



# Economic and Social Council

Distr.: General  
31 July 2017

Original: English

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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 Belarus 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.



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## 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/9c on compliance by Belarus with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

## II. Summary of follow-up

2. On 24 December 2014, the Party concerned provided its first progress report on the implementation of decision V/9c.

3. On 2 January 2015, the first progress report of the Party concerned was forwarded to the communicants of communications ACCC/C/2009/37 and ACCC/C/2009/44 for its comments by 23 January 2015. The communicants provided comments on 23 January 2015.

4. By letter of 13 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9c to the Party concerned together with a reminder to the Party concerned of the request by the Meeting of the Parties to provide its second progress report on the implementation of decision V/9c by 31 October 2015.

5. On 28 October 2015, the Party concerned provided its second progress report.

6. On 6 November 2015, the second progress report of the Party concerned was forwarded to the communicants of communication ACCC/C/2009/37 and ACCC/C/2009/44 for their comments by 27 November 2015. No comments were received from the communicants. An observer, public association "Ecohome", provided its comments on 27 November 2015.

7. On 10 February 2016, the Party concerned provided additional information.

8. On 8 March 2016, the observer "Ecohome" submitted comments on the implementation of decision V/9c.

9. At its fifty-second meeting (Geneva, 8–11 March 2016), the Committee reviewed the implementation of decision V/9c in open session with the participation of the Party concerned in person and the observer "Ecohome" by audioconference.

10. The Party concerned provided its reply to the questions posed by the Committee during the fifty-second meeting on 25 April 2016.

11. On 3 May 2016, the observer "Ecohome" provided comments on the reply of the Party concerned. No comments were received from the communicants.

12. By letter dated 13 October 2016, the Party concerned provided an update on its progress to implement decision V/9c.

13. On 31 October 2016, the Party concerned provided its third progress report and on 22 November 2016, the observer "Ecohome" provided comments thereon.

14. At its fifty-fifth meeting (Geneva, 6–9 December 2016), the Committee reviewed the implementation of the decision V/9c in open session with the participation of the Party concerned and the observer "Ecohome", both in person. The observer provided a written version of the statement it made during the session on 17 December 2016 and additional information on 21 December 2016.

15. At its fifty-sixth meeting (Geneva, 28 February – 3 March 2017), the Committee held an open session on the implementation of decision V/9c with the participation of the Party concerned by audio conference and the observer “Ecohome” in person. The Committee was informed that, in January 2017, the Party concerned had adopted new legislation relevant to the implementation of decision V/9c. In order to ensure that its second progress review was as useful as possible, the Committee decided to delay the finalization of its second progress review in order to examine the extent to which the legislation adopted in January 2017 met the requirements of decision V/9c.

16. On 28 March 2017, the Party concerned provided the texts of the legislation adopted in January 2017.

17. By letter of 4 April 2017, the secretariat sent the Committee’s second progress review on the implementation of decision V/9c to the Party concerned. The Party concerned was informed that all measures necessary to implement decision V/9c had to be completed, and reported upon, by no later than 25 April 2017 in order to be taken into account in the Committee’s report to the sixth session of the Meeting of the Parties.

18. The Party concerned provided further information on 4 May 2017. Despite its late submission, the Committee agreed to take this information into account in its preparation of the present report. No comments were received from communicants or observers.

19. The Committee adopted its report to the sixth session of the Meeting of the Parties on the implementation of decision V/9c through its electronic decision-making procedure on 27 July 2017, and thereafter requested the secretariat to send it to the Party concerned and the communicants.

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

20. In order to meet the requirements of paragraphs 6 and 7 of decision V/9c, the Party concerned would need to provide the Committee with evidence 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;<sup>1</sup>

(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;<sup>2</sup>

(c) There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;<sup>3</sup>

(d) There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, including those that may not be subject to an EIA decision procedure, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;<sup>4</sup>

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<sup>1</sup> Decision V9c, para. 6 (a).

<sup>2</sup> Ibid., para. 6 (b).

<sup>3</sup> Ibid., para. 6 (c).

<sup>4</sup> Ibid., para. 6 (d).

(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);<sup>5</sup>

(f) There are clear provisions imposing obligations on 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;<sup>6</sup>

(g) There are clear provisions imposing obligations on 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;<sup>7</sup>

(h) There are clear provisions imposing obligations on the relevant public authorities to:

(i) Promptly inform the public of the decisions taken by them and their accessibility;<sup>8</sup>

(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;<sup>9</sup>

(iii) Establish relevant publicly accessible lists or registers of all decisions subject to article 6 held by them;<sup>10</sup>

(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;<sup>11</sup>

(j) The amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is made public, as required under article 6, paragraph 9, of the Convention;<sup>12</sup>

(k) The full content of all the comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the authorities responsible for taking the decision (including those responsible for the *expertiza* conclusion);<sup>13</sup> and

(l) Appropriate practical and other provisions are made for the public to participate during the preparation of plans and programmes relating to the environment.<sup>14</sup>

21. The Committee welcomes the first, second and third progress reports of the Party concerned, which were received on time, and commends the useful tables annexed to those reports indicating which provisions of its legislation were intended to implement each

<sup>5</sup> Ibid., para. 6 (e).

<sup>6</sup> Ibid., para. 6 (f).

<sup>7</sup> Ibid., para. 6 (g).

<sup>8</sup> Ibid., para. 6 (h) (i).

<sup>9</sup> Ibid., para. 6 (h) (ii).

<sup>10</sup> Ibid., para. 6 (h) (iii).

<sup>11</sup> Ibid., para. 6 (i).

<sup>12</sup> Ibid., para. 7 (a).

<sup>13</sup> Ibid., para. 7 (b).

<sup>14</sup> Ibid., para. 7 (c).

paragraph of decision V/9c. The Committee also welcomes the further information provided by the Party concerned on 10 February, 25 April and 13 October 2016 as well as 28 March and 4 May 2017.

22. The Committee also welcomes the information received from the communicants and observer on 23 January and 27 November 2015 as well as 8 March, 3 May, 22 November and 17 and 21 December 2016.

