

Findings and recommendations with regard to submission ACCC/S/2015/2 concerning compliance by Belarus

Adopted by the Compliance Committee on 23 July 2021¹

I. Introduction

1. On 27 March 2015, Lithuania (the submitting Party) sent a submission to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of Belarus (the Party concerned) to comply with articles 3(9) and 6(2), (3), (4), (6) and (8) of the Convention regarding the decision-making on the siting and construction of a nuclear power plant (NPP) in Ostrovets, Belarus, approximately 50km from the Lithuanian capital Vilnius.²
2. The submission was forwarded to Belarus on 8 April 2015 for its response.
3. On 8 October 2015 Belarus provided its response to Lithuania's submission.
4. On 18 July 2016, the Committee sent questions for the reply of Belarus and Lithuania.
5. Belarus and Lithuania submitted their replies on 12 and 19 August 2016, respectively.
6. The Committee held a hearing to discuss the substance of the submission at its fifty-fifth meeting (Geneva, 6-9 December 2016) with the participation of Belarus and Lithuania.
7. On 10 August 2017, the Committee sent questions to Lithuania and Belarus, which provided their replies on 30 August and 18 October 2017 respectively. Lithuania provided comments on Belarus' reply on 31 October 2017.
8. The Committee completed its draft findings through its electronic decision-making procedure on 7 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded to Belarus and Lithuania for their comments on 8 June 2021. Both parties were invited to provide their comments by 20 July 2021.
9. Belarus and Lithuania each submitted comments on 20 July 2021.
10. The Committee proceeded to finalize its findings in closed session, taking account the comments received and adopted its findings through its electronic decision-making procedure on 23 July 2021. The Committee agreed that the findings should be published as a formal pre-session document to its seventy-second meeting.

¹ This text will be produced as an official United Nations document in due course. Meanwhile editorial or minor substantive changes (that is changes that have no impact on the findings and conclusions) may take place.

² The submission and related documentation are available from <https://unece.org/acccs20152-belarus>

II. Summary of facts, evidence and issues

A. Legal framework

11. At the time of the events at issue, public participation in environmental impact assessment (EIA) procedures, including in the transboundary context, was regulated in Belarus through Law No. 54-3 of 9 November 2009, as amended on 14 July 2011.³

B. Facts

Events before the 2010 expertiza

12. Belarus informed Lithuania about the NPP project on 15 July 2008. On 24 September 2008, Lithuania responded that it intended to participate in the EIA process.⁴

13. On 7 January 2009, Lithuania informed Belarus of its concern that it appeared that Ostrovets had already been selected as location of the NPP prior to the EIA procedure.

14. On 19 March 2009, Belarus notified Lithuania of its intention to construct the NPP at Ostrovets as a priority location.⁵

15. On 24 March 2009, Belarus wrote to Lithuania noting its obligations under the Espoo Convention and providing information regarding the project implementation.⁶

16. On 24 August 2009, Lithuania received an abridged version of a preliminary EIA report (19 pages) from Belarus (the abridged preliminary EIA report) and was informed that the full text would be made available online in Russian and English.⁷ Belarus requested comments thereon from Lithuania and its “experts.”⁸ An annexed table referred to the possibility for the public to submit comments from “September-December 2009” and a public hearing in Ostrovets on 9 October 2009.⁹

17. On 7 September 2009, Lithuania forwarded the abridged preliminary EIA report to its public authorities and environmental NGOs.¹⁰ It did not notify the Lithuanian public of the possibility to submit comments.

18. On 15 September 2009, Belarus provided Lithuania with a physical copy of the full preliminary EIA report (the 2009 preliminary EIA report) of approximately 100 pages and set a commenting deadline of 15 October 2009 for Lithuania’s experts.¹¹

19. On 9 October 2009, a public hearing was held in Ostrovets (the 2009 Ostrovets hearing).¹²

20. On 15 October 2009, Lithuania forwarded comments from its competent authorities, which stated that the 2009 preliminary EIA report’s findings were unjustified, that information was missing and it was only a scoping document. Lithuania’s letter also requested that a public hearing be organized in Lithuania after the final EIA report was received. On 26 January 2010, Belarus replied to Lithuania’s letter of 15 October 2009.¹³

³ Response to the submission, p. 1.

⁴ Ibid, p. 4; submission, annex, p. 1.

⁵ Submission, annex, p. 1.

⁶ Ibid., pp. 1 and 2.

⁷ Ibid., p. 2.

⁸ Submitting Party’s comments on Party concerned’s reply, 31 October 2017, pp. 2 and 6.

⁹ Party concerned’s reply to Committee’s questions, 18 October 2017, annex 4.

¹⁰ Submission, annex 1, p. 2.

¹¹ Ibid.

¹² Response to the submission, p. 3.

¹³ Submission, annex 1, p. 2.

21. On 10 February 2010, Lithuania informed Belarus that it proposed to organise a public hearing in Vilnius on 2 March 2010 to discuss the 2009 preliminary EIA report. On 18 February 2010, Lithuania informed interested parties, including members of the public and competent authorities, of the public hearing and that translation into Lithuanian would be provided.¹⁴
22. On 2 March 2010, Lithuania held a public event in Vilnius to discuss the 2009 preliminary EIA report (the 2010 Vilnius event). The event was attended by approximately 80 members of the Lithuanian public and representatives of Lithuania and Belarus. No translation into Lithuanian was provided.¹⁵
23. In March and April 2010, an electronic petition against the project was signed by more than 23,000 members of the Lithuanian public and an appeal was made to the Ministry of Environment, Parliament, Prime Minister, and President of Lithuania, requesting due representation of the Lithuanian public concerning the Ostrovets NPP project.¹⁶
24. On 7 May 2010, Lithuania sent its “position document” to Belarus, opposing the NPP and stating that the 2009 preliminary EIA Report must be supplemented. It further requested a public hearing be held in Lithuania to discuss the EIA report. On 14 June 2010, Belarus replied to the questions raised in the position document and indicated it would provide more information at a bilateral meeting.¹⁷
25. On 18 June 2010, a bilateral meeting between Lithuania and Belarus was held in Minsk during which Belarusian officials presented, though did not provide, a longer version of the EIA report.
26. On 9 July 2010, Lithuania submitted written comments following the bilateral meeting, indicating that it considered the 2009 preliminary EIA report to be only a scoping document. It requested to be provided with the final EIA Report and for a public hearing be organized after the final EIA report was available.¹⁸
27. On 13 July 2010, Belarus approved the state ecological expertiza conclusion no. 28 on the justification of investment into the construction of a nuclear power plant in the Republic of Belarus.¹⁹

Events before the 2013 expertiza

28. On 11 February 2011, Belarus sent Lithuania an updated EIA report of approximately 1000 pages (the 2011 EIA report). On 18 March 2011, Lithuania replied that it could not consider this EIA report as final as it did not contain answers to the questions of the Lithuanian public. On 22 April 2011, Belarus responded that it had already provided explanations to the questions raised.²⁰
29. On 15 September 2011, the President of Belarus signed Decree No. 418 on the Location and Design of an NPP in Belarus. Belarus informed Lithuania of this on 23 September 2011, also noting that questions raised by Lithuania could not be included in the EIA report, but comments would be considered in the implementation of the project.²¹
30. On 2 December 2011, Lithuania informed Belarus that its answers were insufficient and requested a public hearing on the 2011 EIA report and bilateral

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid., pp. 3 and 4.

¹⁹ Party concerned’s reply to Committee’s questions, 18 October 2017, p. 4.

