



LIETUVOS RESPUBLIKOS APLINKOS MINISTERIJA
THE MINISTRY OF ENVIRONMENT OF THE REPUBLIC OF LITHUANIA

A. Jakšto St 4/9, LT-01105 Vilnius, tel.: (+370 5) 266 36 61, fax: (+370 5) 266 36 63, e-mail: info@am.lt URL: http://www.am.lt

Mr. Nick Bonvoisin, Secretary
Convention on Environmental Impact
Assessment in a Transboundary Context
Office: 429-1, Palais des Nations
CH-1211 Geneva 10
Switzerland

7 June 2011

No. (10-3)-D8- 5314

Mr. Matthias Sauer, Chair
Implementation Committee
Convention on Environmental Impact
Assessment in a Transboundary Context
Palais des Nations
CH-1211 Geneva 10
Switzerland

**SUBMISSION BY LITHUANIA HAVING CONCERNS ABOUT THE COMPLIANCE
OF THE REPUBLIC OF BELARUS WITH ITS OBLIGATIONS UNDER ESPOO
CONVENTION WITH RESPECT TO THE CONSTRUCTION OF THE NUCLEAR
POWER PLANT IN THE REPUBLIC OF BELARUS**

Dear Mr. Nick Bonvoisin, Mr. Matthias Sauer,

Taking into account the findings provided in the report of the Twentieth session of the Implementation Committee, under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), held from 11 to 13 January 2011 in Geneva and the letter of the Implementation Committee addressed to the Ministry of Environment of the Republic of Lithuania dated 8 September 2010, The Republic of Lithuania having concerns about the compliance of the Republic of Belarus with its obligations under the Convention with respect to the construction of the nuclear power plant in the territory of Belarus is making an official submission to the Implementation Committee.

On 11 February 2011 Lithuania received a letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus providing to us so called final EIA report for the Belarusian NPP project, which is not considered by Lithuania as a final report and EIA procedure is not completed.

We are concerned, that despite the absence of fulfilled procedures required by Espoo Convention (properly prepared EIA report, organisation of requested public hearings and consultations) it seems that the site for construction of the planned NPP has already been chosen in Astravets site, the digging and other preparatory works have started and it is publically declared untruth by Belarusian authorities that the final EIA report has been submitted to the all affected parties. We are confident that on 11 February 2011 the provided document can't be considered as the final EIA report, because the officially submitted Lithuanian requests to provide clear answers and essential additional information and fulfil other obligations under Espoo Convention are in general ignored by Belarusian authorities.

Regarding to the abovementioned Lithuania asks Implementation Committee to keep Your attention on that issue and to take an action and call Belarusian side fully comply requirements of Espoo convention and restart EIA process.

Implementation Committee in the above mentioned letter has indicated that submission of the Concerned Party "should only be made once the final decision on the activity has been taken", it should be noted that Lithuania is not officially aware whether a final decision has already been taken with respect to the construction of the nuclear power plant in Belarus, as no explanations concerning the nature of final decision were received during the environmental impact assessment (EIA) procedure. However, based on the statements of Belarusian authorities in the press regarding the implementation of the project, it is highly presumable that final decision has already been taken without informing the affected parties.

Lithuania is of the opinion that Belarus has violated the following provisions of Espoo convention while carrying out the environmental impact assessment procedure for the construction of the nuclear power plant:

Article 2, paragraph 2, which requires Each Party to take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.

In September 2008, the Ministry of Environment of the Republic of Lithuania (hereinafter referred to as the "Ministry of Environment") on its own initiative informed the Republic of Belarus that Lithuania intended to participate in the process of transboundary environmental impact assessment for the nuclear power plant project in Belarus and requested to present information (notification) in compliance with the provisions of Espoo Convention. The request was repeated in January and April 2009.

In the letter dated 7 January 2009 No. (1-15)-D8-92 Ministry of Environment raised concerns that Belarusian and Lithuanian mass media had reported that Astravec region had been chosen for the construction of the nuclear power plant, despite the fact, that EIA procedure had not been yet initiated and the notification under the requirements of Espoo Convention hadn't been submitted to the affected Parties. Taking into account the information of the press and the lack of knowledge of EIA system of the Republic of Belarus, Ministry of Environment repeatedly requested to give a general overview of the EIA procedure including communication and participation of the affected parties and provide explanations whether the site selection procedure was finished prior the EIA, unfortunately there was no lucid answer. Even today it is not clear whether the legal requirements of the planning system (including EIA) in the Republic of Belarus are harmonized with the

requirements of Espoo convention, indicating that not all necessary legal or administrative measure were taken to ensure the proper implementation of Espoo Convention.

