

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VII/81
on compliance by Lithuania with its
obligations under the Convention**

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I. Introduction

1. At its seventh session (Geneva, Switzerland, 18-21 October 2021), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VII/81 on compliance by Lithuania with its obligations under the Convention (see ECE/MP.PP/2021/2/Add.1).

II. Summary of follow-up

2. At its seventy-third meeting (Geneva, 13-16 December 2021), the Committee held an open session to provide guidance on preparing the plan of action that each Party subject to a decision or request of the Meeting of the Parties was requested to submit by 1 July 2022. Representatives of the Party concerned and the communicant of communication ACCC/C/2013/98 took part in the open session.

3. On 8 February 2022, on the Committee's instructions, the secretariat sent an information note and a template for its plan of action to the Party concerned to assist it to prepare its plan of action.

4. At its seventy-fourth meeting (Geneva, 15-16 March 2022), the Committee held a further open session on the preparation of Parties' plans of action. The purpose of the session was to answer any specific questions from the Parties regarding the format or content of their plan of action. Representatives of the Party concerned took part in the open session.

5. On 28 June 2022, the Party concerned submitted its plan of action.

6. On 4 July 2022, the secretariat forwarded the Party concerned's plan of action to the communicant of communication ACCC/C/2013/98 and registered observers, inviting their comments by 1 August 2022.

7. On 1 August 2022, the communicant of communication ACCC/C/2013/98 submitted its comments on the plan of action.

8. On 3 December 2022, the secretariat wrote to the Party concerned that, having reviewed its plan of action, the Committee had concluded that Lithuania's plan of action appeared to be only partially appropriate. The Committee therefore invited the Party concerned to attend an open session at its seventy-seventh meeting (Geneva, 13-16 December 2022) to discuss its plan of action.

9. On 8 December 2022, the secretariat wrote to the Party concerned, providing it with a brief summary of the Committee's concerns on its plan of action.

10. At its seventy-seventh meeting, the Committee held an open session to discuss the Party concerned's plan of action with the participation of representatives of the Party concerned, the communicant of communication ACCC/C/2013/98 and observers Public Interest Advocacy Fund and Mr. Dainius Labeckis.

11. On 15 December 2022, the observer Public Interest Advocacy Fund provided its comments on the plan of action.

12. On 21 March 2023, the Party concerned submitted an update.

13. On 29 September 2023, the Party concerned submitted its first progress report on decision VII/81, on time.

14. On 2 October 2023, the secretariat forwarded the Party concerned's first progress report to the communicant of communication ACCC/C/2013/98 and registered observers, inviting their comments by 30 October 2023.

15. On 30 October 2023, the observer Public Interest Advocacy Fund provided comments on the Party concerned's first progress report.

16. After taking into account the information received, the Committee prepared its first progress review at its virtual meeting on 25 January 2024 and adopted it through its electronic decision-making procedure on 13 February 2024. The Committee thereafter requested the secretariat to forward the first progress review to Lithuania, the communicant of communication ACCC/C/2013/98, and the registered observers.

III. Considerations and evaluation by the Committee

17. In order to fulfil the requirements of paragraph 2 of decision VII/81, Lithuania would need to provide the Committee with evidence that it has taken the necessary legislative, regulatory and administrative measures to ensure that:

- (a) Regarding decisions on whether to permit specific activities subject to article 6 of the Convention:
 - (i) The public is notified about all time frames for opportunities for public participation, including the period during which relevant documentation will be available and in which comments can be submitted;
 - (ii) Any international consultations concerning a specific cross-border activity by a public authority of the Party concerned prior to completion of the public participation procedure under article 6 must not, in law or in fact, preclude all options being open during the public participation procedure;
 - (iii) The range of options open at each stage of decision-making is adequately reflected in the information provided to the public at each stage;
 - (iv) A clear requirement is established that comments submitted by the public are sent to the competent public authority itself;
 - (v) The obligation to take due account of the comments, information, analysis or opinions submitted by the public during the environmental impact assessment procedure is placed on the competent public authority;
 - (vi) When publishing the decision, the competent public authority provides evidence to the public, either in or along with the decision, of how due account was taken of the outcome of the public participation;
- (b) The State Security Department receives clear instructions to refrain from activities that could be perceived as harassment, penalization or persecution of persons seeking to exercise their rights to participate or seek access to justice under the Convention.

