public hearings, but the law fails to set the details to ensure that the public is informed in an adequate, timely and effective manner. The practice of publishing the OVOS Statement (in abridged or even full versions) cannot substitute for it. Also, in the view of the Committee, journalists' articles commenting on a project in the press or on television programmes (as referred to by the Party concerned), in general, do not per se constitute a public notice for the purpose of public participation, as required under article 6, paragraph 2, of the Convention. For this reason, the Committee finds that the Party concerned failed in the case of the HPP project to comply with article 6, paragraph 2; and also that there is a general failure of the system if the Party concerned to comply with these provisions of the Convention. <i>(See paragraphs 86 of document ECE/MP.PP/2011/11/Add.2)</i></p> <p>Under the legislation of the Party concerned, some obligations related to taking due account of the outcomes of public participation rest with the developer and the OVOS consultant, who are bound to consider all the comments and suggestions submitted by the public and to include them in the record of hearings, together with an indication of whether these comments were approved or rejected and the grounds for their rejection or approval. The applicable laws do not, however, envisage similar obligations in relation to the authorities (or the experts) competent for issuing the expertiza conclusions. They are bound only to consider the conclusions of the public expertiza, which, as a non-mandatory element of the procedure (see para. 320 above), cannot be considered as a measure implementing the provisions of article 6 of the Convention. Bearing the above in mind, the Committee is of the opinion that the law of the Party concerned fails to comply with the requirements of article 6, paragraph 8, of the Convention. Considering the discussed deficiencies in providing public participation in relation to the project, the Committee is not sure if there were any outcomes of public participation that could have been taken into account in the expertiza conclusions, and therefore it is not in a position to assess whether the Party concerned was in compliance with article 6, paragraph 8, of the Convention in this respect. <i>(See paragraphs 96-97 of document ECE/MP.PP/2011/11/Add.2)</i></p>	<p>considerations on which the decisions is based <i>(See paragraph 106 of document ECE/MP.PP/2011/11/Add.2)</i></p>
<p><i>ACCC/C/2009/38 (Document ECE/MP.PP/C.1/2011/2/Add.10)</i></p> <p><b>Early participation</b></p>	<p>In respect of the communicant's submission that, due to the fact that the Reporters' terms of reference did not require them to hear evidence regarding whether the road was needed, the Party concerned failed to meet the requirement of article 6, paragraph 4, of the Convention that all options be open, the Committee notes that there has been an ongoing public participation process regarding the AWPR for more than a decade. <i>(See paragraph 81 of document ECE/MP.PP/C.1/2011/2/Add.10)</i></p> <p>In the light of the above, the relevant issue is to ensure that there was public participation regarding all</p>	<p>Found, among other things, that the Party concerned is not in non-compliance with article 6, paragraph 4. <i>(See paragraph 82 of document ECE/MP.PP/C.1/2011/2/Add.10)</i></p>

	<p>options, including the “zero option”, at some previous stage. Considering the chronology set out in paragraphs 23 to 40 above, the Committee finds that at several stages, the public had opportunities to make submissions that the AWPR should not be built and to have those submissions taken into account. In this regard, the Committee notes that it is not empowered to examine events that, in some cases, significantly predate the entry into force of the Convention for the Party concerned. The Committee considers that the public had a number of opportunities during the ongoing participation process over the years to make submissions that the AWPR not be built, and to have those submissions taken into account. (<i>See paragraph 82 of document ECE/MP.PP/C.1/2011/2/Add.10</i>)</p>	
<p><i>ACCC/C/2009/41 (Document ECE/MP.PP/2011/11/Add.3)</i></p> <p><b>Early participation</b></p>	<p>It follows from article 6, paragraph 4, of the Convention that a core criterion for public participation in decisions on specific activities is that it is provided at an early stage “when all options are open and effective public participation can take place”.</p> <p>The question is thus whether the opportunity for public participation in the EIA procedure after the construction permit was issued, but before the operation was permitted, was sufficient to meet the requirements of the Convention.</p> <p>Each Party to the Convention has certain discretion to design the decision-making procedures covered by article 6 of the Convention. Also, in tiered decision-making procedures, each Party can decide which range of options is to be discussed at each stage of the decision-making. Yet, within each and every such procedure where public participation is required, it should be provided early in the procedure so as to ensure that indeed all options are open and effective participation can take place (ACCC/C/2006/16, ECE/MP.PP/2008/5/Add.6, paras. 