

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**Second progress review of the implementation of decision VI/8g  
on compliance by Kazakhstan with its  
obligations under the Convention**

Contents	
	<i>Page</i>
I. Introduction .....	2
II. Summary of follow-up on decision VI/8g .....	2
III. Consideration and evaluation by the Committee .....	3
IV. Conclusions .....	14

## **I. Introduction**

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8g on compliance by Kazakhstan with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

## **II. Summary of follow-up**

2. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8g in open session with the participation by audio conference of representatives of the Party concerned. Though invited, no communicants or registered observers took part in the open session. The Chair requested the Party concerned to provide a written version of the information it provided during the session.

3. On 1 October 2018, the Party concerned submitted its first progress report on decision VI/8g on time.

4. On 5 October 2018, the secretariat forwarded the first progress report to the communicant of communication ACCC/C/2013/88, inviting its comments by 1 November 2018.

5. On 2 November 2018, the communicant of communication ACCC/C/2013/88 submitted its comments on the first progress report.

6. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 24 February 2019. The Committee thereafter requested the secretariat to forward the first progress review to the Party concerned and the communicant of communication ACCC/C/2013/88.

7. On 25 February 2019, the secretariat sent the Committee's first progress review to the Party concerned and the communicant of communication ACCC/C/2013/88.

8. At its sixty-third meeting (Geneva, 11-15 March 2019), the Committee reviewed the implementation of decision VI/8g in open session, with the participation by audio conference of representatives of the Party concerned. Though invited, no communicants or registered observers took part in the open session.

9. On 1 April 2019, the Party concerned provided a statement following the open session on decision VI/8g held during the Committee's sixty-third meeting.

10. On 17 April 2019, the Party concerned provided draft amendments of the Environmental Code, and on 31 May 2019, the Party concerned provided draft legislation on public participation.

11. On 24 September 2019, the secretariat wrote to the Party concerned to remind it of the deadline of 1 October 2019 set out in paragraph 6(a) of decision VI/8g for the Party concerned to provide its second progress report.

12. On 3 October 2019, the Party concerned submitted its second progress report on decision VI/8g, two days late. On the same date, the secretariat forwarded the second progress report to the communicant of communication ACCC/C/2013/88, inviting its comments thereon.

13. On 29 December 2019, the secretariat wrote to the Party concerned at the Committee's request seeking some additional information and clarifications.

14. On 10 January 2020, the Party concerned submitted part of the information requested by the Committee.

15. On 14 January 2020, the secretariat wrote to the Party concerned seeking the remaining of the information requested by the Committee, which the Party concerned promptly submitted on the same day.

16. On 19 February 2020, the secretariat wrote to the Party concerned to ask it to provide the text of the Rules for Public Hearings as currently in force, which the Party concerned duly provided on 20 February 2020.

17. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 3 March 2020. The Committee thereafter requested the secretariat to forward the second progress review to the Party concerned and the communicants of communications ACCC/C/2004/6, ACCC/C/2011/59 and ACCC/C/2013/88.

### **III. Considerations and evaluation by the Committee**

18. In order to fulfil the requirements of paragraph 2 of decision VI/8g, the Party concerned would need to provide the Committee with evidence that it had taken the necessary legislative, regulatory and administrative measures:

(a) To ensure that the mandatory requirements of the content of the public notice, as prescribed by article 6(2) of the Convention, are detailed in law;

(b) To establish a clear and consistent requirement for all information relevant to the decision-making to be made accessible to the public, in accordance with article 6(6) of the Convention;

(c) To ensure that, in accordance with article 6(7) of the Convention, the submission of comments by the public is not limited to only “reasonable” comments;

(d) To establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public of the environmental expertiza conclusions, and to facilitate public access to these decisions, in accordance with article 6(9) of the Convention;

(e) To maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments.

19. In order to fulfil the requirements of paragraph 5 of decision VI/8g, the Party concerned would need to provide the Committee with evidence that it had taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) The content of the public notice prescribed by the Rules for Public Hearings meets all the requirements set out in article 6(2) of the Convention;

(b) Time frames set for decision-making procedures subject to articles 6 or 7 of the Convention are sufficient to enable the public to prepare and to participate effectively and:

(i) To the extent possible, they do not overlap with holiday periods and other non-working days;

(ii) The volume and the complexity of the project or plan, programme or policy is considered when setting the relevant time frames;

(c) Appropriate practical and/or other provisions are made for the public to participate during the preparation of plans within the scope of article 7 of the Convention, including clear requirements to ensure that:

(i) The necessary information is provided to the public;

- (ii) The public that may participate is identified by the relevant public authority;
- (iii) The requirements of article 6(3), (4) and 8 of the Convention are applied.

