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in a Transboundary Context

Implementation Committee

Twenty-seventh session
Geneva, 12–14 March 2013

Report of the Implementation Committee on its twenty-seventh session

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I. Introduction

1. The twenty-seventh session of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA) was held from 12 to 14 March 2013 in Geneva, Switzerland.

A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Ms. E. Grigoryan (Armenia); Ms. A. Babayeva (Azerbaijan); Ms. S. Dimitrova (Bulgaria); Mr. M. Prieur (France); Mr. J. Brun (Norway); Ms. T. Plesco (Republic of Moldova); Ms. L. Papajová Majeská (Slovakia); Ms. V. Kolar-Planinšič (Slovenia); Mr. F. Zaharia (Romania); and Ms. L. A. Hernando (Spain). Mr. J. Jendroška (Poland) was absent.

B. Organizational matters

3. The Chair of the Committee, Ms. Kolar-Planinšič, opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2013/1).

II. Submissions

4. Discussions concerning submissions were not open to observers, according to rule 17, paragraph 1, of the Committee's operating rules.

A. Belarus

5. The Committee continued its consideration of the submission by Lithuania, received on 16 June 2011, expressing concerns about compliance by Belarus with its obligations under the Convention regarding the planned construction of a nuclear power plant (NPP) in Ostrovets, Belarus, close to the border with Lithuania. The Committee finalized its findings and recommendations further to the submission (annex), taking into account the information brought to its attention before, during and after the hearing of the two Parties held at the Committee's twenty-fourth session, in March 2012.

6. The Committee requested the secretariat to inform the two Parties accordingly. The secretariat was also requested to provide the findings and recommendations to the concerned Parties, once issued as an official document, and to subsequently transmit them for consideration by the Meeting of the Parties to the Convention at its sixth session in 2014. The related documents and information (as specified in operating rule 16) should also be posted on the Convention website.

B. Azerbaijan

7. The Committee finalized its draft findings and recommendations further to the submission by Armenia, received on 31 August 2011, expressing concerns about compliance by Azerbaijan with its obligations under the Convention regarding six named

gas and oil projects, taking into account the information brought to its attention before and during its twenty-sixth session.

8. The Committee agreed to send the draft findings and recommendations to the two Parties and to invite them to submit to the secretariat, by 31 May 2013 at the latest, their comments or representations, which were to remain confidential at that stage.

9. The Committee agreed to consider any comments or representations at its twenty-eighth session before finalizing its findings and recommendations for consideration by the next session of the Meeting of the Parties to the Convention.

10. In parallel, the Committee agreed to gather further information regarding the likely significant adverse transboundary impacts of, and the transboundary environmental impact assessment (EIA) process for, two of the activities by Azerbaijan vis-à-vis the other Caspian Sea coastal State that was a Party to the Convention, namely Kazakhstan. It asked the Chair to write to both Governments to invite them to provide by 31 May 2013 the following further information:

(a) Questions to Azerbaijan:

(i) Could Azerbaijan exclude the possibility of a significant adverse transboundary environmental impact on the territory of Kazakhstan from the project on the joint development and production sharing for the Azeri and Chirag oil and gas fields and the deep water portion of the Gunashli oil and gas field in the Azerbaijan sector of the Caspian Sea, including the Sangachal terminal (the ACG project), and the Shah Deniz project?;

(ii) The EIA for phase 2 of the ACG project indicated that the consultant for the EIA documentation had agreed with the Ministry of Ecology and Natural Resources to transmit, through the Caspian Environment Programme, the Environmental and Social Impact Assessment (ESIA) report to the other Caspian countries. To which countries had that report been transmitted? Had it been transmitted for any other phases of the ACG project, or the Shah Deniz project? Could Azerbaijan provide the Committee with a copy of the letter from the Ministry agreeing the transmittal of the ESIA report for phase 2 of the ACG project to the Caspian Sea countries, together with its translation into English?;

(b) Questions to Kazakhstan:

(i) Was Kazakhstan informed about the ACG and Shah Deniz projects after 2001?;

(ii) Could Kazakhstan exclude the likelihood of transboundary environmental impacts of the above projects on its territory?

III. Committee initiative

11. The Committee noted the report by the Committee member nominated by Azerbaijan on the country's progress in implementing recommendations by an international consultant to the secretariat (report of 31 August 2012) to further strengthen Azerbaijan's capacity to comply fully with its Convention obligations.

12. The Committee encouraged Azerbaijan to incorporate the recommended improvements into its new draft law on EIA, which was currently before the parliament, and into the future implementing regulations and resolutions to be adopted by the Cabinet of Ministers. It invited Azerbaijan to provide the text of the draft law in advance of its next

session, in Russian and, if possible, in English, along with a detailed written report on progress made.

IV. Review of implementation

A. Preparation of the reviews of implementation of the Convention and the Protocol

13. The Committee noted the report by the secretariat on receipt of the completed questionnaires on implementation of the Convention and the Protocol in the period 2010–2012, and on plans for the preparation of the draft fourth review of implementation of the Convention and the draft first review of the implementation of the Protocol.

14. Noting also the proposals by the Bureau in that regard, the Committee provided its views and suggestions for the production by the secretariat of draft reviews of implementation that were substantially shorter than (i.e., half as long as) the past reviews.

15. In general, the Committee agreed with the Bureau that information on the implementation by Parties of their legal obligations under the Convention and the Protocol (part I of the questionnaires) should be prioritized. The draft reviews should focus in particular on those areas where implementation was still challenging or weak in many of the Parties. Responses under part I should be supplemented with practical examples from part II describing good practices and substantial weaknesses or difficulties in implementing the two treaties.

16. Based on the suggestions from the curators, Ms. Plesco and Ms. E. Grigoryan, the Committee agreed on a number of detailed proposals for shortening the draft reviews, e.g.: shortening the prefaces and introductions; if possible, not repeating the text of the questions; grouping the questions; and leaving out the responses to questions 18, 19, 23 and 27 of part I of the SEA questionnaire. Other technical and detailed advice by the Committee was provided directly to the secretariat.

17. The secretariat was invited to provide the Committee's views and proposals for information to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its second meeting, to be held in Geneva, from 27 to 30 May 2013.

B. Specific compliance issues from the Third Review

18. The Committee examined a reply from the Government of Portugal received on 26 November 2012 in response to the Committee's letter of 13 September 2011 requesting further clarifications on whether Portugal's national list of activities subject to EIA included "offshore hydrocarbon production" as listed in appendix I to the Convention.