57 and 71).</p> <p>Providing for public participation after the construction permit can only be compatible with the requirements of the Convention if the construction permit does not preclude that all issues decided in the construction permit can be questioned in subsequent or related decision-making so as to ensure that all options remain open. Yet, a mere formal possibility, de jure, to turn down an application at the stage of the operation permit, when the installation is constructed, is not sufficient to meet the criteria of the Convention if, de facto, that would never or hardly ever happen (ACCC/C/2007/22, ECE/MP.PP/2009/4/Add.1, para. 39). The risk is obvious that providing for public participation only after the construction permit precludes early and effective public participation when all options are open. Rather, it is likely that once an installation has been constructed in accordance with a construction permit, political and commercial pressures, as well as notions of legal certainty, effectively foreclose discussions concerning the construction itself, as well as options with regard to technology and infrastructure (ACCC/C/2006/16, ECE/MP.PP/2008/5/Add.6, paras. 74–75).</p> <p>In the present case, the Committee is convinced that, once the construction of the NPP Units 3 and 4 is carried out, many of the conditions set in the construction permit are such that they can no longer be challenged by the public. Although the permit to commence the operation and the permit to continue the</p>	<p>The Committee finds that by failing to provide for early and effective public participation in the decision-making, the Party concerned failed to comply with article 6, paragraphs 4 and 10, of the Convention (para. 64). (<i>See paragraph 69 of document ECE/MP.PP/2011/11/Add.3</i>)</p>

	<p>operation are to be given before the activity starts, there is a considerable risk that once the installation is constructed it is no longer a politically realistic option for the authority to block the operation on the basis of issues relating to the construction, to technology or to infrastructure. Moreover, it is not sufficient to provide for public participation only at the stage of the EIA procedure unless it is also part of the permitting procedure. For these reasons, the Party concerned failed to comply with article 6, paragraph 4, of the Convention in the decision-making for NPP Units 3 and 4. <i>(See paragraphs 61-64 of document ECE/MP.PP/2011/11/Add.3)</i></p>	
<p><i>ACCC/C/2009/43 (Document ECE/MP.PP/2011/11/Add.1)</i></p> <p><b>Notification</b></p> <p><b>Early participation</b></p>	<p>The public concerned may be informed through public or individual notice. In the present case, the notice was made by means of, inter alia, national press, the Internet and local television programmes (three times). <i>(See paragraph 63 of document ECE/MP.PP/2011/11/Add.1)</i></p> <p>The requirement for early public notice in the environmental decision-making procedure is not detailed in article 6, paragraph 2, of the Convention. Article 6, paragraph 4, points to the purpose of giving notice early in the environmental decision-making procedure, that is, that the public has the possibility to participate when all options are open and participation may be effective. The timing needed from the moment of the notification until the hearing, in which the public concerned would be expected to participate in an informed manner, namely, after having had the opportunity to duly examine the project documentation, depends on the size and the complexity of the case. <i>(See paragraph 65 of document ECE/MP.PP/2011/11/Add.1)</i></p> <p>The Committee considers that one week to examine the EIA documentation relating to a mining project (first hearing) is not early notice in the meaning of article 6, paragraph 2, because it does not allow enough time to the public concerned to get acquainted with voluminous documentation of a technical nature and to participate in an effective manner. In general, the two-week public notice in the second hearing, after the expertise opinion, could be considered early public notice, mainly because a lot of the project-related documentation for the environmental decision-making is the same or is based on the documentation necessary to be consulted for the first meeting. However, through their comments to the draft findings, the Party concerned and the communicant informed the Committee that the project material under consideration for the second meeting was more voluminous than for the first hearing. The Party concerned added that the public did not raise the issue that the time was not sufficient to examine the project-related material. The Committee took note of the information submitted at a very late stage of the process for its attention, but observes that the fact that no objection was made in respect of the time to examine project-related documentation is not material as to whether the requirements on early and effective public participation have been met <i>(See para 67 of document ECE/MP.PP/2011/11/Add.1)</i></p> <p>For these reasons, the Committee finds that the Party concerned failed to inform the public early in the environmental decision-making process and in a timely manner, as required by article 6, paragraph 2, of the Convention.</p>	<p>While acknowledging the continuous efforts of the Party concerned in implementing decision III6/b, the Committee finds that there are still shortcomings in the law of the Party concerned and practice and, due to these shortcomings in the present case, the Party concerned failed to comply with article 3, paragraph 1, of the Convention (para. 56); and article 6, paragraphs 2, 4 and 9, of the Convention (paras 69, 76 and 78 respectively). <i>(See paragraph 83 of document ECE/MP.PP/2011/11/Add.1)</i></p>