General observations

18. The Committee welcomes the Party concerned's first progress report, which was received on time.

19. The Committee appreciates the overall level of engagement that the Party concerned has demonstrated so far in the Committee's follow-up on decision VII/81, including the significant effort made to amend its legislative framework on public participation in environmental impact assessment (EIA) procedures.

20. The Committee however regrets that the Party concerned has not assisted the Committee in its task of reviewing the progress made by the Party concerned to implement decision VII/81 as much as it might have done.

21. In its plan of action and first progress report, the Party concerned cites various provisions of its Law on Environmental Impact Assessment of Planned Economic Activities

(EIA Law) and the Regulations on Environmental Impact Assessment of the Proposed Economic Activity (EIA Regulations). It appears however that new versions of both the EIA Law and EIA Regulations were enacted in 2023. The Committee is therefore disappointed that, in its first progress report, the Party concerned provides no information as to which provisions of the 2023 EIA Law or 2023 EIA Regulations are relevant to the implementation of the recommendations in paragraph 2(a) of decision VII/81. The failure by the Party concerned to do so has significantly hampered the Committee's ability to review the progress made by the Party concerned to implement paragraph 2(a) of decision VII/81.

22. Moreover, in its first progress report, the Party concerned reports jointly on paragraphs 2(a)(ii) and (iii) and paragraphs 2(a)(iv) and (v) of decision VII/81, without explaining which of the measures reported upon are relevant for each particular recommendation. The content of each recommendation is however quite different. The Committee therefore requests the Party concerned, in its final progress report, to indicate clearly which legislative, regulatory or administrative measures it has taken to implement each particular recommendation.

Paragraph 2(a)(i) of decision VII/81 – content of notice for public participation

23. With respect to the recommendation in paragraph 2(a)(i) of decision VII/81, in its plan of action and first progress report the Party concerned cites articles 8(3), 8¹(3) and 10 of its EIA Law and paragraphs 69, 75, 77, 83, 84 of its EIA Regulations.

24. In its first progress report, the Party concerned reports that, following the amendment of the EIA Law adopted on 22 November 2022, it has prepared an updated publication, an information sheet and a schema, which are posted on the websites of the Ministry of the Environment and of the Environmental Protection Agency and aimed at providing the public with information on how to participate in EIA procedures.¹

25. With respect to the provisions of the EIA Law cited in the Party concerned's plan of action and progress report, the Committee notes that the content and numbering of these provisions differs from the excerpt of its 2023 EIA Law submitted by the Party concerned together with its first progress report.² The Committee also notes that the link to the EIA Regulations provided in the plan of action and first progress report states that the EIA Regulations No. D1-885 have been superseded by EIA Regulations No. D1-157, which entered into effect on 24 May 2023. The Committee expresses its disappointment that, in its first progress report, the Party concerned has not provided the Committee with the text of the EIA Regulations as currently in force, nor informed the Committee which provisions of the new Regulations implement the recommendation in paragraph 2(a)(i) of decision VII/81.

26. The Committee notes that, since the publication, information sheet and schema posted online at the links provided in the first progress report are in Lithuanian, the Committee is not in a position to examine their content. While these publications do not directly address the recommendation in paragraph 2(a)(i) of decision VII/81, the Committee nevertheless welcomes the efforts made by the Party concerned to increase the awareness of the Lithuanian public on how to participate in EIA procedures.

