

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

**Third progress review of the implementation of decision V/9a
on compliance by Armenia with its
obligations under the Convention**

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I. Introduction

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

II. Summary of follow-up

2. By letter of 8 April 2016, the secretariat sent the Committee's second progress review on the implementation of decision V/9a to the Party concerned together with a reminder of the request by the Meeting of the Parties to provide its final progress report to the Committee by 31 October 2016, on the measures taken and the results achieved in implementation of the recommendations set out in decision V/9a.

3. On 22 July 2016, the Party concerned provided an update on its progress.

4. The Party concerned provided its third progress report on the implementation of decision V/9a on 31 October 2016. On 19 November 2016, the Party concerned provided a further update via email including translated texts of some pending legislative proposals.

5. By letter of 21 November 2016, the non-governmental organization "Ecological Right", an observer, provided comments on the Party concerned's third progress report.

6. On 6 December 2016, the Party concerned took part via audioconference in the open session on the implementation of decision V/9a held during the fifty-fifth meeting of the Compliance Committee (6-9 December, Geneva).

Party concerned's third progress report and further update provided

7. In its third progress report dated 31 October 2016, the Party concerned submitted that, with regard to paragraph 32(a) of the second progress review, the draft law "On non-governmental organisations" ("draft Law on NGOs") and the draft law "Amending administrative Code of the Republic of Armenia" ("draft amendment to the Administrative Code") had been prepared and sent to the National Assembly of the Republic of Armenia. The Party concerned submitted that these draft laws lay down the right of NGOs to protect the interests of their stakeholders in Court (article 16, paragraph 2, of the draft Law on NGOs and article 216(6) of the draft amendment to the Administrative Code). The Party concerned further stated that the draft Law on NGOs defines "stakeholders" as persons or their groups defined by the statute of the organizations. The Party concerned further noted that the two draft laws were currently being translated and would be sent to the Committee as soon as translation was completed.

8. With regard to paragraph 32(b) of the second progress review, the Party concerned referred the Committee to article 4, part 1, point 7, and article 14 of the Law "On environmental impact assessment and expertise" and provided translations of these articles.

9. With regard to paragraph 32(c) of the second progress review, the Party concerned informed the Committee that the Law "On environmental impact assessment and expertise" was currently being amended with the involvement of international experts to bring it into compliance with the Espoo Convention and the Protocol on Strategic Environmental Assessment. Any provisions that were problematic from the perspective of the Aarhus Convention would be reviewed at the same time and the final draft law will be provided to the Committee. In addition, the Decision of the Government of the Republic of Armenia N1325, of 19 November 2014, ("Decision N1325") will be discussed and reviewed with the public concerned and the results will be provided to the Compliance Committee.

10. With respect to paragraph 32(c) of the second progress review and the Committee's concerns regarding the apparent omission of environmental NGOs from the definition of the "public concerned", the Party concerned referred the Committee to article 4, point 21,

of the Law “On environmental impact assessment and expertise” which defines “interested community” as “legal entities and natural persons demonstrating an interest regarding the approval of the fundamental document and (or) the implementation of the anticipated activity subject to expert assessment.” The Party concerned stated that, according to article 51, point 4 and article 122 of the Civil Code and article 3, point 3, of the current Law on NGOs (as well as article 2, point 1 of the draft Law on NGOs), NGOs are defined as “legal entities” and therefore they fall under the definition of “interested community”. The definition of “interested community” allows any legal entity to take part in the EIA process regardless of its legal status (NGO, fund, enterprise etc.) and sphere of activity (environment, health etc.) and they are considered to be interested community by the fact that they demonstrate an interest. The Party concerned submitted that the possible review of the definition will nevertheless be discussed and the results will be provided to the Committee.

11. With respect to the Committee’s remarks in paragraph 22 and 32(c) of its second progress review concerning the apparent restriction in paragraph 24 of Decision N1325, the Party concerned stated that paragraph 24 does not restrict the possibility of the public to make remarks and proposals. Rather, the provision restricts the discretion of the initiator and assessment centre to not take remarks and proposals into account to the three clear cases defined in the provision, namely remarks and proposals that (a) contradict the requirements of the current legislation; (b) have no relation to the environmental impact; or (c) contain incorrect calculations or data. In all other cases, the initiator and assessment centre must take the remarks and proposals into account. The Party concerned submitted that this and other proposals will nevertheless be discussed with the public concerned and the results will be communicated to the Committee.