19. The Committee regretted the considerable delay in receiving the requested response and stressed that the Government of Portugal had the responsibility to provide the Committee with the requested information fully and in a timely manner.

20. Not having found the response sufficiently precise, the Committee asked that the Chair write to Portugal to invite it to submit to the secretariat by 13 May 2013 an excerpt of the relevant national legislation and an English translation of the exact wording of that provision.

V. Information gathering

A. Ukraine

21. Further to its twenty-fifth session, the Committee continued its consideration of the information received regarding EIA for a planned extension of the Rivne NPP in Ukraine, close to the border with Belarus and Poland. Previously, the Committee had concluded that Ukraine had not applied the Convention in relation to the planned extension of the NPP and also that the extension of the lifetime of an NPP, even in absence of any works, was to be considered as a major change to an activity and consequently subject to the Convention's provisions.

22. On the above grounds, the Committee decided to begin a Committee initiative further to paragraph 6 of the Committee's structure and functions. In line with paragraph 9 of the Committee's structure and functions, the Committee decided to invite Ukraine to its next session to participate in the discussion and to present information and opinions on the matter under consideration. The Committee would start by considering the initiative in a closed session, followed by a brief presentation by Ukraine and questions by the Committee. The initiative would then be considered again in a closed session to draft findings and recommendations.

23. The Committee agreed that the information to be requested from Ukraine should include the following:

(a) Had the extension of the lifetime of the Rivne NPP units 1 and 2 been subject to a transboundary EIA procedure in line with the Convention?

(b) In its response to the Committee of 15 November 2011, Ukraine had referred to a report covering environmental impacts? Had that report been submitted to the Ukrainian public for comments? What were the contents of that EIA report? Did it fully cover the requirements for an EIA report as set out in article 5 of the Convention and appendix II?

(c) Which Parties could potentially be affected? Had any of those countries requested information regarding the project in question?

(d) Would the Government implement the full transboundary EIA procedure provided for by the Convention? If so, what were the procedure and the time frame for the implementation steps?;

(e) When had the decision been taken by the State Nuclear Regulatory Inspection to continue operating the NPP units?

24. The Committee invited Ukraine to provide written replies to its questions through the secretariat, in English, by no later than 31 May 2013, and to be prepared to answer them during the hearing. Ukraine should also be made aware that the questions might still be subject to modifications by the Committee and that additional questions could be asked during the hearing.

25. Finally, Ukraine should be invited to provide the secretariat with the names of its respective delegates as soon as possible, and be reminded of operating rule 11, paragraphs 1 to 3, and rule 15, paragraph 4, regarding the procedure for Committee initiatives. The Committee asked the Chair to send an invitation letter to Ukraine including the above information.

B. Romania

26. Further to its twenty-fifth session, the Committee continued to consider the information it had gathered on a planned activity in Romania, close to the border with Bulgaria, further to information provided by a Romanian non-governmental organization (NGO). The Committee considered a reply from the Government of Romania received on 18 February 2013 in response to its letter of 2 October 2012. The member nominated by Romania left the room in accordance with rule 17 of the Committee's operating rules.

27. The Committee agreed that while parts of the responses from Romania were satisfactory, further clarification was needed regarding the general features of the system in place and, in particular, whether it allowed for a meaningful consideration of locational alternatives at an early stage when all options were open and within an appropriate impact assessment procedure (whether EIA or SEA). To that end, the Committee asked the Chair to write to the Government of Romania to request the following information by 15 May 2013:

(a) Whether a "partial location authorization" could be granted to several locations and whether it had been granted to several locations in that particular case;

(b) Whether it was practically feasible (and not just legally possible) that a developer undertake all the required "preparatory nuclear studies" to obtain another partial location authorization, further to a request to consider an alternative site for a repository resulting from an SEA and/or EIA.

C. Lithuania

28. The Committee considered information provided by a Belarusian NGO regarding a planned activity in Lithuania, close to the border with Belarus.

29. For its further consideration of the case, the Committee asked the Chair to write to the Government of Lithuania and to the Belarusian NGO to request for the following further information by 13 May 2013:

(a) Information to be requested from the NGO:

(i) The text of the by-law or statutes of the NGO, to the extent possible, in English;

(ii) When and how the NGO had been informed of the Lithuanian project. Was the project in question the new Visaginas project located at the same site as the former Ignalina NPP?;

(iii) Had the NGO participated in a hearing about that project? If so, when and where had the hearing been held?;

(iv) Had the NGO been informed of the final decision regarding the project? If so, when and by whom?;

(v) What was the exact location of the NPP with respect to the border and the lake (to be indicated on a map)?;

(b) Information to be requested from the Government of Lithuania:

(i) When had Lithuania notified the affected Parties according to article 3, paragraph 1, of the Convention regarding the planned construction of the NPP in Visaginas?;

- (ii) Had Belarus asked to be able to participate in the transboundary EIA procedure? If so, when?;
- (iii) When had the EIA documentation been submitted to Belarus?;
- (iv) Had the public in Belarus been informed of and provided with possibilities for making comments on or objections to the proposed activity?;
- (v) When had Lithuania taken a final decision regarding the construction of the NPP? A copy of that decision should be provided to the Committee;
- (vi) Had a geological engineering survey of the NPP site been provided after the final decision?;
- (vii) Had the referendum of 14 October 2012 had an impact on the project?

30. The Committee decided to continue its consideration of the matter at its next session based on the requested further information and its analysis to be provided by the curator by 15 June 2013.

D. Ukraine

31. The Committee considered the information received on 26 October 2012 from a Belarusian NGO regarding a planned activity in Ukraine, close to the border with Belarus.

32. The Committee also noted letters that had been brought to its attention from the Governments of Austria, Poland, Romania and Slovakia addressed to the Government of Ukraine regarding the proposed activity.

33. The Committee asked the Chair to write to the Government of Ukraine to inform it of the Committee's conclusion that the extension of the lifetime of an NPP was subject to the Convention. Furthermore, Ukraine should be invited to provide, by 31 May 2013 for consideration by the Committee in September 2013, information on: the planned activity; whether the potentially affected countries had been notified in accordance with article 3 of the Convention; and the transboundary EIA process for the planned activity. It should also clarify whether the Government had taken the necessary legal, administrative and other measures to implement the provisions of the Convention.

34. The Committee nominated Ms. Hernando as the curator for the matter and invited her to provide an analysis of the information to be provided by Ukraine in advance of its next session.

