

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

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

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1	2
II. Summary of follow-up action on decision V/9c since the Committee's first progress review	2	2
III. Considerations and evaluation by the Committee	52	10
IV. Conclusions and recommendations	129	23

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 since the Committee's first progress review

2. By letter of 13 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9c to the Party concerned together with a reminder to the Party concerned of the request by the Meeting of the Parties to provide its second progress report to the Committee by 31 October 2015 on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9c.

3. On 28 October 2015 (dated 27 October 2015), the Party concerned provided its second progress report on the implementation of decision V/9c.

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

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

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

7. At its fifty-second meeting (Geneva, 8-11 March 2016), the Committee reviewed the implementation of decision V/9c in open session with the participation of the Party concerned in person and the observer "Ecohome" by audioconference. Following the discussion in open session, the Committee commenced the preparation of its second progress review on the implementation of decision V/9c in closed session.

8. On 16 April 2016, the secretariat invited the Party concerned to submit the comments it had made during the open session, as well as its replies to the questions posed during the Committee's fifty-second meeting in writing, by 25 April 2016.

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

10. On 27 April 2016, the secretariat invited the communicant and observer to submit their comments by 3 May 2016.

11. On 3 May 2016, the observer "Ecohome" provided its comments. No comments were received from the communicants.

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

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

14. On 7 December 2016, the Committee reviewed the implementation of the decision V/9c in open session with the participation of the Party concerned and the observer “Ecohome”, both in person. The Party concerned provided its statement during the session in writing on 17 December 2016.

15. In response to a clarification request of the Committee concerning its comments of 22 November 2016, the observer “Ecohome” provided a response via email on 21 December 2016.

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

17. On 28 March 2017, the Party concerned provided the texts of the legislation adopted in January 2017 relevant to the implementation of decision V/9c.

18. After taking into account the information received, the Committee adopted its second progress review through its electronic decision-making procedure on 31 March 2017 and requested the secretariat to forward it to the Party concerned and the communicants of communications ACCC/C/2009/37 and ACCC/C/2009/44 as well as the observer, “Ecohome”.

Party concerned’s second progress report

19. In its second progress report submitted on 28 October 2015, the Party concerned provided the text of the draft Law “On making addendums and amendments to some laws of the Republic of Belarus on the issues of environmental protection and public participation in environmental decision-making” (the draft Law) and reported that the draft Law would have a second reading at the eighth session of the House of Representatives of the National Assembly of the Republic Belarus in November 2015. After the entry into force of the Law, a Decision of the Council of Ministers would also be adopted.

20. The Party concerned reported that it was continuing to implement an Action Plan for the implementation of the Convention from 2014-2017.

21. The Party concerned also reported that the Ministry of Natural Resources and Environment (Ministry of Environment) continued to cooperate with the Academy of Public Administration under the President and had sent a proposal for inclusion of lectures “Implementing the Aarhus Convention in the Republic of Belarus” in a 2015/2016 academic year schedule for management trainings. It also stated that the Ministry of Environment was preparing a joint seminar on access to justice together with public associations “Ecohome”, “Ecopravo” and “Belarusian Republican Union of Lawyers”, which was to be held in the second half of December 2015.

22. The Party concerned reported that the Ministry of Environment was continuing to cooperate with law enforcement agencies on the issues of compliance with article 3, paragraph 8, of the Convention.

23. In an annex to its second progress report, the Party concerned provided its analysis of the comments received from the communicants of communications ACCC/C/2009/37 and ACCC/C/2009/44 on regarding the Action Plan for the implementation of the Convention from 2014-2017.

24. With respect to the communicants' comments referred to in paragraph 7 of the first progress review, the Party concerned stated that the development of the Action Plan was made on its own initiative in order to strengthen cooperation between the public authorities and organize the work on the implementation of the Aarhus Convention, including recommendations. The Party concerned stated that the Action Plan contained specific steps aimed at implementing decision V/9c. It added that column "Notes" in the Action Plan contained references to particular paragraphs of decision V/9c. It stated that its current priority was to intensify work by public authorities on the implementation of the Aarhus Convention, in view of the fact that both the Ministry of Environment and other government bodies are in constant cooperation with the public. The Party concerned further reported that cooperation with the public regarding the implementation of the Convention is conducted in various ways including: consideration of claims from the public; operation of the public environmental coordination council under the Ministry of Environment; mutual participation in activities and conducting joint activities; exchange of environmental information through websites and the public environment e-mailing greenbelt, among others. The Party concerned stated that from 1 January 2015 to 21 October 2015, the Ministry of Environment had received and processed 533 requests from individuals and 274 requests from legal entities. The Party concerned also stated that, during the preparation of the Action Plan, it had considered the comments received from the public. It attached to its second progress report its response to the public's comments, including its justifications reflecting its consideration of the comments received.

25. With respect to the communicants' comments referred to in paragraph 8 of the first progress review, the Party concerned confirmed that some changes had been introduced to the draft Law but they were not of a fundamental nature. The Party concerned submitted that amendments to the Law "On information, informatization and information protection", were included in the draft Law "On making addendums and amendments to some laws of the Republic of Belarus on health issues" (article 7 of the draft Law) which had been prepared for its second reading. It reported that the definition of "environmental decision-making" remained in the draft Law. The Party concerned further noted that the responsibility of state bodies for ensuring public participation procedures in accordance with article 6 of the Convention is provided for in the seventh part of article 15-2 of the draft Law. The Party concerned further submitted that the requirement that public comments are taken into account before the adoption of the conclusions of the state ecological examination regarding the decisions referred to in the second indent of the second part of article 15-2 of the draft Law is contained in part five of article 15-2. The Party concerned also submitted that a similar requirement to take the results of the public discussion of environmental impact assessment (EIA) reports into account is planned to be included in the by-law.

26. In the additional information provided on 10 February 2016, the Party concerned reported that the Law of the Republic of Belarus "On Amendments and Supplements to Some Laws of the Republic of Belarus on Environmental Protection and Public Participation in Decision making in Environmentally Significant Matters" had been adopted on 24 December 2015, and enclosed the text of the adopted Law. The Party concerned further reacted to a number of the comments made by the observer "Ecohome" on the Party concerned's second progress report, including those in paragraph 36 below.

27. By letter of 25 April 2016, the Party concerned provided the text of the draft Resolution of the Council of Ministers "On Approval of the order of organizing and

holding of public discussions of drafts of environmentally significant decisions, the environmental impact assessment report, taking record of the adopted environmentally significant decisions” and a table summarizing the legislative measures it had taken to implement the recommendations of the decision V/9c. The Party concerned reported that the draft Resolution was undergoing the approval procedure with public authorities and was supposed to enter into force together with the Law of the Republic of Belarus “On Amendments and Supplements to Some Laws of the Republic of Belarus on Environmental Protection and Public Participation in Decision-making in Environmentally Significant Matters” on 1 July 2016. The Party concerned noted that it would provide further information concerning the implementation of the recommendations contained in the decision V/9c after 1 July 2016.

