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### Economic Commission for Europe

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

#### Sixth session

Budva, Montenegro, 11 – 13 September 2017

Item 7 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation  
of the Convention: Compliance mechanism**

### Report of the Compliance Committee\*

#### Compliance by Ukraine with its obligations under the Convention

##### *Summary*

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 19 of decision V/9 of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

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\* The present document is being issued without formal editing.

## Contents

	<i>Page</i>
I. Introduction .....	3
II. Summary of follow-up .....	3
III. Considerations and evaluation by the Committee .....	5
IV. Conclusions and recommendations .....	13

## I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), 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 V/9m on compliance by Ukraine with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

## II. Summary of follow-up

2. On 9 December 2014, the Party concerned provided its first progress report on its implementation of decision V/9m.

3. On 2 January 2015, the first progress report by the Party concerned was forwarded to the communicant of communication ACCC/C/2004/3, Environment-People-Law, for its comments by 23 January 2015. No comments were received from the communicant.

4. On 23 June 2015, the communicant of communication ACCC/C/2004/03 provided a brief update on the status of the draft legislation proposed by the Party concerned.

5. On 24 June 2015, the secretariat wrote to the Party concerned seeking further information regarding the status of the draft legislation. On 26 June 2015, the Party concerned provided an update on the pending draft legislation as well as the text of two pending legislative proposals, namely a draft law “On environmental impact assessment” and a draft law on “On Strategic Environmental Assessment”.

6. On 2 October 2015, the Party concerned provided a further update including updated versions of both legislative proposals.

7. At the Committee’s request, on 20 January 2016 the Executive Secretary of the Economic Commission for Europe (ECE) wrote to the Prime Minister of Ukraine, Chairman of the Verkhovna Rada of Ukraine and Chair of the Parliamentary Committee on issues of European integration. In his letters, the Executive Secretary *inter alia* reminded the Party concerned that paragraph 6 of decision V/9m provided for the caution in place since the fourth session of the Meeting of the Parties to be lifted if Ukraine had adopted the necessary measures to bring its legislation into full compliance with the Convention, in particular fully satisfying the conditions set out in paragraph 5 of the decision, and had notified the secretariat of this fact by 31 December 2015.

8. At its fifty-second meeting (Geneva, 8 – 11 March 2016), the Committee reviewed the implementation of decision V/9m in open session. The Party concerned took part in the open session by audio conference. Though invited, the communicant did not take part. During the session, the Committee noted that to date the Party concerned had not replied to the letters of the ECE Executive Secretary of 20 January 2016. The Committee requested the Party concerned to submit the text of the relevant draft legislation currently before the Parliament. The Committee agreed that it would take into account the information received when finalizing its progress review on the implementation of decision V/9m, including on whether the conditions in paragraph 5 of decision V/9m had been fulfilled.

9. At the Committee’s request, on 8 April 2016 the secretariat invited the Party concerned to submit in writing the comments it had made during the open session at the Committee’s fifty-second meeting as well as updated versions of the draft laws under consideration, by 14 April 2016. The Party concerned provided a written version of its comments during the fifty-second meeting as well as updated version on the draft laws on 12 April 2016.

10. On 20 June 2016, the Party concerned provided a further update on the draft legislation.
11. On 23 November 2016, the Party concerned informed the Committee that the proposed law “On environmental impact assessment” and the proposed law “On strategic environmental assessment” had been adopted by the Parliament on 4 October 2016. The Party concerned stated that thereafter on 31 October 2016 the two laws had been vetoed by the President of the Party concerned. The Party concerned provided the Committee with English translations of the text of these laws as adopted by the Parliament on 4 October 2016 and vetoed by the President on 31 October 2016 (hereafter “the vetoed EIA law” and “the vetoed SEA law”).
12. On 8 December 2016, the communicant of communication ACCC/C/2004/03 provided comments on the recent legislative developments.
13. On 23 January 2017, at the request of the Committee, the ECE Executive Secretary sent a letter to the Party concerned forwarding the Committee’s progress review. The Executive Secretary reminded the Party concerned that the caution issued in relation to the subject of decision V/9m, in place since the fourth session of the Meeting of the Parties, remained valid.
14. At the Committee’s fifty-sixth meeting (Geneva, 28 February – 3 March 2017), the Committee reviewed the implementation of decision V/9m in open session with the participation of the communicant of communication ACCC/C/2004/03. The communicant of communication ACCC/C/2004/03 also provided a written version of its statement presented at the open session.
15. On 15 June 2017, the Party concerned informed the Committee that the law “On environmental impact assessment” (hereafter “the EIA law”) and law “On strategic environmental assessment” had been adopted and signed by the President. The communicant of communication ACCC/C/2004/03 provided brief comments on the same date, in which it stated that “The law was indeed signed by the President. The text of the law remains essentially unchanged comparing to the text assessed by the [Compliance Committee]”.<sup>1</sup>
16. On 22 June 2017, the Party concerned provided the text, in Ukrainian and English, of the EIA law as adopted.

