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7 January 2011

Ms. Galina Volchuga
Deputy Minister of Natural Resources
and Environmental Protection
of the Republic of Belarus
10, Kollektornaya St.
220048 Minsk
Belarus

Dear Ms. Volchuga,

Re: Follow-up on communication ACCC/C/2009/37 to the Aarhus Convention Compliance Committee concerning compliance by Belarus

We refer to the findings and recommendations of the Aarhus Convention Compliance Committee with regard to communication ACCC/C/2009/37, adopted on 24 September 2010, at the Committee's twenty-ninth meeting. The Committee, pursuant to paragraph 35 of the annex to decision I/7 and taking into account the cause and degree of non-compliance, made a number of recommendations to be considered by the Meeting of the Parties in its recommendations to the Party concerned in June 2011. In the meantime, in the context of communication ACCC/C/2009/44 concerning compliance by Belarus and currently pending before the Committee, the Committee has been informed of a number of changes in legislation and practice that have taken place in Belarus during 2010.

You are now invited to comment on the recommendations of the Committee on communication ACCC/C/2009/37 and to inform the Committee of any progress by Belarus in implementing these recommendations not later than **11 February 2011**. The Committee would appreciate to have this information when it concludes its report to the Meeting of the Parties, including its recommendations on issues of non-compliance, at its thirty-first meeting (22-25 February 2011).

For your convenience, the recommendations of the Committee are also annexed to this letter.

Please do not hesitate to contact the secretariat (public.participation@unece.org) if you require any further information.

Yours sincerely,

Monika Linn
Deputy Director
Environment Division

CC: Permanent Mission of the Republic of Belarus to the United Nations Office and other International Organizations in Geneva
Mr. Ivan Narkevitch, Head of the Department of International Conventions and Agreements, RUE "Bel SRC "Ecology", Belarus
Mr. Andriy Andrussevych, European ECO Forum
Ms. Irina Sukhy, Council of Public Association "Ecohome"
Mr. Aleh Novikau, Belarussian Party of "Greens"
Mr. Thomas Alge Oekobuero – Coordination office of Austrian Environmental Organizations

Enc Recommendations set out in the findings on communication ACCC/C/2009/37

ANNEX

FINDINGS AND RECOMMENDATIONS WITH REGARD TO COMMUNICATION ACCC/C/2009/37 CONCERNING COMPLIANCE BY BELARUS adopted on 24 September 2010 (paras. 102 – 106)

IV. CONCLUSIONS AND RECOMMENDATIONS

102. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

103. The Committee finds that in relation to the HPP project the Party concerned:

(a) by failing to provide the requested information, it failed to comply with article 4, paragraph 1, of the Convention (para. 72 above);

(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);

(c) by not providing the public with sufficient possibilities to submit any comments, information, analyses or opinions relevant for the HPP project, it failed to comply with article 6, paragraph 7 (paras. 94-95 above);

(d) by not informing promptly the public about the environmental expertiza conclusions, namely a decision of the construction of the HPP project, it failed to comply with article 6, paragraph 9 (para. 99 above).

104. Moreover, the Committee finds that the following general features of the Belarusian legal framework are not in compliance with the Convention:

(a) requiring an interest be stated for access to environmental information (art. 4, para. 1) (para. 72 above);

(b) not adequately regulating the public notice requirements: in particular by not providing for mandatory means of informing the public, setting insufficient requirements as to the content of public notice and not providing for a clear requirement for the public to be informed in an adequate, timely and effective manner (art. 6, para. 2) (para. 86 above);

(c) setting only maximum time-frames for public hearings and allowing thereby in individual cases to set time-frames which might be not reasonable (art. 6, para. 3) (para. 90 above);

(d) 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 (art. 6, paras. 2(d)(iv) and (v) and art. 6 paras. 6 and 7) (para. 80 above);

(e) not establishing mandatory requirements for the public authorities that issue the expertiza conclusion to take into account the comments of the public (art. 6, para. 8) (para. 96 above);

(f) 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 (art. 6, para. 9) (para. 98 above).

105. Furthermore the Committee is concerned that:

- (a) in relation to compliance with article 5, paragraphs 1(a) and 1(b), the law in Belarus render only the developer responsible for maintaining the documentation relevant to OVOS and expertiza, including the documents evidencing public participation, and they do not include any obligation in this respect of the authorities competent to examine the results of OVOS and to issue expertiza conclusions;
- (b) the law in Belarus concerning situations where provisions on public participation do not apply may be interpreted much more broadly than allowed under article 6, paragraph 1(c) of the Convention.

B. Recommendations and other measures

106. The Committee, pursuant to paragraph 35 of the annex to decision I/7 and taking into account the cause and degree of non-compliance, recommends the Meeting of the Parties:

(a) pursuant to paragraph 37(b) of the annex to decision I/7, to recommend to the Party concerned to take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

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

(ii) 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;

(iii) There are clear requirements regarding the form and content of the public notice as required under article 6 paragraph 2 of the Convention;

(iv) There are reasonable minimum time frames for submitting the comments during the public participation procedure, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;

(v) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e. the authorities competent to take the decisions subject to article 6 of the Convention);

(vi) There is a clear responsibility of the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or at the public hearings;

(vii) There is a clear responsibility of the relevant public authorities to take due account of the outcome of public participation and to provide evidence of this in the publicly available statement of reasons and considerations on which the decisions is based;

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

- inform promptly the public of the decisions taken by them and their accessibility;
- maintain and make accessible to the public: copies of such decisions along with the other information relevant to the decision-making, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments;
- establish relevant publicly accessible list or registers of the decisions held by them.

(ix) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1(c) of the Convention.

(b) Pursuant to paragraph 37(c) of the annex to decision I/7, invite the Party concerned to:

(i) to draw up an action plan for implementing the above recommendations with a view to submitting an initial progress report to the Committee by 1 December 2011 and the action plan by 1 April 2011;

(ii) to provide information to the Committee at the latest six months in advance of the fifth Meeting of the Parties on the measures taken and the results achieved in implementation of the above recommendations.