**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

**Task Force on Public Participation in Decision-making**

**Eighth meeting**
Geneva, 8-9 October 2018
Item 2 of the provisional agenda
Ensuring effective public participation

**Information paper N4**

**SELECTED CONSIDERATIONS, FINDINGS AND REPORTS OF THE AARHUS CONVENTION COMPLIANCE COMMITTEE RELATING TO EFFECTIVE PUBLIC PARTICIPATION**

Background paper¹
Prepared by the secretariat

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This background paper is not intended to be exhaustive but to outline a selection of considerations, findings and reports of the Aarhus Convention Compliance Committee² (hereinafter – the Committee) in regard to item 2 of the agenda of the eighth meeting of the Task Force on Public Participation in Decision-making under the Aarhus Convention relating to public participation in decision-making related to (i) meaningful and early public participation; (ii) the availability of all relevant documents to the public; (iii) effective notification and time frames for public participation; and (vi) ensuring that greater account is taken of the comments from the public in the final decisions, and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions.

Participants are invited to consult this document in advance of the meeting in order to gain an overview of issues to be discussed under agenda item 2, the challenges encountered by the Parties in implementation, and to discuss good practices and further needs to be addressed under the auspices of the Task Force on Public Participation in Decision-Making.

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¹ The document was not formally edited.
<table>
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<tr>
<th>Reports / cases</th>
<th>Reports on general issues of compliance (to MoPs) / Consideration and evaluation by the Committee (for cases)</th>
<th>Findings and recommendations of the Committee</th>
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<td><strong>Reports of the Compliance Committee to the Meeting of the Parties</strong></td>
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<td>Report by the Committee to the third session of the Meeting of the Parties (Document ECE/MP.PP/2008/5)</td>
<td>The Committee notes that in some countries the developer is given responsibility for organising public participation, including for making available the relevant information and for collecting the comments. However, it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from the relevant public authority, and that comments should be submitted to the relevant public authority (art. 6, para. 2 (d) (iv) and (v), and art. 6, para. 6). While direct communication between the developer and the public concerned is important and indeed promoted by the Convention (art. 6, para. 5), placing undue reliance on the developer to provide for public participation would not be in line with the Convention. <em>(See paragraph 59 of document ECE/MP.PP/2008/5)</em></td>
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<td><em>Effective notification and time frames for public participation (article 6, paragraphs 2, 3, 5, and 6)</em></td>
<td>The Committee notes that there are considerable differences in time frames provided in national legal frameworks for the public to get acquainted with the documentation and to submit comments. The requirement to provide “reasonable time frames” in article 6, paragraph 3, implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity. Thus a time frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project. In this context, providing a time frame of only 10 working days for a wide range of types of projects, as revealed to be the case in at least one Party’s jurisdiction, for getting acquainted with the documentation, including the EIA report, and for preparing to participate in the decision-making process concerning a major complex project does not meet the requirement of reasonable time frames in article 6, paragraph 3. <em>(See paragraph 60 of document ECE/MP.PP/2008/5)</em></td>
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<td>Effective notification and time frames for public participation (article 6, paragraph 3)</td>
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<td>(a) The Committee appreciates a flexible approach to setting the time frames, aiming to allow the public to access the relevant documentation and prepare itself, and considers that while a minimum of 30 days between the public notice and the start of public consultations is a reasonable time frame, the flexible approach allows to extend this minimum period as may be necessary taking into account, inter alia, the nature, complexity and size of the proposed activity (ACCC/C/2009/37, para. 89);</td>
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<td>(b) The Committee, however, does not consider appropriate a flexible approach, whereby only the maximum time frame for public participation procedures is set, in relation to the time frames for public consultations and submitting the comments. Such an approach, regardless of how long the maximum time frame is, runs the risk that in individual cases time frames might be set which are not reasonable. Thus, such an approach, whereby only maximum time frames for public participation are set, cannot be considered as meeting the requirement of setting reasonable time frames under article 6, paragraph 3, of the Convention (ACCC/C/2009/37, para. 90);</td>
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<td>(c) The Committee considers that the provision of “a period of approximately six weeks for the public to inspect the documents and prepare itself for the public inquiry” in order to “to exercise its rights under article 6, paragraph 6”, and provision of “45 days for public participation and for the public to submit comments information, analyses or opinions relevant to the proposed activity” under article 6, paragraph 7, “in this case meet the requirements of these provisions in connection with article 6, paragraph 3, of the Convention” (ACCC/C/2007/22, para. 44);</td>
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<td>(d) The Committee finds that a period of 20 days for the public to prepare and participate effectively cannot be considered reasonable if such period includes days of general celebration in the country, as in the case where the public notice was made on 22 December, providing a time frame of 20 days for the public to submit comments on a file consisting of more than 1,000 pages and on many plans related to the construction of 23 buildings containing 1,390 apartments (ACCC/C/2008/24, para. 92). (See paragraph 89 of document ECE/MP.PP/2011/11)</td>
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Similarly, in the context of public participation, national legislation sometimes makes the developer/investor responsible for the public participation process. The Committee recognizes that to ensure proper conduct of the public participation procedure the administrative functions related to its organization may be delegated to bodies or persons who are quite often specializing in public participation or mediation, are impartial and do not represent any interests related to the proposed activity being subject to the decision-making. This differs, however, from relying solely on the developer for public participation (see also ACCC/C/2009/37 and previous findings for ACCC/C/2006/16, para. 78). While developers (project proponents) may hire consultants specializing in public participation, neither the developers themselves nor the consultants hired by them can ensure the degree of impartiality necessary to guarantee proper conduct of the public participation procedure in compliance with the Convention. In this context the Committee finds the following features of such systems as being not in compliance with the Convention:

(a) Making the developers (project proponents) rather than the relevant public authorities responsible for organizing public participation, including for making available the relevant information to the public and for collecting comments;
(b) Not establishing mandatory requirements for the public authorities that issue the expertiza conclusion to take into account the comments of the public;
(c) Not establishing appropriate procedures to promptly notify the public about the environmental expertiza conclusions and not establishing appropriate arrangements to facilitate public access to these conclusions. (See paragraph 84 of document ECE/MP.PP/2011/11)

The observations of the Committee regarding the role of the developers should not be read as excluding the involvement of any private entities in the process. The public authorities should maintain control of the involvement of such private entities in the organization, for instance, of public hearings, or imposing fees to cover the costs related to public participation. (See paragraph 85 of document ECE/MP.PP/2011/11)
| Report by the Committee to the fifth session of the Meeting of the Parties  
(Document ECE/MP.PP/2014/9) |
|---|
| **Meaningful and early participation**  
(*article 6, paragraph 4*) |
| Once the decision to permit a proposed activity has been taken without public involvement, providing for such involvement at a following stage could under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide for “early public participation when all options are open”. This is the case even if a full EIA procedure is subsequently to be carried out. It is not in accordance with the Convention to provide for public participation only at the stage of the EIA procedure if the decision to permit the activity has already been taken, as it results in reducing the public’s input to only commenting on how the environmental impact of the project could be mitigated and precludes the public from having any input on the decision on whether the installation should be at the selected site in the first place (ACCC/C/2009/44).  
(See paragraph 80 of document ECE/MP.PP/2011/11) |
| The Committee emphasizes that article 6, paragraph 4, of the Convention requires “early public participation, when all options are open and effective public participation can take place”, both in relation to activities under article 6 of the Convention and in relation to plans and programmes under article 7. If the adoption of local investment plans or other developments were to prejudice public participation in the planning procedure, as envisaged by article 6, paragraph 4, in relation to article 6 or 7 of the Convention, this would engage the responsibilities of the Party concerned under these provisions of the Convention. If this were the case, the Party concerned would also be obliged to ensure all inclusive public participation, i.e., not limited to the involvement of private sector, in this early stage of planning (ACCC/C/2010/45 and ACCC/C/2011/60)  
(See paragraph 81 of document ECE/MP.PP/2011/11) |

| Report by the Committee to the sixth session of the Meeting of the Parties  
(Document ECE/MP.PP/2017/32) |
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<td><strong>Effective notification and time frames for public participation in</strong></td>
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<td>As indicated above, ultimately it is for the competent public authorities of the Party of origin to ensure that the public participation procedure complies with the requirements of article 6 also in situations where the foreign public is involved. In cases that are not subject to a transboundary procedure under an international treaty (e.g., the Espoo Convention), the requirement to inform the public concerned in the affected countries in an adequate, timely and effective manner will be the sole responsibility of the competent authority of the Party of origin. Ensuring that the notification is effective may include, inter alia, publishing</td>
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| **the transboundary context (article 6, paragraph 2)** | announcements in the popular newspapers and by other means customarily used in the affected countries, along with exploring possibilities for using more dynamic forms of communication (e.g., through social media). In cases that are subject to a transboundary procedure under an international treaty, the Party of origin remains responsible under the Aarhus Convention for the adequate, timely and effective notification of the public concerned in the affected country, either by carrying out the notification itself or by making the necessary efforts to ensure that the affected Party has done so effectively. *(See paragraph 33 of document ECE/MP.PP/2017/32)*  
Not providing a clear requirement in its legal framework to ensure that public authorities, when selecting means of notifying the public, are bound to select such means which, bearing in mind the nature of the proposed activity, would ensure that all those who potentially could be concerned, including the public concerned outside its territory, have a reasonable chance to learn about the proposed activity, constitutes non-compliance with article 6, paragraph 2, of the Convention with respect to the legal framework of the Party concerned. *(See paragraph 34 of document ECE/MP.PP/2017/32)* |
| **Report by the Committee to the sixth session of the Meeting of the Parties (Document ECE/MP.PP/2017/32)** | The Committee considers that the discretion as to the range of options to be addressed at consecutive stages of the decision-making is closely related to the opportunities for public participation on those options. A multi-stage decision-making procedure in which certain options are considered at a stage without public participation and where no subsequent stage provides an “opportunity for the public to also participate on the options decided at that earlier tier” would be incompatible with the Convention. Similarly, a multi-stage decision-making procedure that provides for public participation on certain options at an early stage but leaves other options to be considered at a later stage without public participation would likewise not be compatible with the Convention. *(See paragraph 40 of document ECE/MP.PP/2017/32)*  
So long as the public concerned, including the public concerned in other countries, will be provided with the opportunity to participate effectively in the stage of the decision-making at which the exact designs or technical |
specifications (including the risk factor and potential environmental impacts of each) are under consideration, the use of an “envelope” or “black box” approach at the environmental impact assessment stage does not, in itself, constitute non-compliance with the requirement in article 6, paragraph 4, of the Convention to provide for early public participation when all options are open. The Committee stresses, however, that if the public concerned was not provided with the opportunity to participate effectively in that subsequent stage, the Party concerned would be in non-compliance with article 6, paragraph 4, of the Convention. *(See paragraph 41 of document ECE/MP.PP/2017/32)*

The incorporation of article 6, paragraph 4, into the text of article 7 means that Parties must provide for early public participation on plans and programmes relating to the environment when all options (including the so-called “zero option”) are open and when due account can be taken of the outcome of the public participation. In the light of the above, the Committee considers that it would be too late to provide public participation only at the stage of permitting the specific activity if by then all options, and in particular the “zero option” not to proceed at all, were no longer open. *(See paragraph 54 of document ECE/MP.PP/2017/32)*

**Report by the Committee to the sixth session of the Meeting of the Parties (Document ECE/MP.PP/2017/32)**

**Availability of documents (article 6, paragraph 6)**

While the competent authority may have certain discretion as to the range of options to be addressed at each stage of a multi-stage decision-making procedure to permit an activity subject to article 6, at each stage at which public participation is required all information relevant to the decision-making at that particular stage that is available to the public authorities should be made available to the public concerned (excepting information exempted from public disclosure in accordance with article 4, paragraphs 3 and 4). Partial disclosure – article 6, paragraph 6 in conjunction with article 4, paragraphs 4 and 6. *(See paragraph 41 of document ECE/MP.PP/2017/32)*