### **General observations**

20. The Committee welcomes the information submitted by the Party concerned and the general level of engagement the Party concerned has demonstrated in the Committee's review of decision VI/8g, including in particular its prompt replies to the Committee's requests for additional information.

21. However, the Committee is seriously concerned about the very poor quality of the second progress report and other information provided by the Party concerned. Already in its first progress review, the Committee observed that the Party concerned had provided information which had failed to address the content of the recommendations in paragraphs 2 and 5 of decision VI/8g at all.<sup>1</sup>

22. In its second progress report and the additional information it submitted at the Committee's request on 10 January 2020, the Party concerned provides tables setting out, for each recommendation in decision VI/8g, the provisions of its current and draft Environmental Codes and Rules for Public Hearings that it considers would address that particular recommendation. However, as outlined in the Committee's analysis below, the legislative provisions cited by the Party concerned very often are not relevant to that particular recommendation.

23. Moreover, despite the secretariat in its email of 29 December 2019 explicitly requesting the Party concerned to provide the Committee with the text of the latest version of the draft Environmental Code and to provide a table explaining which provisions of the latest draft Environmental Code will implement each of the recommendations in paragraphs 2, 4 and 5 of decision VI/8g, the table provided by the Party concerned on 10 January 2020 appears to be based on a different version of the draft Environmental Code than the text of the full draft Environmental Code the Party concerned provided to the Committee on 14 January 2020.

24. Each of the above problems have unnecessarily added to the Committee's work and hampered it in its task to review the progress by the Party concerned to implement decision VI/8g. They have each resulted in a situation wherein the Committee must itself search the full text of the draft Environmental Code in order to find the relevant provisions in order to assess whether the Party concerned has in fact taken measures to address each recommendation in decision VI/8g.

25. The Committee makes clear that the burden is on the Party concerned to demonstrate, in a clear manner, that it has in fact implemented each recommendation in decision VI/8g. If the Party concerned has failed to do so by 1 October 2020, the Committee must report to the seventh session of the Meeting of the Parties that the Party concerned has failed to meet the requirements of the decision and accordingly remains in non-compliance.

26. It would be particularly regrettable if in fact the Party concerned had taken appropriate measures to implement the decision, but due to its poor reporting, the pertinent legislative provisions were not put before the Committee. Such a situation may not only result in the Meeting of the Parties, at its seventh session, adopting a new decision concerning the compliance of the Party concerned, with the associated reporting duties for the Party concerned, it would also once again unnecessarily add to the Committee's workload.

27. In the light of the above, the Committee expresses its willingness to assist the Party concerned to better understand what will be expected from it in order to fulfil paragraphs 2

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<sup>1</sup> Committee's first progress review, 24 February 2019, para. 46.

and 5 of decision VI/8g. In this regard, as for the other decisions of the Meeting of the Parties on the compliance of individual Parties, the Committee will hold an open session on decision VI/8g at its sixty-sixth meeting (Geneva, 9-13 March 2020), to which the Party concerned, communicants and observer will be invited.

28. Finally, the Committee makes clear that all references to the draft Environmental Code in the Committee's second progress review are to the version of the draft Code provided by the Party concerned on 14 January 2020.

#### **Paragraphs 2(a) and 5(a) of decision VI/8g**

29. The Committee considers that the recommendation in paragraph 5(a) of decision VI/8g, which stems from the Committee's findings on communication ACCC/C/2013/88, does not impose any additional substantive obligations beyond those already contained in paragraph 2(a) of the decision. The Committee will thus examine the implementation of paragraphs 2(a) and 5(a) together.

30. With respect to paragraph 2(a) of decision VI/8g, as it did in its first progress report, the Party concerned in its second progress report refers to article 57-2 of its current Environmental Code and appendix 1 to the Rules for Public Hearings.<sup>2</sup>

31. The Committee already made clear in its first progress review that article 57-2 is not relevant to the recommendation in paragraph 2(a) of decision VI/8g.<sup>3</sup>

32. With respect to the Rules for Public Hearings, the Committee in its first progress review identified a number of the notice requirements set out in article 6(2) of the Convention that it considered to be missing from the Rules for Public Hearings.<sup>4</sup> The Party concerned has not put any information before the Committee to indicate that the Rules for Public Hearings have yet been amended to address the Committee's concerns.

