

Compliance by Belarus with its obligations under the Convention

I. Introduction

a. Decision IV/9b of the Meeting of the Parties

1. At its fourth session, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision IV/9b on compliance by Belarus with its obligations under the Convention (included in ECE/MP.PP/20011/2/Add.1).

2. Review of Belarus' compliance with the Convention had been triggered by communication ACCC/C/2009/37 concerning access to information and public participation in the decision-making for the hydro-power plant project on the Neman River. In its findings adopted on 24 September 2010, the Committee found that the Party concerned had failed to comply with articles 4, paragraph 1 and article 6, paragraphs 2, 2(d)(iv)-(v), 3, 6, 7, 8 and 9 (ECE/MP.PP/2011/11/Add.2). The Committee made recommendations directly to the Meeting of the Parties.

3. At its thirty-first meeting (22-25 February 2011), in the light of being informed of a number of changes in legislation and practice that had taken place in Belarus during 2010, the Committee decided to recommend to the Meeting of the Parties that its recommendations with regard to communication ACCC/C/2009/37 should be taken up in the light of the new legislation (ECE/MP.PP/C.1/2011/2).

4. Through decision IV/9b, the Meeting of the Parties endorsed the Committee's findings that related both to the specific case for the hydro-power plant and to the general legal framework. Having taken note of the ongoing legislative and regulatory reforms in Belarus in relation to the implementation of the Convention, the Meeting of the Parties recommended to the Party concerned in the process of its reform to reach compliance with the Convention, to take the necessary legislative regulatory and practical arrangements to ensure that:

- (a) The general law on access to information refers to the 1992 Law on Environmental Protection that specifically regulates access to environmental information, in which case the general requirement of stating an interest does not apply;
- (b) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner;
- (c) There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;
- (d) There are reasonable minimum time frames for submitting 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;
- (e) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention);
- (f) There 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;

- (g) 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;
- (h) There is a clear responsibility of the relevant public authorities to:
 - i. Inform promptly the public of the decisions taken by them and their accessibility;
 - ii. Maintain and make accessible to the public: copies of such decisions along with the other information relevant to the decision-making, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments;
 - iii. Establish relevant publicly accessible lists or registers of the decisions held by them;
- (i) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 (c), of the Convention.

5. The Meeting of the Parties also invited Belarus 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 2012; and to provide information to the Committee, at the latest six months in advance of the fifth session of the Meeting of the parties, on the measures taken and the results achieved in implementation of the recommendations.

b. Communication ACCC/C/2009/44

6. During the intersessional period 2008-2011, the Committee also considered communication ACCC/C/2009/44 concerning compliance by Belarus in relation to the decision-making for the construction of a nuclear power plant in Ostrovets. Since the Committee adopted its findings and recommendations in that communication at its thirty-third meeting (27-28 June 2011), which was held back-to-back with the fourth session of the Meeting of the Parties, those findings were not considered by the Meeting of the Parties at its fourth session and will be considered at the Meeting's fifth session.

7. In its findings on communication ACCC/C/2009/44 adopted on 28 June 2011 (ECE/MP.PP/C.1/2011/6/Add.1), the Committee in that case found non-compliance by Belarus with article 4, paragraph 1(b) and article 6, paragraphs 2(d)(vi), 4, 6, 7 and 9 of the Convention. The Committee found non-compliance both with respect to the specific circumstances of the Ostrovets nuclear power plant and, recalling its findings on communication ACCC/C/2009/37, the general legal framework. With the agreement of the Party concerned, the Committee recommended to the Party concerned that it :

- (a) In amending its legislative, regulatory and other measures, take note of the Committee recommendations on communication ACCC/C/2009/37 with respect to the general legal framework, and ensure the compatibility of and coherence between the general framework for public participation in decisions on specific activities (the general EIA legislation) and the framework for public participation in nuclear activities;
- (b) Ensure that the amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is made public, as required under article 6, paragraph 9, of the Convention;
- (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);

- (d) Make appropriate practical and other provisions for the public to participate during the preparation of plans and programmes relating to the environment;
- (e) Organize training of public officials to raise awareness with regard to the Convention and ensure that public officials are adequately informed so as to prevent the dissemination of inaccurate information.