With respect to providing access to the information relevant to the decision-making under article 6, paragraph 6, the Committee stresses that an approach where whole categories of environmental information are unconditionally
declared as confidential and for which no release is possible is incompatible with article 6, paragraph 6, in conjunction with article 4, paragraphs 4 and 6, of the Convention. *(See paragraph 42 of document ECE/MP.PP/2017/32)*

| Report by the Committee to the sixth session of the Meeting of the Parties ECE/MP.PP/2017/32 | The Convention leaves the Parties some discretion in designing “appropriate procedures” for informing the public under article 6, paragraph 9, about the decision once it has been taken. However, these procedures must ensure that information about the decision taken is communicated to the public in an effective way. The Committee considers that, as a good practice, the methods used to notify the public concerned under article 6, paragraph 2, should be utilized as a minimum for informing the public under article 6, paragraph 9, of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned. In the view of the Committee, informing the public about the decision taken exclusively by means of the Internet does not meet the requirement of article 6, paragraph 9, of the Convention. The Committee commends a practice of making the full text of the decision available electronically on the website of the competent authority (and also, but not only, on the website of the developer). However, relying only on publishing the decision electronically may exclude members of the public who do not use the Internet regularly or do not have easy access to it from the possibility to be effectively informed about the decision that has been taken. Moreover, the mere fact that the public may be able to access a decision subject to article 6 through a publicly accessible electronic database does not satisfy the requirement of article 6, paragraph 9, if the public has not been promptly and effectively informed of that fact. *(See paragraph 49 of document ECE/MP.PP/2017/32)* |

| Relevant considerations, findings and recommendations of the Compliance Committee | The Committee notes that the failure to notify members of the public concerned in accordance with article 2, paragraph 5, may also have effectively denied them the possibility to avail of the rights provided for under other provisions of article 6. If a key group of members of the public most directly affected by the activity was not informed of the process and not invited to participate in it, it follows that Found, among other things, that: …………… the Government of the Party concerned did not comply fully with article 6, paragraph 1 (a), and |
### Effective notification and time frames for public participation

#### Meaningful and early participation (article 6, paragraphs 2, 3, 4, 7 and 8)

They did not receive notice in “sufficient time” as required under article 6, paragraph 3, and that in practice they did not have the opportunities for early and effective participation that should have been available in accordance with paragraph 4 or to provide input in accordance with paragraph 7. Similarly, if no public notice of the planned hearings or other participation opportunities was given, and if affected local residents were not invited to the hearing, whatever views they had to offer could not have been taken into account as required by article 6, paragraph 8. (See paragraph 24 of document ECE/MP.PP/C.1/2005/2/Add.2)

Aside from any consequential problems arising from a failure to implement paragraph 2, some other provisions of article 6 may have been breached even with respect to those members of the public that did receive notification of the hearings in accordance with the requirements of paragraph 2. For example, the fact that construction started before the July hearings were held is clearly not in conformity with the requirement under article 6, paragraphs 3 and 4, for “reasonable time frames” and “early public participation, when all options are open.” Furthermore, it appears that the responsible authorities treated the outcome of the hearings as if it were the outcome of public participation. This would have been more acceptable if the hearings had genuinely involved all key groupings within the public concerned. As it was, the views of those who were not invited to participate in the hearings, which apparently were expressed in other ways and were well known to the authorities, do not appear to have been taken into account. (See paragraph 25 of document ECE/MP.PP/C.1/2005/2/Add.2)

#### Annex I, paragraph 20, of the Convention, and, in connection with this, article 6, paragraphs 2, 3, 4, 7 and 8. (See paragraph 33 of document ECE/MP.PP/C.1/2005/2/Add.2)

### ACCC/S/2004/01 and ACCC/C/2004/03 (Document ECE/MP.PP/C.1/2005/2/Add.3)

#### Effective notification and time frames for public participation in the transboundary context (article 6, paragraph 2)

With regard to the facts included in paragraph 6 above, there is, in the opinion of the Committee, sufficient evidence that there were members of the public, both in the Party made the submission and in the Party concerned, interested in or concerned about the project that had to be notified in accordance with article 6, paragraph 2, of the Convention. (See paragraph 27 of document ECE/MP.PP/C.1/2005/2/Add.3)

Considering the nature of the project and the interest it has generated, notification in the nation-wide media as well as individual notification of organizations that explicitly expressed their interest in the matter would have been called for. The

See above.
Party, therefore, failed to provide for proper notification and participation in the
meaning of article 6 of civil society and specifically the organizations, whether
foreign or international, that indicated their interest in the procedure. With regard
to the NGOs and individuals in the Party made the submission, such notification
and participation could have been undertaken by Party concerned via the Party
made the submission authorities, as there is sufficient evidence to suggest that the
Party concerned Government was well aware of the concerns expressed to
authorities of the Party made the submission by citizens and organizations in the
Party made the submission. The Committee, however, notes that, generally
speaking, there are no provisions or guidance in or under article 6, paragraph 2,
on how to involve the public in another country in relevant decision making, and
that such guidance, seems to be needed, in particular, in cases where there is no
requirement to conduct a transboundary EIA and the matter is therefore outside
the scope of the Espoo Convention. *(See paragraph 28 of document ECE/MP.PP/C.1/2005/2/Add.3)*

The timeline, as reflected, failed to allow the public to study the information on
the project and prepare and submit its comments. It also did not allow the public
officials responsible for making the decision sufficient time to take any comments
into account in a meaningful way, as required under article 6, paragraph 8. *(See
paragraph 29 of document ECE/MP.PP/C.1/2005/2/Add.3)*

*ACCC/S/2004/01 and ACCC/C/2004/03 (Document ECE/MP.PP/C.1/2005/2/Add.3)*

*The availability of all relevant documents to the public (article 6, paragraph 6)*

Moreover, article 6, paragraph 6, of the Convention is aimed at providing the
public concerned with an opportunity to examine relevant details to ensure that
public participation is informed and therefore more effective. It is certainly not
limited to publication of an environmental impact statement. But had some of the
requested information fallen outside the scope of article 6, paragraph 6, of the
Convention, it would be still covered by the provisions of article 4, regulating
access to information upon request. *(See paragraph 32 of document ECE/MP.PP/C.1/2005/2/Add.3)*
| ACCC/S/2004/01 and ACCC/C/2004/03 (Document ECE/MP/PP/C.1/2005/2/Add.3) | The Committee finds that by refusing to provide the text of the decision along with the reasons and considerations on which it is based and not indicating how the communicant could have access to it, the Party concerned did not comply with its obligations under the second part of article 6, paragraph 9, to make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based. (See paragraph 35 of document ECE/MP/PP/C.1/2005/2/Add.3) | See above. |
| ACCC/C/2004/08 (Document ECE/MP/PP/C.1/2006/2/Add.1) | In the Committee’s view, plans related to land-use planning fall under article 7 of the Convention and are subject to the public participation requirements contained therein, including, inter alia, the application of the provisions in paragraphs 3, 4 and 8 of article 6. The Committee therefore finds that the failure to ensure public participation in the preparation of plans such as those referred to in paragraph 21 above constitutes non-compliance with article 7 of the Convention. (See paragraph 25 of document ECE/MP/PP/C.1/2006/2/Add.1) | Found, among other things, that: ………….by failing to ensure effective public participation in decision-making on specific activities, the Government of the Party concerned did not comply fully with article 6, paragraph 1 (a); with annex I, paragraph 20, of the Convention; or, in connection with this, with article 6, paragraphs 2–5 and 7–9. It considers that the extent of non-compliance would be somewhat mitigated if public participation were to be provided for in further permitting processes for the specific activities in question, but it notes that the requirement under article 6, paragraph 4, to ensure that early public participation is provided for… |

**ACCC/S/2004/01 and ACCC/C/2004/03 (Document ECE/MP/PP/C.1/2005/2/Add.3)**

*Ensuring that greater account is taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions (article 6, paragraph 9)*

The Committee finds that by refusing to provide the text of the decision along with the reasons and considerations on which it is based and not indicating how the communicant could have access to it, the Party concerned did not comply with its obligations under the second part of article 6, paragraph 9, to make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based. (See paragraph 35 of document ECE/MP/PP/C.1/2005/2/Add.3)

**ACCC/C/2004/08 (Document ECE/MP/PP/C.1/2006/2/Add.1)**

*Meaningful and early participation*

*Ensuring that greater account is taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions (articles 6 and 7)*

In the Committee’s view, plans related to land-use planning fall under article 7 of the Convention and are subject to the public participation requirements contained therein, including, inter alia, the application of the provisions in paragraphs 3, 4 and 8 of article 6. The Committee therefore finds that the failure to ensure public participation in the preparation of plans such as those referred to in paragraph 21 above constitutes non-compliance with article 7 of the Convention. (See paragraph 25 of document ECE/MP/PP/C.1/2006/2/Add.1)

The extent to which the provisions of article 6 apply in this case depends inter alia on the extent to which the decrees (or some of them) can be considered “decisions on specific activities”, that is, decisions that effectively pave the way for specific activities to take place. While the decrees are not typical of article 6–type decisions on the permitting of specific activities, some elements of them are (as is mentioned above) more specific than a typical decision on land use designation would normally be. The Convention does not establish a precise boundary between article 6–type decisions and article 7–type decisions. Notwithstanding that, the fact that some of the decrees award leases to individual named enterprises to undertake quite specific activities leads the Committee to believe that, in addition to containing article 7–type decisions, some of the decrees do contain decisions on specific activities.
Another question that arises is whether a further, more detailed permitting process, with public participation, is envisaged for the various specific activities. If no further permitting process is envisaged, then the question of compliance with article 6 arises more starkly. (See paragraph 25 of document ECE/MP/PP/C.1/2006/2/Add.1)

The Committee also finds that by failing to provide for public participation in decision-making processes for the designation of land use, the Government of the party concerned was not in compliance with article 7 of the Convention. (See paragraph 43 of document ECE/MP/PP/C.1/2006/2/Add.1)

Recommended, among other things, that the Party concerned:

(b) ensure practical application of public participation procedures at all levels of decision-making in accordance with article 7 of the Convention and relevant domestic legislation; …
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<td><strong>Meaningful and early participation</strong></td>
<td>The Committee notes that the public participation requirements for decision-making on an activity covered by article 7 are a subset of the public participation requirements for decision-making on an activity covered by article 6. Regardless of whether the decisions are considered to fall under article 6 or article 7, the requirements of paragraphs 3, 4 and 8 of article 6 apply. <em>(See paragraph 70 of document ECE/MP.PP/C.1/2007/4/Add.1)</em></td>
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<td><strong>Effective notification and time frames for Public Participation</strong></td>
<td>A question with regard to the stage of a decision-making process at which public consultations should take place was raised in the commenting on the draft of these findings and recommendations. In this regard, the Committee wishes to make clear that once a decision to permit a proposed activity in a certain location has already been taken without public involvement, providing for such involvement in the other decision-making stages that will follow can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide “early public participation when all options are open”. This is the case even if a full environmental impact assessment is going to be carried out. Providing for public participation only at that stage would effectively reduce the public’s input to only commenting on how the environmental impact of the installation could be mitigated, but precluding the public from having any input on the decision on …</td>
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<td><strong>Ensuring that greater account is taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions</strong></td>
<td><em>(article 7 in conjunction with article 6, paragraphs 3, 4 and 8)</em></td>
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*(d) ensure that appropriate forms of decisions are used in decision-making on matters subject to articles 6 and 7, so as to ensure that the public can effectively exercise their rights under the Convention; (e) undertake appropriate practical measures to ensure effective access to justice, including the availability of adequate and effective remedies to challenge the legality of decisions on matters regulated by articles 6 and 7 of the Convention; *(See paragraph 45 of document ECE/MP.PP/2008/5/Add.6)* |

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**Found, among other things, that the Party concerned has failed to implement requirements of article 6, paragraphs 3, 4 and 8 in the relevant decision-making process and thus was not in compliance with article 7. *(See paragraph 92 of document ECE/MP.PP/2008/5/Add.6)*

**Recommended, among other things, to the Party concerned take the necessary legislative, regulatory, administrative and other measures to ensure that: …**

**(b) Practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment are in**
whether the installation should be there in the first place, as that decision would have already been taken. The Committee has already expressed this view in some of its earlier findings and recommendations (see ECE/MP.PP/C.1/2005/2/Add.4, para.11 and ECE/MP.PP/C.1/2006/2/Add.1, para.29). (See paragraph 79 of document ECE/MP.PP/C.1/2007/4/Add.1)
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<th>AC/C/2006/16 (Document ECE/MP.PP/2008/5/Add.6)</th>
<th>Effective notification and time frames for public participation (article 6, paragraph 2 and 3)</th>
<th>(96) of document ECE/MP.PP/2008/5/Add.6</th>
<th>paragraph 96 of document ECE/MP.PP/2008/5/Add.6</th>
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The requirement for the public to be informed in an “effective manner” means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned have a reasonable chance to learn about proposed activities and their possibilities to participate. Therefore, if the chosen way of informing the public about possibilities to participate in the EIA procedure is via publishing information in local press, much more effective would be publishing a notification in a popular daily local newspaper rather than in a weekly official journal, and if all local newspapers are issued only on a weekly basis, the requirement of being “effective” established by the Convention would be met by choosing rather the one with the circulation of 1,500 copies rather than the one with a circulation of 500 copies. *(See paragraph 67 of document ECE/MP.PP/2008/5/Add.6)*

The Committee thus concludes that by not properly notifying the public about the nature of possible decisions, and by failing to inform the public in an effective manner, the Party concerned has failed to comply with article 6, paragraph 2 of the Convention. *(See paragraph 68 of document ECE/MP.PP/2008/5/Add.6)*