33. In its table of legislative provisions submitted on 10 January 2020, the Party concerned indicates that articles 96 and 107 of its draft Environmental Code implement paragraph 2(a) of decision VI/8g.<sup>5</sup> The Committee points out that these provisions, however, do not relate at all to the content of notice requirements for activities subject to article 6 of the Convention and thus are irrelevant to the recommendation contained in paragraph 2(a).

34. In contrast, though not cited by the Party concerned in this context, the Committee considers that article 84(4) of the draft Environmental Code is indeed relevant. Draft article 84(4) states:

“A public hearing announcement must contain the following information:

1. Subject of the public hearings;
2. The place, date and time of the start of the public hearing;
3. The procedure for holding public hearings;
4. A link to the page of the Internet resource of the authorized body in the field of environmental protection, for which you can familiarize yourself with the draft report on possible impacts;
5. Details and contact details of the initiator of the intended activity;

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<sup>2</sup> Party's second progress report, 3 October 2019, p. 1.

<sup>3</sup> Committee's first progress review, 24 February 2019, para. 9.

<sup>4</sup> Committee's first progress review, 24 February 2019, para. 9.

<sup>5</sup> Relevant excerpts of draft Environmental Code, 10 January 2020, p. 1.

6. The e-mail address and phone number by which you can get additional information about the planned activity, conduct public hearings, as well as request copies of documents related to the planned activity.”<sup>6</sup>

35. While welcoming draft article 84(4), the Committee considers that a number of the notice requirements set out in article 6(2) of the Convention still appear to be missing from the draft article, namely:

- The proposed activity and the application on which a decision will be taken (article 6(2)(a) of the Convention);
- The nature of possible decisions or the draft decision (article 6(2)(b), of the Convention);
- The commencement of the envisaged procedure (article 6(2)(d)(i) of the Convention)
- An indication of the time schedule for transmittal of comments or questions (article 6(2)(d)(v) of the Convention);
- An indication of what environmental information relevant to the proposed activity is available (article 6(2)(d)(vi) of the Convention);
- The fact that the activity is subject to a national or transboundary environmental impact assessment procedure (article 6(2)(e) of the Convention).

36. The Committee accordingly invites the Party concerned in its final progress report to clearly specify which provisions of its Environmental Code or Rules for Public hearings implement each of the above notice requirements, or otherwise to provide an amended version of article 84(4) or the Rules for Public Hearings in which each of the above notice requirements are clearly set out.

37. In the light of the above, the Committee considers that the Party concerned has not yet demonstrated that it has fully met the requirements of paragraphs 2(a) and 5(a) of decision VI/8g.

#### **Paragraph 2(b) of decision VI/8g**

38. With respect to paragraph 2(b) of decision VI/8g, in its second progress report the Party concerned refers to some provisions of its Rules for Public Hearings.<sup>7</sup> The Committee points out that none of the provisions referred to by the Party concerned, however, are relevant to the recommendation in paragraph 2(b) of decision VI/8g.

39. In contrast, the Committee considers that article 79(2), (5) and (6), article 83(4), (5) and (8) and article 84(2)(1) of the draft Environmental Code,<sup>8</sup> though not cited by the Party concerned in this context, are indeed relevant to paragraph 2(b) of decision VI/8g.

40. The Committee welcomes draft article 79(2), (5) and (6), article 83(4), (5) and (8) and article 84(2)(1). It particularly welcomes the requirement in draft article 83(5) that:

“The information contained in the report on possible impacts must comply with the requirements for the quality of information, including being reliable, accurate, complete and current”.<sup>9</sup>

41. In the light of the above, while the Party concerned has not yet met the requirements of paragraph 2(b) of decision VI/8g, the Committee considers that if article 79(2), (5) and (6), article 83(4), (5) and (8) and article 84(2)(1) of the draft Environmental Code are adopted in their current form, they will together fulfil the requirements of paragraph 2(b) of decision VI/8g.

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<sup>6</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

<sup>7</sup> Party’s second progress report, 3 October 2019, pp. 1-2.