VI. Structure, functions and operating rules

35. The Committee noted the request by the Meeting of the Parties to the Convention (decision V/4) that the Committee keep under review its structure, functions and operating rules and, if necessary, develop them, including by providing recommendations on the imposition of sanctions for non-compliance.

36. The Committee agreed that the following issues should be further developed or clarified:

- (a) Requirements regarding information from Parties, e.g., the Committee should accept only original documents and their English translations and not weblinks;
- (b) Electronic decision-making;
- (c) Eligibility of Committee members, in case of a finding of non-compliance.

37. The Committee invited the curators Ms. Hernando and Mr. Zaharia, with the assistance of the secretariat, to prepare for its next session a draft document with proposals on the above matters. The document should also include its earlier proposals to clarify the rules regarding decision-making, participation in Committee sessions and the roles of Committee members nominated for Protocol or Convention matters only.

38. The Committee decided to continue its discussion on the matter at its next session with a view to submitting proposals to the Meetings of the Parties to the Convention and to the Protocol at their next sessions.

VII. Other business

39. The Committee agreed that it would initiate at its next session the preparation of a report on its activities during 2011–2014, and a draft decision on the review of compliance, including draft amendments to the operating rules of the Committee, to be submitted to the Meetings of the Parties at their next sessions. To that end, the secretariat was invited to prepare draft documents in advance of its next session.

40. The Committee took note of a letter from a German parliamentarian representing the Green Party expressing concerns regarding the planned construction of NPP Hinkley Point C by the United Kingdom of Great Britain and Northern Ireland, and noting that the German Government had not been notified and the German public had not been consulted on the planned activity. The Committee invited the secretariat to inform the parliamentarian about the procedure for submitting information to it. Mr. Zaharia was nominated the curator for the possible future information-gathering case on that matter.

VIII. Presentation of the main decisions taken and closing of the session

41. The Committee adopted the draft report of its session, prepared with the support of the secretariat.

42. The Committee decided that it would next meet from 10 to 12 September 2013. The Chair then closed the twenty-seventh session.

Annex

Findings and recommendations further to a submission by Lithuania regarding Belarus (EIA/IC/S/4)

I. Introduction

1. On 16 June 2011,^a the Government of Lithuania made a submission to the Implementation Committee expressing concerns about the compliance of Belarus with its obligations under the Espoo Convention with respect to the planned NPP at Ostrovets, Belarus, close to the border with Lithuania.

2. The submission claimed that Belarus had failed to properly complete the EIA procedures with respect to the planned activity while proceeding with digging and other preparatory works. It maintained, in particular, that the EIA report provided by the Belarusian authorities to the affected Parties for their comments on 11 February 2011 could not be considered as a final report because Lithuania's requests for "clear answers" and "essential additional information" had not been taken into account, including notably with regard to the Ostrovets site and its locational alternatives. According to the submission, the construction of an NPP in the vicinity of Vilnius would represent an "unjustifiably high risk" to Lithuania. It was further pointed out that, while Lithuania had not received explanations concerning the nature of the final decision with respect to the construction of the plant, and could therefore not be "officially aware" whether a final decision had already been taken, "based on the statements of Belarusian authorities in the press regarding the implementation of the project, it was highly presumable that it had been taken without informing the affected parties".

3. The submission asserted that Belarus had violated article 2, paragraphs 2 and 6, article 3, paragraph 2 (a)–(c), article 4, paragraphs 1 and 2, article 5 and article 6, paragraphs 1 and 2, of the Convention. These obligations relate to:

(a) The legal, administrative and other measures for the establishment of an EIA procedure that permits public participation and the preparation of the EIA documentation described in appendix II with respect to proposed activities listed in appendix I (article 2, para. 2);

(b) Public participation (article 2, para. 6);

(c) The contents of a notification (article 3, para. 2 (a)–(c));

(d) The preparation of the EIA documentation (article 4, paras. 1 and 2);

(e) Consultations on the basis of the EIA documentation (article 5);

(f) The final decision (article 6, paras. 1 and 2).

4. On 16 June 2011, the secretariat, further to paragraph 5 (a) of decision III/2 (ECE/MP.EIA/6, annex II, appendix), e-mailed a copy of the submission to the Convention's focal point in Belarus, requesting that Belarus send any reply and information in support thereof to the secretariat and to the focal point in Lithuania within three months (i.e., not later than 16 September 2011).

^a The date of the receipt by the secretariat of the official submission letter dated 7 June 2011.

5. At its twenty-second session (5–7 September 2011), the Implementation Committee took note of the submission by Lithuania and of the message sent by the secretariat (ECE/MP.EIA/IC/2011/6, para. 22).

6. The Government of Belarus provided its reply to the submission on 22 September 2011 in Russian and on 3 October 2011 in English. The Committee noted the reply and its English translation at its twenty-third session (5–7 December 2011). It also noted the further information received from Lithuania on 5 December 2011 as a reaction to the response by Belarus. The Committee decided to invite the two Parties to its twenty-fourth session (20–23 March 2012) where it would continue the consideration of the submission.

7. At its twenty-fourth session, the Committee considered the submission, inviting the delegation from Lithuania to describe the submission and the delegation of Belarus to reply. The two delegations also replied to questions posed by members of the Committee. Both Parties provided their responses to the questions also in writing (Lithuania on 6 March 2012 and Belarus on 15 June 2012). The Committee then drafted its findings and recommendations at its twenty-fourth and twenty-fifth sessions (11–13 September 2012), taking into account the information made available to the Committee by the two Parties.

8. Before finalizing its findings and recommendations, in accordance with paragraph 9 of the appendix to decision III/2, the Committee sent the draft findings and recommendations to the two Parties, inviting their comments or representations by 9 November 2012. At its twenty-sixth session (26–28 November 2012), the Committee considered the responses provided by both Parties and noted also the additional information received from Belarus on 22 and 26 November 2012. The Committee finalized its findings and recommendations at its twenty-seventh session, taking into account the comments and representations from both Parties as well as the additional information received from Belarus and from Lithuania in advance of the session.

II. Summary of facts, information and issues

A. Background

9. The Convention entered into force for Belarus on 8 February 2006. With the exception of the Russian Federation, all the neighbouring countries of Belarus are also Parties to the Convention: Latvia (1998); Lithuania (2001); Poland (1997); and Ukraine (1999). Austria (a Party since 1994), although not a neighbouring country, also participated in the transboundary EIA procedure for the proposed activity.

10. Belarus intends to construct a new NPP unit on the Ostrovets site located approximately 25 kilometres from the border between Belarus and Lithuania. The site is located about 40 kilometres from the Lithuanian capital, Vilnius, with a population of over half a million. Belarus informed the affected Parties about the planned activity on 15 July 2008, and Lithuania agreed on 24 September 2008 to participate in the EIA procedure.