12. Further to paragraph 9 above, in its update of 19 November 2016, the Party concerned reported that a draft amendment to Decision N1325 had been elaborated by the Ministry of Nature Protection and sent to environmental NGOs, Aarhus Centres and other stakeholders on 11 November 2016. The Party concerned also reported that in the draft amendment the times allocated to public participation periods had been extended, namely the time period in article 15, point 1 had been changed from 7 to 12 working days; in article 15, point 2(a) from 15 to 18 working days; in article 15, point 2(b) from 10 to 13 working days and in article 15, point 2(c) from 10 to 12 working days. The Party concerned further reported that it was proposed that Decision N1325 would be amended to read: “Reasonable remarks and proposals, made by public, shall be taken into account by the initiator and assessment centre. If remarks and proposals are not taken into account grounded justifications shall be provided in that connection.” The Party concerned also reported that it was proposed to amend the reference to “20th day” in article 44 of Decision N1325 to “10th day”. The Party concerned further submitted that the indicated timelines would be the maximum possible, as the assessment centre must be allowed enough time to carry out its expertise procedure.

Comments of observer (Ecological Right) on Party concerned’s third progress report

13. In its comments of 21 November 2016, the observer “Ecological Right” submitted that the Party concerned did not duly implement decision V/9a and requested the Committee to declare the suspension of privileges and special rights given to the Party concerned in accordance with paragraph 37(g) of decision I/7.

14. With regard to paragraph 32(a) of the second progress review, the observer stated that it could not find indications that the draft amendment to the Administrative Code had been presented to Parliament, nor had it been subject of public consultation. The observer further submitted that it had not been able to locate the proposal on the webpage www.ecolex.am, which the Party concerned had presented in its second progress report as a portal for information related to environmental legislation, and that that webpage generally contains poor information.

15. Also with regard to paragraph 32(a) of the second progress review, the observer submitted that the draft Law on NGOs is currently before Parliament but that it will not bring the Party concerned into compliance with the access to justice provisions of the

Convention. The observer alleged that, in particular, article 16, paragraph 2 and 3, of the draft Law on NGOs disproportionately restricts access to justice by limiting standing to cases in which the NGO took part in public hearings organized in accordance with the Law “On Environmental Impact Assessment and Expertise” or had no opportunity to participate therein. The observer submitted that this unduly restricts access to justice to the EIA context and thereby excludes, for instance, procedures concerning activities not subject to EIA or concerning access to environmental information. The observer also alleged that it is not in line with the requirements of the Convention if an organization is prevented from bringing a challenge because it failed to participate in a participation procedure held long ago and that the phrasing “had no opportunity to participate” is arbitrary and gives too much discretion to a presiding judge. The observer stated that these comments had also been submitted to representatives of the Government and Parliament of the Party concerned but had not been taken into account.

16. With regard to paragraph 32(c) of the second progress review, the observer submitted that the amendments to Decision N1325 do not properly implement the recommendations of the Committee because the amendment only increases the timeframes to consult project-related documentation and to submit comments from two to five days. The observer alleged that this amendment will not bring the Party concerned into compliance with article 6, paragraph 3, of the Convention and that amendments should therefore be made to the Law “On Environmental Impact Assessment and Expertise” to alter the timeframes.

17. The observer further stated that the Party concerned has not provided any information with regard to the implementation of paragraph 33(c) of the second progress review. The observer submitted that additional evidence as to which trainings for judges were conducted, the names of participants and information on finances allocated to these trainings would be important to be able to estimate their efficiency. The observer referred in that regard to a recent judgement of the Administrative Court which is before the Committee in the context of communication ACCC/C/2016/138. The observer submitted that the fact that this judgement was adopted after the mentioned trainings calls their efficiency into question.