²⁰ Submission, annex 1, p. 5.

²¹ Ibid.

consultations. On 6 February 2012, Belarus proposed bilateral consultations regarding the post-project analysis.²²

31. On 11 June 2013, Belarus sent Lithuania a translation of the 2011 EIA report in Lithuanian-language together with supplementary material (the 2013 EIA report). It requested Lithuania to hold a public discussion on the report by 15 August 2013. On 8 July 2013, Lithuania requested further time, stating that the translation was of such a poor quality that it did not consider it appropriate to circulate it to its public.²³

32. On 19 July 2013, Belarus informed Lithuania that it had published information about the project in the Lithuanian media and had informed the Lithuanian public about a hearing to be held in Ostrovets on 17 August 2013. It invited Lithuania's authorities to attend bilateral consultations to discuss the EIA report and provide answers to remaining questions in Minsk on 20 August 2013. On 6 August 2013, Lithuania responded that the 2013 EIA report was merely a Lithuanian translation of the 2011 EIA report and requested Belarus to send a final EIA report.²⁴

33. On 16 August 2013, Belarus responded that the 2013 EIA report included additional information concerning consultations held between 2011 and 2013. Belarus further complained that Lithuania did not disseminate the report to the public.²⁵

34. On 17 August 2013, Belarus organized a public hearing in Ostrovets (the 2013 Ostrovets hearing). No representatives of Lithuanian public authorities attended.²⁶

35. On 10 September 2013, Lithuania stated that it found the 2013 EIA report to be insufficient in multiple respects, requested additional information by 1 October 2013 and proposed a public hearing in Vilnius in October 2013. On 1 October 2013, Belarus replied that it had already responded to most of the issues raised by Lithuania, it saw no need to update the EIA report, and expressed its regrets that Lithuania did not respond to its repeated proposals for a meeting of experts and did not inform its public of the EIA report.²⁷

36. On 23 October 2013, Belarus approved state ecological expertiza conclusion no. 98 on the project documentation for the Belarusian NPP.²⁸

Events after the 2013 expertiza

37. On 29 October 2013, Belarus issued permit No. 02300/239-4 (dated 13 September 2013), authorising the installation of nuclear equipment in Unit One of the NPP. On the same day, Lithuania reiterated its requests that Belarus provide additional explanations, that I organize a public hearing and expert meeting and that no unilateral action be taken. During October-November 2013, Lithuania received comments from its public on the text of the 2013 EIA report.²⁹

38. On 2 November 2013, Decree No. 499 On Construction of the Belarusian Power Station of the President of Belarus was adopted. It decreed the implementation of the Ostrovets NPP project in the period of 2013-2020 and stated that no negative impacts of the NPP in a transboundary context were identified, concerned parties having failed to prove any negative impact. Belarus informed Lithuania of the Decree on 21 November 2013.³⁰

²² Ibid.

²³ Ibid, p. 6.

²⁴ Ibid., p. 7.

²⁵ Ibid.

²⁶ Ibid., submitting Party's reply to Committee's questions, 19 August 2016, p. 2.

²⁷ Submission, annex 1, pp. 7 and 8.

²⁸ Ibid., p. 8.

²⁹ Ibid.

³⁰ Ibid.

39. On 3 December 2013, Lithuania forwarded comments by its public to Belarus. Lithuania reiterated its requests for additional information on the EIA report and the 2013 Ostrovets event and again offered to organise a public hearing.³¹

40. On 13 and 24 February 2014, Belarus replied that all questions raised by Lithuania had been answered from 2011 to 2013 and criticised Lithuania's non-cooperation in the organisation of the 2013 Ostrovets hearing, as well as Lithuania's failure to organize a public hearing and to provide an opportunity to submit comments.³²

41. On 30 December 2014, Belarus issued a permit authorising the construction of Unit Two of the Ostrovets NPP.³³

C. Admissibility

42. Belarus does not challenge the admissibility of the Lithuanian submission.

D. Use of other international procedures

43. On 7 June 2011, Lithuania filed a submission with the Espoo Convention Implementation Committee regarding the Ostrovets NPP.³⁴ On 14 March 2013, the Espoo Convention Implementation Committee concluded that the EIA procedure performed by Belarus was in non-compliance with the Espoo Convention and recommended that Belarus continue the transboundary EIA process.³⁵ The Meeting of the Parties to the Espoo Convention (Geneva, 2-5 June 2014), adopted decision VI/2,³⁶ endorsing the Implementation Committee's findings.³⁷

E. Substantive issues

Relationship with communication ACCC/C/2009/44 and decision V/9c

44. Lithuania submits that communication ACCC/C/2009/44 concerned the opportunities for the Belarusian public to participate, while the present submission concerns the Lithuanian public and provides additional facts.³⁸

45. Belarus submits that its compliance with article 6 (2), (4) and (6) of the Convention has already been analysed in the Committee's findings on communication ACCC/C/2009/44 and endorsed through decision V/9c, and that it is currently taking measures to implement the recommendations contained therein.³⁹

Article 3 (9)

Possibilities for the Lithuanian public to participate

46. Lithuania asserts that the Lithuanian public encountered restrictions when trying to participate in the decision-making process for the NPP because Belarus failed to provide answers to the Lithuanian public regarding the NPP project and to organize a public hearing in Lithuania on the EIA report, despite Lithuania's six requests between 2013 and 2014 to that end.⁴⁰

³¹ Ibid., p. 9.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ ECE/MP.EIA/IC/2013/2. See also submission, annex 1, p. 6.

³⁶ ECE/MP.EIA/20.Add.1

³⁷ Submission, annex 1, p. 10.

³⁸ Submission, p. 16.

³⁹ Party concerned's reply, 12 August 2016, p. 1.

⁴⁰ Submission, pp. 8-9.

47. Lithuania claims its public was not duly informed about the 2009 Ostrovets hearing and that Belarus did not provide evidence that any members of the Lithuanian public in fact participated at this event.⁴¹ Lithuania acknowledges the annex of a letter from Belarus from 24 August 2009 referred to the 2009 Ostrovets hearing but asserts that it was not clear this hearing was also directed at its public.⁴²

48. Lithuania also claims that the Lithuanian public was unable to review or comment on the state ecological expertiza conclusions and that they were not properly informed about the outcome of these conclusions.⁴³

49. Belarus claims that neighbouring states were informed of the 2009 Ostrovets hearing on 24 August 2009 and that the event enabled foreign citizens to participate on equal footing with the Belarusian public.⁴⁴ It also claims that the 2010 and 2013 state ecological expertiza conclusions were publicly available to both the Belarusian and Lithuanian public.⁴⁵

Translations of relevant documents and interpretation during meetings

50. Lithuania alleges that Belarus failed to submit essential information about the project in Lithuanian⁴⁶ and that the English documentation provided by Belarus did not include comprehensive information about the project.⁴⁷ In particular, Lithuania submits that:

(a) Only an abridged version of the 2009 preliminary EIA report was provided in Lithuanian before the 2010 Vilnius event;⁴⁸

(b) Belarus did not provide interpretation at the 2010 Vilnius event as had been informally agreed in accordance with the established practice between the two Parties that the Party of origin bears responsibility for interpretation in line with the polluter pays principle. The Lithuanian public was unable to ask questions in Lithuanian, and that information provided by Belarusian representatives was difficult or impossible to understand. Belarus did not, as it had promised, subsequently provide Lithuanian translations of all the presentations made during the event.⁴⁹

(c) The 2013 EIA report was incomprehensible, containing basic errors and meaningless sentences.⁵⁰

51. Belarus agrees that poor-quality translation of EIA materials may impede public participation but submits that the Lithuanian public did not seek clarifications.⁵¹

52. Belarus notes that, according to the Guidance on Public Participation in EIA in a Transboundary Context, “in general, the Party of origin is responsible for translation as well as for the cost”, but points out that the Guidance also cites the Guidance on the Practical Application of the Espoo Convention (“the Espoo Guidance”) which states that the cost of public participation in a transboundary EIA (including the translation) can be covered by the developer, the Party of origin or the affected Party.⁵²

53. Belarus submits that the Espoo Guidance allows for the possibility to translate into English or Russian and that only parts of the documents must be translated into the

⁴¹ Submitting Party’s reply to Committee’s questions, 19 August 2016, p. 4.

