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Seventh session

Geneva, 18–20 October 2021

Item 7 (b) of the provisional agenda

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

Report of the Compliance Committee on compliance by Kazakhstan*

Summary

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties (ECE/MP.PP/2017/2/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).

* The present document is being issued without formal editing.



I. Introduction

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

II. Summary of follow-up

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

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

4. On 5 October 2018, the secretariat forwarded the first progress report to the communicants of communications ACCC/C/2004/01, ACCC/C/2004/02, ACCC/C/2004/06, ACCC/C/2011/59 and ACCC/C/2013/88 and registered observers, inviting their comments by 1 November 2018.

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

6. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 24 February 2019. On 25 February 2019, the secretariat sent the Committee's first progress review to the Party concerned and communicants of communications ACCC/C/2004/01, ACCC/C/2004/02, ACCC/C/2004/06, ACCC/C/2011/59 and ACCC/C/2013/88 and registered observers.

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

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

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

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

11. On 3 October 2019, the Party concerned submitted its second progress report on decision VI/8g, two days late. On the same date, the secretariat forwarded the second progress report to the communicants of communications ACCC/C/2004/01, ACCC/C/2004/02, ACCC/C/2004/06, ACCC/C/2011/59 and ACCC/C/2013/88 and registered observers, inviting their comments thereon.

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

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

14. On 14 January 2020, the secretariat wrote to the Party concerned seeking the remaining of the information requested by the Committee, which the Party concerned promptly submitted on the same day.
15. On 19 February 2020, the secretariat wrote to the Party concerned to ask it to provide the text of the Rules for Public Hearings as currently in force, which the Party concerned duly provided on 20 February 2020.
16. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 3 March 2020. The Committee thereafter requested the secretariat to forward the second progress review to the Party concerned and the communicants of communications ACCC/C/2004/01, ACCC/C/2004/02, ACCC/C/2004/06, ACCC/C/2011/59 and ACCC/C/2013/88 and registered observers.
17. At its sixty-sixth meeting (Geneva, 9–13 March 2020), the Committee reviewed the implementation of decision VI/8g in open session, with the participation by audio conference of representatives of the Party concerned. Though invited, no communicants or registered observers took part in the open session.
18. On 9 April 2020, the Party concerned provided a statement following the open session on decision VI/8g held during the Committee's sixty-sixth meeting and an annex containing comments on the Committee's second progress review.
19. On 13 October 2020, the Party concerned submitted its final progress report on decision VI/8g, not on time.
20. On 17 October 2020, the secretariat forwarded the final progress report by the Party concerned to the communicants of communications ACCC/C/2004/01, ACCC/C/2004/02, ACCC/C/2004/06, ACCC/C/2011/59, ACCC/C/2013/88 and observers, inviting their comments thereon.
21. On 12 November 2020, the communicant of communications ACCC/C/2004/01, ACCC/C/2004/02 and ACCC/C/2013/88 submitted their comments on the Party concerned's final progress report.
22. On 18 November 2020, the Party concerned submitted comments on the comments of the communicants of communications ACCC/C/2004/01, ACCC/C/2004/02 and ACCC/C/2013/88 on the Party concerned's final progress report.
23. On 10 May 2021, the secretariat, at the Committee's request, invited the Party concerned to submit the texts of relevant legislation.
24. On 30 June 2021, the Party concerned submitted the requested legislation.
25. The Committee completed its draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement decision VI/8g through its electronic decision-making procedure on 4 July 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was then forwarded on that date to the Party concerned, the communicants and registered observers with an invitation to provide comments by 19 July 2021.
26. At its seventy-first meeting (Geneva online, 7–9 July 2021), the Committee reviewed the implementation of decision VI/8g in open session with the participation via virtual means of the Party concerned. Though invited, no communicants or registered observers took part in the open session.
27. Comments on the Committee's draft report were received from the communicant of communication ACCC/C/2011/59 on 7 July 2021 and from the Party concerned and the communicant of communications ACCC/C/2004/01, ACCC/C/2004/02, and ACCC/C/2013/88 on 16 July 2021.
28. After taking into account the information received, the Committee finalized and adopted its report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8g through its electronic decision-making procedure on 26 July 2021 and

thereafter requested the secretariat to send it to the Party concerned, the communicants and observers.

III. Considerations and evaluation by the Committee

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

- (a) To ensure that the mandatory requirements of the content of the public notice, as prescribed by article 6 (2) of the Convention, are detailed in law;
- (b) To establish a clear and consistent requirement for all information relevant to the decision-making to be made accessible to the public, in accordance with article 6 (6) of the Convention;
- (c) To ensure that, in accordance with article 6 (7) of the Convention, the submission of comments by the public is not limited to only “reasonable” comments;
- (d) To establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public of the environmental expertiza conclusions, and to facilitate public access to these decisions, in accordance with article 6 (9) of the Convention;
- (e) To maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments.

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

- (a) The content of the public notice prescribed by the Rules for Public Hearings meets all the requirements set out in article 6 (2) of the Convention;
- (b) Time-frames set for decision-making procedures subject to articles 6 or 7 of the Convention are sufficient to enable the public to prepare and to participate effectively and:
 - (i) To the extent possible, they do not overlap with holiday periods and other non-working days;
 - (ii) The volume and the complexity of the project or plan, programme or policy is considered when setting the relevant time-frames;
- (c) Appropriate practical and/or other provisions are made for the public to participate during the preparation of plans within the scope of article 7 of the Convention, including clear requirements to ensure that:
 - (i) The necessary information is provided to the public;
 - (ii) The public that may participate is identified by the relevant public authority;
 - (iii) The requirements of article 6 (3), (4) and 8 of the Convention are applied.

