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

Task Force on Public Participation in Decision-making

Tenth meeting

Items 2,3, 4 and 5 of the provisional agenda

Geneva, 10-11 October 2022

SELECTED CONSIDERATIONS, FINDINGS AND REPORTS OF THE AARHUS CONVENTION COMPLIANCE COMMITTEE RELATING TO EFFECTIVE PUBLIC PARTICIPATION

Background paper[1]

Prepared by the secretariat

This background paper is not intended to be exhaustive but to outline a selection of considerations, findings and reports of the Aarhus Convention Compliance Committee[2] (hereinafter – the Committee) in regard to item 2 of the agenda of the tenth meeting of the Task Force on Public Participation in Decision-making under the Aarhus Convention regarding public participation in decision-making related to (i) meaningful and early public participation; (ii) the availability of all relevant documents to the public; (iii) effective notification and time frames for public participation; and (vi) ensuring that greater account is taken of the comments from the public in the final decisions, and ensuring the appropriate provision of feedback on how the public's comments have been taken into account in the decisions. The paper is also relevant for other agenda items.

Participants are invited to consult this document in advance of the meeting in order to gain an overview of issues to be discussed under agenda item 2, the challenges encountered by the Parties in implementation, and to discuss good practices and further needs to be addressed under the auspices of the Task Force on Public Participation in Decision-making.

[1] The document was not formally edited.
[2] Available from http://www.unece.org/env/pp/cc.html

Reports/Cases	**Consideration and evaluation by the Committee**	**Findings and recommendations of the Committee**
ACCC/A/2020/2 Request for advice by Kazakhstan (Document ECE/MP.PP/C.1/2021/6) *Public participation in the context of COVID-19* Articles 3(1), 3(2); 6; 7; 8.	Even in the case of a crisis such as the pandemic, the binding rights set out in the Convention cannot be reduced or curtailed. Rather, if the usual modalities for ensuring effective public participation in decision-making cannot be used, any alternative means must fulfil the requirements of the Convention. The Convention does not preclude public hearings on decision-making under the Convention being held through videoconferencing or other virtual means, provided that in practice all the requirements of the Convention are fully met. *(Paragraphs 16–17 of document ECE/MP.PP/C.1/2021/6)* As a starting point, the Committee emphasizes the general obligation in articles 6–8 of the Convention on each Party to provide for effective public participation in decision-making. Article 6 (4) expressly imposes a requirement on Parties to ensure that effective public participation can take place. The same requirement is repeated in article 6 (2) and (3) and is also thereby incorporated into article 7. Article 8 also refers to effective public participation. Thus, the obligation to ensure opportunities for the public to participate effectively is the fundamental standard against which all the aspects of a public participation procedure under the Convention should be measured. As set out in paragraphs 23–69 below, this applies equally to public participation procedures carried out during the pandemic. The opportunities for the public to participate in the decision-making on a particular activity during the pandemic should be "consistent" with, that is in line with, the opportunities for the public to participate in normal times. This means that public authorities may need to make additional efforts to ensure that the public are, in practice, not disadvantaged. *(Paragraphs 22–23 of document ECE/MP.PP/C.1/2021/6)*	With respect to the request for advice made by the Party concerned, the Committee concludes that the Convention does not preclude the holding of public hearings on decision-making under the Convention during the pandemic through videoconferencing or other virtual means, provided that in practice all the requirements of the Convention are fully met, including those highlighted in paragraphs 22–69 above. *(Paragraph 70 of document ECE/MP.PP/C.1/2021/6)*

	As a first step, since it may not be possible to apply the modalities typically deployed in public participation procedures in the Party concerned, a needs assessment should be carried out, at the time of preparing the relevant legal framework or on a case-by-case basis, to identify what modalities will, in practice, ensure effective opportunities for the public to participate in decision-making under the Convention during the pandemic. The needs assessment should identify any barriers to the participation of the public due to technology, language, literacy or disability, as well as any particular obstacles to participation experienced by marginalized groups or by members of the public whose opportunities to participate may be limited due to their duties during the pandemic. This should also include an assessment of the portion of the public facing each such barrier. As a good practice, the needs assessment should be prepared in consultation with the public. As a good practice, the Party concerned should also, on an ongoing basis, evaluate the effectiveness of the modalities applied in public participation procedures under the Convention during the pandemic, including by inviting feedback on this point from the public. Bearing in mind the feedback received, the modalities may need to be adapted going forward in order to ensure that the opportunities for the public to participate are indeed effective in practice. Any alternative modalities for public participation applied during the pandemic should not result in any additional costs on the public who seek to participate. For example, toll-free phone numbers should be provided during the virtual public hearing in order that the public without access to the Internet may still participate without charge. Since the modalities for public participation will differ from those typically used in the Party concerned, officials and authorities will need to make additional efforts and allow more time to assist and provide guidance to explain to the public how they can participate in decision-making procedures on environmental matters carried out during the pandemic.	

	Each Party will also need to provide training and additional resources to their authorities and officials to ensure that they are properly equipped to facilitate participation by the public in decision-making procedures under the Convention carried out during the pandemic. *(Paragraphs 26–30 of document ECE/MP.PP/C.1/2021/6)* In accordance with article 6 (2) of the Convention, during the pandemic the public concerned must still be informed of the proposed decision-making in an adequate, timely and effective manner. Since members of the public may be required to stay in their homes, or may choose to do so for health reasons, it may not be adequate or effective to notify them only through physical notices posted in the vicinity of the proposed activity or on public noticeboards and, accordingly, additional means of notification should be used. *(Paragraph 33 of document ECE/MP.PP/C.1/2021/6)* Since the procedure may differ in significant respects from the usual public participation procedures that apply in the Party concerned, in addition to the other notice requirements listed in article 6 (2), it will be particularly important for the notice to include clear information on the envisaged procedure, including: (a) The opportunities for the public to participate (art. 6(2)(d)(ii)); (b) When and how the public may participate in the virtual public hearing (art. 6(2)(d)(iii)); (c) How the public can obtain the relevant information (art. 6(2)(d)(iv)); (d) The relevant public authority to which comments or questions can be submitted, together with the time schedule for doing so (art. 6(2)(d)(v)). *(Paragraph 35 of document ECE/MP.PP/C.1/2021/6)* Since the public will not be able to prepare and to participate in the usual way, the standard time frames for each stage of the public participation procedure may need to be extended to enable the public to prepare and participate effectively. For example, the time	

	frame for the public to prepare comments may need to be extended since it may take longer than usual for the public to access all information relevant to the decision-making. *(Paragraph 38 of document ECE/MP.PP/C.1/2021/6)* If, due to the restrictions in place during the pandemic, the public concerned will not be able to visit the premises of public authorities to examine the information relevant to the decision-making in person, it will be necessary to put in place alternative possibilities for the public to examine the relevant information. In line with the Convention's 2005 Recommendations on the more effective use of electronic information tools to provide public access to environmental information, a good practice would be to establish a user-friendly one-stop online portal where the public concerned can easily access all the relevant information. However, if the public concerned cannot visit the public authority's premises to examine the information relevant to the decision-making, it must also be possible for those without access to the Internet to easily access that information. This may entail posting information packs containing all the relevant information to such persons. In accordance with article 6 (6), these information packs must be provided free of charge. *(Paragraphs 40 –42 of document ECE/MP.PP/C.1/2021/6)* The public must, in every case, have the option to submit comments in writing. In the case of a virtual hearing, this should include the opportunity to submit written comments after the virtual hearing has taken place. In the decision-making, equal account must be taken of comments submitted in writing and comments made during the virtual hearing. As with hearings held in person, hearings held through videoconferencing or other virtual means should be open to anyone who wishes to take part, and not only by invitation.	