27. The recommendation in paragraph 2(a)(i) of decision VII/81, however, concerns the required content of the public notice to be provided to the public concerned during public participation procedures on whether to permit specific activities subject to article 6 of the Convention. Specifically, in order to fulfil paragraph 2(a)(i) of decision VII/81, the Party concerned will need to demonstrate to the Committee that it has taken the necessary legislative, regulatory and administrative measure to ensure that, during public participation procedures on whether to permit specific activities subject to article 6 of the Convention, the public concerned is informed in an adequate, timely and effective manner about all the time frames of its opportunities to participate, including the period during which relevant documentation will be available and in which comments can be submitted.

¹ Party's first progress report, 29 September 2023, pp. 3-7.

² Party's first progress report, 29 September 2023, annex 1.

28. The Committee regrets that, in its first progress report, the Party concerned states that it has implemented this recommendation but fails to indicate which provisions of its legislation, as currently in force, in fact do so. As noted above, the failure by the Party concerned to do so has added considerably to the Committee's work to prepare the current progress review.

29. The Committee also expresses concern that it has not been able to identify any provision of the EIA Law or EIA Regulations clearly requiring that the public concerned is notified in an adequate, timely and effective manner nor any provision requiring the public concerned to be identified, which is instrumental for the effective notification of the public concerned, especially the members of the public concerned who are affected or likely to be affected by the activity and who live in municipalities or districts other than those in which the activity is proposed.

30. Since the Party concerned has not provided the Committee with the full text of its 2023 EIA Law and 2023 EIA Regulations as currently in force, nor explained which of their provisions implement paragraph 2(a)(i) of decision VII/81, the Committee is not in a position to conclude upon whether the Party concerned has fulfilled the requirements of paragraph 2(a)(i). The Committee requests the Party concerned, together with its final progress report due on 1 October 2024, to provide the text, together with an English translation thereof, of all legislative, regulatory and administrative measures it has by then taken to implement the recommendation in paragraph 2(a)(i) of decision VII/81 as well as a clear explanation of how those measures fulfil that recommendation.

Paragraph 2(a)(ii) and (iii) of decision VII/81 – all options open and seen to be open

29. As noted in paragraph 22 above, in its plan of action and first progress report, the Party concerned reports on the recommendations in paragraphs 2(a)(ii) and (iii) jointly.

30. With respect to the recommendations in paragraphs 2(a)(ii) and (iii) of decision VII/81, in its plan of action dated 28 June 2022 the Party concerned referred to a proposed amendment to article 15(1) of the Law on Environmental Protection. In its plan of action, the Party concerned stated that the proposed amendment to article 15(1) provided that:

“When planning an economic activity for which it is necessary to perform the procedures established in the Law on Environmental Impact Assessment of the Proposed Economic Activity of the Republic of Lithuania, no decisions regarding this activity may be taken that restrict the choice of alternatives in advance,- possible alternatives shall be considered and the most appropriate one (s) selected while carrying out strategic environmental assessment and / or environmental impact assessment procedures”.³

31. In its first progress report, the Party concerned reports that the amendment to article 15(1) of the Law on Environmental Protection entered into effect on 15 July 2022. The Committee regrets that the Party concerned has not, however, provided the Committee with the text of article 15(1) as currently in force. This is particularly disappointing given that, in its summary of concerns to the Party concerned's plan of action, the Committee had specifically reminded the Party concerned that, in order to be in a position to assess the measures taken by the Party concerned to fulfil the recommendations contained in decision VII/81, the Committee would need to receive the full texts of all relevant legislation, together with English translations thereof.⁴

32. In its plan of action and first progress report, the Party concerned also refers to articles 11-12 and 17 of the EIA Regulations No. D1-885, as amended in 2022. The Committee notes, however, that the link to the EIA Regulations provided in the Party concerned's plan of action and first progress report states that EIA Regulations No. D1-885 have been superseded by

³ Party's first progress report, 29 September 2023, pp. 9-10.