	<p>Whether the notification is effective depends on the particular means employed, which in this case include the national press, local TV and the Internet (websites of the Ministry and the Aarhus Centre). Sometimes, it may also be necessary to have repeated notifications so as to ensure that the public concerned has been notified.</p> <p>These circumstances make it obvious that the rural population in the area would not possibly have regular access to the Internet, while local newspapers may be more popular than national newspapers. However, the use of local television may be a useful tool to inform the public concerned in an appropriate manner. Hence, the Committee does not find here that the Party concerned failed to give effective public notice.</p> <p>The Committee may assess the adequacy of the public notice on the basis of the information it received (public notices in the national newspapers, translation provided by the Party concerned). The notice is brief and not very clear about which public authority is responsible for the decision-making, but includes most elements of article 6, paragraph 2. Consequently, and since the Committee cannot assess the notice given through the TV and the Internet, there is not enough evidence to assert that the Party concerned failed to provide public notice reflecting the minimum features as provided in article 6, paragraph 2, of the Convention. (<i>See paragraphs 69 - 71 of document ECE/MP.PP/2011/11/Add.1</i>)</p> <p>In this case, a special mining licence was issued for the developer to exploit deposits in the region in 2004, and the developer organized public participation in the framework of the EIA procedure in 2006. Providing for public participation only after the licence has been issued reduced the public's input to only commenting on how the environmental impact of the mining activity could be mitigated, but precluded the public from having input on the decision on whether the mining activity should be pursued in the first place, as that decision had already been taken. Once a decision to permit a proposed activity has been taken without public involvement, providing for such involvement in the other subsequent decision-making stages can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide "early public participation when all options are open". This is the case even if a full EIA is going to be carried out (ACCC/C/2005/12, para. 79). Therefore, the Committee finds that the Party concerned failed to provide for early public participation as required in article 6, paragraph 4, of the Convention. (<i>See paragraph 76 of document ECE/MP.PP/2011/11/Add.1</i>)</p>	
<p><i>ACCC/C/2009/44 (Document ECE/MP.PP/C.1/2011/6/Add.1)</i></p> <p><b>Role of private actors and project developers</b></p> <p><b>Early participation</b></p> <p><b>Notification</b></p>	<p>In the above context, and reiterating its findings in ACCC/C/2009/37 concerning the role of the developer in the procedure, the Committee stresses that it is not in compliance with the Convention for the authority responsible for taking the decision (including the authorities responsible for the expertiza conclusions) to be provided only with the summary of the comments submitted by the public. The Convention requires that the full content of all the comments made by the public (whether those claimed to be accommodated by the developer or those which are not accepted) be submitted to such authorities. (<i>See paragraph 64 of document ECE/MP.PP/C.1/2011/6/Add.1</i>)</p>	<p>Found, among other things, that:</p> <p>(c) Concerning the role of the project developer, it is not in compliance with the Convention that the authority responsible for taking the decision (including the authorities responsible for the expertiza conclusions) are provided only with the summary of the</p>