1. Committee's information-gathering on Belarus

11. Prior to Lithuania's submission, the Committee had already sought clarifications from Belarus on its application of the Convention with respect to the proposed NPP further to information provided by Ecoclub, a Ukrainian NGO, on 1 July 2009 (Committee letters of 12 October 2009, 12 March 2010, 8 September 2010, 18 January 2011, 23 June 2011 and 7 September 2011) and considered information provided by Belarus (letters of 16 November 2009, 22 July 2010, 31 December 2010 and 28 February 2011) (Committee ref. EIA/IC/INFO/5). In addition, in October 2009, the Committee had written to Latvia,

Lithuania, Poland and Ukraine to ask about their experiences in the application of the Convention to the proposed activity and had considered the responses received from each of them.

12. In January 2011, the Committee observed that the preliminary and the final versions of the EIA documentation supplied by Belarus differed significantly, which it thought might be a reflection of a more general systemic inconsistency between the Convention and environmental assessment within the framework of State ecological expertise system in Belarus (and in several other former Soviet Republics). Consequently, the Committee invited Belarus to its twenty-first session (20 June 2011) to clarify the matter and also to respond to the Committee's questions in writing after the session. Furthermore, following the official submission by Lithuania on 16 June 2011, the Committee decided to close the information-gathering case on Belarus and to pursue its consideration of the possible general systemic inconsistency, while at the same time beginning its consideration of the submission by Lithuania regarding the planned construction of the NPP. Belarus did not agree to the publishing of the related correspondence on the Convention's website at that time, considering the Lithuanian statements as unfounded and that publication was not timely pending the Committee's conclusion on the submission (reply by Belarus of 24 August 2011).

13. After its analysis of the EIA procedures in Belarus, the Committee concluded at its twenty-third session that, although Belarus had no explicit legal provision regulating the final decision on a proposed activity or its contents in accordance with article 6, paragraph 2, of the Convention, it had no grounds to conclude that there was a systemic inconsistency between the State ecological expertise of Belarus and the Convention. Belarus was informed of the Committee's conclusions by a letter of 25 January 2012.

2. Relevant findings by the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

14. The Committee noted that Belarus was also Party to the Convention on Access to Information, Public participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). It therefore referred to the findings and recommendations prepared by the Aarhus Convention Compliance Committee regarding compliance by Belarus with the provisions of that Convention, which it deemed of relevance to the present submission.

15. The Aarhus Convention Compliance Committee had examined a communication by an NGO concerning the decision-making process related to the construction of the NPP in Ostrovets. It had observed that there was "considerable uncertainty as to the participatory procedures applicable in case of nuclear activities" and a "lack of clarity as to the decision which is considered to be the final decision permitting [the] activity".^b In relation to the NPP, the Compliance Committee found that Belarus had failed to comply with the Aarhus Convention by "restricting access to the full version of the EIA report"; "by not duly informing the public that, in addition to the publicly available 100-page EIA report, there was a full version of the EIA report (more than 1,000 pages long)"; "by providing for public participation only at the stage of the EIA for the NPP, with one hearing on 9 October 2009, and effectively reducing the public's input to only commenting on how the environmental impact could be mitigated, and precluding the public from having any input

^b Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2009/44 concerning compliance by Belarus (ECE/MP.PP/C.1/2011/6/Add.1, para. 88 (a) and (b)).

on the decision on whether the NPP should be at the selected site in the first place (since the decision had already been taken)”; “by not informing the public in due time of the possibility of examining the full EIA report”, and by limiting the possibility for the public to submit comments.^c

B. The transboundary EIA procedure regarding the nuclear power plant

16. On 15 July 2008, Belarus informed all its neighbouring countries about its intention to construct an NPP, without referring to its possible location. On 24 September 2008, Lithuania expressed its wish to participate in the transboundary EIA procedure. In addition, it asked Belarus for further information in January and in April 2009. According to Belarus, in March 2009, Austria, Latvia, Lithuania, Poland and Ukraine expressed their intention to participate in the transboundary EIA procedure.

17. On 24 August 2009, Belarus forwarded to Lithuania and the other affected Parties EIA documentation in Russian and in English on the planned activity, including: notification, information on the transboundary EIA procedure and on the process for public participation and consultations, as well as brief information on the EIA documentation of the construction and operation of the NPP in Belarus. Lithuania considered that it received on this date a notification prepared as set out in article 3, paragraph 2, of the Convention.

18. On 15 September 2009, Belarus sent Lithuania and the other affected Parties “a preliminary EIA report” including justification of the selection of Ostrovets site as the priority site for the planned activity made “on the basis of research results and according to International Atomic Energy Authority (IAEA) standards”. Belarus maintained that the preliminary EIA report was prepared in line with article 4, paragraph 1, and appendix II of the Convention. Lithuania, for its part, contested the findings of the preliminary report and argued that it failed to provide information as set out in appendix II, e.g., as regards: reasonable alternatives (for example locational and technological), the no-action alternative and the potential environmental impact of the proposed activity.

19. On this basis, Lithuania considered the report sent on 15 September 2009 only as a scoping document. However, on 15 October 2009, Lithuania was the only Party concerned to submit comments to Belarus on the report. On 18 and 19 November 2009, Lithuanian and Belarusian experts met in Vilnius for the preparation of a final draft of a bilateral agreement on the implementation of the Espoo Convention. The NPP project was discussed in the margins of this meeting. On 26 January 2010 and 2 February 2010, at the request of Lithuania, Belarus sent Lithuania: a brief information document regarding the EIA on the construction and operation of the planned NPP in Belarus; section No. 15 of the EIA report, entitled “forecast of the transboundary impact of the Belarus NPP”; and replies to the Lithuanian comments and proposals of 15 October 2009.

20. On 2 March 2010, in response to Lithuania’s invitation of 10 February 2010, and with the agreement of Belarus, a public hearing was held in Vilnius with the participation of representatives from Belarus and its outcomes were recorded in the minutes. Lithuania complained that the representatives of Belarus had not been sufficiently well prepared to respond to the questions from the public, whereas Belarus asserted that the logistical issues, including interpretation, had not been sufficiently agreed upon beforehand. Nevertheless, Belarus managed to arrange for interpretation which, bearing in mind the short notice, may have been of insufficient quality. Following the hearing, over 23,000 people in Lithuania signed an electronic petition against the planned activity in Ostrovets.

