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Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Compliance Committee

Thirty-first meeting

Geneva, 22–25 February 2011

Report of the Compliance Committee on its thirty-first meeting

Addendum

Compliance by Lithuania with its obligations under the Convention

I. Implementation of decision III/6d of the Meeting of the Parties

1. At its third session, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision III/6d on compliance by Lithuania with its obligations under the Convention (ECE/MP.PP/2008/2/Add.12).

2. Through decision III/6d, the Meeting of the Parties endorsed the findings of the Committee, with regard to the failure of Lithuania to comply with the provisions of article 6, paragraphs 2 and 3, of the Convention, in connection with the decisions in the environmental impact assessment for a proposed landfill, and with regard to a general failure of the Lithuanian legal framework to comply with the provisions of article 6, paragraphs 2 (in particular 2 (d) (iv) and (v)), 3, 6, and 7.

3. The Meeting of the Parties also recommended to the Party concerned to take a number of legislative, regulatory, administrative and other measures and requested Lithuania to draw up an action plan for implementing the recommendations, with the involvement of the public concerned, and to submit it to the Compliance Committee by 31 December 2008 (paras. 2 and 3). It also invited Lithuania to provide information to the Committee, at the latest six months in advance of the fourth session of the Meeting Parties,

on the measures taken and the results achieved in implementation of its recommendations (para. 4).

4. On 2 October 2008, the secretariat forwarded decision III/6d to Lithuania with a reminder concerning the requests and recommendations of the Meeting of the Parties contained therein.

5. On 5 March 2009, the Party concerned informed the Committee that the Ministry of Environment had already prepared the draft action plan, which, however, due to delays in public consultations was yet not ready to be submitted to the Committee.

6. By letter dated 4 May 2009, the Committee expressed its concern at the failure of Lithuania to submit the action plan by the 31 December 2008 deadline. A reminder was then sent to Lithuania on 27 July 2009.

7. On 1 September 2009, Lithuania submitted its action plan to the Committee in the Lithuanian language, followed by a translation in the English language on 21 September 2009. The action plan had been approved by Resolution No. 979 of 26 August 2009.

8. At its twenty-fifth meeting (22–25 September 2009), the Committee considered the action plan. By letter of the secretariat of 30 October 2009, the Committee sought clarification on the specific content of the amendments envisaged for each measure, as outlined in the action plan, and the precise time frame for their adoption. Following an informal exchange of letters between the secretariat and the Party concerned, the latter provided clarification on 30 December 2009. In addition, on 18 February 2010, Lithuania informed the Committee about the adoption of some more measures listed in its action plan.

9. At its twenty-seventh meeting (16–19 March 2010), the Committee considered the additional information and clarifications provided by the Party concerned. It also asked the Party concerned, by letter of 23 April 2010, to address some additional issues, in particular with regard to the role of the developer in public participation, the time frames for public participation under the new legislation and the timing for adoption of the draft measures mentioned in the action plan. The Party concerned claimed that it had never received the letter. A reminder was sent to the Party concerned on 7 October 2010.

10. On 7 December 2010, the Party concerned submitted a list of the measures that had been implemented and those that were to be implemented shortly.

11. At its thirtieth meeting (14–17 December 2010), the Committee took note of the information submitted by the Party concerned, but still noted that it had not submitted the additional information requested by the Committee at its twenty-seventh meeting with respect to the role of the developer and the time frames for public participation.

12. On 28 January 2011, the Party concerned sent its clarification.

13. At its thirty-first meeting, the Committee reviewed the situation with regard to follow-up by Lithuania to decision III/6d, taking note of the information provided by Lithuania during the intersessional period and its national implementation report.

14. The Committee notes with appreciation that Lithuania has implemented a number of measures to reach compliance with the Convention.

15. With regard to the recommendation under paragraph 2 (a) of decision III/6d, measures were taken to improve the existing legal framework with the aim to introduce a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner.