⁴² Submitting Party’s comments on Party concerned’s reply, 31 October 2017, pp. 3 and 6-7.

⁴³ Submission, pp. 9-10.

⁴⁴ Response to submission, p. 3.

⁴⁵ Party concerned’s comments on Committee’s draft findings, 20 July 2021, p. 3.

⁴⁶ Submission, p. 9.

⁴⁷ Submitting Party’s reply to the Committee’s questions, 19 August 2016, p. 3.

⁴⁸ Submission, p. 9.

⁴⁹ Submission, pp. 4 and 9.

⁵⁰ Submission, pp. 6, 9 and 12.

⁵¹ Response to submission, p. 3.

⁵² Ibid.

language of the affected Party. Belarus submits that the EIA report was sent to Lithuania in English and that no comments on the translation quality were received.⁵³

54. Belarus asserts that Lithuania and Belarus simply failed to agree on the division of responsibility for the public participation procedure and for the translation.⁵⁴

Article 6 (2)

Informing about the proposed activity and envisaged procedure

55. Lithuania submits that it is implicit in article 6(2) of the Convention that the public concerned be informed at the earliest stage of the procedure, when all opportunities are open. However, it claims that its public was not informed in an adequate, timely and effective manner about the project.⁵⁵

56. Lithuania claims that because the expertiza conclusion is a permitting decision, its public should have been allowed to participate in the decision-making procedure. Lithuania also claims that its public was not informed about the 2013 expertiza,⁵⁶ nor Decree No. 418/2011 or Decree No. 499/2013.⁵⁷

57. Belarus submits that it informed Lithuania about its intentions to construct the NPP on 15 July 2008 and also sent a letter to focal points of the Espoo Convention on 24 August 2009 with the aim of informing the public in other States about the planned construction of the NPP. It claims the Lithuanian public was given a longer time for commenting on the EIA report than the Belarusian public.⁵⁸

Informing the public concerned about its opportunities to participate

58. Lithuania contends that Belarus failed to inform the Lithuanian public about opportunities to participate in a decision-making process on three occasions:

(a) The Lithuanian public was not properly informed about the 2009 Ostrovets hearing (see para. 47 above);⁵⁹

(b) The 2010 Vilnius event cannot be considered as providing proper information to the public;⁶⁰ and

(c) The Lithuanian public was not properly informed about the 2013 Ostrovets hearing.⁶¹ It claims that the sources which Belarus cites as providing information on the hearing were in Russian and either not followed by Lithuanian audiences or only followed by the Russian-speaking public.⁶²

59. Lithuania further alleges that the Lithuanian public's opportunity to participate in the 2013 event was restricted because they were not given sufficient time to analyse the EIA report and because additional restrictions meant that some people were unable to attend it.⁶³ Lithuania claims that journalists were refused visas and that the bus to Ostrovets left an hour earlier than advertised.⁶⁴ It further claims that a group of people who may receive employment at the Ostrovets NPP in the future were deliberately gathered for the purpose of going to Ostrovets as representatives of the Lithuanian public.⁶⁵

⁵³ Ibid.

⁵⁴ Ibid., pp. 3-4.

⁵⁵ Submission, p. 10.

⁵⁶ Submission, pp. 10 and 14.

⁵⁷ Submitting party's opening statement at hearing, p. 11.

⁵⁸ Response to submission, p. 4.

⁵⁹ Submitting party's reply to Committee's questions, 19 August 2016, p. 4.

⁶⁰ Submission, p. 11.

⁶¹ Ibid.

⁶² Submitting Party's comments on Party's reply, 31 October 2017, p. 3.

⁶³ Submission, pp. 6 and 11.

⁶⁴ Submitting Party's reply, 19 August 2016, pp. 2-3.

⁶⁵ Submission, pp. 6-7.

60. Belarus submits that its notification of 24 August 2009 to Espoo Convention focal points included information about the 2009 Ostrovets hearing.⁶⁶

61. Belarus submits that, in line with the Espoo Guidance, the responsibility for informing the public of the 2010 Vilnius event fell on both the concerned Parties.⁶⁷

62. Regarding the 2013 Ostrovets hearing, Belarus submits that it published a notice in Lithuanian and Russian on the website of the Belarusian Embassy in Lithuania providing information on the event and that information was also published on various other websites of Belarusian institutions and in a Lithuanian newspaper (“Obzor”). This information included the date and time of the event, information on free visa support and transport to the venue by bus at 10:45.⁶⁸

Article 6 (3)

Reasonable time to participate

63. Lithuania claims that the only period for the Lithuanian public to comment was from 10 February until 31 March 2010, that Belarus had only asked for comments from experts in 2009 and that at that time it was unclear what stage the EIA process was at and when the public participation procedure would be initiated.⁶⁹

64. Belarus contends that Lithuania forwarded its comments on the EIA documentation with its letter of 15 October 2009 and sent additional comments on 7 May 2010. It claims that the time-frame for comments was not limited.⁷⁰

Time to become acquainted with updated EIA report

65. Lithuania claims that Belarus restricted the opportunity of the Lithuanian public to participate by not providing enough time to review the various EIA reports. It submits that an updated and more detailed EIA report was presented at the meeting on 18 June 2010 which Lithuania could not examine in advance and that Lithuania did not receive the full EIA report until February 2011. It claims that the full EIA report was presented to the Belarusian public considerably earlier.⁷¹ Lithuania alleges that its public thus had unequal access to this information.

66. Lithuania notes that, due to the poor quality of translation of the 2013 EIA report, it asked for more time to examine the report and for a comprehensible translation and postponed publishing the EIA report for its public. As Belarus did not provide a new translation, Lithuania eventually published the original version together with a disclaimer and comments by competent authorities.⁷²

67. Lithuania also claims that its public was not informed in time about the expertiza decision and could not submit comments.⁷³

68. Belarus claims that the Lithuanian public submitted comments on the 2009 preliminary EIA report. It submits that the 2011 EIA report contained clarifications of issues described in the 2009 preliminary EIA Report and that the 2013 EIA report was accompanied by materials detailing the participation of the Lithuanian public on the EIA report, but that there were no changes of a fundamental nature between the different versions of the report.⁷⁴

⁶⁶ Party concerned’s reply to Committee’s questions, 18 October 2017, p. 7.

⁶⁷ Response to submission, p. 4.

⁶⁸ Party concerned’s reply to Committee’s questions, 18 October 2017, pp. 7-8.

⁶⁹ Submitting Party’s reply to Committee’s questions, 30 August 2017, p. 3; submitting Party’s comments on the Party concerned’s reply to Committee’s questions, 31 October 2017, p. 2.

⁷⁰ Party concerned’s reply to Committee’s questions, 18 October 2017, pp. 3-4.