^c Ibid., para. 89.

21. On 7 May 2010, Lithuania submitted further comments which Belarus responded to in writing on 14 June 2010 and also during bilateral consultations held in Minsk on 18 June 2010. Following these consultations, in its subsequent letters to Belarus, Lithuania requested the holding of another public hearing.

22. Lithuania stated that, a few days before the bilateral meeting in June 2010, it had discovered in reading a letter from Belarus dated 14 June 2010, that a “substantially amended EIA report” had been posted on a Belarusian website on 4 March 2010. Belarus, for its part, did not consider this report as amended but as supplemented with the comments received “from the public and the concerned Parties”. Lithuania maintained that it had not been informed by Belarus that a new version of the EIA was available on the website. Consequently, Lithuania claimed to have “repeatedly” requested, both during and after the bilateral meeting, access to the full EIA documentation and the reconvening of the public hearing based on it. On 9 July 2010, Lithuania submitted its views to Belarus on the outcomes of the meeting and on the overall EIA process.

23. On 11 February 2011, Belarus sent a “final EIA report” to the affected Parties for comments, “prior to the approval of the justification of investment into the construction of the power plant”. According to Belarus “the comments on the preliminary EIA report from all affected parties and the public concerned were taken into consideration in the final version of the EIA report”.

24. Lithuania considered that the report was not final, and that it notably failed to provide information on an “equal and thorough assessment of locational alternatives” as well as the selection criteria and other data concerning the Ostrovets site. Lithuania further claimed that the decision on the State ecological expertise of Belarus had been taken and the Ostrovets site chosen by the Belarusian authorities already in July 2010, prior to the submission of the “final EIA report” to the affected Parties for comments. Lithuania submitted its comments on the report on 18 March 2011 and requested further information. Belarus responded to Lithuania on 22 April 2011. That response prompted further questions from Lithuania on 20 June 2011, which Belarus, in its letter to the secretariat of 22 September 2011, said it would answer “in the nearest future”. Belarus also responded to comments on the final report that it received from Latvia and Poland.

25. On 15 September 2011, the President of Belarus adopted a Decree (“Edict”) on the approval of the Ostrovets site for the construction of the NPP. In its letter of 22 September 2011, Belarus pointed out that this Decree corresponded to the final decision as set out in article 6 of the Convention.

26. In its letter of 27 February 2012 to Belarus, the European Commission (a Party to the Espoo Convention since 1997), expressed its concerns about the EIA process for the Ostrovets NPP and asked several questions about the EIA. The Committee took note of this information. The Committee has not been informed of any responses by Belarus to these questions.

III. Consideration and evaluation

A. General observations

27. The Committee gathered information allowing it to identify in a sufficiently precise manner the main facts and events, and to evaluate the application of the Convention. The Committee regretted that not all of the documents and letters it had received had been translated into English, including the EIA report; and that a number of the letters referred to by the Parties had not been made available for its consideration.

28. The Committee considered that, in essence, the submission was about substantive issues. Lithuania objected to the planned construction of an NPP by Belarus near Vilnius and claimed that its objections and requests for information had not been taken into account or had been only partially answered during the related transboundary EIA procedure.

29. The Committee noted that it was not within its capacity or mandate to examine or to take a position on the environmental and scientific issues that had been raised in connection with the planned activity. These included the following:

(a) The scientific assessment of alternative sites, the criteria and reasons for choosing a site near Vilnius and the alleged violation of the Principle 4 of the IAEA *Fundamental Safety Principles* (2006);^d

(b) Management of radioactive waste;

(c) Discharges of radioactive elements into water and the atmosphere;

(d) Emergency situations and impacts of potential accidents;

(e) Radiological impacts under normal conditions;

(f) Geological data;

(g) Thermal pollution and the hydrological regime of the Neris River listed as a Natura 2000 site.^e

30. The Committee stressed that it would focus its attention on examining the application of the relevant provisions of the Convention during the EIA procedure.

B. Legal basis

31. Belarus deposited its instrument of accession to the Convention on 10 November 2005 and it entered into force 90 days later, on 8 February 2006. Lithuania deposited its instrument of accession to the Convention on 11 January 2001 and it entered into force 90 days later.

32. Item 2 in appendix I to the Convention, which sets out the list of activities covered, identifies “thermal power stations and other combustion installations with a heat output of 300 megawatts or more ... and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load)”.

33. In the context of the submission, the Committee examined the relevant provisions of articles 2, 3, 4, 5 and 6 and appendix II and their application.

C. Main issues

1. EIA legislation in Belarus

34. In accordance with article 2, paragraph 2, of the Convention, each Party must take the necessary legal measures to implement the provisions of the Convention.

^d Principle 4: Justification of facilities and activities: facilities and activities that give rise to radiation risks must yield an overall benefit (see ST/PUB/1273).

^e Natura 2000 is a European Union network of protected areas.

35. Lithuania considers that the contents and the procedural aspects of the EIA procedure in Belarus were unclear and not sufficiently known to it.

36. The legislation of Belarus on EIA and its consistency with the Convention had been subject to information gathering by the Implementation Committee between 2009 and December 2011 (see paras. 11–13 above). During that time, the Committee was made aware of substantial revisions that Belarus had made to its domestic legislation on EIA. Consequently, the Committee noted that the numerous legislative changes that had taken place since the beginning of the process for the planned construction of an NPP in Belarus in July 2008 made the EIA process complicated to follow, and could well explain the lack of clarity referred to by Lithuania. Consequently, the Committee deemed it determinant to establish when each of the new regulations had entered into force.

37. In its response of 22 September 2011 to the Lithuanian submission, Belarus indicated that the latest legislative acts “regulating the procedure of EIA implementation” that it had adopted consisted of the following:

(a) The Law on State Ecological Expertise of 9 November 2009, amended on 14 July 2011;

(b) Resolution No. 755 of 19 May 2010, amended by resolution No. 689 on 1 June 2011;

(c) Decision No. 571 of 4 May 2009, introducing special rules for public participation in decision-making on nuclear issues.

2. Notification

38. The Committee considered that the two Parties disagreed about the date of the notification. Subsequent to the information Belarus had provided about the project on 15 July 2008, Lithuania, in its letter of 24 September 2008, informed Belarus of its willingness to participate in the EIA procedure, as if they had received a notification. The 15 July 2008 letter did not, however, completely fulfil the requirements of article 3, paragraph 2. For that reason, Lithuania subsequently argued that the correct notification was contained in the letters of 24 August 2009 and 15 September 2009 from Belarus.

