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United Nations Economic Commission for
Europe

Chairman of the Compliance Committee of
the Convention on Access to Information,
Public Participation in Decision-Making and
Access to Justice in Environmental Matters

Mr. Jonas Ebbesson

Copy: Ministry of Foreign Affairs of the
Republic of Belarus

Dear Mr. Ebbesson!

Ministry of Natural Resources and Environmental Protection of the Republic of Belarus (hereinafter referred to as the Ministry of Environment) provides additional information on the second progress review on the implementation of decision V/9c concerning the Republic of Belarus, adopted on the fifth session of the Meeting of the Parties to the Aarhus Convention.

Paragraph 6(a)

As previously reported, the Law of the Republic of Belarus of 11th of May 2016 №362-3 provided for amendments and supplements to article 2 of the Law of the Republic of Belarus "On Information, Informatization and Information Protection". Thus, in accordance with part two of the abovementioned article "Legislation of the Republic of Belarus may establish peculiarities for legal regulation of informational relations related to information constituting state secret, personal data, advertisement, protection of children from information harmful to their health and development, scientific and technical, statistical, legal, **environmental** and other information".

Peculiarities for legal regulation for provision of environmental information are stipulated in the Law of the Republic of Belarus "On Environmental

Protection" of 26th of November 1992 № 1982-XII (as amended on 18th of July 2016):

- Article 74. Composition, sources and types of environmental information, forms of its provision and distribution.
- Article 74-1. Access to environmental information.
- Article 74-2. Limiting access to environmental information.
- Article 74-3. Providing state bodies and other state organizations with environmental information.
- Article 74-4. Providing citizens and legal entities, that are not state bodies or other state organizations, with environmental information.
- Article 74-5. Order for provision of specialized environmental information.
- Article 74-6. Application for environmental information.
- Article 74-7. Distribution of environmental information of general use.

In accordance with part eleven of article 74-4 "Applicant shall not explain the reasons of his interest in obtaining environmental information".

Amendments and supplements to article 2 of the Law of the Republic of Belarus "On information, informatization and information protection" has ensured, that it is necessary to be guided by the provisions of the Law of the Republic of Belarus "On Environmental Protection" when requesting for environmental information.

In this regard we consider, that the requirements of the paragraph 6(a) have been complied with.

Paragraphs 6(b)-(i):

(i) - Article 11 of the Constitution of the Republic of Belarus of 1994 (with amendments and supplements, adopted at the republican referendums of 24th of November 1996 and 17th of October 2004) states, that "Foreign nationals and stateless persons on the territory of Belarus shall enjoy rights and liberties and fulfill duties on equal terms with the citizens of the Republic of Belarus, unless otherwise provided by the Constitution, the laws and international treaties".

In accordance with article 4 of the Law of the Republic of Belarus of 4th January 2010 № 105-3 (as amended on 20th July 2016) "On Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus" "Foreigners on the territory of the Republic of Belarus enjoy rights and liberties and fulfill duties on equal terms with the citizens of the Republic of Belarus, unless otherwise provided by the Constitution of the Republic of Belarus, the present Law, other laws and international treaties of the Republic of Belarus".

In accordance with article 12 of the Law of the Republic of Belarus "On Environmental Protection", citizens of the Republic of Belarus are endowed among others with the following rights:

apply in the order established by the legislation of the Republic of Belarus to governmental bodies, other organizations and officials for the receipt of full, trustworthy and timely environmental information;

take part in public hearings on the drafts of environmentally significant decisions, environmental impact assessment reports, ecological reports on strategic environmental assessment.

Public associations, that carry out activities in the field of environmental protection, as well as other legal entities are endowed with similar rights:

take part in public hearings on the drafts of environmentally significant decisions, environmental impact assessment reports, ecological reports on strategic environmental assessment;

apply in the order established by the legislation of the Republic of Belarus to governmental bodies, other organizations and officials for the receipt of full, trustworthy and timely environmental information;

apply to governmental bodies and other organizations in written, electronic and verbal forms on environmental matters and receive motivated responses (Article 15 of the Law of the Republic of Belarus "On Environmental Protection").