⁴ Email to Party concerned providing brief summary of Committee's concerns on plan of action, 8 December 2022.

EIA Regulations No. D1-157, which entered into effect on 24 May 2023. In its first progress report, the Party concerned has not provided the Committee with the text of the Regulations No. D1-157 as currently in force, nor informed the Committee which provisions of those Regulations implement the recommendation in paragraph 2(a)(ii) and (iii) of decision VII/81.

Paragraph 2(a)(ii) of decision VII/81 – precluding options through cross-border consultations

33. In order to fulfil the recommendation in paragraph 2(a)(ii), the Party concerned will need to demonstrate that it has taken the necessary legislative, regulatory and administrative measures to ensure that any international consultations concerning a specific cross-border activity by a public authority of the Party concerned prior to completion of the public participation procedure under article 6 do not, in law or in fact, preclude all options being open during the public participation procedure.

34. In its findings on communication ACCC/C/2013/98 (Lithuania), the Committee considered that: “the general location, at least, of the OHL’s border crossing point was perceived to have been fixed at the inter-State consultation meeting on 30 April 2010 between Poland and Lithuania”.⁵ The Committee held that: “by limiting the options in practice for the location of the border crossing point for the overhead power line by setting that location through inter-State consultations before the public participation procedures had been concluded, the Party concerned precluded the possibility for the public to participate when all options on the crossing point were open and thus failed to comply with article 6(4) of the Convention.”⁶

35. Article 15(1) as cited in the Party concerned’s plan of action (see para. 30 above) requires that “no decision” that restricts the choice of alternatives may be taken in advance of the SEA and EIA procedures. However, in the facts before the Committee in its findings on communication ACCC/C/2013/98 (Lithuania), the Party concerned had not taken “a decision” on the border crossing point. Rather, the general location, at least, of the OHL’s border crossing point was perceived to have been fixed at the inter-State consultation meeting on 30 April 2010 between Poland and Lithuania. Thereafter, the only alternatives studied in the SEA and EIA procedures “were compliant with” the crossing point agreed at that meeting and the Committee consider that that demonstrated that the agreement reached at the inter-State meeting foreclosed other options in practice. Given this background, the Committee is not convinced that article 15(1) as cited in the plan of action would be sufficient to prevent the foreclosing of options in practice if a similar situation were to recur in the future.

36. Based on the foregoing, the Committee considers that the Party concerned has not yet demonstrated that it has taken the necessary measures to fulfil the recommendation in paragraph 2(a)(ii) of decision VII/81. The Committee therefore invites the Party concerned, together with its final progress report due on 1 October 2024, to provide the text, together with an English translation thereof, of all legislative, regulatory and administrative measures it has by then taken to implement the recommendation in paragraph 2(a)(ii), as well as a clear explanation of how those measures fulfil that recommendation.

Paragraph 2(a)(iii) – adequate information on the range of options open at each stage

37. The focus of the recommendation in paragraph 2(a)(iii) of decision VII/81 is that the Party concerned ensure that the range of options open at each stage of the decision-making is not just legally open but also can clearly be seen to be open by the public concerned. It appears to the Committee that, while article 15(1) of the Law on Environmental Protection (see para. 30 above) may address the legal obligation not to foreclose alternatives, articles 11-12 and 17 of EIA Regulations No. D1-885 cited in the Party concerned’s plan of action appear of greater relevance to the recommendation in paragraph 2(a)(iii) of decision VII/81, which concerns the information provided to the public concerned on the range of options open at each stage of the decision-making.

⁵ ECE/MP.PP/C.1/2021/15, para. 112.

⁶ ECE/MP.PP/C.1/2021/15, para. 115.

38. On this point, the Committee notes that it is not clear from the cited provisions of EIA Regulations No. D1-885 whether the information to be provided to the public on the range of options open at each stage includes information on the zero-option and the possibility for the public to submit comments regarding the zero-option.