#### **Communication ACCC/C/2013/87**

17. Communication ACCC/C/2013/87 was submitted on 13 May 2012 by Mr. Alexandr Alexandrovich Lapin, a member of the public, alleging non-compliance of the Party concerned with articles 4, paragraph 2 and article 6, paragraphs 1-9, of the Convention in connection with the construction of biofuel and waste incineration plants.
18. At its forty-first meeting (Geneva, 25–28 June 2013), the Committee determined communication ACCC/C/2013/87 to be admissible on a preliminary basis. On 26 July 2013, the communication was forwarded to the Party concerned for its response. In accordance with paragraph 23 of the annex to decision I/7, the Party concerned was invited to provide its response by 26 December 2013.
19. Despite the secretariat sending a number of reminders, the Party concerned failed to provide its response to the communication.
20. At the Committee’s forty-eighth meeting (Geneva, 24–27 March 2015), the Party concerned informed the Committee that due to the annexation of part of its territory, the development of the above project had been suspended and that it was encountering

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<sup>1</sup> Email update by communicant of communication ACCC/C/2004/03, 15 June 2017.

difficulties in obtaining the relevant information to prepare its response to the communication.

21. After some further follow-up, on 28 September 2016, the secretariat sent questions to the communicant and the Party concerned at the request of the Committee inquiring, *inter alia*, whether the communicant considered that certain aspects of his communication could be dealt with in the context of decision V/9m. On 1 November 2016, the communicant responded that his communication could be adequately examined in the context of decision V/9m.

22. At its fifty-fifth meeting (Geneva, 6-9 December 2016),<sup>2</sup> the Committee accordingly agreed to close the case and decided that the general issues raised in the communication would be reviewed in the context of its report to the Meeting of the Parties on decision V/9m.

23. On 28 June 2017, on the invitation of the Committee, the communicant provided his comments on the new EIA law adopted by the Party concerned.

#### **Finalization of the Committee's report to the sixth session on decision V/9m**

24. After taking into account the comments on the EIA law received from the communicants of communication ACCC/C/2004/03 and ACCC/C/2013/87, the Committee adopted its report to the sixth session of the Meeting of the Parties on decision V/9m through its electronic decision-making procedure on 31 July 2017 and requested the secretariat to forward the report to the Party concerned and the communicants.

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

25. In order to meet the requirements of decision V/9m, the Party concerned would need to provide the Committee with evidence that it has implemented the measures requested by the Meeting of the Parties in decision II/5b, and in particular that the Party concerned has implemented measures that:

(a) Provide for public participation of the kind required by article 6 of the Convention (article 6, paragraph 1 (a), and, in connection with this, article 6, paragraphs 2 to 8, and article 6, paragraph 9 (second sentence));<sup>3</sup>

(b) Ensure that information is provided by public authorities upon request (article 4, paragraph 1);<sup>4</sup>

(c) Address the lack of clarity with regard to public participation requirements in environmental impact assessment and environmental decision-making procedures for projects, such as time frames and modalities of a public consultation process, requirements to take its outcome into account and obligations with regard to making information available in the context of article 6, in order to ensure a clear, transparent and consistent framework for the implementation of the Convention (article 3, paragraph 1).<sup>5</sup>

26. The Committee recalls that, with a view to assist the Party concerned to come into compliance, in its findings on decision III/6f of the Meeting of the Parties adopted at its twenty-third meeting (Geneva, 31 March – 3 April 2009), the Committee had provided a checklist of points for the Party concerned to address in its draft legislation (see para. 10 of

<sup>2</sup> ECE/MP.PP/C.1/2016/9, para. 17.