31. The Committee welcomes the three progress reports received from the Party concerned as well as the further information it has provided at the Committee’s request.

32. The Committee also welcomes the comments received from the communicants of communications ACCC/C/2004/01, ACCC/C/2004/02, ACCC/C/2011/59 and ACCC/C/2013/88.

General observations

33. The Committee appreciates the general level of engagement the Party concerned has demonstrated in the Committee's review of decision VI/8g during the intersessional period.

34. However, the Committee is concerned about the very poor quality of all the progress reports that the Party concerned has submitted during the intersessional period. In each of its progress reports, the Party concerned has cited provisions of its legislation which are not relevant to the particular recommendation at issue. This significantly hampers the Committee's task of reviewing the Party concerned's progress in meeting the requirements set in decision VI/8g.

35. Moreover, the Committee is disappointed that the Party concerned did not itself inform the Committee about the adoption of the new Environmental Code on 2 January 2021 and which contains provisions that are highly relevant for demonstrating progress in meeting the requirements set by decision VI/8g. Rather, the Committee has had to request the Party concerned to provide the text of the new Environmental Code as adopted and has then had to itself search through the Code to identify the provisions of potential relevance to the implementation of decision VI/8g.

36. As the Committee has already made clear in its second progress review, the burden is on the Party concerned to demonstrate, in a clear manner, that it has in fact taken all the steps necessary to implement the recommendations in decision VI/8g. The Committee stresses that it would be regrettable if the Party concerned had taken the necessary measures to fulfil the requirements of the decision in question, but as a consequence of its poor reporting, these would not be put in front of the Committee.

37. In its comments on the Committee's draft report, the communicant of communications ACCC/C/2004/01, ACCC/C/2004/02 and ACCC/C/2013/88 submits that article 65 of the new Environmental Code:

(a) Removes the mandatory environmental impact assessment (EIA) for a range of activities, thus also resulting in a violation of the Convention on Environmental Impact Assessment in a Transboundary Context;¹

(b) Is contrary to the provisions of the Convention on Biological Diversity;²

(c) Is contrary to the requirements of paragraphs 2 (b) and 5 (c) of decision VI/8g, since access to information related to the decision-making process for a number of activities with significant harmful effects will be significantly limited, impeding full compliance with the provisions of article 6 (6) of the Convention.³

38. With respect to the points in paragraph 37 (a) and (b) above, these allegations refer to the Party concerned's compliance with other international instruments and thus fall outside the scope of the Committee's review. With respect to paragraph 37 (c) above, the Committee considers the communicant has not explained how, if an activity is not subject to article 6 of the Convention, any alleged limitations on the information provided with respect to the decision-making on that activity could constitute a failure to comply with article 6 (6) of the Convention. The Committee will thus not examine these points further in the context of its review of decision VI/8g.

Paragraph 2 (a) and 5 (a) of decision VI/8g: Mandatory requirements of the public notice

39. As the Committee has already mentioned in its second progress review, the recommendation in paragraph 5 (a) of decision VI/8g does not impose any additional substantive obligations beyond those already contained in paragraph 2 (a) of the decision.⁴ The Committee will therefore examine the implementation of paragraphs 2 (a) and 5 (a) jointly.

¹ Communicant's comments on Committee's draft report, 16 July 2021, p. 1.

² Ibid., pp. 1–2.

³ Ibid., p. 2.

⁴ Committee's second progress review, 6 March 2020, para. 29.

40. With respect to the recommendations in paragraph 2 (a) and 5 (a) of decision VI/8g, the Party concerned in its final progress report refers to rule 12 of the Rules for Public Hearings.⁵ The Committee notes, however, that the aforementioned provision does not address the recommendations contained in paragraphs 2 (a) and 5 (a).

41. In contrast, although not cited by the Party concerned, the Committee considers rule 10 of the Rules for Public Hearings to be indeed relevant:

In order to hold a public hearing in the form of an open meeting, the Contracting Authority shall publish a notice in the media about the holding of a public hearing in the national language and in Russian at least twenty working days before the public hearing, stating the following information:

Date, time and place of the public hearing;

Name of the local executive body and contact details of the person responsible for organising the public hearing;

The email address of the local executive body where comments and suggestions are accepted;

The address of the local authority's website where the project documentation is available;

The address of a place where members of the public can access the paper versions of the projects;

Name of the state authority responsible for carrying out the state environmental impact assessment;

The name and contact details of the customer;

The customer's website or email address where comments and suggestions are accepted;

The name and contact details of the developer of the documentation.⁶

42. In its comments on the Committee's draft report, the Party concerned states that article 73 of the new Environmental Code stipulates the mandatory content of the public notice.⁷

43. The Party concerned also states that the new draft Rules for Holding Public Hearings, which are currently undergoing the approval procedure at the Ministry of Justice, have been developed in compliance with the Environmental Code.⁸

44. The Committee notes that article 73 (4) of the new Environmental Code, sets out public notice requirements which are of relevance for the recommendations set out in paragraphs 2 (a) and 5 (a) of decision VI/8g:

The initiator shall organize the dissemination of an advertisement for public hearings in Kazakh and Russian in at least one newspaper and through at least one television or radio channel distributed to the relevant administrative-territorial units, fully or partially located within the affected territory. The announcement of the public hearing shall be disseminated by the means set out in the first part of this paragraph at least twenty working days prior to the date of the public hearing. The date for the commencement of the public hearing shall not be earlier than the date of expiry of the deadline set out in part two of paragraph 3 of this article.