39. In any event, EIA Regulations No. D1-885 cited in the plan of action and first progress report were superseded by EIA Regulations No. D1-157 on 24 May 2023 and the content and numbering of the Regulations has changed. The Committee therefore regrets that, in its first progress report, the Party concerned has not informed the Committee which provisions of EIA Regulations No. D1-157 as currently in force address the recommendation in paragraph 2(a)(iii).

40. Based on the foregoing, the Committee is not in a position to determine the extent to which the Party concerned has fulfilled the recommendation in paragraph 2(a)(iii) of decision VII/81. The Committee requests the Party concerned, in its final progress report due on 1 October 2024, to clearly indicate which provisions of the EIA Regulations or other legislation, as then in force, fulfil the recommendation in paragraph 2(a)(iii), and to provide the full text of those provisions, together with an English translation thereof.

Paragraphs 2(a)(iv) and (v) of decision VII/81 – submission to and consideration of comments by competent public authority

41. As noted in paragraph 22 above, in its plan of action and first progress report, the Party concerned reports on the recommendations in paragraphs 2(a)(iv) and (v) of decision VII/81 jointly.

42. With respect to these recommendations, in its plan of action, the Party concerned referred to articles 8(7), 8(11), 9(4), 11(3), 11(10) and 12(1) of its proposed new EIA Law.

43. In its first progress report, the Party concerned reports that the amended EIA law entered into effect on 1 January 2023. It also reports that EIA Law has since been supplemented with the “Procedural schedule for public information and participation in the process of environmental impact assessment of the proposed economic activity” (Procedural Schedule) which entered into force on 24 May 2023.⁷

Paragraph 2(a)(iv) - submission of comments to competent public authority

44. In order to fulfil the recommendation in paragraph 2(a)(iv) of decision VII/81, the Party concerned will need to demonstrate that it has taken the necessary legislative, regulatory and administrative measures to ensure that it has established a clear requirement that comments submitted by the public are sent to the competent public authority itself, and not, as previously, to an entity not required to be independent from the developer.⁸

45. The Committee considers that the amendments introduced in articles 8(7), 9(4), 11(3), and 11(10) of the 2023 EIA Law appear to be of relevance to the recommendation in paragraph 2(a)(iv) of decision VII/81.

46. In particular, as regards the EIA programme, article 8(7) of the 2023 EIA Law provides that:

“The public concerned shall have the right to submit proposals for a programme to the competent authority and to the organiser of the proposed economic activity or to the drafter of the environmental impact assessment documents within a specified time limit for the submission of proposals...”⁹

47. In those cases in which no EIA programme will be prepared, article 9(4) of the 2023 EIA Law provides that:

⁷ Party’s first progress report, 29 September 2023, p. 12.

⁸ See in particular ECE/MP.PP/C.1/2021/15, paras. 132-137.

⁹ Party’s first progress report, 29 September 2023, annex 1, p. 2.

“The public concerned shall have the right to submit proposals to the competent authority and to the organiser of the proposed economic activity or to the drafter of the environmental impact assessment documents within 10 working days of the date on which the notice of the commencement of the EIA is published by the competent authority.”¹⁰

48. As regards the EIA report, article 11(3) of the 2023 EIA Law provides that:

“...The public shall have the right to access the report and submit proposals to the competent authority and to the drafter of the environmental impact assessment documents before and during the public hearings, and by the deadline referred to in paragraph 10 of this Article.”¹¹

49. Additionally, article 11(10) of the 2023 EIA Law provides as follows:

“Within 3 working days of receipt of the report, the competent authority shall, in accordance with the procedure laid down by the Minister for the Environment, publish a notice of receipt of the report to the public and access to it. Within 10 working days of the publication of the notice, the public concerned shall have the right to submit in writing to the competent authority proposals for an environmental impact assessment and report on the proposed economic activity.”¹²