28. Concerning the exemption of proposed activities for military purposes from the provisions on public participation in the above-mentioned Law, the Party concerned submitted that the English translation of indent 1 of part 3 of article 15-2 of the Law “On Environmental Protection” was “Public discussions of drafts of ecologically significant decisions may be not held in the cases provided by the third part of the article 15-2 of the Law” and that the word “may” indicates that public hearings may be conducted or not conducted. The Party concerned noted that the decision would be taken in each particular case.

Comments on the Party concerned’s second progress report

29. In its comments dated 27 November 2015, the observer “Ecohome” confirmed the adoption of the draft Law “On Amendments and Supplements to Some Laws of the Republic of Belarus on Environmental Protection and Public Participation in Decision making in Environmentally Significant Matters” at its second reading by Parliament and made the following observations on the text:

- (a) The definition of “public discussion” in article 1 contains a legally undefined notion of “public interest”;
- (b) Article 15 still uses the legally undefined concept “associations operating in the field of environment protection”;
- (c) The list in the first part of article 15-2 does not provide the right for citizens and legal entities to participate in public discussions of forest management projects;
- (d) The third paragraph of article 15-2 is formulated in such a way that only a fraction of projects relating to environmental legislation will be subject to public participation. Such an approach is contrary to article 8 of the Convention. In addition, only the normative part of a draft normative act will be subject to public discussion and not the entire document as a whole.
- (e) Contrary to the third indent of the third paragraph of article 15-2 (fourth indent of the third paragraph in the final version of the law) relating to EIA reports, public discussion of the environmental impact of projects related to the construction and operation of facilities referred to in the second indent of the third paragraph of article 15-2 (second indent of the third paragraph in the final version of the law) should be conducted, since the information on these facilities are not related to state secrets.
- (f) The fourth indent of the third part of article 15-2 allows the possibility to exempt any draft environmental decision from public discussion if it is in the form of either a legislative decree or legislative order, which under the Constitution have

supremacy over legislation. In this way, the wording of this provision reduces the significance of the entire draft Law, because it allows for too many exceptions.

(g) Part four of article 15-2 does not oblige the authorities to carry out repeated public participation if, after the public discussion by the body which prepared the draft, it was significantly changed at the stage of its adoption and the body which prepared the draft normative act and the body which adopts it are different. Such a conflict situation took place in 2015 with the drafting of the Forest Code, which was significantly modified between the first and second reading in the Parliament, but not submitted again for public discussion since, in the Parliament's view, "legislation does not oblige Parliament to hold public discussions with respect to environmental laws." This approach does not meet the requirements of article 8 of the Convention.

30. The observer welcomed the further cooperation between the Ministry of Environment and law-enforcement agencies on issues of compliance with article 3, paragraph 8, of the Convention but requested to receive more detailed information on the measures taken.

31. The observer stated that the Convention is still not being complied with, and the decision of the Meeting of the Parties has not been executed with respect to the construction of the Ostrovets nuclear power plant because decisions on the construction of the nuclear power plant were not discussed with the public and the public was not provided with relevant information. In November 2014, the Department of Nuclear and Radiation Safety of the Ministry of Emergency Situations carried out a comprehensive inspection of the construction of the nuclear power plant which identified a number of violations. In 2014, the observer requested access to the report but was denied. The observer also submitted that the decisions adopted with regard to the nuclear power plant, which were taken in violation of the Aarhus Convention, remain in force and serve as the basis for the adoption of further decisions.

32. In its comments of 8 March 2016, the observer "Ecohome" welcomed the efforts of the Party concerned's national focal point for the Convention in the Ministry of Environment to implement the recommendations of decision V/9c. At the same time, the observer stated that, at the official level, there was no clear and unambiguous understanding of the recommendations provided in decision V/9c or their goals and that the recommendations were interpreted in favour of maintaining the current situation. The observer referred to the Party concerned's second progress report where it was stated that:

"The main part of the recommendations contained in this decision concerns improvement of the national legislation and contains direct indications on the need to change its regulations."

33. The observer claimed that this interpretation was not entirely correct because decision V/9c demanded "to take as a matter of urgency the necessary legislative, regulatory, and administrative step to establish the practical arrangements" to accomplish the recommendations of the fourth and fifth sessions of the Meeting of the Parties. Moreover, paragraphs 7(b) and (c) of decision V/9c also contained recommendations which aimed at practical measures and activities. The observer claimed that the improvement of the legislation was important but not the only way to implement decision V/9c since there was a critical need for essential improvement of the practical implementation of the legislation. The observer stated that the adoption of the Law "On Amendments and Supplements to Some Laws of the Republic of Belarus on Environmental Protection and Public Participation in Decision making in Environmentally Significant Matters" did not address the recommendations in paragraphs 6(b), (d), (g), (h), (i) or 7(a) of decision V/9c.

34. The observer claimed that there was no systematic basis for dialogue with the public. In particular, the idea of a working group on the implementation of decision V/9c,

including representatives of the public, had been welcomed by the Ministry of Environment but had not been followed up on. The observer submitted that there were still no measures in place to bring practice into line with the recommendations of decision V/9c or the Convention's provisions. With respect to access to the information, the public still had no access to the texts of documents (including decisions) of state bodies and their reports (e.g. concerning the inspection of nuclear power plant construction). Moreover, there was neither will nor actions taken to bring about the essential changes needed regarding public participation in decision-making processes in environmental matters and in matters related to decisions on specific activities.

35. In its comments submitted on 3 May 2016, the observer welcomed the efforts made by the Party concerned but at the same time stated that implementation of decision V/9c should not be limited to the adoption of the Law of the Republic of Belarus "On Amendments and Supplements to Some Laws of the Republic of Belarus on Environmental Protection and Public Participation in Decision-making in Environmentally Significant Matters", which was expected to come into force on 1 July 2016, and the draft Resolution "On approval of the order of organizing and holding of public discussions of drafts of environmentally significant decisions, the environmental impact assessment report, taking record of the adopted environmentally significant decisions" (draft Resolution), which was in preparation with the final version not yet having been adopted. The observer stated that these legislative acts in themselves did not implement a number of recommendations of decision V/9c as set out below.