II. Summary of follow-up action with decision IV/9b and communication ACCC/C/2009/44

8. Due to the relevance of the recommendations in ACCC/C/2009/44 with those in decision IV/9b, the Committee in following up with the action of the Party concerned in relation to decision IV/9b considered the overall efforts undertaken for the approximation of the legal framework to the standards of the Convention, including in following up with the recommendations directly to the Party concerned in ACCC/C/2009/44. The NGO community involved in ACCC/C/2009/44 was also directly involved in following up with decision IV/9b.

9. On 30 November 2011, the Party concerned submitted electronically its progress report due on 1 December 2011, but due to a technical issue, the report had not reached the recipients in time for the thirty-fifth meeting of the Committee (13-16 December 2011) (see below). In its report, the Party informed the Committee of the major steps towards reaching compliance with the Convention, in particular through the adoption of Decision 689 adopted by the Cabinet of Ministers on 1 June 2011 and amending Resolution 755 adopted by the Cabinet of Ministers of 19 May 2010; Resolution 1370 of 13 October 2011; and Resolution 687 adopted by the Cabinet of Ministers of 1 June 2011 concerning public participation in urban planning and construction activities. The Party concerned also informed of further legislative changes in the context of access to information and public participation, as defined in the Convention, as part to a project commissioned by the European Union and the United Nations Development Programme. The text of Decision 689, amending Resolution 755, and of Resolution 687 was provided in the Russian and English languages.

10. The report of the Party concerned highlighted in particular the following changes introduced through Decisions 689:

- (a) The inclusion of the principles of timeliness and effectiveness of public information on the environmental impact of a proposed activity in the basic principles of the OVOS legislation;
- (b) The establishment of a minimum 30-days period for public discussions after the public notice;
- (c) The obligatory inclusion in the public notice of information of the public authority competent to take the decision to permit the activity;
- (d) The clarification of the procedure for the review of the OVOS report;
- (e) The obligation for the competent authorities to publish decisions they take on proposed activities on the Internet

11. On 15 and 16 December 2011, the European Ecoforum (communicant on ACCC/C/2009/44) and Ecodome (Belarus), respectively, submitted letters for consideration by the Committee.

12. In its letter of 15 December 2011, the European EcoForum provided an overview of the changes introduced through Decision No. 689. In the view of the NGO, the Decision introduced some improvements in the legal system, by extending for example the relevant EIA legislation, including with respect to public participation, in nuclear matters and by introducing several changes in the OVOS procedure; yet, there were still several shortcomings in respect to access to information and public participation, as identified by the Committee in its findings on ACCC/C/2009/37 and

ACCC/C/2009/44, and there were concerns over what was considered a final decision under article 6 or the public accessibility of the expertiza conclusions.

13. In its letter of 16 December 2011, Ecodome informed the Committee of the continuing activities in relation to the Ostrovets nuclear power project, despite the recent findings and recommendations of the Committee.

14. At its thirty-fifth meeting, the Committee considered the two letters by the NGO community and agreed to review the matter further at its thirty-sixth meeting (27-30 March 2012). As mentioned above, the Committee at that meeting was not aware of the report submitted by the Party concerned on 30 November 2011.

15. At its thirty-sixth meeting, the Committee noted that the Party concerned had submitted its progress report electronically within the set deadline of 1 December 2011, but due to a technical issue, the report had not reached the recipients in time for the thirty-fifth meeting of the Committee. The Committee expressed its general satisfaction with the general direction of action taken by the Party concerned. The Committee requested the secretariat to remind the Party of the upcoming deadline of 1 April 2012 for the submission of its action plan. It agreed that it would welcome comments by the communicant on the action plan as well, and that it would review the materials received in further detail at its thirty-seventh meeting (26-29 June 2012).

16. On 30 March 2012, the Party concerned submitted the action plan, as requested by decision IV/9b. In its action plan, the Party concerned identified the specific actions to be taken to reach compliance and set a timeline.

