

21.11.2014 № 13-11/2638

Chair,
Implementation Committee,
Convention on Environmental
Impact Assessment in a
Transboundary Context

Dear Mr. Zaharia,

Referring to your letter of 19 September 2014 and paragraph 59 of the decision VI/2 of the Meeting of the Parties to the Espoo Convention, the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus (hereinafter – Ministry) reports on the implementation by Belarus of the recommendations made by the Meeting of the Parties further to the submission by Lithuania.

Paragraph 51 of the decision VI/2 “Requests 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;”

Following the completion of the transboundary EIA procedure for the Belarusian NPP, in accordance with Article 6, paragraph 1 of the Espoo Convention and the Implementation Committee’s recommendation¹, the Edict of the President of the Republic of Belarus of 2 November 2013 “On construction of the Belarusian nuclear power plant” was adopted, which is the final decision in the terms of the Espoo Convention.

This Edict authorized the construction of the Belarusian NPP and approved the site for its construction.

In paragraph 1, subparagraph 2.1 of the Edict of the President of the Republic of Belarus of 2 November 2013 (annex 1) it is stated that “the NPP

¹ ECE/MP.EIA/IC/2013/2, annex, para. 74 (c)

construction shall be implemented on the basis of the design documentation for its construction and with due regard to the results of the environmental impact assessment, including the environmental impact assessment documents, comments to these documents made by the concerned parties and the public, results of the consultations with the affected Parties reflected in the conclusion of the state ecological expertise of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus on the Belarusian NPP design documentation (23 October 2013, No. 98)”.

The named conclusion of the Ministry (annex 2) confirms that additional design decisions to minimize impacts on the river Viliya were made in the design documentation for the Belarusian NPP construction taking into consideration outcomes of the consultations with Lithuania (page 15 in the original document, page 14 in its unofficial translation).

Bearing in mind the Implementation Committee’s findings in relation to the Edict of the President of the Republic of Belarus of 15 September 2011 “On location and project development of the NPP in the Republic of Belarus”², we request the Committee to take into consideration the following.

The Edict of the President of the Republic of Belarus of 15 September 2011 was not the final decision for the purposes of the Espoo Convention.

This is confirmed by the opinions of the Implementation Committee:

“<...> while the Parties are free to decide which of the multitude of decisions required within their regulatory framework should be considered final for the purpose of the Convention, their discretion in this respect is limited to those decisions that in real terms set the environmental conditions for implementing the activity”³;

“<...> if the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the «final decision» in the meaning of the Convention”⁴.

In its comments on the Implementation Committee’s draft findings and recommendations⁵ Belarus agreed with the Committee’s opinion that the Edict of the President of the Republic of Belarus of 15 September 2011 was not the final decision. Belarus clarified that this Edict permitted the NPP design, but not its construction.

Also in its answers to the Implementation Committee’s questions⁶ in the course of the Committee’s consideration of the Lithuania’s submission Belarus clarified that the Edict of the President of the Republic of Belarus of 15 September 2011 authorized development of the project and design

² ECE/MP.EIA/IC/2013/2, annex, paras. 71-72

³ ECE/MP.EIA/10, decision IV/2, annex I, para. 61

⁴ ECE/MP.EIA/IC/2009/2, para. 21

⁵ letter of the Ministry to the Implementation Committee of 9 November 2012

⁶ letter of the Ministry to the Implementation Committee of 15 June 2012

documentation for the Belarusian NPP and defined the NPP site for these purposes (annex 3).

On the basis of the above, Belarus did not review the Edict of the President of the Republic of Belarus of 15 September 2011 as there were no grounds for this.

Paragraph 52 of the decision VI/2 “Also requests Belarus to provide to Lithuania the final decision³² on the proposed activity taken in accordance with the previous recommendation, along with the reasons and considerations on which it was based;”

In accordance with Article 6, paragraph 2 of the Espoo Convention Lithuania and the Implementation Committee’s recommendation⁷ the copies of the Edict of the President of the Republic of Belarus of 2 November 2013 and of the conclusion of the Ministry (in Russian and English, in hard copy and electronic format) along with the reasons and considerations, which the final decision was based on, were sent to the affected Parties, including Lithuania, by the letter of the Ministry of 21 November 2013 (annex 4).

Paragraph 53 of the decision VI/2 “Further requests 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;”

Belarus has being continued the transboundary EIA procedure on the basis of the final EIA documentation.