<sup>3</sup> Decision V/9m, para. 5 (a).

<sup>4</sup> *Ibid.*, para. 5 (b).

<sup>5</sup> *Ibid.*, para. 5 (c).

those findings).<sup>6</sup> The Committee's findings on decision III/6f were sent to the Prime Minister of the Party concerned by the Executive Secretary of the ECE on 16 April 2009.<sup>7</sup>

27. The Committee considers that the checklist set out in paragraph 10 of its findings on decision III/6f stands as a useful reference of the points that the Party concerned should address in order to fulfil decision V/9m. Paragraph 10 of those findings stated that the Committee would like to review, at the earliest opportunity, the draft legislation on the following points:

(a) The proposed wording requiring that public authorities obtain environmental information relevant to their functions, including that on which they base their decisions;

(b) The proposed wording requiring that information within the scope of article 4 of the Convention is provided regardless of its volume;

(c) The proposed wording concerning the detailed requirements for informing the public, as required under article 6, paragraph 2, of the Convention, about the initiation of the procedure and possibilities for the public to participate. In particular:

(i) The required form of the public notice;

(ii) The required contents of the public notice (as compared with the requirements specified in paragraph 2 (a) to (d) of article 6); and

(iii) How, in case of projects having transboundary impact, the public concerned abroad is to be notified, in accordance with paragraph 2 (e) of article 6.

(d) The proposed wording setting specific timeframes for the public consultation process. In particular:

(i) The time for the public to study the information on projects and to prepare to participate effectively; and

(ii) The time for the public to prepare and submit comments.

(e) The proposed wording requiring that sufficient time is available for the public officials to take any comments into account in a meaningful way;

(f) How the Government will prevent short-cutting in the decision-making procedure, i.e. parts of the environmental impact assessment (EIA) being provided for evaluation and approval by the decision-making authority prior to any information being made publicly available;

(g) The proposed wording requiring that public authorities do not limit the provision of information under article 6, paragraph 6, and article 4 of the Convention to publication of the environmental impact statement but include other relevant information to ensure more informed and effective public participation;

(h) The proposed wording clarifying that information that applicants are required to provide in the course of the public authorities' decision-making on decisions under article 6 is generally not exempt from disclosure;

(i) The proposed wording requiring disclosure of EIA studies in their entirety as the rule (with the possibility for exempting parts being an exception to the rule;

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<sup>6</sup> Annex II to the report of the Compliance Committee on its Twenty-third meeting (Geneva, 31 March – 3 April 2009), ECE/MP.PP/C.1/2009/2.

<sup>7</sup> Letter from Executive Secretary of the ECE to the Prime Minister of Ukraine conveying the findings of the Compliance Committee, 16 April 2009.

(j) The proposed wording requiring that text of decisions, along with the reasons and considerations on which they are based, are publicly available.<sup>8</sup>

28. The Committee welcomes the progress report by the Party concerned received on 9 December 2014, as well as the updates and information provided on 26 June and 2 October 2015, on 12 April, 20 June and 23 November 2016 as well as on 21 February and 15 and 22 June 2017.

29. The Committee also welcomes the comments and information provided by the communicant of communication ACCC/C/2004/03 on 23 June 2016, 8 December 2016 and 26 February and 15 June 2017. In this regard, the Committee notes the communicant's confirmation in its email of 15 June 2017 that the text of the EIA law as adopted remains essentially unchanged to the text assessed by the Compliance Committee in its progress review of 23 January 2017. The Committee also welcomes the comments from the communicant of communication ACCC/C/2013/87 on 28 June 2017.

30. The Committee examines below the extent to which the EIA law meets the requirements of paragraph 5 (a) – (c) of decision V/9m in paragraphs 0-0 below and, to this end, uses the checklist set out in paragraph 10 of its findings on decision III/6f (see para. 27 (a) – (j) above) as a useful reference of the points that the Party concerned should address in order to fulfil paragraphs 5 (a) – (c) of decision V/9m.

31. Before examining the EIA law in light of this checklist however, it examines the comments submitted by the communicant of communication ACCC/C/2013/87 on the new EIA law.