The announcement of the public hearing shall contain the following information:

- (1) The subject of the public hearing;
- (2) The place, date and start time of the public hearing;

⁵ Party's final progress report, 13 October 2020, p. 1.

⁶ Rules for Public Hearings, from the Party concerned, 30 June 2021.

⁷ Party's comments on the Committee's draft report, 16 July 2021, p. 1.

⁸ Ibid.

(3) A link to the website of the environmental authority where the draft environmental impact statement and a copy of the planned activity statement can be consulted;

(4) Details and contact details of the initiator of the proposed activity;

(5) An email address and telephone number to obtain further information about the proposed activity, the holding of the public hearing, and to request copies of documents related to the proposed activity;

(6) The email address and postal address of the environmental authority or its subdivisions, to which the public concerned may send their comments and suggestions on the draft possible impact report in writing or electronically.⁹

45. While welcoming article 73 (4) of the new Environmental Code, the Committee notes that a number of the notice requirements set out in article 6 (2) of the Convention still appear to be missing from the above-mentioned provisions, namely:

(a) The application on which a decision will be taken (article 6 (2) (a) of the Convention);

(b) The nature of possible decisions or the draft decision (article 6 (2) (b) of the Convention);

(c) The opportunities for the public to participate (article 6 (2) (d) (ii));

(d) An indication of the time schedule for transmittal of comments or questions (article 6 (2) (d) (v) of the Convention);

(e) An indication of what environmental information relevant to the purposed activity is available (article 6 (2) (d) (vi) of the Convention);

(f) The fact that the activity is subject to national or transboundary environmental impact assessment procedure (article 6 (2) (e) of the Convention).

46. The Committee notes that the new Rules for Public Hearings are currently under preparation. The Committee emphasizes that, in order to fulfil paragraphs 2 (a) and 5 (a) of decision VI/8g, it will be important that the new Rules for Public Hearings address each of the points listed in paragraph 45 above.

47. However, since the text of the draft Rules has not been put before it, the Committee is not in a position to assess whether, if adopted in their current form, the draft Rules would indeed fully meet the requirements of paragraphs 2 (a) and 5 (a) of decision VI/8g .

48. In the light of the foregoing, the Committee finds that the Party concerned has not yet met the requirements in paragraphs 2 (a) and 5 (a) of decision VI/8g.

Paragraph 2 (b) of decision VI/8g: Access to all information relevant to the decision-making procedure

49. With respect to paragraph 2 (b) of decision VI/8g, the Party concerned refers to rule 12 of the Rules for Public Hearings which provides that:

Twenty days prior to the public hearing, local executive authorities shall provide public access to environmental information relating to the environmental impact assessment procedure for proposed economic or other activities and the decision-making process for such activities through an internet resource, as well as through other means of information.¹⁰

50. In its comments on the Committee's draft report, the communicant of communications ACCC/C/2004/01, ACCC/C/2004/02, and ACCC/C/2013/88 expresses its concern that the wording of the right "to a healthy environment" in article 13 (1) of the new Environmental Code is too vague and that, as a result, the Party concerned "does not guarantee the public the right of access to all information about a favorable environment for human health and

⁹ New Environmental Code, from the Party concerned, 30 June 2021.

¹⁰ Rules for Public Hearings, from the Party concerned, 30 June 2021.

wellbeing” and thus the requirements in paragraph 2 (b) of decision VI/8g will not be fully met.¹¹

51. The communicant of communications ACCC/C/2004/01, ACCC/C/2004/02 and ACCC/C/2013/88 also submits that article 20 (2) of the new Environmental Code does not fulfil the requirements set in a paragraph 2 (b) of decision VI/8g due to a lack of clarity as to what type of information is disclosed in the context of the environmental impact assessment procedure and the decision-making process.¹²

52. Regarding the communicant’s concerns outlined in paragraph 50 above, the Committee explains that, in reviewing the implementation of paragraph 2 (b) of decision VI/8g, its role is to examine the legal framework of the Party concerned with respect to the provision of information to the public relevant to decision-making under article 6 of the Convention, and not the provision of environmental information to the public more generally.

53. Concerning the communicant’s comments regarding article 20 (2) of the Environmental Code, the Committee notes that this provision stipulates that “access to environmental information relating to the environmental impact assessment procedure and the decision-making process on planned activities is provided in line with this Code.” As the Committee already emphasized in its first progress review with respect to a similar provision in the previous Environmental Code, providing access only to the “environmental information” related to the environmental impact assessment procedure of the planned economic and other activity and process of adopting decisions on this activity does not meet the requirements of article 6 (6) of the Convention. Article 6 (6) requires public authorities to give the public concerned access to all information relevant for the decision-making referred to in this article. Allowing access of the public only to environmental information instead of all information relevant to the decision-making is not sufficient to meet the requirements of the Convention.

54. Since the Party concerned has not itself pointed the Committee to any other provision of its new Environmental Code or relevant secondary legislation that establishes a clear and consistent requirement for all information relevant to the decision-making to be made accessible to the public, and not just environmental information, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 2 (b) of decision VI/8g.