	Also, as with hearings held in person, if a large number of members of the public wish to take part in the virtual hearing, in order to enable all members of the public wishing to speak to do so, more than one hearing may need to be held or the hearing may need to take place over more than one day. *(Paragraphs 43–46 of document ECE/MP.PP/C.1/2021/6)* Alternatives should be provided so that members of the public lacking access to technology or appropriate technical skills are still able to participate effectively. First, members of the public who do not have access to the Internet, or who experience technical difficulties, should still be able to participate in the hearing by calling a toll-free phone number to listen to the proceedings and to ask questions and make statements. Second, all members of the public should be entitled to submit written comments. *(Paragraphs 49–51 of document ECE/MP.PP/C.1/2021/6)* An important element of a public hearing is the opportunity for the public to ask questions and to cross-examine the developer or promoter of the proposed activity and their experts. In addition to the possibility to join the virtual hearing and ask questions by Internet or telephone, members of the public should, as a good practice, be given the opportunity to submit written questions in advance of the hearing and for the hearing organizers to put those questions to the appropriate persons during the hearing itself. A record should be kept of the replies provided to any such questions. As for hearings held in person, appropriate interpretation should be provided on request in order to ensure the effective participation of the public. To that end, the notice of the virtual hearing to be published under article 6 (2) of the Convention should, as appropriate, indicate the language(s) in which the virtual hearing will be conducted and inform the public of the possibility to request interpretation, if required. *(Paragraphs 54–55 of document ECE/MP.PP/C.1/2021/6)*	

	For proposed activities that may have potential transboundary impacts, the current status of the pandemic and the measures taken by public authorities in those areas should be borne in mind. Going forward, it may be that the public within the Party concerned are once again able to participate in person, but the foreign public are still under restrictions regarding their freedom of movement and can only participate in the decision-making procedure remotely. In such a situation, the Party concerned should put in place appropriate arrangements to enable the foreign public to nevertheless participate effectively. The organizers of the public hearing should provide appropriate technical support to ensure the smooth running of the virtual hearing. Contact details of the technical support personnel should be provided in the notification for the virtual hearing, together with instructions on the various means by which the public may join the hearing (for example, weblink, toll-free phone numbers, etc.) *(Paragraphs 58–60 of document ECE/MP.PP/C.1/2021/6)* If the virtual hearing is affected by widespread technical problems, it should be postponed and rescheduled, at least for the parts of the hearing which were unable to proceed. *(Paragraph 62 of document ECE/MP.PP/C.1/2021/6)* In every public participation procedure under articles 6 and 7 of the Convention, the public must be able to see how their comments have been taken into account in the decision-making in a transparent, traceable way. This obligation applies equally to public participation carried out through virtual means. As a good practice, the methods used to notify the public concerned under article 6 (2) should be utilized as a minimum for informing the public under article 6 (9) of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned.	

	(Paragraphs 68–69 of document ECE/MP.PP/C.1/2021/6)	
ACCC/A/2014/1 Request for advice by Belarus (Document ECE/MP.PP/C.1/2017/11) Articles 6(7), 6 (8); 8	Having considered the secretariat's draft response, and after taking into account the comments by the Party concerned thereon, the Committee notes with approval paragraph 11 of the Maastricht Recommendations as cited above. According to the wording of article 6, paragraph 7, of the Convention, and subject to the requirements of national law, it may not be necessary to hold a public hearing in every decision-making procedure within the scope of article 6. The Committee, however, recommends to the Party concerned that its public authorities select the appropriate tools and techniques that will ensure, bearing in mind the nature of the proposed activity, that the public concerned can participate effectively, including a public hearing where one would be appropriate to achieve this end. In accordance with article 6, paragraph 8, of the Convention, authorities must in all cases ensure that due account can be taken of the outcome of the public participation. In keeping with this, the Committee recommends to the Party concerned that when a public hearing is held, the public should be able to submit their comments, information and so forth orally during the hearing, in addition to having the opportunity to submit written comments. *(Paragraph 45 of document ECE/MP.PP/C.1/2017/11)* In its findings on communication ACCC/C/2010/53 (United Kingdom), the Compliance Committee found that: The Convention prescribes the modalities of public participation in the preparation of legally binding normative instruments of general application in a general manner, pointing to some of the basic principles and minimum requirements on public participation enshrined by the Convention (i.e., effective public participation at an early stage, when all options are open; publication of a draft early enough; sufficient time frames for the public to consult a draft and comment). Parties are then left with some discretion as to the specificities of how public participation should be organized. In the same findings, the Committee found: The Committee also examines whether the result of public participation was taken into account as far as possible. This is mandatory under article 8 and in practice it means that the final version of the normative instrument	Having considered the above, the Committee adopts the recommendations set out in the following paragraphs. The Committee recommends to the Party concerned that: […] (f) Its public authorities select the appropriate tools and techniques that will ensure, bearing in mind the nature of the proposed activity, that the public concerned can participate effectively, including a public hearing where one would be appropriate to achieve this end. In accordance with article 6, paragraph 8, of the Convention, authorities must in all cases ensure that due account can be taken of the outcome of the public participation. In keeping with this, when a public hearing is held, the public should be able to submit their comments, information and so forth orally during the hearing, in addition to having the opportunity to submit written comments; […] (h) The final version of a normative instrument be in practice accompanied by an explanation of the public participation process and how the results of the public participation were taken into account, bearing in mind that article 8, paragraphs (a)–(c), of the Convention sets forth a minimum of three elements that should be implemented in order to meet the obligation to promote effective public participation, and also that the final sentence of article 8 requires Parties to ensure that the outcome of public participation is taken into account as far as possible; *(Paragraph 58 of document ECE/MP.PP/C.1/2017/11)*

	… should be accompanied by an explanation of the public participation process and how the results of the public participation were taken into account. *(Paragraph 51, excerpts from paragraphs 84 and 86 of ACCC/C/2010/53, in document ECE/MP.PP/C.1/2017/11)* Having considered the secretariat's draft response, and after taking into account the comments by the Party concerned thereon, the Committee considers that the excerpts cited from page 185 of the Implementation Guide and paragraph 86 of the Committee findings on communication ACCC/C/2010/53 are particularly relevant to the question of the Party concerned. Bearing in mind that article 8, paragraphs (a)–(c), of the Convention sets forth a minimum of three elements that should be implemented in order to meet the obligation to promote effective public participation, and also that the final sentence of article 8 requires Parties to ensure that the outcome of public participation is taken into account as far as possible, the Committee recommends to the Party concerned that the final version of a normative instrument be in practice accompanied by an explanation of the public participation process and how the results of the public participation were taken into account. *(Paragraph 53 of document ECE/MP.PP/C.1/2017/11)*	
ACCC/S/2015/2 Submission concerning compliance by Belarus (Document ECE/MP.PP/C.1/2021/13) Articles 3(2), 6 (2)	The Committee considers that adequate information under article 6 (2) (d) (iv) and (v) requires a specific contact point in the public authority to be named and preferably an email address to be provided. *(Paragraph 94 of document ECE/MP.PP/C.1/2021/13)* The means of notification used to notify the public concerned in the Party of origin may not be sufficient to notify the public concerned in the transboundary context. *(Paragraph 97 of document ECE/MP.PP/C.1/2021/13)* As a minimum, article 3 (2) requires that, before a public participation procedure takes	Since the Committee has already addressed the various aspects of the public participation procedure on the 2010 and 2013 expertizas in the preceding paragraphs, it will not make a separate finding on this point. It expresses concern, however, that none of the evidence before it shows that either Belarus or Lithuania took steps to make sure that the relevant law and the rules to be applied during the decision-making procedure were explained to the Lithuanian public. *(Paragraph 159 of document ECE/MP.PP/C.1/2021/13)* The Committee finds that:

	place, Parties endeavour to ensure that their officials provide guidance to the public so that the public has an adequate understanding of the relevant law, the decision-making procedure and its opportunities to participate. This obligation applies to each Party to the Convention, whether it be the Party of origin or the affected Party. *(Paragraphs 158 –159 of document ECE/MP.PP/C.1/2021/13)*	(a) By failing to provide adequate and effective notice to the Lithuanian public concerning its opportunities to participate in the hearing in Ostrovets on 9 October 2009 and to send written comments during the decision-making on the 2010 State ecological expertiza the Party concerned failed to comply with article 6 (2) (d) (ii) and (v) of the Convention […] (b) By failing to ensure that the means used to notify the Lithuanian public of the 2009 Ostrovets hearing were effective, either by carrying out the notification itself or by making the necessary efforts to ensure that Lithuania had done so effectively, the Party concerned failed to comply with article 6 (2) of the Convention; […] The Committee, pursuant to paragraph 35 of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 36 (b) of the annex to decision I/7, recommends that the Party concerned take the necessary legislative, regulatory and administrative measures and establish practical arrangements in order to ensure that in decision-making on proposed activities with potential transboundary impacts: […] (b) Adequate and effective notification is provided to the public concerned in the affected States, in its national languages, including in widely published media in each State, regarding: (i) Any decision-making procedure subject to article 6,