The requirement to provide ‘reasonable time frames’ implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity. A time frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project. *(See paragraph 69 of document ECE/MP.PP/2008/5/Add.6)*

The time frame of only 10 working days, set out in the EIA Law of the Party concerned, for getting acquainted with the documentation, including EIA report, and for preparing to participate in the decision-making process concerning a major landfill, does not meet the requirement of reasonable time frames in article 6, paragraph 3. *(See paragraph 70 of document ECE/MP.PP/2008/5/Add.6)*

Found, among other things, that ............. the Party concerned failed to comply with the requirements of article 6, paragraphs 2, and 3, of the Convention. *(See paragraph 89 of document ECE/MP.PP/2008/5/Add.6)*

Moreover, the Committee finds the following general features of the legal framework of the Party concerned as not being in compliance with article 6 of the Convention:

(a) Lack of clear requirement for a public to be informed in an adequate, timely and effective manner (article 6, para. 2);
(b) Setting a fixed 10 working-day period for inspecting the documentation and for submitting the comments (article 6, para. 3); *(See paragraph 90 of document ECE/MP.PP/2008/5/Add.6)*

Recommended, among other things, that the Party concerned to take the necessary legislative, regulatory, administrative and other measures to ensure that:
(i) 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;
(ii) There are reasonable time frames for different phases of public participation taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;

(See paragraph 91 of document ECE/MP.PP/2008/5/Add.6)

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<tr>
<th>ACCC/C/2006/16 (Document ECE/MP.PP/2008/5/Add.6)</th>
<th>The availability of all relevant documents to the public (article 6, paragraph 6)</th>
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| However, the above reliance on the developer in providing for public participation in fact raises doubts as to whether such an arrangement is fully in line with the Convention. Indeed, it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from public authority, and that comments should be submitted to the relevant public authority (article 6, paragraph 2 (d) (iv) and (v), and article 6, paragraph 6). Accordingly, reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention. (See paragraph 78 of document ECE/MP.PP/2008/5/Add.6) | Found among other things that: 

......... the following general features of the legal framework of the Party concerned as not being in compliance with article 6 of the Convention: 

......... Making developers (project proponents) rather than relevant public authorities responsible for organizing public participation, including for making available the relevant information and for collecting the comments (article 6,
paragraph 2 (d) (iv) and (v), and article 6, para. 6).
(See paragraph 78 of document ECE/MP.PP/2008/5/Add.6)

Recommended, among other thing, to the Government of the Party concerned to take the necessary legislative, regulatory, administrative and other measures to ensure that:

(iii) There is a clear responsibility 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;
(iv) There is a clear possibility that any comments can be submitted by any member of the public, even if the comments are not “motivated”; There is a clear correlation between the time period(s) for informing the public about the decision and making available the text of the decision together with the reasons and considerations on which it is based with the time frame for initiating review procedures under article 9, paragraph 2, of the Convention;
(v) For each decision-making procedure covered by article 6 of the Convention a public authority from
<table>
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<tr>
<th>ACCC/C/2008/24  (Document ECE/MP.PP/C.1/2009/8/Add.1)</th>
<th>Effective notification and time frames for public participation (article 6, paragraph 3)</th>
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<td>On the basis of the above, the Committee finds that a period of 20 days for the public to prepare and participate effectively cannot be considered reasonable, in particular if such period includes days of general celebration in the country. Moreover, the Committee notes that the initial proposal was made on 12 December 2005, and that the time span between this initial proposal and the public notice on 22 December 2005 was 10 days, indicating that the authority was in an extraordinary rush to initiate the commenting period; this can indeed give reason to suspect that making the notice so fast was not a routine procedure, as also evidenced by other cases reported in the current communication. Therefore, the Committee finds that the Party concerned was in non-compliance with article 6, paragraph 3. (See paragraph 92 of document ECE/MP.PP/C.1/2009/8/Add.1)</td>
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| Found, among other things, that: |
|………as a result of a public authority setting a time frame of 20 days during the holiday season for the public to examine the documentation and to submit comments in relation to the Urbanization Project, the Party concerned failed to comply with the requirements of article 6, paragraph 3, of the Convention, referred to in article 7 (See paragraph 116 of document ECE/MP.PP/C.1/2009/8/Add.1) |

| Recommended, among other things, to the Party concerned: |
| (a) To take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:  |
| …….. |
| (iii) Clear requirements be established for the public to be informed of decision making processes in an adequate, timely and effective manner, including informing public |
authorities that entering into agreements relevant to the Convention that would foreclose options without providing for public participation may be in conflict with article 6 of the Convention;

……

(v) Public participation procedures include reasonable time frames for the different phases allowing for sufficient time for the public to prepare and participate effectively, taking into account that holiday seasons as part of such time frames impede effective public participation; due to the complexity and the need to consult with experts, land use legislation be reviewed to expand the existing time frame of 20 days in the light of the findings and conclusions of the Committee;

(See paragraph 119 of document ECE/MP.PP/C.1/2009/8/Add.1)

| ACCC/C/2009/36 (Document ECE/MP.PP/C.1/2010/4/Add.2) | The Committee recognizes that article 6, paragraph 6, refers to giving “access for examination” of the information that is relevant to decision-making, but the Committee notes that article 4, paragraph 1, requires that “copies” of environmental information be provided. In the Committee’s view “copies” does, in fact, require that the whole documentation be close to the place of residence of the requester or entirely in electronic form, if the requester lives in another town or city. For these reasons, the Committee finds that the Party concerned failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention. (See paragraph 61 of document ECE/MP.PP/C.1/2010/4/Add.2) | Found, among other things, that: 

……….. public authorities set inhibitive conditions for public participation, and as a result the Party concerned failed to comply with article 6, paragraphs 3 and 6, of the Convention. (See paragraph 72 of document ECE/MP.PP/C.1/2010/4/Add.2) |
The Committee notes that public participation in decision-making for a specific project is inhibited when the conditions described by the communicant in the case of the oil refinery project are set by the public authorities. The Committee finds that, by requiring the public to relocate 30 or 200 kilometres, by allowing access to thousands of pages of documentation from only two computers without permitting copies to be made on CDROM or DVD, and by, in these circumstances, setting a time frame of one month for the public to examine all this documentation on the spot, the authorities of the Party concerned failed to provide for effective public participation and thus to comply with article 6, paragraphs 6 and 3, respectively, of the Convention.

(See paragraph 61 of document ECE/MP.PP/C.1/2011/4/Add.2)

Recommended, among other things, to the Party concerned:
(a) To take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that the recommendations of the Committee in paragraph 119 (a) (ii) and (iii) of its findings for communication ACCC/C/2008/24 become effective;
(b) To ensure the implementation of recommendations of the Committee in paragraph 119 (a) (iv) of its findings for communication ACCC/C/2008/24 (See paragraph 75 of document ECE/MP.PP/C.1/2011/4/Add.2)

ACCC/C2009/37 (Document ECE/MP.PP/2011/11/Add.2)

Effective notification and time frames for Public Participation (article 6, paragraph 2)  

...In the OVOS/expertiza system it is usually the responsibility of the developer to organize public participation at the OVOS stage of the procedure, while at the expertiza stage the possibility for public participation is usually provided only through the public environmental expertiza. The organization of a public environmental expertiza is not a mandatory part of the decision-making, and therefore it cannot be considered as a primary tool to ensure implementation with the provisions of article 6 of the Convention. It may, however, play a role as an additional measure to complement the public participation procedure required as a mandatory part of the decision-making. In the OVOS/expertiza system, the mandatory public participation procedure is required at the OVOS stage and the developer is usually responsible for organizing the procedure, including for notifying the public and making available the relevant information and for collecting the comments (see also paras. 28 and 29 above). The Committee has already noted (ACC/C/2006/16, para. 78) that such a reliance on the developer in providing for public participation raises doubts as to whether

Found, among other things, that:

…………

(b) By not providing for adequate, timely and effective public notice, according to the criteria of the Convention, it failed to comply with article 6, paragraph 2 (para. 86 above) (See paragraph 103 of document ECE/MP.PP/2011/11/Add.2)

Moreover, the Committee finds that the following general features of the legal framework of the Party
such an arrangement is fully in line with the Convention because it is implicit in certain provisions of article 6 of the Convention that the relevant information should be available directly from a public authority, and that comments should be submitted to the relevant public authority (art. 6, paras. 2 (d) (iv)–(v) and 6). The above observations do not mean, however, that the responsibility for performing some or even all the above functions related to public participation should always be placed on the authority competent to issue a decision whether to permit a proposed activity. In fact, in many countries the above functions are being delegated to various bodies or even private persons. Such bodies or persons, performing public administrative functions in relation to public participation in environmental decision-making, should be treated, depending on the particular arrangements adopted in the national law, as falling under the definition of a “public authority” in the meaning of article 2, paragraph 2 (b) or (c).

To ensure proper conduct of the public participation procedure, the administrative functions related to its organization are usually delegated to bodies or persons which are quite often specializing in public participation or mediation, are impartial and do not represent any interests related to the proposed activity being subject to the decision-making. While the developers (project proponents) may hire consultants specializing in public participation, neither the developers themselves nor the consultants hired by them can ensure the degree of impartiality necessary to guarantee proper conduct of the public participation procedure. Therefore, the Committee in this case finds that, similarly to what it has already observed in the past “reliance solely on the developer for providing for public participation is not in line with these provisions of the Convention” (ACCC/C/2006/16, para. 78).

These observations regarding the role of the developers (project proponents) shall not be read as excluding their involvement, under the control of the public authorities, into the organization of the public participation procedure (for example conducting public hearings) or imposing on them special fees to cover the costs related to public participation. Furthermore, any arrangements requiring or encouraging them to enter into public discussions before applying for a permit are well in line with article 6, paragraph 5, provided the role of such arrangements is supplementary to the mandatory public participation procedures.

(See paragraphs 76-81 of document ECE/MP.PP/2011/11/Add.2)
With regard to the legislation and the general practice followed for public notification in the Party concerned, there is a legal obligation for the developer to notify the public about the conduct of public hearings, but the law fails to set the details to ensure that the public is informed in an adequate, timely and effective manner. The practice of publishing the OVOS Statement (in abridged or even full versions) cannot substitute for it. Also, in the view of the Committee, journalists’ articles commenting on a project in the press or on television programmes (as referred to by the Party concerned), in general, do not per se constitute a public notice for the purpose of public participation, as required under article 6, paragraph 2, of the Convention. For this reason, the Committee finds that the Party concerned failed in the case of the HPP project to comply with article 6, paragraph 2; and also that there is a general failure of the system of the Party concerned to comply with these provisions of the Convention. (See paragraph 86 of document ECE/MP.PP/2011/11/Add.2)

In this context, the Committee appreciates a flexible approach to setting the time frames aiming to allow the public to access the relevant documentation and to prepare itself, and considers that while a minimum of 30 days between the public notice and the start of public consultations is a reasonable time frame, the flexible approach allows to extend this minimum period as may be necessary taking into account, inter alia, the nature, complexity and size of the proposed activity.

The Committee, however, does not consider appropriate a flexible approach, whereby only the maximum time frame for public participation procedures is set, as this is the case in Belarus in relation to the time frames for public consultations and submitting of comments. Such an approach, regardless of how long the maximum time frame is, runs the risk that in individual cases time frames might be set which are not reasonable. Thus, such an approach, whereby only maximum time frames for public participation are set, cannot be considered as meeting the requirement of setting reasonable time frames under article 6, paragraph 3, of the Convention. (See paragraph 89-90 of document ECE/MP.PP/2011/11/Add.2)
It follows from article 6, paragraph 4, of the Convention that a core criterion for public participation in decisions on specific activities is that it is provided at an early stage “when all options are open and effective public participation can take place”. … The question is thus whether the opportunity for public participation in the EIA procedure after the construction permit was issued, but before the operation was permitted, was sufficient to meet the requirements of the Convention.

Each Party to the Convention has certain discretion to design the decision-making procedures covered by article 6 of the Convention. Also, in tiered decision-making procedures, each Party can decide which range of options is to be discussed at each stage of the decision-making. Yet, within each and every such procedure where public participation is required, it should be provided early in the procedure so as to ensure that indeed all options are open and effective participation can take place (ACCC/C/2006/16 ECE/MP.PP/2008/5/Add.6, paras. 57 and 71).

Providing for public participation after the construction permit can only be compatible with the requirements of the Convention if the construction permit does not preclude that all issues decided in the construction permit can be questioned in subsequent or related decision-making so as to ensure that all options remain open. Yet, a mere formal possibility, de jure, to turn down an application at the stage of the operation permit, when the installation is constructed, is not sufficient to meet the criteria of the Convention if, de facto, that would never or hardly ever happen (ACCC/C/2007/22 ECE/MP.PP/2009/4/Add.1, para. 39).