36. With respect to paragraph 6(b) of decision V/9c, the observer emphasised that the paragraph refers to "adequate and effective" provision of information. The observer claimed that currently the public was only informed via notices about public discussions on the websites of local executive bodies and the local official media, which the observer submitted did not amount to adequate and effective provision of information. The observer submitted that it would be more effective to place notice not only in the media but also in public places: on bulletin boards in local bodies, at public transport stops and, most importantly, near the planned construction of the facility. The observer noted that in practice, the local population did not visit websites of local bodies. The observer further claimed that the information on the website of local bodies was not presented systematically and that it did not follow a uniform approach. Thus, it was often impossible to find information on the website. The observer stated that this fact was confirmed by several studies¹ and submitted that this process of informing was not efficient considering that notices were usually printed in small print in the newspapers and that people usually did not know or read the official publications of certain districts. The observer claimed that in practice people did not learn about public discussions in time. The observer also stated that paragraph 7 of the draft Resolution did not provide information to the public about decision-making processes but only information on the procedure for public hearings.

37. Concerning paragraph 6(e) of decision V/9c, the observer stated that the draft Resolution did not directly provide for comments to be submitted directly to the authority responsible for making the decision.

38. With respect to paragraph 6(g) of decision V/9c, the observer stated that only in exceptional cases were the protocols of public hearings on the EIA reports, meetings, as well as a summary of comments and feedback received through public discussions and text

¹ The results of the study about the provision of information to the citizens by the local executive bodies about the public discussions via website, available at : http://greenbelarus.info/files/downloads/monitoring_saytov.pdf and the practice of public participation in environmental decision-making processes, available at: http://cet.eurobelarus.info/files/userfiles/5/CET/2014_Aarhus_Convention.pdf.

or information about the final decision placed on the websites of local executive bodies. The observer claimed that in most cases, the public who sought such information from public authorities was refused access on the ground that it was not environmental information or that the information was for internal use only. The observer further submitted that paragraph 14 of the Resolution No 687 “On the procedure of conduction of public discussions in the field of architecture, urban planning and construction activities”, approved by the Council of Ministers of the Republic of Belarus on 1 June 2011 (as amended 4 January 2014), stated that “Comments and (or) suggestions of the participants of the public discussion that do not meet the requirements of normative legal acts, including technical normative acts, cannot serve as the basis for the introduction of amendments and (or) additions to the project”. The observer claimed that this directly contradicts article 6 of the Convention, which explicitly provides the public with the opportunity to submit “any” comments that it considers relevant.

39. Concerning paragraph 6(h)(i) of decision V/9c, the observer claimed that this recommendation had not been implemented. The observer asserted that the public was not informed of the decisions taken and often could not access the decision upon request, since public authorities claimed that this information was not environmental information or was information for internal use only.

40. With respect to paragraph 7(a) of decision V/9c, the observer claimed that, for the majority of decisions, the proposed legislation did not clearly indicate which decision was the final decision and which body was authorized to make it. The observer noted that article 15 of the (then) draft Law “On state ecological expertise, strategic environmental assessment and environmental impact assessment”, which was referred to by the Party concerned, was still in draft form and in the approval stage.

41. In addition to the above comments, the observer provided further comments and suggestions as track changes to the text of the draft Resolution.

Party concerned’s third progress report

42. In its third progress report dated 28 October 2016, the Party concerned referred to three measures that it had taken to implement the requirements of article 6 of the Convention, namely:

- amendments to the Decree of the President of the Republic of Belarus of 24 April 2008 number 349 “On Criteria for the Assignment economic and other activities that have a harmful effect on the environment and to environmentally hazardous activities”, which entered into force on 12 February 2016,
- a new version of the Law of the Republic of Belarus № 399-3 “On the state ecological expertise, strategic environmental assessment and environmental impact assessment” of 18 July 2016, which was expected to enter into force on 22 January 2017
- Resolution of the Council of Ministers of the Republic of Belarus number 458 “On Approval of the Procedure organizing and conducting environmentally significant public discussions of draft decisions on the impact assessment reports on the environment, taking into account the environmental decision-making and the introduction of amendments and additions to some Council Regulation” of 14 June 2016, which constitutes the adopted version of the Draft Resolution referred to above (the Resolution).

43. The Party concerned further provided a table indicating which amendments were intended to implement which paragraphs of Decision V/9c, thereby updating a previous

table submitted on 25 April 2016. The specific provisions referred to are mentioned in the Considerations section below.

44. The Party concerned further informed the Committee of two events organized in Minsk, namely a seminar on “Ensuring access to justice on matters relating to the environment” (14 December 2015) and a round-table on “Implementation of the provisions Aarhus Convention: focus on public participation in decision environmental decision-making” (13 July 2016). It also reported on the ongoing project on “strengthening the implementation of the Aarhus Convention in the Republic of Belarus,” conducted with international technical assistance, in the context of which two seminars had been held (Brest, 7 October 2016 and Mogilev, 26 October 2016). The Party concerned also announced that further workshops will be held on 2-3 November 2016 in Minsk as well as in the remaining areas of the country before the end of December 2016.

Comments on the Party concerned’s third progress report

45. In its comments of 22 November 2016, the observer “Ecohome” welcomed the adoption of legislation by the Party concerned to implement decision V/9d but also submitted that this legislation did not yet fully implement the decision. The observer stated that the public had no access to information regarding the construction of nuclear power plants, including on the associated environmental risks. In particular, a request to have access to the reports of state inspections of nuclear power plant constructions in the period of 2014-2016 had been refused and that questions relating to the fall of a reactor vessel at the site had been insufficiently answered.

46. The observer further stated that environmental information was frequently categorized as “for internal use only” or as “private information”, which allows public authorities to refuse access to this information without classifying it as a state secret. The communicant submitted that access to this type of information should be regulated, that the classification “for internal use only” should not be applied to materials and documents containing environmental information (such as detailed plans of the territory) and that a procedure should be created according to which the public can obtain access to other documents classified as “for internal use only”.

47. Concerning paragraph 7(a) of decision V/9d, the Party concerned submitted that it was still not clear from the legislation which decisions are to be considered final decisions for certain activities. The observer also expressed its hope that with the adoption of the new legislation, law enforcement would improve as well and that provisions implementing the Convention would be adhered to, especially by public authorities other than the Ministry of Natural Resources and Environmental Protection.

48. In its statement during the open session at the Committee’s fifty-fifth meeting, the observer “Ecohome” stated that it welcomed the actions taken by the Party concerned but that some issues remained for the adequate implementation of decision V/9c.

49. The observer submitted that, in the light of the recent changes in the legislation, the recommendations of paragraphs 6(c), (d), (f), (h)(ii)-(iii) and 7(b) of decision V9c have been implemented. With regard to paragraph 6(c) of decision V/9c, the observer referred to Appendix F, TAP 17.02-08-2012, a form for the notification of public discussions, the text of which the observer also provided to the Committee.² Concerning paragraph 6(d), the observer submitted that a public participation period of 30 days has been set. With regard to paragraph 6(f), the observer stated that the responsibilities of government agencies have been clearly set out, however, paragraph 11 of the Resolution unjustifiably limited the public’s participation in the work of the Commissions (to three persons). Concerning

² See attachment to email from observer dated 7 December 2016.

paragraph 6(h)(ii), the observer noted that paragraph 6 of the Resolution implemented this recommendation by requiring the organizers of the public discussion to hold the information and to make it publicly available. With regard to paragraph 6(h)(iii), the observer stated that chapter 5 requires public authorities to take the results of public participation into account. With regard to paragraph 7(b), the observer noted that paragraph 6 of the Resolution requires the organizers of public discussion to submit the comments to the decision-making authorities.