A term of "legal entity" is contained in Article 44 of the Civil Code of the Republic of Belarus (with amendments and supplements entered into force on 3^d of February 2017). Paragraph 3 of Article 44 states, that to legal entities with respect to which their founders (participants) do not have property rights belong: public and religious organizations (associations); charitable and other funds; associations of legal entities and (or) of individual entrepreneurs (associations and unions), and other noncommercial organizations unless otherwise provided by the present Code, other laws or acts of President of the Republic of Belarus.

Despite the fact, that the national legislation does not contain a term "public", this term is widely used in regulatory legal acts. Abovementioned provisions of the national legislation testify that both individuals, i.e. citizens of the Republic of Belarus and foreigners, and legal entities, their associations, organizations, associations and unions etc., may be considered as public.

As an example of providing the citizens of the Republic of Belarus and foreign citizens with equal rights according to the abovementioned national legislation, we can use the public hearings of the NPP EIA report, that was held on 9th of October 2009 on the territory of the Republic of Belarus. Citizens of Lithuania, Russia and Ukraine took part in these public hearings on equal basis with the citizens of the Republic of Belarus.

(ii) - We contradict to the conclusion of the Committee regarding the necessity to present project documentation together with an EIA report for public hearings. In accordance with the national legislation in force, at the time at the tile the EIA is carried out and the EIA report is prepared, there is no project documentation in most cases.

In accordance with subparagraph 1.1 of paragraph 1 of the Decree of the President of the Republic of Belarus of 14th of January 2014 "On Measures to Improve Construction Activity", prior to the development of project documentation on construction, renovation or restoration of facilities, referred to in accordance with the classification, established by the State Committee for Standardization, to the first - fourth classes of complexity, a project owner or developer shall develop and approve pre-project (pre-investment) documentation. In its turn, this documentation includes pre-investment feasibility study and technical assignment, which determines the necessity, technical feasibility, environmental impact assessment (in cases, envisaged by the legislation on state environmental expertise), economic expediency of investing in construction and etc.

The following stage is forwarding an EIA report together with pre-project (pre-investment) documentation for state environmental expertise (paragraph 7 of Article 19 of the Law of the Republic of Belarus as of 18th of July 2017 № 399-3 "On State Environmental Expertise, Strategic Environmental Assessment and Environmental Impact Assessment").

Besides state environmental expertise, the institute of public environmental expertise exists in the Republic of Belarus.

In accordance with article 61 of the Law of the Republic of Belarus "On State Environmental Expertise, Strategic Environmental Assessment and Environmental Impact Assessment", public environmental expertise shall be organized and held on the initiative of public associations and citizens by independent specialists, who have the right to obtain documentation being subject to public environmental expertise, including materials on environmental impact assessment as well as other materials, which are necessary for performing public environmental expertise, from a project owner (initiator of planned economic and other activity).

In accordance with paragraph 3 of article 13 of the abovementioned Law, conclusions of public environmental expertise (if any) related to environmental impact, shall be taken into account when performing state environmental expertise.

Therefore, public environmental expertise is another mechanism for the involvement of public into decision-making, as well as an opportunity to review documents, materials, including pre-project (pre-investment) documentation.

Besides public discussion of environmental impact assessment reports, the national legislation of the Republic of Belarus provides for notifying the public on granting an integrated environmental permit to a natural resource user.

Thus, the Decree of the President of the Republic of Belarus of 17th of November 2011 № 528 (as amended on 9th of March 2016) "On Integrated Environmental Permits" specifies a list of facilities having integrated impact on the environment.

Natural resources' users, who are putting into commissioning the facilities, listed in the Annex to the Decree of the President of the Republic of Belarus as of 17th of November 2011 № 528, shall obtain an integrated environmental permit starting from the day of commissioning of a facility.