The risk is obvious that providing for public participation only after the construction permit precludes early and effective public participation when all options are open. Rather, it is likely that once an installation has been constructed in accordance with a construction permit, political and commercial pressures, as well as notions of legal certainty, effectively foreclose discussions concerning the construction itself, as well as options with regard to technology and infrastructure (ACCC/C/2006/16 ECE/MP.PP/2008/5/Add.6, paras. 74–75).

Found that:

…….. by failing to provide for early and effective public participation in the decision-making leading to the Nuclear Power Plant, the Party concerned failed to comply with article 6, paragraphs 4 and 10, of the Convention. (See paragraph 69 of ECE/MP.PP/2011/11/Add.3)

Recommended, among other things, to the Party concerned to review its legal framework so as to ensure that early and effective public participation is provided for in decision-making when old permits are reconsidered or updated or the activities are changed or extended compared to previous conditions, in accordance with the Convention. (See paragraph 70 of document ECE/MP.PP/2011/11/Add.3)
In the present case, the Committee is convinced that, once the construction of the Nuclear Power Plant Units is carried out, many of the conditions set in the construction permit are such that they can no longer be challenged by the public. Although the permit to commence the operation and the permit to continue the operation are to be given before the activity starts, there is a considerable risk that once the installation is constructed it is no longer a politically realistic option for the authority to block the operation on the basis of issues relating to the construction, to technology or to infrastructure. Moreover, it is not sufficient to provide for public participation only at the stage of the EIA procedure unless it is also part of the permitting procedure. For these reasons, the Party concerned failed to comply with article 6, paragraph 4, of the Convention in the decision-making for the Nuclear Power Plant Units. (See paragraphs 60-64 of document ECE/MP.PP/2011/11/Add.3)

| **ACCC/C/2009/43**  
| **(Document ECE/MP.PP/2011/11/Add.1)**  
| **Effective notification and time frames for public participation (article 6, paragraph 2)**  
| **With respect to plans and programmes, article 7 of the Convention establishes a set of obligations for Parties to meet on public participation during the preparation of plans and programmes “relating to” the environment.**  
| **The Concept for the exploitation of the deposits may be considered a regional development strategy and sectoral planning which falls under … article 7 of the Convention, as a plan relating to the environment; or it may be the first phase (expressed as an “intention”) for a planned activity under … article 6 of the Convention.…. However, it is important to identify what the legal effects of an act are — whether an act constitutes a decision under article 7 or a first phase/intention for a planned activity under article 6, because only some of the public participation provisions of article 6 apply to decisions under article 7. (See paragraphs 51-52 of document ECE/MP.PP/2011/11/Add.1)**  
| **The Committee considers that one week to examine the EIA documentation relating to a mining project (first hearing) is not early notice in the meaning of article 6, paragraph 2, because it does not allow enough time to the public concerned to get acquainted with voluminous documentation of a technical nature and to participate in an effective manner. In general, the two-week public notice**  
| **Found that:**  
| **While acknowledging the continuous efforts of the Party concerned in implementing decision III6/b, the Committee finds that there are still shortcomings in the law of the Party concerned and practice and, due to these shortcomings in the present case, the Party concerned failed to comply with article 3, paragraph 1, of the Convention (para. 56); and article 6, paragraphs 2, 4 and 9, of the Convention. (See paragraph 83 of document ECE/MP.PP/2011/11/Add.3)**
in the second hearing, after the expertise opinion, could be considered early public notice, mainly because a lot of the project-related documentation for the environmental decision-making is the same or is based on the documentation necessary to be consulted for the first meeting. However, through their comments to the draft findings, the Party concerned and the communicant informed the Committee that the project material under consideration for the second meeting was more voluminous than for the first hearing. The Party concerned added that the public did not raise the issue that the time was not sufficient to examine the project-related material. The Committee took note of the information submitted at a very late stage of the process for its attention, but observes that the fact that no objection was made in respect of the time to examine project-related documentation is not material as to whether the requirements on early and effective public participation have been met.

With regard to the timing of the public notice and in relation also to the finding of non-compliance with article 3, paragraph 1, (see para. 56 above), the Committee finds that there is a systemic failure in the EIA law of the Party concerned, as it does not provide for any indication on when the public notice for the EIA documentation hearing should be given, and thus the implementation of its article 8 may be arbitrary.

For these reasons, the Committee finds that the Party concerned failed to inform the public early in the environmental decision-making process and in a timely manner, as required by article 6, paragraph 2, of the Convention. (See paragraph 67-69 of document ECE/MP.PP/2011/11/Add.1)
### Meaningful and early participation (article 6, paragraph 4)

In this case, a special mining licence was issued for the developer to exploit deposits in 2004, and the developer organized public participation in the framework of the EIA procedure in 2006. Providing for public participation only after the licence has been issued reduced the public’s input to only commenting on how the environmental impact of the mining activity could be mitigated, but precluded the public from having input on the decision on whether the mining activity should be pursued in the first place, as that decision had already been taken. Once a decision to permit a proposed activity has been taken without public involvement, providing for such involvement in the other subsequent decision-making stages can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide “early public participation when all options are open”. This is the case even if a full EIA is going to be carried out (ACCC/C/2005/12, para. 79). Therefore, the Committee finds that the Party concerned failed to provide for early public participation as required in article 6, paragraph 4, of the Convention. (See paragraph 76 of document ECE/MP.PP/2011/11/Add.2)

See above.

Recommends, among other things, to the Party concerned to take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

- (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 (See paragraph 84 of document ECE/MP.PP/2011/11/Add.3)
ACCC/C/2009/43  
(Document ECE/MP.PP/2011/11/Add.2)  
**Ensuring that greater account is taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions (article 6, paragraph 9)**

According to the EIA Law (art. 11.8), the environmental expertise conclusions should be published and interested parties should be notified. There is no factual evidence that the positive conclusion of 3 April 2006 concerning the EIA documentation or the one of 7 November 2006 concerning the project working document have been published or that the public concerned has been notified accordingly, as required by the law of the Party concerned and by the Convention. The Ministry’s website includes notifications relating to the taking place of public hearings, but no information on decisions taken by the Ministry. In the view of the Committee, the Party concerned failed to comply with article 6, paragraph 9, of the Convention. *(See paragraph 78 of document ECE/MP.PP/2011/11/Add.2)*

See above.

Recommends, among other things, to the Party concerned to take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

…..

(iv) A system of prompt notification of the public concerned on final conclusions of environmental expertise is arranged, e.g., through the website of the Ministry of Nature Protection;  
 *(See paragraph 84 of document ECE/MP.PP/2011/11/Add.3)*

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ACCC/C/2009/44  
(Document ECE/MP.PP/C.1/2011/6/Add.1)  
**Effective notification and time frames for Public Participation (article 6, paragraph 2)**

The Committee notes that the public notice was published on the Internet and also in the national and local printed media. As for the use of Internet, according to statistic data, as of June 2010 there was a 46.2 per cent Internet penetration in the country, considered to be the highest level of penetration in the Commonwealth of Independent States, after the Russian Federation. In addition, Internet access is widespread in the urban areas, where 75 per cent (2010) of the total population is concentrated. The fact that public notice was published in the local press and the project-related documentation could be accessed locally compensates for the fact that Internet access is not widespread in rural areas. For these reasons, the Committee is not convinced that the Party concerned failed to comply with article 6, paragraph 2.

The Committee notes, however, that the public was not duly informed that in addition to the preliminary EIA Report (about 100 pages long), which was made available to the public, there was also the full version of the EIA Report (more than 1,000 pages long), it failed to comply with article 6, paragraph 2 (d) (vi), of the Convention (para. 74).
than 1,000 pages long). In this respect, the Committee finds that the Party concerned failed to comply with article 6, paragraph 2 (d) (vi), of the Convention. (See paragraphs 73-74 of document ECE/MP.PP/C.1/2011/6/Add.1) (See paragraph 88 of document ECE/MP.PP/C.1/2011/6/Add.1)

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<td><strong>ACCC/C/2009/44</strong></td>
<td>**As already noted in the past (findings on communication ACCC/C/2006/16, ECE/MP.PP/2008/5/Add.6, para. 71, and findings on communication ACCC/C/2006/17, ECE/MP.PP/2008/5/Add.10, para. 51), the requirement for “early public participation when all options are open” should be seen first of all within a concept of tiered decision-making, whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, taking into account the particular needs of a given country and the subject matter of the decision-making, each Party has a certain degree of discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological details related to specific environmental standards. Within each and every such procedure where public participation is required, it should be provided early in the procedure, when all options are open and effective public participation can take place. The Committee has not been provided with any evidence that the public was involved, in forms envisaged by the Convention, in previous decision-making procedures which decided on the need for NPP and selected its location. Once the decision to permit the proposed activity had already been taken without public involvement, providing for such involvement at a following stage could under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide for “early public participation when all options are open” (see also findings on communication ACCC/C/2005/12, ECE/MP.PP/C.1/2007/4/Add.1, para. 79; and findings on communication ACCC/C/2009/41, ECE/MP.PP/2011/11/Add.3, paras. 61–63). This is the case in relation to the NPP, the Committee finds that the Party concerned: (c) By providing for public participation only at the stage of the EIA for the NPP, with one hearing, 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), it failed to comply with article 6, paragraph 4, of the Convention)</td>
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In relation to the NPP, the Committee finds that the Party concerned:

(c) By providing for public participation only at the stage of the EIA for the NPP, with one hearing, 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), it failed to comply with article 6, paragraph 4, of the Convention.

Found, among other things, that:

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<tr>
<td><strong>Meaningful and early participation</strong></td>
<td><strong>(article 6, paragraph 4)</strong></td>
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(See paragraphs 73-74 of document ECE/MP.PP/C.1/2011/6/Add.1)
even if a full EIA procedure is being carried out. Providing for public participation only at the stage of the EIA (OVOS) procedure for the NPP, with one hearing, effectively reduced the public’s input to only commenting on how the environmental impact of the NPP could be mitigated, and precluded 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. Therefore, the Committee finds that the Party concerned failed to comply with article 6, paragraph 4, of the Convention. (See paragraphs 77-78 of document ECE/MP.PP/C.1/2011/6/Add.1)

| ACCC/C/2009/44  | Found, among other things, that: |
| (Document ECE/MP.PP/C.1/2011/6/Add.1) | In relation to the NPP, the Committee finds that the Party concerned: |
| **The availability of all relevant documents to the public (article 6, paragraph 6)** | (a) By restricting access to the full version of the EIA Report to the premises of the Directorate of the NPP only and by not allowing any copies to be made, it failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention (para. 69); |
| | ..... |
| | (d) By not informing the public in due time of the possibility of examining the full EIA Report, it failed to comply with article 6, paragraph 6, of the Convention (para. 80); |

Emphasizing that overall economic interests, as such, are not sufficient in order to reasonably restrict access to environmental information, and considering that the Party concerned did not successfully invoke any of the exemptions referred to in article 4, paragraph 4, to justify why this information was restricted, as well as the fact that a significant part of the information was not available in the form requested, the Committee recalls its findings in communication ACCC/C/2009/36 (paras. 60–61), where, although it recognized that article 6, paragraph 6, refers to giving “access for examination” of the information that is relevant to decision-making, it also noted that article 4, paragraph 1, requires that “copies” of environmental information be provided. In the Committee’s view “copies” does, in fact, require that the whole documentation be available close to the place of residence of the person requesting information, or entirely in electronic form, if this person lives in another town or city. According to the facts presented in this case, access to information was restricted to the site of the Directorate of the NPP only and no copies could be made. For these reasons, the Committee finds that the Party concerned failed to comply with article 6, paragraph 6, and article 4, paragraph 1 (b), of the Convention. (See paragraph 69 of document ECE/MP.PP/C.1/2011/6/Add.1)

Article 6, paragraph 6 of the Convention aims at providing the public concerned with an opportunity to examine relevant details to ensure that public participation is informed and therefore effective. While active dissemination of certain documents by publishing them in newspapers (e.g., in the present case publishing a Brief EIA Overview, which is a non-technical summary of the EIA Report) is
certainly a good practice, only by ensuring access to all documents relevant to the decision-making for examination can the requirement of this provision be fulfilled.  
(See paragraph 79 of document ECE/MP.PP/C.1/2011/6/Add.1)

| AC/C/2009/44 | (Document ECE/MP.PP/C.1/2011/6/Add.1) | In the above context, and reiterating its findings in AC/C/2009/37 concerning the role of the developer in the procedure, the Committee stresses that it is not in compliance with the Convention for the authority responsible for taking the decision (including the authorities responsible for the expertiza conclusions) to be provided only with the summary of the comments submitted by the public. The Convention requires that 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) be submitted to such authorities. (See paragraph 64 of document ECE/MP.PP/C.1/2011/6/Add.1) |
| Ensuring that greater account is taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions | (See paragraph 89 of document ECE/MP.PP/C.1/2011/6/Add.1) | Recommended, among other things, to the Party concerned that it:
(c) Ensure that 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 responsible authorities for taking the decision (including those responsible for the expertiza conclusion); (See paragraph 90 of document ECE/MP.PP/C.1/2011/6/Add.1) |
| ACCC/C/2010/50 (Document ECE/MP/PP/C.1/2012/11) | Article 6, paragraph 3, of the Convention relates to “reasonable time frames” for the different phases of the decision-making, allowing sufficient time for the public to prepare and participate effectively during the environmental decision-making. By requiring “reasonable time frames” for effective public participation in the different phases of the decision-making, the Convention presupposes that in multi-phase environmental decision-making procedures, such as those provided for under the law of the Party concerned, opportunities for the public to participate should be provided in each decision-making phase. With respect to tiered decision-making processes (whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage), the Committee has held that:

> [T]aking into account the particular needs of a given country and the subject matter of the decision-making, each Party has a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological details related to specific environmental standards.