17. On 9 March 2012, the communicants were invited to comment on the progress report and the action plan submitted by the Party concerned.

18. On 15 June 2012, the Party concerned informed the Committee of a newly established working group for preparing proposals for better implementation of the Convention and a concept note on amendments to legislation.

19. At its thirty-seventh-meeting, the Committee welcomed the action plan submitted by the Party concerned on 30 March 2012. No comments had been received from the communicant. The Committee also noted the information submitted by the Party concerned on 15 June 2012. Observers drew the attention of the Committee to the translation of “responsibility” in the Russian text of the decision, which could be interpreted as “liability” by the Party concerned and could lead to measures which would not be suitable to address the recommendations of the Meeting of the Parties; to the concerns of the civil society that it had not been properly consulted in the preparation of the action plan; and that further steps had been taken for the construction of the nuclear power station in Ostrovets. The Committee took note of the information provided. It instructed the secretariat to write a letter to the Party concerned clarifying the meaning of “responsibility” in decision IV/9b and inviting the Party to comment on the statements made by the observers and to provide information on how members of the public were involved in the preparation of the action plan and whether all documents were publicly available. The Party concerned should provide the requested information by 15 September 2012. The Committee would then consider the matter at its thirty-eighth meeting (25-28 September 2012). The Committee also requested the secretariat to request the Party to inform the Committee about the progress on the legislative amendments and how those addressed the specific elements of paragraph 4 of decision IV/9b by 1 February 2013.

20. On 14 September 2012 the Party concerned responded to the points made by observers on 29 June 2012, at the Committee’s thirty-seventh meeting.

21. On 28 September 2012, the last day of the Committee’s thirty-eighth meeting, the European EcoForum submitted a letter informing about the arrest and detention of members of the public for their activities in environmental matters (see also below).

22. At its thirty-eighth meeting, the Committee took note of the information provided by the Party concerned on 15 June 2012. The Committee recalled that the Party concerned still had to inform

the Committee about the progress on the legislative amendments and how those addressed the specific elements of paragraph 4 of decision IV/9b by 1 February 2013.

23. At that meeting, the Committee was informed by observers that members of the public, including those involved in communication ACCC/C/2009/44 and expressing their concern over the construction and operation of the Ostrovets nuclear power plant, had been arrested and detained in July 2012 (see also above, letter submitted by the European EcoForum on 28 September 2012). In that regard, the Committee recalled that in its findings on communication ACCC/C/2009/44 it had already considered allegations of non-compliance by Belarus with its obligations under article 3, paragraph 8, of the Convention in relation to the Ostrovets nuclear power plant, because of alleged pressure on members of the public trying to promote their views on that project. In that case, the Committee had found that the allegations concerning harassment were serious and that the alleged facts, if sufficiently substantiated, would amount to harassment in the sense of article 3, paragraph 8, of the Convention, and would therefore constitute non-compliance with that provision. However, on the basis of the information received at that time, the Committee had not been able to assess with sufficient certainty exactly what had happened and therefore it had refrained from making findings on that issue (see ECE/MP.PP/C.1/2011/6/Add.1).

24. The Committee decided to remind the Party of its obligation to report by 1 February 2013, and further to the information received from the observers, to invite it to also comment on the recent arrest and detention referred to in the previous paragraph. It agreed that it would review those materials received in greater detail at its fortieth meeting (25-28 March 2013).

25. On 5 October 2012, the Chair of the Committee sent a letter to the Party concerned inviting it to comment on the events reported with respect to the arrest and detention of members of the public allegedly on the grounds that they had expressed concern over the construction and operation of the Ostrovets nuclear power plant, which events, if substantiated, would amount to non-compliance with article 3, paragraph 8, of the Convention.

26. On 1 February 2013, the Party concerned submitted its report informing the Committee of further activities with a view to bringing its legislation in full compliance with the Convention, including the preparation of a draft law on further amendments to some laws in respect of access to environmental information and public participation requirements. The draft had been discussed with the public. In addition, a draft resolution had been prepared for the conduct of public discussions on environmental decision-making and trainings had been conducted.