**Paragraph 6 (a) of decision V/9c: Stating an interest to apply for environmental information**

23. In its third progress report, the Party concerned stated that paragraph 6 (a) of decision V/9c has been implemented through the Law of the Republic of Belarus No 362-3 “On Amendments and Supplements to Some Laws of the Republic of Belarus on Environmental Protection and Public Participation in Decision-Making in Environmentally Significant Matters” (the Law on Amendments), of 11 May 2016, which was scheduled to enter into force on 1 July 2017.<sup>15</sup> It further stated that the Law on Amendments, inter alia, provides for an amendment to the second part of article 2 of the Law of the Republic of Belarus of 10 November 2008 “On information, informatization and information protection” (National Register of Legal Acts of the Republic of Belarus, 2008, No. 279, 2/1552), by adding in the second part of article 2 after the words “advertising,” and “legal” the words “the protection of children from information harmful to their health and development” and “environmental”.<sup>16</sup>

24. In its second progress review, the Committee welcomed the adoption of the Law on Amendments but requested further clarifications as to how the above amendment ensures that the general requirement of stating an interest does not apply to environmental information.<sup>17</sup> The Committee also took note of the observer’s submission that a relevant amendment on this point was still lacking.<sup>18</sup>

25. In its further information of 4 May 2017, the Party concerned submitted that the above amendment to the Law “On information, informatization and information protection” amended article 2 so as to clarify that special regulations apply to the processing of environmental information. Part 2, of article 2, as amended would therefore now read: “Legislation of the Republic of Belarus may establish peculiarities for legal regulation of informational relations related to information constituting state secret, personal data, advertisement, protection of children from information harmful to their health and development, scientific and technical, statistical, legal, environmental and other information”.<sup>19</sup> The Party concerned submitted that peculiarities for legal regulation for the provision of environmental information are stipulated in the law “On Environmental Protection”. Article 74-4, part 11, of the law “On Environmental Protection provides that “an applicant shall not state the reasons of his request in obtaining environmental information”.<sup>20</sup>

26. The Committee notes that whereas paragraph 6 (a) of decision V/9c recommends that the general law on access to information (i.e. the law “On information, informatization and information protection”) be amended to refer to the law “On environmental protection”,

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<sup>15</sup> Third progress report of the Party concerned, 31 October 2016, p. 3.

<sup>16</sup> Ibid.

<sup>17</sup> Committee’s second progress review, 4 April 2017, para. 57.

<sup>18</sup> Statement at the Committee’s fifty-fifth meeting by the observer “Ecohome”, 17 December 2016, p. 3.

<sup>19</sup> Further information from the Party concerned, 4 May 2017, p. 1.

<sup>20</sup> Ibid., p. 2.

the amendment as adopted only refers to the possibility for “peculiarities” to be established by specific regulation. The Committee notes, however, that it does not require its Parties to apply a specific regulatory technique when implementing the requirements of the Convention. Based on the above provisions and the accompanying explanation by the Party concerned that these provisions mean that applicants will not have to state the reason for requesting information, with no information or indication to the contrary, and without precluding possible further scrutiny of this issue in a future case if the above provisions prove not to meet the requirements of Convention when applied in practice, the Committee finds that the Party concerned has met the requirements of paragraph 6 (a) of decision V/9c.

#### **Paragraph 6 (b)-(i): Scope of application of new legislative measures**

##### *Rights granted to citizens*

27. In its second progress review, the Committee noted with concern that the new legislation adopted by the Party concerned to implement paragraph 6 (b)-(i) of decision V/9c appeared to provide the rights contained therein only to “citizens and legal entities”.<sup>21</sup> The Committee pointed out that, if interpreted narrowly, those terms would not fully cover the “public” as defined in the Convention, which also includes members of the foreign public as well as associations and groups. The Committee accordingly requested further information on this point.<sup>22</sup>

28. In its further information provided on 4 May 2017, the Party concerned stated that in accordance with article 11 of its Constitution and article 4 of the Law No. 105-3 “On Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus”, foreign nationals shall enjoy rights and liberties on the same terms as citizens, unless otherwise provided by the Constitution, the laws and international treaties.<sup>23</sup> Having no evidence before it to the contrary, the Committee finds that this factor does not constitute an obstacle to the Party concerned meeting the requirements of paragraph 6 (b)-(i) of decision V/9c.

##### *Documents subject to public participation*

29. The Committee noted in its second progress review that it had not been provided with sufficient evidence that the new legislation covers all decisions permitting proposed activities within the scope of article 6, paragraph 1, of the Convention.<sup>24</sup> The Committee noted that the new article 15-2 of the Environmental Protection Law, as inserted by “the Law on Amendments” and paragraph 2 of the Resolution of the Council of Ministers of the Republic of Belarus No. 458 “On Approval of the Procedure organizing and conducting environmentally significant public discussions of draft decisions on the impact assessment reports on the environment, taking into account the environmental decision-making and the introduction of amendments and additions to some Council Regulation” of 14 June 2016, since amended by Resolution No. 24 of 13 January 2017 (“Resolution No. 458”),<sup>25</sup> both refer to five categories of decision-making procedures that are subject to public participation, namely, those related to (i) concepts, programs, plans, schemes; (ii) normative legal acts; (iii) permits in the specific context of the removal or transplantation of

<sup>21</sup> Committee’s second progress review, 4 April 2017, para. 59.

<sup>22</sup> Ibid, paras. 59 and 130 (b) (i).

<sup>23</sup> Further information from the Party concerned, 4 May 2017, p. 2.

<sup>24</sup> Committee’s second progress review, 4 April 2017, para. 60.

<sup>25</sup> See Resolution of the Council of Ministers of the Republic of Belarus No 24 of 13 January 2017 “On amending Resolution of the Council of Ministers No 687 of 1 June 2011 and No 458 of 14 June 2016” for the amended version of this Resolution, provided by the Party concerned on 28 March 2017.

pieces of flora, (iv) strategic environmental assessment (SEA) reports; and (v) environmental impact assessment (EIA) reports.

30. From the information provided, it appears to the Committee that categories (i), (ii) and (iv) refer to decisions within the scope of articles 7 and 8 of the Convention. The Committee will therefore not examine categories (i), (ii) or (iv) further in the context of its review of the implementation of paragraph 6 (b)-(i) of decision V/9c.

31. With regard to category (iii), namely permits on removal or transplantation of flora, the Committee has not been provided with sufficient information to determine whether or not such activities fall under article 6 of the Convention. While noting that the legislation's inclusion of permits on removal or transplantation of flora may indicate that such permits are subject to article 6, paragraph 1 (b), of the Convention, given that neither the communicants nor observers have to date raised concerns with respect to the procedure for public participation in decision-making on such permits, the Committee will not examine the requirements for public participation on these permits further in the context of the present report.

32. With regard to category (v), the Committee emphasized in its second progress review that the Convention requires public participation with regard to decisions to permit proposed activities subject to article 6 of the Convention and this is not limited to public participation on the EIA report, but also includes the possibility to inspect and comment on all the information relevant to the decision-making, in particular, though not limited to, the project documentation required to be submitted for state ecological *expertiza* together with the EIA report.<sup>26</sup> The Committee accordingly requested the Party concerned to provide further information on this point.<sup>27</sup>

33. In its further information of 4 May 2017, the Party concerned stated that it did not consider it necessary to provide any project documentation besides the EIA report, because at the stage at which the EIA report is prepared there is in most cases no other project documentation.<sup>28</sup> The Party concerned stated moreover that the public's access to information relating to the decision-making procedure is assured via paragraph 7 of Resolution No. 458, which provides for an open-ended list of information to be made available.<sup>29</sup> The Committee examines paragraph 7 of the Resolution in further detail in paragraph 58 below, but it already points out that while the list in paragraph 7 of the Resolution may, as submitted by the Party concerned<sup>30</sup> be open-ended, there is nothing in the provision that would expressly require that the public is provided with the project documentation submitted for *expertiza*.