While the law of the Party concerned provides for wide public participation at the EIA stage, it limits opportunities for public participation after the conclusion of the EIA. The Committee stresses that environmental decision-making is not limited to the conduct of an EIA procedure, but extends to any subsequent phases of the decision-making, such as land-use and building permitting procedures, as long as the planned activity has an impact on the environment. The law of the Party concerned limits the rights of NGOs to participate after the EIA stage, and individuals may only participate if their property rights are directly affected. This means that individuals who do not have any property rights, but may be affected by the decision, are excluded. Although the Party concerned contends that the results of the EIA procedure are taken into account in the subsequent phases of the decision-making, members of the public must also be able to examine and to

| Effective notification and time frames for Public Participation (article 6, paragraph 3) | Found, among other things, that:

> (a) Through its restrictive interpretation of “the public concerned” in the phases of the decision-making to permit activities subject to article 6 that come after the EIA procedure, the system of the Party concerned fails to provide for effective public participation during the whole decision-making process, and thus is not in compliance with article 6, paragraph 3 of the Convention.

(See paragraph 89 of document ECE/MP/PP/C.1/2012/11) |
comment on elements determining the final building decision throughout the land planning and building processes. Moreover, public participation under the Convention is not limited to the environmental aspects of a proposed activity subject to article 6, but extends to all aspects of those activities. In addition, even if, as the Party concerned contends, the scope of stakeholders with property rights is interpreted widely to include the most distant owners of land plots and other structures, individuals with other rights and interests are still excluded from the public participation process. Therefore, the Committee finds that through its restrictive interpretation of “the public concerned” in the phases of the decision-making to permit activities subject to article 6 that come after the EIA procedure, the legal system of the Party concerned fails to provide for effective public participation during the whole decision-making process. Thus the Party concerned is not in compliance with article 6, paragraph 3, of the Convention. (See paragraphs 69-70 of document ECE/MP/PP/C.1/2012/11)

ACCC/C/2010/50
(Document ECE/MP/PP/C.1/2012/11)

Ensuring that greater account is taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions (article 6, paragraph 8)

… under article 6, paragraph 7, of the Convention, public participation must not be limited to the consideration of the environmental impact of a proposed activity, but entitles the public to submit any comments, information, analyses or opinions that it considers relevant to the proposed activity, including its views on aspects of the activity’s permissibility and its compliance with environmental law. According to the Environmental Assessment Act (art. 10, sect. 1) the EIA opinion “is issued also based on the public comments”. Furthermore, the same act (art. 10, sect. 4) provides that “without the opinion it is not possible to issue a decision needed for carrying out a project”. However, the law of the Party concerned does not require that the authorities issuing the permitting decision fully uphold the content of the EIA opinion. While the EIA procedure provides for public participation, the Committee considers that the above legal framework does not ensure that in the permitting decision due account is taken of the outcome of public participation. In the light of the above, the Committee finds that the Party concerned fails to comply with the requirement in article 6, paragraph 8, of the Convention to ensure that due account is taken in the decision of the outcome of

Found, among other things, that:

(b) By failing to impose a mandatory requirement that the opinions of the public in the EIA procedure are taken into account in the subsequent stages of decision-making to permit an activity subject to article 6, and by not providing opportunity for all members of the public concerned to submit any comments, information, analyses or opinions relevant to the
the public participation. (See paragraph 71 of document ECE/MP/PP/C.1/2012/11)

Recommended, among other things, to the Party concerned to undertake the necessary legislative, regulatory, administrative and other measures to ensure that:

(b) Due account is taken of the outcome of public participation in all phases of the decision-making to permit activities subject to article 6. (See paragraph 89 of document ECE/MP/PP/C.1/2012/11)

Regarding the allegation that no proper public participation was provided during the preparation of the Energy Strategy, the Committee notes that while it is undisputed that the Strategy is a document subject to article 7 of the Convention and some public participation took place during its preparation, there are different views in relation to the participation of NGOs in the working group drafting the Strategy.

Found, among other things, that:

(c) By not providing sufficient time for the public to get acquainted with the draft 2007 Energy Strategy and to
In this context, it should be stressed that whether a particular NGO participated or not in the working group drafting the Strategy is irrelevant from the point of view of meeting the requirements of article 7 of the Convention, because the inclusion of representatives of NGOs and “stakeholders” in a closed advisory group cannot be considered as public participation under the Convention. Furthermore, whatever the definition of the “public concerned” in the law of a Party to the Convention, it must meet the following criteria under the Convention: it must include both NGOs and individual members of the public; and it must be based on objective criteria and not on discretionary power to pick individual representatives of certain groups. In this context, participation in closed advisory groups cannot be considered as public participation meeting the requirements of the Convention.

Furthermore, the Committee notes that, while indeed the draft Strategy was published on the websites of the Ministry of Economy and the Secretariat General of the Government, formally the general public had only 11 days to get acquainted with the draft and submit comments. Despite the fact that some members of the public had been able to submit comments also outside the scope of these 11 days, the Committee considers that the Party concerned failed to ensure a reasonable time frame for public participation in the case of such a document. Thus, by not providing sufficient time for the public to get acquainted with the draft and to submit comments thereon, the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention. (See paragraph 108-110 of document ECE/MP.PP/C.1/2014/12)
<table>
<thead>
<tr>
<th>ACCC/C/2011/59 (Document ECE/MP.PP/C.1/2013/9)</th>
<th>Effective notification and time frames for Public Participation (article 6, paragraph 2)</th>
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<tr>
<td>The Committee notes that the rules on public hearings, as amended in 2012, do not provide for any mandatory requirement for the public notification to be timely. In contrast, the previous regulation established a 20-day period prior to the public hearing for the public notification to be made. Therefore, the Committee finds that the new regulation of the Party concerned does not meet the requirements of article 6, paragraph 2, of the Convention, in terms of timely notification. (See paragraph 48 of document ECE/MP.PP/C.1/2013/9)</td>
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<td>The Committee considers that, although the obligation of the developer to publish information on the website of the Ministry of Environmental Protection at the expertiza stage carries elements of public notification, it is not sufficient to ensure effective public participation. The submission of the draft OVOS report to the State environmental expertiza appears later in the decision-making procedure, and does not compensate for the insufficient public notification at the OVOS stage. Therefore, the Party concerned fails to comply with article 6, paragraph 2, of the Convention. (See paragraph 52 of document ECE/MP.PP/C.1/2013/9)</td>
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| ACCC/C/2011/59 (Document ECE/MP.PP/C.1/2013/9) | The Committee further notes that the OVOS report was made available only on the website of the developer, which is not in accordance with the Convention, even if in this case the developer was a public authority, i.e., the Ministry of Transport and Communication. Rather, the OVOS report should have been made available to the public by the decision-making authority, which in this case was the Ministry of Environment. Therefore, the Committee finds that the Party concerned is not in compliance with article 6, paragraph 6, of the Convention. *(See paragraph 54 of document ECE/MP.PP/C.1/2013/9)* | Found, among other things, that:  
......... the Party concerned, by not establishing consistent and clear legal requirements for making the information relevant to decision-making accessible for the public, fails to comply with article 6, paragraph 6, of the Convention. *(See paragraph 67 of document ECE/MP.PP/C.1/2013/9)* |
| ACCC/C/2011/59 (Document ECE/MP.PP/C.1/2013/9) | The Committee notes that, although the procedure for dealing with public comments at the OVOS stage is clear, the key function of assessing the comments received at this stage and incorporating them in the OVOS report, as appropriate, rests solely with the developer. This means that the comments received from the public are sent to the developer, who is in charge of making amendments to the OVOS report and then returning it to the public authority.  
The Committee considers that the regulatory framework of the Party concerned, according to which the developer is in charge of managing the outcome of the public participation procedures, creates a risk that all public comments are not taken duly into account. *(See paragraphs 61-62 of document ECE/MP.PP/C.1/2013/9)* | Found, among other things, that:  
......... that the Party concerned, by not establishing appropriate procedures to promptly notify the public about the environmental expertiza conclusions and by not establishing appropriate arrangements to facilitate public access to these decisions, fails to comply with article 6, paragraph 9, of the Convention. *(See paragraph 69 of document ECE/MP.PP/C.1/2013/9)* |
The Committee finds that by not establishing appropriate procedures to promptly notify the public about the environmental expertise conclusions and by not establishing appropriate arrangements to facilitate public access to these decisions, the Party concerned fails to comply with article 6, paragraph 9, of the Convention. (*See paragraph 64 of document ECE/MP.PP/C.1/2013/9*)

**Recommended, among other things,** to the Party concerned to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(iii) There is a clear responsibility of the relevant public authorities to:

a. Inform the public promptly of the decisions they have taken and of how the text of the decisions can be accessed;

b. Maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments (*See paragraph 70 of document ECE/MP.PP/C.1/2013/9*)

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**ACCC/C/2012/66**  
(Document ECE/MP.PP/C.1/2014/4)  
*Meaningful and early participation*

What constitutes a “plan” is not defined in the Convention. The fact that a document bears in its title the word “plan” does not necessarily mean that it is a plan; rather it is necessary to consider the substance of the document (see also findings on communication ACCC/C/2008/27 (ECE/MP.PP/C.1/2010/6/Add.2, para. 41)). The Committee thus considers the contents of the municipal waste

**Found, among other things, that:**

(a) The present arrangements under the law of the Party concerned are not
Effective notification and time frames for Public Participation

Ensuring that greater account is taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions

(article 7 in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention)

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<tr>
<th>plans of the Party concerned, as well as the legal effects of these plans on the public, to determine whether they fall within the ambit of article 7 and the extent to which public participation procedures should apply under the Convention. (See paragraph 35 of document ECE/MP.PP/C.1/2014/4)</th>
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<td>While these municipality waste management plans implement the national and county waste management plan and the national strategy at the local level, they are not only theoretical orientations on waste management or only a repetition of the subjects treated in the national/county waste management documentation. It is apparent to the Committee that they contain considerations specific to the region concerned on the impact of waste management, on possible emissions, possible locations and facilities, which are without doubt of interest to the public and therefore should be subject to public participation according to article 7. Moreover, whether a document sets the framework for future development consent is not a determining factor of its nature as a plan under article 7 or not.</td>
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<td>The fact that the waste management plans are not mentioned in the EPA and in sectoral laws as sustainable development and environment protection documents is not relevant; an insufficient coverage by the legislation of one of the subject matters of the Aarhus Convention cannot be invoked as an excuse to avoid its application to an activity which is obviously related to the protection of the environment</td>
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<td>For these reasons, the Committee finds that municipal waste management plans are plans within the purview of article 7 of the Convention. (See paragraphs 39-41 of document ECE/MP.PP/C.1/2014/4)</td>
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<td>As set out in article 7, the Party concerned has to make the appropriate practical and/or other provisions for the public to participate during the preparation of the plan and in accordance with three specific provisions of article 6, paragraphs 3, 4 and 8, of the Convention. This has to be done “within a transparent and fair framework, having provided the necessary information to the public”, while specific reference is made to the objectives of the Convention. (See paragraph 43 of document ECE/MP.PP/C.1/2014/4)</td>
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<td>sufficiently clear to ensure that the requirement of article 7 for a transparent framework is met. Thus, the Party concerned fails to comply with article 7 of the Convention. (See paragraph 55 of document ECE/MP.PP/C.1/2014/4)</td>
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<td>Recommended, among other things, to the Party concerned to ensure that a transparent framework is in place providing for appropriate practical and/or other provisions for the public to participate during the preparation of municipality waste management plans, by, inter alia, including municipality waste management plans in the list of plans relating to the environment which are not formally subjected to SEA, but for which public participation is required, so that article 7 of the Convention is clearly applicable to such plans. (See paragraph 56 of document ECE/MP.PP/C.1/2014/4)</td>
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However, the Committee notes that the EPA, as well as the Regulation on Information and Public Participation, stipulate that the list of plans relating to the environment which are not subjected to SEA, but for which public participation is required, will be determined by law/regulation. According to the information submitted to the Committee, there is yet no law/regulation in place as to this type of plans, and this creates uncertainty as to the application of the public participation procedures. (See paragraph 49 of document ECE/MP.PP/C.1/2014/4)