		including the stages and time-frames of the decision-making and the types of decisions, reports and other documentation that will be prepared at each stage; (ii) Its opportunities to participate in each stage of decision-making subject to article 6, in particular concerning the specific contact point to which comments can be submitted, the exact time schedule for transmittal of comments, and its opportunities to participate in any scheduled public hearing … *(Paragraphs 161–162 of document ECE/MP.PP/C.1/2021/13)*
ACCC/C/2016/144 Case concerning compliance by Bulgaria (Document ECE/MP.PP/C.1/2021/29) Articles 6(2), 6(3), 6(8); 7; 9(3), 9 (4)	The legislation of the Party concerned includes a possibility for an administrative authority – including the MOEW and the RIEW – to impose a CAM to suspend the implementation of a GSP amendment. However, although it is possible for a member of the public to submit a request to the administrative authority to exercise its power to prevent the execution of an administrative act (via an "alert", see paras. 26–35 above), the administrative authority is under no obligation to exercise this power, as is demonstrated by the facts of the case. On this point, the Committee recalls its findings on communications ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom), in which it held that: "the right to ask a public authority to take action does not amount to a 'challenge' in the sense of article 9, paragraph 3, and especially not if the commencement of action is at the discretion of the authority". The Committee considers that the above finding is equally applicable to the possibility under article 127 (6) SDA for the County Governor to challenge the decision to amend a GSP within 14 days of its approval. The Committee finds that a referral by a member of the public to the County Governor can neither amount to a challenge under article 9 (3) nor be considered as an adequate and effective remedy under article 9 (4) of the Convention, given that the County Governor is not obliged to act on such a request. *(Paragraphs 113–114 of document ECE/MP.PP/C.1/2021/29)*	The Committee finds that: (a) By not providing the public with adequate and effective remedies with respect to GSPs, and amendments thereto, adopted on the basis of unlawful SEA decisions, the Party concerned fails to comply with its obligations under article 9 (4) in conjunction with article 9 (3) of the Convention; (b) By not ensuring that the public notice for the proposed GSP amendment contained accurate information on "the proposed activity" and "the nature of the possible decision" nor any of the other information required by article 6 (2) (a)–(e) except for the location, date and time of the hearing, the Party concerned failed to comply with article 7 in conjunction with article 6 (2) of the Convention; (c) By not making the texts of the existing GSP and the proposed GSP amendment effectively available to the public, the Party concerned failed to comply with the

	In the present case, the notice of the public hearings provided a limited level of information on the proposed GSP amendment and associated public participation procedure, indicating only the location, date and time of the hearings and that the "scope" of the amendment was related to a "ZSE area within the territory of the Sports Complex 'Recreation and Culture'". Significantly, the notice did not clarify that the proposed amendment envisaged changing the use of the relevant territory from a forested and partly protected area allowing no more than 1 per cent construction, into a zone that allows 80 per cent of the territory to be used for construction. The notice provided no indication of how the public could access any further information on the draft GSP amendment or the public participation procedure itself or any of the other information required by article 6 (2) (a)–(e) of the Convention. Based on the evidence before it, the Committee considers that the information made available to the public in the notice of the public hearings was, in fact, misleading in that the "scope" of the amendment as described in the public notice was not an adequate description of the actual proposed GSP amendment and was not further explained by any additional text. As the Committee made clear in its findings on communication ACCC/C/2006/16 (Lithuania), "inaccurate notification cannot be considered as 'adequate' and properly describing 'the nature of possible decisions' as required by the Convention". [fn.: ECE/MP.PP/2008/5/Add.6, para. 66.] The Committee therefore considers that the notice by the public authority in the present case fails to comply with the obligations to adequately inform the public about "the proposed activity" and "the nature of the possible decisions" as required by article 6 (2) (a) and (b). Furthermore, the notice provided no indication of the public authority from which relevant information could be obtained, as required by article 6 (2) (d) (iv). The Committee notes that article 127 (1) SDA, which sets out the legal framework for public participation on spatial plans and amendments thereto, only requires that the public notice indicate the "location, date and time" of the public hearing. It does not	requirement in article 7 to provide the necessary information to the public; (d) By not ensuring a reasonable time frame between the public notice of the hearing on the proposed amendment to the Plovdiv GSP and the hearing itself, the Party concerned failed to comply with article 7 in conjunction with article 6 (3) of the Convention; (e) By: (i) Failing to ensure that due account is taken of the outcome of public participation in decision-making on proposed GSPs and GSP amendments; (ii) Failing to demonstrate, in a transparent and traceable way, how due account was taken of the public participation in the decision-making on the proposed amendment to the Plovdiv GSP, the Party concerned has failed to comply with article 7 in conjunction with article 6 (8) of the Convention. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, and recalling the need to implement decision VI/8d, recommends that the Party concerned undertake the necessary legislative, regulatory, administrative and practical measures to ensure that: (a) Adequate and effective remedies are provided for the public to challenge GSPs, and GSP amendments, adopted on the basis of unlawful SEA decisions; (b) Public notice to initiate public participation in

	explicitly require the public authority to ensure that the notice provides adequate information on “the proposed activity”, “the nature of possible decisions or the draft decisions” nor that it includes any of the other required information listed in article 6 (2). *(Paragraphs 122–126 of document ECE/MP.PP/C.1/2021/29)* The communicant claims that the text of the proposed GSP amendment itself was not made available to the public in advance of the hearing. While the Party concerned has disputed this claim, it has not provided the Committee with any evidence demonstrating how the public was informed of where it could access the text of the proposed GSP amendment, nor the text of the existing GSP, prior to the hearing. *(Paragraph 128 of document ECE/MP.PP/C.1/2021/29)* Article 6 (3) of the Convention is applicable to GSPs and GSP amendments by virtue of its incorporation into article 7 of the Convention. The Party concerned must accordingly ensure that public participation procedures for GSPs and their amendment include reasonable time frames for the different phases. This includes allowing sufficient time for informing the public in accordance with article 6 (2) and for the public to prepare and participate effectively. The public hearings on the proposed GSP amendment took place on 12, 13 and 14 December 2013. The Municipality published public notices announcing the hearings only two days before the first of these hearings, i.e. on 10 December 2013. The purpose of publishing notices of public hearings is, inter alia, to allow the public to become acquainted with the proposed activity or plan, to plan their availability and prepare for the hearing effectively. For public participation to be effective, it is necessary that sufficient time be allowed for the public between the announcement of a hearing and the holding of the hearing. A 2–4-day period is clearly insufficient both to enable the public to ensure their	decision-making on GSPs contains details related to the proposed activity and the nature of the subsequent decision, as well as all other relevant information required by article 6 (2) of the Convention; (c) All necessary information, including but not limited to the text of the proposed GSP, and, in the case of a GSP amendment, the text of both the existing GSP and the proposed amendment thereto, is provided to the public in due time before the hearing; (d) In decision-making on proposed GSPs and GSP amendments, a reasonable time frame between the publication of public notice and hearing is provided to the public; (e) In decision-making on proposed GSPs and GSP amendments, due account is required to be taken of the outcomes of the public participation in the decision, and that this is documented in a transparent and traceable way. *(Paragraphs 145–146 of document ECE/MP.PP/C.1/2021/29)*

	availability to attend the hearing and also to prepare for the hearing in order to participate effectively. With respect to the organization of public hearings prior to the adoption of GSPs and GSP amendments, article 127 (1) SDA contains only a requirement to publish a notice of the hearing, without specifying a minimum time that the notice should be published in advance. As the case of the amendment of Plovdiv GSP shows, this lack of specification in the legislation of the Party concerned does not ensure that the requirement in article 6 (3) for reasonable time frames is met. *(Paragraphs 130–134 of document ECE/MP.PP/C.1/2021/29)* Article 127 (1) SDA requires that a report ("protocol") be made of the public consultations and discussions, which is to be included with the documentation for the expert council and the municipal council. In the present case, six public hearings were held on the proposed GSP amendment. The report of these six hearings is a 1-page summary, of which only a total of eight lines are dedicated to summarizing the comments received in the course of these six separate hearings. These eight lines in the report do not clearly identify the specific issues and concerns raised by the public or any proposals they made. Therefore, even assuming that the decision-making authorities had the report at their disposal, they could not have relied on it to take due account of the public's input. Based on the report, and in the absence of information indicating that any other documents reporting the outcome of the public participation were available to the decision-making authorities, the public consultation process appears to have been a mere formality that did not enable the public to participate effectively in the decision-making on the proposed GSP amendment. The Committee notes that there appears to be no requirement in the legal framework of the Party concerned that ensures that the report recording the outcomes of the public participation is taken into account by the authorities when the decision is adopted.	