34. The Party concerned further submitted that, in accordance with article 61 of the Law "On State Environmental Expertise, Strategic Environmental Assessment and Environmental Impact Assessment", public environmental expertize may be organized on the initiative of public associations or citizens by independent specialists.<sup>31</sup> In this regard, the Committee recalls its findings on ACCC/C/2009/37 where it held that:

The organization of a public environmental *expertiza* is not a mandatory part of the decision-making, and therefore it cannot be considered as a primary tool to ensure implementation with the provisions of article 6 of the Convention. It may, however,

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<sup>26</sup> Committee's second progress review, 4 April 2017, para. 63.

<sup>27</sup> Ibid., para. 130 (b) (ii).

<sup>28</sup> Further information from the Party concerned, 4 May 2017, p. 3.

<sup>29</sup> Ibid., pp. 5-6.

<sup>30</sup> Ibid., pp. 5-6.

<sup>31</sup> Ibid., p. 4.

play a role as an additional measure to complement the public participation procedure required as a mandatory part of the decision-making.<sup>32</sup>

The Committee emphasizes that the obligations in article 6 of the Convention are expressly laid upon the Party concerned and its competent public authorities and accordingly public environmental expertise cannot replace the obligation of the Party concerned and its competent authorities to fulfil these requirements.

35. In its further information of 4 May 2017, the Party concerned also stated that in accordance with Decree No. 528 of the President of the Republic of Belarus of 17 November 2011 (as amended on 9 March 2016), developers are required to obtain an integrated environmental permit for the commissioning of facilities falling under a list of facilities defined under its law.<sup>33</sup> The Party concerned also submitted that paragraph 9 of the Regulation on the Order for Issuance of Integrated Environmental Permits, approved by Resolution No. 1677 of the Council of Ministers of 12 December 2011 (as amended on 2 March 2015), includes requirements to notify the public and to take into account public comments in the context of this permitting procedure. According to the Party concerned, the public thus has the opportunity to get acquainted with the materials and take part in public discussions at various stages prior to the commissioning of a facility.<sup>34</sup> While the Committee welcomes the above provisions, the Committee regrets that it has not been provided with sufficient information to be in a position to assess whether these provisions would ensure that the public concerned would be able to participate in the above described manner in the decision-making on all activities within the scope of article 6 of the Convention.

36. The Committee therefore considers that it has not yet been provided with sufficient information to conclude that the problem identified in paragraph 32 above has been resolved. The Committee emphasizes that this is a fundamental point. Until the Party concerned demonstrates to the Committee that its legal framework ensures that the requirements set out in article 6 of the Convention apply not only to the EIA report but to all information relevant to decisions permitting activities subject to article 6, including project documentation, it will remain in non-compliance with article 6 of the Convention.

**Paragraph 6 (b) of decision V/9c: Clear requirement for public to be informed in adequate, timely and effective manner**

37. In its third progress report, the Party concerned stated that paragraph 7 of Resolution No. 458 implements paragraph 6 (b) of decision V/9c.<sup>35</sup>

38. Paragraph 7 of the Resolution requires that the announcement of the start of the environmental decision-making be published on the “public discussion” section of the organizer’s official websites. The Committee notes that, in addition, paragraph 5 of the Resolution sets out the general requirements for notice of public discussions and paragraph 44 sets out the requirements for notice of public discussions regarding EIA reports. Paragraph 44 of the Resolution requires the notice to be published in the media and on the websites of the developer and the responsible local authorities.

39. Notwithstanding the above provisions, as the Committee pointed out in its second progress review there is however, no requirement that when selecting the particular means of notification, the authorities should select those means which will ensure “effective”

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<sup>32</sup> ECE/MP.PP/2011/11/Add.2, para. 76.

<sup>33</sup> Further information from the Party concerned, 4 May 2017, p. 4-5.

<sup>34</sup> *Ibid.*, p. 5.

<sup>35</sup> Third progress report of the Party concerned, 31 October 2016, p. 4.

notification of the public concerned nor are there any specific provisions that would require that the notification be effective in practice.<sup>36</sup> In this regard, in its second progress review the Committee noted the observer's submission that the current method of notification is not effective in informing the public of the public participation procedure because the local population does not usually visit the indicated websites and the advertisements in print media are not sufficiently prominent nor in publications that are read by a sufficient number of people.<sup>37</sup> The Committee also referred the Party concerned to paragraph 64 of the Maastricht Recommendations which provides useful guidance as to the various locations where notice should be posted, including inter alia the immediate vicinity of the proposed activity.<sup>38</sup> The Committee noted that, pursuant to Resolution No. 458, notices for participation procedures on the transplantation and removal of flora items are indeed required to be posted in the vicinity of the proposed activity and expressed its regret that there is no such requirement regarding notices concerning participation procedures on EIA reports and other procedures subject to article 6 of the Convention.<sup>39</sup>

40. In its further information provided on 4 May 2017, the Party concerned stated that in accordance with article 22 of the law "On information, informatization and information protection", the state body may distribute and/or provide public information by, inter alia, "allocating it at the place, which is open for the public, in a state body (on information stands, displays and (or) by another way".<sup>40</sup> The Party concerned stated that, in accordance with this provision and established practice, announcements of public hearings are posted in public places (noticeboards, pillars, entrance hall doors etc.) and it also provided photographs of examples of such notices.<sup>41</sup>

41. While welcoming the various means for publicizing the notice set out in article 22 of the law "On information, informatization and information protection", the Committee considers that it is not clear from the wording of article 22 whether in every public participation procedure the state body is required to use each of the means of notice listed in that provision, or the list in article 22 is intended as a "menu" of possible means of notice to choose from. The Committee also notes that, while posting the announcement in the vicinity of the proposed activity would be covered by the words "other ways" in article 22, it is not among the means of notice expressly listed in that article. For the above reasons, the Committee considers that the Party concerned has not to date demonstrated to the Committee that its legal framework sufficiently ensures that notice will be "effective" in practice.

42. In light of the above, the Committee finds that the Party concerned has not yet fully met the requirements of paragraph 6 (b) of decision V/9c to establish clear requirements to inform the public of its opportunities to participate in decision-making processes on activities subject to article 6 and in particular, it has not yet established clear requirements to inform the public in an effective manner with respect to EIA reports nor, in the light of the Committee's considerations in paragraph 36 above, to inform the public with respect to other information relevant to decisions on activities subject to article 6 including project documentation in an adequate, timely and effective manner.

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<sup>36</sup> Committee's second progress review, 4 April 2017, para. 66.