For these reasons, the Committee finds that the present arrangements under the law of the Party concerned are not sufficiently clear to ensure that the requirement of article 7 for a transparent framework is met. Thus, the Party concerned fails to comply with article 7. (See paragraph 51 of document ECE/MP.PP/C.1/2014/4)

| ACCC/C/2012/68 (Document ECE/MP.PP/C.1/2014/5) | The Committee confirms that the requirement of article 6, paragraph 8, of the Convention that public authorities take due account of the outcome of public participation does not amount to a right of the public to veto the decision. In particular, this provision should not be read as requiring that the final say about the fate and design of the project rests with the local community living near the project, or that their acceptance is always required. Therefore the obligation to take due account of the outcome of the public participation should be interpreted as the obligation that the written reasoned decision includes a discussion of how the public participation was taken into account (see findings on communication ACCC/C/2008/24 (ECE/MP.PP/C.1/2009/8/Add.1, para. 98), and ECE/MP.PP/C.1/2009/4, para. 29). (See paragraph 93 of document ECE/MP.PP/C.1/2014/5) |
| Meaningful and early participation | The assessment of whether a Party concerned is in compliance with article 6 of the Convention depends on whether the steps taken to ensure public participation are commensurate with the size and possible environmental impact of the project. If, for instance, the project concerns the construction of a nuclear power plant, then there is clearly an obligation for the public notice to be advertised widely in national and local media. However, if a project is of local significance, such as the opening of a forest road, a public notice in local media may suffice for |
| Effective notification and time frames for public participation | Found, among other things, that: The Committee finds that because the NREAP of the Party concerned was not subjected to public participation, the Party concerned failed to comply with article 7 of the Convention. (See paragraph 106 of document ECE/MP.PP/C.1/2014/5) |
| Ensuring that greater account is taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions (article 7 in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention) | Recommended, among other things, to the Party concerned to in future submit plans and programmes similar in nature to NREAPs to public participation as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention. (See paragraph 108 of document ECE/MP.PP/C.1/2014/5) |
informing the public concerned (see also findings on communication ACCC/C/2006/16 (ECE/MP.PP/C.1/2008/5/Add.6), para. 67).

(See paragraph 97 of document ECE/MP.PP/C.1/2014/5)

National Renewable Energy Plans (NREAPs) are plans or programmes under article 7 of the Convention (see findings on communication ACCC/C/2010/54, para. 75) and as such are subject to public participation. The fact that the Renewable Energy Strategy of the Party concerned, which informed the NREAP, was subject to public participation does not affect this conclusion, given their different legal status and functions in the EU and legal framework of the Party concerned, respectively. (See paragraph 100 of document ECE/MP.PP/C.1/2014/5)

The Committee concludes that because the NREAP of the Party concerned was not subjected to public participation, the Party concerned failed to comply with article 7 of the Convention, in this regard. (See paragraph 101 of document ECE/MP.PP/C.1/2014/5)

<table>
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<tr>
<th>ACCC/C/20/2012/69 (Document ECE/MP.PP/C.1/2015/10)</th>
<th>Effective notification and time frames for public participation (article 6, paragraphs 3 and 7)</th>
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<tr>
<td>The Committee considers that the assertion of the Party concerned that there was no rationale to involve the public in the issuance of the discharge certificate as “the general public could not override the judgement of experts on such matters as to whether a particular item’s archaeological value was properly assessed or not” fails to take into account the fact that the public includes persons with different expertise, knowledge, opinions or experience. It is thus contrary to the objectives of the Convention</td>
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<td>The importance of the procedure for issuing the archaeological discharge certificate was such that the Party concerned should have provided sufficient time for informing the public and for the public to prepare and participate effectively during the environmental decision-making (art. 6, para. 3) and an opportunity for the public to submit comments, information, analysis or opinions (art. 6, para. 7). For the above-mentioned reasons the Committee finds that, by not providing for any public participation in the procedure for issuing the archaeological discharge certificate, the Party concerned failed to comply with article 6, paragraphs 3 and 7, of the Convention (para. 83); (See paragraph 92 of document ECE/MP.PP/C.1/2015/10)</td>
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Found, among other things, that:

(e) By not providing for any public participation in the procedure for issuing the archaeological discharge certificate, the Party concerned failed to comply with article 6, paragraphs 3 and 7, of the Convention (para. 83); (See paragraph 92 of document ECE/MP.PP/C.1/2015/10)
certificate, the Party concerned failed to comply with article 6, paragraphs 3 and 7, of the Convention. (See paragraph 82-83 of document ECE/MP.PP/C.1/2015/10)

**ACCC/C/2012/70**
(Document ECE/MP.PP/C.1/2014/9)

**Effective notification and time frames for public participation**
(article 7 in conjunction with article 6, paragraph 3)

Whether the application for transitional free allowances at issue falls under article 7 of the Convention is determined by the following two criteria: whether the document is a plan or programme and whether it is related to the environment.

First, what constitutes a “plan” is not defined in the Convention. The fact that a document bears in its title the word “plan” does not necessarily mean that it is a plan under article 7 of the Convention; rather, it is necessary to consider the substance of the document (see findings on communications ACCC/C/2005/11 (ECE/MP.PP/C.1/2006/4/Add.2), para. 29; ACCC/C/2005/12 (ECE/MP.PP/C.1/2007/4/Add.1), para. 65; and ACCC/C/2008/27 (ECE/MP.PP/C.1/2010/6/Add.2), para. 41). For instance, in the present case, the document at issue was an “application” that included the “national investment plan”. The Committee looks at the contents and the legal effects of the application as a whole, to determine whether it falls under article 7 of the Convention.

It is acknowledged that the application relates to the environment since it proposes measures in the energy sector that affect or are likely to affect the elements of the environment…

It is submitted by the Party concerned that once approved by the Government and submitted to the Commission, the application underwent considerable changes. The Committee notes that article 7 requires appropriate provisions to be made for the public to participate during the preparation of the plan. Whether the plan was further amended when it passed to the next level of government (i.e., the Commission) before its finalization and adoption does not alleviate the obligations arising for the Party concerned during the period that it carried the main responsibility for the preparation of the substantive elements of the application.

Found, among other things, that:

(b) By not providing sufficient time for the public to get acquainted with the draft and submit comments, the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention.

(See paragraph 65 of document ECE/MP.PP/C.1/2014/9)
For these reasons, the Committee finds that the application, including its national investment plan, prepared by the Party concerned under the revised rules for the EU ETS, is a plan within the purview of article 7 of the Convention and therefore article 6, paragraphs 3, 4 and 8, apply to its preparation. (See paragraph 48-53 of document ECE/MP.PP/C.1/2014/9)

The Committee considers that providing the public with seven days to get acquainted with the draft documents and to submit comments, let alone allowing it one day for the same purpose, cannot be considered a reasonable time frame for the public to prepare and participate effectively in the preparation of a document of the magnitude of the national investment plan. Therefore, the Committee considers that, by not providing sufficient time for the public to get acquainted with the draft and submit comments, the Party failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention. (See paragraph 57 of document ECE/MP.PP/C.1/2014/9)

In this respect, it is noted that article 7 provides that “the public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention”. This provision should not be used by public authorities in a way so as to restrict public participation, but rather as a way of making public participation more effective. In the present case, it is accepted that the input by private stakeholders engaged in electricity production was essential in that it provided specific technical details indispensable for the preparation of the application. The Committee considers that there was a considerable span of time for participation of private stakeholders compared to that granted to other members of the public, to the extent that the authority exercised its discretion in a way that ran counter to the objectives of the Convention; in particular “to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development” by involving, among others, NGOs promoting environmental protection. While the closer inclusion of the private stakeholders in the process may have been justified, there was still an obligation on the public authority to act in accordance with the objectives of the Convention and not to abuse this provision to effectively bar or significantly

Found, among other things, that:

(c) Given that the preparation process for the application was initiated on 31 October 2009 and that formally the general public had only seven days to get acquainted with the draft and submit comments, starting on 19 August 2011, that is, almost two years after the start of the application’s preparation, the Committee finds that the Party concerned failed to comply with article 7, in conjunction with article 6.
reduce the effective public participation of other members of the public. *(See paragraph 59 of document ECE/MP.PP/C.1/2014/9)*

| ACCC/C/2012/70  (Document ECE/MP.PP/C.1/2014/9) | There is a clear obligation arising from article 7 on public authorities to seriously consider the outcome of public participation in the preparation of plans. However, the Convention does not specify how this should be done in practice. It is recognized that the public authority preparing the plan is ultimately responsible for policymaking and has to consider a number of factors, including the comments of the public. This may lead to a final plan that may not always be accepted by the public. However, the authority should be able to demonstrate how the comments were considered and why it did not follow the views expressed by the public. As already stated, “the requirement of article 6, paragraph 8, that public authorities take due account of the outcome of public participation, does not amount to the right of the public to veto the decision” (see Committee’s commentary on communication ACCC/C/2008/29 in the report of its twenty-fourth meeting (Geneva, 30 June–3 July 2009) ECE/MP.PP/C.1/2009/4, para. 29). Yet, “while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received” (findings on communication ACCC/C/2008/24 (ECE/MP.PP/C.1/2009/8/Add.1), para. 99). The Committee notes that for decisions on specific activities, fulfilment of the requirement of article 6, paragraph 8, is to be proven through fulfilment of article 6, paragraph 9. In contrast, a requirement to make accessible the reasons and considerations on which the decision is based is not expressly provided for in article 7 of the Convention. Nevertheless, the Party concerned has the obligation to demonstrate that it has fulfilled its obligations under article 6, paragraph 8. The Committee notes that in the process of preparing a plan this obligation could be |

| paragraph 4, of the Convention, because no early public participation was ensured, when all options were open. *(See paragraph 65 of document ECE/MP.PP/C.1/2014/9)* | Found, among other things, that: (d) By failing to show through its written and oral submissions how the outcome of public participation was duly taken into account, the Party concerned failed to comply with article 6, paragraph 8, of the Convention. *(See paragraph 65 of document ECE/MP.PP/C.1/2014/9)* |
fulfilled by following the procedure set out in article 6, paragraph 9, or any other way the Party concerns chooses to demonstrate that it has taken “due account” of the outcome of the public participation.  
(See paragraph 60-62 of document ECE/MP.PP/C.1/2014/9)

| ACCC/C/2012/71  | The Committee reiterates that, since the EIA procedure is normally linked closely to decisions that determine whether or not a proposed activity may proceed, it should thus be regarded as part of the decision-making process regardless of the fact that in the Czech legal framework the EIA statement is not a permitting decision per se. Furthermore, according to the evidence before the Committee, the EIA procedure is the principal procedure in the Party’s legal framework to address environmental concerns and to allow broad public participation. It is, moreover, the stage of the decision-making which is specifically designated to address transboundary issues, including by allowing the participation of the foreign public.  
(See paragraph 60 of document ECE/MP.PP/C.1/2017/3) |
| (Document ECE/MP.PP/C.1/2017/3) | It is clear from the wording of article 6 that the obligations imposed by that article are not dependent on obligations stemming from other international instruments. An international treaty may envisage that a Party of origin and an affected Party share joint responsibility for ensuring public participation in the territory of the affected Party (as under the Espoo Convention), or even that the affected Party has sole responsibility for this. However, the obligation to ensure that the requirements of article 6 are met always rests with the Party of origin.  
The situation in such cases is akin to those where the domestic legal order delegates administrative tasks for public participation to other domestic bodies. Accordingly, as the Maastricht Recommendations state, if “the legal framework seeks to delegate any administrative tasks related to a public participation procedure to persons or bodies other than the competent public authority, it should be borne in mind that the ultimate responsibility for ensuring the public participation procedure complies with the requirements of the Convention will still rest with the competent authority”.11 The Committee considers this wording applies equally to situations where the responsibility for certain tasks related to |

| Effective notification and time frames for public participation in the transboundary context (article 6, paragraphs 2 and 3) | Found, among other things, that:  
…………………. by not providing a clear requirement in its legal framework to ensure that public authorities, when selecting means of notifying the public, are bound to select such means which, bearing in mind the nature of the proposed activity, would ensure that all those who potentially could be concerned, including the public outside the territory of the Party concerned, have a reasonable chance to learn about the proposed activity, the Party concerned has failed to comply with article 6, paragraph 2, of the Convention with respect to its legal framework.  
Regarding the decision-making on the NPP, the Committee is convinced that if the public participation procedure on the EIA stage were to remain the last possibility for the public concerned, including the public concerned in another country, to participate in the permitting procedure for the NPP, the Party concerned would fail to comply with |
public participation in the affected country’s territory rests (by virtue of an international instrument or ad hoc agreement) on that country’s public authorities.