27. On 13 February 2013, the Party concerned responded to the letter of the Committee Chair of 5 October 2012 that it was not possible to draw any conclusion about the detention of members of the public in connection with their public activities against the construction of the nuclear power plant.

28. On 28 February 2013 a letter was sent on behalf of the communicant on ACCC/C/2009/37 welcoming the efforts made by the Party concerned in the process of implementation of decision IV/9b. The letter also recalled the concerns expressed by the European EcoForum on 15 December 2011 and the situation with regard to the arrests and detentions in summer 2012.

29. On 21 March 2013, the communicant on ACCC/C/2009/44 sent a letter expressing its disappointment at the fact that the Party did not report on how it followed up specifically with the Committee's recommendations in that communication and had not responded to the points made by the European EcoForum by letter of 15 December 2011. It also highlighted the continuous situation of harassment of environmental activists in the country.

30. At its fortieth meeting, the Committee took note of the report provided by the Party concerned, as well as the Party concerned's response of 13 February 2013 to the Chair's letter of 5 October 2012. The Committee also took note of the comments on the Party's report submitted by the NGOs. An observer expressed deep disappointment with respect to the legislative developments.

31. The Committee noted that the nature of the information provided by the Party concerned did not allow for an accurate evaluation of the progress achieved. It decided to send a letter to the Party

concerned requesting concrete information about the exact dates of the different stages of the legislative process to reach the objectives set in the action plan, originally submitted on 30 March 2012, including information on how the relevant recommendations in communication ACCC/C/2009/44 (ECE/MP.PP/C.1/2011/6/Add.1, para. 90, in particular). The Committee also noted with regret that the response of the Party concerned to the Chair's letter of 5 October 2012, concerning the alleged arrest and detentions of environmental activists, was unsatisfactory, and therefore decided to invite the Party concerned to provide more specific information. The Committee agreed to review the situation in detail at its forty-second meeting and requested the secretariat to explore the possibility of a videoconference with the Party concerned and interested observers and to remind them of the recommendations on communication ACCC/C2009/44 and also the recommendations on communication ACCCC/2009/37, which the Party had accepted.

32. In subsequent letters from the secretariat, the Party concerned was reminded of its deadline for submission of information with regard to both follow-up action with decision IV/9b and the Committee's recommendations on ACCC/C/2009/44.

33. On 31 July 2013, the Party concerned, through its Ministry of Environment, submitted the requested report. In its report the Party concerned informed the Committee of:

(a) The new law introducing amendments to various environmental laws to align the public participation procedures to the Aarhus Convention. A copy of the draft was also submitted to the Committee and the Committee was invited to comment. The draft will be open for public consultations and a new draft will be prepared to include the outcomes of the consultations.

(b) The developments further to the Committee's letter, through its Chair, requesting information about the summer 2012 alleged arrest and detention of members of the public: the Ministry of Environment had conveyed the Committee's request for information to the Ministry of Internal Affairs and the Chief Directorate for Internal Affairs. The Ministry of Internal Affairs replied that it was not possible to draw any conclusion about the connection between the detention of the persons mentioned and their public activities against the construction of the nuclear power plant. The Ministry of Environment then prepared a briefing note concerning the obligations arising from the Convention for Belarus, in particular with respect to article 3, paragraph 8, and sent it to the Ministry of Internal Affairs.

(c) Ongoing staff training activities on matters relating to the Convention

(d) A new project in collaboration with international partners aiming at improving the capacity of NGOs to engage in activities to preserve the natural environment, including training on matters governed by the Convention.

34. At its forty-second meeting, the Committee held a telephone conference with the Party concerned in which the Party concerned provided a statement as to how it had addressed each subparagraph of decision IV/9b, as well as the Committee's findings and recommendations on communication ACCC/C/2009/44. The communicant for communication ACCC/C/2009/44 had also provided its comments on the Party concerned's progress with respect to each subparagraph of the recommendations contained in decision IV/9b, as well as the Committee's recommendations on communication ACCC/C/2009/44. An observer, Ecohome (Belarus) also made a statement on the implementation of those recommendations. The Committee agreed on questions to be sent to the Party concerned for its written response after the meeting and commenced preparation of its draft report to the Meeting of the Parties at its fifth session on the implementation of decision IV/9b. On 16 December 2013, the Party concerned provided its responses to the questions sent to it by the Committee after the Committee's forty-second meeting.