III. Considerations and evaluation by the Committee

18. In order to fulfil the requirements of the decision V/9a, the Party concerned would need to provide the Committee with evidence that it had:

- (a) Taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:
 - (i) Thresholds for activities subject to an EIA procedure, including public participation, are set in a clear manner;
 - (ii) The public is informed as early as possible in the decision-making procedure, when all options are open, and that reasonable time frames are set for the public to consult and comment on project-related documentation;
 - (iii) The responsibilities of different actors (public authorities, local authorities, developers) in the organization of public participation procedures are defined as clearly as possible;
 - (iv) A system of prompt notification of the public concerned of the final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection;¹
- (b) Provided the Committee, by no later than 1 September 2014, with an English translation of the text of the EIA law and other legislative measures as they stand on that date for the Committee’s review;²

¹ Decision V/9a, para. 4 (c).

(c) Provided the Committee with evidence that the draft EIA law and other legislative measures that were proposed by the Party concerned to meet the requirements of decision IV/9a have been adopted;³

(d) Reviewed and clarified its legislation, including the law on NGOs and administrative procedures, so as to ensure compliance with article 9, paragraph 2, of the Convention with regard to standing;⁴ and

(e) Taken the measures necessary to raise awareness among the judiciary to promote implementation of domestic legislation in accordance with the Convention.⁵

19. In its second progress review, which reviewed the Party concerned's second progress report, the Committee invited the Party concerned, prior to the submission of its third progress report:

(a) With respect to the recommendations set out in paragraphs 4 (b), 5 (a) and 7 (a) of decision V/9a, to accelerate the process of adoption of the Law "On Non-governmental Organizations" and the amendments to the Administrative Procedure Code and to provide the Committee with English translations of the drafts of the abovementioned laws in advance of their adoption;

(b) Regarding the recommendation set out in paragraph 4 (c) (i) of decision V/9a, to provide the Committee with English translations of the relevant excerpts of its legislation to demonstrate that all the activities listed in annex I of the Convention would be subject to a public participation procedure in accordance with article 6, paragraph 1(a) of the Convention;

(c) With respect to the recommendations set out in paragraph 4 (c) (ii) of decision V/9a and the Committee's considerations set out in paragraphs 21 and 22 of the second progress review, to remedy the omission of environmental NGOs from the scope of the "public concerned"; to increase the short timeframes for the public to consult project-related documentation and to submit comments within the EIA procedure; and to remove the unwarranted restriction in paragraph 24 of the "Procedure of holding public notification and discussions" on the public's right to submit any comments, information, analyses or opinions it considers relevant to the proposed activity.⁶

20. The Committee further invited the Party concerned, together with its third progress report to:

(a) Provide evidence before the Committee that the requirements of paragraphs 4 (b), 4 (c) (i), 4 (c) (ii), 5, 7(a) and 7(b) of decision V/9a have been fulfilled;

(b) Provide the Committee with English translations of all legislation adopted for the purpose of implementing decision V/9a;

(c) Provide the Committee with more information on the outcomes of the trainings for judges carried out in accordance with paragraph 7(b) of decision V/9a – for example attendance, lecturers, feedback from participants, media reports, articles in the specialized media provoked by the trainings.⁷

21. The Committee welcomes the third progress report of the Party concerned, which was submitted on time, and the information contained therein.

² Decision V/9a, para. 5 (a).

³ Decision V/9a, para. 5 (b).

⁴ Decision V/9a, para. 7 (a).

⁵ Decision V/9a, para. 7 (b).

⁶ Committee's second progress review of the implementation of decision V/9a, para. 32.

⁷ Committee's second progress review of the implementation of decision V/9a, para. 33.

Paragraph 4(a) of decision V/9a - continue the constructive dialogue

22. With regard to paragraph 4(a) of decision V/9a, the Committee notes that the Party concerned provided its third progress report on time as well as a further update thereafter and also took part in the discussions during the Committee's fifty-fifth meeting via audioconference. The Committee welcomes this recent engagement of the Party concerned and emphasizes the need to keep up this form of dialogue in the upcoming crucial steps of the adoption of the various proposals at stake.

Paragraph 4(b), 5(b) and 7(a) of decision V/9a: accelerate adoption of legislative proposals

23. With regard to paragraph 4(b), 5(b) and 7(a) of decision V/9a, the Committee had invited the Party concerned in paragraph 32(a) of its second progress review to accelerate the process of the adoption of the draft Law on NGOs and the draft amendment to the Administrative Procedure Code as well as to provide English translations of these drafts. The Committee welcomes the English translations of the draft Law on NGOs and the draft amendment to the Administrative Code provided by the Party concerned on 17 November 2016. The Committee, however, also reiterates its concern regarding the delay in the adoption of both draft laws.