<sup>8</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

<sup>9</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

### **Paragraph 2(c) of decision VI/8g**

42. With respect to paragraph 2(c) of decision VI/8g, the Party concerned in its second progress report and table of 10 January 2020 reports that the opinions of the persons who have participated in the public hearings, as well as those received through the internet or other sources, are recorded in the protocol of the hearing, in the form specified in appendix 3 of the Rules for Public Hearings.<sup>10</sup>

43. The Party concerned does not, however, report on whether the requirement that the public's comments must be "reasonable" remains in the Rules for Public Hearings – which is of course the focus of the recommendation in paragraph 2(c) in decision VI/8g. In this regard, the Committee expresses its disappointment that the Party concerned has not informed the Committee whether the draft Order amending the Rules for Public Hearings that the Party concerned reported on in the last intersessional period,<sup>11</sup> which would have removed the reference in rules 19 and 27 of the Rules for Public Hearings to "reasonable comments and suggestions", was ever adopted.

44. In the context of preparing its second progress review, the Committee therefore requested the Party concerned to provide the Rules for Public Hearings as currently in force, and the Party concerned promptly did so.<sup>12</sup> Having reviewed the version of the Rules for Public Hearings currently in force, the Committee welcomes that rules 19 and 27 no longer contain a reference to "reasonable comments and suggestions".<sup>13</sup> The Committee regrets however that the Party concerned did not itself inform the Committee of this positive development in its second progress report.

45. Moreover, although the Party concerned does not itself refer to article 84(7) and (13) of the draft Environmental Code in its reporting on paragraph 2(c) of decision VI/8g, the Committee considers those provisions to also be of clear relevance. Article 84(7) of the draft Environmental Code provides that:

"Interested state bodies and the public have the right to send their written comments and suggestions to the authorized body in the field of environmental protection (on paper or electronic media) to the draft report on possible impacts no later than three working days before the start of the public hearing or to voice their comments and suggestions orally during public hearings. Written comments and suggestions received from interested state bodies and the public are entered by the authorized body in the field of environmental protection in the summary table, which is submitted to the public hearing along with the draft report on possible impacts."<sup>14</sup>

46. The Committee welcomes draft article 84(7), which contains no restriction that the comments be reasoned.

47. Likewise, the Committee welcomes draft article 84(13) which provides that:

"After the completion of public hearings, a protocol shall be drawn up in the form established by the Rules for conducting public hearings, which shall include:

- 1) all comments and suggestions from interested state bodies and the public, submitted in writing in accordance with paragraph 7 of this article or voiced in the course of the public hearing, with the exception of comments and suggestions that were withdrawn by their authors during the public hearing;
- 2) responses and comments of the customer on each comment and proposal made in the protocol in accordance with subparagraph 1) above;

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<sup>10</sup> Party's second progress report, 3 October 2019, p. 2, and relevant excerpts of draft Environmental Code, 10 January 2020, p. 2.

<sup>11</sup> Draft order to amend the rules for conducting public hearings from the Party concerned, 30 March 2017, pp. 2-3, and brief clarification from Party concerned on decision V/9j, 12 July 2017.

<sup>12</sup> Email from the secretariat to the Party concerned, 19 February 2020, and Party's reply to the secretariat's email, 20 February 2020.

<sup>13</sup> Rules for Public Hearings, as currently in force, from the Party concerned, 20 February 2020.

<sup>14</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

3) information on the right to appeal the protocol in the manner prescribed by the legislation of the Republic of Kazakhstan.”<sup>15</sup>

48. However, the Committee notes that article 84(8) of the draft Environmental Code provides that:

“The public hearings do not take into account the comments and suggestions of ... the public, which are formulated in a too general way, which does not allow to clarify the essence of the comments or suggestions, or are clearly not related to issues to be studied in the framework of environmental impact assessment.”<sup>16</sup>

49. The Committee considers that draft article 84(7) and (13) would seem to be in line with the requirement in article 6(7) of the Convention that the public is entitled to submit any comment it considers relevant to the proposed activity. However, the Committee is concerned that draft article 84(8) may effectively require that, in order to be taken into account, comments will still need to be reasonable and reasoned. The Committee points out that article 6(8) of the Convention requires that even brief and very general comments that do no more than express support for, or opposition, to an activity must still be taken into account. For example, there is no requirement in article 6(8) that members of the public explain the reason for their opinions, even if it may have been more helpful to decision-makers if they had done so. Rather, in taking due account of the outcome of public participation all comments must be considered. The competent authority may however deal with any comments clearly not related to the issues studied in the assessment in a summary manner, provided this is done in a transparent and traceable way.

