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Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision V/9c  
on compliance by Belarus with its  
obligations under the Convention**

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## **I. Introduction**

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9c on compliance by Belarus with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

## **II. Summary of follow-up action on decision V/9c**

2. By letter of 11 December 2014, the Committee sent a reminder to the Party concerned of the request by the Meeting of the Parties to provide its first detailed progress report to the Committee by 31 December 2014 on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9c.

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

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

5. In its first progress report, the Party concerned reported it had undertaken the following activities to implement decision V/9c:

- On 8 December 2014, the Council of Ministers of the Republic of Belarus sent the draft Law on the Insertion of Additions and Amendments into Several Laws of the Republic of Belarus with regard to Environmental Protection and to Public Participation in Environmentally Significant Decision-Making (Bill No. 6173) to the House of Representatives of the National Assembly.
- In order to improve co-ordination between national government bodies working to implement the recommendations of Decision V/9c, the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus (the Ministry of the Environment), drew up an Action Plan for the implementation of the Convention from 2014-2017, which was approved by the Deputy Prime Minister on 1 October 2014 (Ref. No. 06214-212). Practical implementation of the Action Plan is already underway.
- Proposals have been drawn up for lectures on “Implementing the provisions of the Aarhus Convention in the Republic of Belarus” to be included in the study plan for continuing professional development of active administrative personnel and of those in the administrative reserve corps. These lectures will be delivered at the Academy of Public Administration during the 2014/2015 academic year.
- Lectures on “The role of local executive and administrative agencies in implementing legislative requirements in the field of the environment and environmental management, including the requirements of international agreements to which the Republic of Belarus is party” were delivered to participants in continuing professional development at the Institute of Civil Service (part of the

Academy of Public Administration). Lectures have also been held for the heads of town and village councils on the theme of “Improving the operation of local administrative bodies and local authorities in the contemporary setting”.

- Seminars were conducted for members of Ministry of the Environment bodies, of the Belarusian State University and of the Ministry of Industry of the Republic of Belarus on “Implementing the provisions of the Aarhus Convention in Belarus”.
  - The plan for 2015-2016 is to continue working with other national government bodies on implementing this point of the Action Plan.
  - At the request of the Ministry of the Environment, information on implementing the provisions of the Aarhus Convention has been provided by national government bodies.
  - In the course of the recent sixth round of sectoral consultations between the EU and the Party concerned, the Party concerned had sought support from the EU to create a register of environmental information. Work on this issue is still ongoing.
  - On 24 November 2014, an agreement was reached with the Belarusian Telegraph Agency (the national news agency) to modernize the Ministry of the Environment’s official website and to provide organizational and technical support. This agreement included the creation of a banner for the website “Helping to implement procedures for public participation in environmentally significant decision-making”, under which practical materials and legislation governing procedures for public participation will be posted.
  - Presentation of a report on “Issues of environmental information and public participation in environmentally significant decision-making: a major factor in sustainable development” at a round table discussions on “Legal provision for sustainable development” organized by several public associations.
  - Two radio programmes (November and December 2014) had addressed the issue of implementing the Convention in Belarus.
6. The Action Plan 2014-2017 for the implementation of the Convention annexed to the Party concerned’s first progress report forecast the following activities:
- To conduct an analysis of the Party concerned’s laws and regulations with the aim of drawing up proposals for improving the legislation, and to prepare draft laws and regulations on this issue (2015-2016);
  - To provide curriculum policy documentation on the basic provisions of the Convention for educational programmes in higher education institutions and continuing adult education in specialisations relating to environmental protection (2015-2016)
  - To conduct seminars for national government bodies, courts and the public prosecution service, legal entities and individuals on issues connected with implementing the Convention (2015-2017)
  - To create a register of environmental information
  - To analyse environmental information in the aim of making it publicly accessible without prejudice to terms of confidentiality under the Convention (November 2014-January 2015)
  - To compile a consolidated list of data on environmental information and to agree it with the public authorities concerned (April-May 2015)
  - Technical preparation and workflow management to ensure open access to environmental information (December 2015)

- To provide the Ministry of the Environment with environmental information data for updating the Register of Environmental Information (annually by 1 October)
- To provide the Ministry of the Environment with information about implementation of the Convention and of relevant national legislative provisions (by 15 December 2014, 15 October 2015, 15 October 2016)

7. In their comments on the Party concerned's first progress report, the communicants stated, *inter alia*, that the Party concerned's Action Plan 2014-2017 does not contain information on specific steps aimed at implementing decision V/9c. Moreover, it is directed only to the Ministry of Environment interaction with other public authorities whereas it should include specific measures to implement all the recommendations of decision V/9c. At the same time, there is no any plan to enhance the interaction with the interested public on the further implementation of the Aarhus Convention. The communicants stated that comments from the public intended to orient the plan to implement the recommendations of Belarus adopted at the 5th Meeting of the Parties (in accordance with decision V/9c), were not included in the plan. The communicants also reported that the Action Plan 2014-2017 was not adequately discussed with the interested public due to the very short commenting period for this (from 11 to 15 September 2014).

