

Economic Commission for Europe
United Nations
Environment Division

Mr Sergiusz Ludwiczak

Re: Implementation by Belarus of the
recommendations of the Aarhus
Convention Compliance Committee
dated 29 June 2012

Dear Mr Ludwiczak,

The Ministry of Natural Resources and Environmental Protection of the Republic of Belarus ('the Ministry of the Environment') has examined the communication from the United Nations Economic Commission for Europe ('UNECE') and reports as follows.

On paragraphs 1.1-1.3

On 29 March 2012 a meeting took place of the Ministry of the Environment's public coordination environmental council (PCEC), which examined the issue of 'Implementation of the Aarhus Convention by the Republic of Belarus'. The draft Action Plan for the implementation of the decision on the Republic of Belarus taken by the Fourth Session of the Meeting of the Parties to the Aarhus Convention ('the Action Plan') was presented in the context of this issue, and it was also observed that, as part of the European Union ('EU') and United Nations Development Programme ('UN') project 'Support to the development of a comprehensive framework for international environmental cooperation in the Republic of Belarus', it was planned to produce a draft of amendments and additions to national legislation with the aim of ensuring fuller compliance with the Aarhus Convention. The Action Plan that was examined at the meeting of the PCEC was sent on 30 March 2012 to the Compliance Committee of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Pursuant to point 2 of the Action Plan, a working party was set up to analyse Belarusian legislation and put forward proposals to bring it into compliance with the Aarhus Convention. When the working group was formed, letters no. 14-17/1285 dated 17 April 2012 requesting submission by 25 April 2012 of nominations to the working party were sent to all interested state bodies (the Ministry of Architecture and Construction of the Republic of Belarus, the Ministry of Health of the Republic of Belarus, the Ministry of Communications of the Republic of Belarus), civil society organisations (BirdLife Belarus, Ecohome and Ecolaw), and to the National Centre for Legislation and Legal Research of the Republic of Belarus, the Belarusian National Academy of Science's Institute of Genetics and Cytology and the Centre for Environmental Decisions. No letters containing proposed nominations to the working party were received from NGOs by 25 April 2012.

After Order No. 160-OD of 02.05.2012 on the Creation of a Working Party was signed, a proposal was received by email from Ecohome (ecohome.by@gmail.com) on 2 May 2012 to include the following people in the working party to analyse legislation and put forward proposals to bring it into compliance with the Aarhus Convention: Irina Georgievna Sukhii – chair of the board of Ecohome, Grigorii Konstantinovich Fedorov - lawyer and member of the board of Ecohome, and Sergei Aleksandrovich Magonov – lawyer and member of Ecohome.

A meeting of the working party took place on 31 May 2012, at which the Concept Note for the preparation of amendments and additions to Belarusian legislation with regard to public participation in decision-making on types of activity that affect the environment and public access to information ('the Concept Note') was examined. The Concept Note was also published on the websites of the Ministry of the Environment and the UNECE.

It is planned to produce the draft of amendments and additions to national legislation with the aim of ensuring fuller compliance with the Aarhus Convention and implementation of the recommendations issued to the Republic of Belarus by the Fourth Session of the Meeting of the Parties to the Aarhus Convention ('the draft of amendments and additions') in the third quarter of 2012 in accordance with point 4 of the Action Plan. Public discussion of the draft of amendments and additions is planned for the fourth quarter of this year, in accordance with point 5 of the Action Plan.

On paragraphs 1.3.1.1.-1.3.1.1.5.

Presidential Edict No. 418 of 15 September 2011 on the Location and Design of the Nuclear Power Station in the Republic of Belarus, Law No. 321-3 of 25 November 2011 on the Ratification of the Agreement between the Government of the Republic of Belarus and the Government of the Russian Federation on Cooperation in the Construction of a Nuclear Power Plant on the Territory of the Republic of Belarus and Law No. 352-3 of 7 January 2012 on the Ratification of the Agreement between the Government of the Republic of

Belarus and the Government of the Russian Federation on the Provision to the Republic Belarus of an Export Credit to Construct a Nuclear Power Plant on the Territory of the Republic of Belarus were passed after the development and approval of an investment rationale for the construction of an NPP in the Republic of Belarus ('the investment rationale') and an OVOS report ('the report').

The authorities ensured public participation in the decision to approve the investment rationale and the report that formed part of it through public discussion of the latter and submission of comments on it. The report complied with the requirements of article 6, paragraph 6 of the Aarhus Convention. Public discussion took place from September to December 2009, during which the public could submit written comments on the report. The public could also submit comments, information and opinions during the public hearing that took place on 9 October 2009. The issue of the environmental impact assessment (OVOS) for the Belarusian NPP was also discussed at the meeting of the Ministry of the Environment's PCEC on 17 September 2009, at which representatives of the following organisations were present: the Belarusian Green Party, the movement Scientists for a Nuclear-free Belarus, the environmental group Ecoprotection!, the NGO Belarusian Green Cross, the NGO Ecohome and the NGO Chernobyl Belarusian Socio-ecological Union.

On paragraph 1.3.1.2.

Presidential Edict No. 421 of 16 September 2011 on the Construction of the Beijing Hotel Complex in the City of Minsk provides that:

the five-star Beijing Hotel Complex and service facilities shall be constructed in Minsk within the area bounded by Krasnoarmeiskaia Street and the river Svislach;

the design, approval and construction of the hotel complex shall take account of legislation;

the basis for the start of construction work on the hotel complex shall be a decision by the Minsk City Executive Committee on the allocation of a plot and permission to build a hotel complex.

