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COMMISSION ÉCONOMIQUE
POUR L'EUROPE

Tel: +41 (0)22 917 3294 (direct)
+41 (0)22 917 1234 (Palais des Nations)
Fax: +41 (0)22 917 0123
E-mail: public.participation@unece.org

ОБЪЕДИНЕННЫЕ НАЦИИ

ЕВРОПЕЙСКАЯ ЭКОНОМИЧЕСКАЯ
КОМИССИЯ

Ref: decision IV/9g of the Meeting of the Parties

UNITED NATIONS

ECONOMIC COMMISSION
FOR EUROPE

Palais des Nations, Room 348
CH-1211 GENEVA 10

29 November 2012

Batyr Ballyev
Ministry of Nature Protection of Turkmenistan
15 Bitarap Turkmenistan Street
Ashgabad 744000
Turkmenistan

Dear Mr. Ballyev,

Re: Decision IV/9g of the Meeting of the Parties to the Aarhus Convention

With reference to decision IV/9g of the Meeting of the Parties (MOP) and our recent correspondence, I would like to thank you for coordinating the nomination of Mr. Nazar Korpeyev to represent the Government before the Aarhus Convention Compliance Committee. As you know, the Committee at its thirty-ninth meeting is expected to review the material submitted so far by Turkmenistan and to establish whether the caution lifted by the Meeting of the Parties through decision IV/9g should re-enter into effect on **1 January 2012**.

In preparation for the discussion with the Compliance Committee on **14 December 2012**, the Committee would like to kindly request Mr Korpeyev to address the questions annexed to the present letter. The questions should be addressed in a brief and concise manner. You are encouraged to submit a written statement specifically addressing these questions, in advance of the meeting. A background note has also been prepared to facilitate the discussion (see annex).

If you require clarification, please do not hesitate to contact the secretariat.

Yours sincerely,

Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of Turkmenistan to the United Nations Office and other international organizations in Geneva
Ms. Nadejda Mazur, BIOTICA Ecological Society (communicant in ACCC/C/2004/5)

ANNEX

Questions in preparation for the discussion of decision IV/9g on 14 December 2012

- The amendment of the Act on Public Associations is delayed due to the fact that it does not only concern environmental law, and therefore it was not passed by 1 October 2012 (as requested by decision IV/9g).
 - (a) At what stage of the amendment process is the Act (initial draft with the Ministries, consultations, with the Parliament, etc.)? Please provide precise information.
 - (b) When exactly do you expect the amendment to be adopted?
- Can Turkmenistan:
 - (a) Provide a copy of the current draft amendment of the Act?
 - (b) Explain how the proposed amendments reflect the recommendations of the Compliance Committee?
- What steps exactly have been taken during the last year (i.e. since the MOP-4 in summer 2011 to date) to amend the Act according to the Committee's and the MOP's recommendations? Has the public, including non-governmental organizations and international organizations (such as OSCE/ODIHR and ICNL) been involved in the amendment process?
- In the meantime, until the amended Act has not come into force, is the old Act applied in practice in a way that is in compliance the Convention?
- Apart from the Act, has Turkmenistan examined other legislation (such as the Code of Administrative Offenses and the Presidential Decree on the Registration of Public Associations) to ensure that they are consistent with and do not contradict the Act, as expected to be amended?
- Given the fact that the amendment does not only concern environmental policy and that a number of Governmental actors must be involved, please provide details on the coordination process among the Ministries, in particular the Ministry of Nature and the Ministry of Justice.

Summary background note

Turkmenistan has been in a state of **non-compliance** with the Aarhus Convention **since 2005**. The state of non-compliance relates to the Act on Public Associations.

- **February 2005:** the Compliance Committee finds non-compliance in its findings on communication ACCC/C/2004/05.
- **June 2005:** The findings and recommendations of the Committee are endorsed by the Meeting of the Parties at its second session (MOP-2) (decision II/5c). The MOP requests Turkmenistan to amend the Act in question with a view to bringing all of its provisions into compliance with the Convention.
- **June 2008:** The MOP at its third session (MOP-3) confirms its earlier endorsement of the findings of non-compliance and issues a **provisional caution** to Turkmenistan (the first caution ever issued under the Aarhus Convention) (decision III/6e). In this respect, the MOP asks Turkmenistan to fulfil the following conditions by 1 January 2009:
 - (a) The Act is amended in such a way as to make clear that foreign citizens and persons without nationality can enjoy the same rights as citizens in the formation of and participation in public associations;
 - (b) The Act is amended in such a way as to make clear that members of the public may conduct activities on behalf of non-registered public associations in harmony with the requirements of the Convention, in particular, article 3, paragraph 4;
 - (c) Other legislation does not run counter to these amendments.

- **1 May 2009:** The **caution becomes effective**, after the Compliance Committee establishes that Turkmenistan failed to successfully fulfil the three conditions set by the MOP.

In the meantime, **two sets of proposals** on how to improve the Act on Public Associations were prepared independently by (a) the International Center for Not-for-profit Law (ICNL); and (b) the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR). The latter was prepared at the request of Turkmenistan.

- **18-19 April 2011:** Upon invitation of the Government and in close cooperation with OSCE, members of the Compliance Committee and of the Secretariat organize a **mission** to Ashgabat. The purpose of the mission is for the Committee to gather information for its report to the MOP regarding the implementation of the MOP decisions by Turkmenistan.

Among others, outcomes of the mission are:

- (a) Concrete drafting proposals regarding revisions of the Act, agreed by the members of the Committee and the Government;
 - (b) A recommendation from the Committee to the MOP to lift the caution under the specific conditions that were agreed with the Government.
- **29 June – 1 July 2011:** On the basis of the Committee's report, the MOP decides to **suspend the caution** (decision IV/9g). It also decides that the **caution should re-enter into effect on 1 January 2013**, unless Turkmenistan has amended the Act on Public Associations in order to bring all of its provisions into compliance with the Convention. Turkmenistan has to notify the secretariat by **1 October 2012**.

In implementing necessary revisions to the Act, the MOP requests Turkmenistan to ensure that the following are taken into consideration (see attach 2-4):

- (a) The suggestions made by members of the Compliance Committee at the working session held during its mission to Turkmenistan on 18 April 2011 (informal document C.1/2011/4/Add.2/Inf.1);
 - (b) The outcome of the round tables organized by the National Institute of Democracy and Human Rights under the President of Turkmenistan and the ICNL in 2009 (informal document C.1/2011/4/Add.2/Inf.2);
 - (c) The comments of the OSCE/ODIHR of 22 June 2010.
- **2 October 2012:** Turkmenistan submitted its progress report, as requested through decision IV/9g, where it describes a various actions undertaken by the Party to implement the Convention. With respect to the specific recommendations of MOP decision IV/9g, Turkmenistan reports that the amendment to the Act on Public Associations has yet not passed, due to the complexity of the matter that goes beyond environmental law only.