In accordance with paragraph 9 of the Regulation on the Order for Issuance of Integrated Environmental Permits, approved by the Resolution of the Council of Ministers of 12th of December 2011 № 1677 (as amended on 2^d of March 2015) "On Measures for the Implementation of the Decree of the President of the Republic of Belarus of 17th of November 2011 № 528", issuing authority must, inter alia, post the relevant information on (pages) of territorial bodies of the Ministry of Natural Resources and Environmental Protection at the place, where a natural resources' user is performing economic and other activity, in case of acceptance of the provided documents for consideration, as well as consider public's suggestions concerning application for obtaining an integrated environmental permit.

In accordance with paragraph 10 of the abovementioned Regulation, a natural resources' user is obliged to present a public notification to the public for consideration by allocating it in printed and electronic mass media at the place, where a natural resources' user is performing economic and other activity; to submit materials on the consideration of the requests received from the public by an issuing authority. In accordance with paragraph 12, informing of the public shall be taken into account in taking the decision on the issuance of an integrated environmental permit.

Thus, prior to the commissioning of a facility, the public is provided at different stages with an opportunity to get acquainted with materials and documents concerning this facility, as well as to take part in public discussions.

Furthermore, to ensure public access to information relating to decision-making process, in accordance with paragraph 6 of the Regulation on the Order for Organization and Holding of Public hearings of Drafts of Environmentally Significant Decisions, Environmental Reports on Strategic Environmental Assessment, Environmental Impact Assessment Reports, as well as Taking into Account Environmentally Significant Decisions Taken, approved by the Resolution of the Council of Ministers of the Republic of Belarus of 14th of June 2016 № 458 (as amended on 13th of January 2017), organizers of public hearings shall ensure free access of citizens and legal entities to information and documents, listed in paragraph 7 of the present Regulation, as well as to another available information. The list of information and documents, included into paragraph 7, is also not exhaustive. In accordance with subparagraph 12 of paragraph 7, to ensure free public access to information on the organization and holding of public hearings, the organizers of these hearings shall ensure allocation of information on paper, including other information relating to the decision being

taken at the place of the location of an organizer of public hearings and available to citizens and legal entities.

Concerning the posting of announcements on holding of public hearings, we would like to inform of the following.

In accordance with Article 22 of the Law of the Republic of Belarus of 10th November 2008 № 455-3 (as amended on 11th of May 2016) "On Information, Informatization and Information Protection", state body may distribute and (or) provide public information, by, inter alia:

distributing it in mass media;

allocating it at the place, which is open for public, in a state body (on information stands, displays and (or) by another way);

posting it on web-pages or other state information sources of the global computer network - Internet;

distributing it and (or) providing it by another ways in accordance with the legislation of the Republic of Belarus.

Pursuant to the abovementioned provision of law, as well as in accordance with the established practice, announcements on public hearings are allocated at the places, which are open for public (announcement boards, pillars, entrance hall doors and etc.) (please find the photos attached).

In this regard, we consider, that the requirements of paragraph 6(b)-(i) have been fulfilled.

Paragraph 6 (c,d)

In addition we would like to inform, that, as it was mentioned above, public participation takes place while obtaining an integrated permit, which shall be issued within 2 months.

A natural resources user submits an application and other documents, listed in paragraph 6.53 of the unified list of administrative procedures carried out by state bodies and other organizations with regard to legal entities and individual entrepreneurs, to a permit-issuing authority. This list is approved by the Resolution of the Council of Ministers of 17th of February 2012 № 156.