	<p>The legal framework and the facts of the present case show that the public participation process was scheduled to take place when the location for the project had already been selected.</p> <p>The public participation process for the NPP was part of the EIA (OVOS) procedure undertaken by the developer. The question that arises is whether public participation at that stage was not limited, given that advance preparations for the project had been undertaken since at least 2007 and that the project site and the developer — which had established project offices near the site (project documentation was accessible there) — had been selected. It appears that the option of not building the NPP at the particular location was no longer open for discussion.</p> <p>Within each and every such procedure where public participation is required, it should be provided early in the procedure, when all options are open and effective public participation can take place.</p> <p>The Committee has not been provided with any evidence that the public was involved, in forms envisaged by the Convention, in previous decision-making procedures which decided on the need for NPP and selected its location. Once the decision to permit the proposed activity in the area had already been taken without public involvement, providing for such involvement at a following stage could under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide for “early public participation when all options are open”.</p> <p>Providing for public participation only at the stage of the EIA (OVOS) procedure for the NPP, with one hearing on 9 October 2009, effectively reduced the public’s input to only commenting on how the environmental impact of the NPP could be mitigated, and precluded the public from having any input on the decision on whether the NPP installation should be at the selected site in the first place, since the decision had already been taken. Therefore, the Committee finds that the Party concerned failed to comply with article 6, paragraph 4, of the Convention. <i>(See paragraphs 75-78 of document ECE/MP.PP/C.1/2011/6/Add.1)</i></p>	<p>comments submitted by the public (para. 64).</p> <p>(b) By not duly informing the public that, in addition to the publicly available 100-page EIA report, there was a full version of the EIA Report (more than 1,000 pages long), it failed to comply with article 6, paragraph 2 (d) (vi), of the Convention (para. 74);</p> <p>(c) By providing for public participation only at the stage of the EIA for the NPP, with one hearing on 9 October 2009, and effectively reducing the public’s input to only commenting on how the environmental impact could be mitigated, and precluding the public from having any input on the decision on whether the NPP installation should be at the selected site in the first place (since the decision had already been taken), it failed to comply with article 6, paragraph 4, of the Convention (para. 78); <i>(See paragraphs 88-89 of document ECE/MP.PP/C.1/2011/6/Add.1)</i></p>
<p><i>ACCC/C/2010/50 (Document ECE/MP.PP/C.1/2012/11)</i></p> <p><b>Public concerned</b></p> <p><b>Due account</b></p>	<p>The public participation provisions in article 6 of the Convention mostly refer to the “public concerned”, i.e., a subset of the public at large. The members of the public concerned are defined in article 2, paragraph 5, of the Convention on the basis of the criteria of “affected or likely to be affected by”, or “having an interest in”, the environmental decision-making. Hence, the definition of the Convention is partly based on the concept of “being affected” or “having an interest”, concepts which are also found in the legal system of the Party concerned. <i>(See paragraph 65 of document ECE/MP.PP/C.1/2012/11)</i></p> <p>While narrower than the definition of “the public”, the definition of “the public concerned” under the Convention is still very broad. Whether a member of the public is affected by a project depends on the nature and size of the activity. For instance, the construction and operation of a nuclear power plant may affect more people within the country and in neighbouring countries than the construction of a tanning plant or a slaughterhouse. Also, whether members of the public have an interest in the decisionmaking</p>	<p>Found, among other things, that:</p> <p>(a) Through its restrictive interpretation of “the public concerned” in the phases of the decision-making to permit activities subject to article 6 that come after the EIA procedure, the system of the Party concerned fails to provide for effective public participation during the whole decision-making process, and thus is not in compliance with article 6, paragraph 3 of the Convention (see para. 70 above);</p>

	<p>depends on whether their property and other related rights (in rem rights), social rights or other rights or interests relating to the environment may be impaired by the proposed activity. Importantly, this provision of the Convention does not require an environmental NGO as a member of the public to prove that it has a legal interest in order to be considered as a member of the public concerned. Rather, article 2, paragraph 5, deems NGOs promoting environmental protection and meeting any requirements under national law to have such an interest. <i>(See paragraph 66 of document ECE/MP.PP/C.1/2012/11)</i></p> <p>While the EIA procedure provides for public participation, the Committee considers that the above legal framework does not ensure that in the permitting decision due account is taken of the outcome of public participation <i>(See paragraph 71 of document ECE/MP.PP/C.1/2012/11)</i></p>	<p>(b) By failing to impose a mandatory requirement that the opinions of the public in the EIA procedure are taken into account in the subsequent stages of decision-making to permit an activity