Paragraph 2 (c) of decision VI/8g: Comments by the public not limited to those that are “reasonable”

55. Regarding paragraph 2 (c) of decision VI/8g, in its final progress report the Party concerned reports that according to rules 17–19 of the Rules for Public Hearings, the obligation for comments to be “reasonable” in order to be accepted has been deleted, meaning that all comments received are accepted and processed.¹³

56. The Committee welcomes the abovementioned provisions, in particular rule 19, which indeed no longer contains any reference to “reasonable comments and suggestions”.

57. Although not cited by the Party concerned in either its second or final progress report, the Committee considers that rule 27 of the Rules for Public Hearings would also appear to contribute to fulfilling the requirements in paragraph 2 (c) of decision VI/8g. Rule 27 provides that the minutes of the hearings reflect comments and/or suggestions from interested parties without requiring them to be “reasonable”.

58. In its comments on the Committee’s draft report,¹⁴ the Party concerned refers to article 73 (9) of the new Environmental Code, which stipulates that public hearings are “open to all persons wishing to participate...” and “any person participating in the public hearings shall have the right to make comments and suggestions on the draft report on possible impacts in accordance with the established rules of procedure of the public hearings.”¹⁵

¹¹ Communicant’s comments on Committee’s draft report, 16 July 2021, p. 1.

¹² Ibid.

¹³ Party’s final progress report, 13 October 2020, p. 1.

¹⁴ Party’s comments on Committee’s draft report, 16 July 2021, p. 1.

¹⁵ New Environmental Code, from the Party concerned, 30 June 2021.

59. In addition, while the Party concerned has not itself referred to article 73 (7) and (13) of the new Environmental Code, the Committee considers these provisions to also be relevant to paragraph 2 (c) of decision VI/8g. According to article 73 (7):

Interested public authorities and the public have the right to send their comments and suggestions to the environmental authority in writing (in hard copy or electronic media) on the draft possible impact report no later than three working days before the date of the public hearing or to voice their comments and suggestions orally during the public hearing.¹⁶

60. Article 73 (13) requires that, after the conclusion of the public hearing, minutes shall be drawn up in the form prescribed in the Rules for Public Hearings which must include the following:

(1) All comments and suggestions made by the public authorities and the public concerned, submitted in writing in accordance with paragraph 7 of this article or voiced during the public hearings, with the exception of comments and suggestions withdrawn by their authors during the public hearings;

(2) The proponent's responses and comments on each of the observations and suggestions made in the minutes in accordance with subparagraph (1) of this paragraph;

(3) Information on the right to appeal against the protocol in accordance with the legislation of the Republic of Kazakhstan.¹⁷

61. The Committee welcomes the above-mentioned provisions, which each contain no restriction that the comments be reasoned or “reasonable”.

62. The Committee, however, regrets that the Party concerned has not yet demonstrated that it has addressed the concerns expressed by the Committee in its second progress review with respect to proposed article 84 (8) of the then-draft Environmental Code,¹⁸ which corresponds to article 73 (8) of the new Environmental Code. This provision stipulates that comments which are “not specifically formulated and do not reflect the substance of the comments and suggestions or are clearly irrelevant to the issues to be studied in the environmental impact assessment” are not taken into account.¹⁹

63. The Committee reiterates its concern that this provision may effectively require in practice that, “in order to be taken into account, comments will need to be reasonable and reasoned”²⁰. If this were the case, this would not be compatible with the Convention which requires that every comment, even if brief or general, that does no more than express support for or opposition to an activity must still be taken into account. The competent authority may however deal with any comments clearly not related to the issues studied in the assessment in a summary manner, provided that this is done in a transparent and traceable way.

64. The Committee regrets that the Party concerned has neither submitted examples of comments which could be considered as “not specifically formulated, and do not reflect the substance of the comments and suggestions”, nor clarified how a restriction in taking these comments into account could be compatible with article 6 (8) of the Convention, as specifically requested by the Committee in its second progress review.²¹

65. In the light of the foregoing, the Committee, while welcoming the progress made in that direction, finds that the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 2 (c) of decision VI/8g.

¹⁶ New Environmental Code, from the Party concerned, 30 June 2021.

¹⁷ Ibid.

¹⁸ Committee’s second progress review, 6 March 2020, para. 49.

¹⁹ New Environmental Code, from the Party concerned, 30 June 2021.

²⁰ Committee’s second progress review, 6 March 2020, para. 49.

²¹ Ibid, para. 50.

Paragraph 2 (d) of decision VI/8g: Prompt notification of decisions

66. With respect to paragraph 2 (d) of decision VI/8g, the Committee recalls paragraph 64 of its findings on communication ACCC/C/2010/59 to which the recommendation refers:

The Committee finds that by not establishing appropriate procedures to promptly notify the public about the environmental expertiza conclusions and by not establishing appropriate arrangements to facilitate public access to these decisions, the Party concerned fails to comply with article 6, paragraph 9, of the Convention.²²

67. The Committee notes that in its final progress report the Party concerned refers to certain provisions of the Rules for Public Hearings. The Committee, however, considers that none of the provisions cited by the Party concerned are relevant to the recommendation in paragraph 2 (d) of decision VI/8g.