In accordance with paragraph 10 of the Regulation on the Order for Issuance of Integrated Environmental Permits, approved by the Resolution of the Council of Ministers of the Republic of Belarus of 12th of December 2011 № 1677, a natural resources' user is obliged to:

present a public notification for consideration of the public by posting it in printed and electronic mass media at the place, where a natural resources' user is performing economic and other activity, within 5 working days starting from the day of his notification by a permit-issuing authority on the acceptance of his application for consideration;

to submit materials on the consideration of requests received from the public to an issuing authority within 40 working days starting from the day of his

notification by a permit-issuing authority on the acceptance of his application for consideration.

In the approved public notification form (the Resolution of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 20th December 2011 № 53 "On some issues of the issuance of integrated environmental permits", it shall be noted where comments and suggestions are submitted, contact persons, dates of commencement and termination of public hearing of an application of a natural resources' user and etc.

In this regard, we consider, that the requirements of paragraph 6 (c, d) have been fulfilled.

Paragraph 6 (e)

As explanation of the provisions for holding meetings (paragraphs 46, 47, 54), laid down in the Regulation on the Order for Organization and Holding Public Discussions of Drafts of Environmentally Significant Decisions, Environmental Reports on Strategic Environmental Assessment, Environmental Impact Assessment Reports, as well as Taking into Account Environmentally Significant Decisions Made, we would like to inform of the following.

Both a citizen (one man) and a legal entity, i.e. on behalf of an organization, including NGO, may submit an application for holding a meeting.

There is no approved application form for holding a meeting. Such application may be written in any form. The main point is that, the necessity of holding a meeting for public discussion shall be indicated in such application.

Paragraphs 6 (f, g, h, i, ii, iii)

We consider, that the recommendations, included into these paragraphs, have been fulfilled.

Previously reported appropriate amendments that have been introduced into the national legislation, entered into force only starting from 21st of July 2016. Since that time, practical measures, which are positive examples of the implementation of provisions of the national legislation, have been taken. As an example:

http://minpriroda.gov.by/ru/ob_obsuzd_ru//

<http://perv.minsk.gov.by/obshchestvennye-obsuzhdeniya>

<http://mrik.gov.by/ru/obsuzhdenia/>

http://www.fr.gov.by/public_disc/

<http://www.novopolotsk.by/content/blogcategory/241/332>

<http://sov.minsk.gov.by/obshchestvennoe-obsuzhdenie>

and etc.

This fact, inter alia, is highlighted in the National Report of the Republic of Belarus on the Implementation of the Aarhus Convention. The work in this field continues.

In this regard, the conclusion, that the Republic of Belarus has not fulfilled the abovementioned paragraphs, based only on assumptions and allegations of Ecohome, is at least incorrect.

Paragraph 7 (c)

We consider, that this paragraph of the recommendations has been fulfilled, because provisions, which stipulate the right of citizens and legal entities to take part in public hearings of concepts, programs, plans, schemes, the implementation of which will have environmental impact and (or) relating to natural resources' use, as well as their amendments and supplements not being of technical nature, have been introduced into the national legislation.

Practical measures for ensuring public participation in the development of program plans concerning the environment have been taken. In this way, the following public hearings have been held:

- of a draft of the National strategy for Sustainable Socio-Economic Development of the Republic of Belarus for the period until 2030 (November-December 2014);

- of a draft Strategy for Integrated Management of Municipal Solid Waste of Minsk region (January-February 2015);

- of a draft National Action Plan for Introduction of Green Economy Principles into National Economy Sectors of the Republic of Belarus until 2020 (October-November 2016);

- of a draft National Strategy for Management of Municipal Solid Waste and Secondary Material Resources in the Republic of Belarus for the period until 2035 (February-March 2017), as well as a number of urban planning projects and detailed plans of urban planning projects.

In addition, we would like to inform, that nowadays amendments and supplements to the Regulation on the order for holding public discussions in the fields of architecture, urban planning and construction activity, are being drafted. And these amendments and supplements will have regard to the provisions of the Aarhus Convention.

Attachments: on 3 pages in 1 copy

Sincerely Yours,

First Deputy Minister

Iya V.Malkina