24. With regard to the draft amendment to the Administrative Procedure Code, the Committee notes the observer's statement that it was unable to locate any evidence that the draft had indeed been submitted to Parliament. While the Committee is not in a position to verify whether or not the draft has indeed been submitted to Parliament, the Committee calls upon the Party to increase its efforts to bring the legislative process to a conclusion. The Committee also notes the importance of transparency in that regard, both for the Committee to evaluate the progress of the Party as well as to members of the public, including the observer, to enable them to follow the legislative process.

25. The Committee further takes note of the information provided by the Party concerned concerning the proposed revision of Decision N1325, while regretting that no clear timeline for the revision of the Decision has so far been provided. Similarly, the Committee welcomes the information received regarding the proposed amendment of the Law "On environmental impact assessment and expertize" but notes that no information has been provided regarding the expected timeframe for the finalization of the legislative procedure in that case either.

26. The Committee therefore finds that the Party concerned has not yet fulfilled the requirements of paragraph 4(b) and 5 of decision V/9a. The Committee points out to the Party concerned that all legislative measures intended to implement decision V/9a should be completed by, and reported upon by 31 January 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/9a.

Paragraph 4(c)(i) of decision V/9a: Annex I of the Convention

27. With regard to paragraph 4(c)(i) of decision V/9a, in its third progress report the Party concerned refers the Committee to article 4(1)(7) and 14 of the Law "On environmental impact assessment and expertize". The Committee notes that these provisions were already in force at the time it adopted its second progress review and were already then found to insufficiently implement Annex I of the Convention. The Committee notes that the list provided in article 14 of the Law "On environmental impact assessment and expertize" appears not to include the following activities:

- (a) Coke ovens; installations for gasification and liquefaction; installations for processing and reprocessing of irradiated nuclear fuel and processing of high-level radioactive wastes (paragraph 1 of Annex I to the Convention);

- (b) Processing of ferrous metals (hot-rolling mills, smitheries, application of protective fused metal coats); ferrous metal foundries; (paragraph 2, indents 3 and 4, of Annex I to the Convention);
- (c) Installations for the production of asbestos and the manufacture of asbestos-based products (paragraph 3 of Annex I to the Convention);
- (d) Chemical installations of the production of basic plant health products and biocides; chemical installations for the production of protein feed additives, ferments and other protein substances (other than the production of manufactured feed concentrate) (paragraph 4 of Annex I to the Convention)
- (e) Incineration of hazardous and municipal waste (except if this is termed “processing” in the national system or is interpreted to include that), installations for the disposal of non-hazardous waste (paragraph 5 of Annex I to the Convention);
- (f) Production of pulp (paragraph 7(a) of Annex I to the Convention);
- (g) Motorways and express roads (other than roads of four or more lanes) (paragraph 8(b) of Annex I to the Convention);
- (h) Inland waterways and ports, trading ports and piers (paragraph 9 of Annex I to the Convention);
- (i) Groundwater abstraction and artificial groundwater recharge schemes (paragraph 10 of Annex I to the Convention);
- (j) Works for the transfer of water resources between river basins (other than water supply systems with a diameter of 300 mm and more and with a length of 1 km or more or main canals) (paragraph 11 of the Annex 1 to the Convention);
- (k) Installations for the intensive rearing of sows with 750 places or more (paragraph 15(c) of Annex I to the Convention);
- (l) Quarries and opencast mining (other than for the extraction of underground resources of metal ores, including radioactive underground resources) (paragraph 16 of Annex I to the Convention);
- (m) Installations for the storage of petroleum, petrochemical or chemical products, other than underground (annex 18 of Annex I to the Convention);
- (n) Plants for the pre-treatment or dyeing of fibres or textiles; installations for the surface treatment of substances, objects or products using organic solvents; installations for the production of carbon (hard-burnt coal) or electrographite (annex 19 of Annex I to the Convention).