	Moreover, the Committee recalls that, under article 6 (8), the Party concerned is not only obliged to take due account of the comments presented by the public, but also to demonstrate how it has fulfilled this obligation. As the Committee held in its findings on communication ACCC/C/2013/96 (European Union), "in the process of preparing a plan, this obligation could be fulfilled by following the procedure set out in article 6 (9), or any other way the Party concerns chooses to demonstrate that it has taken 'due account' of the outcome of the public participation". *(Paragraphs 137–141 of document ECE/MP.PP/C.1/2021/29)*	
ACCC/C/2014/122 Case concerning compliance by Spain (Document ECE/MP.PP/C.1/2021/7) Article 6(10)	However, it is not decisive whether the operating conditions of the activity will indeed ultimately be updated or will in fact have significant environmental effects. Likewise, it is immaterial that, if the operating conditions are updated, the updated conditions could in some respects have a beneficial effect on the environment, human health and safety. The crucial point is whether the reconsideration or update is "capable of" changing the activity's basic parameters or will "address" significant environmental aspects of the activity *(Paragraphs 88 and 92 of document ECE/MP.PP/C.1/2021/7)*	In the light of the above, the Committee concludes that at least in some cases, such as the 2013 update of the permit for the Pontevedra chlorine production facility examined in paragraphs 85–97 above, public participation was "appropriate" and thus required. Accordingly, by excluding any possibility for public participation in relation to reconsiderations and updates of permits under the first transitional provision of Law 16/2002, the Party concerned failed to comply with article 6 (10) of the Convention. *(Paragraph 98 of document ECE/MP.PP/C.1/2021/7)* The first transitional provision required all then-existing integrated environmental permits to be updated by 7 January 2014, and for large combustion plants, by 31 December 2016. The communicant has not alleged that any of those permits remain to be updated, albeit long after the first transitional provision's stipulated deadlines. The communicant likewise does not allege that the reconsideration or updating of permits under any other provision of Law 16/2002 or Royal Legislative Decree 1/2016 fail to comply with article 6 (10) of the

		Convention. Bearing in mind these circumstances, the Committee refrains from making any recommendations in this case. The Committee finds that, by putting in place a legal framework that did not envisage any possibility for public participation in relation to reconsiderations and updates under the first transitional provision of Law 16/2002, the Party concerned failed to comply with article 6 (10) of the Convention. Bearing in mind the circumstances outlined in paragraph 100 above, the Committee refrains from making any recommendations in this case *(Paragraphs 100–101 of document ECE/MP.PP/C.1/2021/7)*
ACCC/C/2014/120 Case concerning compliance by Slovakia (Document ECE/MP.PP/C.1/2021/19) Articles 2 (2); 3 (1); 8; 9 (3)	The Committee considers that there is nothing in the title or text of article 8 of the Convention to suggest that it does not include the preparation of legislation by executive bodies to be adopted by national parliaments. On the contrary, although the terms "legislation" and "laws" do not appear in the provision, the wording of article 8 and the ordinary meaning given to its terms nevertheless support the inclusion of legislation and other normative instruments of a similar character. *(Paragraph 95 of document ECE/MP.PP/C.1/2021/19)* The Committee considers that article 8 of the Convention applies also to the preparation of legislation by executive bodies to be adopted by national parliaments, and that public authorities, including Governments, do not act in a legislative capacity when engaged in preparing laws until the draft or proposal is submitted to the body or institution that adopts the legislation. *(Paragraph 101 of document ECE/MP.PP/C.1/2021/19)*	Based on the above considerations, the Committee does not find the Party concerned to be in non-compliance with articles 8, 9 (3) or 3 (1) of the Convention in the circumstances of this case. *(Paragraph 122 of document ECE/MP.PP/C.1/2021/19)*

	In concluding that article 8 of the Convention applies also to the preparation of legislation by parliaments, the Committee notes that that article obliges the Parties to "strive to promote effective public participation at an appropriate stage". This expresses an obligation of a somewhat "softer" nature than the obligations set out in articles 6 and 7, meaning that the Parties must show that they make efforts to provide for public participation in the preparation of legislation and other generally applicable legally binding normative instruments. In comparison with articles 6 and 7, article 8 gives the Parties greater leeway in deciding how to fulfil this obligation. *(Paragraph 103 of document ECE/MP.PP/C.1/2021/19)*	
ACCC/C/2013/107 Case concerning compliance by Ireland. (Document ECE/MP.PP/C.1/2019/9) Articles 6 (1) (a), 6 (2)–(10)	Moreover, the Committee does not find tenable the argument put forward by the Party concerned that the public could have submitted its views on the possible impact on the environment of an extension of the activity's duration at the time of the public participation procedures in 1997, 2004 and 2010 (see paras. 43, 46 and 57 above). The Party concerned has provided no evidence that prior to the grant of the quarry permits in 1998, 2004 and 2010 the public was notified of a possibility that, in 2013, the permits might be extended for a further period of five years. The Committee thus finds the argument of the Party concerned to be unsubstantiated. Based on the above, the Committee concludes that it was "appropriate", and thus required, to apply the provisions of article 6 (2) – (9) to the decision-making on the 2013 permits. The Committee accordingly finds that, by failing to provide opportunities for the public to participate in the decision-making on the 2013 permits to extend the duration of the Trammon quarry, the Party concerned has failed to comply with article 6 (10) of the Convention. *(Paragraphs 85 of document ECE/MP.PP/C.1/2019/9)*	The Committee finds that, by failing to provide opportunities for the public to participate in the decision-making on the 2013 permits to extend the duration of Trammon quarry, the Party concerned has failed to comply with article 6 (10) of the Convention. Moreover, the Committee finds that, by providing mechanisms through which permits for activities subject to article 6 of the Convention may be extended for a period of up to five years without any opportunity for the public to participate in the decision to grant the extension, section 42 (1) (a) (i) and (ii) of the Planning and Development Act 2000 do not meet the requirements of article 6 (10) and thus the Party concerned fails to comply with article 6 (10) of the Convention. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, recommends that, with regard to section 42 (1) (a) (i) and (ii) of the Planning and Development Act 2000, the Party concerned:

		(a) Take the necessary legislative measures to ensure that permits for activities subject to article 6 of the Convention cannot be extended, except for a minimal duration, without ensuring opportunities for the public to participate in the decision to grant that extension in accordance with article 6 (2)–(9) of the Convention; (b) Take the necessary steps to ensure the prompt enactment of the measures to fulfil the recommendation in paragraph (a) above *(Paragraphs 94 and 95 of document ECE/MP.PP/C.1/2019/9)*
ACCC/C/2013/106 Case concerning compliance by Czechia (Document ECE/MP.PP/C.1/2020/3) Article 6 (8)	The Committee emphasizes that a system whereby only the comments of certain members of the public are duly taken into account, while others are disregarded or considered to "count less" by the decision-making authorities, would not be consistent with the Convention. However, while not precluding the possibility to examine this point further should relevant evidence be put before it in a future case, the Committee cannot conclude in the abstract that the system instituted by the Party concerned through the 2015 EIA Act will lead to such a result. *(Paragraph 97 of document ECE/MP.PP/C.1/2020/3)*	Based on the considerations in paragraphs 94 to 99 above, the Committee finds that the communicant has not substantiated its allegations that the Party concerned fails to comply with article 6 (8) of the Convention in the context of the present case. *(Paragraph 100 of document ECE/MP.PP/C.1/2020/3)* Based on the above considerations, the Committee does not find the Party concerned to be in non-compliance with articles 6 or 9 of the Convention in the circumstances of this case. The Committee makes clear that its findings on the present communication have no bearing on its findings and recommendations on communication ACCC/C/2012/71 and its review of the implementation of decision VI/8e of the Meeting of the Parties concerning the Party concerned.

		(Paragraphs 117–118 of document ECE/MP.PP/C.1/2020/3)
ACCC/C/2014/105 Case concerning compliance by Hungary (Document ECE/MP.PP/C.1/2021/16) Articles 5 (7) (a); 7	It is vital that a Party give the public all facts and analyses of facts it considers relevant and important in framing major environmental policy proposals, as well as when plans and programmes relating to the environment are being prepared and discussed. There is in this respect a key interrelationship between the requirements of articles 5 (7) (a) and 7 of the Convention, as the publication of facts and analyses of facts under the former helps to ensure that the public has the relevant information it needs to make its participation in the related decision-making under article 7 effective. *(Paragraph 120 of document ECE/MP.PP/C.1/2021/16)* Article 5 (7) (a) requires each Party to proactively disclose the facts and analyses of facts which it considers relevant and important in "framing" the proposal. In determining whether particular information "frames" a policy proposal, the Committee points out that "framing" refers to information that supports or underpins the decision-making on the policy proposal prior to that decision being taken. It does not refer to analyses or other environmental information generated as a result of that environmental policy proposal. […] *(Paragraph 122 of document ECE/MP.PP/C.1/2021/16)* It is evident from the wording of article 7, final sentence, that the obligation to provide for public participation in policies is somewhat "softer" than that regarding plans and programmes. The Convention does however impose certain minimum obligations with respect to the opportunities for the public to participate in the preparation of policies. First, article 7, final sentence, refers to "the public" in general. Thus, it would not suffice if the opportunities to participate in the preparation of a policy were only provided to selected stakeholders. *(Paragraphs 139–140 of document ECE/MP.PP/C.1/2021/16)*	The Committee thus finds that while, as pointed out in paragraphs 103, 107 and 111 above, the studies, analyses and materials resulting from the Teller and Levai projects should have been disclosed upon request under article 4 (1), the allegation regarding article 5 (7) (a) is unsubstantiated. *(Paragraph 124 of document ECE/MP.PP/C.1/2021/16)* The Committee finds that, by not publishing the "assessment analysis" of the draft 2007–2020 energy policy prepared under articles 43 (1) and 44 (2) of the Environmental Code, the Party concerned failed to comply with article 7, final sentence, in conjunction with article 5 (7) (a) of the Convention. *(Paragraph 164 of document ECE/MP.PP/C.1/2021/16)* The Committee pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, recommends that the Party concerned take the necessary legislative, regulatory, administrative and practical measures to ensure that "assessment analyses" of policies relating to the environment prepared under articles 43 (1) and 44 (2) of the Environmental Code, or any legislation that supersedes them, are made available to the public so that it can effectively exercise its opportunities to

