

Draft decision IS/1d on compliance by Belarus with its obligations under the Convention with regard to the Ostrovets nuclear power plant

Proposal by the Implementation Committee¹

The Meeting of the Parties,

Recalling article 11, paragraph 2, and article 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention),

Recalling also its decision VI/2, paragraphs 48–64,² concerning compliance by Belarus with regard to the construction of the nuclear power plant in Ostrovets,

Recalling further its decision at its seventh session (Minsk, 13–16 June 2017) to finalize its deliberations on the review of compliance with the Convention at an intermediary session, based on a revised draft decision to be prepared by the Implementation Committee and taking into account the work carried out and progress achieved before and during the seventh session,³

Having considered paragraphs 36–44 concerning Belarus in the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its seventh session⁴ and in the reports of the Committee on its **[Minsk] ad-hoc⁵**, thirty-ninth,⁶ fortieth⁷, forty-first⁸ and [forty-second sessions],⁹

The 7th MOP mandated the Committee to review draft decision VII/2 and to prepare a revised draft for the intermediary session, **taking into account** the work already carried out and **the progress achieved before and during the seventh session of the Meeting of the Parties** (as it is mentioned above, ECE/MP.EIA/23-ECE/MP.EIA/SEA/7, para. 27). **The progress on the Belarusian NPP case was achieved at the Committee's ad-hoc session back-to-back to the 7th MOP. The progress was reported by the Committee's Chair to the MOP and reflected in the MOP report.**

Thus to follow the 7th MOP's recommendation to the Committee Belarus suggests to mention the report on the Committee's ad-hoc session.

[Recalling its decision IS/1 on the review of compliance with the Convention, adopted at the intermediary session,]

1. *Appreciates* the annual reports and information provided by Belarus and Lithuania to the Implementation Committee further to decision VI/2 (para 59) since the sixth session of the Meeting of the Parties;
2. *Welcomes* the steps taken by both Parties since the sixth session of the Meeting of the Parties to address the recommendations in decision VI/2 (paras 51-58,62 and 64);

¹ The present decision relates to the submission by Lithuania having concerns about Belarus's compliance with its obligations under the Convention (reference EIA/IC/S/4). More information on submissions and the follow-up on decisions of the Meeting of the Parties with regard to the submissions can be found at http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

² See ECE/MP.EIA/20/Add.1-ECE/MP.EIA/SEA/4/Add.1.

³ See ECE/MP.EIA/23-ECE/MP.EIA/SEA/7, para. 27. See also draft decision VII/2 (ECE/MP.EIA/2017/8).

⁴ ECE/MP.EIA/2017/4-ECE/MP.EIA/SEA/2017/4.

⁵ **[ECE/MP.EIA/IC/ad-hoc/2017/INF.6](#)**

⁶ ECE/MP.EIA/IC/2017/4, para. 36.

⁷ ECE/MP.EIA/IC/2017/6, paras. 27-36.

⁸ ECE/MP.EIA/IC/2018/2, paras.40-48

⁹ ECE/MP.EIA/2018/4, paras. [...]

3. *Commends* the Implementation Committee for its thorough analysis of the steps undertaken by Belarus after the twenty-seventh session of the Committee, as outlined in the 2014 – 2017 report of the Committee on its activities and the reports of the Committee's **[Minsk] ad-hoc**, thirty-ninth, fortieth, forty-first and [forty-second sessions];

The same rationale:

The 7th MOP mandated the Committee to review draft decision VII/2 and to prepare a revised draft for the intermediary session, **taking into account** the work already carried out and **the progress achieved before and during the seventh session of the Meeting of the Parties** (as it is mentioned above, ECE/MP.EIA/23-ECE/MP.EIA/SEA/7, para. 27). **The progress on the Belarusian NPP case was achieved at the Committee's ad-hoc session back-to-back to the 7th MOP. The progress was reported by the Committee's Chair to the MOP and reflected in the MOP report.**

Thus to follow the 7th MOP's recommendation to the Committee Belarus suggests to mention the report on the Committee's ad-hoc session.

4. *[Endorses] [Notes]* the finding of the Implementation Committee that Belarus had undertaken all the required ~~procedural~~ steps to reach the final decision on the planned activity at Ostrovets, as provided for in the Convention¹⁰;

Belarus suggests to quote the reference para of the Committee's report on its 38th session: "8. The Committee recalled that, at its thirty-seventh session, it had agreed on most of its recommendations to the Meeting of the Parties. At that session it had concluded, based on its thorough analysis of the steps taken by both Parties since the Committee's twenty-seventh session (Geneva, 12–14 March 2013), that **Belarus had undertaken all the required steps to reach the final decision on the activity at Ostrovets as provided for in the Convention**".

5. *[Notes] [Endorses]* also the finding of the Implementation Committee that the essence of the compliance matter was about **[substantive issues, with objections from Lithuania to the planned construction of a nuclear power plant near Vilnius] [disagreement between the two Parties related to scientific and other technical matters concerning the construction of the nuclear power plant, for example, regarding reasonable locational alternatives and the methodology and data used in determining the siting]**¹¹ ~~unresolved substantive aspects of the environmental impact assessment documentation, including reasonable locational alternatives and the methodology and data used in determining the siting~~, that could not necessarily be treated separately from the procedural aspects.