50. The observer further submitted that the recommendations in paragraphs 6(b), (e), (g) and 7(c) of decision V/9c have not been fully implemented by the recent legislative changes. With regard to paragraph 6(b), while there is a period of public discussion of at least 30 days, it is not ensured that notification will be effective and that public participation will be conducted at an early stage. Concerning paragraph 6(e), the observer submitted that the legislation does not make clear which public authority or authorities are responsible for making the final decision and that this creates difficulties in submitting comments directly to the decision-making authority. With regard to paragraph 6(g), the observer stated that the legislation requires that comments are answered but contains no obligation to give reasons or a motivation for the answer. The observer expressed concern that this may lead to the requirement for answers becoming a formal exercise over time. With regard to paragraph 7(c), the observer submitted that the new legislation will enter into force in 2017 but the main programmes were already adopted in 2016 for five year terms with insufficient practical measures for public participation.

51. The observer further submitted that the recommendations in paragraphs 6(a), (h)(i), (i) and 7(a) of decision V/9c have not yet been fulfilled by the Party concerned, nor have any appropriate measures been taken in that regard. Concerning paragraph 6(a), the observer submitted that this recommendation has not been addressed under the 1992 Law on Environmental Protection and that the new legislation gives discretion to provide for further specific regulations on certain forms of information. With regard to paragraph 6(h)(i), the observer noted that the current legislation does not require state organizations or other organizations to quickly inform the public of decisions and how they are available. Concerning paragraph 6(i), the observer stated that this recommendation is not implemented in the legislation as such. With regard to paragraph 7(a), the observer submitted that the legislation does not adequately define which decision is to be considered final and that the conclusion of the state ecological expertise is not the permitting decision.

III. Considerations and evaluation by the Committee

52. In order to meet the requirements of paragraphs 6 and 7 of decision V/9c, the Party concerned would need to provide the Committee with evidence that:

- (a) The general law on access to information refers to the 1992 Law on Environmental Protection that specifically regulates access to environmental information, in which case the general requirement of stating an interest does not apply;
- (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.

53. In its first progress review, which reviewed the Party concerned's first progress report and the comments received from the communicants of communication ACCC/C/2009/37 and ACCC/C/2009/44 on that report, the Committee invited the Party concerned, together with its second progress report, 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.

54. The Committee welcomes the Party concerned's second and third progress reports, which were received on time, and the activities set out therein, including the useful tables indicating which provisions of the draft legislation were intended to implement each of the various paragraphs of decision V/9c. The Committee also welcomes the Party concerned's participation in the audio conferences held at the Committee's fifty-second, fifty-fifth and

fifty-sixth meetings and the further information provided by the Party concerned on 10 February 2016, 25 April 2016, 13 October 2016 and 28 March 2017.

55. The Committee notes that the finalization of the current progress review has been delayed in order to take into account the legislation adopted by the Party concerned in January 2017, namely:

- on 13 January 2017, Resolution No. 24 amending the “Resolution” (referred to in paragraph 42 above);
- on 19 January 2017, Resolution No. 47 approving:
 - i. The Regulation on the state ecological expertise procedure, including requirements for the composition of the documentation submitted for state environmental review, the state environmental review conclusion, the procedure for its approval and / or cancellation, special conditions for the implementation of project decisions, as well as requirements for state environmental expertise experts (Regulation on the state ecological expertise procedure)
 - ii. The Regulation on the environmental impact assessment procedure, requirements on the content of the environmental impact assessment report and qualification criteria for environmental impact assessment experts (EIA Regulation);
 - iii. The Regulation on the strategic environmental assessment procedure, requirements on the content of the strategic environmental assessment report and qualification criteria for strategic environmental assessment experts.

56. In the light of the above legislative developments, in the current progress review the Committee focuses its analysis on the extent to which the provisions of the amended “Resolution” of 13 January 2017 and the acts adopted on 19 January 2017, where relevant, meet the requirements of decision V/9c. In doing so, the Committee considers the above acts as a whole, paying particular attention to whether paragraphs previously referred to by the communicant or the observer have been amended or moved within the acts.

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

57. In its table of 25 April 2016 and its third progress report, the Party concerned stated that paragraph 6(a) of decision V/9c has been implemented through the Law of the Republic of Belarus No 362-3 “On Amendments and Supplements to Certain Laws of the Republic of Belarus” (the Law on Amendments), of 11 May 2016, which will enter into force on 1 July 2017. The Law on Amendments, inter alia, provides for an amendment to the second part of article 2 of the Law of the Republic of Belarus of 10 November 2008 “On information, informatization and information protection”(National Register of Legal Acts of the Republic of Belarus, 2008, №279, 2/1552), by adding in the second part of article 2 after the words “advertising,” and “legal” the words “the protection of children from information harmful to their health and development” and “environmental”. While welcoming the adoption of the Law on Amendments, the Committee has not been provided with any information on how the above amendment ensures that the general requirement of stating an interest does not apply to environmental information. The observer also commented on the absence of a relevant amendment on this point (see paragraph 51 above).

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

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

59. As an initial point with regard to the measures taken by the Party concerned to implement paragraph 6(b)-(i) of decision V/9c, the Committee notes with concern that the new legislation appears to provide the rights contained therein only to “citizens and legal entities”. The Committee points out that, if interpreted narrowly, those terms would not fully cover the “public” as defined in the Convention, which also includes members of the foreign public as well as associations and groups. The Committee invites the Party concerned to clarify this point.

60. Furthermore, the Committee has not been provided with sufficient evidence that the new legislation covers all decisions permitting proposed activities within the scope of article 6, paragraph 1 of the Convention. Both the new article 15-2 of the Environmental Protection Law, as inserted by the Law “On Amendments and Supplements to Certain Laws of the Republic of Belarus” (“the Law on Amendments”) and paragraph 2 of the Resolution refer to five categories of decision-making procedures that are subject to public participation: namely those related to (i) concepts, programs, plans, schemes; (ii) normative legal acts; (iii) permits in the specific context of the removal or transplantation of pieces of flora, (iv) SEA reports; and (v) EIA reports.