35. At its forty-third meeting (Geneva, 17-20 December 2013), the Committee continued preparation of its draft report to the Meeting of the Parties at its fifth session on the implementation of the recommendations in decision IV/9b and the Committee's findings on ACCC/C/2009/44. An

observer, Ecohome (Belarus), had also made a statement on the implementation of those recommendations.

36. By email of 13 February 2014, the Committee requested the Party concerned to clarify which provisions of its legislation it considered to address each of the recommendations made through paragraph 4 of decision IV/9b and paragraph 90 of the Committee's findings on ACCC/C/2009/44.

37. The communicant in ACCC/C/2009/44 provided its views on the Committee's request the same day, on 13 February 2014, and the Party concerned provided its response on 19 February 2014.

38. Taking into consideration the information provided, the Committee completed its draft report through its electronic decision-making procedure before sending it to the parties for their comments.

III. Considerations and evaluation by the Committee

Decision IV/9b

39. In order to meet the requirements of decision IV/9b, the Party concerned would need to demonstrate to the Committee that it had taken the necessary legislative regulatory and practical arrangements to ensure that it had fulfilled the recommendations set out in paragraph 4(a)-(i) of that decision (see paragraph 4 of the current report for the content of those recommendations).

40. With respect to the recommendations in paragraphs 4(a), 4(f), 4(g), 4(h)(i), 4(h)(ii), of decision IV/9b, the Party concerned reported that these recommendations would be taken into account through its proposed draft legislation. As that legislation is still only in draft form, the Committee finds that the Party has not yet taken the necessary measures to ensure these recommendations are met.

41. With respect to the recommendation in paragraph 4(b) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that the recommendation was met through section 4.5 of the Regulations on the Conduct of Environmental Impact Assessment, which states:

“4. The main principles of impact assessment are:

...4.5. timely and effective provision of information to the public, transparency, and consideration of public opinion on the environmental impact of a proposed activity;”

42. With respect to decision-making related to the environment that is not subject to the above Regulations, in its response of 19 February 2014, the Party stated that the recommendation in paragraph 4(b) would be taken into account through its proposed draft legislation.

43. While welcoming the inclusion in the Regulations on the Conduct of Environmental Impact Assessment of the principle of timely and effective provision of information to the public, the Committee does not consider that such a principle amounts to a clear requirement for the public to be informed of all decision-making processes that are subject to article 6 in an adequate, timely and effective manner, as set out in the recommendation in paragraph 4(b) of decision IV/9b. The Committee thus finds that the Party has not yet taken the necessary measures to ensure this recommendation is met either for decision-making subject to EIA or decision-making related to the environment which is not subject to EIA.

44. With respect to the recommendation in paragraph 4(c) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that the requirements as to the form and content of public notice under article 6, paragraph 2, of the Convention are met through Technical Code of Practice 17.02-08-2012 (annex G to the Regulations on the Conduct of Environmental Impact Assessment).

45. The requirements for notice are also set out in sections 34 and 35 of the Regulations on the Conduct of Environmental Impact Assessment, namely:

“34. The relevant local councils of deputies and local executive and administrative authorities jointly with the developer shall:

...

within three working days of a communication from the public to the relevant local executive and administrative authorities stating the need for a meeting to discuss the EIA report, inform the public of its time and place by means of publication of an announcement in the media and also on the internet sites of the developer and the relevant local executive and administrative authorities (where such sites exist).

35. The notice of public discussions must include:

35.1. information on the developer of the proposed activity (name; legal, postal and electronic addresses; telephone and fax numbers);

35.2. name, rationale and description of the proposed activity;

35.3. information on the location of the proposed activity;

35.4. information on the timeframe for the proposed activity;

35.5. information on the timetable for public discussions and the submission of comments on the EIA report;

35.6. information on where the EIA report may be inspected and where to send observations and proposals on the EIA report (name of organisation, postal address, internet site, family name, given name, patronymic and job title of the contact person, their telephone and fax numbers and e-mail address);

35.7. information on the location of the executive and administrative authority responsible for taking a decision on whether to permit construction of the installation (its name, postal address, web site, telephone and fax numbers and email address) and the deadline for submitting a communication stating the need for a meeting to discuss the EIA report and a communication stating the intention to conduct a public environmental review”.