<sup>37</sup> *Ibid.*, para. 66, referring to comments from the observer "Ecohome" on the additional information for the second progress report, 3 May 2016, pp. 1-2. See also statement at the Committee's fifty-fifth meeting by the observer "Ecohome", 17 December 2016, pp. 2-3.

<sup>38</sup> Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters, 2015, available from <http://www.unece.org/index.php?id=41803>.

<sup>39</sup> Committee's second progress review, 4 April 2017, para. 66.

<sup>40</sup> Further information from the Party concerned, 4 May 2017, p. 6.

<sup>41</sup> *Ibid.*, p. 6 and pp. 10-12 (of the Russian version).

**Paragraph 6 (c) of decision V/9c: Clear requirements regarding form and content of the public notice**

43. In its third progress report, the Party concerned stated that paragraph 14 and 35 of Resolution No. 458 implement paragraph 6 (c) of decision V/9c.<sup>42</sup>

44. The Committee notes that paragraph 14 is in Chapter 2 of the Resolution which addresses public participation in the preparation of strategic documents (plans, programmes etc.) and draft legislation, rather than public participation to permit specific activities within the scope of article 6 of the Convention. The Committee will thus not consider this paragraph further here.

45. The Committee considers that paragraph 45 of the Resolution, which forms part of Chapter 5 of the Resolution (“public discussion on the EIA report”), appears to address most of the notice requirements of article 6, paragraph 2, of the Convention. However, the Committee considers that the following notice requirements are not clearly addressed in paragraph 45:

(a) An indication of the public authority from which relevant information, other than the EIA report, can be obtained and where the relevant information, other than the EIA report, has been deposited for examination by the public (article 6, paragraph 2 (d) (iv));

(b) Whether the activity is subject to transboundary environmental impact procedure (article 6, paragraph 2 (e)).

46. The Committee also notes the observer’s submission that the legislation does not make clear which public authority or authorities are responsible for making the final decision and that this creates difficulties in submitting comments directly to the decision-making authority. The Committee will further address the designation of the final decision in paragraph 82-84 below. With regard to the notice, the Committee considers that while the ninth indent of paragraph 45 of the Resolution requires information to be given about the local executive and administrative bodies responsible for the decision, it indeed does not explicitly require the public authority responsible for taking the final decision to be stated, as required by article 6, paragraph 2 (c), of the Convention.

47. The Committee takes note of the Technical Code of Good Practice 17.02-08-2012 (02120) submitted by the communicant on 21 December 2016, which includes in Appendix “Ж” a form for the notification of public discussions. The Committee has not received any information as to whether this form would be routinely utilized in the context of decisions under Chapter 5 of Resolution No. 458, though in its second progress review it invited the Party concerned to clarify this point. The Committee considers that such a form, if routinely utilized in practice for procedures subject to article 6 of the Convention, could assist to bring the Party concerned further towards compliance. The Committee points out however that the three features of the notice requirements of article 6, paragraph 2 identified as problematic in paragraphs 45-46 above, appear to be inadequately addressed in Appendix “Ж” also.

48. In the light of the above, while welcoming the progress made, the Committee finds that, by not clearly requiring the following to be addressed in the public notice:

(a) The public authority responsible for making the decision to permit the proposed activity subject to article 6,

<sup>42</sup> Third progress report of the Party concerned, 31 October 2016, p. 5.

(b) The public authority from which relevant information, other than the EIA report, can be obtained and where the relevant information, other than the EIA report, has been deposited for examination by the public, and

(c) Whether the activity is subject to a transboundary environmental impact assessment procedure,

the Party concerned has not yet fulfilled the requirements of paragraph 6 (c) of decision V/9c.

**Paragraph 6 (d) of decision V/9c: Reasonable minimum time frames for submitting comments for all decisions under article 6**

49. In its third progress report, the Party concerned states that paragraph 5 of Resolution No. 458 implements paragraph 6 (d) of decision V/9c.<sup>43</sup>

50. The Committee notes that paragraph 5 of the Resolution envisages at least 30 calendar days for the public participation on the EIA report starting from the date of the notice, which the Committee considers to be a reasonable timeframe for public participation on the EIA report.

51. The Committee accordingly finds that the Party concerned has fulfilled the requirements of paragraph 6 (d) of decision V/9c with respect to the EIA report, however, not yet with respect to public participation on other information relevant to decisions to permit activities subject to article 6 (see para. 36 above).

**Paragraph 6 (e) of decision V/9c: Clear possibility for public to submit comments directly to the authorities competent to take the decision**

52. In its third progress report the Party concerned stated that paragraph 6 (e) of decision V/9c is implemented by paragraph 33, subparagraph 5, paragraph 36 and paragraph 41 of Resolution No. 458.<sup>44</sup>

53. The Committee considers that, with respect to public participation on the EIA report, paragraph 46 of the Resolution expressly provides for the public to submit comments to the local executive and administrative authorities as well as the developer. The Committee has, however, not been provided with any information regarding the possibility to submit comments directly to the authorities responsible for issuing the state ecological *expertiza* conclusions or to the authorities responsible for issuing the construction permit mentioned in paragraph 24 of the Regulation "On the environmental impact assessment procedure, requirements on the content of the environmental impact assessment report and qualification criteria for environmental impact assessment experts" of 19 January 2017 (Regulation on EIA),<sup>45</sup> either of which could be the competent decision-making authority for the purposes of article 6 depending on what constitutes the final decision (see further para. 83 below).

54. In the light of the above, the Committee finds that the Party concerned has fulfilled the requirements of paragraph 6 (e) of decision V/9c with respect to public participation on EIA reports but not yet with respect to public participation on other information relevant to decisions to permit activities subject to article 6 (see para. 36 above).

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> See Decision of the Council of Ministers of the Republic of Belarus No 47 of 19 January 2017 "On some measures on the implementation of the Law of the Republic of Belarus of 18 July 2016 on State Ecological Expertiza, SEA and EIA", provided by the Party concerned on 28 March 2017.

**Paragraph 6 (f) of decision V/9c: Clear obligations on the relevant public authorities to ensure opportunities for public participation as required under the Convention**

55. In its third progress report, the Party concerned stated that paragraph 6 (f) of decision V/9c is implemented through paragraphs 34, 36, 40 and 41 of Resolution No. 458.<sup>46</sup>

56. The Committee considers that paragraph 44 of the Resolution designates the authorities responsible for organizing public participation and notifying the public with respect to EIA reports, namely the deputies of local councils and administrative or executive bodies. These deputies are also required to appoint the members and chairman of the committee responsible for the preparation and conduct of the public discussions.

57. The Committee notes that, in addition to the above, article 21, paragraph 1.3, of the law “On the state ecological expertise, strategic environmental assessment and environmental impact assessment,” adopted on 18 July 2016, and paragraph 4, point 5, of Resolution No. 458 list the various authorities who, together with the developer, are responsible for organizing the public discussion.