50. The Committee invites the Party concerned in its final progress report to provide some examples of comments which it considers are “formulated in a too general way, which does not allow to clarify the essence of the comments or suggestions” and to explain how a restriction on taking into account such comments is consistent with the requirement in article 6(8) of the Convention to take due account of all comments. Alternatively, the Committee invites the Party concerned to amend article 84(8) of the draft Environmental Code to remove the restriction on taking into account such comments and to provide the amended text of article 84(8) together with its final progress report.

51. The Committee welcomes the removal of “reasonable comments and suggestions” from rules 19 and 27 of the Rules for Public Hearings as well as article 84(7) and (13) of the draft Environmental Code. However, in the light of the concerns outlined in paragraphs 49-50 above, the Committee considers that the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 2(c) of decision VI/8g.

#### **Paragraph 2(d) of decision VI/8g**

52. With regard to paragraph 2(d) of decision VI/8g, in its second progress report the Party concerned refers to article 57 of the Environmental Code which it reports requires the conclusion of the state environmental review to be published on the website of the local executive body within 5 days after its receipt by the “nature user”.<sup>17</sup>

53. The Committee points out that, in its report on decision V/9i to the sixth session of the Meeting of the Parties and again in its first progress review on decision VI/8g, it has already made clear that counting the time period for informing the public of the state environmental expertise conclusion from the date of its receipt by the developer and publishing such conclusions only on websites is not sufficient.<sup>18</sup>

54. In its table of 10 January 2020, the Party concerned reports that article 106(3) of the draft Environmental Code stipulates that:

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<sup>15</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

<sup>16</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

<sup>17</sup> Party’s second progress report, 3 October 2019, p. 2.

<sup>18</sup> ECE/MP.PP/2017/41, para. 33, and Committee’s first progress review, paras. 16-17.



“The conclusion of the state environmental expertise should be posted on the Internet resource of the authorized body in the field of environmental protection within five business days after its issuance and be placed in public access for at least thirty business days from the date of its publication.”<sup>19</sup>

55. With respect to the deadline for the publication of environmental expertiza conclusions, the Committee welcomes that article 106(3) of the draft Environmental Code no longer calculates the time from the date that the decision is received by the project proponent, but rather the date that the expertiza conclusion is issued.

56. Regarding the means through which the public is to be notified, the Committee notes that draft article 106(3) requires not only that the environmental expertiza conclusion is published on the local executive body’s website but is also to be physically available to the public for at least thirty days from the date of its publication.

57. In the light of the above, the Committee considers that, on the basis of the legislation currently in force, the Party concerned has not yet fulfilled paragraph 2(d) of decision VI/8g. However, the Committee considers that article 106(3) of the draft Environmental Code, if adopted in its current form, will indeed meet the requirements of paragraph 2(d) of decision VI/8g.

#### **Paragraph 2(e) of decision VI/8g**

58. With respect to paragraph 2(e) of decision VI/8g, in its second progress report the Party concerned refers to paragraph 27 of the Rules for Public Hearings which requires the local executive body to draw up the protocol of the hearing using the format set out in appendix 4 to the Rules for Public Hearings and reflecting the comments and proposals from the public and the position of the customer on each comment or proposal.<sup>20</sup>

59. The Committee notes that both appendices 3 and 4 of the Rules for Public Hearings require evidence to be provided of the comments received from the public and also of how the public was notified of the hearings.<sup>21</sup> The Committee points out, however, neither rule 27 or the appendices address the main focus of paragraph 2(e) of decision VI/8g, which is that the Party concerned maintain, and make accessible to the public through publicly available lists or registers, copies of the decisions taken.

60. In its table of 10 January 2020, the Party concerned refers to article 106(3) of the draft Environmental Code also with respect to paragraph 2(e) of decision VI/8g.<sup>22</sup> The Committee points out that while draft article 106(3) requires the environmental expertiza conclusions to be publicly accessible for at least thirty business days from publication this will not be sufficient to fulfil paragraph 2(e) of decision VI/8g. Rather, in order to fulfil paragraph 2(e) of decision VI/8g, the Party concerned will need to establish a *permanent* list or register through which the public is easily able to access environmental expertiza conclusions, and other information relevant to the decision-making, on an ongoing basis.