	Second, article 5 (7) (a) requires each Party to proactively disclose the facts and analyses of facts which it considers relevant and important in "framing" major environmental policy proposals. *(Paragraph 142 of document ECE/MP.PP/C.1/2021/16)*	participate under article 7, final sentence, of the Convention. *(Paragraph 165 of document ECE/MP.PP/C.1/2021/16)*
ACCC/C/2014/104 Case concerning compliance by the Netherlands. (Document ECE/MP.PP/C.1/2019/3) Articles 6 (2)–(10)	The Committee cannot agree with the position of the Party concerned that the fact that the 1973 licence was for an "indefinite" period means that the 2013 licence amendment extending the design lifetime until 2033 was not a change in the plant's operating conditions. Indeed, the Party concerned itself states that "at the time of the original design and construction of the Borssele nuclear power plant, it was assumed that it would have a design lifetime of 40 years, i.e., until 2014." It is also clear from the documentation that, without the 18 March 2013 decision, the plant was not permitted to operate beyond 2014. The Committee considers that the permitted duration of an activity is clearly an operating condition for that activity, and an important one at that. Accordingly, any change to the permitted duration of an activity, be it a reduction or an extension, is a reconsideration or update of that activity's operating conditions. It follows that any decision permitting the nuclear power plant to operate beyond 2014 amounted to an update of the operating conditions. Based on the above, the Committee considers that the decision of 18 March 2013, by amending the licence to extend the design lifetime of the nuclear power plant until 31 December 2033, updated the operating conditions of the plant. Accordingly, under article 6, paragraph 10, of the Convention, the Party concerned was obliged to ensure that the provisions of article 6, paragraphs 2 to 9, were applied, mutatis mutandis, and where appropriate to that decision. *(Paragraphs 65–66 of document ECE/MP.PP/C.1/2019/3)* In order to meet the requirements of article 6, paragraph 4, public participation must take place at an early stage of the decision-making process, when all options are open and when due account can be taken of the outcome of the public participation. As the Committee held in its findings on communication ACCC/C/2007/22 (France), "this	The Committee finds that, by not having at any stage provided for public participation, meeting the requirements of article 6, where all options were open, in regard to setting the end date of 31 December 2033 for the operation of Borssele Nuclear Power Plant, the Party concerned failed to comply with article 6, paragraph 4, in conjunction with article 6, paragraph 10, of the Convention with respect to the licence amendment of 18 March 2013. Pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, the Committee recommends that the Party concerned take the necessary legislative, regulatory and administrative measures to ensure that, when a public authority reconsiders or updates the duration of any nuclear-related activity within the scope of article 6 of the Convention, the provisions of paragraphs 2 to 9 of article 6 are applied. *(Paragraphs 88–89 of document ECE/MP.PP/C.1/2019/3)*

	implies that when public participation is provided for, the permit authority must be neither formally nor informally prevented from fully turning down an application on substantive or procedural grounds. If the scope of the permitting authority is already limited due to earlier decisions, then the Party concerned should have also ensured public participation during the earlier stages of decision-making." (ECE/MP.PP/2009/4/Add.1, para. 38.) *(Paragraph 76 of document ECE/MP.PP/C.1/2019/3)* The communicant submits that prior to the conclusion of the 2006 Covenant and the 2010 amendment of the Nuclear Energy Act only selected stakeholders were invited by parliament to comment and this has not been disputed by the Party concerned. As the Committee held in its findings on communication ACCC/C/2010/51 (Romania), participation in closed advisory groups cannot be considered as public participation meeting the requirements of the Convention. The Committee accordingly considers that the public did not have the opportunity to participate in a manner that would meet the requirements of article 6 prior to the 2010 amendment to the Nuclear Energy Act. *(Paragraph 80 of document ECE/MP.PP/C.1/2019/3)* While, as acknowledged by the communicant, article 6, paragraph 6, of the Convention does not require an environmental impact assessment to be carried out, the competent public authorities must as a minimum provide the public concerned with access to the information listed in subparagraphs (a)-(f) of that provision. The Committee points out that, in the context of decision-making on the extension of the design lifetime of a nuclear power plant, article 6, paragraph 6 (b), requires that information on the environmental effects of such a longer operation should be made available to the public concerned. The communicant alleges that in the present case the public authorities held relevant information on this point but did not make it available to the public concerned in a systematic manner during the public participation procedure on the March 2013 licensing decision (see para. 46 above). The Party concerned acknowledges that an analysis on the consequences of ending or continuing the operation of Borssele Nuclear Power Plant after 2013 was commissioned by the State Secretary for Housing, Spatial Planning and the Environment and appended to his opinion to parliament of 10 January 2006.94 The Party	

	concerned submits that, having been appended to the State Secretary's opinion of 10 January 2006, the analysis was thereby made available to the public.95 The Committee considers that it goes without saying that an analysis commissioned by the State Secretary for Housing, Spatial Planning and the Environment on the consequences of ending or continuing the operation of the Borssele plant after 2013 would be highly relevant to any decision-making to grant a lifetime extension of that plant beyond 2013. Since as already indicated (see para. 83 above) the Committee will not make a finding on article 6, paragraph 6, it is not necessary for the Committee to ascertain whether or not the above analysis was in the possession of the competent public authorities at the time that the 2012 public participation procedure was carried out. The Committee points out, however, that the fact that the analysis was attached to an opinion submitted to parliament in 2006 does not amount to giving the public concerned access to all available information relevant to a decision-making procedure carried out in the period 2012–2013, that is, more than six years later. However, notwithstanding that the 2012 public participation procedure was held too late to meet the requirements of article 6 of the Convention with respect to the decision to extend the nuclear power plant's operation until 2033, the Committee commends the format used in the 18 March 2013 decision to summarize, group and respond to the comments received from the public and considers that such a format may serve as a useful example for Convention Parties on how to deal with comments received from the public in the text of a decision subject to article 6 in a well-structured, clear and sufficiently detailed way. *(Paragraphs 85– 86 of document ECE/MP.PP/C.1/2019/3)*	
ACCC/C/2014/100 Case concerning compliance by United Kingdom of Great Britain and Northern Ireland (Document ECE/MP.PP/C.1/2019/6)	In a tiered decision-making procedure, the requirement for "early public participation, when all options are open" refers to the availability of options at a given stage of the decision-making. It neither requires that all options must be studied nor indicates which options/alternatives must be studied and at which stage – this is within the discretion of the competent authorities. It merely precludes foreclosing any options without public participation. Nothing in article 6 (4) precludes the right of the competent authorities in the context of article 7 (or, in the case of article 6, of project proponents) to select their preferred option (or options) and promote it (or them); nor does it require that all options	Based on the above considerations, the Committee does not find the Party concerned to be in non-compliance with article 7 of the Convention in the circumstances of this case. *(Paragraph 106 of document ECE/MP.PP/C.1/2019/3)*