68. In contrast, the Committee considers that article 95 (3) of the new Environmental Code is indeed of relevance. Article 95 (3) requires that “the conclusion of the state ecological expertiza shall be posted on the website of the authorised body in the field of environmental protection or its territorial subdivision within five working days after its issuance and shall be publicly available for at least thirty working days from the date of its posting.”²³

69. The Committee welcomes article 95 (3) of the new Environmental Code which calculates the deadline for the publication of the conclusion of the state ecological expertiza not from the date the decision is received by the project proponent, as provided in the previous version of the Environmental Code now repealed, but from the date of issuance of the conclusion.

70. Moreover, with respect to facilitating public access to state ecological expertiza conclusions, the Committee welcomes that article 95 (3) not only requires that the state ecological expertiza conclusion be published on the local executive body’s website, but also that it is available to the public for at least thirty days from the date of its publication.

71. However in order to fulfil paragraph 2 (d) of decision VI/8g, the Party concerned will also need to demonstrate to the Committee that it has taken the necessary measures “to establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public of the environmental expertiza conclusions”.

72. On this point, the Committee refers the Party concerned to its findings on communication ACCC/C/2013/99 (Spain) in which it held:

The Committee considers that, as a good practice, the methods used to notify the public concerned under article 6, paragraph 2, should be utilized as a minimum for informing the public under article 6, paragraph 9, of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned.²⁴

73. The Committee notes that the Party concerned is currently preparing its new Rules for Public Hearings. The Committee underlines that, in order to fulfil paragraph 2 (d) of decision VI/8g, it will be important that the new Rules for Public Hearings, or other secondary legislation, address the points in paragraphs 71 and 72 above.

74. Since the text of the draft Rules has not been put before it, the Committee is not in a position to assess whether, if adopted in their current form, the draft Rules would indeed fully meet the requirements of paragraph 2 (d) of decision VI/8g.

75. In the light of the foregoing, the Committee, while welcoming the progress made in the new Environmental Code, finds that the Party concerned has not yet met the requirements of paragraph 2 (d) of decision VI/8g.

²² ECE/MP.PP/C.1/2013/9, para. 64.

²³ New Environmental Code, from the Party concerned, 30 June 2021.

²⁴ ECE/MP.PP/C.1/2017/17, para. 103.

Paragraph 2 (e) of decision VI/8g: Publicly accessible list or registers of decisions

76. With respect to paragraph 2 (e) of decision VI/8g, in its final progress report the Party concerned refers to rule 19 of the Rules for Public Hearings which provides that the customer submits one copy of the Protocol of the public hearings to the local executive body for publication on the internet no later than seven working days after the public hearing.²⁵

77. The Committee, however, points out that the above-mentioned provision does not address the issue referred to in the recommendation. As the Committee already clarified in its second progress review, the main focus of paragraph 2 (e) of decision VI/8g is that the Party concerned maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions after they have been taken.

78. In its comments on the Committee's draft report, the Party concerned reports that the new draft Rules for Holding Public Hearings, which have been developed in compliance with the Environmental Code, regulate "public awareness".²⁶ The draft Rules for Holding Public hearings are currently undergoing the approval procedure at the Ministry of Justice.

79. Given that the text of the new draft rules has not been put before it, the Committee is not in a position to assess whether they would indeed contribute to fulfilling the requirements of paragraph 2 (e) of decision VI/8g.

80. Having reviewed the new Environmental Code, the Committee considers that article 95 (3) appears to be of most relevance to paragraph 2 (e) of decision VI/8g. Article 95 (3) provides that the conclusion of the state ecological expertiza shall be posted on the website of the authorised body in the field of environmental protection or its territorial subdivision within five working days after its issuance and shall be publicly available for at least thirty working days from the date of its posting.²⁷

81. On this point, the Committee recalls that, in its second progress review, the Committee had already explained that making the state ecological expertiza conclusions publicly accessible for at least 30 working days from publication would not be sufficient to fulfil paragraph 2 (e) of decision VI/8g. The Committee explained that paragraph 2 (e) requires the Party concerned to establish a *permanent* list or register through which the public is easily able to access environmental expertiza conclusions and other information relevant to the decision-making. The Committee thus regrets that the Party concerned has not pointed the Committee to any other provision of its new Environmental Code or relevant secondary legislation through which the requirements of paragraph 2 (e) of decision VI/8g are addressed.

82. In its comments on the Committee's draft report, the Party concerned states that a Unified Environmental Portal has been developed as a mechanism to provide information to the public.²⁸ The portal performs the following functions: "compliance with the requirements of the environmental legislation of the Republic of Kazakhstan; strengthening the capacity for interaction between authorized state bodies and enterprises participating in the information system; ensuring public access in the decision-making process on environmental issues; monitoring of placed ads and protocols on public hearings by local executive bodies; simplification of public access to timely and complete information on the materials of the projects of the planned economic activity."²⁹ Moreover, the Party concerned reports that a place with a specific heading "Public Hearings" is being created on the Portal.³⁰

83. The Committee welcomes the creation of the Unified Environmental Portal as a centralized mechanism through which the public may have access to the information relevant for decision-making processes subject to the Convention in a timely manner. The Committee considers that the Uniform Environmental Portal could potentially indeed serve as the publicly available register through which the public can permanent access to state ecological

²⁵ Party's final progress report, 13 October 2020, p. 2.

²⁶ Party's comments on the Committee's draft report, 16 July 2021, p. 2.

²⁷ New Environmental Code, from the Party concerned, 30 June 2021.

