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

Fourth session

Chisinau, 29 June–1 July 2011

Item 5 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Draft decision IV/9b on compliance by Belarus with its obligations under the Convention

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,

Taking note of the report of the Compliance Committee and the corresponding addendum (ECE/MP.PP/2011/11 and Add.2) with regard to a case concerning access to information and public participation in the decision-making for the hydropower plant project on the Neman River in Belarus (HPP project),

Taking note also of the ongoing legislative and regulatory reforms in Belarus in relation to implementing the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,

Encouraged by the ongoing willingness of the Party concerned to discuss in a constructive manner compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee that the Party concerned in the specific case:

(a) By failing to provide the requested information, it failed to comply with article 4, paragraph 1, of the Convention;

(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;

(c) By not providing the public with sufficient possibilities to submit any comments, information, analyses or opinions relevant for the HPP project, it failed to comply with article 6, paragraph 7 of the Convention;

(d) By not informing the public promptly about the environmental *expertiza*¹ conclusions, namely a decision of the construction of the HPP project, it failed to comply with article 6, paragraph 9 of the Convention;

2. *Endorses also* the following findings of the Committee that the following general features of the Belarusian legal framework are not in compliance with the Convention:

(a) Requiring an interest be stated for access to environmental information (art. 4, para. 1);

(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);

(c) Setting only maximum time frames for public hearings and allowing thereby in individual cases for time frames to be set which might be not reasonable (art. 6, para. 3);

(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);

(f) 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 (art. 6, para. 9);

3. *Shares* the Committee's concerns that:

(a) In relation to compliance with article 5, paragraphs 1 (a) and (b), the law in Belarus renders only the developer responsible for maintaining the documentation relevant to OVOS² and *expertiza*, including the documents evidencing public participation, and they do not impose any obligation in this respect on the authorities competent to examine the results of OVOS and those competent to issue *expertiza* conclusions;

(b) The law in Belarus concerning situations where provisions on public participation do not apply may be interpreted much more broadly than allowed under article 6, paragraph 1 (c), of the Convention;

4. *Recommends* to the Party concerned in the process of its reform to reach compliance with the Convention to take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

(a) The general law on access to information refers to the 1992 Law on Environmental Protection that specifically regulates access to environmental information, in which case the general requirement of stating an interest does not apply;

¹ "State environmental review" or "ecological expertise" (here *expertiza*) mechanism formally established in the former Soviet Union in the second half of the 1980s.

² An acronym whose terms can be rendered as "assessment of impact upon the environment". However, the OVOS should be distinguished from what is generally understood as an environmental impact assessment (EIA). The Compliance Committee, in a decision on Belarus, held that OVOS and the *expertiza*, considered jointly, were "the decision-making process constituting a form of an EIA procedure" (ECE/MP.PP/C.1/2010/6, para. 74).

- (b) 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;
- (c) There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;
- (d) There are reasonable minimum time frames for submitting the comments during the public participation procedure, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;
- (e) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention);
- (f) There is a clear responsibility of 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 through written submission and/or at the public hearings;
- (g) 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 considerations on which the decisions is based;
- (h) There is a clear responsibility of the relevant public authorities to:
 - (i) Inform promptly the public of the decisions taken by them and their accessibility;
 - (ii) Maintain and make accessible to the public: copies of such decisions along with the other information relevant to the decision-making, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments;
 - (iii) Establish relevant publicly accessible lists or registers of the decisions held by them;
- (i) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 (c), of the Convention;

5. *Invites* the Party concerned to draw up an action plan for implementing the above recommendations with a view to submitting an initial progress report to the Committee by 1 December 2011, and the action plan by 1 April 2012;

6. *Also invites* the Party concerned to provide information to the Committee, at the latest six months in advance of the fifth session of the Meeting of the Parties, on the measures taken and the results achieved in implementation of the above recommendations;

7. *Requests* the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of these measures;

8. *Undertakes* to review the situation at its fifth session.