Article 2, paragraph 6, which requires that the Party of origin shall provide, in accordance with the provisions of Espoo Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.

A public hearing meeting on the preliminary EIA report was held on 2 March 2010 in Vilnius the capital of Lithuania. In addition to representatives of the Republic of Belarus, the meeting was attended by approximately 80 representatives of the public, non-governmental organisations, higher education institutions and state authorities. The comments and questions of the participants of the meeting were mostly linked with the proper choice and evaluation of alternatives in respect of a site for the nuclear power plant; the safety of the nuclear power plant; management of radioactive waste; actions in the event of a major accident; the thermal and radiological impact on the river Neris (second largest river in Lithuania) ecosystem; the adverse impact of the nuclear power plant on the Lithuanian population as a result of exposure to radiation. The participants of the meeting proposed to abandon the construction of the nuclear power plant in the Astravets region and select an alternative location as the proposed economic activity would be carried out at a distance which is less than 50 km from Vilnius, the largest city in Lithuania and the capital of the country, and in the event of an accident a large number of residents would be adversely affected by radiation. It should be noted that this event is not considered to comply with the requirements of Espoo Convention, while it has been done without appropriate translation into Lithuanian, poor English language in the so called EIA report, and without any comprehensive answers to Lithuanian questions.

Just before the bilateral meeting held in Minsk on June 18, 2010, regarding the environmental impact assessment for the construction of the nuclear power plant in the Republic of Belarus, the delegation of Lithuanian authorities was unexpectedly informed about the substantially amended EIA report. In respect that EIA report was placed on the website on the 4th of March 2010, just two days after the public hearing meeting in Vilnius, without informing Lithuanian authorities and public, it is obvious that provision of Espo convention to ensure the equivalent possibility for the public of the affected Party to participate in the EIA procedure was violated. The fact that Lithuanian public and authorities hasn't got access to the full environmental impact assessment documentation (the present EIA report is 4 times more thorough both in size and in content than the preliminary EIA report submitted to Lithuania for examination) was emphasized not only at the bilateral meeting but also in the following correspondence to the Republic of Belarus. Lithuania concluded that public information procedure and bilateral consultation procedure have not been implemented properly and requested to reconvene public hearing and organize bilateral consultations based on the amended EIA report. Unfortunately, Belarus hasn't shown any willingness to fulfill this grounded request.

Article 3, paragraph 2, which point out that notification shall contain, inter alia: (a) Information on the proposed activity, including any available information on its possible transboundary impact; (b) The nature of the possible decision; and (c) An indication of a reasonable time within which a response under paragraph 3 of this Article is required, taking into account the nature of the proposed activity; and may include the information set out in paragraph 5 of this Article.

In 2008 and at the beginning of 2009 Lithuania received several letters from Belarus regarding its plans to construct nuclear power plant. In our answers we stated that such letters could not be treated as a notification in accordance with to Espoo Convention, as they didn't meet the requirements of Article 3 of Espoo Convention. Only on 24 August 2009 Ministry of Natural Resources and Environmental Protection of the Republic of Belarus sent us official notification concerning the initiation of the EIA procedure for construction of nuclear power plant in the territory of the Republic of Belarus. Together with notification a summary of preliminary EIA report was submitted, a few weeks later an additional letter together with preliminary EIA report was sent.

These facts imply that the provisions of legislation of the Republic of Belarus are not in conformity with the provisions of Espoo convention, as the latter clearly determines the content of notification. Moreover, the submitted notification doesn't include the nature of possible decision, and this is currently causing a lot of confusion regarding the final decision.

Article 4, paragraphs 1 and 2, which require that the environmental impact assessment documentation to be submitted to the competent authority of the Party of origin shall contain, as a minimum, the information described in Appendix II and that the Party of origin shall furnish the affected Party, as appropriate through a joint body where one exists, with the environmental impact assessment documentation.