8. The communicants also reported that the version of the draft law submitted to the National Assembly is different from the one provided to the Compliance Committee in 2013. They stated that the draft law submitted to the National Assembly did not incorporate the comments made by the Committee on the earlier draft and in some cases changes had been introduced which went against them. In particular, the draft submitted to the National Assembly, *inter alia*, omitted provisions on access to environmental information; the draft did not take into account the Committee's comments on the concept of an "environmental decision", regarding citizenship and NGOs or exceptions for military and defence projects. Moreover, the draft Law did not address public authorities' responsibility to ensure public participation in decision-making on activities subject to article 6 of the Convention nor was there a requirement for the public's comments to be taken into account before the findings of a state environmental expertiza were approved.

9. At its forty-eighth meeting (Geneva, 24-27 March 2015), the Committee reviewed the implementation of decision V/9c in open session, taking into account the comments received from the communicants and from the observers present. Following the discussion in open session, the Committee commenced the preparation of its first progress review on the implementation of decision V/9c in closed session. The Committee adopted its first progress review at its fiftieth meeting (Geneva, 6-9 October 2015) and instructed the secretariat to thereafter send it to the Party concerned and the communicants of communications ACCC/C/2009/37 and ACCC/C/2009/44.

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

10. In order to meet the requirements of decision V/9c, the Party concerned would need to provide the Committee with evidence that:

- (a) The general law on access to information refers to the 1992 Law on Environmental Protection that specifically regulates access to environmental information, in which case the general requirement of stating an interest does not apply;
- (b) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner;

- (c) There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;
- (d) There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, including those that may not be subject to an EIA decision procedure, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;
- (e) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e. the authorities competent to take the decisions subject to article 6 of the Convention);
- (f) There are clear provisions imposing obligations on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or at the public hearings;
- (g) There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in the publicly available statement of reasons and considerations on which the decisions is based;
- (h) There are clear provisions imposing obligations on the relevant public authorities to:
  - (i) promptly inform the public of the decisions taken by them and their accessibility;
  - (ii) maintain and make accessible to the public copies of such decisions along with the other information relevant to the decision-making, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments;
  - (iii) establish relevant publicly accessible lists or registers of all decisions subject to article 6 held by them;
- (i) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 (c), of the Convention;
- (j) The amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is made public, as required under article 6, paragraph 9, of the Convention;
- (k) The full content of all the comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the authorities responsible for taking the decision (including those responsible for the *expertiza* conclusion); and
- (l) Appropriate practical and other provisions are made for the public to participate during the preparation of plans and programmes relating to the environment.

11. The Committee welcomes the Party concerned's first progress report which was received on time and the activities set out therein.

12. The Committee also welcomes the information that the draft Law on the Insertion of Additions and Amendments into Several Laws of the Republic of Belarus with regard to Environmental Protection and to Public Participation in Environmentally Significant

Decision-Making (Bill No. 6173) was sent on 8 December 2014 to the House of Representatives of the National Assembly. It expresses its concern, however, at the reports from the communicants that since the Committee was provided with the text of the draft Law, important provisions of the draft Law have been revised in a manner that would not meet the standards set out in the Convention.

13. Given that the Party concerned has not provided the Committee with the text of the draft Law as submitted to the House of Representatives, the Committee is not in a position to assess the extent to which the draft law would, if adopted, fully met the requirements of paragraphs 8(a) – (c) of decision V/9c.

14. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9c.

15. The Committee invites the Party concerned, together with its second progress report due on 31 October 2015, to provide the Committee with the texts of its draft legislation intended to implement decision V/9c together with a timeline for the adoption of that legislation.

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

16. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9c.

17. The Committee invites the Party concerned, together with its second progress report due on 31 October 2015, to provide the Committee with the texts of its draft legislation intended to implement decision V/9c together with a timeline for the adoption of that legislation.

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