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

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

63. With regard to category (v), the Committee emphasizes that the Convention requires public participation with regard to decisions to permit proposed activities subject to article 6 of the Convention. This is not limited to public participation on the EIA report, but also includes the possibility to inspect and comment on all the information relevant to the decision-making (in particular, though not limited to, the project documentation required to be submitted together with the EIA report for state ecological expertiza). The Committee emphasizes that this is a fundamental point. Until the Party concerned’s legal framework is revised to ensure that the requirements set out in article 6 of the Convention apply to all information relevant to decisions permitting activities subject to article 6, including inter alia project documentation and not only the EIA report, the Party concerned will remain in non-compliance with article 6 of the Convention.

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

64. The Committee notes that, in its table of 25 April 2016 and third progress report, the Party concerned has stated that paragraph 7 of the Resolution implements paragraph 6(b) of decision V/9c.

65. It appears to the Committee, however, that paragraph 7 of the Resolution should more correctly be seen as a means to implement article 6, paragraphs 6 and 9 of the

Convention, and only marginally as an additional means to implement article 6, paragraph 2 of the Convention (as noted with regard to paragraph 6(c) of decision V/9c below).

66. Paragraph 7 of the Resolution requires that the announcement of the start of the environmental decision-making be published on the “public discussion” section of the organizer’s official websites. In addition, paragraphs 5 and 44 of the Resolution provide for the requirements for notification of public participation in the context of the EIA report (Chapter 5). Paragraph 44 of the Resolution requires the notice to be published in the media and on the websites of the developer and the responsible local authorities. There is, however, no general requirement that when selecting the particular means of notification, those means which will ensure “effective” notification of the public concerned should be selected. Nor are there any specific provisions to ensure that the notification will be effective in practice. In this regard, the Committee notes the observer’s submission that the current method of notification is not effective in informing the public of the public participation procedure as the local population does not usually visit the indicated websites and advertisement in print media are not sufficiently prevalent (see paragraph 36 above). The Committee refers the Party concerned to paragraph 64 of the Maastricht Recommendations which provides useful guidance as to the various locations where notice should be posted, including inter alia the immediate vicinity of the proposed activity.³ The Committee notes that notices for participation procedures on the transplanted and removal of flora items are indeed required to be posted in the vicinity of the proposed activity and regrets that there is no such requirement for notices concerning participation procedures on EIA reports and all other activities subject to article 6.

67. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6(b) of decision V/9c with respect to decision-making processes on either EIA reports or the other information relevant to decisions to permit activities subject to article 6 (see para. 63 above).

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

68. The Committee notes that, in its third progress report, the Party concerned stated that paragraph 14 and 35 of the Resolution implement paragraph 6(c) of decision V/9c.

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

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

- An indication of the public authority from which relevant information, other than the EIA report, can be obtained and where the relevant information, other than the EIA report, has been deposited for examination by the public (article 6, paragraph 2(d)(iv));
- Whether the activity is subject to transboundary environmental impact procedure (article 6, paragraph 2(e)).

³ <http://www.unece.org/index.php?id=41803>.

71. The Committee also notes the observer's submission that the legislation does not make clear which public authority or authorities are responsible for making the final decision and that this creates difficulties in submitting comments directly to the decision-making authority (50para. 50 above). The Committee will further address the designation of the final decision in paragraph 104 below. With regard to the notice, the Committee considers that while the ninth indent of paragraph 45 requires information to be given about the local executive and administrative bodies responsible for the decision, it indeed does not explicitly require the public authority responsible for taking the final decision to be stated, as required by article 6, paragraph 2(c) of the Convention.

72. The Committee further takes note of the Technical Code TAP 17.02-08-2012 (02120) submitted by the communicant on 21 December 2016 which includes in Appendix F a form for the notification of public discussions. The Committee has not received any information as to whether this form would be routinely utilized in the context of decisions under Chapter 5 of the Resolution and invites the Party concerned to clarify this point. The Committee considers that such a form, if routinely utilized in practice for procedures subject to article 6 of the Convention, could assist to bring the Party concerned further towards compliance. The Committee points out however that the same three features of the notice requirements of article 6, paragraph 2 that were identified as lacking in paragraph 70 above, are also omitted from the form in Appendix F .

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

- the public authority responsible for making the decision to permit the proposed activity subject to article 6,
- the public authority from which relevant information, other than the EIA report, can be obtained and where the relevant information, other than the EIA report, has been deposited for examination by the public, and
- whether the activity is subject to a transboundary environmental impact assessment procedure,

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

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

74. With respect to paragraph 6(d) of decision V/9c, the Committee notes that in its third progress report, the Party concerned states that paragraph 5 of the Resolution implements this paragraph of the decision.

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

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

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

77. The Committee notes that in its third progress report the Party concerned has stated that paragraph 6(e) of decision V/9c is implemented by paragraphs 33, subparagraph 5, paragraph 36 and paragraph 41 of the Resolution.

78. The Committee considers that, with respect to public participation on the EIA report, paragraph 46 of the Resolution expressly provides for the public to submit comments to the local executive and administrative authorities as well as the developer. The Committee has, however, not been provided with any information regarding the possibility to submit comments directly to either the authorities responsible for issuing the state ecological expertiza conclusions or to the authorities responsible for issuing the construction permit mentioned in paragraph 24 of the “EIA Regulation” of 19 January 2017, either of which could be the competent decision-making authority for the purposes of article 6 depending on the designation of the final decision as required by paragraph 7(a) of decision V/9c (see paragraph 104 below).

79. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6(e) of decision V/9c with respect to decision-making processes on either EIA reports or the other information relevant to decisions to permit activities subject to article 6 (see para. 63 above).

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

80. The Committee notes that in its third progress report, the Party concerned has stated that paragraph 6(f) of decision V/9c is implemented through paragraphs 34, 36, 40 and 41 of the Resolution.

81. The Committee considers that paragraph 44 of the Resolution establishes the responsible authorities to organize public participation and notify the public in the context of EIA reports. The designated authorities are the deputies of local councils and administrative or executive bodies. These deputies are further required to appoint the relevant staff and a chairman responsible for the preparation and conduct of the public discussions.

82. The Committee notes that, in addition to the above, article 21, paragraph 1.3 of the “Law on the state ecological expertise, strategic environmental assessment and environmental impact assessment,” adopted 18 July 2016, and paragraph 4.5 of the Resolution list the various authorities who, together with the developer, are responsible for organizing the public discussion.

83. With respect to making available the relevant information, in accordance with paragraph 46 of the Resolution, the local executive and administrative bodies, together with the developer, are responsible for giving access to the EIA report and, according to paragraph 7 of the Resolution, to some other documents. The Committee points out, however, that article 6, paragraph 6, of the Convention requires the public to be given access to “all information relevant to the decision-making”, including, inter alia, also the project documentation required to be submitted together with the EIA report for expertiza. With respect to clear provisions concerning the collection of comments through written submission and/or at public hearings, the Committee notes that the eighth indent of paragraph 45 of the Resolution clearly envisages the submission of written comments. Similarly, paragraph 48, fifth indent, of the Resolution provides for the receipt of questions, comments and suggestions orally or in writing, together with answers to them. With respect to the collection of comments at public hearings, the Committee notes that paragraphs 49 and 50 of the Resolution provide the responsible authorities for compiling and publishing the minutes and protocol of the public hearing, which are required to include the questions, comments and suggestions received from the public, together with reasoned responses to them.