With a view to implement Implementation Committee’s recommendation⁸ the Parties in the course of the meeting of the Prime-Ministers of the Republic of Belarus and the Republic of Lithuania at the IX International Belarusian and Lithuanian Economic Forum (Klaipeda, Lithuania, 18-19 April 2013)⁹ and also in the course of the 16th meeting of the Bilateral Belarusian-Lithuanian Commission on Trade and Economic Cooperation (Vilnius, 28 May 2013)¹⁰ discussed the steps to be followed in the framework of the EIA procedure and timelines for their implementation.

⁷ ECE/MP.EIA/IC/2013/2, annex, para. 74 (d)

⁸ ECE/MP.EIA/IC/2013/2, annex, para. 74 (e)

⁹ At the meeting of the Prime-Ministers of the Republic of Belarus and the Republic of Lithuania during the IX International Belarusian and Lithuanian Economic Forum it was agreed to hold before 20 May 2013 consultations on the basis of the final EIA report that was submitted to Lithuania in February 2011

¹⁰ In the course of the 16th meeting of the Bilateral Belarusian-Lithuanian Commission on Trade and Economic Cooperation the Parties came to understanding that the Belarusian Party would respond to the letter of the Ministry of Environment of the Republic of Lithuania of 2 May 2013 No. (10-3)-B8-3649 and submit the documentation of the final EIA report for the Belarusian NPP which corresponded to the findings and recommendations of the Implementation Committee of 15 April 2013

Taking into consideration the agreements reached as well as the Lithuania's request¹¹, Belarus:

requested Lithuania to determine date and venue of bilateral consultations with the participation of governmental bodies and public of Lithuania by the letter of the Ministry of 30 April 2013 (annex 5);

submitted to Lithuania the final EIA report in Lithuanian as well as the materials of the bilateral consultations for the period of 2009-2013 for dissemination among the public and concerned governmental bodies and arrangement of public hearings and expert consultations by the letter of the Ministry of 11 June 2013 (annex 6).

Lithuania disavowed the agreements reached and did not react to the Belarus' proposals to disseminate the final EIA documentation and to hold public hearing and expert meetings.

In the answers to the Lithuania's questions Belarus, both in the official correspondence and in the course of bilateral meetings, repeatedly provided Lithuania with the detailed information and additional data. Belarus respects Lithuania's interest in obtaining detailed information about the Belarusian NPP construction project and has continued to answer the questions of Lithuania, including even those far beyond the scope of the Espoo Convention.

Paragraph 54 of the decision VI/2 "Urges Belarus and Lithuania to make further efforts to ensure that the language requirements of public consultations are satisfied;"

By the letter of the Ministry of 11 June 2013 (annex 6) Belarus submitted to Lithuania the final EIA report in Lithuanian and requested to convey it to the concerned governmental bodies and the public. Besides, the final EIA report in Lithuanian was made available in Internet on the web-site of the Belarusian NPP <http://www.dsae.by>.

An announcement in Lithuanian about the public discussions and public hearings was disseminated through the Lithuanian mass-media.

Consecutive interpretation into Lithuanian was provided at the hearings with the Lithuanian public which took place on 17 August 2013 in Ostrovets, Belarus. There were no complaints on the quality of interpretation.

Paragraph 55 of the decision VI/2 "Requests 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;"

By the letter of the Ministry of 30 April 2013 (annex 5) Belarus requested Lithuania to inform the Lithuanian public about the final EIA report in order to give the public a possibility for making comments on it. Lithuania was also

¹¹ letter of the Ministry of Environment of Lithuania of 2 May 2013 regarding the submission of the final EIA report, including answers to all the questions raised by Lithuania since 2009

proposed to determine date and venue of consultations with the participation of the governmental bodies and public of Lithuania.

By the letter of the Ministry of 11 June 2013 (annex 6) Belarus submitted to Lithuania the final EIA report in Lithuanian and requested to disseminate it among the public of Lithuania. Lithuania was once again proposed to determine date and venue of public hearings and expert consultations.

Lithuania did not react to the Belarus's proposals on arrangement of hearings for the Lithuanian public.

Moreover, Lithuania did not inform its public about the final EIA report in a timely manner and did not provide its public with a possibility to comment on the report as it was requested by Belarus and is provided for in the Espoo Convention (Article 3, paragraph 8 and Article 4, paragraph 2), in the Guidance on the Practical Application of the Espoo Convention (paragraph 48) and in the Guidance on Public Participation under the Espoo Convention (paragraph 22).

Facing this situation Belarus was forced to take steps to inform the Lithuanian public, collect opinions and comments of the Lithuanian citizens' on the final EIA report, as well as to conduct public hearings unilaterally.