²⁸ Party's comments on the Committee's draft report, 16 July 2021, p. 2.

²⁹ Ibid., pp. 2–3.

³⁰ Ibid., p. 3.

expertiza conclusions after they have been taken, as well as other information relevant to the decision-making, as required by paragraph 2 (e) of decision VI/8g.

84. If the Party concerned intends the Unified Environmental Portal to serve as the permanent public register of decisions subject to article 6 of the Convention as required by paragraph 2 (e), the Committee invites the Party concerned to confirm this fact, together with relevant supporting evidence.

85. Since the Party concerned has not yet demonstrated to the Committee that all state ecological conclusions for activities subject to article 6 are indeed available to the public on a permanent basis through the Unified Environmental Portal, the Committee, while welcoming the positive steps undertaken by the Party concerned, finds that the Party concerned has not yet fulfilled the requirements of paragraph 2 (e) of decision VI/8g.

Paragraph 5 (b) (i) and (ii) of decision VI/8g: Time-frames for decision-making procedures subject to articles 6 and 7

86. Paragraph 5 (b) (i) and (ii) require the Party concerned to take the necessary legislative, regulatory and administrative measures to ensure that time-frames set for decision-making procedures subject to article 6 and 7 are sufficient to enable the public to participate effectively. Furthermore, time-frames must be set in a way that, to the extent possible, they do not overlap with holiday periods and other non-working days. In addition, the volume and complexity of the project or plan, programme or policy needs to be considered when setting the time-frames.

87. In its final progress report, the Party concerned has once again failed to report on its implementation of paragraph 5 (b) of decision VI/8g. As the Committee already stressed in its second progress review, the failure to report on paragraph 5 (b) significantly hampers the Committee's task of reviewing the implementation of the recommendation. The Party concerned's failure to report its progress in this regard is even more surprising, given that the new Environmental Code, which was adopted on 2 January 2021, includes provisions which would appear to be of direct relevance to the requirements in paragraph 5 (b).

Time-frames for decision-making subject to article 6

88. With respect to paragraph 3 (b) of decision VI/9g, the Party concerned refers in its final progress report to rules 9 and 10 of the Rule for Public Hearings. Rule 9 provide that the local executive body agrees, inter alia, the time of the public hearings.³¹ With respect to public hearings in the form of open meetings, rule 10 requires the customer to publish a notice in the media about the holding of a public hearing in the national language and in Russian at least twenty working days before the public hearing.³²

89. The Committee considers that, provided that the notice period in rule 10 is applied as a minimum time-frame to be extended in case of: (a) overlap with holiday periods and non-working days; and (b) volume and complexity of the proposed activity, twenty business days should be sufficient.

90. Although not cited by the Party concerned itself, the Committee likewise welcomes that article 73 (4) of the new Environmental Code has likewise extended the notice period to twenty business days to be applied as a minimum time-frame. In the Committee's view this new time-frame is sufficient, as a minimum time-frame, to enable the public to prepare and participate effectively in decision-procedures subject to article 6.

91. With respect to the time-frame for the public to submit its comments, the Committee notes that according to article 73 (3) of the new Environmental Code, the draft report on possible impacts must be made available for inspection on the website of the authorized body for environmental protection and the local executive bodies of the respective administrative -territorial unit for at least thirty calendar days from the date of the posting.³³ The Committee

³¹ Party's final progress report, 13 October 2020, p. 3.

³² Ibid.

³³ New Environmental Code, from the Party concerned, 30 June 2021.

welcomes that the time-frame of thirty days is set as a minimum time-frame and that it starts to run from the date of the posting of the draft report.

92. While welcoming the above progress, the Committee notes that the Party concerned has not yet adopted the relevant secondary legislation. The Committee points out that it will be important for the Party concerned to ensure that the time-frames in its secondary legislation are fully in line with those set out in paragraphs 90 and 91 above.

93. Based on the foregoing, the Committee finds that, while welcoming the significant progress made, the Party concerned has not yet fulfilled the requirements of paragraph 5 (b) (i) and (ii) with respect to decision-making subject to article 6.

Time-frames for decision-making subject to article 7

94. Although not cited by the Party concerned itself, the Committee notes that article 60 (2) of the new Environmental Code requires the “public authority-developer” to ensure that the public concerned is able to participate at all stages of the strategic environmental assessment in accordance with the Code on instructions for the organization and conduct of environmental assessment, starting from the initial stage in the development of the documents where options can be selected from among the available alternatives.³⁴

95. The Committee further notes that article 60 (3) (2) of the new Environmental Code provides that:

The public authority–developer shall ensure the participation of the public concerned in the strategic environmental assessment by:

...

(2) establishing a reasonable time-frame to enable the public concerned to make comments and proposals in a timely and effective manner at all stages of strategic environmental assessment;³⁵

96. The Committee welcomes that articles 60 (2) and 60 (3) (2) of the new Environmental Code ensure that the public is entitled to participate at every stage of the strategic environmental assessment and that reasonable time-frames for public participation should be established.

97. Having reviewed the draft Code on instructions for the organization and conduct of the environmental assessment (hereinafter the draft EIA instructions), the Committee notes that section 14 provides that:

Representatives of the public shall submit comments and suggestions: in the case of screening, within ten working days, and in the case of screening and simultaneous scoping or separate scoping, within fifteen working days following the latest date of publication of documents.³⁶

98. Moreover section 26 of the draft EIA instructions provides that: “the competent authority for environmental protection shall accept comments and suggestions from the state authorities and the public concerned within thirty calendar days from the date of publication of the strategic environmental assessment report on its website.”³⁷

99. As a general note, the Committee welcomes that the draft EIA instructions provide for public participation at the screening and scoping stage, which constitutes good practice.