subject to article 6, and by not providing opportunity for all members of the public concerned to submit any comments, information, analyses or opinions relevant to the proposed activities in those subsequent phases, the Party concerned fails to comply with the requirement in article 6, paragraph 8, of the Convention to ensure that in the decision due account is taken of the outcome of the public participation (see para. 71 above); <i>(See paragraph 89 of document ECE/MP.PP/C.1/2012/11)</i></p> <p>Recommended, among other things, that:</p> <p>(a) Members of the public concerned, including tenants and NGOs fulfilling the requirements of article 2, paragraph 5, are allowed to effectively participate and submit comments throughout the decision-making procedure subject to article 6;</p> <p>(b) Due account is taken of the outcome of public participation in all phases of the decision-making to permit activities subject to article 6; <i>(See paragraph 90 of document ECE/MP.PP/C.1/2012/11)</i></p>
<p><i>ACCC/C/2011/59 (Document ECE/MP.PP/C.1/2013/9)</i></p> <p><b>Public concerned</b></p> <p><b>Notification</b></p> <p><b>Due account</b></p>	<p>In the view of the Committee, the OVOS and the expertiza in this system should be considered jointly as the decision-making process constituting a form of environmental impact assessment procedure. <i>(See paragraph 44 of document ECE/MP.PP/C.1/2013/9)</i></p> <p>Considering the role of the developer in the OVOS, including in the public participation procedure, under the legislation of the Party concerned, the Committee stresses that the developers or the consultants hired by them, as “project proponents” may not ensure all the conditions necessary to guarantee the proper</p>	<p>Found, among other things, that:</p> <p>The Committee finds that by not providing the requirement for informing the public in a timely manner, and by not specifying the means of informing the public other than publication in the mass media, the Party</p>

<p><b>Role of private actors and project developers</b></p>	<p>conduct of the public participation. The Committee thus draws the attention of the Party concerned to the fact that reliance solely on the developer to provide for public participation is not in line with the provisions of the Convention (cf. ECE/MP.PP/2011/11/Add.2, para. 80; and findings on communication ACCC/C/2006/16 (ECE/MP.PP/2008/5/Add.6, para. 78)), and that due responsibility must be undertaken by the public authorities during the public participation procedure. As noted earlier by the Committee, “these observations regarding the role of the developers (project proponents) shall not be read as excluding their involvement, under the control of the public authorities, into the organization of the public participation procedure (for example conducting public hearings) or imposing on them special fees to cover the costs related to public participation” (ECE/MP.PP/2011/11/Add.2, para. 81). <i>(See paragraph 45 of document ECE/MP.PP/C.1/2013/9)</i></p> <p>The Committee notes that despite similarities to the OVOS/expertiza system, the law of the Party concerned has specific features, since it provides for some possibilities for the public to participate also at the expertiza stage, by granting an opportunity to all interested citizens and public associations to express their opinion while the State environmental expertiza is being conducted by submitting written suggestions and comments directly to the competent authority. <i>(See paragraph 46 of document ECE/MP.PP/C.1/2013/9)</i></p> <p>The Committee notes that the legislation of the Party concerned, in addition to the terms “the public” (общественность) and “the public concerned” (заинтересованная общественность), for the purpose of public participation also uses the term “interested persons” (заинтересованные лица). Since “interested persons” is not defined and there are no criteria to distinguish it from the other two terms, this, in the view of the Committee, may lead to confusion. <i>(See paragraph 47 of document ECE/MP.PP/C.1/2013/9)</i></p> <p>At the OVOS stage, the legislation of the Party concerned does not provide for any detailed mandatory requirements regarding methods of informing the public about the public participation procedure other than publication of an announcement in the mass media. Other sources for public notification may be used on a voluntary basis. Although in the present case the public was informed about the project by the notice in two newspapers, and also through the information on the website of the developer, the Committee considers that the Party concerned failed to establish detailed mandatory requirements regarding public notice to ensure that the public is informed in an adequate, timely and effective manner (cf. ECE/MP.PP/2011/11/Add.2, paras. 83, 86). <i>(See paragraph 50 of document ECE/MP.PP/C.1/2013/9)</i></p> <p>For the expertiza stage, the legislation of the Party concerned requires the developer to ensure publication of information in special environmental publication sources, as well as on the website of the Ministry of Environmental Protection, concerning the submission of the draft OVOS report to the State environmental expertiza. <i>(See paragraph 51 of document ECE/MP.PP/C.1/2013/9)</i></p> <p>The Committee considers that, although the obligation of the developer to publish information on the website of the Ministry of Environmental Protection at the expertiza stage carries elements of public notification, it is not sufficient to ensure effective public participation. The submission of the draft OVOS</p>	<p>concerned fails to ensure that the public is informed in an adequate, timely and effective manner and thus fails to comply with article 6, paragraph 2, of the Convention (paras. 47 and 51 above). <i>(See paragraph 66 of document ECE/MP.PP/C.1/2013/9)</i></p>