61. In the light of the above, the Committee considers that the Party concerned has not yet demonstrated that it has fulfilled the requirements of paragraph 2(e) of decision VI/8g.

#### **Paragraph 5(b)(i) and (ii) of decision VI/8g**

62. The Party concerned does not report on its implementation of paragraph 5(b)(i) and (ii) of decision VI/8g in either its second progress report or its table of 10 January 2020. The Committee expresses its concern at the failure by the Party concerned to report on paragraph 5(b) as this significantly hampers the Committee’s task of reviewing the implementation of this recommendation. The failure of the Party concerned to report on

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<sup>19</sup> Relevant excerpts of draft Environmental Code, 10 January 2020, p. 3.

<sup>20</sup> Party’s second progress report, 3 October 2019, pp. 2-3.

<sup>21</sup> Rules for Public Hearings, as currently in force, from the Party concerned, 20 February 2020.

<sup>22</sup> Relevant excerpts of draft Environmental Code, 10 January 2020, p. 3.

paragraph 5(b) is all the more surprising given that it appears to the Committee that several provisions of the draft Environmental Code are directly relevant to paragraph 5(b). These provisions are examined below.

#### Timeframes for decision-making subject to article 6

63. According to article 79(9) of the draft Environmental Code, the public has 30 business days to comment on the application for a planned activity, starting from the date the initiator submits its application to the competent authority.<sup>23</sup>

64. The Committee considers that for most activities subject to article 6 of the Convention, a timeframe of 30 business days for the public to prepare and submit their comments on the proposed activity should be sufficient. The Committee however expresses concern that the 30 business days in draft article 79(9) starts to run not from the date the application is publicly notified, but rather from the date of the application's submission to the competent authority. The Committee accordingly invites the Party concerned to amend draft article 79(9) so that the time starts to run from the date the application is publicly notified. The Committee also invites the Party concerned to provide the text of amended article 79(9) together with its final progress report.

65. The Committee notes that article 84(4) of the draft Environmental Code requires the announcement of a public hearing to be distributed no later than fifteen business days before the start of the public hearing.<sup>24</sup> The Committee welcomes that the timeframe of fifteen business days is a minimum timeframe. Providing that the timeframe is indeed applied as a minimum timeframe to be extended (i) when the notice period overlaps with holiday periods and other nonworking days; and (ii) to take into account the volume and complexity of the proposed activity, the Committee considers that the proposed timeframe in draft article 84(4) should be sufficient.

66. In light of the above, since the above provisions are still in draft form, the Committee considers that the Party concerned has not yet fulfilled paragraph 5(b)(i) and 5(b)(ii) of decision VI/8g with respect to decision-making under article 6 of the Convention. However, so long as draft article 79(9) is amended to make clear that the timeframe of 30 business days is counted from the date the application is publicly notified, the Committee considers that, once adopted, article 79(9) and 84(4) of the draft Environmental Code should indeed meet the requirements of paragraph 5(b)(i) and 5(b)(ii) of decision VI/8g with respect to decision-making subject to article 6 of the Convention.

#### Timeframes for decision-making subject to article 7

67. The Committee notes that article 71(3)(2) of the draft Environmental Code provides that:

“The state body-developer ensures the participation of the interested public in the strategic environmental assessment by:

...

(2) The establishment of reasonable deadlines providing the public concerned with the opportunity to provide comments and suggestions in a timely and effective manner at all stages of the strategic environmental assessment.”<sup>25</sup>

68. The Committee welcomes that draft article 71(3)(2) requires the establishment of reasonable timeframes, with the opportunity for the public to provide comments and suggestions at all stages of the strategic environmental assessment.

69. The Committee points out, however, that draft article 71(3)(2) does not require that the timeframes be set so that, to the extent possible, they do not overlap with holiday periods and other nonworking days. Nor does it require that the volume and complexity of

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<sup>23</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

<sup>24</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

<sup>25</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

the plan, programme or policy is considered when setting the relevant timeframes. It may be that the Party concerned intends to address each of these aspects through the Instructions for the organization and conduct of environmental assessment. However, since the Instructions have not to date been put before it, the Committee is not in a position to assess whether the Instructions will satisfactorily address each of these aspects or not.