The announcement in Lithuanian containing the information on opportunity for the Lithuanian public to familiarize itself with the final EIA report was disseminated through the Lithuanian mass-media and posted in Internet. The Lithuanian public was provided with opportunity to submit its comments or questions on the report in writing (by post or email) as well as during the hearings on 17 August 2013 in Ostrovets. Free visas were issued to the participants of the public hearings and free insurance and free transportation from Lithuania (Vilnius and Visaginas) to Ostrovets and back were provided.

Besides, in view of Lithuania's decision to make the final EIA report publicly available¹², by the letter of the Ministry of 1 October 2013 (annex 7) Belarus provided the Lithuanian public with additional opportunity to submit its comments on the final EIA report by 18 October 2013 through the competent authority of Lithuania.

Belarus' steps do not contradict to the Espoo Convention as, according to Article 3, paragraph 8 of the Convention, both Parties (a Party of origin and an affected Party) shall ensure that the public of the affected Party be informed of, and be provided with possibilities for making comments on the proposed activity.

In accordance with the provisions of the Guidance on Public Participation under the Espoo Convention (paragraph 65) Belarus considers the timeframe provided to the Lithuanian public as reasonable:

¹² letter of the Ministry of Environment of the Republic of Lithuania of 10 September 2013

by the letter of the Ministry of 30 April and 11 June 2013 (annexes 5 and 6) Belarus suggested to Lithuania to determine timing for public hearings; given the fact that Lithuania did not determine such timing, Belarus chose timeframes, based on the national EIA procedure.

Bearing in mind the Lithuania's position in relation to the Belarus' steps on ensuring participation of the Lithuanian public in the EIA procedure, we request the Committee to take into consideration the following.

Paragraph 55 of the Guidance on the Practical Application of the Espoo Convention, Lithuania refers to, cannot be a reason for Lithuania not to provide its public with the final EIA report for the Belarusian NPP because this paragraph says about gathering information, that stakeholders (public, different authorities, specialists, IFO, NGO) hold, in the framework of public participation.

The Lithuanian statement that Belarus restricted possibilities for the Lithuanian public to participate in the hearings in Ostrovets and the selective choice of participants is insulting and offensive and has no factual grounds.

Lithuania's officials (members of the Government and Parliament) were invited to attend public hearings in Ostrovets by the letter of the Ministry of Energy of the Republic of Belarus of 9 August 2013 (annex 8), but did not attend the event. The hearings were covered by 13 Lithuanian mass-media. The video-recording of the hearings is available in Internet on the web-site of the Belarusian NPP <http://www.dsae.by>.

Paragraph 56 of the decision VI/2 "Encourages Belarus and Lithuania to continue consultations, on the basis of article 5, and urges Parties to agree on a reasonable time frame for the consultation period;"

Belarus undertook all possible measures to agree with Lithuania on the reasonable timeframes for consultation process.

As it was mentioned above, this issue was discussed in the course of the meeting of the Prime-Ministers of the Republic of Belarus and the Republic of Lithuania at the IX International Belarusian and Lithuanian Economic Forum (Klaipeda, Lithuania, 18-19 April 2013) and during the 16th meeting of the Bilateral Belarusian-Lithuanian Commission on Trade and Economic Cooperation (Vilnius, 28 May 2013). Following the agreements reached, Belarus invited Lithuania to hold consultations by the letters of the Ministry of 30 April and 11 June 2013 (annexes 5 and 6).

Afterwards, Lithuania disavowed these agreements and did not respond to the Belarus' proposals to hold consultations¹³ (annexes 5, 6, 7, 9, 10).

As Lithuania did not accept Belarus' proposals to hold consultations in the format of meetings, consultations were carried out by correspondence (April-October 2013).

¹³ letters of the Ministry of 30 April, 11 June, 19 July, 16 August and 1 October 2013

Paragraph 57 of the decision VI/2 “Also encourages Belarus and Lithuania to agree on a post-project analysis in accordance with article 7 of the Convention;”

By the letter of the Ministry of 23 May 2014 (annex 11) Belarus sent to Lithuania and other countries, which participated in the transboundary EIA procedure for the Belarusian NPP, the draft post-project analysis program to discuss the parameters of post-project analysis and data exchange.

Lithuania considered steps of Belarus as premature, but, nevertheless, submitted comments on the document submitted¹⁴.

Currently, the post-project analysis program is being elaborated taking into account the received comments, including those from Lithuania.

Paragraph 58 of the decision VI/2 “Further encourages Belarus and Lithuania to conclude the bilateral agreement for the implementation of the Convention in accordance with article 8;”

By the letter of the Ministry of 15 May 2014 (annex 12) Belarus sent to Lithuania the revised text of the draft bilateral agreement on implementation of the Espoo Convention. Lithuania was proposed to resume negotiations on the draft and to conduct a bilateral meeting in Minsk.