28. The Committee notes that, bearing in mind the possibility of translation disparities and technical precisions, it is currently not in a position to assess definitively whether the activities mentioned above are or are not covered by article 14, or any other provision, of the Law “On environmental impact assessment and expertize”. The Committee accordingly requests the Party concerned to inform the Committee of the provisions of the Law “On environmental impact assessment and expertize” that cover each of the activities mentioned in the list, or to provide the texts, together with an English translation thereof, of other legislation that provides for public participation with respect to decision-making to permit these activities. The Committee takes note in this context of the oral statement by the Party concerned during the discussion at its fifty-fifth meeting (Geneva, 6-9 December 2016) that this issue would be addressed. However, pending the provision of the relevant information, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 4(c)(i) of decision V/9a.

Paragraph 4(c)(ii) of decision V/9a

Time-frames

29. With regard to paragraph 4(c)(ii) of decision V/9a, the Committee had, in paragraph 21 of its second progress review, noted with concern the timelines set in the Law “On environmental impact assessment and expertize”, for instance in article 26, paragraph 2 and 4, as well as in article 15 of Decision N1325. In its third progress report, the Party concerned informed the Committee that it was currently reviewing the legislation with the help of international experts. In its update provided on 19 November 2016, the Party concerned informed the Committee of the proposed new timelines that were being considered for inclusion in the legislation (see paragraph 11 above). During the discussion at the Committee’s fifty-fifth meeting (Geneva, 6-9 December 2016), the Party concerned mentioned further timelines which it said were included in the current Decision N1325, namely 52 days for public comments on category A activities, 37 days on category B activities, 17 days on C activities. The Party concerned indicated that these timelines would be extended, namely from 52 to 66 days, 37 to 51 days and 17 to 22 days.

30. The Committee notes that the legislative proposals to establish appropriate timeframes are still in draft form. The Committee accordingly finds that the Party concerned has not yet fulfilled the requirements of paragraph 4(c)(ii) with respect to timeframes.

Environmental NGOs as “public concerned”

31. With regard to paragraph 4(c)(ii) of decision V/9a, the Committee had noted in paragraph 21 of its second progress review that NGOs were not expressly mentioned in the Law “On environmental impact assessment and expertize” as part of the public concerned. In its third progress report, the Party concerned referred the Committee to article 4, point 21 of the Law “On environmental impact assessment and expertize”, which defines the “interested community” as “legal entities and natural persons demonstrating interest regarding the approval of the fundamental document and (or) the implementation of the anticipated activity subject to expert assessment.” The Party concerned stated that an NGO will be considered a legal entity for the purpose of this provision on the basis of article 51, point 4 and article 122 of the Civil Code as well as article 3, point 3, of the current Law on NGOs. The Committee has not been provided with the text of the above-mentioned provisions of the Civil Code or the current Law on NGOs and is therefore not in a position to fully assess whether NGOs are indeed considered to be legal entities for the purpose of article 4, point 21, of the Law “On environmental impact assessment and expertize”. Pending its examination of the above legislative provisions, the Committee finds that the Party concerned has not yet fulfilled the requirement of article 4(c)(ii) of decision V/9a with respect to the clear inclusion of environmental NGOs as part of the public concerned for the purposes of the Law “On environmental impact assessment and expertize”.

32. On this point, the Committee notes the oral statement by the Party concerned during the open session at the Committee’s fifty-fifth meeting (Geneva, 6-9 December 2016), that NGOs would be included as part of the public concerned in the proposed amendment to the Law on environmental impact assessment and expertize. The Committee considers that such a provision could usefully further clarify the status of NGOs in this context.

Ensure that “any” comment can be submitted

33. Also with regard to paragraph 4(c)(ii) of decision V/9a, in its second progress review the Committee had noted that paragraph 24 of Decision No 1325 contradicted the requirement that the public could submit “any” comment as required by article 6, paragraph 7, of the Convention. Paragraph 24 of Decision No 1325 states that: “Reasonable remarks and proposals, made by the public, shall be taken into account by the initiator and assessment centre. Remarks and proposals contradicting the requirements of the current legislation, and having no relation to the environmental impact, as well as incorrect calculations or data, shall not be taken into account; in that connection grounded justifications shall be provided.”

34. In its third progress report, the Party concerned submitted that this requirement does not restrict the possibility of the public to make remarks and proposals but rather restricts the discretion of the initiator and assessment centre to not take remarks and proposals into account to three clear cases defined in the provision, namely remarks and proposals that:

- (a) Contradict the requirements of the current legislation,
- (b) Have no relation to the environmental impact or
- (c) Contain incorrect calculations or data.