46. The Committee welcomes that section 35 of the Regulations on the Conduct of Environmental Impact Assessment and the Technical Code of Practice appears to address the majority of the requirements for notice set out in article 6, paragraph 2. The Committee is not convinced however that either sections 34 and 35 of the Regulation or the Technical Code of Practice address the requirements of article 6, paragraph 2 (b) or 2 (d)(vi). The Committee finds that the Party has not yet fully met the requirements of recommendation in paragraph 4(c) of decision IV/9b in these particular respects.

47. With respect to the recommendation in paragraph 4(d) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that this recommendation was addressed through section 35-1 of the Regulations on the Conduct of Environmental Impact Assessment, which states:

“35-1. The period of public discussions must be no fewer than 30 calendar days from the date of publication of the notice of public discussions.”

48. With respect to decision-making related to the environment that is not subject to the above Regulations, in its response of 19 February 2014, the Party stated that the recommendation in paragraph 4(d) would be taken into account through its proposed draft legislation.

49. On the basis of the information provided, the Committee finds the recommendation in paragraph 4(d) of decision IV/9b to be fulfilled with respect to decision-making subject to an EIA procedure but not yet fulfilled with respect to decision-making subject to article 6 of the Convention which is not subject to an EIA procedure.

50. With respect to the recommendation in paragraph 4(e) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that this recommendation was addressed through section 41 of the Regulation on the Conduct of Environmental Impact Assessment, which states:

“A summary of feedback prepared by the design organisation pursuant to the contract with the developer shall be appended to the record of the public discussions. This summary shall

include all observations and proposals on the EIA report received during the public discussion process by the relevant local executive and administrative authorities, the developer and the design organisation indicated in the notice of public discussions.”

51. The Committee finds, however, that the above provision only requires a summary of the comments received by the developer to be provided to the public authorities, whereas the recommendation in paragraph 4(e) of decision IV/9b requires that there be 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). The Committee thus finds that the Party concerned has not taken sufficient measures to comply with the recommendation in paragraph 4(e) of decision IV/9b.

52. With respect to the recommendation in paragraph 4(h)(iii) of decision IV/9b, in its response of 19 February 2014, the Party informed the Committee that this recommendation was addressed through section 23 of the Regulations on the Conduct of Environmental Impact Assessment, which states:

“Lists of planning permission decisions for installations shall be created and maintained up-to-date by local executive and administrative authorities on their web sites (where such sites exist).”¹

53. While welcoming the introduction of such a provision into the Regulations on the Conduct of Environmental Impact Assessment, the Committee is not convinced that section 23 fulfils the recommendation in paragraph 4(h)(iii) of decision IV/9b for public authorities to establish relevant publicly accessible lists or registers of the decisions held by them. In particular, the Committee considers that the lists should include all relevant decisions subject to the Convention, not only “planning permission decisions for installations” as currently provided for.

54. With respect to the recommendations in paragraph 4(i) of decision IV/9b, no information was provided by the Party concerned. Thus, the Committee must find that the Party has not yet taken the necessary measures to ensure this recommendation is met.

55. In the light of the above considerations, the Committee welcomes the efforts made by the Party concerned to implement decision IV/9b so far, but is not convinced that the Party concerned has yet taken the necessary measures to fulfil the recommendations set out in paragraphs 4(a)-(i) of that decision.

Findings on ACCC/C/2009/44

56. In order to meet the requirements of the recommendations made by the Committee in its findings on ACCC/C/2009/44, the Party concerned would need to demonstrate to the Committee that it had taken the necessary legislative regulatory and practical arrangements to ensure that it had fulfilled the recommendations set out in paragraph 90 (a)-(e) of those findings (see paragraph 7 for the content of those recommendations).

