

Dear Mr Ebbesson

We would like to thank you for allowing us the opportunity of an additional period of time to prepare information regarding Submission ACCC/S/2015/2 ('the Submission') and wish to inform you of the following.

Belarus, as a Party to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Aarhus Convention') and to the Convention on Environmental Impact Assessment in a Transboundary Context ('the Espoo Convention'), has, in its approach to implementing public participation procedures – including in a transboundary context – regarding the proposed construction of a nuclear power plant in the Republic of Belarus ('the Belarusian NPP'), been governed by the provisions of the Conventions and of the relevant national legislation, mentioned below.

The principles of interaction with the public when implementing environmental impact assessment (OVOS) procedures, including in a transboundary context, are laid down in the State Environmental Review Act (Law of the Republic of Belarus No. 54-3 of 9 November 2009, as amended on 14 July 2011 – 'the Act').

Thus, under Article 12 of the Act, documentation evidencing approval of the environmental impact assessment report by affected parties (for economic or other activities proposed in the Republic of Belarus that may have a transboundary impact) is among the materials to be appended to the environmental impact assessment report.

The environmental impact assessment report for installations listed in paragraphs 2 - 31 of the first part of Article 13 of the Act, taking into account the criteria (production capacity, dimensions of pipelines and other networks, etc.) set out in Appendix I and Appendix III to the Convention on Environmental Impact Assessment in a Transboundary Context, signed at Espoo on 25 February 1991, must include a section on the assessment of possible transboundary impact.

Environmental impact assessment, including environmental impact assessment considering possible transboundary impact, is to be organized and

financed by the developer and carried out according to an agreement between design organizations and the developer in accordance with the Act and under the procedures laid down by the Council of Ministers of the Republic of Belarus.

Under Article 14 of the Act, state environmental review (*expertiza*, or expert appraisal) must take no longer than one month, or, for project documentation for a proposed economic or other activity that may have a transboundary impact, two months from the date of receipt of project documentation that complies with the requirements laid down by the Council of Ministers of the Republic of Belarus, unless otherwise specified by legislation.

Under Article 22 of the Act, design organizations shall, in the context of state environmental review, *inter alia*, participate in consultations with affected parties and in public discussions of reports on environmental impact assessment in a transboundary context which they have compiled.

Resolution No. 755 of the Council of Ministers of the Republic of Belarus of 19 May 2010 on Several Measures to Implement the Law of the Republic of Belarus of 9 November 2009 on State Environmental Review approved the Regulations on the Conduct of Environmental Impact Assessment, which lay down the procedure for the conduct of environmental impact assessment (OVOS) – *inter alia*, consideration of any possible transboundary impact – of a proposed economic or other activity, including activities involving the use of nuclear energy.

The Aarhus Convention Compliance Committee (‘the Committee’) is familiar with these legal provisions from cases that it has previously reviewed with regard to the Republic of Belarus.

The Ministry of Natural Resources and Environmental Protection of the Republic of Belarus has analysed the information in the Submission.

We present the main results of this analysis below.

With regard to the information in the section of the Submission relating to **article 3, paragraph 9**, of the Aarhus Convention, it should be noted that Lithuania refers to materials from its correspondence with Belarus during the period 10 September 2013 to 13 August 2014 in the context of the Espoo procedure and to the findings of the Espoo Convention Implementation Committee with regard to the Republic of Belarus. The greater part of this correspondence is devoted to domain-specific information, expert evaluation of which, including evaluation of whether or not the replies to Lithuania’s questions were complete and of the equivalence of the information in successive versions of the environmental impact assessment (OVOS) report – versions which differ in volume – falls within the remit of specialists in the use of nuclear energy.

Lithuania's allegations about irregularities in procedural matters, which are also reflected in the above-mentioned correspondence, are entirely familiar and have already been subject to review by the Espoo Convention Implementation Committee, as a result of which recommendations were made to the Republic of Belarus and the Republic of Lithuania. The Espoo Convention Implementation Committee will finalize its analysis of progress on compliance with the above-mentioned recommendations at its thirty-fourth session, and a report on this issue to the Meeting of the Parties to the Espoo Convention is to be presented at the latter's seventh session, in accordance with the decision adopted at its previous, sixth session.

Thus, the current phase is one of implementing recommendations, and therefore it would be premature to draw final conclusions.

In addition, it should be noted that article 3, paragraph 9, of the Aarhus Convention states that the public shall have the possibility to participate in decision-making without discrimination as to citizenship, nationality or domicile. The participation of foreign citizens, including citizens of the Republic of Lithuania, on an equal footing with the Belarusian public, in the public meeting held in Ostrovets on 9 October 2009 to discuss the environmental impact assessment (OVOS) report can be seen as an instance of this possibility being put into practice.