58. With respect to making available the relevant information, paragraph 46 of the Resolution stipulates that the local executive and administrative bodies, together with the developer, are responsible for giving access to the EIA report and, according to paragraph 7 of the Resolution, to other information relating to the decisions being taken. The Committee points out, however, that article 6, paragraph 6, of the Convention requires the public to be given access to “all information relevant to the decision-making”, including, inter alia, also the project documentation required to be submitted together with the EIA report for *expertiza*. The Committee notes that, while the list in paragraph 7 of the Resolution may, as submitted by the Party concerned,<sup>47</sup> be open-ended there is nothing in the provision that would expressly require that the public is provided with the project documentation submitted for *expertiza*.

59. With respect to clear provisions concerning the collection of comments through written submission and/or at public hearings, the Committee notes that the eighth indent of paragraph 45 of the Resolution clearly envisages the submission of written comments. Similarly, pursuant to paragraph 48, fifth indent, of the Resolution, the procedure for the meeting to discuss the EIA report shall include the receipt of questions, comments and suggestions orally or in writing, together with answers to these. With respect to the collection of comments at public hearings, the Committee notes that paragraphs 49 and 50 of the Resolution require the responsible authorities to compile and publish the minutes and protocol of the public hearing, which are to include the questions, comments and suggestions received from the public, together with reasoned responses to them.

60. In its second progress review, the Committee noted that paragraph 54 of the Resolution requires that the public must apply to the local authorities within 10 working days from the publication of the notice for a hearing on the EIA report to be held.<sup>48</sup> The Committee invited the Party concerned to provide further information on the practical application of this requirement.<sup>49</sup>

61. In its further information provided on 4 May 2017, the Party concerned stated that an application for a hearing can be submitted by either an individual or an NGO and can be

<sup>46</sup> Third progress report of the Party concerned, 31 October 2016, p. 5.

<sup>47</sup> Further information from the Party concerned, 4 May 2017, pp. 5-6.

<sup>48</sup> Committee’s second progress review, 4 April 2017, para. 84.

<sup>49</sup> Ibid.

in any written form.<sup>50</sup> The Committee welcomes this clarification but notes that it is not clear from the information provided whether the request is binding on the public authorities, i.e. whether the public authorities are required to organize a public hearing whenever they receive such an application. However, since the Committee has no information before it that would indicate that the public authorities do not organize public hearings when they receive such requests, the Committee does not consider that the lack of clarity noted above would itself prevent the Party concerned from fulfilling the requirements of paragraph 6 (f) of decision V/9c.

62. In the light of the above, the Committee finds that the Party concerned has fulfilled the requirements of paragraph 6 (f) of decision V/9c with respect to public participation on EIA reports but not yet with regard to public participation on other information relevant to decisions to permit activities subject to article 6 (see para. 36 above).

**Paragraph 6 (g) of decision V/9c: Clear obligation to take due account of outcome of public participation and to provide evidence thereof**

63. In its third progress report the Party concerned stated that paragraph 6, paragraph 7, indent 6, and paragraph 41 of Resolution No. 458 implement paragraph 6 (g) of decision V/9c.<sup>51</sup>

64. The Committee does not consider that paragraphs 6 or 7 of the Resolution contain clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation or to provide evidence of this in a publicly available statement of reasons and considerations.

65. With regard to public participation on the EIA report, the Committee notes that paragraph 49 of the Resolution requires a record of the hearing on the EIA report to be drawn up within 5 working days, including a list of questions, comments and suggestions on the EIA report received during the meeting, and reasoned responses to them. Similarly, paragraph 50 of the Resolution *inter alia* requires the record of public hearings to include a summary of all the comments and suggestions received in the process of the public discussions on the EIA report, together with reasoned responses to them. Paragraph 50 also requires the record of the public hearing, including the comments received and the reasoned responses to them, to be posted on the official website of the organizer of the public discussions.

66. The Committee further notes that paragraph 51 of the Resolution requires the organizers of the public discussions on the EIA report to forward the documents referred to in paragraphs 49 and 50 of the Resolution to the developer and other entities for them to be taken into account in making decisions about implementing the activity. In addition, paragraph 52 requires the developer and the public authority preparing the project documentation to develop a coordinated decision on the feasibility of the proposed activity according to the results of the public discussion on the EIA report. The Committee notes that, being part of Chapter 5 of the Resolution (“Public discussions of an EIA Report”, paragraphs 51 and 52 would seem to relate to the decision-making on the EIA report and not the final decision on the project and would accordingly not be sufficient to fully meet the requirements of article 6, paragraph 8, of the Convention. The Committee also notes, however, that paragraph 23 of the Regulation “On the state ecological expertise procedure, including requirements for the composition of the documentation submitted for state environmental review, the state environmental review conclusion, the procedure for its

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<sup>50</sup> Further information from the Party concerned, 4 May 2017, p. 7.

<sup>51</sup> Third progress report of the Party concerned, 31 October 2016, p. 5.

approval and/or cancellation, special conditions for the implementation of project decisions, as well as requirements for state environmental expertise experts” of 19 January 2017 (Regulation on state ecological expertise)<sup>52</sup> requires that the authorities responsible for issuing the state ecological expertise conclusions take into account, inter alia, the results of the public participation on the EIA report. Due to the fact that in accordance with paragraphs 29 and 30 of the Regulation on state ecological expertise the outcome of the state ecological expertise serves as a binding determination as to whether the project can proceed, the Committee considers that this provision is in principle sufficient for the purposes of article 6, paragraph 8, of the Convention.

67. In its second progress review the Committee welcomed the above measures, and noted that, if implemented in practice, they would meet the requirement of paragraph 6 (g) of decision V/9c.<sup>53</sup> However, the Committee also noted the assertion by “Ecohome” that, in practice, protocols of public hearings, summaries of comments and feedback as well as information on the final decision are only exceptionally posted on the designated website and that, where documents had not been uploaded, the public’s request for access to such documents have been repeatedly refused on the basis that they do not constitute environmental information or are for internal use only.<sup>54</sup> The Committee stressed that, for decisions within the scope of the Convention, the protocols of public participation procedures and the responses of the public authorities thereto as well as information on the final decision taken, constitute information relevant to the decision-making and therefore must be available to the public in accordance with article 6, paragraphs 6 and 9, of the Convention. It emphasized that there is no legal basis to exempt such information from disclosure as internal documents under article 4, paragraph 3 (c), of the Convention or otherwise.

68. In this respect, in its further information provided on 4 May 2017 the Party concerned stated that measures had been taken to ensure the implementation of paragraph 6 (g) of decision V/9c in practice and referred the Committee to a number of websites of public authorities.<sup>55</sup> The Party concerned also referred the Committee to its National Implementation Report and stated that work in this area was continuing.<sup>56</sup> The Committee notes that some of the websites referred to by the Party concerned indeed include announcements of the initiation or completion of public discussions. The Committee accordingly welcomes the steps taken so far by the Party concerned on this point and also notes that, despite the observer’s assertion, the Committee has not been provided with any actual evidence of a failure by the Party concerned in this regard. In light of the foregoing, the Committee considers that, given the absence of supporting evidence, the observer’s assertion alone would not prevent the Party concerned from fulfilling the requirements of paragraph 6 (g) of decision V/9c.