50. While the above-mentioned provisions of the 2023 EIA Law indicate that, at these stages of the EIA procedure, the public concerned is able to submit its comments directly to the competent public authority, it is not clear however whether this includes “any” comments as required by the Convention (in particular also those regarding the “zero” option) and what is the relation between the time-frame of 10 working days in article 11(10) of the 2023 EIA Law and the time-frame of “at least 20 working days” in paragraph 29.7 of the Procedural Schedule. In this regard, the Committee has not been provided with the full text of the 2023 EIA Law nor the text of the 2023 EIA Regulations. Without having seen the full text of the 2023 EIA Law or the 2023 EIA Regulations, the Committee is not in a position to conclude on whether Party concerned has taken the necessary measures to ensure that a clear requirement is established that, throughout the decision-making on a proposed activity subject to article 6, all comments submitted by the public may be sent to the competent public authority itself.

51. Based on the foregoing, the Committee is not in a position to conclude on whether the Party concerned has fulfilled the recommendation in paragraph 2(a)(iv) of decision VII/81. The Committee requests the Party concerned, in its final progress report due on 1 October 2024, to provide the full texts of its 2023 EIA Law and 2023 EIA Regulations, including an English translation thereof, and to clearly indicate which provisions of its 2023 EIA Law and 2023 EIA Regulations, as then in force, fulfil the recommendation in paragraph 2(a)(iv) of decision VII/81.

Paragraph 2(a)(v) - competent public authority to take due account of the outcomes of the public participation

52. In order to fulfil the recommendation in paragraph 2(a)(v) of decision VII/81, the Party concerned will need to demonstrate that it has taken the necessary legislative, regulatory and administrative measures to ensure that the obligation to take due account of the comments, information, analysis or opinions submitted by the public during the environmental impact assessment procedure is placed on the competent public authority.

53. Having reviewed the provisions of the 2023 EIA Law referenced by the Party concerned in its first progress report in relation to paragraph 2(a) (iv) and (v) of decision VII/81 (see paragraph 42 above), it appears that the primary responsibility to assess and take

¹⁰ Party’s first progress report, 29 September 2023, annex 1, p. 4.

¹¹ Party’s first progress report, 29 September 2023, annex 1, p. 4.

¹² Party’s first progress report, 29 September 2023, annex 1, p. 6.

due account of the comments received from the public concerned during the EIA process remains on the drafter, rather than the competent public authority.¹³

54. As to the EIA Programme, while the Party concerned refers to article 8(11) of the EIA Law, it appears that article 8(10) would be the correct reference on this stage of the EIA process, providing that “Within 10 working days of receipt of the programme, the competent authority, having examined and assessed the programme and the proposals submitted jointly by the interested public and on the basis of the conclusions of the environmental impact assessment entities, shall approve the programme or submit reasoned requirements to the drafter of the environmental impact assessment documents to supplement and/or amend the programme....”. This must be read together with article 8(9), not referenced by the Party concerned, which sets out the responsibility of the drafter of the EIA documents to conduct the assessment of the proposals from the public concerned.¹⁴

55. Similarly, in the context of the notice on the commencement of an EIA procedure without an EIA programme, article 9(4) of the EIA Law provides that it is for the drafter, together with the operator, to “submit an assessment of the proposals received [from the public concerned]”.

56. Though not referenced by the Party concerned, article 11(1) of the EIA Law provides that, when drafting the EIA report, “The drafter of the environmental impact assessment documents shall draw up the report... taking into account the proposals received [from the public concerned]”. Given that this is the only provision in the EIA Law addressing specifically the “taking into account” of public comments, it is disappointing that the Party concerned did not itself bring this provision to the Committee’s attention.

57. Pursuant to article 12(1) of the EIA Law, the competent public authority “having examined the proposals of the public concerned and the assessment of these proposals” either requests that the EIA report be supplemented or amended or makes a decision on the environmental impact of the proposed economic activity. As outlined above, the referenced assessment of the proposals from the public (i.e. the actual taking into account of the public comments for purposes of the EIA process) continues to be conducted by the drafter, not the competent public authority.