In the light of the above, the Committee stresses that, whether in a domestic or transboundary context, the ultimate responsibility for ensuring that the public participation procedure complies with the requirements of article 6 lies with the competent authorities of the Party of origin.

(See paragraphs 67-69 of document ECE/MP.PP/C.1/2017/3)

Though the Convention does not expressly address a Party’s responsibilities when organizing a public participation procedure in a transboundary context, it nevertheless makes clear that, for all decision-making subject to article 6, the Party must ensure that the public concerned is informed in an adequate, timely and effective manner…

As indicated above, ultimately it is for the competent public authorities of the Party of origin to ensure that the public participation procedure complies with the requirements of article 6, also in situations where the foreign public is involved. In cases that are not subject to a transboundary procedure under an international treaty (e.g., the Espoo Convention), the requirement to inform the public concerned in the affected countries in an adequate, timely and effective manner will be the sole responsibility of the competent authority of the Party of origin. Ensuring that the notification is effective may include, inter alia, publishing announcements in the popular newspapers and by other means customarily used in the affected countries, as well as by exploring possibilities for using more dynamic forms of communication (e.g., through social media). In cases that are subject to a transboundary procedure under an international treaty, the Party of origin remains responsible under the Aarhus Convention for the adequate, timely and effective notification of the public concerned in the affected country, either by carrying out the notification itself or by making the necessary efforts to ensure that the affected Party has done so effectively.

(See paragraphs 71-72 of document ECE/MP.PP/C.1/2017/3)

article 6, paragraphs 2 (d) (ii), 3, 4, 6 and 7, of the Convention

(See paragraph 113 of document ECE/MP.PP/C.1/2017/3)

Recommended, among other things, to the Party concerned provides:

(a) A legal framework to ensure that when selecting means of notifying the public under article 6, paragraph 2, public authorities are required to select such means as will ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity, and including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of the Party concerned;

(b) The necessary arrangements to ensure that:

(i) When conducting transboundary procedures in cooperation with the authorities of affected countries, the competent public authorities make the necessary efforts to ensure
The Committee is convinced that in the case of decision-making on ultrahazardous activities like an NPP, being activities invariably of wide public concern, particular attention must be taken at the stage of identifying the public concerned and selecting the means of notification in order to ensure that all those who potentially could be concerned in the decision-making, including the public concerned outside its territory, have a reasonable chance to learn about the proposed activities and their possibilities to participate. In this regard, the public may potentially be concerned both because of the possible effects of the normal or routine operation of the NPP and because of the possible effects in case of an accident or other exceptional incident. In both cases, the decision-making may impact not only on matters, such as property or health, but also on less measurable aspects, like quality of life. For an ultrahazardous activity such as an NPP, members of the public may be affected or be likely to be affected by, or have an interest in, the environmental decision-making within the scope of the Convention even if the risk of an accident is very small. In determining who is concerned by the environmental decision-making, the Committee also considers the magnitude of the effects if an accident should indeed occur, whether the persons and their living environment within the possible range of the adverse effects could be harmed in case of an accident, and the perceptions and concerns of persons living within the possible range of the adverse effects. It is clear to the Committee that with respect to NPPs, the possible adverse effects in case of an accident can reach way beyond State borders and over vast areas and regions.

For the above reasons, the Committee considers that the geographical scope of the potential effects of the NPP, including in the event of an accident, cannot be confined only to the “municipalities whose administrative territory includes an internal or external part of the emergency planning zone”…

More generally, the Committee notes that, while a legal framework that chiefly relies on the affected territorial self-governing units using locally specific ways of informing the public may well be adequate for activities whose potential effect on the environment would be confined to that locality, it may be insufficient for ultrahazardous activities that are invariably of wide public concern (whether specific activities subject to article 6 or in the context of plans and programmes that the public concerned in the affected countries is in fact notified in an effective manner;

(ii) There will be proper possibilities for the public concerned, including the public outside the territory of the Party concerned, to participate at the subsequent stages of the multi-stage decision-making procedure regarding the NPP;

(See paragraph 117 of document ECE/MPP.PP/C.1/2017/
subject to article 7). Moreover, notice on the Ministry’s web page would not in itself be enough in order to ensure effective notification of the public, as it is not reasonable to expect members of the public to proactively check the Ministry’s website on a regular basis just in case at some point there is a decision-making procedure of concern to them. In this respect the Committee recalls paragraph 64 (c) of the Maastricht Recommendations, which provides that public notice should be placed also in “the newspaper(s) corresponding to the geographical scope of the potential effects of the proposed activity and which reaches the majority of the public who may be affected by or interested in the proposed activity”.

(See paragraph 74-76 of document ECE/MP.PP/C.1/2017/3)

The Committee notes that only very basic information about the hearing, namely its timing and venue, was provided in advance. While that might meet the requirements of article 6, paragraph 2 (d) (iii), the Committee considers that it does not meet the requirement in article 6, paragraph 2 (d) (ii), to adequately and effectively inform the public concerned of its opportunities to participate. If a hearing is to be held, the public concerned should be notified of its opportunities to participate in that hearing, e.g., the format of the hearing, the format in which the public may make interventions, and any time limits on those interventions. This is particularly important in the case of a foreign public concerned, which may be entirely unfamiliar with how hearings are conducted in the Party of origin, though it should not be presumed that all members of the public concerned from the Party of origin will necessarily know this either.

(See paragraph 80 of document ECE/MP.PP/C.1/2017/3)

Article 6, paragraph 3, of the Convention requires that public participation procedures include reasonable time frames for the different phases, allowing sufficient time, inter alia, for the public to prepare and participate effectively.

(See paragraph 82 of document ECE/MP.PP/C.1/2017/3)

Regarding the timing of the hearing, which was held four days after the period for written comments ended, the Committee does not consider this inherently problematic. Article 6, paragraph 7, of the Convention does not require the hearing to be a vehicle through which public authorities must demonstrate how
they have already taken due account of the public’s written comments. Rather, the hearing is an opportunity for the public to be heard and also offers the opportunity for the applicant to present the project and respond to questions and comments.

Concerning the hearing’s duration, neither party disputes that the hearing lasted from 10 a.m. until 3 a.m. the next morning (i.e., 17 hours). Given a transboundary project of such a contentious nature as an NPP, the Committee considers that the competent authorities should have foreseen that the hearing might require longer than one working day and they should therefore have planned and organized accordingly. As it was, the Committee considers that organizing the hearing in such a manner was not acceptable. Article 6, paragraph 3, requires that the time frame for each phase of the public participation procedure must be reasonable and enable the public to participate effectively. The public cannot be expected to participate effectively if its opportunity to be heard comes only after it has been already sitting in the hearing for more than a full working day. Nor does it ensure that the public authorities present are in a fit state to take due account of that participation.

*(See paragraph 87-88 of document ECE/MP.PP/C.1/2017/3)*

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<thead>
<tr>
<th>ACCC/C/2012/71 (Document ECE/MP.PP/C.1/2017/3)</th>
<th>With respect to article 6, paragraph 4, the Committee cites with approval the Maastricht Recommendations, which state that: While the competent authority may have certain discretion as to the range of options to be addressed at each stage of the decision-making, at each stage where public participation is required, it should occur when all the options to be considered at that stage are still open and effective public participation can take place. If a particular tier of the decision-making process has no public participation, then the next stage that does have public participation should provide the opportunity for the public to also participate on the options decided at that earlier tier (para. 18). The Committee considers that the discretion as to the range of options to be addressed at consecutive stages of the decision-making is closely related to the</th>
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<tr>
<td><em>Meaningful and early public participation (article 6, paragraph 4)</em></td>
<td>See above.</td>
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opportunities for public participation on those options. A multi-stage decision-making procedure in which certain options are considered at a stage without public participation and where no subsequent stage provides an “opportunity for the public to also participate on the options decided at that earlier tier” would be incompatible with the Convention. Similarly, a multi-stage decision-making procedure that provides for public participation on certain options at an early stage but leaves other options to be considered at a later stage without public participation would likewise not be compatible with the Convention.

The Committee understands that no decision on the technological design of the reactor has yet been made. In the light of this, the Committee finds that, so long as the public concerned, including the public concerned in other country, will be provided with the opportunity to participate effectively in the stage of the decision-making at which the exact designs or technical specifications (including the risk factors and potential environmental impacts of each) are under consideration, the use of an “envelope” or “black box” approach at the EIA stage does not, in itself, constitute non-compliance with the requirement in article 6, paragraph 4, of the Convention to provide for early public participation when all options are open. The Committee stresses, however, that if the permitting procedure were to continue and the public concerned was not provided with the opportunity to participate effectively in that stage, the Party concerned would be in non-compliance with article 6, paragraph 4, of the Convention. (See paragraph 91-93 of document ECE/MP.PP/C.1/2017/3)

The Committee finds that, so long as the public concerned, including the public concerned in Germany, is provided with the opportunity to participate effectively in the stage of the decision-making at which the exact designs or technical specifications (including risk factors and potential environmental impacts) are under consideration, the use of the “envelope” or “black box” approach at the EIA stage does not, in itself, constitute non-compliance with article 6, paragraphs 4, 6 and 7. The Committee stresses, however, that if the permitting procedure were to continue without providing the public concerned with the opportunity to participate effectively in that stage, the Party concerned would be in non-compliance with article 6, paragraphs 4, 6 and 7, of the Convention.
### Availability of all relevant documents (article 6, paragraph 6)

Information regarding the specific technology to be used is clearly of relevance for the decision-making on whether to permit the NPP and is therefore subject to the requirements of article 6, paragraph 6. Therefore, if the public authorities were in fact provided with any further information relevant to the decision-making than that made available to the public concerned (excepting information exempted from public disclosure in accordance with article 4, paragraphs 3 and 4), that would amount to non-compliance with article 6, paragraph 6. **See above.**

### Meaningful and early participation

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Text</th>
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<tr>
<td>ACCC/C/2013/88 (Document ECE/MP.PP/C.1/2017/12)</td>
<td>While recognizing that such councils may make a useful contribution to the development of environment policy, the Committee emphasizes that the councils can only be of a complementary nature. In this regard, the Committee recalls its previous findings on communication ACCC/2010/51 where it held: The inclusion of representatives of NGOs and “stakeholders” in a closed advisory group cannot be considered as public participation under the Convention. Furthermore, whatever the definition of the “public concerned” in the law of a Party to the Convention, it must meet the following criteria under the Convention: it must include both NGOs and individual members of the public; and it must be based on objective criteria and not on discretionary power to pick individual representatives of certain groups. <strong>(See paragraph 121 of document ECE/MP.PP/C.1/2017/12)</strong></td>
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<td>Found, among other things, that: (c) By failing to set out clear requirements in its legal framework for due account to be taken of the outcomes of public participation in decision-making within the scope of articles 6 and 7 of the Convention, the Party concerned fails to comply with article 6, paragraph 8, and article 7 in conjunction with article 6, paragraph 8, of the Convention; (d) By failing to make appropriate practical and/or other provisions for the public to participate during the preparation of plans, programmes and policies relating to the environment,</td>
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### (article 7 in conjunction with article 6, paragraphs 3, 4 and 8)

When examining whether the Plan to Develop Resorts is a plan or programme, the Committee recalls its past findings in which it had observed that when examining whether a decision falls within the ambit of article 7 of the Convention, its label under the Party’s national law is not decisive, and it is necessary to examine the content of the document and its legal effects. In this respect, the Committee considers that, as also set out in the *The Aarhus Convention: An Implementation Guide* (Implementation Guide), a typical article...
7 decision (plan or programme) has the legal nature of (a) a general act (often adopted finally by a legislative branch), (b) initiated by a public authority, (c) which sets, often in a binding way, the framework for certain categories of specific activities (development projects), and (d) which usually is not sufficient for any individual activity to be undertaken without an individual permitting decision.