69. In its second progress review the Committee also noted the observer’s submission that paragraph 14 of Resolution No. 687 “On the procedure of conduction of public discussions in the field of architecture, urban planning and construction activities”, approved by the Council of Ministers of the Republic of Belarus on 1 June 2011 (as amended 4 January 2014) provides that comments that do not meet the requirements of

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<sup>52</sup> See the Decision of the Council of Ministers of the Republic of Belarus No 47 of 19 January 2017 “On some measures on the implementation of the Law of the Republic of Belarus of 18 July 2016 on State Ecological Expertiza, SEA and EIA”, provided by the Party concerned on 28 March 2017.

<sup>53</sup> Committee’s second progress review, 4 April 2017, para. 90.

<sup>54</sup> *Ibid.*, para. 90, referring to the comments from the observer “Ecohome” on additional information for the second progress report, 3 May 2016, p. 2.

<sup>55</sup> Further information from the Party concerned, 4 May 2017, p. 7.

<sup>56</sup> *Ibid.*

normative legal acts will not be taken into account.<sup>57</sup> However, no evidence has to date been put before the Committee to show that paragraph 14 of Resolution No. 687 has prevented comments from members of the public from being taken into account in practice. The Committee considers that, in the absence of any such evidence, the existence of this provision as such does not prevent the Party concerned from meeting the requirements of paragraph 6 (g) of decision V/9c. The Committee makes clear that this does not in any way preclude it from examining allegations regarding paragraph 14 of Resolution No. 687 in a future case if relevant evidence is brought before it.

70. In the light of the above, the Committee finds that the Party concerned has fulfilled the requirements of paragraph 6 (g) of decision V/9c with respect to public participation on EIA reports but not yet with regard to public participation on other information relevant to decisions to permit activities subject to article 6 (see para. 36 above).

#### **Paragraph 6 (h) (i) of decision V/9c: Promptly inform the public of decisions**

71. In its third progress report the Party concerned stated that paragraph 6 (h) (i) of decision V/9c is implemented by paragraphs 6 and 7 of Resolution No. 458.<sup>58</sup>

72. While indeed paragraph 7 of the Resolution imposes a requirement to inform the public about the decision taken, the Committee considers that it fails to include a clear provision for the public to be informed “promptly” as required by paragraph 6 (h) (i) of decision V/9c and article 6, paragraph 9, of the Convention. The Committee notes that the observer has also submitted that the legislation of the Party concerned lacks such a requirement.<sup>59</sup> The Committee points out that, while compliance with the Convention does not necessarily require that the Party concerned incorporates the exact wording of the Convention in its legislation, the obligations enshrined therein must be fulfilled in practice.

73. The Committee further notes, however, that paragraph 24 of the Regulation on EIA of 19 January 2017 requires the conclusions of state ecological expertise to be made public on the website of the competent authority within 10 days and requires the relevant local authorities to inform the public concerned within 10 days via printed mass media and the Internet. Due to the fact that, in accordance with paragraphs 29 and 30 of the Regulation on state ecological expertise of 19 January 2017, the outcome of the state ecological expertise serves as a binding determination as to whether the project can proceed, the Committee considers that this provision could in principle be sufficient to implement the obligation to promptly inform the public of decisions in relation to the conclusions of state ecological expertise for the purposes of article 6, paragraph 9, of the Convention. However, without a clear indication as to what indeed constitutes the final decision in the system of the Party concerned (see para. 83 below), the Committee can not, and does not, conclude that the Party concerned has fully met the requirements of paragraph 6 (h) (i) of decision V/9c.

#### **Paragraph 6 (h) (ii) of decision V/9c: Maintaining and making accessible copies of decisions and relevant information**

74. In its third progress report the Party concerned stated that paragraphs 6 and 7 of Resolution No. 458 implements paragraph 6 (h) (ii) of decision V/9c.<sup>60</sup>

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<sup>57</sup> Committee’s second progress review, 4 April 2017, para. 91 referring to comments from the observer “Ecohome” on additional information for the second progress report 3 May 2016, p. 2.

<sup>58</sup> Third progress report of the Party concerned, 31 October 2016, p. 6.

<sup>59</sup> Statement at the Committee’s fifty-fifth meeting from the observer “Ecohome”, 17 December 2016, p. 4.

<sup>60</sup> Third progress report of the Party concerned, 31 October 2016, p. 6.

75. The Committee considers that paragraph 7 of the Resolution indeed imposes a requirement to make publicly available copies of the decisions (ninth indent) and other relevant information, including evidence of having fulfilled the obligation to inform the public (second indent) and having provided the public with possibilities to submit comments (seventh indent). The Committee notes that an obligation to publish the decision is also included in article 15-2 of the Law on Environmental Protection. The Committee considers the above provisions sufficiently implement the obligation to maintain and make accessible copies of decisions and relevant information regarding decisions taken as a result of an EIA. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned (see para. 83 below), the Committee can not, and does not, conclude that the Party concerned has fully met the requirements of paragraph 6 (h) (ii) of decision V/9c.

**Paragraph 6 (h) (iii) of decision V/9c: Publicly accessible lists or registers of decisions**

76. In its third progress report the Party concerned stated that paragraph 6 (h) (iii) of decision V/9c is implemented through paragraph 7 and Chapter 5, in particular paragraphs 45 to 47, of Resolution No. 458.<sup>61</sup>

77. The Committee considers that paragraphs 7 and 57 of the Resolution require public authorities to maintain and publish on their official websites a list of environmentally significant decisions, including decisions taken as a result of an EIA. The Committee accordingly considers paragraphs 7 and 57 to sufficiently impose an obligation to create publicly accessible lists or registers of decisions for decisions taken as a result of an EIA. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned (see para. 83 below), the Committee can not, and does not, conclude that the Party concerned has fully met the requirements of paragraph 6 (h) (iii) of decision V/9c.

**Paragraph 6 (i) of decision V/9c: No broader exemptions than permitted under article 6, paragraph 1 (c) of the Convention**

78. In its third progress report the Party concerned stated that the third paragraph of article 15-2 of the Environmental Protection Law (as amended) and paragraph 3 of Resolution No. 458 implement paragraph 6 (i) of decision V/9c.<sup>62</sup> The third paragraph of article 15-2 states:

Drafts of the following types of environmentally significant decisions need not be subject to public discussions:

Drafts of environmentally significant decisions connected with the construction and operation of defence installations, military infrastructure installations;

Drafts of environmentally significant decisions connected with the construction and operation of installations, information about which is categorized as a state secret;

Drafts of environmentally significant decisions regarding other installations, in cases specified by the legislation of the Republic of Belarus and by international agreements entered into by the Republic of Belarus;

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

Environmental impact assessment reports on installations listed in the second to fourth subparagraphs of this paragraph.