#### **Comments of the communicant of communication ACCC/C/2013/87**

32. Through paragraph 17 of the report of its fifty-fifth meeting,<sup>9</sup> the Committee agreed to consider in its follow-up on decision V/9m the extent to which general issues (though not specific events) raised in communication ACCC/C/2013/87 are addressed. In this regard, the Committee notes that the events described in communication ACCC/C/2013/87 took place prior to the adoption of the new EIA law,<sup>10</sup> which is the major subject of the follow-up on paragraphs 5 (a) and (c) of decision V/9m. At the request of the Committee, the secretariat therefore forwarded the text of the adopted EIA law to the communicant of communication ACCC/C/2013/87 for his comments prior to its fifty-seventh meeting (Geneva, 27 – 30 June 2017).<sup>11</sup>

33. In his comments on the new EIA law received on 28 June 2017, the communicant of communication ACCC/C/2013/87 submitted that the new EIA law, and in particular article 7 thereof, fails to ensure open public hearings for local citizens on activities falling under article 3, paragraph 2, of the EIA law.<sup>12</sup> Having taken note of this view, the Committee considers that, while the newly adopted EIA law is yet “untested”, the concerns expressed by the communicant of communication ACCC/C/2013/87 appear to be adequately addressed by the new law. Article 7, paragraphs 5 and 6, of the EIA law provide an obligation to organize

<sup>8</sup> Annex II to the report of the Compliance Committee on its Twenty-third meeting (Geneva, 31 March – 3 April 2009), ECE/MP.PP/C.1/2009/2, para. 10.

<sup>9</sup> ECE/MP.PP/C.1/2016/9.

<sup>10</sup> The EIA law was adopted on 23 May by the Parliament and signed by the President of the Party concerned on 13 June 2017. See email update from the Party concerned, 15 June 2017. The Party concerned further provided the text of the adopted EIA law on 22 June 2017.

<sup>11</sup> Email by the secretariat to the communicant of communication ACCC/C/2013/87 inviting his input to the Committee's examination, 25 June 2017.

<sup>12</sup> Comments of the communicant of communication ACCC/C/2013/87 on the extent to which the measures taken by the Party concerned to implement decision V/9m address the general issues raised in his communication, 28 June 2017.

hearings for the “public”, which is defined in article 1, paragraph 1 (1), of the EIA law as “any natural or legal person”. Article 8 in conjunction with article 4, paragraph 3, of the EIA law sets out the notice requirements for the public participation period, which the Committee considers adequate to inform local citizens. Article 2, paragraph 1, of the EIA law requires that the outcome of public participation is also taken into account by the decision-making authorities.

34. The Committee notes that, in accordance with article 7, paragraph 9, of the EIA law, the procedure for public hearings need to be established by the Cabinet of Ministers of the Party concerned and emphasizes that it is crucial that these procedures concord with the requirements of the Convention. While not precluding the possibility of examining allegations regarding the procedure for public hearings once adopted, if brought before it in a future case, the Committee does not consider that that the EIA law as adopted itself *prima facie* fails to meet the requirements of decision V/9m.

35. In light of the foregoing, the Committee considers that the comments of the communicant of communication ACCC/C/2013/87 do not raise matters that would indicate that the Party concerned has failed to meet the requirements of decision V/9m. The Committee makes clear, however, that this does not preclude the Committee from examining allegations regarding how the EIA law or its subsidiary legislation, such as the procedure for public hearings, is applied in practice if brought before it in a future case.

36. The Committee examines below the extent to which the EIA law meets the requirement of the checklist set out in paragraph 27 (a) – (j) above.

#### **A. Paragraph 5 (b) of decision V/9m**

##### **A requirement for public authorities to obtain environmental information relevant to their functions**

37. The Committee notes that in its report dated 22 June 2011, the Party concerned stated that it had adopted the Law “On Access to Public Information” in January 2011.<sup>13</sup> According to the Party concerned, article 13 and 14 of the Law “On Access to Public Information” regulates the acquisition and dissemination of environmental information. Article 13 of the Law requires information providers, as defined in article 12, to *inter alia* maintain and regularly update registers of documents and to maintain chronological files of copies of official documents and records for public access. Article 14, paragraph 1 of the Law sets out a list of information that information providers are obliged to disclose while article 14, paragraph 2 further requires that the information identified in article 14, paragraph 1, must be published on the information provider’s website immediately following its emergence.