3. EIA documentation

39. The status of the preliminary and the final EIA report was another subject of disagreement.

40. Lithuania considered the preliminary EIA report provided by Belarus on 15 September 2009 to be only an EIA programme or a scoping document. Furthermore, for Lithuania, the bilateral meeting of 18 June 2010 was “to be considered as a preliminary discussion of the EIA process” (letter of 9 July 2010). Following modifications to the preliminary report, Belarus provided “a final EIA report” on 11 February 2011. Lithuania, however, claimed (in its letter of 18 March 2011 and in its submission of 7 June 2011) that that report could not be considered as “final” because it failed to fully answer Lithuania’s previous comments and requests for information.

4. Public participation

41. According to Belarus, it had organized a public hearing in Ostrovets on 9 October 2009 with the participation of some Lithuanian citizens. The Committee noted, however, that Lithuania had not received an invitation to participate in this public hearing. The minutes of the 9 October 2009 hearing had not been provided to the Committee.

42. On 2 March 2010, a public hearing was organized in Vilnius, as proposed by Lithuania in its letter of 10 February 2010. After this event, in its letter to Belarus of 7 May 2010, Lithuania complained that the representatives of Belarus were “not sufficiently well prepared for the public hearing regarding the EIA report” and that they had failed to provide a “quality” translation into the Lithuanian language.

43. Furthermore, Lithuania wrote to Belarus on 7 May 2010 and on 9 July 2010 requesting another public hearing in Lithuania based on the “amended” or “supplemented” EIA report that had been posted on the Belarusian website between 2 and 4 March 2010 but which had not been made available for the public hearing of 2 March 2010. It also requested that adequate interpretation into Lithuanian be provided during the hearing. The Committee noted that Belarus had not organized a second public hearing in Lithuania in spite of Lithuania’s requests. The Committee regretted having received the minutes of the hearing of 2 March 2010 only on 9 November 2012 and in the Lithuanian language. It also noted that the minutes had not been signed by Belarus.

44. The Committee considered that, although the Convention did not specify mechanisms for public participation, the holding of public hearings was an essential step in the effective public participation provided for in article 2, paragraph 6, and article 3, paragraph 8, of the Convention and as set out in the guidance on public participation.^f The Committee also considered that responding to the request for a second hearing, whether held in Belarus or in Lithuania, would have provided the public of the affected Party an equivalent opportunity to participate in the process of consultation (article 2, para. 6). That would have been necessary in particular given the modifications that had been made to the EIA report since the first public hearing held on 2 March 2010.

45. The Committee noted that, from the point of view of public participation, a number of problems had arisen in relation to the translation of materials and interpretation during the hearing in Vilnius. A better translation of the documents would have allowed for proper public participation, by ensuring a non-discriminatory process of participation in line with article 2, paragraph 6. In that context, the Committee noted its earlier opinion that: “Unless otherwise provided for in a bilateral or multilateral agreement or other arrangement, the burden for translation should fall upon the Party of origin in line with the polluter pays principle”.^g

46. In relation to the organizational aspects of the public participation (in this case, with respect to the hearing) held on the territory of the affected Party, the Committee pointed out that both the affected Party and the Party of origin had obligations in ensuring the proper proceedings of such participation, as requested by article 3, paragraph 8, and article 4, paragraph 2, of the Convention, which refer to “the concerned Parties” as regards public involvement.^h Therefore, the Committee considered in this respect that even if the interpretation provided by Belarus during the public hearing organized in Lithuania had been imperfect, that was not a sufficient argument against the process of public participation, as Lithuania argued.

47. The Committee also noted that the public participation and consultation processes could have been more effective had the two Parties facilitated the visa-granting formalities.

^f *Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context* (ECE/MP.EIA/7).

^g ECE/MP.EIA/IC/2010/2, para. 35; see also in ECE/MP.EIA/15, decision V/4, para. 6 (f).

^h See also ECE/MP.EIA/IC/2010/2, para. 35, ECE/MP.EIA/IC/2010/4, paras. 19 (c) and 20 and decision V/4, para. 6 (c).

48. On 4 March 2010, Belarus published information on the EIA on the Internet in Russian and in English. The Committee noted that, as such, a website could be one of the useful means to allow for the public of the Parties concerned to participate in a transboundary EIA procedure, if they so agreed, provided that the information was complete, provided in time and, for the relevant parts of the EIA documentation, in the language of the affected Party, and that the public was given a possibility to comment it on the website.

49. Regarding the language of the information, the Committee recalled its earlier opinion (ECE/MP.EIA/IC/2010/2, para. 35) that:

The concerned Parties should share the responsibility for ensuring that the opportunity provided to the public of the affected Party was equivalent to that provided to the public of the Party of origin, including access to at least relevant parts of the documentation in a language the public could understand, as set out in article 2, paragraph 6; article 3, paragraph 8; and article 4, paragraph 2 of the Convention. Unless otherwise provided for in a bilateral or multilateral agreement or other arrangement, the concerned Parties should, when sending or responding to the notification, agree at the start of the procedure for transboundary EIA on the scope of documentation to be translated. The documentation to be translated should, as a minimum, include the non-technical summary and those parts of the EIA documentation that were necessary to provide an opportunity to the public of the affected Party to participate that was equivalent to that provided to the public of the Party of origin. The Committee recommended that EIA documentation should include a separate chapter on transboundary impact to facilitate translation.

50. Lithuania claimed that its public and authorities had not been informed that a “substantially amended EIA report” had been placed on the website two days after the public hearing, and that on that basis it was obvious that an “equivalent” possibility for the public of the affected Party to participate in the EIA, in line with article 2, paragraph 6, had not been ensured. The Committee noted that the information of 14 June 2010 from Belarus regarding the website had been provided three months after the website had been set up. In conclusion, the Committee considered that the final EIA documentation had not been made available for the public of the affected Party to comment.

5. Consultations

51. During the transboundary EIA procedure, the two Parties consulted each other through the exchange of letters and on the occasion of two bilateral meetings. Consequently, the Committee considered that Lithuania had been given opportunities to provide Belarus with its comments, questions, technical arguments and advice. The Committee noted, however, that Belarus had seemingly not always provided sufficiently precise and detailed answers and information to Lithuania’s enquiries, for instance regarding the detailed assessment of the alternative sites, a health impact assessment, security preparedness and radioactive wastes. In that regard, the Committee pointed out that, in accordance with article 5 of the Convention, consultations should not be only a mere formality, but should concern the measures to “reduce or eliminate” (article 5, paragraph 1) the potential transboundary impact of the proposed activity and allow thorough examination of its possible alternatives.