⁷¹ Submission, pp. 11-12.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Response to submission, p. 4; Party’s reply to Committee’s questions, 18 October 2017, p. 3.

Article 6 (4)

69. Lithuania claims that construction works at the Ostrovets site began as early as May 2009.⁷⁵ At the time the Lithuanian public had heard informally via the media that Ostrovets had been selected as the NPP location even though the EIA procedure had not yet commenced.⁷⁶

70. Lithuania claims that the public were consequently unable to submit comments regarding alternative locations for the NPP.⁷⁷ Lithuania further alleges that, while Belarus claims to have considered several alternative sites, it failed to explain why the Ostrovets site was chosen and other sites eliminated.⁷⁸

71. Belarus submits that its compliance with article 6 (4) of the Convention regarding the Ostrovets NPP has already been analysed by the Committee in its findings on communication ACCC/C/2009/44.⁷⁹

72. Belarus claims that in March 2010, the Lithuanian public could comment on the whole package of EIA documentation envisaged in article 4 of the Espoo Convention and that at the 2013 Ostrovets hearing, the Lithuanian public could comment on several different issues, including the “reasons and factors determining the selection of the Ostrovets site”.⁸⁰ Belarus also submits that Lithuania was provided with information about the advantages of the Ostrovets site and justification of its selection.⁸¹

Article 6 (6)

73. Lithuania alleges that its public has never been provided with a full and detailed EIA report and that Belarus failed to respond to its requests for more information about the impact of the project on the Lithuanian public and environment and on safety issues. It further submits that Belarus failed to update the 2009 preliminary EIA report with additional information as requested.⁸²

74. In particular, Lithuania alleges that Belarus failed to provide evidence for its claim that the proposed project would not have an adverse impact on the population and the environment as required by article 6 (6) (c) of the Convention. Lithuania also submits that it has received no evidence of any relevant project-related reports, proposals or surveys sent by Belarus to answer its questions as required by article 6 (6) (f) of the Convention.⁸³

75. Lithuania asserts that Belarus’s claim that all of the EIA documentation required under article 4 of the Espoo Convention was contained in the 2009 preliminary EIA report is untrue. It refers to the Espoo Convention Implementation Committee’s finding that the preliminary and final EIA documentation supplied differed significantly and the Implementation Committee’s subsequent recommendation that Belarus provide the final EIA documentation and allow an adequate period to submit further comments before taking the final decision.⁸⁴

76. Belarus submits that its compliance with article 6 (6) regarding the Ostrovets NPP has already been analysed in the Committee’s findings on communication ACCC/C/2009/44.⁸⁵

77. Belarus explains that the 2009 EIA report was a preliminary one prepared for holding discussions and consultations with the public and concerned parties. It claims

⁷⁵ Submitting party’s opening statement at hearing, 7 December 2016, p. 5.

⁷⁶ Submission, p. 13.

⁷⁷ Ibid.

⁷⁸ Ibid., pp. 5 and 10-11.

⁷⁹ Response to submission, p. 5.

⁸⁰ Party concerned’s reply to the Committee’s questions, 18 October 2017, p. 6.

⁸¹ Response to submission, p. 4.

⁸² Submission, p. 13.

⁸³ Submission, pp. 13-14.

⁸⁴ Submitting Party’s comments on Party concerned’s reply, 31 October 2017, pp. 2 and 3.

⁸⁵ Response to submission, p. 5.

that it represents the whole package of EIA documentation envisaged in article 4 of the Espoo Convention. For example, it included assessment of different types of reactors and three potential NPP locations (as well as justification of the selection of the Ostrovets site).⁸⁶

78. Belarus further explains that the 2011 EIA report was the final EIA report and was supplemented with materials regarding the public participation procedure. It claims that it represents the whole package of EIA documentation envisaged in article 6 of the Espoo Convention. In particular, it contained clarifications of matters described in the preliminary report and took into account the results of the transboundary EIA procedure. Belarus also states that it contained no new information about environmental impact that was not in the 2009 preliminary EIA report.⁸⁷

79. Belarus also claims that no EIA report was provided during the meeting on 18 June 2010 but that the final EIA report was the one sent to affected parties on 11 February 2011. The documents Belarus sent to Lithuania in 2013 (the 2013 EIA report) was the final 2011 EIA report translated into Lithuanian and a summary of the public participation procedure.⁸⁸

Article 6 (8)

80. Lithuania claims that the EIA reports and ecological expertiza conclusions failed to take due account of the outcome of the public participation. In particular, it alleges that the EIA reports fail to refer to public participation and that the ecological expertiza conclusion falsely states that the required international procedures were carried out.⁸⁹ It also claims that the final decision on site selection was made by Decree No. 418 before the EIA report was finalised and before public hearings on the matter had taken place.⁹⁰

81. Belarus states that article 6 (8) requires Parties to consider public opinion seriously but not to accept the substance of all comments received. Belarus states that, in the course of implementing the Committee's findings on communication ACCC/C/2009/44, it is enshrining in its legislation the requirement to take account of the outcome of public participation.⁹¹

82. Belarus claims that in any case comments on the 2009 preliminary EIA report were taken into account during the preparation of the 2011 EIA report and that the results of the transboundary EIA procedure (including consultations and public discussions) were considered during the 2013 state ecological expertiza.⁹²

III. Consideration and evaluation by the Committee

83. Belarus ratified the Convention on 9 March 2000. The Convention entered into force for Belarus on 30 October 2001, the date of the Convention's general entry into force.

Scope of consideration

84. Lithuania alleges that Belarus failed to comply with articles 3 (9) and 6 (2), (3), (4), (6) and (8) of the Convention regarding the opportunities for the Lithuanian public to participate in the decision-making on the 2010 and 2013 state ecological expertizas on the siting and construction of the Ostrovets NPP.

⁸⁶ Party concerned's reply to the Committee's questions, 18 October 2017, p. 2.

⁸⁷ Ibid., pp. 2-3.

⁸⁸ Ibid., p. 3.

⁸⁹ Submission, p. 14.

⁹⁰ Submitting Party's reply to Committee's questions, 19 August 2016, pp. 4-5.

⁹¹ Response to submission, pp. 3-4.

⁹² Party concerned's reply to Committee's questions, 18 October 2017, p. 3.

85. The participation of the Belarusian public in the decision-making on the 2010 state ecological expertiza was considered by the Committee in its findings on communication ACCC/C/2009/44 (Belarus). In those findings, the Committee found Belarus to be in non-compliance with article 4 (1) (b) and article 6 (2) (d) (vi), (4), (6) and (7) of the Convention. Those findings were endorsed in decision V/9c at the fifth session of the Meeting of the Parties to the Convention (Maastricht, 30 June-2 July 2014).⁹³

86. Lithuania's allegations under article 6 (2), (4) and (6) concerning the 2010 expertiza to some extent overlap with the above findings. Accordingly, when considering those allegations, the Committee examines whether its earlier findings are equally applicable to the opportunities for the Lithuanian public to participate in the 2010 expertiza. It also examines whether the Lithuanian public received less favourable treatment than the Belarusian public under article 3 (9) of the Convention.

87. Under Belarus' legal framework at the time, the state ecological expertiza conclusions for a project subject to article 6 of the Convention effectively served as the final permitting decision for that project. The state ecological expertiza conclusions regarding the location of the Ostrovets NPP were issued on 13 July 2010 while the state ecological expertiza conclusions regarding its construction design were issued on 23 October 2013. The Committee considers that the 2010 and 2013 expertiza conclusions should be seen as "tiered" decision-making "whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage"⁹⁴. Accordingly, the Committee considers that both state ecological expertiza were decisions subject to the requirements of article 6 of the Convention.