84. However, the Committee notes that paragraph 54 of the Resolution appears to require that the public must apply to the local authorities within 10 working days from the publication of the notice for a hearing on the EIA report to be held. The Committee invites the Party concerned to provide further information on:

- Whether an application from the public is required in every case for a hearing to be held, or whether there are some activities for which a hearing is mandatory even if no such application is received;
- Whether such a request is binding on the responsible authorities;
- Whether an application from just one member of the public or one environmental NGO would be enough, or whether a certain number of applications is required before a hearing will be held;
- The form in which the public's application needs to be made and whether a request not in the required format will still be accepted as a valid application.

85. In the light of the above, while welcoming the progress made, the Committee finds that the Party concerned has not yet fully met the requirements of paragraph 6(f) of decision V/9c with respect to decision-making processes on either EIA reports or the other information relevant to decisions to permit activities subject to article 6 (see para. 63 above).

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

86. The Committee notes that, in its third progress report, the Party concerned stated that item 6 of paragraph 6, paragraph 7 and paragraph 41 of the Resolution implement paragraph 6(g) of decision V/9c.

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

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

89. The Committee further notes that paragraph 51 requires the organizers of the public discussions on the EIA to forward the documents referred to in paragraphs 49 and 50 of the Resolution to the developer and other entities to be taken into account in making decisions about implementing the activity. In addition, paragraph 52 requires the developer and the public authority preparing the project documentation to develop a coordinated decision on the feasibility of the proposed activity according to the results of the public discussion on the EIA report. The Committee notes, however, that the procedure under paragraph 51 and 52 does not relate to the final decision on the project and, in itself, is therefore not sufficient to fully meet the requirements of article 6, paragraph 8, of the Convention. The Committee also notes, however, that the Regulation of 19 January 2017 on the procedure of state ecological expertise requires in paragraph 23 that authorities responsible for issuing state

ecological expertise conclusions take into account, inter alia, the results of public participation on the EIA report. Due to the fact that, in accordance with paragraphs 29 and 30 of the Regulation on the procedure of state ecological expertise, the outcome of the state ecological expertise serves as a binding determination as to whether the project can proceed, this provision is in principle sufficient for the purposes of article 6, paragraph 8, of the Convention.

90. The Committee welcomes the above measures, and considers that if implemented in practice, they would meet the requirement of paragraph 6(g) of decision V/9c. However, the Committee notes Ecohome's assertion that, in practice, protocols of public hearings, summaries of comments and feedback as well as information on the final decision are only exceptionally posted on the designated website and that, where documents had not been uploaded, the public's request for access to such documents have been repeatedly refused on the basis that they do not constitute environmental information or are for internal use only (see para. 38 above). The Party concerned did not comment on the communicant's assertion. The Committee stresses that, for decisions within the scope of the Convention, the protocols of public participation procedures and the responses of the public authorities thereto as well as information on the final decision taken, constitute information relevant to the decision-making and therefore must be available to the public in accordance with article 6, paragraphs 6 and 9 of the Convention. There is no legal basis to exempt such information from disclosure as internal documents under article 4, paragraph 3(c) of the Convention or otherwise.

91. The observers further claim that paragraph 14 of the Resolution No. 687 "On the procedure of conduction of public discussions in the field of architecture, urban planning and construction activities", approved by the Council of Ministers of the Republic of Belarus on 1 June 2011 (as amended 4 January 2014) provides that comments that do not meet the requirements of normative legal acts will not be taken into account (see paragraph 38 above). The Party concerned has not to date commented on this point. The Committee accordingly invites the Party concerned to clarify how paragraph 14 would be consistent with the requirement in article 6, paragraph 7 of the Convention that the public must be allowed to submit any comments that it considers relevant to the proposed activity.

92. Pending information on the issues raised in paragraphs 90-91 above, and in the light of the current failure by the Party concerned to ensure that the requirements set out in article 6 of the Convention apply to all information relevant to decisions permitting activities subject to article 6, including inter alia project documentation and not only the EIA report (see para. 63 above), the Committee is not yet in a position to find that the Party concerned has fulfilled the requirements of paragraph 6(g) of decision V/9c.

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

93. With respect to paragraph 6(h)(i) of decision V/9c, the Committee notes that in its third progress report the Party concerned refers to the sixth indent of paragraph 7 of the Resolution as implementing this paragraph of decision V/9c.

94. While indeed paragraph 7 of the Resolution imposes a requirement to inform the public about the decision taken, the Committee considers that it fails to include a clear provision for the public to be informed "promptly" as required by paragraph 6(h)(i) of decision V/9c and article 6, paragraph 9, of the Convention. The absence of such a requirement in the Party concerned's legislation appears to be further confirmed by the comments of the observer (see paragraph 51 above). While compliance with the Convention does not necessarily require that the Party concerned incorporates the exact wording of the Convention in its legislation, the obligations enshrined therein must be fulfilled in practice. The Committee notes that paragraph 24 of the "EIA Regulation" of 19 January 2017 requires the conclusions of state ecological expertise to be made public on the

website of the competent authority within 10 days and requires the respective local authorities to inform the public concerned thereof within 10 days via printed mass media and the Internet.

95. The Committee considers the above provision to sufficiently implement the obligation to promptly inform the public of decisions in relation to the conclusions of state ecological expertise. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned (see para. 104 below), the Committee cannot conclude on whether the Party concerned has fully met the requirements of paragraph 6(h)(i) of decision V/9c.

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

96. With respect to paragraph 6(h)(ii) of decision V/9c, the Committee notes that in its third progress report the Party concerned cites the sixth indent of paragraph 7 of the Resolution as implementing this paragraph of decision V/9c.

97. The Committee considers that paragraph 7 of the Resolution indeed imposes a requirement to make publicly available copies of the decisions (ninth indent) and other relevant information, including evidence of fulfilling the obligations of informing the public (second indent) and providing it with possibilities to submit comments (seventh indent). The Committee notes that an obligation to publish the decision is also included in article 15-2 of the Environmental Protection Law (as amended). The Committee accordingly considers the above provision as sufficiently implementing the obligation to maintain and make accessible copies of decisions and relevant information as regards decisions taken as a result of an EIA. However, without a clear indication as to constitutes the final decision in the system of the Party concerned (see para. 104 below), the Committee cannot conclude on whether the Party concerned has fully met the requirements of paragraph 6(h)(ii) of decision V/9c.