57. With respect to the recommendation in paragraph 90 (a) of the Committee findings in ACCC/C/2009/44, in its response of 16 December 2013, the Party concerned informed the Committee that this recommendation was addressed through section 1 of the Regulations on the Conduct of Environmental Impact Assessment, which states:

“1. These Regulations set out the procedure for the conduct of environmental impact assessment [OVOS] (hereinafter ‘impact assessment’), including consideration of any possible

¹ Available from:

http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/Belarus/PSM_SEE_OVOS_consolidated_EN.pdf

transboundary impact, of a proposed economic or other activity, including activities in the field of use of nuclear energy (hereinafter ‘proposed activity’).”

58. On the basis of the information provided, the Committee finds that the recommendation in paragraph 90(a) of its findings on ACCC/C/2009/44 has been met.

59. With respect to the recommendations set out in paragraphs 90 (b) and (c) of the Committee’s findings on ACCC/C/2009/44, in its response of 19 February 2014, the Party concerned reported that these recommendations would be taken into account through its proposed draft legislation. As the legislation is still only in draft form, the Committee finds that the Party has not yet taken the necessary measures to ensure these recommendations are met.

60. With respect to the recommendation in paragraph 90 (d) of the Committee findings in ACCC/C/2009/44, the Party concerned provided the Committee with various excerpts of its legislation, including:

- a. Article 15 of the Law “On Environmental Protection”, which provides, inter alia, that NGOs operating in the field of environmental protection have right to participate in the development of state projects, programmes and measures (at national, sectoral and local levels) regarding the rational use of natural resources and the protection of the environment;
- b. Article 16 of the Law “On specially protected nature areas”, which provides that citizens and public associations have the right to make suggestions and assist state agencies in the implementation of activities for the organization, operation, protection and use of specially protected nature areas. Ministerial decree No. 94 of 29 October 2008 “On some issues of specially protected nature areas” provides that draft management plans shall be subject to public consultation through a public hearing.
- c. Article 40 of the Law “On the use of nuclear energy”, which provides that citizens, public associations and other organizations are eligible to participate in the discussion of draft regulations and public programmes in the field of the use of nuclear energy”;
- d. Article 4 of the Law “On the architectural, urban planning and construction activity”, which establishes a right for individuals to participate in the development of urban planning areas, including settlements.

61. The Committee finds that the legislation of the Party concerned provides for the public to participate to some extent during the preparation of a range of different plans and programmes relating to the environment. However, on the basis of the short legislative excerpts provided, the Committee cannot find that the Party concerned makes appropriate practical and other provisions for the public to participate during the preparation of plans and programmes relating to the environment. In particular, it is not possible for the Committee to determine whether the requirements of article 7 (including the requirements of article 6, paragraphs 3, 4 and 8), are provided for in the legislation of the Party concerned. For these reasons, the Committee cannot find that the recommendation in paragraph 90(d) of the findings on ACCC/C/2009/44 has been met.

62. With respect to the recommendation set out in paragraph 90 (e) of the Committee findings in ACCC/C/2009/44, in its response of 19 February 2014, the Party concerned informed the Committee that, with the assistance of the Regional Environmental Centre (Hungary), in December 2013 it had held three training seminars on "The Aarhus Convention in the Republic of Belarus". The training was attended by representatives of government agencies and other public officials, as well as NGOs from Minsk, Gomel and Brest. In addition, a working meeting of representatives of the Ministry of Environment and the Ministry of Energy was held in XX to discuss issues relating to implementation by the Republic of Belarus with its obligations under the Aarhus Convention , in particular article 3, paragraph 8 and article 8 of the Convention. Furthermore, in the light of the concern expressed by the

Comment [o1]: The Party concerned is invited to advise the Committee of the date

Compliance Committee with regard to the Republic of Belarus' implementation of article 3, paragraph 8, of the Convention, in ~~XX~~ the Ministry of the Environment had sent more extensive explanatory information about the Aarhus Convention to the Ministry of Internal Affairs of the Republic of Belarus. Lastly, in January 2014, a national seminar was held in Minsk on the theme : "Promoting the implementation of the Aarhus Convention in Belarus". The seminar was organized by the OSCE in cooperation with UNECE, with the support of the Ministry for Environment and the RUE "Bel SRC "Ecology". The seminar was attended by representatives of government agencies, NGOs and academia.