88. The Committee's findings on communication ACCC/C/2009/44 examine the public participation procedure concerning the 2010 state ecological expertiza, but not the 2013 expertiza. Public participation in the decision-making on the 2013 state ecological expertiza is thus examined in the present findings for the first time.

89. Both parties refer in their submissions to the obligations in, and guidance prepared under, the Espoo Convention. The Committee makes clear that, while arrangements between Parties under the Espoo Convention may contribute to compliance with the Aarhus Convention in transboundary contexts, the role of the Committee is to review compliance with the provisions of the Aarhus Convention, the requirements of which stand in their own right.

Article 6 in the transboundary context

90. Regarding public participation in the transboundary context, in its findings on communication ACCC/C/2012/71 (Czechia), the Committee held:

It is clear from the wording of article 6 that the obligations imposed by that article are not dependent on obligations stemming from other international instruments. An international treaty may envisage that a Party of origin and an affected Party share joint responsibility for ensuring public participation in the territory of the affected Party (as under the Espoo Convention), or even that the affected Party has sole responsibility for this. However, the obligation to ensure that the requirements of article 6 are met always rests with the Party of origin.⁹⁵

⁹³ ECE/MP.PP/2014/2/Add.1.

⁹⁴ ECE/MP.PP/2008/5/Add.6, para. 71.

⁹⁵ ECE/MP.PP/C.1/2017/3, para. 67.

Article 6 (2) – public notice

2010 expertiza

Content of notice

91. The notice annexed in Belarus' letter to Lithuania of 24 August 2009⁹⁶ is identical to the notice published on Belarusian government websites on 31 July 2009. The Committee examined the content of that notice in its findings on communication ACCC/C/2009/44 and found that it contained most of the elements prescribed in article 6 (2) of the Convention. It however found that "by not duly informing the public that, in addition to the publicly available 100-page EIA report, there was a full version of the EIA report (more than 1,000 pages long)," Belarus failed to comply with article 6 (2) (d) (vi) of the Convention.⁹⁷

92. Since the content of the notice provided to Lithuania on 24 August 2009 is identical to the notice provided to the public in Belarus, the Committee finds the above finding to apply equally to the present case.

93. That is not however the end of the matter. The Committee notes that only very basic information about the 2009 Ostrovets hearing, namely its timing and venue, was provided in that notice. Regarding the public's opportunity to submit written comments, only a vague time-frame, "September-December 2009", with no clear deadline, was provided. The Ministry of Energy's postal address was given but no specific contact point within the Ministry to whom comments should be addressed.

94. On this point, the Committee considers that adequate information under article 6 (2) (d) (iv) and (v) require a specific contact point in the public authority to be named and preferably an email address to be provided.

95. Moreover, while the details provided in the notice might meet the requirements of article 6 (2) (d) (iii) regarding the time and venue of the hearing, the Committee considers that the information provided does not meet the requirement in article 6 (2) (d) (ii) to adequately and effectively inform the public concerned of its opportunities to participate either at the hearing or in writing. As the Committee made clear in its findings on communication ACCC/C/2012/71 (Czechia):

If a hearing is to be held, the public concerned should be notified of its opportunities to participate in that hearing, e.g., the format of the hearing, the format in which the public may make interventions, and any time limits on those interventions. This is particularly important in the case of a foreign public concerned, which may be entirely unfamiliar with how hearings are conducted in the Party of origin.⁹⁸

96. Based on the foregoing, the Committee finds that, by failing to provide adequate and effective information to the Lithuanian public concerning its opportunities to participate in the hearing in Ostrovets on 9 October 2009 and to send written comments during the decision-making on the 2010 state ecological expertiza, the Party concerned failed to comply with article 6 (2) (d) (ii) and (v) of the Convention.

Means of notification

97. In its findings on communication ACCC/C/2009/44, the Committee noted that the public in Belarus had been informed of the 2009 Ostrovets hearing through announcements on Belarusian government websites in July 2009 and in national and local print media in September 2009. The Committee found these means of notification to be sufficient regarding the Belarusian public. However, the means of notification

⁹⁶ Communication ACCC/C/2009/44, annex 5.

⁹⁷ ECE/MP.PP/C.1/2011/6/Add.1, paras. 20(a), 72 and 88(b).

⁹⁸ ECE/MP.PP/C.1/2017/3, para. 80.

used to notify the public concerned in the Party of origin may not be sufficient to notify the public concerned in the transboundary context.

98. In its findings on communication ACCC/C/2012/71 (Czechia), the Committee held:

In cases that are subject to a transboundary procedure under an international treaty, the Party of origin remains responsible under the Aarhus Convention for the adequate, timely and effective notification of the public concerned in the affected country, either by carrying out the notification itself or by making the necessary efforts to ensure that the affected Party has done so effectively.⁹⁹

99. In that case, the Party of origin had given clear instructions to the public authorities of the affected Party on how to notify its public, and those instructions were consistent with the means of notification envisaged for notifying the public in the Party of origin. Nevertheless, the Committee was not convinced that these instructions were sufficient to ensure effective notification in the transboundary context.¹⁰⁰

100. In the present case, Belarus cites its letter of 24 August 2009 as meeting its obligation to provide adequate and effective notice to the Lithuanian public. However, the letter, which states that it is a notification under the Espoo Convention, invites Lithuania to provide the comments of its “experts” on the 2009 preliminary EIA report by 1 October 2009. While the annex to the letter is entitled “Notification of the public on the planned activities, the EIA procedure and participation process and consultations”, it contains no clear request or instructions to Lithuania to notify the Lithuanian public of their opportunities to participate.

101. The Committee thus considers that the letter of 24 August 2009 and its annex were even less sufficient to ensure the effective notification of the Lithuanian public than the instructions examined in its findings on communication ACCC/C/2012/71 (Czechia).

102. In the light of the inadequate notice regarding the 2009 Ostrovets hearing, Lithuania decided to organize the 2010 Vilnius event for which it itself undertook notification of the Lithuanian public. However, this does not in any way alter the fact that Belarus failed to meet its obligation under article 6 (2) of the Convention to ensure the adequate and effective notice of the Lithuanian public regarding the 2009 Ostrovets hearing.

103. Based on the foregoing, the Committee finds that, by failing to ensure that the means used to notify the Lithuanian public of the 2009 Ostrovets hearing were effective, either by carrying out the notification itself or by making the necessary efforts to ensure that Lithuania had done so effectively, the Party concerned failed to comply with article 6(2) of the Convention.

2013 expertiza

104. Belarus has provided the text of the notice regarding the 2013 Ostrovets hearing which it published, in Lithuanian and Russian, on the website of the Belarusian Embassy in Lithuania. Information regarding the hearing was also provided in the Lithuanian weekly newspaper “Obzor” from 25 to 31 July 2013, as well as on the websites of various Belarusian institutions.

105. Belarus claims that the notice was published in the Lithuanian media in Lithuanian language in advance of the hearing.¹⁰¹ However, it has not provided the Committee with any evidence to support its claim. Regarding the “Obzor” newspaper, the Committee understands that this is a Russian language newspaper published in

⁹⁹ ECE/MP.PP/C.1/2017/3, para. 72.

¹⁰⁰ ECE/MP.PP/C.1/2017/3, para. 71.

¹⁰¹ Party concerned’s comments on Committee’s draft findings, 20 July 2021, p. 2.