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

98. With respect to paragraph 6(h)(iii) of decision V/9c, the Committee notes that in its third progress report the Party concerned has stated that paragraph 7 and Chapter 5 (in particular paragraphs 44 to 47) of the Resolution implement this paragraph of decision V/9c.

99. The Committee considers that paragraphs 7 and 57 of the Resolution indeed require public authorities to maintain and publish on their official websites a list of environmentally significant decisions, including decisions adopted and decisions taken as a result of an EIA. The Committee accordingly considers the above provisions as sufficiently providing for an obligation to create publicly accessible lists or registers of decisions for decisions taken as a result of an EIA. However, without a clear understanding as to what constitutes the final decision in the system of the Party concerned (see paragraph 104 below), the Committee cannot conclude on whether the Party concerned has fully met the requirements of paragraph 6(h)(iii) of decision V/9c.

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

100. With respect to paragraph 6(i) of decision V/9c, the Committee notes that in its third progress report the Party concerned has stated that the third paragraph of article 15-2 of the Environmental Protection Law (as amended) and paragraph 3 of the Resolution implement this paragraph of decision V/9c. The third paragraph of article 15-2 states:

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

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

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

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

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

101. The Committee notes the Party concerned's submission that, pursuant to article 15-2 of the Environmental Protection Law (as amended), the four exceptions above are the only exemptions permitted and that these will each be assessed on a case-by-case basis. However, the Committee emphasises that only the first of the above four exceptions is permissible under the Convention – the other three have no legal basis under the Convention and are not permitted.

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

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

103. The Committee notes that in its table of 25 April 2016 and in its third progress report, the Party concerned has stated that paragraph 7(a) of decision V/9c is implemented through article 15, paragraph 4 of the law “On State Ecological Expertise, Strategic Environmental Assessment and Evaluation the impact on the environment”.

104. The Committee considers that article 15, paragraph 4 of the above law states that the conclusion on the state ecological expertise is the final decision for the purposes of the Espoo Convention but does not specify whether or not it is the final decision permitting the activity. The Committee notes that the final permitting decision should be the decision that permits the implementation of the proposed activity to commence. In this regard, the Committee also notes the observer's submission that the legislation does not make clear which public authority or authorities are responsible for making the final decision (para. 50 above). The Committee thus finds that the Party concerned has not yet fully met this aspect of paragraph 7(a) of decision V/9c.

105. With respect to requiring that the final decision permitting the activity be made public, the Committee notes that the Party concerned did not report on this aspect. Nonetheless, as the Committee has noted in paragraph 96 above, paragraph 7 of the Resolution requires that organizers of public discussions post environmentally significant decisions on their website. The Committee considers that this provision may well serve to publish the final permitting decision. However, without a clear understanding as to what constitutes the final decision in the system of the Party concerned (see preceding paragraph), the Committee cannot conclude as to whether the Party concerned has fully met the requirements of paragraph 7(a) of decision V/9c.

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

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

107. The Committee notes that in its table of 25 April 2016 and its third progress report, the Party concerned has stated that paragraph 7(b) is implemented through the second indent of paragraph 6 of the now adopted Resolution.

108. The Committee considers that the final paragraph of the second indent of paragraph 6 does indeed require that the comments from the public are submitted in full to the authorities competent to take decisions.

109. The Committee accordingly finds that the Party concerned has fulfilled the requirements of paragraph 7 (b) of decision V/9c, regarding public participation on the EIA report, however, not yet with respect to public participation on the other information relevant to decisions to permit activities subject to article 6 (see para. 63 above).

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

110. With respect to paragraph 7(c) of decision V/9c, the Committee notes that, in its table of 25 April 2016 and third progress report, the Party concerned has stated that the second indent of paragraph 1 of article 15-2 of the Environmental Protection Law (as amended) and Chapter 2 of the Resolution implement this paragraph of the decision.

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

112. Though the observer did not allege any defects in the provisions of article 15-2 itself, it expressed strong concern that the main programmes for the next five years were already adopted in 2016, while the above legislation will only enter into force in 2017. The Committee emphasises that if the Party concerned were to have deliberately set out to adopt the main programmes within the scope of article 7 just prior to the entry into force of article 15-2 in order to avoid giving the public the rights to participate set out therein, then such an approach would run directly counter to the spirit of the Convention. However, based on the limited information before the Committee regarding the aforementioned programmes, the Committee is not in a position to assess whether they were in fact programmes within the meaning of article 7 and if so, whether or not the requirements of article 7 were met during their preparation. The Committee points out that if indeed the programmes were subject to article 7 and the requirements of article 7 were not met, this would have constituted a further breach of article 7. Given the limited information before it, however, the Committee is not in a position to make a finding on this point. The Committee further notes that even if it had had the requisite information before it to make a finding on this point, any recommendations it might have made would have certainly reiterated the recommendation in paragraph 7(c) of decision V/9c.

113. In the light of the above, having found in paragraph 111 above, that article 15-2 and Chapter 2 meet the requirements of paragraph 7(c), the Committee finds that the Party concerned has fulfilled the requirements of paragraph 7 (c) of decision V/9c.

Summary of findings

114. The Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6(a) of decision V/9c, namely to ensure that the general requirement of stating an interest does not reply to request for access to environmental information (see para. 58 above).

115. Until the Party concerned's legal framework is revised to ensure that the rights set out in article 6 of the Convention apply to all information relevant to the decisions permitting activities subject to article 6, including inter alia project documentation and not only the EIA report, the Party concerned will remain in non-compliance with article 6 of the Convention (see para. 63 above).

116. The Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6(b) of decision V/9c, namely to establish a clear requirement to inform the public in an adequate, timely and effective manner, with respect to decision-making processes on either EIA reports or the other information relevant to decisions to permit activities subject to article 6 (see para. 67 above).

117. The Committee finds that, by not clearly requiring the following to be addressed in the public notice:

- the public authority responsible for making the decision to permit the proposed activity subject to article 6,
- the public authority from which relevant information, other than the EIA report, can be obtained and where the relevant information, other than the EIA report, has been deposited for examination by the public, and
- whether the activity is subject to a transboundary environmental impact assessment procedure,

the Party concerned has not yet fulfilled the requirements of paragraph 6(c) of decision V/9c, namely to establish clear requirements regarding the form and content of the public notice (see para. 63 above).

118. The Committee finds that the Party concerned has fulfilled the requirements of paragraph 6(d) of decision V/9c, namely to establish reasonable minimum time frames for submitting comments, with respect to the EIA report, however, not yet with respect to public participation on the other information relevant to decisions to permit activities subject to article 6 (see para. 76 above).

119. The Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6(e) of decision V/9c, namely to establish a clear possibility to submit comments directly to the relevant authorities, with respect to decision-making processes on either EIA reports or the other information relevant to decisions to permit activities subject to article 6 (see para. 79 above).

