



NATIONS UNIES
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ОБЪЕДИНЕННЫЕ НАЦИИ
ЭКОНОМИЧЕСКАЯ КОМИССИЯ
ДЛЯ ЕВРОПЫ

UNITED NATIONS
ECONOMIC COMMISSION
FOR EUROPE

IMPLEMENTATION COMMITTEE

CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

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Ref. EIA/IC/INFO/4

12 March 2010

Dear Ms. Baron,

I am writing to you on behalf of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991).

At its eighteenth session, held in Geneva from 23 to 25 February 2010, the Committee considered replies by the Governments of Belgium and the Netherlands, dated 3 February 2010 and 12 December 2009, respectively, to my letter of 13 October 2009, further to information provided by a Dutch non-governmental organization, Comité Centrale Néé, regarding a planned combined-cycle gas turbine power plant at Visé in Belgium close to the border with the Netherlands. The Committee took note of the on-going appeal by Eijsden City Hall (Netherlands) and three Belgian citizens before the administrative section of a Belgian court, the Council of State of Belgium, against the final decision on the activity.

The Committee decided not to begin a Committee initiative further to the information provided, as there was insufficient evidence of non-compliance. Nonetheless, the Committee noted that some aspects of the practical application of the Convention to the activity did not necessarily constitute good practice and so decided to make some observations, listed below as items (a)-(f).

- (a) The Committee considered it important that the no-action alternative was addressed fully so that the evolution of the environment in the absence of the project could be considered.
- (b) The Committee was of the opinion that the standards of the Party of origin for the content of the environmental impact assessment documentation are normally applicable, as long as those standards comply with international legislation applicable in the concerned Parties.

Ms. Eva BARON, Ministry of Housing, Spatial Planning and Environment
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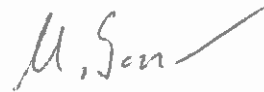
- (c) The Committee was also of the opinion that the concerned Parties share the responsibility for ensuring that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin, including access to at least relevant parts of the documentation in a language the public can understand, further to article 2, paragraph 6, article 3, paragraph 8, and article 4, paragraph 2. This access must be based on at least partial translation of documentation, when documentation is in a language that cannot be understood by the public of the affected Party. Unless otherwise provided for in a bilateral or multilateral agreement or other arrangement, the concerned Parties should agree at the start of the procedure for transboundary environmental impact assessment, when sending or responding to the notification, on the scope of documentation to be translated. The documentation to be translated should, as a minimum, include the non-technical summary and those parts of the environmental impact assessment documentation that are necessary to provide an opportunity to the public of the affected Party to participate that is equivalent to that provided to the public of the Party of origin. The Committee recommended that environmental impact assessment documentation include a separate chapter on transboundary impact to facilitate translation. Unless otherwise provided for in a bilateral or multilateral agreement or other arrangement, the burden for translation should fall upon the Party of origin in line with the polluter pays principle. The Committee noted that the duration of the procedure is dependent upon timely provision of the environmental impact assessment documentation translated as necessary.
- (d) The Committee considered that entrusting the proponent of an activity with the carrying out of the procedure for transboundary environmental impact assessment would not be adequate, unless the proponent is the State.
- (e) The Committee reiterated the common responsibility of all concerned Parties to ensure that the opportunity provided to the public of the affected Party to participate in the procedure under the Convention is equivalent to that provided to the public of the Party of origin. The affected Party has an obligation to allow such an opportunity. If the affected Party refuses to undertake its duties, the Party of origin cannot be held responsible for organizing public participation in the affected Party, but should provide the possibility for the public of the affected Party to participate in the procedure of the Party of origin.
- (d) The Committee emphasized that the Government of the Party of origin is responsible for ensuring that notification under article 3 is carried out properly. The recipient of a notification in the affected Party is the point of contact in accordance with decision I/3 (ECE/MP.EIA/2, annex III), unless otherwise provided for in a bilateral or multilateral agreement or other arrangement.
- (e) The Committee wished to remind Parties that consultations under article 5 are bilateral or multilateral discussions between authorities that have been authorized by the concerned Parties, and should not be confused with public participation under article 3, paragraph 8, and article 4, paragraph 2, or with consultation of the authorities under article 4, paragraph 2, in the areas likely to be affected.
- (f) The final decision should provide a summary of the comments received pursuant to article 3, paragraph 8, and article 4, paragraph 2, and the outcome of the consultations as referred to in article 5, and describe how they and the outcome of the environmental impact assessment were integrated or otherwise addressed in the final decision, in the light of the reasonable alternatives described in the environmental impact assessment.

The Committee asked that I write to the Governments of Belgium and the Netherlands, and to the non-governmental organization, indicating that the Committee would not consider the matter further.

The Committee requested your agreement that the correspondence between the Committee and your Government be placed on the Convention's website; if there is no reply to this request by 30 April 2010, the

Committee would understand that you agree with publication. Similar correspondence between the Committee and Parties has already been placed at http://www.unece.org/env/eia/implementation/implementation_committee_letters.htm, as illustration of the Committee's approach to a specific compliance issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Sauer', with a long horizontal stroke extending to the right.

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