79. The Party concerned submits that, pursuant to article 15-2 of the Environmental Protection Law (as amended), the four exceptions above are the only exemptions permitted and that these will each be assessed on a case-by-case basis.<sup>63</sup> However, as the Committee emphasized in its second progress review, only the first of the above four exceptions is permissible under the Convention – the other three have no legal basis under the Convention and are not permitted.<sup>64</sup> In its further information provided on 4 May 2017, the Party concerned did not provide any further comments on this matter.

80. The Committee accordingly finds that the Party concerned has not yet fulfilled the requirements of paragraph 6 (i) of decision V/9c.

**Paragraph 7 (a) of decision V/9c: Clearly designate which is the final permitting decision and make it public**

*Clearly designate the final decision*

81. In its third progress report, the Party concerned stated that paragraph 7 (a) of decision V/9c is implemented through article 15, paragraph 4 of the law “On state ecological expertise, strategic environmental assessment and environmental impact assessment”.<sup>65</sup>

82. In its second progress review, the Committee noted that article 15, paragraph 4 of the above law states that the conclusion on the state ecological expertise is the final decision for the purposes of the Espoo Convention but that it does not specify whether or not it is the final decision permitting the activity. The Committee accordingly requested the Party concerned to clarify this point but to date the Party concerned has not done so.<sup>66</sup>

83. The Committee considers that the final permitting decision should be the decision that permits the implementation of the proposed activity to commence. In this regard, the Committee notes the observer’s submission that the legislation does not make clear which public authority or authorities are responsible for making the final decision either.<sup>67</sup> The Committee accordingly finds that the Party concerned has not yet fully met this aspect of paragraph 7 (a) of decision V/9c.

*Publication of the final decision*

84. The Party concerned did not report on any legislation requiring that the final decision permitting the activity be made public. Nonetheless, as the Committee noted in paragraph 77 above, paragraph 7 of Resolution No. 458 requires that organizers of public discussions post environmentally significant decisions on their website. The Committee considers that this provision may well serve to require publication of the final permitting decision. However, without a clear understanding as to what constitutes the final decision in the system of the Party concerned (see preceding paragraph), the Committee cannot conclude that the Party concerned has fully met the requirements of paragraph 7 (a) of decision V/9c.

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<sup>63</sup> Committee’s second progress review, 4 April 2017, para. 101.

<sup>64</sup> Ibid.

<sup>65</sup> Third progress report of the Party concerned, 31 October 2016, p. 6-7.

<sup>66</sup> Committee’s second progress review, 4 April 2017, paras. 104 and 126.

<sup>67</sup> Statement at the Committee’s fifty-fifth meeting by the observer “Ecohome”, 17 December 2016, p. 4.

85. Based on the above, while welcoming the steps taken so far, the Committee finds the Party concerned has not yet fully met the requirements of paragraph 7 (a) of decision V/9c.

**Paragraph 7 (b) of decision V/9c: Submit the full content of comments to decision-making authorities**

86. In its third progress report, the Party concerned stated that paragraph 7 (b) of decision V/9c is implemented through the second indent of paragraph 6 of Resolution No. 458.<sup>68</sup>

87. The Committee considers that the final paragraph of the second indent of paragraph 6 does indeed require that the comments from the public are submitted in full to the authorities competent to take decisions, including those responsible for the *expertiza* conclusion.

88. The Committee accordingly finds that the Party concerned has fulfilled the requirements of paragraph 7 (b) of decision V/9c regarding public participation on the EIA report, but not yet with respect to public participation on other information relevant to decisions to permit activities subject to article 6 (see para. 36 above).

**Paragraph 7 (c) of decision V/9c: Appropriate arrangements for public participation under article 7 of the Convention**

89. In its third progress report, the Party concerned stated that the second indent of paragraph 1 of article 15-2 of the Law on Environmental Protection (as amended) and Chapter 2 of Resolution No. 458 implement paragraph 7 (c) of decision V/9c.<sup>69</sup>

90. The Committee considers that the above provisions indeed provide a legal basis for public participation in the preparation of plans and programmes relating to the environment. Article 15-2 refers to concepts, programmes, plans and schemes, the implementation of which has an impact on the environment or is related to the use of natural resources, as well as changes and additions to them. Chapter 2 sets out the procedure for public participation on plans and programmes. The Committee notes that neither the communicants nor the observer allege that the above framework in itself fails to meet the Convention's requirements. In light of this, and bearing in mind the rather general nature of the recommendation in paragraph 7 (c) of decision V/9c, the Committee will not engage in a detailed examination of the extent to which all the requirements of article 7 are met in the context of the present report. The Committee accordingly considers that, in the absence of any information to the contrary, article 15-2 of the Law on Environmental Protection and Chapter 2 of the Resolution make appropriate provision for the public to participate during the preparation of plans and programmes relating to the environment to the extent envisaged by paragraph 7 (c) of decision V/9c.

91. Though the observer did not allege any defects in the provisions of article 15-2 itself, it expressed strong concern that the main programmes for the next five years were already adopted in 2016, while the above legislation will only enter into force in 2017. The Committee emphasizes that if the Party concerned were to have deliberately set out to adopt the main programmes within the scope of article 7 just prior to the entry into force of article 15-2 in order to avoid giving the public the rights to participate set out therein, then such an approach would run directly counter to the spirit of the Convention. The Committee points out that if these programmes were subject to article 7 and the requirements of article 7 were not met, this would have constituted a further breach of article 7. However, the

<sup>68</sup> Third progress report of the Party concerned, 31 October 2016, p. 7.

<sup>69</sup> Ibid.

Committee notes that even if it had had the requisite information before it to make a finding with respect to the adoption of these programmes, any recommendations it might have made would have, in any event, referred back to the recommendation in paragraph 7 (c) of decision V/9c, which the Committee has just determined in paragraph 90 above, to now be addressed through the new legislation.

92. The Committee notes the information provided by the Party concerned on 4 May 2017 on the public participation procedures carried out during the adoption of various plans and programmes between 2014-2017 as well as its statement that it was presently amending the Regulation on the order for holding public discussions in the fields of architecture, urban planning and construction activity and that these amendments would have regard to the provisions of the Aarhus Convention.<sup>70</sup>

93. While not precluding the possibility to examine the application of the relevant provisions further in a future case should relevant evidence be put before it, based on its considerations in paragraph 90 above and having received no information to the contrary, the Committee finds that article 15-2 of the Law on Environmental Protection and Chapter 2 of Resolution No. 458 make appropriate provision for the public to participate during the preparation of plans and programmes relating to the environment to an extent that meets the requirements of paragraph 7 (c) of decision V/9c.