Lithuania. Similarly, all the webpages that Belarus has provided which the Committee has been able to access are in Russian.¹⁰²

106. This means that, based on the evidence before the Committee, the only notice of the 2013 Ostrovets hearing provided in the Lithuanian language was the notice published on the website of the Belarusian Embassy in Lithuania. In its findings on communication ACCC/C/2012/71 (Czechia), the Committee held:

notice on the Ministry's web page would not in itself be enough in order to ensure effective notification of the public, as it is not reasonable to expect members of the public to proactively check the Ministry's website on a regular basis just in case at some point there is a decision-making procedure of concern to them.¹⁰³

107. The Committee considers the above finding equally relevant to notice published on the embassy's website. To be effective, notice of the hearing should have been published in the Lithuanian-language media as well as the Russian-language one.

108. Given the above, the Committee finds that, by failing to provide adequate and effective notice of the 2013 Ostrovets hearing in the Lithuanian-language media, the Party concerned failed to comply with article 6(2) of the Convention.

Article 6 (3) – reasonable time-frames

2010 expertiza

109. Lithuania claims that the Lithuanian public had only from 10 February to 31 March 2010 to comment on the 2009 EIA preliminary report and that this time-frame was insufficient.

110. As noted in paragraph 93 above, the annex to Belarus' letter of 24 August 2009 stated that the public would be able to submit written comments between September-December 2009. In the body of that letter, Belarus asked Lithuania to seek comments from its "experts" by 1 October 2009. Lithuania apparently did not inform the Lithuanian public of the opportunity to comment at that point.

111. In its findings on communication ACCC/C/2005/16 (Lithuania), the Committee made clear that:

The requirement to provide "reasonable time-frames" implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity. A time-frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project.¹⁰⁴

112. It is clear to the Committee that the construction of an NPP is a "major complex project". The Committee considers that the four-month time-frame set out in the annex to Belarus' letter of 24 August 2009 would have been a reasonable time-frame for the public to prepare and participate effectively in a major complex project such as the NPP.

113. As it turned out, the Lithuanian public was not informed of this four-month commenting period. This is due to the inadequate notice provided by Belarus on 24 August 2009 and the lack of effective communication between Belarus and Lithuania to then clarify the procedure. The Committee has already found that notice to be in noncompliance with article 6(2) in paragraphs 96 and 103 above.

114. As regards the time-frames, the Committee notes Belarus' claim that, in practice, the time limit for the public to comment was unlimited. Moreover, Lithuania itself reports that it sent comments from its public to Belarus on 7 May 2010. The Committee

¹⁰² Party concerned's reply to Committee's questions, 18 October 2017, pp. 7-8.

¹⁰³ ECE/MP.PP/C.1/2017/3, para. 76.

¹⁰⁴ ECE/MP.PP/2008/5/Add.6, para. 69.

thus does not consider that the time-frame for the Lithuanian public to send written comments in practice was unreasonable.

115. Regarding Lithuania's claim that the full EIA report was presented for the first time at the bilateral meeting on 18 June 2010 meant that Lithuania was unable to effectively prepare, the Committee points out that that meeting was a meeting between the governments of Lithuania and Belarus and the Lithuanian public was not present. The fact that Belarus had not provided the full EIA report in advance of that meeting is not in itself a breach of article 6 (3) of the Convention.

116. Given the foregoing, the Committee does not find Belarus to be in noncompliance with article 6 (3) regarding the time-frames for the Lithuanian public to participate in the 2010 state ecological expertiza.

2013 expertiza

117. Lithuania claims that, following Belarus' provision of the Lithuanian translation of the EIA report on 11 June 2013, the time-frame for the Lithuanian public to prepare for the 2013 Ostrovets hearing was unreasonable.

118. Lithuania states that it did not make the 2013 EIA report available to the Lithuanian public immediately because of the poor quality of the translation. Lithuania has not informed the Committee of the date that it published the 2013 EIA report.

119. The Committee considers that, if the 2013 EIA report had been published by Lithuania shortly after Belarus had provided it to Lithuania on 11 June 2013, this would have provided a reasonable time-frame for the public to prepare to participate in the 2013 Ostrovets hearing.

120. Moreover, both the English and Russian versions of the 2013 EIA report had been provided to Lithuania by Belarus on 11 February 2011. The Committee notes that, according to Lithuania's 2011 national census, 63% of Lithuanians spoke Russian and 30% spoke English.¹⁰⁵ While Lithuania informed its competent authorities about the report on 21 February 2011, there is no evidence before the Committee as to the date which Lithuania informed its public about the Russian and English versions.

121. Given the above, the Committee finds the allegation that the Party concerned failed to comply with article 6 (3) concerning the time-frames for the Lithuanian public to participate in the decision-making on the 2013 expertiza to be unsubstantiated.

Article 6 (4)

122. Lithuania claims that Ostrovets had already been chosen as the location of the NPP prior to the commencement of the EIA procedure and any opportunity for the Lithuanian public to participate.

123. In its findings on communication ACCC/C/2009/44, the Committee held that by "precluding the public from having any input on the decision on whether the NPP installation should be at the selected site in the first place (since the decision had already been taken)" Belarus failed to comply with article 6 (4) of the Convention.¹⁰⁶

124. The Committee has already found Belarus to be in non-compliance with article 6 (4) of the Convention for precluding the public from having any input on the site of the NPP, and this issue is subject to the Committee's follow-up on paragraph 3 (c) (iii) of decision VI/8c. The Committee therefore abstains from making a second finding on this point. Upon the adoption of the present findings, Lithuania will be entitled to take part in the Committee's follow-up on that decision, or any decision that supersedes it.

¹⁰⁵ "78.5% of Lithuanians speak at least one foreign language" (Statistics Lithuania, 27 September 2013), available at <https://in.mfa.lt/in/en/news/statistics-lithuania-785-of-lithuanians-speak-at-least-one-foreign-language> (last accessed 1 June 2021).

¹⁰⁶ ECE/MP.PP/C.1/2011/6/Add.1, para. 88.

Article 6 (6) – access to all information relevant to the decision-making

2010 expertiza

125. In its findings on communication ACCC/C/2009/44, the Committee noted that the Belarusian public was informed of the existence of the full (1000-page) EIA report for the first time at the 2009 Ostrovets hearing. The Committee accordingly found Belarus to be in noncompliance with article 6 (6) of the Convention for failing to inform the public in due time of the possibility to examine the full EIA Report.¹⁰⁷

126. Since the Committee has found that the notice to the Lithuanian public regarding the 2009 Ostrovets hearing was ineffective (see paras. 96 and 103 above), the Committee considers that the Lithuanian public had even less opportunity to access the full EIA report prior to the 2010 state ecological expertiza than the Belarusian public.

127. Lithuanian officials became aware of the existence of the full EIA report at the bilateral meeting on 18 June 2010. As a result, while the Belarusian public were advised at the 2009 Ostrovets hearing “to consult the full EIA report in Minsk and Ostrovets”,¹⁰⁸ the Lithuanian public had no such opportunity.

128. The Committee has already found Belarus to be in non-compliance with article 6(6) of the Convention for failing to inform the Belarusian public in due time of the possibility of examining the full EIA Report.¹⁰⁹ By providing the Lithuanian public with the possibility to examine the full EIA report at an even later stage than that provided to the Belarusian public, which was in itself too late to comply with the Convention, the Committee finds that the Party concerned failed to comply with article 6 (6) with respect to the Lithuanian public also.

