

**To:**

**Ms. Fiona Marshall**, Secretary to Compliance Committee  
of the UN ECE Convention on Access to Information, Public Participation in Decision-  
Making and Access to Justice in Environmental Matters  
United Nations Economic Commission for Europe  
Environment and Human Settlement Division  
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**From:**

**European ECO Forum Legal Focal Points**

*represented by*

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**COMMUNICANT’S POSITION  
ON SOME ISSUES RELATED TO IMPLEMENTATION  
BY BELARUS OF DECISION IV/9B AND COMMITTEE’S RECOMMENDATIONS IN  
RELATION TO COMMUNICATION C/44 (BELARUS)**

1. This letter outlines communicant’s (ACCC/C/2009/44) position on implementation of the decision IV/9b by the Government of Belarus and Committee’s recommendations in relation to our case (ACC/C/2009/44).
2. The communicant is not aware of any specific steps taken by the Government of Belarus to implement decision IV/9b despite the fact that we are in close contact with public concerned in Belarus. However, the communicant is aware of the fact that just Belarus has introduced some changes into its relevant legislation just before MOP IV was held.
3. The communicant wishes to present its position and analysis of the legislative changes in Belarus relevant for implementation of decision IV/9b and Committee’s recommendations for C/44.
4. Our analysis is **limited to legal consequences of the adoption of Council of Ministers Decision No.689 of June 01, 2011**. This decision introduced three groups of changes:
  - it **annulled** *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*, adopted by the Decision of the Cabinet of Ministers of Belarus No.571 on May 4, 2009.
  - it **extended scope** of the relevant EIA legislation to nuclear projects by amending OVOS and Environmental Expertiza Regulations (both adopted by Decision 755 of Council of Ministers of May 19, 2010)
  - **introduced several changes** into OVOS procedure and a few to state environmental expertiza (review) procedure.
5. We consider that **annulling “nuclear regulation”** together with extending scope of relevant EIA legislation is a positive step which addresses some of the concerns we raised in the course of

the case discussion. This also seems to fulfill recommendation by the CC for communication C/44 (para.90 (a) of the Findings & Recommendations).

6. The decision No.689 introduced numerous changes into OVOS and some changes to state environmental expertiza procedures. We will focus on those aspects we consider relevant for implementation of the Aarhus Convention and/or identified in MOP decision (C/37) and Compliance Committee findings (C/44).

7. Changes introduced into state environmental expertiza procedure have little relevance to implementation of the Aarhus Convention so they are not analyzed. Therefore, **no 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. Yet, some aspects related to access to final outcome of the state environmental expertiza are now subject to OVOS procedure (analyzed below).

8. 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

9. The changes modified the term “final decision” as used in the OVOS procedure by making direct reference to a “*information about decision taken by local ... authorities...referred to as decision to permit construction of the object, together with reasoning for its adoption*” (OVOS Procedure, Art 23, para.2, subitem 2). This information shall be made available to public during 10 days since adoption (this decision is also given to parties affected under Espoo Convention). In addition, public announcement during OVOS consultations procedures now includes information about authority taking this decision. **We consider that this “construction” permit cannot be considered as final decision under Art.6 of the Aarhus Convention.**

10. The changes introduce a new term “*decision whether project documentation complies or not with environmental legislation requirements, which is part of conclusions of state environmental expertiza*” (OVOS Procedure, Art. 23, para.1). This “decision” must be put on the web-site of the MoE within 10 days of its adoption. We have no idea what exactly this could mean, probably a summary paragraph of the state environmental expertiza conclusions. **Therefore, the public continues to have no access to conclusions of the state environmental expertiza as such.**

11. The changes provide for public access to **final OVOS report** as adopted by the developer (OVOS Procedure, art.23, para.2, subitem 1). This is a new requirement which is positive for public access to information about project.

12. The changes introduce a requirement for authorities and developer to publish some information during public consultations stage **in the Internet** (draft OVOS report, public announcements) in addition to regular means (previously it was optional to make them available in the Internet).

13. Finally, the changes establish **minimum timeframes** for public discussions period of 30 days since publication of relevant announcement of their commencement (as compared to *maximum* time period in previous version of OVOS procedure).

14. The communicant wishes to stress that existing EIA legislation in Belarus continue to have numerous key shortcomings in relation to access to information and public participation as identified by the Compliance Committee in C/37 and C/44 communications, as well as analyzed in our Written Pleadings sent to the Compliance Committee after a public hearing in C/44 case (Sep 22. 2010). In particular, it provides for no public participation procedures during environmental expertiza process.

Respectfully submitted on behalf of the communicant,  
Andriy Andrushevych  
Resource & Analysis Center "Society and Environment"