

Comments and amendments from representatives of the Ecohome Environmental Association and the 'Green Network' Partnership, by Andriy Andruskevych of the European ECO Forum, relating to the Report of the Republic of Belarus of 24 December 2014 on the measures taken and the results achieved in implementation of the recommendations received at the fifth session of the Meeting of the Parties to the Aarhus Convention.

1. In its [Report](#)¹ No. 14-7/1458-vi of 24 December 2014 to the Aarhus Convention Compliance Committee on the measures taken and the results achieved in implementation of the Committee's recommendations under Decision V/9c, the Republic of Belarus cites an "Action Plan for Implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters for 2014-2017". However, we consider that this Plan cannot be seen as representing measures taken or results achieved by the Republic of Belarus in implementation of the Committee's recommendations, given that the main aim of the Plan is to strengthen interaction between the Ministry of the Environment and national government bodies concerned with implementing the provisions of the Aarhus Convention, and also because the Plan itself contains no information on specific measures directed at implementing the Committee's recommendations with regard to Communication ACCC/C/2009/37 or to the findings and recommendations on Communication ACCC/C/2009/44, confirmed [by Decision V/9c](#).² In our view, the Plan should include specific measures for putting into practice all the recommendations in Decision V/9c; but in its present form, it is directed solely at the Ministry of the Environment's interaction with other government bodies concerned with putting the Convention into practice. At the same time, there is no plan of any kind for strengthening interaction on the issue of further implementation of the Aarhus Convention with the public concerned.

The public's recommendations directed at focusing the Plan on implementing the recommendations to Belarus adopted at the fifth session of the Meeting of the Parties (under Decision V/9c) have not been incorporated in the Plan; the same applies to our other remarks intended to improve legislation and the practical application of the law. Yet the Ministry of the Environment plans to rely on such improvements, in addition to this Plan, when taking further steps connected with implementing the recommendations. What is more, the Ministry of the Environment considers that the adoption of the Law of the Republic of Belarus on the Insertion of Additions and Amendments into Several Laws of the Republic of Belarus with regard to Environmental Protection and to Public Participation in Environmentally Significant Decision-Making and the introduction of other amendments to legislation represent sufficient implementation of the recommendations mentioned.

We would like to point out that the Action Plan has not been adequately discussed with the public concerned, since the period allocated for this (from 11 to 15 September 2014) was too short.

¹http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9c_Belarus/frPartyV9c_progressreport_24.12.2014.pdf

²http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9c_Belarus/Decision_V9c.pdf

2. In its Report, the Republic of Belarus mentions the preparation of the Draft Law of the Republic of Belarus on the Insertion of Additions and Amendments into Several Laws of the Republic of Belarus with regard to Environmental Protection and to Public Participation in Environmentally Significant Decision-Making. The public concerned has presented its comments on the Draft Law, but has not duly received any relevant communications in reply. More specifically, certain representatives of the public concerned submitted comments and suggestions on this Draft Law; in some instances, it is not simply that these were not incorporated, but that no reasoned arguments were even given as to why these comments were rejected or not considered worthwhile.

The main comments from the public that were not adopted in the final revision of the Draft Law were as follows. The Draft Law contains an unsatisfactory internal contradiction in its definition of the concept “environmentally significant decisions”. The public’s suggestions about the need to introduce public discussions of forestry management plans were not incorporated. Innovative suggestions for broadening public access to justice in environmental matters were not included in the Draft Law. The framework proposed in Article 15-2 practically excludes the possibility of introducing a two-stage arrangement for public discussions – at the stage when a decision to allocate a plot of land for planning and development is taken and at the EIA report or architectural design concept stage. The Draft Law also permits a situation in which the public authorities do not have Internet sites, which is contrary to legislation currently in force.

It should be noted that the final revised version³ of the Draft Law differs from the draft submitted to the Compliance Committee in 2013.⁴ In particular, it totally lacks any of the provisions on access to environmental information originally provided for by the version of the Draft Law submitted to the Committee. We would like to draw the Compliance Committee’s attention to the fact that the version of the Draft Law placed as a Bill before Parliament does not incorporate the comments and suggestions previously expressed by the Committee,⁵ and in certain cases amendments have been introduced which contradict them. In particular, the concept of “environmentally significant decisions” does not take into account the Committee’s comments at all (points 9-14 of the Committee’s Comments). What is more, decisions subject to article 6 of the Convention have been completely omitted from this concept (see the second paragraph of Article 15-2 of the Draft Law). We consider that the proposed Draft Law does not reflect the Committee’s recommendations with regard to citizenship and NGOs (points 15-16 of the Committee’s Comments). The Draft Law does not tackle the issue of public authorities’ responsibility to ensure public participation in decisions subject to article 6 of the Convention, since the requirement that this responsibility should be undertaken by a public authority does not extend to public discussions of such decisions (fifth paragraph of Article 15-2 of the Draft Law). In addition, there is, in reality, no requirement that the public’s comments on a given project should be taken into account before approval of the findings of a state environmental review/*expertiza*; this is contrary to the requirements of article 6, paragraph 8, of the Convention (since the conclusion of a state environmental review/*expertiza* is also a decision