Upon the receipt by the Ministry of Environment in September 2009, according to provisions of the Espoo Convention, of a notification alongside with the **preliminary** EIA documentation, the Ministry of Environment forwarded this information to state authorities and higher education institutions and non-governmental organisations and requested to submit comments on it. Taking into account the comments received, the Ministry of Environment submitted on 15 October 2009 to the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus 39 comments and conclusions that **preliminary** EIA report lacked essential information, which was required by the provisions of Appendix II of Espoo Convention, the provided findings were ungrounded, therefore, the preliminary EIA report could be treated only as a scoping document. It was stated that the public hearing in Lithuania could be organized only after the receipt of **final** EIA report with the answers to the submitted comments. Referring to the provisions of Espoo Convention on providing the equal opportunities for the public of Parties concerned to participate in the EIA procedure, Belarus was informed that the final position of Lithuania would be presented only following a public hearing of the EIA report in Lithuania, which may be organised solely upon the receipt of a part of the documentation (the summary of the **final** EIA report and information on possible transboundary impacts) in the Lithuanian language. The intention to have a consultation meeting after the submission of the final position was also expressed.

In February 2010 Lithuania received the translation of the preliminary EIA report, which was published on the website of the Ministry of Environment and forwarded to state and local authorities, public environmental protection organisations and higher education institutions alongside with information on a public hearing of the EIA report to be held and a request to submit comments on the EIA documentation to Lithuanian Ministry of Environment.

It should be noted that during Lithuanian-Belarusian experts meeting regarding the preparation of final draft of bilateral agreement on implementation of Espoo Convention (held in Vilnius on 18-19 November 2009) it was explained that the preliminary EIA report would not be amended during the EIA procedure, therefore it was agreed that Belarus would submit us summary of the preliminary EIA report an information about possible transboundary impacts translated into Lithuanian language in a short time and after the receipt of this documentation Lithuania would inform Belarus when public hearing in Lithuania could be organised. At the above-mentioned

public hearing meeting in Vilnius the delegation of Belarus didn't inform that EIA report had been already substantially amended and in no time the updated version would be posted on the internet. Such information reached Lithuania only in June 2010. Despite the repeated requests of Lithuanian authorities to promptly submit this document for comments, the amended EIA report was sent to Lithuania only on 11 February 2011. Lithuania is concerned by the fact that State ecological expertise and State general expertise were finished by this date. This implies that efforts are taken by Belarusian authorities with a view to formally apply the provisions of Espoo Convention without any synchronization with national requirements.

According to the points b-d of Appendix II of Espoo Convention EIA documentation shall contain a description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative; a description of the environment likely to be significantly affected by the proposed activity and its alternatives; a description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance. It means that during the EIA all alternatives must be assessed equally thorough. Prioritisation of one or another site shall be substantiated in an environmental impact assessment report, which is possible solely conducting a thorough analysis of the considered alternatives. It must be pointed out that both versions of the EIA report for the Belarus nuclear power plant project fail to provide equal and thorough assessment of locational alternatives, as it is focuses exclusively on the Astravets site, despite the fact that other two alternative sites are mentioned in the report (Kukshinovo and Krasnaya Polyana). Moreover, in the response to the remarks presented in the letter of the Ministry of Environment of the Republic of Lithuania of 15 October 2009 it was stated that according to the legal acts of the Republic of Belarus in force, the building of nuclear power plants Kukshinovo and Krasnaya Polyana would be forbidden as these selected sites are in the karst region. This also implies that only one locational alternative is examined, rather than the three alternatives, as claimed in the EIA report. Furthermore, it is unclear which criteria have served as a basis for selection of these three alternative locations and whether the surveys for selection of suitable sites for the building of the nuclear power plant were done according to the IAEA safety requirements "Site Evaluation for Nuclear Installations", NS-R-3, and other international recommendations.

Any specific site should be given a priority solely upon considering all available alternatives. In this case, information must be provided on the potential impact on the elements of the environment by each of the site under consideration and the possible extent of the impact must be compared. The degree of risk of all the sites and its acceptability must be evaluated. According to the fourth safety principle of the IAEA (*Fundamental Safety Principles, SF-1, IAEA, 2006*), the radiation risks to which the nuclear installations and related activities give rise must be outweighed by the benefits that they yield in the course of their operation. The calculations done by the scientists of the Institute of Physics of the Republic of Lithuania (*Expert Evaluation of the Nuclear Power Plant in Belarus (2010), Annex 5*) show that in the event of a severe accident and under unfavourable conditions, the health of the residents of Vilnius and surrounding areas is exposed to a real and unacceptable threat. Construction of a nuclear power plant at such a close distance from Vilnius, the largest city of the Republic of Lithuania and its capital, would pose an unjustifiable high risk posed by this facility to Lithuania.

The final choice of the site should be made solely upon performing an in-depth assessment of the site from the safety perspective. Such an assessment covering geological, geophysical, emergency preparedness and other issues must be performed in line with the current good international practice.