Comment [o2]: The Party concerned is invited to advise the Committee of the date

63. On the basis of the information provided, the Committee finds that the Party has sufficiently fulfilled the requirements of paragraph 90 (e) of the Committee findings on ACCC/C/2009/44. It encourages the Party to carry out further such initiatives around the country to ensure the awareness of all public officials involved in the implementation of the requirements of the Convention and to report on these activities through its national implementation reports.

64. In the light of the above considerations, the Committee finds that the Party concerned has taken the necessary measures to fulfil the recommendations set out in paragraphs 90(a) and 90 (e) of the findings on ACCC/C/2009/44. However, the Committee findings that the Party concerned has not yet taken the necessary measures to fulfil the recommendations set out in paragraph 90 (b), 90(c) and 90(d) of those findings.

IV. Conclusions and recommendations

65. The Committee welcomes the active and constructive engagement of the Party concerned in the compliance review process, including its efforts to provide additional information upon request and to meet deadlines.

66. Having reviewed the information provided in the intersessional period, the Committee finds that the Party concerned has seriously and actively engaged to follow the recommendations set out in paragraph 4 of decision IV/9b and paragraph 90 of the Committee's findings on ACCC/C/2009/44. Based on the information provided, the Committee considers that the Party concerned has fulfilled paragraphs 90 (a) and 90 (e) of the Committee's findings on ACCC/C/2009/44. While welcoming the progress made by the Party concerned, the Committee regrets that the Party has not yet taken the necessary measures to fulfil the recommendation set out in paragraphs 4(a)-(i) of decision IV/9b or paragraphs 90 (b), (c), and (d) of the Committees findings on ACCC/C/2009/44.

67. The Committee recommends that, pursuant to paragraphs 35 and 36(d) of the annex to decision I/7, that the Meeting of the Parties:

- (a) Endorses the above report of the Committee with regard to compliance by Belarus;
- (b) Welcomes the efforts made by the Party concerned to meet the recommendations of the Committee and the progress it has achieved in that respect;
- (c) Recommends the Party concerned to take the 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;²

- 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;³
- iii. There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;⁴
- iv. There are reasonable minimum time frames for submitting the comments during the public participation procedure for all decisions under article 6 of the Convention, including those that may not be subject to an EIA decision procedure, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;⁵
- 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);⁶
- 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;⁷
- 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;⁸
- viii. There is a clear responsibility of the relevant public authorities to:
 1. Inform promptly the public of the decisions taken by them and their accessibility;⁹
 2. 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;¹⁰
 3. Establish relevant publicly accessible lists or registers of all decisions subject to article 6 held by them;¹¹
- 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;¹²

² Decision IV/9b, paragraph 4(a)

³ Decision IV/9b, paragraph 4(b)

⁴ Decision IV/9b, paragraph 4(c)

⁵ Decision IV/9b, paragraph 4(d)

⁶ Decision IV/9b, paragraph 4(e).

⁷ Decision IV/9b, paragraph 4(f).

⁸ Decision IV/9b, paragraph 4(g).

⁹ Decision IV/9b, paragraph 4(h)(i).

¹⁰ Decision IV/9b, paragraph 4(h)(ii).

¹¹ Decision IV/9b, paragraph 4(h)(iii).

¹² Decision IV/9b, paragraph 4(i).

- x. Ensure that the amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is made public, as required under article 6, paragraph 9, of the Convention;¹³
 - xi. 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);¹⁴
 - xii. Make appropriate practical and other provisions for the public to participate during the preparation of plans and programmes relating to the environment;¹⁵
- (d) Requests the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in the implementation of the above recommendations.

¹³ Findings on ACCC/C/2009/44, paragraph 90(b).

¹⁴ Findings on ACCC/C/2009/44, paragraph 90(c).

¹⁵ Findings on ACCC/C/2009/44, paragraph 90(d).