

To:

The Compliance Committee of the Aarhus Convention,

Ms. Fiona Marshall

CC:

Republic of Belarus,

Ministry of Environment (focal point of the Aarhus Convention), info@minpriroda.by

From: European ECO Forum Legal Focal Point, represented by Andriy Andrusevych, Resource & Analysis Center "Society and Environment"

Case Ref: communication C/37 and communication C/44 (Belarus)

Sep 26th, 2013

Communicant's views on

Implementation of MOP decision and committee's recommendations by Belarus

1. This memo reflects communicant's views on implementation by Belarus of the MOP decision IV/9b and committee's findings in communication C/44.

I General considerations on legal context

2. In our view, there are two major legislative issues relevant for the assessment of measures taken to implement recommendations: (a) significant changes introduced in 2011 to the EIA legislation in Belarus and (b) draft legislative proposals submitted to the Compliance Committee by the Government of Belarus.
3. As to "new" EIA legislation. The communicants are aware of the fact that just before MOP IV was held. This includes new law on State Environmental Review (*Expertiza*) and two new regulations on OVOS and EIA. We have made analysis of the legal consequences of the adoption of this new legal framework for EIA in the context of Aarhus Convention's obligations. This analysis was submitted to the Compliance Committee in December 2011. Since then no significant changes were made to EIA legal framework so our views are still relevant.
4. Briefly, we consider that:
 - **No Aarhus-related changes were introduced into state environmental expertiza process** (the Law on Environmental Expertiza was not subject to changes, too). They remain silent on public participation procedures.
 - **OVOS procedure was subject to numerous changes**, including access to information about "final decision" and authority taking it; access to environmental expertiza conclusions; access

to final OVOS report; Internet-access to some information in course of the public consultation procedure; Establishing minimum timeframes for public discussions on OVOS report.

- **The new OVOS procedure has certain improvements** (such as public notice requirements, access to OVOS report), **yet it has numerous shortcomings in light of Article 6 requirements** (construction permit as final decision, no access to environmental expertiza conclusions, etc).
- **The OVOS procedure, even if perfect, is not a decision-making procedure, therefore it cannot ensure implementation of various Article 6 requirements.**

5. As to legislative proposals submitted to Compliance Committee (draft regulation on public participation and draft law amending certain laws). First, **the draft regulation on public participation has limited scope of application**, basically only relevant in the context of Article 7 of the Convention. It has no applicability to Annex I activities. Second, draft law amending other laws may possibly address the issue of link (conflict) between the Law on Information and Law on Environmental Protection in the context of access to environmental information.

II MOP decision implementation

6. These comments reflect communicant's views on implementation of MOP Decision IV/9b. It is structured in line with recommendations contained in para 4 of the Decision IV/9b.
 - (a) + Proposed draft law submitted to the Compliance Committee by Belarus does address the issue in our view;
 - (b) + Current framework may address requirement of adequate, timely and effective notice within OVOS procedure;
 - (c) + Current framework may address requirement of adequate, timely and effective notice within OVOS procedure;
 - (d) + Current framework may address requirement of adequate, timely and effective notice within OVOS procedure;
 - (e) - There is no possibility to submit comments directly to responsible public authority;
 - (f) - Responsible public authority does not accept comments directly under OVOS scheme;
 - (g) - This is not addressed in the current framework;
 - (h) - Current OVOS/Expertiza scheme does not address this recommendation, including subparagraphs (i)-(iii);
 - (i) We don't have views on this recommendation.

III Recommendations in C/44

7. We recognize the fact that *Regulation on the procedures for discussion of the issues in the area of the use of nuclear energy with participation of citizens associations, other organizations and citizens* was annulled. This left nuclear decision-making without any special legal framework in light of Aarhus Convention's requirements implementation. In other words, nuclear decision-making now relies on relevant environmental laws (OVOS and expertiza) to ensure access to information and public participation requirements.
8. Subsequently, our views on specific Committee's recommendations implementations are (as contained in para.90 of the Findings and Recommendations in C/44):

- (a) + - Since there is now no specific legal requirements on public participation and access to information within nuclear decision-making, the two legal frameworks are coherent now;
- (b) – It is still unclear what is final decision for nuclear installations Belarus ;
- (c) + This is solved through new OVOS framework ;
- (d) + This recommendation may be addressed by the draft regulation on public participation submitted for comments to Compliance committee;
- (e) No views on this.

Respectfully submitted on behalf of the communicants,

Andriy Andrushevych

Resource & Analysis Center “Society and Environment”