Articles 6 (2)–(4), 6 (6), 6 (8); 7	studied by the competent authorities, for example those considered in passing at an early exploratory stage, be presented to the public. However, it does imply that members of the public should be able in their comments to challenge the options put forward in the draft plan and to propose other options, including the zero option. This has a bearing on the obligation in article 6 (8) to take due account of the outcome of the public participation. This provision, seen in this context, requires the competent authorities to consider the option or options suggested by the public and provide reasons for not accepting them. In light of the previous paragraph, the Committee considers that the requirements of article 6 (4) of the Convention would not be met if options were de jure and de facto still open but this was in no way apparent to members of the public participating in the decision-making procedure. The Committee does not, however, consider that this was the case in the public consultation on the DNS. The communicant alleges that the public participation documents presented the choice of the "Y" route as an accepted fact and that the consultation questions did not enquire as to the different options considered (see paras. 57 and 58 above). The Committee does not agree. While the Party concerned did promote its preferred option in the consultation documents (see chapter 4 of the 2010 Command Paper116 and chapter 5 to the Consultation Document), 117 the Committee does not consider that there is any evidence before it that members of the public could not propose other options, including the zero option. Rather, the consultation questions enquired whether the public agreed that the "Y" network was the best option (see, for example, questions 2 and 5 in para. 30 above) *(Paragraphs 84– 85 of document ECE/MP.PP/C.1/2019/6)* It is clear that "the necessary information" in article 7 includes the notice requirements in article 6 (2). These requirements are incorporated by virtue of the express reference in article 7 to article 6 (3), which in turn stipulates that notice is to be carried out in accordance with article 6 (2). In contrast, the information requirements in article 6 (6) are not directly applicable to article 7 of the Convention. On this point, it is obvious that the information and documentation developed for the preparation of plans and programmes would frequently	

	differ from that listed in subparagraphs (a)–(f) of article 6 (6). However, the Committee considers that the rationale of both provisions is that the available information that will enable the public to participate effectively in the relevant decision-making in each case must be provided. While not directly applicable, article 6 (6) may accordingly serve as a source of guidance in the application of the requirement in article 7 to provide "the necessary information" to the public, provided that the differences between decisions on specific activities and plans and programmes are taken into account. An important difference between article 6 and article 7 is that article 6 covers specific activities commonly considered as those "which may have a significant effect on the environment", while article 7 relates to plans and programmes "relating to the environment". Specific activities "which may have a significant effect on the environment" would normally be required by national law to undergo some form of environmental impact assessment. Hence, article 6 (6) refers to information typically provided in the process of environmental assessment, such as a description of "the significant effects of the proposed activity on the environment" or of "the measures envisaged to prevent and/or reduce the effects" *(Paragraphs 88– 91 of document ECE/MP.PP/C.1/2019/6)* The Committee considers that some of the requirements included in article 6 (6) should nonetheless be used as guidance as to what constitute elements of the obligation under article 7 to provide the public with "the necessary information". The first element is the obligation to provide "all information relevant to the decision-making that is available at the time of the public participation procedure". This would include, inter alia, the "main reports and advice issued to the public authority" available at the time when the public is informed in accordance with article 6 (2) (see article 6 (6) (f)). It would also include any available information on the effects of the proposed plan or programme on the environment (see article 6 (6) (b)). A second element is the obligation to provide an "outline of the main alternatives studied by the applicant",	

	which, in the case of plans and programmes, would mean those studied by the competent authority responsible for the preparation of the given plan or programme. In the light of the above observations, the Committee considers that 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 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. *(Paragraphs 93–94 of document ECE/MP.PP/C.1/2019/6)*	
ACCC/C/2013/98 Case concerning compliance by Lithuania (Document ECE/MP.PP/C.1/2021/15) Article 6 (2), 6 (4), 6 (7), 6 (8), 6 (9)	Whilst the fact that no members of the public participated in the hearing is significant, lack of attendance does not necessarily mean that the notice was ineffective. However, public authorities should take care to choose effective methods of notification, and if experience shows that the methods used do not result in the participation of the public concerned, they should be reconsidered. *(Paragraph 98 of document ECE/MP.PP/C.1/2021/15)* It goes without saying that the obligation in article 6 (2), to provide "adequate and effective" notice, requires that the information in the notice is correct. The public must be able to rely on this information and should not have to double-check that it is correct. Regardless of which entity carries out the notification, it is for the Party concerned to ensure that the public concerned is adequately and effectively, and by that correctly, notified. *(Paragraph 101 of document ECE/MP.PP/C.1/2021/15)*	Lithuanian legislation refers to notification "if possible" by radio and television, which may have been a useful method in this case. However, the communicant has not provided sufficient evidence to show that the methods used did not ensure effective notification and the Committee accordingly does not find non-compliance with article 6(2) in this regard. *(Paragraph 98 of document ECE/MP.PP/C.1/2021/15)* The Committee finds that: (a) By not correctly notifying the public concerned about the time frames during which relevant documentation would be available and in which comments could be submitted, the Party concerned

	Given the above, the Committee considers that the general location, at least, of the OHL's border crossing point was perceived to have been fixed at the inter-State consultation meeting on 30 April 2010 between Poland and Lithuania. The fact that the only alternatives studied in the SEA and EIA procedures "were compliant with" the crossing point agreed at that meeting demonstrates that that agreement foreclosed other options in practice. *(Paragraph 112 of document ECE/MP.PP/C.1/2021/15)* Compliance with article 6 (4) requires not only that all options are legally open at the time of the public participation, it must also be apparent to the public concerned that they are open. In the Committee's view, the reference in the 2009 Decree's title to "overhead power line" implies that the power line technology had, by then, already been decided. Moreover, the notice for the public hearing in the Krosna neighbourhood on 14 July 2010 lists five issues remaining at that time to be "solved" to build the power line. This list includes selecting "the most suitable location for the power line"; however, there is no reference to selecting the power line technology. Rather, the notice states that: "The approximately 50 kilometre-long power transmission line will be installed on transmission towers; the average distance between towers shall be 320 m. The total number of towers can be 150. … The height of the transmission tower shall not exceed 73 m." These project characteristics are also listed in the brochure published in early 2010, which refers to 150 transmission towers with a height of 73 m and an average distance between transmission towers of 320 m. The Committee considers that, even if it were still legally possible for the decisionmakers to have opted for the underground alternative, the title of the 2009	failed to comply with the requirements in article 6(2)(d)(ii) to adequately inform the public concerned about the envisaged procedure, including the opportunities for the public to participate; (b) By limiting the options in practice for the location of the border crossing point for the overhead power line by setting that location through inter-State consultations before the public participation procedures had been concluded, the Party concerned precluded the possibility for the public to participate when all options on the crossing point were open and thus failed to comply with article 6(4) of the Convention; (c) By failing to ensure that all options regarding the choice of technology for the power line were not just legally open but also could clearly be seen to be open by the public concerned, the Party concerned failed to comply with article 6(4) of the Convention; (d) By establishing a system whereby comments submitted by the public during the EIA procedure are to be in the first instance submitted to an entity not required to be independent from the developer, and not to the competent public authority itself, the Party concerned is in non-compliance with article 6(7) of the Convention; (e) By not ensuring that the competent public authority is required to take due account of the outcomes of the public participation, the Party concerned fails to comply with article 6(8) of the Convention; (f) By failing to demonstrate, either in or along with the decision, how due account was taken of the outcome of the public participation, the Party concerned failed to comply with article 6(9) of the Convention regarding the decision on the overhead power line;

	Decree, the above public notice and brochure all sent a strong message to the public concerned that overhead technology had already been selected. *(Paragraphs 117–121 of document ECE/MP.PP/C.1/2021/15)* In principle, delegating certain tasks, such as receiving public comments and organizing public hearings, can be appropriate provided public authorities maintain sufficient oversight. In the present case, however, the task was delegated to the EIA drafter, a consultant engaged by the developer. This did not ensure the necessary impartiality and control required by article 6(7) of the Convention. *(Paragraph 134 of document ECE/MP.PP/C.1/2021/15)* The obligation in article 6 (8) that the Party concerned shall ensure that, in the decision, due account is taken of the outcome of the public participation necessarily requires that the public's comments be considered by the competent public authority. Accordingly, it is incompatible with the Convention for the developer's consultant to prepare the responses to the comments received and the reasoned evaluation of the comments for the competent public authority. Moreover, it is not in compliance with the Convention for the competent public authority responsible for taking the decision to be provided only with the summary of the comments submitted by the public. It is fundamental for compliance with article 6 (8) that there should be a clear obligation in the legal framework for the competent public authority itself to take due account of the outcome of the public participation. *(Paragraphs 138 - 139 of document ECE/MP.PP/C.1/2021/15)* While writing individually to each member of the public who submitted comments may be an additional good practice, such individual "private" replies cannot meet the requirement in article 6 (9) to publicly show the reasons on which the decision is based, including how the public's comments have been taken into account. *(Paragraph 143 of document ECE/MP.PP/C.1/2021/15)*	[…] The Committee, pursuant to paragraph 36(b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37(b) of the annex to decision I/7, recommends that the Party concerned take the necessary legislative, regulatory and administrative measures to ensure that: (a) Regarding decisions on whether to permit specific activities subject to article 6 of the Convention: (i) The public is notified about all time frames for opportunities for public participation, including the period during which relevant documentation will be available and in which comments can be submitted; (ii) Any international consultations concerning a specific cross-border activity by a public authority of the Party concerned prior to completion of the public participation procedure under article 6 must not, in law or in fact, preclude all options being open during the public participation procedure; (iii) The range of options open at each stage of decision-making is adequately reflected in the information provided to the public at each stage; (iv) A clear requirement is established that comments submitted by the public are sent to the competent public authority itself; (v) The obligation to take due account of the comments, information, analysis or opinions submitted by the public during the EIA procedure is placed on the competent public authority;