52. The Committee stressed that, in line with article 3, paragraph 5 (b), of the Convention, the Party of origin had to provide to the affected Party “relevant information” on the possible significant adverse transboundary impact of the proposed activity. Once the relevant information was complete, the two Parties should enter into consultations as set out in article 5. Consequently, the Committee considered it important that, in order to allow for meaningful consultations under article 5, the information provided should be as complete

and precise as possible and, in particular, should meet any reasonable request as to its scope made by the affected Party.

6. Alternative sites

53. Considering that the issue of alternative sites was at the core of the controversy between the two Parties, the Committee evaluated in depth the due application of article 2, paragraph 7, article 5, paragraph (a), and appendix II, paragraphs (b), (c) and (d). The Committee also referred to good practice as described in the background note by the secretariat on the application of the Convention to nuclear energy-related activities (ECE/MP.EIA/2011/5, para. 29) and to its previous opinion that “it was important that the no-action alternative should be addressed fully so that the evolution of the environment in the absence of the project could be considered” (ECE/MP.EIA/IC/2010/2, para. 33).

54. The Convention requires that the EIA documentation include possible alternatives to the proposed activity. Moreover, appendix II to the Convention specifically refers to the description of “locational alternatives”. Consequently, the Committee considered that the EIA documentation had to evaluate and justify the different elements to be taken into account for the reasonable alternatives. It also pointed out that the choice of the location of the proposed activity should result from the EIA procedure and should not be determined before the final EIA report was issued, unless the choice of the location was determined in an appropriate strategic environmental assessment (SEA) procedure that included a transboundary procedure. Furthermore, in line with article 2, paragraph 7, of the Convention, the EIA has to be undertaken “at the project level of the proposed activity”; in a similar vein, the relevant provision in article 6, paragraph 4, of the Aarhus Convention calls for public participation “when all options are open”.

55. The Committee observed that for the Ostrovets NPP project the choice of the location had preceded the EIA process. In the communications made available to the Committee, Ostrovets had been mentioned as a priority site since 2008 (written responses from Belarus to the Committee, 15 June 2012, para. 17). The Aarhus Convention Compliance Committee, in its findings and recommendations on a communication concerning the Ostrovets project, referred to 2007 in this regard (ECE/MP.PP/C.1/2011/6/Add.1, para. 75). The Aarhus Committee also stated that “it appears that the option of not building the NPP at the particular location was no longer open for discussion” and “once the decision to permit the proposed activity in the Ostrovets area had already been taken without public involvement, providing for such involvement at a following stage could under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide for ‘early public participation when all options are open’” (ibid., para. 76).

7. Final decision

56. The Committee recalled decision V/4 (para. 6 (g)) that:

The final decision should provide a summary of the comments received pursuant to article 3, paragraph 8, and article 4, paragraph 2, of the Convention and the outcome of the consultation as referred to in article 5, and should describe how they and the outcome of the environmental impact assessment have been incorporated or otherwise addressed in the final decision, in the light of the reasonable alternatives described in the environmental impact assessment documentation.

It also recalled decision IV/4 (para. 61) that the final decision is the decision which “in real terms set the environmental conditions for implementing the activity” (see ECE/MP.EIA/10). In addition, the Committee also referred to the finding of the Aarhus Convention Compliance Committee that in Belarusian legislation “there is a lack of clarity

as to the decision which is considered to be the final decision” (ECE/MP.PP/C.1/2011/6/Add.1, para. 88 (b)). The Committee also referred to relevant good practice described in the secretariat’s background note (ECE/MP.EIA/2011/5, para. 50):

Given the high level of public interest, and the strong interest often shown by the authorities in affected Parties, it is important to demonstrate that, in the final decision on the proposed activity, due account is taken of the outcome of the EIA, including the EIA documentation, as well as the comments received from the public and authorities of affected Parties and the outcome of the consultations. This information needs to be shared with the public and authorities of affected Parties.

57. The Committee deemed it important to clarify whether the final decision indeed complied with article 6 of the Convention. In this regard, it examined, *inter alia*, whether:

(a) The final decision took due account of the outcome of the EIA, the EIA documentation, the comments received in writing and the outcome of the consultations (article 6, para. 1);

(b) The final decision reflected the potential environmental impact of the planned activity in Lithuania (appendix II, para. (d));

(c) Belarus, as Party of origin, had placed particular emphasis on giving Lithuania the reasons for approving the chosen activity from among the reasonable alternatives considered in compliance with article 6, paragraph 2 (requiring “the reasons and considerations on which” the decision was based), article 4 and appendix II;

(d) It was possible to revise the decision based on existing or additional information that took into account the stress tests recommended by IAEA following the Fukushima nuclear disaster (article 6, para. 3).

IV. Findings

58. Having considered the above, the Committee adopts the following findings with a view to bringing them to the attention of the Meeting of the Parties for formal adoption in accordance with paragraph 13 of the appendix to decision III/2.

59. The Committee finds, in general terms, that the lack of objections regarding the EIA documentation from the other concerned Parties participating in the EIA procedure does not provide in itself grounds for concluding that a Party is in compliance with its obligations under the Convention.

A. Measures for the establishment of an EIA procedure (article 2, para. 2)

60. Recalling its opinion at its twenty-third session, the Committee concludes that, following the recent legislative changes in Belarus, Belarus has improved its legal framework on EIA and the Committee has no grounds for finding non-compliance with article 2, paragraph 2, of the Convention.

B. Notification (article 3, para. 2 (a)–(c))

61. The Committee finds that, even if the information provided by Belarus of 15 July 2008 about the planned construction of the NPP did not fully comply with the requirements for notification set out in article 3 of the Convention, Lithuania had responded to it. Moreover, Belarus supplemented this information on 24 August 2009. In addition, during

the Committee's hearing, the two Parties themselves agreed that the requirements concerning the notification had been fulfilled by the notification of 24 August 2009. Therefore, the Committee finds that Belarus is not in non-compliance with article 3, paragraphs 2 (a)–(c).

C. Public participation (article 2, para. 6, article 3, para. 8)

62. The Committee recalled its earlier finding (ECE/MP.EIA/IC/2010/4, para. 19 (c)) that:

The concerned Parties had a common responsibility for providing equivalent opportunities for public participation in the affected Party, including accurate and effective notification of the public. In that context, while recognizing the lack of administrative powers of the Party of origin's competent authority on the territory of the affected Party, at a minimum it had to provide the possibility for the public of the affected Party to participate in the procedure of the Party of origin (ECE/MP.EIA/IC/2010/2, para. 37). The Party of origin's competent authority should furthermore support the affected Party's competent authority in providing effective participation for the public of the affected Party in the procedure for transboundary environmental impact assessment.

