



## Economic and Social Council

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### Economic Commission for Europe

#### Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

##### **Fifth session**

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

##### **Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism**

### **Draft decision V/9c concerning compliance by Belarus with its obligations under the Convention\***

#### **Prepared by the Bureau**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2014/9) and the findings of the Committee on communication ACCC/C/2009/44 (ECE/MP.PP/C.1/2011/6/Add.1) concerning access to information and public participation with respect to the proposed construction of a nuclear power plant, as well as the report of the Committee on compliance by Belarus with its obligations under the Convention (ECE/MP.PP/2014/12), examining the implementation by Belarus of decision IV/9b and the Committee's recommendations in its findings on communication ACCC/C/2009/44;

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\* The present document has been submitted late due to the short interval between the forty-fourth meeting of the Compliance Committee and the deadline for the submission of documents to the fifth session of the Meeting of the Parties, and the need for further consultation on the document before its submission.



*Encouraged* by Belarus' willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2009/44:

(a) In relation to the general legal framework, recalling the Committee's findings on communication ACCC/C/2009/37 (ECE/MP.PP/2011/11/Add.2):

(i) There is considerable uncertainty as to the participatory procedures applicable in case of nuclear activities;

(ii) There is lack of clarity as to the decision which is considered to be the final decision permitting an activity in terms of article 6, paragraph 9;

(iii) Concerning the role of the project developer, it is not in compliance with the Convention that the authority responsible for taking the decision (including the authorities responsible for the *expertiza* conclusions) are provided only with the summary of the comments submitted by the public;

(b) In relation to the nuclear power plant (NPP):

(i) By restricting access to the full version of the environmental impact assessment (EIA) report to the premises of the Directorate of the NPP in Minsk only and by not allowing any copies to be made, the Party concerned failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention;

(ii) By not duly informing the public that, in addition to the publicly available 100-page EIA report, there was a full version of the EIA report (more than 1,000 pages long), the Party concerned failed to comply with article 6, paragraph 2 (d) (vi), of the Convention;

(iii) By providing for public participation only at the stage of the EIA for the NPP, with one hearing on 9 October 2009, and effectively reducing the public's input to only commenting on how the environmental impact could be mitigated, and precluding the public from having any input on the decision on whether the NPP installation should be at the selected site in the first place (since the decision had already been taken), the Party concerned failed to comply with article 6, paragraph 4, of the Convention;

(iv) By not informing the public in due time of the possibility of examining the full EIA report, the Party concerned failed to comply with article 6, paragraph 6, of the Convention;

(v) By limiting the possibility for members of the public to submit comments, the Party concerned failed to comply with article 6, paragraph 7, of the Convention;

2. *Welcomes* the recommendations made by the Committee in its findings on communication ACCC/C/2009/44 (ECE/MP.PP/C.1/2011/6/Add.1, para. 90), made in accordance with paragraph 36 (b) of the annex to decision I/7, and the willingness of the Party concerned to accept them, but regrets the slow progress made in implementing those recommendations since their adoption almost three years ago;

3. *Also welcomes* the serious and active engagement of the Party concerned in the compliance review process, in particular its efforts to follow the recommendations set out in paragraph 4 of decision IV/9b and paragraph 90 of the Committee's findings on ACCC/C/2009/44, as well as its efforts to provide additional information to the Committee upon request and to meet deadlines;

4. *Endorses* the finding of the Compliance Committee that the Party concerned has fulfilled paragraphs 90 (a) and 90 (e) of the Committee's findings on ACCC/C/2009/44,

but has not yet taken the necessary measures to fulfil the recommendations set out in paragraphs 90 (b), (c), and (d) of those findings or paragraphs 4 (a)-(i) of decision IV/9b;

5. *Notes with regret* that the Party concerned therefore remains in non-compliance with the Convention, including through failing to implement the earlier recommendations of the Meeting of the Parties;

6. *Reiterates* its recommendation to the Party concerned to take as a matter of urgency the necessary legislative, regulatory, and administrative measures and establish the practical arrangements to ensure that, in accordance with paragraphs 4 (a)-(i) of decision IV/9b:

(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;

7. *Recommends*, in addition, that the Party concerned to take the necessary legislative, regulatory, and administrative measures and establish the practical arrangements to ensure that, in accordance with paragraph 90 (b), (c), and (d) of the Committee's findings on communication ACCC/C/2009/44:

(a) 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;

(b) 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);

(c) Appropriate practical and other provisions are made for the public to participate during the preparation of plans and programmes relating to the environment;

8. *Requests* the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in the implementation of the above recommendations;

9. *Undertakes* to review the situation at its sixth session.

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