Presidential Edict No. 421 of 16 September 2011 does not specify a site (construction plot) for the hotel complex.

The area between Krasnoarmeiskaia Street and the river Svislach consists of a landscaped recreational area, housing, and industrial buildings which are to be converted into social amenities.

The authorities ensured public participation in decision-making on town planning in the area bounded by Ulianovskaia Street, Pervomaiskaia Street, Pulikhova Street, Smolenskaia Street and Lenina Street through public discussion of the detailed urban development plan for this area. The area bounded by Krasnoarmeiskaia Street and the river Svislach is located in the area bounded by Ulianovskaia Street, Pervomaiskaia Street, Pulikhova Street, Smolenskaia Street and Lenina Street. The detailed urban development

plan sets out the zoning and land use regulations for the area. Public discussion took place from 10-27 September 2011, during which the public could submit written comments on the plan. The detailed urban development plan was approved by the Minsk City Executive Committee on 10 November 2011.

The decision to allow construction of the Beijing Hotel Complex was passed by the Minsk City Executive Committee on 10 November 2011 (after the development and approval of the detailed urban development plan) in accordance with the land use regulations for the area between Krasnoarmeiskaia Street and the river Svislach.

Public participation in decision-making on the construction of the hotel complex is not provided for by article 6 of the Aarhus Convention. Nor is public discussion of the hotel complex construction project provided for by national legislation as it does not contravene the land use regulations for the area bounded by Krasnoarmeiskaia Street and the river Svislach.

Presidential Edict No. 253 of 5 June 2012 on the Sino-Belarusian Industrial Park:

- sets out the boundaries of the Sino-Belarusian Industrial Park ('the park');
- provides that:

 - the park shall be a territorial unit of the Republic of Belarus;

 - the park shall be developed on the basis of the general plan of the park, approved by the Cabinet of Ministers of the Republic of Belarus, which sets out the spatial development strategy of the spatial structure and zoning of its territory;

 - plots within the park shall be appropriated and provided only for the construction and (or) servicing of park installations in accordance with the general plan.

In other words, the Presidential Edict of 5 June 2012 only establishes the boundaries of the park. It does not set out the types of activity planned within the park.

Pursuant to national legislation, the authorities will ensure public participation in decision-making:

- on the development of the territory of the park through public discussion of the draft general plan of the park, which is provided for by Law No. 300-3 of 5 July 2004 on Architectural, Urban Planning and Construction Activity in the Republic of Belarus;

- on the construction of installations within the park that may have significant environmental impact and which are subject to an environmental impact assessment (OVOS), as provided by Law No. 54-3 of 9 November 2009 on State Environmental *Expertiza* and the Regulations on the Conduct of Environmental Impact Assessment (OVOS), adopted by Resolution No. 755 of 19 May 2010 of the Cabinet of Ministers.

As regards the failure to provide environmental information on the exact quantity of vegetation cleared and its location during the implementation of the

Beijing hotel complex Sino-Belarusian investment project (paragraph 1.3.1.2.1.) we can report that information on the exact quantity of vegetation cleared in connection with the construction of this installation is contained in Decision No. 1116 of 22.11.2011 of the Administration of the Lenin District of Minsk on the Clearance of Flora from the Construction Site and, according to parties to the court case, was presented to the claimant's side during the civil hearing of the claim of Ecohome, V.I. Zubok and V.A. Dranchuk against Minskzelenstroi Industrial Municipal Unitary Enterprise, the Administration of the Lenin District of Minsk and the Beijing-Minsk Hotel foreign limited liability company in the Frunzenskii District Court in Minsk.

On the issue of termination of proceedings on the claim of Ecohome for cessation of an economic activity causing a significant adverse environmental impact connected to the construction of the Beijing Hotel, as regards lack of jurisdiction (paragraph 1.3.1.2.1), we report the following.

During legal proceedings on the issue stated above, the claimant changed its claims in such a manner that it gave the defendant the opportunity to petition for termination of proceedings for lack of jurisdiction. Having heard the parties, the court deemed that it should grant the petition, as follows from the court's ruling.

National judicial proceedings on this issue have not currently been exhausted.

As regards amendments to national legislation to ensure compliance with the Aarhus Convention (paragraph 1.3.1.1.), we report that shortcomings in implementation of article 8 of the Convention in Belarusian national legislation were noted in the national report on the implementation of the Aarhus Convention presented to the Aarhus Convention bodies in 2011.

Work is currently being carried out to prepare the draft of amendments and additions to several laws in order to bring Belarusian legislation into fuller compliance with the Convention, in particular as regards strengthening public participation during the preparation of executive regulations and other generally applicable legally binding normative instruments that may have an environmental impact.

As regards Cabinet of Ministers Resolution No. 1426 of 22.10.2011 (paragraph 1.3.1.2.), we report as follows.

The comments relating to the time frame for notice of a meeting on the planned removal and transplant of vegetation and cases where permission for removal or transplantation is not needed, were voiced by the public at the meeting of the PCEC on 21 December 2011. This was recorded in the minutes, where it was noted that these comments and proposals would be examined when the respective additions and amendments were inserted into the documents under examination.

Yours respectfully

First Deputy Minister

V.V. Kulik

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14.09.2011 Letter_on implementation of the recommendations.rtf