As far as the translation of environmental impact assessment (OVOS) materials into the official language of an affected Party is concerned, then it is undoubtedly the case that poor-quality translation may impede public participation. However, no clarifications have been sought by the public.

According to paragraph 26 of the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context, "in general, the Party of origin is responsible for translation as well as for the cost".

Moreover, the Guidance on Public Participation also cites the Guidance on the Practical Application of the Espoo Convention with regard to the fact that the cost of public participation in a transboundary EIA (including the translation) can be covered by the developer (proponent), the Party of origin, the affected Party, etc.

According to paragraph 61 of the latter Guidance, "translating into English or Russian instead of the language of the affected Party is sometimes done when there is an International Financing Institution involved or when the assessment deals with more than two Parties. It is important that at least parts of the documents are translated to the language of the affected Party." Belarus presented the environmental impact assessment (OVOS) report to all the parties concerned, including the Republic of Lithuania, in English. No comments on the quality of the translation were received.

It is clear that, when Belarus and Lithuania began consultations, they failed to agree on the division of responsibility for the public participation

procedure: in particular, there was no clear agreement in advance whose responsibility it would be to provide translation.

With regard to compliance with **article 6, paragraph 2**, of the Aarhus Convention, it should be noted that analysis of the chronology of events has shown that a somewhat longer period of time for discussion of the environmental impact assessment (OVOS) report was given to the Lithuanian public than to the Belarusian. This complies with paragraph 23 (c) (ii) of the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters.

Under Article 1 of the Act, state environmental review is the establishment of compliance or non-compliance of project or other documentation relating to a proposed economic or other activity with legislation on environmental protection and efficient use of natural resources. Public participation is provided for at the stage of preparing the environmental impact assessment (OVOS) report, which forms part of the project documentation subject to state environmental review. One form of public participation is public environmental review, the results of which may be submitted to state environmental review. However, as far as is known, the Lithuanian Republic has not conducted a public environmental review relating to the Belarusian NPP.

By letter of 15 July 2008 (Ref. No. 14-09/2945-vn), Lithuania was officially informed of the Republic of Belarus's intentions to construct an NPP in Belarus, including its intention to conduct scientific research and investigative surveys in the Mogilev, Grodno and Vitebsk oblasts of the Republic of Belarus as part of its study of sites for possible construction of an NPP.

In the course of further frequent correspondence, Lithuania was provided with information about the preferability of the Ostrovets site.

According to paragraph 73 of the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context, adopted at the third meeting of the Parties to the Espoo Convention, the burden of ensuring public participation falls on both the concerned Parties, i.e. the Party of origin and the affected Party.

Thus, in the case of the event in Vilnius on 2 March 2010, responsibility for informing the public of the time and place of the public hearings also fell on both the concerned Parties.

With regard to the information in the Submission about **article 6, paragraph 3**, of the Aarhus Convention, it must be pointed out that the new version of the environmental impact assessment (OVOS) report mentioned in the Submission is a more detailed edition of the previous version and does not contain any changes of a fundamental nature.

As is correctly noted in the Submission in relation to **article 6, paragraphs 2, 4 and 6**, of the Aarhus Convention, compliance by the Republic of Belarus with these provisions of the Aarhus Convention has already been analysed in the context of a case concerning Belarus previously reviewed by the Committee, which also concerned construction of the Belarusian NPP. The Committee's findings in that case were adopted by the fifth session of the Meeting of the Parties to the Aarhus Convention and, for the most part, concern the introduction of relevant amendments and additions to national legislation, which is still ongoing. The period for complying with these recommendations has not yet expired.

With regard to the information in the Submission about **article 6, paragraph 8**, of the Aarhus Convention, we would like to point out that the Implementation Guide to the Aarhus Convention calls on the Parties to consider public opinion seriously and states that this can be facilitated by the registration of written comments and the recording of public meetings. However, the Guide also points out that taking account of the outcome of public participation does not require the relevant authority to accept the substance of all comments received. In the course of introducing the above-mentioned amendments and additions to national legislation, Belarus is also taking steps to enshrine in legislation the requirement to take account of the outcome of public participation.

We would also like to point out that some of the information in the Submission does not reflect the real situation, including the assertion that Belarus was *\*[non-]compliant* with article 9, paragraph 8, of the Aarhus Convention: obviously, this paragraph is referred to in error.

Everything stated above is supported by documentary evidence, which can be provided as the Committee requires.

The Republic of Belarus is currently taking measures intended to help to improve bilateral cooperation in settling any disagreements connected with implementing the Belarusian NPP project. These include establishing an inter-authority working group for effective discussion of any issues arising in the course of the Parties' implementation of their international obligations.

Yours sincerely,

Minister

A.M. Kovkhuto

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\* **Translator's Note:** The Russian source document contains what is presumably a typo: на ('on') for не ('not'). Reference to lines 9-10 on page 15 of Lithuania's Submission shows that the change I have introduced here is the correct one.