70. In the light of the above, while welcoming the progress made through draft article 71(3)(2), the Committee considers that the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 5(b)(i) and 5(b)(ii) of decision VI/8g with respect to decision-making subject to article 7 of the Convention.

#### **Paragraph 5(c)(i) of decision VI/8g**

71. The Party concerned in its second progress report does not report on its implementation of paragraph 5(c)(i) of decision VI/8g which requires that it put in clear requirements to ensure that the necessary information is provided to the public. However, having reviewed the draft Environmental Code, the Committee notes that draft article 71(6) sets out a list of information to be provided to the public.<sup>26</sup>

72. Draft article 71(6) provides that:

“Information that must be provided to the public in the process of strategic environmental assessment in the manner prescribed by the Instructions for the organization and conduct of environmental assessment includes:

- 1) information about the start of development of the Document, its name, main directions and terms of implementation;
- 2) the name and location of the state body (official) responsible for receiving and recording comments and suggestions from the public concerned;
- 3) the time, place and method of receiving comments and suggestions from the interested public at various stages of the strategic environmental assessment;
- 4) draft documents prior to their approval;
- 5) conclusions on the results of screening the impacts of the document;
- 6) statements and conclusions on determining the scope of reports on strategic environmental assessment;
- 7) reports on strategic environmental assessment;
- 8) minutes of consultations with interested state bodies conducted during screening of the impacts of the document, determining the scope of the report on strategic environmental assessment, as well as assessing the quality of the report on strategic environmental assessment and the draft document;
- 9) reports on monitoring the significant environmental impacts of the implementation of the documents;
- 10) announcements of public hearings;
- 11) minutes of public hearings on draft Documents and reports on strategic environmental assessment;
- 12) certificates, including a synthesis of comments and suggestions from the public received during public hearings;
- 13) information on the assessment of transboundary impacts carried out as part of a strategic environmental assessment;
- 14) conclusions on the quality of reports on strategic environmental assessment;

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<sup>26</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

- 15) approved documents;
- 16) other documents and information provided to the authorized body in the field of environmental protection in connection with the strategic environmental assessment.”<sup>27</sup>

73. In its findings on communication ACCC/C/2014/100 (United Kingdom), the Committee held that:

“the obligation in article 7 to provide “the necessary information to the public” includes requirements both:

- (a) To actively disseminate the information indicated in article 6 (2), including information about the opportunities to participate and availability of the relevant information; and
- (b) To make available to the public all information that is in the possession of the competent authorities and is relevant to the decision-making and is to be used for that purpose. The relevant information under category (b) would normally include the following information:
  - (i) The main reports and advice issued to the competent authority;
  - (ii) Any information regarding possible environmental consequences and cost-benefit and other economic analyses and assumptions to be used in the decision-making;
  - (iii) An outline of the main alternatives studied by the competent authority.”<sup>28</sup>

74. The Committee welcomes article 71(6) of the draft Environmental Code, including article 71(6)(16), which makes clear that not only the information listed in article 71(6)(1)-(15) must be provided to the public, but also any other information provided to the competent authority in connection with the strategic environmental assessment.

75. In the light of the above, the Committee considers that, while the Party concerned has not yet fulfilled paragraph 5(c)(i) of decision VI/8g, if article 71(6) of the draft Environmental Code is adopted in its current form, the Party concerned will indeed meet the requirements of paragraph 5(c)(i) of decision VI/8g.

#### **Paragraph 5(c)(ii) of decision VI/8g**

76. The Party concerned in its second progress report does not report on its implementation of paragraph 5(c)(ii) of decision V/8g, which requires that it put in place clear requirements to ensure that the public that may participate is identified by the relevant public authority. However, having reviewed the draft Environmental Code, the Committee notes that draft article 71(3)(1) requires the state authority-developer to determine the public concerned and that, according to draft article 71(4), the criteria for determining the public concerned are to be defined in the Instructions for the organization and conduct of strategic environmental assessment, which have not so far been provided to the Committee.<sup>29</sup>

77. In the light of the above, the Committee welcomes articles 71(3)(1) and article 71(4) of the draft Environmental Code as positive steps. However, having not yet been provided with the Instructions for the organization and conduct of strategic environmental assessment, the Committee considers that the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 5(c)(ii) of decision VI/8g.

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<sup>27</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

<sup>28</sup> ECE/MP.PP/C.1/2019/6, para. 94.