100. With respect to the fulfilment of paragraph 5 (b) (i) and (ii) of decision VI/8g, however, since the draft EIA instructions have not yet been adopted, the Committee is not yet in a position to determine that the Party concerned has met the requirements of those paragraphs.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Draft Code on instructions for the organization and conduct of the strategic environmental assessment, from the Party concerned, 30 June 2021.

³⁷ Ibid.

101. Based on the above considerations, the Committee, while welcoming the progress made, finds that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 5 (b) (i) and (ii) of decision VI/8g with respect to decision-making subject to article 7.

Paragraph 5 (c) (i) of decision VI/8g: Provision of information to the public during the preparation of plans within the scope of article 7

102. The Committee regrets that the Party concerned has not reported in any of its progress reports on the implementation of paragraph 5 (c) (i) of decision VI/8g which requires that it put in place clear requirements to ensure that the necessary information is provided to the public during the preparation of plans within the scope of article 7 of the Convention.

103. Notwithstanding that it has not been cited by the Party concerned, the Committee notes that article 60 (6) of the new Environmental Code requires that:

Information to be made available to the public concerned during the strategic environmental assessment process in the manner prescribed in the guidelines for organizing and conducting environmental assessments shall include:

- (1) Information on the start of the development of the Document, its title, main lines of action and time-frame;
- (2) Name and location of the public authority (officer) responsible for receiving and considering comments and suggestions from the public concerned;
- (3) The time, place and manner of receiving comments and suggestions from the public concerned at the various stages of the strategic environmental assessment;
- (4) Draft Documents before their approval;
- (5) Conclusions on the results of the impact screening of the Document;
- (6) Statements and conclusions on the scoping of strategic environmental assessment reports;
- (7) Strategic environmental assessment reports;
- (8) Minutes of the consultations with the public authorities concerned carried out in screening the impacts of the Document, in determining the scope of the Strategic Environmental Assessment Report, and in assessing the quality of the Strategic Environmental Assessment Report and draft Document;
- (9) Reports on the monitoring of significant environmental impacts of the implementation of the Documents;
- (10) Announcements of public hearings;
- (11) Minutes of public hearings on draft Documents and strategic environmental assessment reports;
- (12) Briefs, including a summary of the comments and suggestions of the public concerned received during the public hearings;
- (13) Information on the assessment of transboundary impacts carried out as part of the strategic environmental assessment;
- (14) Conclusions on the quality of strategic environmental assessment reports;
- (15) Approved Documents;
- (16) Other documents and information provided to the authorised body for environmental protection in connection with the strategic environmental assessment.³⁸

104. As the Committee already recalled in its second progress review, in its findings on communication ACCC/C/2014/100 (United Kingdom), the Committee held that:

³⁸ New Environmental Code, from the Party concerned, 30 June 2021.

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

(a) To actively disseminate the information indicated in article 6 (2), including information about the opportunities to participate and availability of the relevant information; and

(b) To make available to the public all information that is in the possession of the competent authorities and is relevant to the decision-making and is to be used for that purpose. The relevant information under category (b) would normally include the following information:

(i) The main reports and advice issued to the competent authority;

(ii) Any information regarding possible environmental consequences and cost-benefit and other economic analyses and assumptions to be used in the decision-making;

(iii) An outline of the main alternatives studied by the competent authority.³⁹

105. The Committee welcomes article 60 (6) of the new Environmental Code which sets out a broad list of information that must be provided to the public, including in particular article 60 (6) (16) which requires to provide the public with all other information relevant to the strategic environmental assessment. However, since the Party concerned has not yet adopted its relevant secondary legislation, the Committee is not yet in a position to determine that the Party concerned has fully met the requirements of paragraph 5 (c) (i) of decision VI/8g.

106. Accordingly, the Committee, while welcoming the progress made, finds that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 5 (c) (i) of decision VI/8g.

Paragraph 5 (c) (ii) of decision VI/8g: Identification of the public which may participate in decision-making within the scope of article 7

107. The Committee notes that the Party concerned has also not reported in any of its progress reports on its implementation of paragraph 5 (c) (ii), which requires it to put in place clear requirements to ensure, during the preparation of plans within the scope of article 7 of the Convention, the public that may participate is identified by the relevant public authority.

108. The Committee notes that article 60 (3) (2) of the new Environmental Code stipulates that “the public authority–developer shall ensure the participation of the public concerned in the strategic environmental assessment by: (1) Identification of the public concerned”.⁴⁰ Article 60 (4) further provides that the criteria for identifying the public concerned are to be determined in the EIA instructions.

109. Since however, the EIA instructions are not yet adopted, the Committee is not in a position to determine whether the Party concerned has met the requirements of paragraph 5 (c) (ii) of decision VI/8g.

110. Accordingly, the Committee, while welcoming the progress made, finds that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 5 (c) (ii) of decision VI/8g.

Paragraph 5 (c) (iii) of decision VI/8g: Application of article 6 (3), (4), (8) with respect to plans within the scope of article 7

111. The Committee notes with disappointment that the Party concerned has likewise not reported in any of its progress reports on the implementation of paragraph 5 (c) (iii) of decision VI/8g, which requires it to take the necessary legislative, regulatory and administrative measures to ensure public participation with respect to plans within the scope

³⁹ ECE/MP.PP/C.1/2019/6, para. 94.