58. Although not drawn to the Committee’s attention by the Party concerned, this is further reinforced by point 17 of the Procedural Schedule. Point 17 provides as follows:

“The preparer of the EIA documentation shall register the proposals of the concerned public on the EIA programme received from the Agency, the organiser of the proposed economic activity and directly from the representatives of the concerned public in accordance with the form for registration of the proposals of the concerned public set out in Annex 2 to the Procedural Schedule and, together with the organiser of the proposed economic activity, shall prepare an evaluation of the proposals of the concerned public by completing the form set out in Annex 3 to the Procedural Schedule. The proposals shall be evaluated, indicating whether they have been accepted, partially accepted or rejected. Information shall be provided on how the accepted proposal has been taken into account. In the event of rejection or partial rejection of a proposal, reasons shall be given for the rejection or partial rejection.”¹⁵

59. Based on the foregoing provisions, it appears that the primary responsibility to take due account and assess the comments from the public concerned during public participation in EIA processes continues to lie on the drafter, not the competent public authority. In this context, the Committee also notes the information received from the observer Public Interest Advocacy Fund, which raised concerns about the fact that comments received from the public

¹³ ECE/MP.PP/C.1/2021/15, para. 139.

¹⁴ Party’s first progress report, 29 September 2023, annex 1, pp. 2-3.

¹⁵ Party’s first progress report, 29 September 2023, annex 3, p. 3; see also article 37 of the Procedural Schedule for Public Information and Participation in the Process of Environmental Impact Assessment of the Proposed Economic Activity (Party’s first progress report, 29 September 2023, annex 3, p. 7).

are evaluated not by a competent public authority but by the drafter of the documents/the project developer.¹⁶

60. Therefore, the Committee concludes that the Party concerned has not yet demonstrated that it has met the requirement in paragraph 2(a)(v) of decision VII/81 to establish a clear obligation on the competent public authority to take due account of the comments received from the public during the EIA procedure.

Paragraph 2(a)(vi) of decision VII/81 – making available decisions along with the reasons and considerations on which the decision is based

61. With respect to the recommendation in paragraph 2(a)(vi) of decision VII/81, in its first progress report, the Party concerned reports that it conducted a training for law enforcement officers of the Environmental Protection Agency and Fire and Rescue Department on 24 November 2022. It also reports that the Ministry of Environment is planning to organize similar law enforcement trainings for the Environmental Protection Agency in the last quarter of 2023, with the aim to remind these officers that the decisions on EIAs, and all accompanying documents, be made available to the public.¹⁷

62. As to the training provided to law enforcement officers on 24 November 2022, while the Committee welcomes the Party concerned's initiative to provide training to its officials, the Party concerned has not provided any information on the content of the training or its relevance to the recommendation in paragraph 2(a)(vi) of decision VII/81.

63. In its plan of action dated 28 June 2022, replicated in its first progress report, the Party concerned referred to articles 11(9) and (12) of the EIA Law, as then in force, as well as articles 13(3) and 87 of the EIA Regulations as then in force.¹⁸

64. Based on the information before it, it appears to the Committee that the text of both article 11(9) and (12) of the EIA Law had in fact substantially changed by the time the Party concerned submitted its first progress report.¹⁹ The excerpt of the latest version of the EIA Law, in force as of 1 January 2023, and submitted as annex 1 to the first progress report, no longer contains the same or equivalent language in either of these provisions.²⁰ In contrast, the older version of the EIA Law, submitted as annex 2 to the first progress report, does reflect the language quoted by the Party concerned in its first progress report. It therefore appears that the information provided by the Party concerned in its first progress report was based on an already then-superseded EIA law and no longer reflected its legal framework in force at the time. The Committee reminds the Party concerned that, in order for the Committee to effectively carry out its work, it is essential that the Party concerned provides the Committee with accurate, clear, complete and up-to-date information regarding the measures it has taken to implement the recommendations, including English translations of all relevant provisions thereof.