On the above grounds, the Committee finds that Belarus is in non-compliance with article 2, paragraph 6.

63. The Committee finds that Belarus was in compliance with its obligations under article 3, paragraph 8, of the Convention, on the grounds that by sending on 24 August 2009 the draft EIA report to Lithuania for public participation, and by attending the public hearing in Vilnius on 2 March 2010, Belarus had started the consultation at an early stage and before the final decision concerning the site selection was taken (15 September 2011).

D. EIA documentation (article 4, para. 2)

64. By not informing Lithuania of the availability of the final EIA report, and by not submitting it for comments to Lithuania including from its public, the Committee finds that Belarus is in non-compliance with the requirement of article 4, paragraph 2, to furnish the affected Party with the final EIA documentation for the purpose of public participation.

E. Consultations (article 5)

65. The Committee acknowledges the existence of continuous communication and goodwill between the two Parties. The Committee notes, however, that both Parties failed to agree at the commencement of the consultations on their time frame and scope, which, in the opinion of the Committee is the precondition for successful consultations.

66. The Committee finds, based on the information received from the two Parties, that consultations between Belarus and Lithuania are continuing. In this context, the Committee notes that meetings between the two Parties dedicated to the NPP issue took place, as well as exchanges of letters, which are, in its opinion, important steps towards full compliance with the requirements of article 5. Notwithstanding this, and although article 5 of the Convention does not stipulate a specific time period for responding to questions regarding the EIA documentation, the Committee finds that the lack of response to several specific questions put to Lithuania by Belarus, as well as delays in answering, makes such

consultations purely formal. On these grounds, the Committee finds that Belarus is not yet in full compliance with the requirements of article 5.

F. Assessment of alternatives (article 5, para. (a), and appendix II, paras. (b) (c) and (d))

67. Based on the information presented by Belarus and Lithuania, the Committee finds that the requirements of article 5, paragraph (a), and of appendix II, paragraphs (b), (c) and (d), regarding the description of possible and reasonable alternatives have not been clearly fulfilled within the required time limits. Ostrovets was chosen as the priority site at the beginning of the process in 2008, prior to the notification and to the completion of the final EIA (response of Belarus to the Committee dated 15 June 2012, para. 17).

68. The Committee finds that, even if the two alternative sites considered had not been found suitable on the grounds that they did not adequately fulfil the safety criteria, the final choice of the site appears not to have been sufficiently discussed or commented, including by the public, during the consultation, or to have sufficiently addressed the no-action alternative or the specific impact on human health and safety of the proposed activity in the vicinity of the capital of a neighbouring State. Furthermore, the description of locational alternatives to be included in the EIA documentation in line with appendix II (b) should be especially required when an activity is planned near a city.

69. The Committee stresses the importance of the definition set out in article 1, paragraph (vii), of the Convention which specifically includes considerations of human health and safety and socioeconomic conditions among the impacts to be considered in the preparation of the transboundary EIA documentation and in the consultations.

70. On the above grounds the Committee finds that Belarus is not yet in full compliance with article 5, paragraph (a), in relation to appendix II, paragraphs (b), (c) and (d).

G. The final decision (article 6, paras. 1 and 2)

71. The Committee noted that for the Ostrovets NPP, Belarus split the final decision into two parts: (a) the decision on the location; and (b) the decision on permitting the construction in that specific location. The Committee finds that when Parties split their final decisions into several parts, all of these parts of the final decision have to comply with article 6 of the Convention.

72. The Presidential Decree of Belarus of 15 September 2011 approved the location of the future NPP, that is, the Ostrovets site, without taking into account the requirements of the Espoo Convention, as set out in article 6 of the Convention. The decision was not provided to Lithuania, it did not include the reasons and considerations on which it was based, and it did not take due account of the comments of Lithuania. The Committee therefore finds that Belarus is in non-compliance with article 6, paragraphs 1 and 2, of the Convention, in regard to the decision on the location.

73. The Committee considers that the decision on permitting the construction in the Ostrovets site has not yet been taken and, therefore, it finds that Belarus is not in non-compliance with article 6, paragraphs 1 and 2, of the Convention, in regard to this decision.

V. Recommendations

74. The Committee recommends that the Meeting of the Parties:

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- (a) Endorse the findings of the Implementation Committee that Belarus is in compliance with its obligations under article 3, paragraph 2 (a) and (c), and article 3, paragraph 8, of the Convention in relation to the activities referred to in the submission;
- (b) Endorse the findings of the Implementation Committee that Belarus is in non-compliance with its obligations under article 2, paragraph 6, article 4, paragraph 2, article 5, paragraph (a), and article 6, paragraphs 1 and 2, of the Convention in relation to the activities referred to in the submission;
- (c) Request the Government of Belarus to take a final decision on the site selection, in full compliance with the requirements of article 6, i.e., ensuring that due account has been taken of the outcome of the EIA documentation, and the comments thereon received pursuant to article 3, paragraph 8, and article 4, paragraph 2, as well as the outcome of the consultations referred to in article 5;
- (d) Also request Belarus to provide to Lithuania the final decision on the proposed activity taken in accordance with the previous recommendation, along with the reasons and considerations on which it was based;
- (e) Further request Belarus to continue the procedure of transboundary EIA on the basis of the final EIA documentation. To this end, and in accordance with the provisions of the Convention, Belarus should agree with Lithuania on the steps to be followed, answer all Lithuania's questions, and take into consideration the Lithuanian comments;
- (f) Urge Belarus and Lithuania to make further efforts to ensure that the language requirements of public consultations are satisfied;
- (g) Request Belarus and Lithuania to ensure that the Lithuanian public is informed about the final EIA report and provided with possibilities for making comments or objections to it, in line with article 3, paragraph 8, of the Convention;
- (h) Encourage Belarus and Lithuania to continue consultations, on the basis of article 5, and urge Parties to agree on a reasonable time frame for the consultation period;
- (i) Also encourage Belarus and Lithuania to agree on a post-project analysis in accordance with article 7 of the Convention;
- (j) Further encourage Belarus and Lithuania to conclude the bilateral agreement for the implementation of the Convention in accordance with article 8;
- (k) Request Belarus and Lithuania to report by the end of each year to the Implementation Committee on the implementation of these recommendations.
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