⁴⁰ New Environmental Code, from the Party concerned, 30 June 2021.

of article 7, including clear requirements for the application of article 6 (3), (4) and (8) of the Convention.

112. Having however reviewed the provisions of the new Environmental Code, the Committee considers that some of its provisions may be of relevance in this context. The Committee therefore examines them below.

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

113. As mentioned in paragraphs 95 and 96 above, article 60 (3) (2) of the new Environmental Code provides for the establishment of “a reasonable time-frame” to enable the public concerned to make comments and proposals in a timely and effective manner at all stages of the strategic environmental assessment.

114. The Committee welcomes article 60 (3) (2) of the new Environmental Code which constitutes significant progress by the Party concerned towards meeting the recommendation in paragraph 5 (c) (iii). Since however, the relevant secondary legislation is not yet adopted, the Committee is not in a position to determine whether the Party concerned has met the requirements of paragraph 5 (c) (iii) of decision VI/8g

115. Based on the above, the Committee, while welcoming the progress made in that direction, finds that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 5 (c) (iii) of decision VI/8g with respect to article 6 (3) of the Convention.

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

116. The Committee notes that article 5 (9) of the new Environmental Code sets out “the principle of public participation”, including that the public has the right to participate in decision-making on issues affecting the environment at an early stage, when all options are open for consideration and when effective public participation can be ensured.

117. Moreover, article 60 (2) of the new Environmental Code provides that the “public authority-developer” shall ensure that the public concerned is able to participate in all stages of the strategic environmental assessment, beginning with the initial stage in the development of the documents where options can be selected from among the available alternatives.

118. While welcoming both the abovementioned provisions, the Committee notes that from the wording of article 60 (2) of the new Environmental Code, it is not clear that the public has the right to participate when all options, including the zero option, are open. Based on article 60(2), it appears that the public has the right to participate only with respect to “options which are available” rather than “when all options are open” as required by the Convention. The Committee points out that, if that were the case, that would not meet the requirements of article 6 (4) of the Convention,

119. Since the relevant secondary legislation has not yet been adopted, the Committee invites the Party concerned to take into account paragraph 118 above when doing so.

120. In light of the above, the Committee finds that, while welcoming the progress made, the Party concerned has not yet demonstrated that it has fully met the requirements set in paragraph 5 (c) (iii) of decision VI/8g with respect to article 6 (4) of the Convention.

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

121. Although not cited by the Party concerned, the Committee considers that article 82 (6) of the new Environmental Code appears to be relevant to putting in place a clear requirement to ensure that the requirements of article 6 (8) are met during the preparation of plans within the scope of article 7 of the Convention.

122. The Committee welcomes article 82 (6), which requires that the comments and suggestions received from the public in the process of strategic environmental assessment be taken into account. However, since the relevant secondary legislation has not yet been adopted, the Committee is not yet in a position to determine that the Party concerned has fully met the requirements of paragraph 5 (c) (iii) of decision VI/8g in this respect.

123. In the light of the above, the Committee, while welcoming the progress made in that direction, finds that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 5 (c) (iii) of decision VI/8g with respect to article 6 (8) of the Convention.

IV. Conclusions

124. Based on the above considerations, the Committee finds that, while welcoming the progress made, the Party concerned has not yet demonstrated that it has met the requirements of paragraphs 2 and 5 of decision VI/8g.

125. The Committee recommends to the Meeting of the Parties that it re-affirm decision VI/8g, and in that regard, request the Party concerned to take, as a matter of urgency, the necessary legislative, regulatory and administrative measures and practical arrangements to:

- (a) Ensure that the mandatory requirements of the content of the public notice, as prescribed by article 6 (2) of the Convention, are detailed in law;
- (b) Ensure that time-frames set for decision-making procedures subject to articles 6 or 7 of the Convention are sufficient to enable the public to prepare and to participate effectively and:
 - (i) To the extent possible, they do not overlap with holiday periods and other non-working days;
 - (ii) The volume and the complexity of the project or plan, programme or policy is considered when setting the relevant time-frames;
- (c) Establish a clear and consistent requirement for all information relevant to the decision-making to be made accessible to the public, in accordance with article 6 (6) of the Convention;
- (d) Ensure that, in accordance with article 6 (7) of the Convention, the submission of comments by the public is not limited to only reasoned or “reasonable” comments;
- (e) Establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public of the environmental expertiza conclusions, and to facilitate public access to these decisions, in accordance with article 6 (9) of the Convention;
- (f) Maintain and make accessible to the public, through publicly available lists or registers, copies of decisions within the scope of article 6 once taken and other information relevant to the decision-making;
- (g) Ensure that appropriate practical and/or other provisions are made for the public to participate during the preparation of plans within the scope of article 7 of the Convention, including clear requirements to ensure that:
 - (i) The necessary information is provided to the public;
 - (ii) The public that may participate is identified by the relevant public authority;
 - (iii) The requirements of article 6 (3), (4) and (8) of the Convention are applied;

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

- (a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations in paragraph 125 above;
- (b) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the plan of action and the recommendations in paragraph 125 above;
- (c) Provide such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the recommendations in paragraph 125 above;

(d) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the recommendations in paragraph 125 above is to be considered.