<sup>29</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

### **Paragraph 5(c)(iii) of decision VI/8g**

78. In its second progress report, the Party concerned likewise does not provide any information pertinent to paragraph 5(c)(iii) of decision VI/8g. The Committee, however, having reviewed the draft Environmental Code, considers that article 71 of the draft Environmental Code contains relevant provisions. The Committee examines these below.

#### Reasonable time frames for different phases, sufficient time for informing the public and for the public to participate effectively (article 6(3) of the Convention)

79. As set out in paragraph 67 above, article 71(3)(2) of the draft Environmental Code stipulates that reasonable timeframes shall be established providing the public concerned with the opportunity to provide comments and suggestions in a timely and effective manner at all stages of the SEA procedure.<sup>30</sup>

80. The Committee welcomes the requirement in draft article 71(3)(2) to ensure reasonable timeframes for all stages of the SEA procedure. The Committee considers that draft article 71(3)(2), if adopted in its current form, would constitute significant progress by the Party concerned. However, bearing in mind the considerations outlined in paragraph 69 above, the Committee considers that the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 5(c)(iii) of decision VI/8g with respect to article 6(3) of the Convention.

#### Early public participation when all options are open (article 6(4) of the Convention)

81. Article 71(2) of the draft Environmental Code provides that the public authority-developer shall ensure the opportunity of the interested public to participate at all stages of the decision-making process, including the earliest stage when alternatives can be considered.<sup>31</sup>

82. The Committee welcomes draft article 71(2). However, it is not clear to the Committee from the wording of this provision that the public will be ensured the opportunity to participate when all options, including the zero option, are open. In this respect the Committee notes that draft article 71(2) stipulates that the public will have an opportunity to participate with respect to the alternatives “which are available” rather than when all options are available. The Committee invites the Party concerned either to amend article 71(2) of the draft Environmental Code to make clear that public participation will be provided at a time when *all* options, including the zero option, are open or, otherwise, to explain what provisions it has put in place to ensure that the public will be entitled to participate when all options, including the zero option, are still open .

83. In the light of the above, the Committee considers that, while draft article 71(2) is a positive step, the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 5(c)(iii) of decision VI/8g with respect to article 6(4) of the Convention.

#### Due account of the outcome of public participation (article 6(8) of the Convention)

84. Article 71(3)(6) of the draft Environmental Code requires that in the process of strategic environmental assessment the comments and suggestions by the public shall be taken into account.<sup>32</sup>

85. While the Party concerned has not yet fulfilled paragraph 5(c)(iii) of decision VI/8g, the Committee welcomes article 71(3)(6) of the draft Environmental Code and considers that, if adopted in its current form, the Party concerned will meet the requirements of paragraph 5(c)(iii) of decision VI/8g with respect to article 6(8) of the Convention.

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<sup>30</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

<sup>31</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

<sup>32</sup> Additional information from the Party concerned, annex 1, 14 January 2020.

## IV. Conclusions

86. The Committee considers that the Party concerned has not yet met the requirements of paragraph 2 and 5 of decision VI/8g, though it welcomes the significant progress in that direction made by the draft Environmental Code. The Committee considers that if adopted in its current form, its provisions would fulfil many, though not all, of the requirements of paragraph 2 and 5 of decision VI/8g.

87. While welcoming the second progress report of Party concerned and the other information it has provided, the Committee expresses serious concern that the Party concerned has again provided irrelevant information about its implementation of several of the recommendations in decision VI/8g and has omitted to report on some of the recommendations in decision VI/8g entirely.

88. The Committee invites the Party concerned to structure its final progress report due on 1 October 2020 in a table that clearly explains what measures have been taken, or are being taken, to address each of the recommendations in paragraphs 2(a)-(e) and paragraphs 5(a), 5(b)(i) and (ii), and 5(c)(i), (ii) and (iii) of decision VI/8g.

89. The Committee also invites the Party concerned, together with its final progress report, to provide the texts, together with English translations thereof, of all legislative, regulatory or administrative measures intended to implement the recommendations in paragraphs 2(a)-(e) and paragraphs 5(a), 5(b)(i) and (ii), and 5(c) (i), (ii) and (iii) of decision VI/8g, as well as an approximate timeline for the adoption of any of the measures by then still in draft form.

90. The Committee reminds the Party concerned that all measures necessary to implement decision VI/8g must be completed by, and reported upon, by no later than 1 October 2020, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VI/8g.

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