		(vi) When publishing the decision, the competent public authority provides evidence to the public, either in or along with the decision, of how due account was taken of the outcome of the public participation; […] *(Paragraphs 160–161 of document ECE/MP.PP/C.1/2021/15)*
ACCC/C/2013/96 Case concerning compliance by European Union (Document ECE/MP.PP/C.1/2021/3) Articles 6 (2), 6 (8); 7	The obligation to identify the public which may participate must not be used by public authorities in a way that would restrict public participation, but rather as a way of making public participation more effective. However, simply designing the procedure so that anyone who may wish to participate can do so may not be enough. Even if the procedure is open to all, it is recommended that, bearing in mind, inter alia, the nature of the decision-making and its geographical scope, a wide range of interest groups be identified and encouraged to take part in the process. The bottom line is that the public participation procedure must be open to allow anyone affected by or with an interest in the decision to participate. *(Paragraph 115 of document ECE/MP.PP/C.1/2021/3)* Whatever procedure is used, the Committee emphasizes that it is for the Party concerned to demonstrate that it has taken due account of the outcome of the public participation. The obligation to take due account has just as much force for plans, programmes and policies under article 7 as it has for projects under article 6. *(Paragraph 128 of document ECE/MP.PP/C.1/2021/3)*	The Committee accordingly does not find the Party concerned to have failed to comply with article 7 in conjunction with article 6 (2) of the Convention regarding the identification and notification of the public in this case. *(Paragraph 120 of document ECE/MP.PP/C.1/2021/3)* The Committee finds that: […] (c) By failing to demonstrate, in a transparent and traceable way, how due account was taken of the public participation on the first PCI list, the Party concerned failed to comply with article 7 in conjunction with article 6 (8) of the Convention; […] The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, recommends that the Party concerned take the necessary legislative, regulatory or other measures and practical

		arrangements to ensure that in public participation procedures within the scope of article 7 of the Convention carried out under the TEN-E Regulation, or any superseding legislation: […] (b) Due account of the outcomes of the public participation is taken, in a transparent and traceable way, in the decision-making. *(Paragraphs 137 –138 of document ECE/MP.PP/C.1/2021/3)*
ACCC/C/2013/90 Case concerning compliance by United Kingdom (Document ECE/MP.PP/C.1/2021/14) Article 6 (4)	For an activity likely to have a significant effect on the environment, such as the lagoons in the present case, it can never meet the requirement of article 6 (4) of the Convention for "early public participation, when all options are open" for the decision to permit the activity to be taken after the activity has already commenced or the construction has taken place. *(Paragraph 94 of document ECE/MP.PP/C.1/2021/14)*	The Committee finds that: (a) By only providing for public participation in the decision-making to permit the lagoons once they had already been constructed, the Party concerned failed to meet the requirement in article 6(4) to provide for early public participation when all options are open […] The Committee, pursuant to paragraph 36(b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37(b) of the annex to decision I/7, recommends that the Party concerned take the necessary legislative, regulatory, administrative and practical measures to ensure that: (a) Decisions to permit activities subject to article 6 of the Convention cannot be taken after the activity has already commenced or has been constructed, save in highly exceptional cases and subject to strict and defined criteria; … *(Paragraphs 167–168 of document ECE/MP.PP/C.1/2021/14)*

ACCC/C/2013/81 Case concerning compliance by Sweden (Document ECE/MP.PP/C.1/2017/4) Article 6 (1) (a); annex I (20).	As far as paragraph 1 (a) of article 6 is concerned, the Committee notes that wind turbines are not expressly mentioned in annex I to the Convention. It follows that the only way in which the wind turbines in this case would fall within paragraph 1 (a) would be if the construction of the turbines were an activity referred to in paragraph 20 of annex I to the Convention, i.e., if it were an activity where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation; but the communicant has not sought to argue, or present any evidence, that paragraph 20 of annex I applies. *(Paragraph 76 of document ECE/MP.CC/C.1/2017/4)*	Having considered the above, the Committee finds that the Party concerned is not in non-compliance with articles 5, 6, 7, 8 and 9 of the Convention in the circumstances of this case. *(Paragraph 107 of document ECE/MP.PP/C.1/2017/4)*
ACCC/C/2012/68 Case concerning compliance by the European Union and the United Kingdom of Great Britain and Northern Ireland. (Document ECE/MP.PP/C.1/2014/5) Articles 6 (2), 6 (3), 6 (4), 6 (6), 6 (8); 7.	The Committee confirms that the requirement of article 6, paragraph 8, of the Convention that public authorities take due account of the outcome of public participation does not amount to a right of the public to veto the decision. In particular, this provision should not be read as requiring that the final say about the fate and design of the project rests with the local community living near the project, or that their acceptance is always required. Therefore, the obligation to take due account of the outcome of the public participation should be interpreted as the obligation that the written reasoned decision includes a discussion of how the public participation was taken into account. *(Paragraph 93 of document ECE/MP.PP/C.1/2014/5)* The assessment of whether a Party concerned is in compliance with article 6 of the Convention depends on whether the steps taken to ensure public participation are commensurate with the size and possible environmental impact of the project. If, for instance, the project concerns the construction of a nuclear power plant, then there is clearly an obligation for the public notice to be advertised widely in national and local media. However, if a project is of local significance, such as the opening of a forest road, a public notice in local media may suffice for informing the public concerned. *(Paragraph 97 of document ECE/MP.PP/C.1/2014/5)*	Having considered the information submitted by the parties in this regard, the Committee finds that the Party concerned (United Kingdom) overall duly took into account the comments submitted by the communicant and did not fail to comply with article 6, paragraph 8, of the Convention. *(Paragraph 94 of document ECE/MP.PP/C.1/2014/5)* The Committee finds that the public concerned, including the communicant, had ample opportunity in more than one instance to participate in the consultation process and to submit comments. In this respect the Committee notes the following aspects. First, the way the notice for the project was advertised in the local press fits the local significance of the project and meets the requirements of article 6, paragraph 2, of the Convention. Second, the time frames provided for public consultations (almost one month each time for the original and revised versions of the environmental

	NREAPs are plans or programmes under article 7 of the Convention (see findings on communication ACCC/C/2010/54, para. 75) and as such are subject to public participation. The fact that the United Kingdom's Renewable Energy Strategy, which informed the NREAP, was subject to public participation does not affect this conclusion, given their different legal status and functions in the EU and United Kingdom legal framework, respectively. *(Paragraph 100 of document ECE/MP.PP/C.1/2014/5)*	statement) were reasonable and therefore in line with article 6, paragraph 3, of the Convention. Third, the public concerned was involved from the beginning of the process. The process was therefore in conformity with article 6, paragraph 4, of the Convention. Fourth, the comments submitted by the public were addressed, in particular the main point of concern regarding the protection of the Golden Eagle, entailing that the Party complied with the requirements of article 6, paragraph 6, of the Convention. Based on the above, the Committee does not find the Party concerned (United Kingdom) failed to comply with the public participation provisions of article 6 of the Convention. *(Paragraphs 98–99 of document ECE/MP.PP/C.1/2014/5)* The Committee, pursuant to paragraph 35 of the annex to decision 1/7 of the Meeting of the Parties, recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of the annex to decision I/7, recommend to the Party concerned (United Kingdom) to in future submit plans and programmes similar in nature to NREAPs to public participation as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention. *(Paragraph 108 of document ECE/MP.PP/C.1/2014/5)*
ACCC/C/2010/53	The Convention provides for somewhat differentiated requirements for public participation in the framework of decisions on specific activities (art. 6), plans, programmes (art.7) and policies (art. 7), or executive regulations and generally applicable	For these reasons, the Committee does not find that the Party concerned has failed to take into account as much as possible the objections/comments of the

