

Follow up on Ukrainian case

Yelyzaveta Aleksyeyeva,
EPL, Ukraine

Timetable

- Communication, May 2004
- Findings and recommendations of the 7th MCC (non-compliance), February 2005
- MOP-2 decision (strategy), May 2005
- MOP-3 decision (caution), 2008
- Strategy adopted, Dec 2008
- 26th CCM, Dec 2009 (progress on strategy implementation)

- MOP-4 (2011)

Communication

- 2, 3, 4, 6, 7, 8 and 9 of the Article 6
- Developer did not inform EPL about the permitting decision on construction of Danube – Black Sea canal, either by a public notice or individually, even not upon our written request
- Environmental Impact Statement did not contain any information of the possibilities for public participation
- Developer did not provide to EPL access to the documentation, in particular the Evaluation of Environmental Impacts (EEI) that “EEI is the property of the developer”.
- Ministry approved the permit seven days following the first notification about the project
- Access to a full text of the permit was denied (24 pages)

Findings

- not in compliance with article 6.1 (a), 6. 2 to 6.8, and article 6.9 (second sentence).
- not in compliance with article 4,

The Committee also finds that the lack of clarity with regard to public participation requirements in EIA and environmental decision-making procedures for projects, such as time frames and modalities of a public consultation process, requirements to take its outcome into account, and obligations with regard to making available information in the context of article 6, indicates the absence of a clear, transparent and consistent framework for the implementation of the Convention and constitutes

- non-compliance with article 3, paragraph 1, of the Convention.

Recommendations to the MOP

- Request the Government of Ukraine
- To bring its legislation and practice into compliance with the provisions of the Convention and include information on the measures taken to that effect in its report to the next meeting of the Parties
- To submit to the Compliance Committee, not later than the end of 2005, a strategy, including a time schedule, for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that sets out clear procedures for their implementation. The strategy might also include capacity-building activities, in particular for the judiciary and public officials involved in environmental decision-making

Follow up (1)

- No strategy has been submitted by the deadline
- April 2006 – a letter from CC reminding MOP II decision, setting June 2006 as a deadline and threatening to recommend MOP to issuance of a declaration of non-compliance or suspension of benefits
- Meeting the deadline Ukraine responded that it established a Working Group to developed a Strategy and kindly asked not to impose sanctions

Follow up (2)

- 12th CCM established a new deadline Sep, 1st 2006
- Ukraine failed to meet the deadline due to difficult political situation and asked to extend it to 31 December 2006
- CC diplomatically says it's not really possible
- End of Sep, the draft elements of the strategy (6 years plan) finally submitted

Follow up (3)

- 13th CCM (Oct, 2006) – considers the draft of a Strategy, make lots of recommendations on improvement and ask to finalize and submit the strategy by the end of 2006
- A promise to submit the Strategy by May 2008
- April 2008 Report to the MOP on implementation of MOP II decision
 - Ukraine failed to implement decision of MOP II and remains in a situation of non-compliance
 - suggests that the Meeting of the Parties may wish to examine the strategy to be submitted by Ukraine in May 2008,
 - In the light of the outcomes of such examination and taking into account the fact that since the adoption of decision II/5b in 2005 the Party concerned has not taken adequate steps to bring about compliance with the Convention, the Meeting of the Parties may also wish to consider whether to apply any other stricter measures
- Plan of the strategic movements of the Ministry of the Environmental Protection submitted in May 2008

MOP III decision

- fulfillment of the actions set out in the AP would not fully address the recommendations of decision II/5b and therefore would not bring about compliance with the Convention
- issue a conditional caution to become effective on 1 May 2009, unless the Government has fully satisfied the conditions set next and has notified the Secretariat of this fact by 1 January 2009.
- to submit to the Committee periodically, namely in Nov 2008, 09 and 10, detailed information on progress in implementing the action plan

Conditions

- The AP incorporates clear activities to resolve the problems identified by the Committee
- The AP also incorporates capacity-building activities, in particular training of the judiciary and of public officials involved in environmental decision-making;
- The AP establishes a procedure which ensures its implementation in a transparent manner and in full consultation with civil society;
- The AP is transposed through a governmental normative act ensuring its implementation by all ministries and other relevant authorities;

Strategy

- DECREE OF THE CABINET OF THE MINISTERS
dated December 27th, 2008

On the Approval of Action Plan on
Implementation of the Decision of the Parties
to Aarhus Convention #III/6f

- [FinalActionPlan.2008.12.27.doc](#)

CC conclusions on the Nov, 08 Report as well as Strategy:

- Is not convinced that the conditions set out in the MOP III decision have been fulfilled
- AP is of a very general nature, lacking clarity in step-by-step activities
- posed a long list of questions

Recent developments

- Dec 2009 an Annual report was presented on the 26th CCM including the progress on the Strategy
 - Draft Law amending the domestic definition of the environmental information
 - Draft Decree on access to environmental information
 - Draft Decree on public participation