³<http://pravo.by/main.aspx?guid=3941&p0=2014115001>

⁴ http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Belarus/Draft_Law_Rus.pdf

⁵ www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Belarus/Comments_by_Compliance_Committee_on_Belarus___draft_Law.pdf

within the meaning of the Convention and as interpreted by the Committee). The Draft Law submitted does not take into account the Committee's comments regarding exclusions for military and defence installations and activities.

3. The Report contains the information that "an agreement [...] reached with the Belarusian Telegraph Agency [...] included the creation and posting on the Ministry's [official \[web\] site](#) of the banner 'Helping to implement procedures for public participation in environmentally significant decision-making', under which practical materials and legislation governing procedures for public participation will be posted". However, at present – as of 23 January 2015 – this banner is nowhere to be found on the Ministry of the Environment's website.

4. In addition, we would like to point out that Belarus has not undertaken any measures to improve the practical application of the law in the context of Communication ACCC/C/2009/44, where this matter was first raised and on which, inter alia, a decision was made by [Decision V/9c](#). With regard to the construction of a nuclear power plant (NPP) in Belarus, the Republic of Belarus has shown itself unwilling to provide the public with the fundamental opportunities established by the Convention. Thus, at the end of last year, the Ecohome Environmental Association approached the Ministry for Emergency Situations and Gosatomnadzor (the Belarusian nuclear regulatory body) with a document provision request for the report on the comprehensive inspection of the Belarus NPP construction, which had revealed violations. The document was not provided to the public concerned, and no indication of the reasons for this was given. So this represents yet another breach of the public's right of access to information. It is worth pointing out that in Sweden, for instance, similar documents are posted by the regulator on his official website and provided to the public on request.

The public also notes that no relevant progress has been observed on the issue of improving the practical application of the law and implementing the recommendations with respect to [Decision V/9c](#).

We hope that, from now on, the Republic of Belarus will provide information on progress in implementing [Decision V/9c](#), made at the fifth session of the Meeting of the Parties to the Aarhus Convention, including information on specific measures undertaken in order to implement the recommendations repeated by the Committee with regard to Communication ACCC/C/2009/37.

Appendix 1

Comments on the Action Plan sent by the Ecohome Environmental Association and the Green Network to the Ministry of the Environment, which were not incorporated in its final revision:

- This Action Plan for implementation of the provisions of the Aarhus Convention does not cover all three pillars of the Convention. The scheduled measures relate mainly to access to environmental information. There is almost nothing in the Plan about public participation in decision-making or access to justice.

- This Plan does not include any measures intended to improve the practical application of the law, apart from some training activities for state officials.
- The title of the Plan does not correspond to the description of the measures announced in it.
- The section of the Plan about creating a “register of environmental information” does not give a clear idea of what will be included in the register – direct information or a description of information given in accordance with other measures subordinate to the aim of defining the content of environmental information.

Suggestions put forward, which were also not incorporated:

- As part of the Plan, action to create a precise set of unified arrangements for public discussions (given that there are at present already three different procedures for public participation in environmentally significant decision-making in Belarus, with the creation of a fourth currently planned).
- As part of the Plan, actions to improve the practical application of the law, which could include producing guidelines for state officials on best practice in implementing the Aarhus Convention, as well as instructions for the application of various legal provisions in accordance with the Convention. It would be appropriate for these guidelines and instructions to be drafted by a working party including experts from the Aarhus Convention Compliance Committee and representatives of the public concerned in Belarus, or else to make provision to consult external experts during the drafting process.
- As far as the environmental information register is concerned, its main aim should be to ensure access to original environmental information. The register could consist of two parts: a description of data and information that must be made available to the public, and direct access to a primary information bank. ‘Primary information’ could be information associated with pollution/emission sources, held by the Ministry of the Environment pursuant to reporting requirements, and could be provided through a geoinformation system and associated with a geographical map. In any case, establishing a register of primary environmental information is an important step in ensuring the provision of environmental information. It is likely that public domain software could be used for such a register.

23 January 2015