

**Comments of the Ecological Society Green Salvation (hereinafter—Ecological Society)
on Draft report of the Compliance Committee Compliance by Kazakhstan with its obligations
under the Convention**

1. According to paragraph 1 of Article 13 of the new Environmental Code: “Everyone has the right to a **healthy environment**.”

Article 1 of the Aarhus Convention states: “In order to contribute to the protection of the right of every person of present and future generations to live in an **environment adequate to his or her health and well-being**, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters...”

The Ecological Society considers that this notion of the new Environmental Code is **too general (vague)**. Therefore, Kazakhstan—as a party to the convention—**does not guarantee the public the right of access to all information about a favorable environment for human health and well-being**.

The requirements of paragraph **2(b) will not be fully met**. Information related to the decision-making process regarding an enabling environment for human health and well-being is already the subject of ongoing controversy and conflict. **Access to this information will be significantly limited**, which will impede compliance with the provisions of paragraph 6 of Article 6 of the Convention.

2. The notion of paragraph 2 of Article 20 of the Environmental Code of 2021: “The timing and procedure for providing environmental information” is too vague. “2. Access to environmental information related to the **environmental impact assessment procedure** and the **decision-making process** for the planned activities is provided in accordance with this Code.”

It is not clear from the notion whether access is granted:

- to **all environmental information** or only to that related to the **environmental impact assessment procedure** and the decision-making process for the planned activity;
- **to all information** related to the decision-making process or only **to its part**;
- **to all information** related to the decision-making process, whether **environmental or not**.

The Ecological Society considers that this notion is contrary to the requirements of paragraph 2(b).

3. The Ecological Society doubts that the provisions of Article 72 **may** contribute to the fulfillment of paragraph 2 (b) of decision VI/8g.

4. Article 65 of the new Environmental Code removes the mandatory environmental impact assessment (EIA) for a range of activities. In particular, EIA is recognized as optional for planned activities on the territory of national parks. In defining the types of activities for which an EIA is mandatory, Article 65 does not use the definition of “significant effect on the environment” (Article 6, paragraph 1(b), Aarhus Convention).

As a result, the provisions of Article 65 contradict the provisions of the Convention on Environmental Impact Assessment in a Transboundary Context.

Paragraph 1 of Appendix III of the Convention concerning the EIA procedure defines the criteria for “significant impact” as follows:

“1. In considering proposed activities to which Article 2, paragraph 5, applies, the concerned Parties may consider whether **the activity is likely to have a significant adverse transboundary impact** in particular by virtue of one or more of the following criteria: ...

(b) Location: proposed activities which are located in or close to an area of special environmental sensitivity or importance (such as wetlands designated under the Ramsar Convention, **national parks, nature reserves...**)”

https://unece.org/fileadmin/DAM/env/eia/about/eia_text.htm#appendix3 .

The provisions of Article 65 are contrary to the provisions of the Convention on Biological Diversity. Guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment (Decisions Adopted

by the Sixth Meeting of the Conference of the Parties to the Convention on Biological Diversity, 2002, VI/7) states:

“Category A: Environmental impact assessment mandatory:

Only in the case criteria can be based on formal legal backing, such as:

- National legislation, for example in case of impact on **protected species and protected areas**;
- **International conventions such as CITES, the Convention on Biological Diversity,**

Ramsar Convention on Wetlands, etc..”

<https://www.cbd.int/decision/cop/?id=7181>.

According to Article 3 of Aarhus Convention:

“5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for **broader access** to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.

6. This Convention **shall not require any derogation from existing rights** of access to information, public participation in decision-making and access to justice in environmental matters.”

The Ecological Society considers that the provisions of Article 65 are **contrary to the requirements of paragraphs 2(b) and 5(c)**. Access to information related to the decision-making process for a number of activities with **significant harmful effects will be significantly limited**, which will impede full compliance with the provisions of paragraph 6 of Article 6 of the Convention.

5. The Ecological Society agrees with the rest of the Committee's comments.

On behalf of the Ecological Society Green Salvation

Sergey Kuratov

July 16, 2021