(See paragraphs 124-125 of document ECE/MP.PP/C.1/2017/12)

The Committee considers, as also stated in the Implementation Guide, that whether a particular plan or programme relates to the environment should be determined with reference to the implied definition of “environment” found in the definition of “environmental information” (article 2, para. 3). The following types of plans, programmes and policies may be considered as relating to the environment: (a) those that may have a significant effect on the environment and require strategic environmental assessment; (b) those that may have a significant effect on the environment but do not require strategic environmental assessment; (c) those that may have an effect on the environment but the effect would not be significant; and (d) those intended to help protect the environment.78

(See paragraphs 128 of document ECE/MP.PP/C.1/2017/12)

Of particular pertinence in this case is the incorporation of article 6, paragraph 4, into the text of article 7, meaning that Parties must provide for early public participation on plans and programmes relating to the environment when all options (including the so-called “zero option”) are open and when due account can be taken of the outcome of the public participation. In the light of the above, in the present case, the Committee considers that it was too late to provide public participation only at the stage of permitting the specific activity of the project itself since by then all options, and in particular the “zero option” not to construct any new ski resorts at all, were no longer open. (See paragraph 130 of document ECE/MP.PP/C.1/2017/12)

The Committee notes that the Party concerned has not asserted that the Plan to Develop Resorts was subject to a public participation procedure. Rather it contends that no public participation procedure was required and thus none was

the Party concerned has failed to comply with article 7 of the Convention in general;
(e) By failing to provide for early and effective public participation on the Plan to Develop Resorts, the Party concerned has failed to comply with article 7 in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention. (See paragraph 133 of document ECE/MP.PP/C.1/2017/12)
carried out. However, as set out above, the Committee has found that the Plan was indeed required to be subject to public participation in accordance with article 7 of the Convention. The Committee therefore finds that by failing to provide for early and effective public participation on the Plan to Develop Resorts, the Party concerned has failed to comply with article 7 in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention. *(See paragraph 131 of document ECE/MP_PP/C.1/2017/12)*

| ACCC/C/2013/88 (Document ECE/MP_PP/C.1/2017/12) | In order to ensure appropriate conditions for meaningful public participation, article 6, paragraph 2 (a)–(e), of the Convention provides a list of minimum information that is to be mentioned in the public notice. *(See paragraph 99 of document ECE/MP_PP/C.1/2017/12)* |
| Effective notification and time frames for public participation (article 6, paragraphs 2 and 3) | In the light of the above, the Committee finds that, by failing to ensure that its legal framework ensures that the public concerned is informed in an adequate, timely and effective manner of all matters included in subparagraphs (a)–(e) of article 6, paragraph 2, the Party concerned has failed to comply with article 6, paragraph 2, of the Convention both with respect to its current legislation and regarding the public participation procedure on the project in particular. *(See paragraph 102 of document ECE/MP_PP/C.1/2017/12)*

The Committee considers that providing notice a minimum of 20 calendar days before the public hearing for the public to become acquainted with the documentation and to prepare to participate may generally be sufficient, bearing in mind that longer periods may be required in complex cases or when there is voluminous documentation. In this regard, the Committee recalls its previous findings on communication ACCC/2006/16 where it held:

> The requirement to provide “reasonable time frames” implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity. A time frame

Found, among other things, that:

(a) By failing to ensure that its legal framework ensures that the public concerned is informed in an adequate, timely and effective manner of all matters included in subparagraphs (a)–(e) of article 6, paragraph 2, the Party concerned has failed to comply with article 6, paragraph 2, of the Convention both with respect to its current legislation, and regarding the public participation procedure on the resort in particular;

(b) By failing to ensure a sufficient time frame for the public to prepare and participate effectively during the environmental decision-
which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project. However, it is apparent that when this period partially or fully overlaps with the days of major religious festivals, national days or, to a certain extent, the main summer or winter holidays, the actual time frames envisaged for the public to prepare to participate are automatically shortened. (See paragraph 104-105 of document ECE/MP.PP/C.1/2017/12)

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<th>making on the resort, the Party concerned failed to comply with article 6, paragraph 3, of the Convention. (See paragraph 133 of document ECE/MP.PP/C.1/2017/12)</th>
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<td>Recommended, among other things, to the Party concerned to take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:</td>
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<td></td>
<td>(a) The content of the public notice prescribed by the Rules of Public Hearings meets all the requirements set out in article 6, paragraph 2, of the Convention;</td>
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<td>(b) Time frames set for decision-making procedures subject to articles 6 or 7 of the Convention are sufficient to enable the public to prepare and to participate effectively and:</td>
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<td>(i) To the extent possible, they do not overlap with holiday periods and other nonworking days;</td>
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<td>(ii) The volume and the complexity of the project or plan, programme or policy is</td>
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In this respect, the Committee recalls its findings on communication ACCC/C/2012/71 in which it held that:

In cases that are not subject to a transboundary procedure under an international treaty (e.g., the Espoo Convention), the requirement to inform the public concerned in the affected countries in an adequate, timely and effective manner will be the sole responsibility of the competent authority of the Party of origin. Ensuring that the notification is effective may include, inter alia, publishing announcements in the popular newspapers and by other means customarily used in the affected countries, as well as by exploring possibilities for using more dynamic forms of communication (e.g., through social media). In cases that are subject to a transboundary procedure under an international treaty, the Party of origin remains responsible under the Aarhus Convention for the adequate, timely and effective notification of the public concerned in the affected country, either by carrying out the notification itself or by making the necessary efforts to ensure that the affected Party has done so effectively.

Having reviewed the applicable provisions of the legislation of the Party concerned, pursuant to which notice is to be posted on the Secretary of State’s website, it appears to the Committee that the legal framework of the Party concerned still does not contain a sufficient guarantee that in case of decision-making regarding activities having clearly more than national scope, such as decision-making regarding nuclear power plants, all those who potentially could be concerned, including the public concerned outside its territory, have a reasonable chance to learn about proposed activities. In this regard, the Committee refers to its findings on communication ACCC/C/2012/71, where it held that “it is not reasonable to expect members of the public to proactively check the Ministry’s website on a regular basis just in case at some point there is a decision-making procedure of concern to them.”

**Found that:**

(a) By not ensuring that the public concerned in the Party affected had a reasonable chance to learn about the proposed activity and the opportunities for the public to participate in the respective decision-making, the Party concerned failed to comply with article 6, paragraph 2, of the Convention with regard to the decision-making;

(b) By not providing a clear requirement in its legal framework to ensure that public authorities, when selecting means of notifying the public, are bound to select such means which, bearing in mind the nature of the proposed activity, would ensure that all those who potentially could be concerned, including the public concerned outside its territory, have a reasonable
For the above reasons, the Committee finds that, by not ensuring that the public concerned in the other country had a reasonable chance to learn about the proposed activity and the opportunities for the public to participate in the respective decision-making, the Party concerned failed to comply with article 6, paragraph 2, of the Convention with regard to the decision-making.

The Committee also finds that, by not providing a clear requirement in its legal framework to ensure that public authorities, when selecting means of notifying the public, are bound to select such means which, bearing in mind the nature of the proposed activity, would ensure that all those who potentially could be concerned, including the public concerned outside its territory, have a reasonable chance to learn about the proposed activity, the Party concerned fails to comply with article 6, paragraph 2, of the Convention with respect to its legal framework.

(See paragraphs 81-84 of document ECE/MP.PP/C.1/2017/14)

Recommended, among other things, to the Party concerned to put in place a legal framework to ensure that:

(a) When selecting the means for notifying the public under article 6, paragraph 2, public authorities are required to select such means as will ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity and including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of the Party concerned;

(See paragraph 90 of document ECE/MP.PP/C.1/2017/14)
**ACCC/C/2014/99**  
(Document ECE/MP.PP/C.1/2017/17)

**Effective notification and time frames for public participation**  
(article 6, paragraph 2)

...members of the public concerned, except the local residents who were notified individually, were not informed in an adequate and effective manner about the proposed activity and the application on which a decision would be taken, as required by article 6, paragraph 2 (a), of the Convention. Such information must include a sufficiently clear and detailed description of the activity so that the public is able to gain an accurate understanding of its nature and scope. In this respect, the Committee reiterates its earlier finding on communication ACCC/C/2006/16 that “inaccurate notification cannot be considered as ‘adequate’ and properly describing ‘the nature of possible decisions’ as required by the Convention”.

In addition, the Committee points out that public notice did not specify: the public authority responsible for making the decision as required by article 6, paragraph 2 (c), of the Convention; what environmental information relevant to the proposed activity was available, as required by article 6, paragraph 2 (d) (vi); and the fact that the activity was subject to an environmental impact assessment procedure, as required by article 6, paragraph 2 (e), of the Convention.

In the light of the above, the Committee finds that, by not properly informing the public concerned about the proposed change or extension to an activity subject to article 6 or update to its operating conditions, or of the public authority responsible for making the decision, and by not indicating what environmental information relevant for the proposed activity was available and that the activity was subject to an environmental impact assessment procedure, the Party concerned failed to comply with article 6, paragraph 2 (a), (c), (d) (vi) and (e), of the Convention in this case. *(See paragraphs 92-94 of document ECE/MP.PP/C.1/2017/17)*

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<tr>
<th>Found, among other things, that:</th>
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<tr>
<td>(a) By not properly informing the public concerned about the project by the company, and in particular about:</td>
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<tr>
<td>(i) The proposed change or extension to an activity subject to article 6 or update to its operating conditions;</td>
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<td>(ii) The public authority responsible for making the decision;</td>
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<td>(iii) What environmental information relevant for the proposed activity was available;</td>
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<td>(iv) The fact that the activity was subject to an environmental impact assessment procedure; the Party concerned failed to comply with article 6, paragraph 2 (a), (c), (d) (vi) and (e), of the Convention.</td>
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<td><em>(See paragraph 108 of document ECE/MP.PP/C.1/2017/17)</em></td>
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| ACCC/C/2014/99  
(Document ECE/MP.PP/C.1/2017/17) | The Committee notes that it is common ground between the parties that the text of the decision was published only on the website of the Ministry. The Committee has concluded in its previous findings that to be in compliance with article 6, paragraph 9, of the Convention, the Parties should establish, in their legislation, a clear requirement to inform the public of when the decision is taken, including a reasonable time period (deadline) for providing this information “promptly” and “in accordance with the appropriate procedures”, in particular bearing in mind the relevant time frames for initiating review procedures under article 9, paragraph 2. The Convention leaves the Parties some discretion in designing “appropriate procedures” for informing the public under article 6, paragraph 9, about the decision once it has been taken. However, these procedures must ensure that information about the decision taken is communicated to the public in an effective way. In this regard, the Committee notes with approval paragraph 137 of the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters which recommend that: “The methods used to notify the public concerned under article 6, paragraph 2, may also be used here, bearing in mind, however, that under article 6, paragraph 9, the right to be informed is granted to ‘the public’ and not to ‘the public concerned’ only.” Drawing on the above, the Committee considers that, as a good practice, the methods used to notify the public concerned under article 6, paragraph 2, should be utilized as a minimum for informing the public under article 6, paragraph 9, of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned. 

In the view of the Committee, informing the public about the decision taken exclusively by means of the Internet does not meet the requirement of article 6, paragraph 9, of the Convention. The Committee commends the practice of making the full text of the decision available electronically on the website of the competent authority (and also, but not only, on the website of the developer). However, relying solely on publishing the decision electronically may exclude members of the public who do not use the Internet regularly or do not have easy access to it from the possibility of being effectively informed about the decision that has been taken. Moreover, as the Committee held in its findings on communication ACCC/C/2012/71, “it is not reasonable to expect members of the public to make an effort to find the decision published on the website of the competent authority. The Party concerned should take the necessary legislative, regulatory or other measures and practical arrangements to ensure that the public is promptly informed of decisions taken under article 6, paragraph 9, of the Convention not only through the Internet, but also through other means, including but not necessarily limited to the methods used to inform the public concerned pursuant to article 6, paragraph 2, of the Convention. (See paragraph 109 of document ECE/MP.PP/C.1/2017/17) |
| Ensuring that greater account is taken of the comments from the public in the final decisions and ensuring the appropriate provision of feedback on how the public’s comments have been taken into account in the decisions (article 6, paragraph 9) | Found, among other things, that: 

(b) By not informing the public about the decision to permit the activity subject to article 6 of the Convention by any other means than publishing the decision on the Internet, the Party concerned failed to comply with article 6, paragraph 9, of the Convention. (See paragraph 108 of document ECE/MP.PP/C.1/2017/17) Recommended, among other things, to the Party concerned to take the necessary legislative, regulatory or other measures and practical arrangements to ensure that the public is promptly informed of decisions taken under article 6, paragraph 9, of the Convention not only through the Internet, but also through other means, including but not necessarily limited to the methods used to inform the public concerned pursuant to article 6, paragraph 2, of the Convention. (See paragraph 109 of document ECE/MP.PP/C.1/2017/17) |
public to proactively check the Ministry’s website on a regular basis just in case at some point there is a decision-making procedure of concern to them.” The Committee highlights that this logic is equally applicable to electronic publication in official gazettes. On this point, the Committee also recalls its finding on communication ACCC/C/2004/8 where it held that the mere fact that the public may be able to access a decision subject to article 6 through a publicly accessible electronic database does not satisfy the requirement of article 6, paragraph 9, if the public has not been promptly and effectively informed of that fact.

In the light of the above, the Committee finds that by not informing the public about the decision to permit the activity subject to article 6 of the Convention by any other means than publishing the decision on the Internet, the Party concerned has failed to comply with the requirements of article 6, paragraph 9, of the Convention. (See paragraphs 103-105 of document ECE/MP.PP/C.1/2017/17)