Until now, Lithuania did not respond to these proposals.

Belarus once again raised this issue at the meeting of the Prime-Ministers of the Republic of Belarus and the Republic of Lithuania at the X International Belarusian and Lithuanian Economic Forum (Mogilev, Belarus, 4 November 2014) and in a follow-up letter of the Ministry of 18 November 2014 (annex 13).

Paragraph 61 of the decision VI/2 “Regrets that Belarus and Lithuania were not able to agree on the steps undertaken within the transboundary procedures after 14 March 2013;”

Belarus undertook all possible measures to agree with Lithuania on the steps to be followed in the framework of the EIA procedure and reasonable timeframes for this process.

As it was mentioned above, this issue was discussed in the course of the meeting of the Prime-Ministers of the Republic of Belarus and the Republic of Lithuania at the IX International Belarusian and Lithuanian Economic Forum (Klaipeda, Lithuania, 18-19 April 2013) and during the 16th meeting of the Bilateral Belarusian-Lithuanian Commission on Trade and Economic Cooperation (Vilnius, 28 May 2013). Following the agreements reached Belarus invited Lithuania to hold consultations by the letters of the Ministry of 30 April and 11 June 2013 (annexes 5 and 6).

Afterwards, Lithuania disavowed these agreements, did not respond to the Belarus' proposals and put forward pre-conditions for the consultation process

¹⁴ letter of the Ministry of Environment of the Republic of Lithuania of 13 August 2014

which included preparation of the revised EIA report by Belarus and submission by Belarus answers to questions of Lithuania that would satisfy the latter.

Rigid position of Lithuania regarding the consultation procedure and linking its timeframe to the EU Presidency of Lithuania, did not contribute to achieving compromise on these issues.

Paragraph 62 of the decision VI/2 “Invites Lithuania and Belarus to improve their communication and cooperation for the implementation of the Convention, inter alia, by establishing a permanent joint body on post-project analysis according to article 7 and any other relevant issue concerning the Ostrovets nuclear power plant;”

Steps aimed at improving bilateral cooperation and settling the dispute regarding implementation of the Belarusian NPP project at the initiative of Belarus were discussed in the course of the meeting of the Prime-Ministers of the Republic of Belarus and the Republic of Lithuania at the X International Belarusian and Lithuanian Economic Forum (Mogilev, Belarus, 4 November 2014).

As a follow-up to this meeting Belarus by the letter of the Ministry of 18 November 2014 (annex 13) suggested to Lithuania:

to establish a permanent joint body for the post-project analysis for the Belarusian NPP;

to develop and implement a project of joint radiation monitoring system for nuclear facilities located nearby the Belarusian-Lithuanian border, with involvement of the European Commission and, possibly, third concerned countries;

to hold a number of expert consultations on the Belarusian NPP-related issues the Lithuanian side is interested in;

to accelerate the process of conclusion of the bilateral agreement on implementation of the Espoo Convention.

Paragraph 64 of the decision VI/2 “Encourages Belarus to further develop confidence-building measures, including to invite the International Atomic Energy Agency (IAEA) for a Site and External Events Design (SEED) mission with a view to evaluating the site selection criteria and studies for the nuclear power plant, as well as its development and operation, to fully ensure its safety;”

Belarus confirms its statement made at the high-level segment of the 6th session of the Meeting of the Parties to the Convention and the 2nd session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol to invite the IAEA Site and External Events Design Review Service (SEED mission).

The official request for the mission was submitted to the IAEA Secretariat (annex 14).

We remain at your disposal for any further explanation or clarification the Committee may need.

Annexes:

1. copy of the Edict of the President of the Republic of Belarus of 2 November 2013 “On construction of the Belarusian nuclear power plant”;
2. copy of the conclusion of the state ecological expertize of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus on the Belarusian NPP design documentation of 23 October 2013;
3. copy of the Edict of the President of the Republic of Belarus of 15 September 2011 “On location and project development of the NPP in the Republic of Belarus”;
4. letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 21 November 2013;
5. letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 30 April 2013;
6. letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 11 June 2013;
7. letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 1 October 2013;
8. letter of the Ministry of Energy of the Republic of Belarus of 9 August 2013;
9. letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 19 July 2013;
10. letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 16 August 2013;
11. letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 23 May 2014;
12. letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 15 May 2014;
13. letter of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus of 18 November 2014;
14. note verbale of the Ministry of Foreign Affairs of the Republic of Belarus to the IAEA Secretariat of 19 September 2014.

First Deputy Minister,
Focal Point of Belarus to the Espoo Convention

Iya Malkina