120. While welcoming the progress made, the Committee finds that the Party concerned has not yet fully met the requirements of paragraph 6(f) of decision V/9c, namely to establish clear provisions ensuring such opportunities for public participation as are required under the Convention, with respect to decision-making processes on either EIA reports or the other information relevant to decisions to permit activities subject to article 6 (see para. 85 above).

121. Pending information on the issues raised in paragraphs 90-91 above, and in the light of the current failure by the Party concerned to ensure that the requirements set out in article 6 of the Convention apply to all information relevant to decisions permitting activities subject to article 6, including inter alia project documentation and not only the EIA report (see para. 63 above), the Committee is not yet in a position to find that the Party concerned has fulfilled the requirements of paragraph 6(g) of decision V/9c (see para. 92 above).

122. The Committee finds that the Party concerned has implemented the requirement to promptly inform the public of decisions in relation to the conclusions of state ecological expertise. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned (see para. 104 above), the Committee cannot conclude on whether the Party concerned has fully met the requirements of paragraph 6(h)(i) of decision V/9c (see para. 95 above).

123. The Committee finds that the Party concerned has implemented the requirement to maintain and make accessible copies of decisions and relevant information as regards decisions taken as a result of an EIA. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned, the Committee cannot conclude on whether the Party concerned has fully met the requirements of paragraph 6(h)(ii) of decision V/9c (see para. 97 above).

124. The Committee finds that the Party concerned has implemented the requirement to create publicly accessible lists or registers of decisions for decisions taken as a result of an EIA. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned, the Committee cannot conclude on whether the Party concerned has fully met the requirements of paragraph 6(h)(iii) of decision V/9c (see para. 99 above).

125. The Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6(i) of decision V/9c, namely to ensure that statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1(c) of the Convention (see para. 102 above).

126. While welcoming the steps taken so far, the Committee finds the Party concerned has not yet fully met the requirement in paragraph 7(a) of decision V/9c to clearly designate in its legal framework which decision is to be considered the final decision and to make these final decisions available (see paras. 104 and 105 above).

127. The Committee finds that the Party concerned has fulfilled the requirements of paragraph 7 (b) of decision V/9c regarding public participation on the EIA report, however, not yet with respect to public participation on the other information relevant to decisions to permit activities subject to article 6 (see para. 109 above).

128. The Committee finds that the Party concerned has fulfilled the requirements of paragraph 7 (c) of decision V/9c (see para. 113 above).

IV. Conclusions and recommendations

129. The Committee finds that the Party concerned has not yet fulfilled all the requirements of decision V/9c, but welcomes the progress made in that direction to date as set out in paragraphs 114-128 above.

130. In order for the Committee to prepare its report to the sixth session of the Meeting of the Parties on the implementation of decision V/9c, the Committee invites the Party concerned to provide it with evidence, including the relevant legislative provisions together

with English translations thereof, to show it has taken the necessary legislative, regulatory or administrative measures:

- (a) With respect to paragraph 6(a) of decision V/9c, to amend its legislation so that the requirement to state an interest for requests for access to environmental information no longer applies;
- (b) With respect to paragraph 6(b)-(i) of decision V/9c:
 - (i) To clarify that the words “citizens and legal entities” as used in the legislation adopted in January 2017 is interpreted to fully cover the “public” as defined in the Convention, which, inter alia, includes members of the foreign public as well as associations and groups;
 - (ii) To revise its legal framework to ensure that the requirements set out in article 6 of the Convention apply to all the information relevant to decisions permitting activities subject to article 6, including inter alia project documentation, and not only the EIA report.
- (c) With respect to paragraph 6(b), to ensure that there is a clear requirement for the public to be informed of decision-making on both EIA reports as well as other information relevant to decisions to permit activities subject to article 6, in an adequate, timely and effective manner, including by posting notification in the vicinity of the proposed activity.
- (d) With respect to paragraph 6(c) of decision V/9c, to ensure that there are clear requirements regarding the form and content of the public notice encompassing all the elements of requirements of article 6, paragraph 2 of the Convention, including:
 - (i) the public authority responsible for making the decision to permit the proposed activity,
 - (ii) an indication of the public authority from which relevant information, other than the EIA report, can be obtained and where the relevant information, other than the EIA report, has been deposited for examination by the public; and
 - (iii) whether the activity is subject to a transboundary environmental impact assessment procedure.
- (e) With respect to paragraph 6(d) of decision V/9c, to ensure that, as well as on the EIA report, there are reasonable minimum time frames for submitting comments on the other information relevant to decisions to permit activities under article 6.
- (f) With respect to paragraph 6(e) of decision V/9c, to ensure that there is a clear possibility for the public to submit comments both on the EIA report and on the other information relevant to decisions to permit activities under article 6 of the Convention directly to the decision-making authority;
- (g) With respect to paragraph 6(f) of decision V/9c, to ensure that, for both EIA reports and the other information relevant to decisions to permit activities subject to article 6 of the Convention, 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 obligations to make available all the information relevant to the decision-making and to collect comments from the public through written submissions and/or at the public hearings;
- (h) With respect to paragraph 6(g) of decision V/9c, to ensure that with respect to all decisions to permit activities subject to article 6:

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- (i) There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation regarding both the EIA report and the other information relevant to decisions to permit activities under article 6, and to provide evidence of this in the publicly available statement of reasons and considerations on which the decision is based;
 - (ii) Any exceptions on access to information set out in national law are not used by public authorities as a basis to withhold the public's access to the above information;
- (i) With respect to paragraph 6(h)(i) of decision V/9c, to ensure that there are clear provisions on the relevant public authorities to promptly publish all final decisions taken to permit activities subject to article 6 of the Convention ;
 - (j) With respect to paragraph 6(h)(ii) of decision V/9c, to maintain and make accessible to the public copies of all final decisions taken to permit activities subject to article 6 of the Convention (including any final decisions that do not result from an EIA);
 - (k) With respect to paragraph 6(h)(iii) of decision V/9c, to ensure that all final decisions permitting activities subject to article 6 are included in publicly accessible lists or registers (including any final decisions that do not result from an EIA);
 - (l) With respect to paragraph 6(i) of decision V/9c, to ensure that statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for broader exemptions than allowed under article 6, paragraph 1(c) of the Convention;
 - (m) With respect to paragraph 7(a) of decision V/9c:
 - (i) To clearly designate in its legal framework which decision is to be considered the final decision permitting a proposed activity subject to article 6 of the Convention;
 - (ii) To make all final decisions permitting activities subject to article 6 of the Convention publicly available;
 - (n) With respect to paragraph 7(b) of decision V/9c, to ensure that the full content of all the comments made by the public on the EIA report and on the other information relevant to the decision-making (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 the authorities responsible for the expertiza conclusion).

131. The Committee informs the Party concerned that all measures necessary to implement decision V/9c must be completed by, and reported upon by no later than 25 April 2017, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision V/9c.