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	<p>report to the State environmental expertiza appears later in the decision-making procedure, and does not compensate for the insufficient public notification at the OVOS stage. Therefore, the Party concerned fails to comply with article 6, paragraph 2, of the Convention. <i>(See paragraph 52 of document ECE/MP.PP/C.1/2013/9)</i></p> <p>According to the 2007 OVOS Instructions the developer is responsible for gathering, registering, compiling and analysing the results of public participation which should be taken into due account and, if necessary, the OVOS report should be amended. The developer is also in charge of transmitting the outcome of the public participation procedure to the public authority mandated to issue a conclusion on the State environmental expertiza. <i>(See paragraph 60 of document ECE/MP.PP/C.1/2013/9)</i></p> <p>The Committee notes that, although the procedure for dealing with public comments at the OVOS stage is clear, the key function of assessing the comments received at this stage and incorporating them in the OVOS report, as appropriate, rests solely with the developer. This means that the comments received from the public are sent to the developer, who is in charge of making amendments to the OVOS report and then returning it to the public authority. <i>(See paragraph 61 of document ECE/MP.PP/C.1/2013/9)</i></p> <p>The Committee does not possess sufficient information on the practical application of the scheme just outlined to conclude whether its features amount to a systematic inconsistency and, therefore, a failure of the Party concerned to comply with article 6, paragraph 8. The Committee considers that the regulatory framework of the Party concerned, according to which the developer is in charge of managing the outcome of the public participation procedures, creates a risk that all public comments are not taken duly into account. However, given the information before it, the Committee is not able to determine whether in this case there was any further outcome of the public participation, besides the comments accepted, that could have been taken into account in the expertiza conclusion. Therefore, the Committee is not in a position to assess whether the Party concerned was in compliance with article 6, paragraph 8, of the Convention in this particular case. <i>(See paragraph 62 of document ECE/MP.PP/C.1/2013/9)</i></p>	
<p><i>ACCC/C/2012/68 (Document ECE/MP.PP/C.1/2014/5)</i></p> <p><b>Early participation</b></p> <p><b>Due account</b></p>	<p>In this regard, the Committee confirms that the requirement of article 6, paragraph 8, of the Convention that public authorities take due account of the outcome of public participation does not amount to a right of the public to veto the decision. In particular, this provision should not be read as requiring that the final say about the fate and design of the project rests with the local community living near the project, or that their acceptance is always required. Therefore the obligation to take due account of the outcome of the public participation should be interpreted as the obligation that the written reasoned decision includes a discussion of how the public participation was taken into account (see findings on communication ACCC/C/2008/24 (ECE/MP.PP/C.1/2009/8/Add.1, para. 98), and ECE/MP.PP/C.1/2009/4, para. 29).</p> <p>Having considered the information submitted by the parties in this regard, the Committee finds that the Party concerned overall duly took into account the comments submitted by the communicant and did not fail to comply with article 6, paragraph 8, of the Convention. <i>(See paragraphs 93-94 of document</i></p>	

	<p><i>ECE/MP.PP/C.1/2014/5)</i></p> <p>In this case, the Committee finds that the public concerned, including the communicant, had ample opportunity in more than one instance to participate in the consultation process and to submit comments. In this respect the Committee notes the following aspects. First, the way the notice for the project was advertised in the local press fits the local significance of the project and meets the requirements of article 6, paragraph 2, of the Convention. Second, the time frames provided for public consultations (almost one month each time for the original and revised versions of the environmental statement) were reasonable and therefore in line with article 6, paragraph 3, of the Convention. Third, the public concerned was involved from the beginning of the process. The process was therefore in conformity with article 6, paragraph 4, of the Convention. Fourth, the comments submitted by the public were addressed, in particular the main point of concern regarding the protection of the Golden Eagle, entailing that the Party complied with the requirements of article 6, paragraph 6, of the Convention. <i>(See paragraph 98 of document ECE/MP.PP/C.1/2014/5)</i></p>	