38. Based on this information, including the statement by the Party concerned, the Committee finds that the Party concerned has fulfilled the requirements of paragraph 27 (a) above.

##### **A requirement for information to be provided on request regardless of its volume**

39. In its report dated 22 June 2011, the Party concerned stated that the Law “On Access to Public Information” of January 2011 prevents public authorities from refusing an access to information request on the basis that it relates to a large volume of information.<sup>14</sup> Having examined the grounds for refusing access to information set out in article 23 of that Law, the Committee notes that these do not seem to include a possibility to refuse access on the basis of the volume of information requested. Rather, pursuant to article 21, paragraph 4, of the

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<sup>13</sup> Report from the Party concerned, 22 June 2011 (in the context of decision III/6f).

<sup>14</sup> *Ibid.*



Law, if the request is for a large volume of information or requires processing a large amount of data, information providers may extend the term for addressing the request to 20 business days, specifying the reason for the extension.

40. Based on the above information, including the statement by the Party concerned, the Committee finds that the Party concerned has fulfilled the requirements of paragraph 27 (b) above.

#### **Overall assessment on paragraph 5 (b) of decision V/9m**

41. In the light of its findings in paragraphs 38 and 40 above, the Committee finds that the Party concerned has met the requirements of paragraph 5 (a) of decision V/9m. The Committee makes clear that this does not preclude the Committee examining allegations regarding the above provisions of the Act “On Public Information”, including their application in practice, if brought before it in a future case.

### **B. Paragraphs 5 (a) and 5 (c) of decision V/9m**

#### **The requirements for informing the public in accordance with article 6, paragraph 2 of the Convention**

42. The Committee notes that article 4, paragraph 1, of the EIA law requires that the public must be informed in an adequate, timely and effective manner of the EIA process.

##### *(i) Form of the public notice*

43. With regard to the form of the public notice, the Committee notes that article 4, paragraph 2, of the EIA law requires that notification of the proposed activity and the commencement of public consultations is published on the official website of the competent authority. In addition, article 4, paragraph 3, of the EIA law requires the developer to publish notification of the proposed activity and the commencement of public consultations in the printed mass media (at least two), the territory of dissemination of which covers the administrative territorial units likely to be affected by the proposed activity. Furthermore, article 4, paragraph 3 requires the notice to be placed on the notice boards of the local self-governing authorities or in other public places in the location of the proposed activity. The Committee further notes with appreciation that article 8, paragraph 3, of the EIA law requires that the notification is to be kept up for the entire period of the public participation.

##### *(ii) Content of the public notice*

44. As regards the content of the public notice, the Committee stated in its progress review that it considered that article 8, paragraph 2 of the vetoed EIA law covers all the requirements of article 6, paragraph 2(a)-(d) of the Convention.<sup>15</sup> The Committee notes that in the EIA law as finally adopted, article 8, paragraph 2 (9), refers not to “relevant information”, which is the phrasing used in article 6, paragraph 2 (d) (iv), but to “additional information identified by the developer”. The Committee examines this change further in the context of its analysis regarding article 6, paragraph 6, of the Convention below (see para. 54 below), but does not find that this wording as such fails to meet the requirements of article 6, paragraph 2 (d) (iv) of the Convention. On a separate point, the Committee welcomes the explicit inclusion in article 8, paragraph 2 (7), of the EIA law of a requirement to provide the postal and electronic address to which comments and suggestions can be directed.

<sup>15</sup> Committee’s progress review, 23 January 2017, para. 29.

(iii) *Notification in case of transboundary impacts*

45. The Committee notes that article 14 of the EIA law sets out the requirements for a transboundary environmental impact assessment procedure. Article 14, paragraph 14, of the EIA law requires that the competent central authority shall disclose its decision to carry out a transboundary environmental impact assessment procedure and shall inform the public of that decision in accordance with article 4 of the EIA law.

*Conclusion regarding requirements for informing the public*

46. In the light of the above, the Committee finds that the Party concerned has met each of the requirements set out in paragraph 27 (c) (i) – (iii) above.

**Timeframes for public participation - article 6, paragraph 3, of the Convention**

47. Regarding the time for the public to prepare and submit comments, article 5, paragraph 7, of the EIA law provides for a timeframe of 20 working days for the public to prepare and submit comments during the EIA procedure. With respect to public consultations on the proposed activity after the submission of the EIA report, pursuant to article 7, paragraph 6, of the EIA law, the timeframe for public comments shall not be shorter than 25 working days and longer than 35 working days.