2013 expertiza

129. Lithuania alleges that Belarus failed to comply with article 6 (6) because, despite Lithuania’s repeated requests, neither the 2011 EIA report nor the 2013 Lithuanian translation thereof provided sufficiently detailed information about the impact of the project on the Lithuanian public and environment or sufficient evidence to support its conclusions or sufficient response to the questions raised by the Lithuanian public.

130. As regards the accuracy and completeness of the information relevant to the decision-making, in its findings on communication ACCC/C/2005/16 (Lithuania) the Committee held:

the Committee does not consider itself in a position to analyse the accuracy of the data which form the basis for the decisions in question. ... Thus, the role of the Committee is to find out if the data that were available for the authorities taking the decision were accessible to the public and not to check whether the data available were accurate.¹¹⁰

131. To this end, in its finding on communication ACCC/C/2009/71 (Czechia), the Committee held:

if the public authorities were in fact provided with any further information relevant to the decision-making than that made available to the public concerned (excepting information exempted from public disclosure in accordance with article 4, paragraphs 3 and 4), that would amount to non-compliance with article 6, paragraph 6.¹¹¹

132. Belarus adopted the state ecological expertiza on the construction and design of the NPP on 23 October 2013. The Committee doubts that in the more than two years

¹⁰⁷ ECE/MP.PP/C.1/2011/6/Add.1, paras. 68 and 79-80.

¹⁰⁸ ECE/MP.PP/C.1/2011/6/Add.1, para. 42.

¹⁰⁹ ECE/MP.PP/C.1/2011/6/Add.1, para. 79.

¹¹⁰ ECE/MP.PP/2008/5/Add.6, para. 79.

¹¹¹ ECE/MP.PP/C.1/2017/3, para. 96.

between the publication of the 2011 EIA report on 11 February 2011 and the expertiza conclusion's adoption on 23 October 2013, no further information relevant to the decision-making on the construction and design of the NPP was compiled by Belarus. However, since it does not have any evidence before it that Belarus was in fact in possession of any more information relevant to the decision-making, the Committee does not make a finding on this point.

Article 6 (7)

133. Lithuania claims that Belarus' representatives at the 2010 Vilnius event were not ready to answer the Lithuanian public's questions. While Lithuania makes this allegation under article 3 (9), since there is no evidence before the Committee of how ready the Belarus officials were to answer the questions of the Belarusian public at the 2009 Ostrovets hearing, the Committee examines this allegation under article 6 (7) instead.

134. In selecting representatives to take part in a public hearing or other event with the public concerned, Belarus should have taken care to ensure that they had the necessary expertise to address the public's questions. For a complex project like an NPP, there may also be technical questions for which its representatives would need to provide further information in writing after the event.

135. In its findings on communication ACCC/C/2012/71 (Czechia), the Committee held:

Having not been provided with a copy of the communicant's questions, the Committee is not in a position to assess whether they were in the form of questions requesting information (i.e., amounting to a request for information under article 4), comments to be taken into account in the decision-making procedure under article 6, paragraph 7, or otherwise. The Committee does not therefore make a separate finding on this point.¹¹²

136. The above situation is similar to the present case. The Committee has not been provided with a transcript of the questions asked by the Lithuanian public that Belarus' representatives are alleged not to have answered. The Committee is accordingly not in a position to make a finding on this point.

Article 6 (8) – due account of the Lithuanian public's comments

2010 expertiza

137. Appendix 4 of the EIA report presented by Belarus to the Committee is a summary of the comments received on the EIA report.¹¹³ This includes in section 6 the comments received during the 2010 Vilnius event. Since Lithuania has not provided the Committee with the text of any comments from the Lithuanian public that are not reflected in appendix 4, the Committee finds the allegation that Belarus failed to take due account of the comments made by the Lithuanian public during the 2010 Vilnius event to be unsubstantiated.

2013 expertiza

138. Regarding the comments received from the public during the decision-making on the 2013 state ecological expertiza, the Committee notes that appendix 4 to the EIA report is dated 2010 and does not appear to contain any comments from the Lithuanian public after May 2010. Despite the Committee's explicit request,¹¹⁴ Belarus has failed to provide any other documents demonstrating how the Lithuanian public's comments were taken into account in the decision-making leading up to the adoption of state ecological expertiza no. 98 on 23 October 2013. The Committee thus finds that, by failing to demonstrate how due account was taken of the comments of the Lithuanian

¹¹² ECE/MP.PP/C.1/2017/3, paras. 104 and 105.

¹¹³ See link in Party concerned's reply to Committee's questions, 18 October 2017, p. 4.

¹¹⁴ Letter to the Parties enclosing questions from the Committee, 10 August 2017, p. 2.

public in the decision-making on the 2013 state ecological expertiza, the Party concerned failed to comply with article 6 (8) of the Convention.

Article 6 (9) – access to decisions

139. While not referring to article 6 (9) specifically, Lithuania claims that the 2010 and 2013 state ecological expertiza conclusions were not published and the Lithuanian public did not have an opportunity to comment on them.

140. As the Committee has previously held, state expertiza conclusions constitute final permitting decisions. The Convention thus does not require that the public have an opportunity to comment on them. However, article 6 (9) requires the public to be promptly informed of the decision, and for the text of the decision to be made accessible along with the reasons and considerations on which the decision is based.

141. Belarus asserts that the text of the 2010 and 2013 state ecological expertizas were publicly available to both the Belarusian and Lithuanian public but has not provided any evidence to support its claim.¹¹⁵ Nor has it provided any evidence that it provided the text of the 2010 and 2013 state ecological expertizas or the related 2011 and 2013 Presidential Decrees to Lithuania with instructions to inform the Lithuanian public.

142. Given the above, the Committee finds that, by not making accessible to the Lithuanian public the text of the 2010 and 2013 state ecological expertiza conclusions, including the reasons and considerations on which they were based, the Party concerned failed to comply with the obligation in article 6 (9) of the Convention.

Article 3 (9) – discrimination

143. In its findings on communication ACCC/C/2012/71 (Czechia), the Committee set out the test for whether the public in the transboundary context had been subject to discrimination under article 3(9) of the Convention:

the Committee considers the general test to be whether the public concerned in [the affected Party] was given any less favourable treatment than the public concerned in [the Party of origin] with regard to its opportunities to participate in the procedure.¹¹⁶

144. Accordingly, the Lithuanian public should have had the opportunity to participate in the decision-making on the Ostrovets NPP on terms no less favourable than the Belarusian public, and Belarus should have taken appropriate and effective steps to ensure that the Lithuanian public could participate on those terms. While cooperation between Belarus and Lithuania could have furthered the opportunities for the Lithuanian public to participate, it was for Belarus to make sure the Convention's requirements were met.

145. Lithuania alleges that the Lithuanian public had less favourable opportunities than the Belarusian public to participate in the decision-making on the Ostrovets NPP in several respects, as examined below.

Access to the full EIA report

146. The Belarusian public was first informed of existence of the full EIA report at the 2009 Ostrovets hearing. Having found in paragraphs 96 and 103 above that the notice to the Lithuanian public regarding the 2009 Ostrovets hearing was ineffective, the Committee considers that the Lithuanian public cannot be said to have been informed about the full EIA report until some point after the 2009 Ostrovets hearing.

147. The Committee thus considers that the Lithuanian public had less opportunity than the Belarusian public to access information relevant to the decision-making on the 2010 state ecological expertiza since they were informed later about the existence of the

¹¹⁵ Party concerned's comments on Committee's draft findings, 20 July 2021, p. 3.

¹¹⁶ ECE/MP.PP/C.1/2017/3, para. 107.

full EIA report and since the full EIA report was only available to view in person in Minsk and Ostrovets.