To Belarus' knowledge the Committee has never stated position that the essence of the compliance matter was about unresolved substantive aspects of the EIA documentation.

So, Belarus suggests to quote the related para 26 of the Committee's respective report on 37th session

"26. The Committee reiterated its previously stated position that, **in essence, the submission was about substantive issues, with objections from Lithuania to the planned construction of a nuclear power plant near Vilnius. It noted that the persistent disagreement between the two Parties related to scientific and other technical matters concerning the construction of the nuclear power plant, for example, regarding reasonable locational alternatives and the methodology and data used in determining the siting as described in the EIA documentation.**

¹⁰ ECE/MP.EIA/IC/2017/2, see para 8.

¹¹ **ECE/MP.EIA/IC/2016/6, see para 26**

6. *[Endorses also] [Notes]* the finding of the Implementation Committee that for reaching the final conclusion on whether Belarus was in compliance with its obligations under the Convention ~~both~~ procedural and substantive aspects of the EIA procedure **could not necessarily be treated separately** ~~were to be examined~~¹².

Belarus suggests to quote the reference para of the Committee's report on its 38th session and thus to delete "both" and "were to be examined"
 "9. ...underlining that procedural and substantive aspects of the EIA procedure could not necessarily be treated separately when assessing compliance, in particular if the essence of the compliance case in question was about substantive aspects..."

6bis. *[Endorses also] [Notes]* the conclusion of the Implementation Committee that it was not within its capacity or mandate to examine the environmental and scientific issues that had been raised in connection with the planned activity¹³

The Committee has been making this statement throughout a number of its meetings. Thus this Committee's conclusion is worth to be noted by the MOP.

7. *Notes* that for reaching its final conclusion the Implementation Committee identified the need for **[the services of scientific experts and other technical advice or consult other relevant sources, according to its structure and functions] [sufficient technical and scientific knowledge it did not possess]**¹⁴ ~~sufficient resources and specific expertise that were not available to it.~~

Belarus suggests to quote the respective para 32 of the report on the Committee's 34th session: "32. ...but since it did not in this specific case have the sufficient technical and scientific knowledge to assess compliance by Belarus with the Convention on that basis, it was necessary for it to seek the services of scientific experts and other technical advice or consult other relevant sources, according to its structure and functions."

8. *Acknowledges* the efforts of the Implementation Committee to seek external expert advice, notably on the technical and scientific questions related to the environmental impact assessment documentation that it had identified in order to conclude its deliberations on the matter.

9. *Notes*, that ~~having exhausted all the avenues for receiving external expert advice and considering the unprecedented circumstances related to the compliance matter~~, the Committee decided **exceptionally** to examine the documentation prepared by Belarus under the environmental impact assessment procedure and, as appropriate, seek the services of scientific experts and other technical advice or consult other relevant sources in accordance with its structure and functions¹⁵.

Belarus **does not see any unprecedented circumstances** related to the Belarusian NPP case. Could the Committee please clarify what it means by this wording?
 And it looks conflicting saying that the Committee "have exhausted all the avenues for receiving external expert advice" and at the same time that it is going to "seek the services of scientific experts and other technical advice or consult other relevant sources"
 Belarus also suggests to **remove "exceptionally"** as it proceeds from the assumption that:
any mechanism for review of compliance shall not be exceptional to any Party but be applicable/uniform for all compliance cases;
any Party's compliance shall be considered on a non-discriminatory, non-arbitrary and unbiased basis as it is provided for in the Committee's operating rules;
 and again in the spirit of the Committee's operating rules procedure for review of compliance of Belarus shall ensure consistency, predictability, credibility, transparency, accountability and efficiency in the work of the Committee.

¹² ECE/MP.EIA/IC/2017/2, Para 9

¹³ **ECE/MP.EIA/IC/2016/6, see para 26; ECE/MP.EIA/IC/2017/2, see para 9**

¹⁴ **ECE/MP.EIA/IC/2015/4, see para 32**

¹⁵ See para 7 (d).

10. *Endorses* the finding of the Implementation Committee, that in accordance with the information made available to it and further to its assessment of the environmental impact assessment documentation of Belarus, Belarus is in [compliance] [non-compliance] with its obligations under the Convention [under article 2, paragraph 6, article 5, paragraph (a), and article 6, paragraphs 1 and 2 of the Convention].

11. *Encourages* Belarus and Lithuania to continue bilateral expert consultations on issues of disagreement, including on matters that are beyond the scope of the Convention.

12. *Also encourages* both Parties to continue working on the post-project analysis and reach an agreement in establishing a joint bilateral body and procedures for such analysis, in particular to ensure sufficient public participation in the framework of the post-project analysis regarding the activity at Ostrovets.

13. *Regrets* that the bilateral agreement for the implementation of the Convention has not yet been concluded, and encourages Belarus and Lithuania to conclude such an agreement further to article 8 of the Convention.

14. *Requests* Belarus and Lithuania to report annually to the Implementation Committee on the progress made.