48. The Committee finds that the above timeframes appear reasonable and accordingly, the Party concerned meets the requirements set out in paragraph 27 (d) above.

**Sufficient time for public authorities to take comments into account - article 6, paragraph 8, of the Convention**

49. Article 2, paragraph 1(3), of the EIA law requires the competent authority to examine inter alia the information received from the members of the public through the public consultations. Article 7, paragraph 7, of the EIA law requires the competent authority to ensure the preparation of the report on the public participation process and article 11, paragraph 1, of the EIA law requires the report on public consultations to be submitted to the competent authorities. Article 9, paragraph 3, of the EIA law requires the competent authority to consider and take note of the report on the public consultations when reaching the EIA conclusion.

50. The Committee notes that, in accordance with article 9, paragraph 6, of the EIA law, the EIA conclusion is to be submitted to the developer within 25 days from the end of the public participation period. The Committee considers that this timeframe should generally give the public authorities sufficient time to consider the outcome of the public participation.

51. In the light of the above, the Committee finds that the Party concerned has met the requirements set out in paragraph 27 (e) above.

**Preventing short-cutting in the decision-making procedure - article 6, paragraph 4, of the Convention**

52. With regard to preventing short-cutting in the decision-making by parts of the EIA being approved prior to being made publicly available, the Committee notes that article 4, paragraph 3, of the EIA law requires that notification of the activity subject to EIA and notice of the commencement of public consultations on the EIA report shall be made public by the developer no later than 3 working days following the submission to the competent authority. Moreover, pursuant to article 4, paragraph 9, of the EIA law, at the time of submitting the EIA report, the developer shall simultaneously provide the competent authority with the data proving the fact and date of publication of the notification on the proposed activity and the notice of the commencement of public consultations on the EIA report. Article 4, paragraph

9 also requires the competent authority to verify and add the above information to the report on public consultations.

53. Based on the above, the Committee finds that the Party concerned has met the requirements set out in paragraph 27 (f) above.

**Information other than environment impact statement to be provided - article 6, paragraph 6 of the Convention**

54. With regard to making information other than the environmental impact statement available, the Committee noted in its progress review that article 4, paragraph 5, of the vetoed EIA law required not only the EIA report but also other information requisite for the environmental impact assessment to be made available at locations accessible to the public.<sup>16</sup> The Committee notes that in the EIA law as finally adopted, article 4, paragraph 5, refers to other documentation “provided by the developer” instead. The Committee has, however, no evidence before it that would suggest that this change would have a limiting effect on the information to be made available. The Committee further notes that pursuant to article 4, paragraph 7 of the EIA law, the competent authority shall ensure public access to “all information” relevant to the decision-making process free of charge as it becomes available (subject to article 4, paragraph 8 of the EIA law, which is discussed in para. 56 below).

55. Based on the above, the Committee finds that the Party concerned has met the requirements set out in paragraph 27 (g) above.

**Information provided by developer not exempted from disclosure - article 6, paragraphs 4 and 6 of the Convention**

56. Concerning information that the developer is required to provide in the course of the public authorities’ decision-making on decisions under article 6 of the Convention, article 4, paragraph 5 of the EIA law requires the EIA report and other documentation required for the EIA to be open (subject to the requirements of article 4, paragraph 8, of the EIA law) and provided by the competent authority, local self-governance authority and the developer for examination. Article 4, paragraph 8, of the EIA law stipulates that, in exceptional cases, where the documentation on the proposed activity or the EIA report contain confidential information of the developer, such information may be detached upon the reasoned request of the developer and the remaining information provided to the public. Article 4, paragraph 8, states, however, that information on the environmental impact, including quantitative and qualitative indicators of emissions and discharges, physical and biological factors of impact, use of natural resources and waste management, shall be open and access thereto shall not be restricted.

57. In the light of the above, the Committee finds that the EIA law contains no general exemption on disclosure of information that the developer is required to provide in the course of the public authorities’ decision-making. Rather, article 4, paragraph 8, of the EIA law makes it clear that such information may be exempted only in exceptional cases, upon the reasoned request of the developer. Moreover, article 4, paragraph 8, makes clear that certain types of environmental information can never be kept confidential. Based on the above analysis, the Committee finds that the Party concerned has met the requirements set out in paragraph 27 (h) above.