<p><i>ACCC/C/2012/70 (Document ECE/MP.PP/C.1/2014/9)</i></p> <p><b>Early participation</b></p> <p><b>Due account</b></p>	<p><b>Early participation, when all options are open (art. 6, para. 4)</b></p> <p>Given that the process to prepare the application was initiated on 31 October 2009 and that formally the general public had only seven days to get acquainted with the draft and submit comments, starting on 19 August 2011, that is, almost two years after the start of the application’s preparation, the Committee finds that the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 4, of the Convention, because no early public participation was ensured, when all options were open. <i>(See paragraph 58 of document ECE/MP.PP/C.1/2014/9)</i></p> <p>In this respect, it is noted that article 7 provides that “the public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention”. This provision should not be used by public authorities in a way so as to restrict public participation, but rather as a way of making public participation more effective. In the present case, it is accepted that the input by private stakeholders engaged in electricity production was essential in that it provided specific technical details indispensable for the preparation of the application. The Committee considers that there was a considerable span of time for participation of private stakeholders compared to that granted to other members of the public, to the extent that the authority exercised its discretion in a way that ran counter to the objectives of the Convention; in particular “to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development” by involving, among others, NGOs promoting environmental protection. While the closer inclusion of the private stakeholders in the process may have been justified, there was still an obligation on the public authority to act in accordance with the objectives of the Convention and not to abuse this provision to effectively bar or significantly reduce the effective public participation of other members of the public. <i>(See paragraph 59 of document ECE/MP.PP/C.1/2014/9)</i></p>	<p>Found, among other things, that:</p> <p>(d) By failing to show through its written and oral submissions how the outcome of public participation was duly taken into account, the Party concerned failed to comply with article 6, paragraph 8, of the Convention (para. 63). <i>(See paragraph 65 of document ECE/MP.PP/C.1/2014/9)</i></p>

**Due account of the public participation (art. 6, para. 8)**

There is a clear obligation arising from article 7 on public authorities to seriously consider the outcome of public participation in the preparation of plans. However, the Convention does not specify how this should be done in practice. *(See paragraph 60 of document ECE/MP.PP/C.1/2014/9)*

It is recognized that the public authority preparing the plan is ultimately responsible for policymaking and has to consider a number of factors, including the comments of the public. This may lead to a final plan that may not always be accepted by the public. However, the authority should be able to demonstrate how the comments were considered and why it did not follow the views expressed by the public. As already stated, “the requirement of article 6, paragraph 8, that public authorities take due account of the outcome of public participation, does not amount to the right of the public to veto the decision” (see Committee’s commentary on communication ACCC/C/2008/29 in the report of its twenty-fourth meeting (Geneva, 30 June–3 July 2009) ECE/MP.PP/C.1/2009/4, para. 29). Yet, “while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received” (findings on communication ACCC/C/2008/24 (ECE/MP.PP/C.1/2009/8/Add.1), para. 99). *(See paragraph 61 of document ECE/MP.PP/C.1/2014/9)*

The Committee notes that for decisions on specific activities, fulfilment of the requirement of article 6, paragraph 8, is to be proven through fulfilment of article 6, paragraph 9. In contrast, a requirement to make accessible the reasons and considerations on which the decision is based is not expressly provided for in article 7 of the Convention. Nevertheless, the Party concerned has the obligation to demonstrate that it has fulfilled its obligations under article 6, paragraph 8. The Committee notes that in the process of preparing a plan this obligation could be fulfilled by following the procedure set out in article 6, paragraph 9, or any other way the Party concerns chooses to demonstrate that it has taken “due account” of the outcome of the public participation. *(See paragraph 62 of document ECE/MP.PP/C.1/2014/9)*

The Party concerned was not able to show through its written and oral submissions how the outcome of public participation was duly taken into account. *(See paragraph 62 of document ECE/MP.PP/C.1/2014/9)*