16. With regard to the recommendation under paragraph 2 (b) of the decision, new time frames for public participation were introduced, in particular:

(a) The public now has at least 20 working days (10 days before the public presentation and 10 days after it) to comment on the environmental impact assessment (EIA) report;

(b) If, subsequently, the EIA report is substantially amended, corrected or supplemented, the competent authority may require a new public participation process and the public will have 20 working days to comment on the amended report;

(c) The legislation does not define the time frame to comment on the scoping document during the scoping phase, which lasts a minimum of 30 working days, but the public has the possibility to comment during the whole scoping procedure and to submit its comments to the competent authority.

17. In addition, the public now has 21 days, instead of 14, to submit proposals and comments in the procedure relating to integrated pollution prevention and control (IPPC).

18. With regard to recommendations under paragraphs 2 (c) and (f) of the decision related to the division of responsibilities between the developer and public authorities, measures were introduced to ensure that both the developer and the public authorities are responsible for informing the public about initiating the procedure. It seems, however, that according to clause 14 (para. 7) and clause 31 of the Procedural Guide, the main responsibility for providing the public with the possibility to access the relevant information (EIA documents) and to submit comments, is still mainly put on the developer or the drafter of the EIA documents. The Party concerned provided clarification to the Committee that a number of additional measures have been taken to ensure implementation of these recommendations in spatial planning and IPPC procedures. The Committee took note of the additional information.

19. With regard to recommendations under paragraph 2 (d) of the decision, there have been legislative changes to allow the public to submit "any comments and proposals" without the requirement that they be "reasoned".

20. With regard to the recommendation under paragraph 2 (e) of the decision, the Party concerned informs the Committee that, in the context of spatial planning procedures, the response of the developer to proposals and comments may be appealed within one month from the date of receipt before the State spatial planning supervisory authority. Also, in the context of the IPPC procedure, the decisions and actions or inaction of the Regional Environmental Protection Departments of the Ministry of Environment, in connection with the issuance, renewal, correction or revocation of a permit, including public participation, may be appealed to the courts from the date of the issuance of the decision.

21. With regard to the recommendation under paragraph 2 (g) of the decision, the Party concerned provided information on a number of measures to ensure public participation in plans and programmes regarding strategic environmental assessment procedures, in plans and programmes designated for the environment, including air and water protection and waste management, and the possibility for the public to participate in the development, review and renewal of river basin district management plans.

22. In this regard, the Party concerned informed the Committee of the general policy followed to ensure public participation in all draft legislation, according to which all draft normative acts are published on a centralized Information System of Draft Legislation and the public have the opportunity to submit comments and proposals. On the basis of comments, improved versions of the draft are subsequently published.

23. In order to ensure the comprehensive review of compliance by Lithuania, the Committee invited Lithuania, as well as the communicant whose communication had initially triggered the review of compliance by Lithuania, to comment on the draft of the present report. Comments were received from the Party concerned on 15 March 2011. The

Committee appreciates the clarifications provided by the Party concerned, which have helped the Committee to finalize its analysis in the previous paragraphs.

II. Conclusions

24. The Committee wishes to note the engagement of the Party concerned, demonstrated by its correspondence with the Committee and its effort to meet the deadlines set by decision III/6d to the extent possible. Having reviewed the information provided in the intersessional period and the national implementation report for 2008–2011, the Committee notes with appreciation that the Party concerned has seriously and actively engaged to follow the recommendations of decision III/6d. Reiterating that public authorities cannot be substituted in any way in their role in providing information and in the carrying out of public participation processes, the Committee considers that the information provided by Lithuania during the intersessional period provides a basis to find that the Party concerned is not in a state of non-compliance with the provisions of article 6, paragraphs 2, 3, 6, and 7.

III. Recommendations

25. In the light of the above, the Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the Meeting of the Parties endorse the above findings of the Committee with regard to compliance by Lithuania.