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<sup>16</sup> Committee’s progress review, 23 January 2017, para. 39.

**Disclosure of EIA studies in their entirety as a rule - article 6, paragraph 6 of the Convention**

58. With regard to the disclosure of EIA studies in their entirety, as noted in paragraph 56 above, article 4, paragraph 5 of the EIA law requires the EIA report and other documentation required for the EIA to be open (subject to the requirements of article 4, paragraph 8 of the vetoed law) and provided by the competent authority, local self-governance authority and the developer for examination. Also as noted above, article 4, paragraph 8 of the EIA law stipulates that in exceptional cases where the documentation on the proposed activity or the EIA report contain confidential information of the developer, such information may be detached upon the reasoned request of the developer and the remaining information provided to the public. Article 4, paragraph 8 states, however, that information on the environmental impact, including quantitative and qualitative indicators of emissions and discharges, physical and biological factors of impact, use of natural resources and waste management, shall be open and access thereto shall not be restricted.

59. After examining the above provisions, the Committee finds that the Party concerned has met the requirements set out in paragraph 27 (i) above.

**Making available of the decisions and underlying reasons - article 6, paragraph 9, of the Convention**

60. The Committee notes that article 9, paragraph 4, of the EIA law stipulates that the descriptive part of the EIA conclusion shall contain information on, inter alia, the taking into account of the EIA report and accepted and rejected comments and suggestions obtained through the public consultations. Article 9, paragraph 7, of the EIA law requires that the competent authority make the EIA conclusion public within 3 working days of the adoption thereof by the means set out in article 4 of the law. The same paragraph requires that the decision be added within that timeframe to the single environmental impact assessment registry.

61. With respect to the final decision on the proposed activity, article 11, paragraph 4, of the vetoed EIA law requires the public authorities to publish information on the final decision within three working days of the decision and to ensure opportunities for the public to examine it. In addition, article 11, paragraph 5 of the EIA law requires that information on the decision on carrying out the proposed activity shall be added to the single environmental impact assessment registry by the competent authorities that granted the EIA conclusion within 3 working days of them receiving the final decision.

62. Based on the above, the Committee finds that the Party concerned has met the requirements set out in paragraph 27 (j) above.

**Overall assessment on paragraphs 5 (a) and (c) of decision V/9m**

63. In light of its findings in paragraphs 46, 48, 51, 53, 55, 57, 59 and 62 above, the Committee finds that the Party concerned has met the requirements of paragraphs 5 (a) and (c) of decision V/9m. The Committee makes clear, however, that this does not preclude the Committee from examining allegations regarding the provisions of the EIA law considered in paragraphs 42-62 in future cases, e.g. with respect to the adequacy of any implementing provisions by the Cabinet of Ministers of the Party concerned or the application of the new law in practice, if brought before it in a future case.

## IV. Conclusions and recommendations

64. The Committee welcomes the engagement of the Party concerned in the compliance review process during the intersessional period.

65. Having examined the new EIA law, based on the information provided and having received no evidence to the contrary, the Committee finds that the Party concerned has adopted the necessary measures to bring its legislation into compliance with the Convention, and in particular has satisfied the requirements of paragraph 5 (a) – (c) of decision V/9m. The Committee accordingly finds that the Party concerned is no longer in a state of non-compliance with the points of non-compliance identified in the Committee's findings on communication ACCC/C/2004/03.

66. While the measures considered above were not taken before 31 December 2015,<sup>17</sup> i.e. the date set out in paragraph 6 (b) of decision V/9m as a condition for the caution to be lifted, the Committee considers that in the light of its finding in paragraph 65 above the caution issued by the Meeting of the Parties at its fourth session should now be lifted. Consequently, the Committee considers that the special rights and privileges accorded to the Party concerned should not be suspended.<sup>18</sup>

67. The Committee recommends that, pursuant to paragraph 35 of the annex to decision I/7, the Meeting of the Parties endorse the above report with regard to compliance by Ukraine.

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<sup>17</sup> Report of the Committee's fifty-second meeting (Geneva, 8-11 March 2016), para. 78.

<sup>18</sup> See decision V/9m, para. 8.