Case concerning compliance by United Kingdom of Great Britain and Northern Ireland. (Document ECE/MP.PP/C.1/2013/3) Article 8	legally binding normative instruments (art. 8). Whether the Traffic Regulation Order falls within the scope of article 6, article 7 or article 8 of the Convention must be determined on a contextual basis, taking into account the legal effects of the Order. *(Paragraph 82 of document ECE/MP.PP/C.1/2013/3)* The Convention prescribes the modalities of public participation in the preparation of legally binding normative instruments of general application in a general manner, pointing to some of the basic principles and minimum requirements on public participation enshrined by the Convention (i.e., effective public participation at an early stage, when all options are open; publication of a draft early enough; sufficient timeframes for the public to consult a draft and comment). Parties are then left with some discretion as to the specificities of how public participation should be organized. In the present case, the public has been given the opportunity to comment at various occasions (see also the report of the Ombudsman, in particular paragraphs 22–29). The Committee finds that the Party concerned has offered opportunities for public participation to a degree that meets the requirements of article 8. *(Paragraph 84 of document ECE/MP.PP/C.1/2013/3)* The Committee also examines whether the result of public participation was taken into account as far as possible. This is mandatory under article 8 and in practice it means that the final version of the normative instrument — here the Traffic Regulation Orders — should be accompanied by an explanation of the public participation process and how the results of the public participation were taken into account. *(Paragraph 86 of document ECE/MP.PP/C.1/2013/3)* To this end, the Committee reviewed the TIE Committee Reports: “Edinburgh Tram — Traffic Regulation Orders” and “Edinburgh Tram — Traffic Regulation Order: TRO1 Review”, both dated 21 September 2010 (annexes 5 and 6 to the Party’s response of 23 August 2011). The Committee finds that the comments relating to the impact on the Moray Feu were considered. Although the comments and supporting documentation on	communicant. At the same time, the Committee notes that the public participation process has not been completed yet. The Party concerned may well have striven to promote public participation, but the Committee notes that participation would have been more effective if the raw data, which was part of the basis for decision-making, had been duly provided to the public. While the Committee has already concluded that refusing access to the raw data constitutes non-compliance with article 4, the Committee does not find this to amount to non-compliance also with article 8. Noting that the decision-making procedure has not been completed, the Committee stresses that the raw data should be made available to the public in the continuing decision-making. *(Paragraph 88 of document ECE/MP.PP/C.1/2013/3)*

	air and noise quality were rejected, a detailed reasoning was provided and specific actions were recommended. Among actions to be undertaken were to continue to monitor air quality, and to organize workshops with the residents to discuss mitigation measures. Mitigation measures were seen as necessary as, although the official measurements showed that air and noise quality were within the United Kingdom and European Union standards, it was recognized that there was an air and noise quality impact. In addition, it was recommended to note alternative rerouting (e.g., reopening of Hope Street eastbound) to help redistribution of traffic in the area. *(Paragraph 87 of document ECE/MP.PP/C.1/2013/3)*	
ACCC/C/2010/50 Case concerning compliance by Czechia (Document ECE/MP.PP/C.1/2012/11) Articles 2 (5); 6 (3), 6 (8)	Article 6, paragraph 3, of the Convention relates to "reasonable time frames" for the different phases of the decision-making, allowing sufficient time for the public to prepare and participate effectively during the environmental decision-making. By requiring "reasonable time frames" for effective public participation in the different phases of the decision-making, the Convention presupposes that in multi-phase environmental decision-making procedures, such as those provided for under Czech law, opportunities for the public to participate should be provided in each decision-making phase. With respect to tiered decision-making processes (whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage), the Committee has held that: [T]aking into account the particular needs of a given country and the subject matter of the decision-making, each Party has a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological details related to specific environmental standards. While Czech law provides for wide public participation at the EIA stage, it limits opportunities for public participation after the conclusion of the EIA. The Committee	The Committee finds that: (a) Through its restrictive interpretation of "the public concerned" in the phases of the decision-making to permit activities subject to article 6 that come after the EIA procedure, the system of the Party concerned fails to provide for effective public participation during the whole decision-making process, and thus is not in compliance with article 6, paragraph 3 of the Convention. (b) By failing to impose a mandatory requirement that the opinions of the public in the EIA procedure are taken into account in the subsequent stages of decision-making to permit an activity subject to article 6, and by not providing opportunity for all members of the public concerned to submit any comments, information, analyses or opinions relevant to the proposed activities in those subsequent phases, the Party concerned fails to comply with the requirement in article 6, paragraph 8, of the Convention to ensure that in the decision due account is taken of the outcome of the public participation.

	stresses that environmental decision-making is not limited to the conduct of an EIA procedure, but extends to any subsequent phases of the decision-making, such as land-use and building permitting procedures, as long as the planned activity has an impact on the environment. Czech law limits the rights of NGOs to participate after the EIA stage, and individuals may only participate if their property rights are directly affected. This means that individuals who do not have any property rights, but may be affected by the decision, are excluded. Although the Party concerned contends that the results of the EIA procedure are taken into account in the subsequent phases of the decision-making, members of the public must also be able to examine and to comment on elements determining the final building decision throughout the land planning and building processes. Moreover, public participation under the Convention is not limited to the environmental aspects of a proposed activity subject to article 6 but extends to all aspects of those activities. In addition, even if, as the Party concerned contends, the scope of stakeholders with property rights is interpreted widely to include the most distant owners of land plots and other structures, individuals with other rights and interests are still excluded from the public participation process.. […] According to the Environmental Assessment Act (art. 10, sect. 1) the EIA opinion "is issued also based on the public comments". Furthermore, the same act (art. 10, sect. 4) provides that "without the opinion it is not possible to issue a decision needed for carrying out a project". However, Czech law does not require that the authorities issuing the permitting decision fully uphold the content of the EIA opinion. While the EIA procedure provides for public participation, the Committee considers that the above legal framework does not ensure that in the permitting decision due account is taken of the outcome of public participation. *(Paragraphs 69–71 of document ECE/MP.PP/C.1/2012/11)*	[…] The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, recommends the Party concerned to undertake the necessary legislative, regulatory, administrative and other measures to ensure that: (a) Members of the public concerned, including tenants and NGOs fulfilling the requirements of article 2, paragraph 5, are allowed to effectively participate and submit comments throughout the decision-making procedure subject to article 6; (b) Due account is taken of the outcome of public participation in all phases of the decision-making to permit activities subject to article 6; *(Paragraphs 89–90 of document ECE/MP.PP/C.1/2012/11)*
ACCC/C/2010/45 Case concerning compliance by United Kingdom of Great Britain and Northern Ireland	Article 6, paragraph 1 (b), of the Convention requires Parties, in accordance with national law, to apply the provisions of article 6 to decisions on proposed activities not listed in annex I to the Convention which may have a significant effect on the environment. Parties to this end are to determine whether the proposed activity is subject to article 6 of the Convention. As the Committee found in communication ACCC/C/2010/50, the outcome	Having considered the above in the context of communications ACCC/C/2010/45 and ACCC/C/2011/60, the Committee does not find the Party concerned to be in non-compliance with articles 6,

(Document ECE/MP.PP/C.1/2013/12) Articles 6 (1) (b), 6 (4), 6 (7); 7	of an EIA screening decision is a determination under article 6, paragraph 1 (b), of the Convention. *(Paragraph 75 of document ECE/MP.PP/C.1/2013/12)* Nevertheless, the Committee notes that article 6, paragraph 7, of the Convention gives any member of the public the right to submit comments, information, analyses or opinions during public participation procedures, either in writing or, as appropriate, orally at a public hearing or inquiry with the applicant. The fact that some local authorities only provide for participation of members of the public at planning meetings via written submissions, as stressed in communication ACCC/C/2011/60, is not as such in non-compliance with article 6, paragraph 7, of the Convention. *(Paragraph 78 of document ECE/MP.PP/C.1/2013/12)* The Committee considers that local investment plans, and possibly also Local Strategic Partnerships or Local Enterprise Partnerships, may well be part of the decision on plans or programmes within the purview of article 7 of the Convention. While there is no statutory requirement for the authorities to prepare local investment plans and these plans are not part of a statutory development plan, there appears to be a growing trend for local authorities in the United Kingdom to set their local planning priorities framework through local investment plans. The Homes and Communities Agency has developed a Good Practice for local investment planning that encourages integration of community involvement. Still, this remains guidance for good practice, and authorities have some discretion whether to engage all stakeholders, and not only prospective developers. *(Paragraph 79 of document ECE/MP.PP/C.1/2013/12)* The Committee emphasizes that article 6, paragraph 4, of the Convention requires “early public participation, when all options are open and effective public participation can take place”, both in relation to activities under article 6 of the Convention and in relation to plans and programmes under article 7 of the Convention. If the adoption of local investment plans, or other developments, were to prejudice public participation in the	7 or 9 of the Convention and makes no recommendations. *(Paragraph 87 of document ECE/MP.PP/C.1/2013/12)* In view of the finding in paragraphs 85 and 86, the Committee points the Party concerned to its findings and recommendations in communications ACCC/C/2008/27 and ACCC/C/2008/33 and decision IV/9i (United Kingdom), adopted by the Meeting of the Parties to the Convention at its fourth session *(Paragraph 88 of document ECE/MP.PP/C.1/2013/12)*

	planning procedure as envisaged by article 6, paragraph 4, in relation to article 6 or 7 of the Convention, this would engage the responsibilities of the Party concerned under these provisions of the Convention. If this were the case, the Party concerned would also be obliged to ensure all-inclusive public participation, i.e., not limited to the involvement of the private sector, in this early stage of planning. *(Paragraph 81 of document ECE/MP.PP/C.1/2013/12)*	