These arguments prove that our judgment to consider preliminary EIA report only as EIA scoping document and to request organization of the public hearing and bilateral consultations in Lithuania

only after the receipt of the final EIA report was well-grounded.

Article 5, paragraph 1, which requires the Party of origin shall, after completion of the environmental impact assessment documentation, without undue delay enter into consultations with the affected Party.

The bilateral meeting regarding the environmental impact assessment for the construction of the nuclear power plant in the Republic of Belarus was held on June 18, 2010. After the meeting Lithuania in the written form presented its view on the outcomes of the meeting and the overall EIA process (Letter of the Ministry of Environment No. (10-3)-D8-6627 of 9 July 2010). It was emphasized that Lithuanian public and authorities hadn't got access to the full EIA documentation, therefore actions such as reconvening of public hearing meeting and bilateral consultations were needed for proper implementation of Espoo convention. Unfortunately such grounded request is ignored by Belarus, which in this case is the violation of Espoo convention .

Article 6, paragraphs 1 and 2, which require that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to Article 3, paragraph 8 and Article 4, paragraph 2, and the outcome of the consultations as referred to in Article 5. The final decision on the proposed activity along with the reasons and considerations on which it was based shall be provided to the affected Party by the Party of origin.

We are concerned, that despite the absence of fulfilled procedures required by Espoo Convention (properly prepared EIA report, organisation of requested public hearings and consultations) it seems that the site for construction of the planned NPP has already been chosen, the digging and other preparatory works have started and it is declared that the final EIA report has been submitted to the affected parties. Moreover, the Belarussian State ecological expertise and State general expertise were carried out last year without notifying affected Parties on their conclusions. Only from the press it is known that authorities of the Republic of Belarus approved the project. We are concerned, that lack of transparency on the nature of the final decision causes various misunderstandings and misinterpretations, which could result in inappropriate adoption of the final decision. It should be noted that according to the provisions of Espoo Convention the final decision regarding the site selection for construction of the Belarussian NPP shall be taken and any construction works shall be started only after the evaluation of the outcome of EIA including the comments of the affected Parties and the outcome of consultations under Espoo Convention with the affected Parties. It should be noted that the Party of origin shall provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based.

Summarizing abovementioned information Lithuania requests Espoo Convention Secretariat and the Implementation Committee:

- to attract attention on that issue and to take an action by calling Belarussian side fully comply with the requirements of Espoo Convention and restart EIA process (properly prepare EIA report, organise of proper public hearings and consultations);
- to invite Belarussian side to suspend all construction process until EIA process is fully finished;
- to invite Belarus once again to revise their decisions and to withdraw Belarussian NPP from Astravets site which is only 50 kilometres from the centre of Lithuanian capital city Vilnius

and which has to be regarded as insurmountable difficulty for the implementation of the emergency planning measures.

We are looking forward to close cooperation and are ready to submit further clarifications if needed.

Please find enclosed:

1. Letter of the Ministry of Environment of the Republic of Lithuania No. (1-15)-D8-8345 of 24 September 2008.
2. Letter of the Ministry of Environment of the Republic of Lithuania No. (1-15)-D8-92 of 7 January 2009.
3. Letter of the Ministry of Environment of the Republic of Lithuania No. (1-15)-D8-8864 of 15 October 2009 .
4. Letter of the Ministry of Environment of the Republic of Lithuania No. (10-3)-D8-4486 of 7 May 2010.
5. Letter of the Ministry of Environment of the Republic of Lithuania No. (10-3)-D8-6627 of 9 July 2010
6. Letter of the Ministry of Environment of the Republic of Lithuania No (10-3)-D8-2613 of 18 March 2011.
7. Letter of the Ministry of Natural Resources and the Environmental Protection of the Republic of Belarus No. 14-09/2945-BH of 15 July 2008 (in Russian).
8. Letter of the Ministry of Natural Resources and the Environmental Protection of the Republic of Belarus No. 14-16/1382-BH of 19 March 2009 (in Russian).
9. Letter of the Ministry of Natural Resources and the Environmental Protection of the Republic of Belarus No. 14-16/3759 BH of 24 August 2009 (in Russian with unofficial English translation).
10. Letter of the Ministry of Natural Resources and the Environmental Protection of the Republic of Belarus No. 13-16/816 BH of 11 February 2011.
11. Minutes of the meeting of Lithuanian–Belarusian experts regarding the preparation of final draft of bilateral agreement on implementation of Espoo Convention of 18-19 November 2009 (in Russian).

Yours sincerely,

Dr. Aleksandras Spruogis
Vice-Minister