35. The Committee notes that at least the second of these requirements is incompatible with the requirement in article 6, paragraph 7 of the Convention that “any” comment submitted by the public shall be taken into account. With regard to category (b), the Committee notes that comments need not only concern the proposed activity’s environmental impact but can concern any aspect of the proposed activity. With regard to element (c), the Committee notes that, while in principle it is permissible to not take into account incorrect calculations or data, authorities should not impose their own calculations as the only possible correct version without giving consideration to other calculations. The Committee further notes that paragraph 24 of Decision No 1325 refers to “reasonable remarks and proposals” and, although the Party concerned has submitted that this gives no further discretion to the responsible authorities (i.e. that they will be limited to only refuse comments on the basis of the criteria (a)-(c) above), this is not immediately clear from the wording of paragraph 24 itself.

36. The Committee further notes that, in its update of 17 November 2016, the Party concerned appears to indicate that paragraph 24 of Decision N1325 is currently being considered for amendment (see paragraph 12 above). The Committee notes that the proposed amendment does not include the criteria (a)-(c) above, which would seem a positive development, though the proposed amendment still includes the reference to “reasonable remarks and proposals”. As noted in the previous paragraph, a requirement that remarks and proposals be “reasonable” would not be consistent with article 6, paragraph 7 of the Convention which entitles the public to submit *any* comments that it thinks relevant. Thus, even if the amendment were made in the form currently proposed, the Party concerned would not fulfil the requirements of paragraph 4(c)(ii) of decision V/9a. In this regard, the Committee takes note of the assurance given by the Party concerned during the open session at the Committee’s fifty-fifth meeting (Geneva, 6-9 December 2016) that the requirement in Decision No. 1325 that comments should be reasoned would be removed, and the Committee looks forward to the Party concerned’s confirmation that this has been done.

37. In light of the foregoing, while welcoming the steps taken to date, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 4(c)(ii) of decision V/9a.

Paragraph 7(a) of decision V/9a: standing for NGOs under article 9, paragraph 2

38. With regard to paragraph 7(a) of decision V/9a, article 16, paragraph 2, of the draft Law on NGOs states that organizations may represent “the lawful interests of their beneficiaries in court in the area of environmental protection.” This phrasing is repeated in the proposed amendment to article 216.6(1), of the Administrative Procedure Code. NGOs are free to determine which “persons or groups” are to be regarded as “beneficiaries” in their statute (article 17(2) draft Law on NGOs), this being a separate category from “members” and “volunteers”.

39. Article 16, paragraph 3 of the draft Law on NGOs and draft Article 216.6 paragraph 2 of the Administrative Procedure Code provide, however, for three conditions for when a suit may be brought by an NGO:

- (a) Statutory purpose requirement: The suit follows from its statutory purposes and tasks of the organizations and is aimed at the protection of the collective interests of its beneficiaries concerned with the statutory purposes of the organization.

(b) Preclusion requirement: The organization must have participated in public discussion of fundamental documents or planned activities, or was denied the opportunity to do so.

(c) Time requirement: The organization must have been active in the area as defined in article 16, paragraph 2 of the draft Law on NGOs (i.e. environmental protection), for at least 2 years.

40. The Committee examines below whether the conditions proposed above would ensure compliance by the Party concerned with article 9, paragraph 2 of the Convention, as required by paragraph 7(a) of decision V/9a. To address the proposed amendments in turn:

(a) Statutory purpose requirement

41. Concerning the proposed statutory purpose requirement, the Committee considers that this requirement does not contravene the Convention as long as an NGO is able to freely determine and amend its statute. Having analysed articles 12 to 14 of the draft Law on NGOs, it appears to the Committee that this possibility exists for NGOs. The Committee also notes, however, that article 3(2) of the draft Law on NGOs states that it is prohibited to define such goals in the NGO's statute, "which are rights directly foreseen by law and conditioned by the peculiarities of another non-governmental union." It is not clear to the Committee what purpose this exclusion would serve and whether it may unnecessarily limit the possibility for environmental NGOs to gain standing.