148. The Committee finds that, by providing less favourable treatment to the Lithuanian public regarding access to the information relevant to the decision-making on the 2010 state ecological expertiza, the Party concerned failed to comply with article 3(9) of the Convention.

Failure to ensure proper translation of documents into Lithuanian

149. Lithuania submits that the public concerned should receive at least the following key documents in their national language: a detailed project description, information about the project's potential impact on the population and the environment, and "procedural and substantial issues of the EIA".¹¹⁷ Lithuania also submits that the translation of the 2011 EIA report provided in Lithuanian in July 2013 (the 2013 EIA report) was of very poor quality.

150. The Committee considers that, while certainly a good practice, the Aarhus Convention, including article 3 (9), does not require a Party of origin to translate all relevant information into the languages of all affected countries.

151. While it is regrettable that the two Parties did not come to a clear agreement regarding translation of at least the main consultation documents (e.g. those listed in para. 149 above) in advance, the Committee notes that this was somewhat compensated for by the fact that English and Russian translations of the full EIA report were available. As noted in paragraph 120 above, according to Lithuania's 2011 national census, 63% of Lithuanians spoke Russian and 30% spoke English. Given this fact, the Committee does not find that the allegedly poor quality of the Lithuanian translation of the EIA report as such implied a breach of article 3 (9) of the Convention.

Interpretation during 2010 Vilnius event

152. The Committee considers that the practical arrangements for public hearings in the transboundary context should as far as possible be settled by written agreement between the States beforehand. While the practical arrangements of the March 2010 event are a cause for concern, there is insufficient evidence before the Committee to determine whether the parties had in fact reached an agreement regarding interpretation during the event or to translate Belarus' representatives' presentations after the event. The Committee thus does not find a breach of article 3 (9) with respect to the interpretation and translation of the 2010 Vilnius event.

Hearing for Lithuanian public prior to the 2013 expertiza

153. Lithuania makes two main allegations about Belarus' failure to provide a proper hearing for the Lithuanian public prior to the 2013 state ecological expertiza's adoption. First, that Belarus actively restricted the Lithuanian public's participation at the 2013 Ostrovets hearing. Second, that despite Lithuania's repeated requests, Belarus failed to organize a public hearing in Lithuania on the full EIA report.

Restrictions on participation

154. Lithuania alleges that the Lithuanian public encountered practical barriers to attend the 2013 Ostrovets hearing, including that the scheduled bus to the hearing left an hour earlier than notified and that at least one Lithuanian journalist was denied a visa to attend.

155. The Committee considers that both these allegations are a matter of concern. Journalists have an important role to play in supporting the implementation of the Convention and they must be able to fully exercise their rights under the Convention just like any other member of the public. In addition, practical arrangements like a scheduled bus departure should not be changed without adequate and effective

¹¹⁷ Submitting Party's reply to Committee's questions, 19 August 2016, p. 3.

notification. However, in the circumstances of the present case, the Committee does not have sufficient evidence before it to make a finding on these allegations.

Failure to organize hearing on full EIA report

156. Lithuania states that it sent multiple requests that a hearing be held in Lithuania to discuss the full EIA report, but that no such hearing was held. Some of these requests were sent after the 2013 state ecological expertiza conclusion was adopted and are thus outside the scope of the Convention.

157. Regarding the requests made before the 2013 expertiza's adoption, the Committee finds that while nothing in the Convention would have prevented Belarus from organizing a hearing in Lithuania, the failure to do so does not in itself constitute a breach of article 3 (9) of the Convention.

Article 3(2) – assistance to the public

158. While Lithuania has not alleged non-compliance with article 3 (2) of the Convention, the Committee makes some observations in this regard. As a minimum, article 3 (2) requires that before a public participation procedure takes place, Parties endeavour to ensure that their officials provide guidance to the public so that the public has an adequate understanding of the relevant law, the decision-making procedure and its opportunities to participate.

159. This obligation applies to each Party to the Convention, whether it be the Party of origin or the affected Party.¹¹⁸ Since the Committee has already addressed the various aspects of the public participation procedure on the 2010 and 2013 expertizas in the preceding paragraphs, it will not make a separate finding on this point. It expresses concern, however, that none of the evidence before it shows that either Belarus or Lithuania took steps to make sure that the relevant law and the rules to be applied during the decision-making procedure were explained to the Lithuanian public.

IV. Conclusions and recommendations

160. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

161. The Committee finds that:

(a) By failing to provide adequate and effective notice to the Lithuanian public concerning its opportunities to participate in the hearing in Ostrovets on 9 October 2009 and to send written comments during the decision-making on the 2010 state ecological expertiza, the Party concerned failed to comply with article 6 (2) (d) (ii) and (v) of the Convention;

(b) By failing to ensure that the means used to notify the Lithuanian public of the 2009 Ostrovets hearing were effective, either by carrying out the notification itself or by making the necessary efforts to ensure that Lithuania had done so effectively, the Party concerned failed to comply with article 6 (2) of the Convention;

(c) By failing to provide adequate and effective notice of the 2013 Ostrovets hearing in the Lithuanian-language media, the Party concerned failed to comply with article 6 (2) of the Convention;

(d) By providing the Lithuanian public with the possibility to examine the full EIA report at an even later stage than that provided to the Belarusian public, which was

¹¹⁸ ECE/MP.PP/C.1/2017/15, para. 87.

in itself too late to comply with the Convention, the Party concerned failed to comply with article 6 (6) with respect to the Lithuanian public also;

(e) By failing to demonstrate how due account was taken of the comments of the Lithuanian public in the decision-making on the 2013 state ecological expertiza, the Party concerned failed to comply with article 6 (8) of the Convention;

(f) By not making accessible to the Lithuanian public the text of the 2010 and 2013 state ecological expertiza conclusions, including the reasons and considerations on which they were based, the Party concerned failed to comply with article 6 (9) of the Convention;

(g) By providing less favourable treatment to the Lithuanian public regarding access to the information relevant to the decision-making on the 2010 state ecological expertiza, the Party concerned failed to comply with article 3 (9) of the Convention.

B. Recommendations

162. The Committee, pursuant to paragraph 35 of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 36 (b) of the annex to decision I/7, recommends that the Party concerned takes the necessary legislative, regulatory and administrative measures and establishes practical arrangements in order to ensure that in decision-making on proposed activities with potential transboundary impacts:

(a) Arrangements are made to initiate co-operation with the affected states at an early stage to ensure translation of the main consultation documents and interpretation at hearings so that the public concerned in those countries can effectively participate in the decision-making;

(b) Adequate and effective notification is provided to the public concerned in the affected states, in their national languages including in widely published media in each state, regarding:

(i) Any decision-making procedure subject to article 6, including the stages and time-frames of the decision-making and the types of decisions, reports and other documentation that will be prepared at each stage.

(ii) Their opportunities to participate in each stage of decision-making subject to article 6, in particular concerning the specific contact point to which comments can be submitted, the exact time schedule for transmittal of comments, and its opportunities to participate in any scheduled public hearing;

(c) The public concerned in the affected states is informed in a timely manner of the possibility to examine the complete draft environmental impact assessment report for a proposed activity subject to article 6;

(d) Due account is taken of comments submitted by the public in the affected states during a public participation procedure under article 6;

(e) The text of state ecological expertizas, including the reasons and considerations on which they are based, is promptly made accessible to the public concerned in the affected states, and instructions are given on where it can be accessed;

(f) Concerning (a)-(e) above, the public in the affected states receives no less favourable treatment than the public in the Party concerned.