#### **IV. Conclusions and recommendations**

94. The Committee finds that the Party concerned has not yet fulfilled all the requirements of decision V/9c, but welcomes the considerable progress made in that direction to date as set out in paragraph 95 below.

95. The Committee finds that:

(a) The Party concerned has fulfilled the requirements of paragraph 6 (a) of decision V/9c, namely to ensure that the general requirement of stating an interest does not apply to requests for access to environmental information (see para. 26 above).

(b) The Party concerned has not yet fully met the requirements of paragraph 6 (b) of decision V/9c to establish clear requirements to inform the public of its opportunities to participate in decision-making processes on activities subject to article 6 and in particular, it has not yet established clear requirements to inform the public in an effective manner with respect to EIA reports and, with respect to other information relevant to decisions on activities subject to article 6 including project documentation, in an adequate, timely and effective manner (see para. 42 above).

(c) The Party concerned has not yet fully met the requirements of paragraph 6 (c) of decision V/9c to establish clear requirements regarding the form and content of the public notice, by not clearly requiring the following to be addressed in the public notice:

(i) The public authority responsible for making the decision to permit the proposed activity subject to article 6,

(ii) The public authority from which relevant information other than the EIA report can be obtained and where the relevant information other than the EIA report has been deposited for examination by the public, and

(iii) Whether the activity is subject to a transboundary environmental impact assessment procedure (see para. 48 above).

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<sup>70</sup> Further information from the Party concerned, 4 May 2017, p. 8.

(d) The Party concerned will remain in non-compliance with article 6 of the Convention until the legal framework of the Party concerned is revised to ensure that the rights set out in article 6 of the Convention apply not only to the EIA report but to all information relevant to decisions permitting activities subject to article 6, including project documentation (see para. 36 above). The Committee emphasizes that this is a fundamental point.

(e) While the Party concerned has fulfilled the requirements of decision V/9c set out below with respect to public participation on environmental impact assessment reports, it has not yet fulfilled these requirements with respect to public participation on other information relevant to decisions to permit activities subject to article 6, including project documentation:

(i) The requirement in paragraph 6 (d) of decision V/9c to establish reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, taking into account the stage of decision-making as well as the nature, size and complexity of the proposed activity (see para. 51 above).

(ii) The requirement in paragraph 6 (e) of decision V/9c to establish a clear possibility to submit comments directly to the authorities competent to take the decisions subject to article 6 of the Convention (see para. 54 above).

(iii) The requirement in paragraph 6 (f) of decision V/9c to establish clear provisions imposing obligations on 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 collecting comments through written submissions and/or at public hearings (see para. 62 above).

(iv) The requirement in paragraph 6 (g) of decision V/9c to establish clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in a publicly available statement of reasons on which the decision is based (see para. 70 above).

(f) The Party concerned has implemented the requirement to promptly inform the public of decisions in relation to the conclusions of state ecological expertise. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned (see para. 83 above), the Party concerned has not yet fully met the requirements of paragraph 6 (h) (i) of decision V/9c (see para. 73 above).

(g) The Party concerned has implemented the requirement to maintain and make accessible copies of decisions and relevant information regarding decisions taken as a result of an EIA. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned, the Party concerned has not yet fully met the requirements of paragraph 6 (h) (ii) of decision V/9c (see para. 75 above).

(h) The Party concerned has implemented the requirement to create publicly accessible lists or registers of decisions for decisions taken as a result of an EIA. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned, the Party concerned has not yet fully met the requirements of paragraph 6 (h) (iii) of decision V/9c (see para. 77 above).

(i) The Party concerned has not yet fulfilled the requirements of paragraph 6 (i) of decision V/9c, namely to ensure that 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 (see para. 80 above).

(j) While the steps taken so far are welcome, the Party concerned has not yet fully met the requirement in paragraph 7 (a) of decision V/9c to clearly designate in its legal framework which decision is to be considered the final decision and to make those decisions publicly available (see paras. 83 and 84 above).

(k) The Party concerned has fulfilled the requirements of paragraph 7 (b) of decision V/9c to submit the full content of all comments made by the public regarding the EIA report; however, it has not yet fulfilled the requirements of that paragraph with respect to comments on other information relevant to decisions to permit activities subject to article 6 (see para. 88 above).

(l) The Party concerned has met the requirements of paragraph 7 (c) of decision V/9c to make appropriate provision for the public to participate during the preparation of plans and programmes relating to the environment (see para. 93 above).

96. The Committee recommends to the Meeting of the Parties that it reaffirms its decision V/9c and requests the Party concerned take as a matter of urgency the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) There are clear requirements to inform the public of its opportunities to participate in decision-making processes on activities subject to article 6 and in particular:

- (i) With respect to EIA reports, to inform the public in an effective manner;
- (ii) With respect to other information relevant to decisions on activities subject to article 6, including project documentation, to inform the public in an adequate, timely and effective manner;<sup>71</sup>

(b) The content of the public notice required under article 6, paragraph 2, of the Convention includes *inter alia* the following:

- (i) The public authority responsible for making the decision to permit the proposed activity subject to article 6,
- (ii) The public authority from which relevant information other than the EIA report can be obtained and where the relevant information other than the EIA report has been deposited for examination by the public, and
- (iii) Whether the activity is subject to a transboundary environmental impact assessment procedure;<sup>72</sup>

(c) The rights set out in article 6 of the Convention apply not only to the EIA report but to all information relevant to decisions permitting activities subject to article 6, including project documentation, and that with respect to public participation on such information:

- (i) There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;<sup>73</sup>

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<sup>71</sup> Decision V/9c, para. 6 (b).

<sup>72</sup> *Ibid.*, para. 6 (c).

<sup>73</sup> *Ibid.*, para. 6 (d).

(ii) 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);<sup>74</sup>

(iii) There are clear provisions imposing obligations on 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;<sup>75</sup>

(iv) The full content of all comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the authorities responsible for taking the decision (including those responsible for the *expertiza* conclusion);<sup>76</sup>

(v) There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in a publicly available statement of reasons and considerations on which the decisions is based;<sup>77</sup>

(d) 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;<sup>78</sup>

(e) The amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is promptly made public, as required under article 6, paragraph 9, of the Convention;<sup>79</sup>

97. The Committee further recommends to the Meeting of the Parties that it request the Party concerned:

(a) To continue its constructive dialogue with the Committee;

(b) To provide detailed progress reports to the Committee by 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(c) To provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;

(d) To participate (either in person or by audio conference) in the meetings of the Committee, at which the progress of the Party concerned in implementing the above recommendations is to be considered.

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<sup>74</sup> Ibid., para. 6 (e).

<sup>75</sup> Ibid., para. 6 (f).

<sup>76</sup> Ibid., para. 7 (b).

<sup>77</sup> Ibid., para. 6 (g).

<sup>78</sup> Ibid., para. 6 (i).

<sup>79</sup> Ibid., paras. 6 (h) (i) and 7 (a).