(b) Preclusion requirement

42. With regard to the proposed preclusion requirement, in paragraph 68 of its findings on communication ACCC/C/2012/76 (Bulgaria) the Committee held:⁸ "The Convention does not make participation in the administrative procedure a precondition for access to justice to challenge the decision taken as a result of that procedure, and introducing such a general requirement for standing would not be in line with the Convention." The proposed requirement in the draft Law on NGOs that the NGO must have participated in the public discussion of fundamental documents or planned activities, or was denied the opportunity to do so, clearly contradicts this requirement and is therefore not in compliance with article 9, paragraph 2 of the Convention.

(c) Time requirement

43. With regard to the proposed time requirement, the Committee states that a requirement as to a certain time of incorporation does not contravene the Convention as long as it is set at a reasonable level. The Committee considers that the requirement in proposed article 16, paragraph 3 of the draft Law on NGOs for an organization to have been active for at least 2 years would not contravene the Convention.

44. Given that neither the draft Law on NGOs nor the amendment to the Administrative Procedure Code have to date entered into force, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 7(a) of decision V/9a. The Committee further notes that the proposed inclusion of a preclusion requirement (see paragraph 41 above), means that the Party concerned would not fulfil the requirements of paragraph 7(a) of decision V/9a were the draft laws to be adopted in their current form.

Paragraph 7(b) of decision V/9a: trainings for the judiciary

45. With regard to paragraph 7(b) of decision V/9a, the Party concerned has not provided any further information in its third progress report concerning the outcomes of the trainings for the judiciary. During the open session at the Committee's fifty-fifth meeting (Geneva, 6-9 December 2016), the Party concerned reported that it had encountered some internal difficulties with obtaining the relevant information and that it would provide it to the Committee after the meeting. The Committee points out that the internal organisation of the Party concerned does not constitute an excuse for non-compliance with the Convention.

⁸ ECE/MP.PP/C.1/2016/3.

The Committee therefore finds that the Party concerned has not yet fulfilled the requirements of paragraph 7(b) of decision V/9a.

IV. Conclusions

46. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraphs 4 (b), 4 (c) (i), 4 (c) (ii), 5, 7(a) and 7(b) of decision V/9a, but welcomes the steps taken by the Party concerned to date in that direction.

47. 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/9a, the Committee invites the Party concerned by 31 January 2017:

(a) With respect to the recommendations set out in paragraphs 4 (b), 5 (a) and 7 (a) of decision V/9a, to accelerate the process of the adoption of the draft Law on NGOs and the amendments to the Administrative Procedure Code, to complete the revision of Decision N1325 and to adopt the amendment to the Law “On environmental impact assessment and expertize”;

(b) Regarding the recommendation set out in paragraph 4 (c) (i) of decision V/9a, to take the necessary legislative and regulatory steps to ensure that all activities listed in paragraph 27 above are subject to a public participation procedure in accordance with article 6, paragraph 1(a) of the Convention;

(c) With respect to the recommendations set out in paragraph 4 (c) (ii) of decision V/9a, to increase the short timeframes for the public to consult project-related documentation and to submit comments within the EIA procedure; to provide the Committee with further information on the definition of “legal entities” under its national law, in particular the Civil Code, and to remedy the omission of environmental NGOs from the scope of the “public concerned”, if this is not already otherwise ensured; and to remove the unwarranted restrictions in paragraph 24 of the “Procedure of holding public notification and discussions” on the public’s right to submit any comments, information, analyses or opinions it considers relevant to the proposed activity.

(d) With respect to paragraph 7(a) of decision V/9a, to amend the draft Law on NGOs and the draft amendment of the Administrative Procedural Code so as to remove the requirement that an organization, in order to bring a judicial challenge with regard to a fundamental document or planned activity, must have participated in the public discussion of that document or activity, or have been denied the opportunity to do so;

(e) To provide the Committee with further information on the outcomes of the trainings carried out in accordance with paragraph 7(b) of decision V/9a – for example, attendance, lecturers, feedback from participants, media reports, articles in the specialized media provoked by the trainings.

(f) To provide the Committee with the texts of all legislation adopted for the purpose of implementing decision V/9a, together with English translations thereof.

48. The Committee reminds the Party concerned that all measures necessary to implement decision V/9a must be completed by, and reported upon by 31 January 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/9a.