65. The Committee expresses its disappointment that the Party concerned did not itself indicate to the Committee which provisions of its legislation as currently in force are relevant for its implementation of paragraph 2(a)(vi) of decision VII/81. In the light of the failure by the Party concerned to do so, the Committee is not in a position to conclude on whether the Party concerned has fulfilled the recommendation in paragraph 2(a)(vi) of decision VII/81. The Committee requests the Party concerned, in its final progress report due on 1 October 2024, to provide the full texts of its 2023 EIA Law and 2023 EIA Regulations, including an English translation thereof, and to clearly indicate which provisions of its 2023 EIA Law and 2023 EIA Regulations, as then in force, fulfil the recommendation in paragraph 2(a)(vi) of decision VII/81.

¹⁶ Comments on first progress report by observer Public Interest Advocacy Fund, 30 October 2023, para. 9.2.2.

¹⁷ Party's first progress report, 29 September 2023, p. 14.

¹⁸ Party's first progress report, 29 September 2023, pp. 13-14.

¹⁹ Party's first progress report, 29 September 2023, p. 13.

²⁰ Party's first progress report, 29 September 2023, annex 1.

Paragraph 2 (b) of decision VII/81 – clear instructions to State Security Department

66. In order to fulfil paragraph 2 (b) of decision VII/81, the Party concerned will need to demonstrate to the Committee that it has taken the necessary legislative, regulatory and administrative measures to ensure that the State Security Department receives clear instructions to refrain from activities that could be perceived as harassment, penalization or persecution of persons seeking to exercise their rights to participate or seek access to justice under the Convention.

67. With respect to paragraph 2 (b) of decision VII/81, in its plan of action dated 28 June 2022, the Party concerned referred to various amendments to its Law on Intelligence, amending the procedure for handling complaints about intelligence officers conducting intelligence and counter-intelligence operations. The amendments establish a new, independent Office of the Intelligence Controller, who, in accordance with article 23 on the Law on Intelligence and the Law on Intelligence Controllers, is mandated to receive complaints, as well as to investigate on its own initiative, alleged violations of human rights and freedoms.²¹ The Party concerned also referred to the future possibility for the Intelligence Controller, in accordance with article 24 on the Law on Intelligence Controllers, to formulate methodological recommendations and/or provide advice to the State Security Department (and potentially other intelligence institutions) on refraining from activities that could be perceived as harassment, penalization or persecution of persons seeking to exercise their rights under the Aarhus Convention.²²

68. In its first progress report, the Party concerned reports that, on 21 March 2023, the Parliament appointment a new Intelligence Controller for a 5-year term. It reports that the Office of Intelligence Controllers “performs continuous supervision of the legality of the activities of intelligence institutions, checks the validity and legality of the application of the methods of these institutions, investigates possible violations of human rights, checks the legality of personal data processing, examines complaints of intelligence officers, makes recommendations to intelligence institutions, [and] upon detecting signs of a possible criminal act, applies to pre-trial investigation institution or prosecutor”.

69. While the Committee welcomes the various amendments referred to by the Party concerned in its plan of action, including the establishment of the independent Office of the Intelligence Controller, the Committee again expresses its disappointment about the Party concerned’s failure to provide the full text of the new legislation, together with an English translation thereof. Without having before it the full text of the relevant legislation, including an English translation thereof, the Committee is not in a position to determine whether the recommendation in paragraph 2 (b) of decision VII/81 is met.

70. In any event, based on the information provided in the plan of action and first progress report itself, it appears to the Committee that the amendments to the Law on Intelligence and the Law on Intelligence Controllers concern the possibility for members of the public to submit complaints or for Intelligence Controllers to investigate violations of human rights on their own initiative, after alleged violations have occurred. The amendments, however, do not appear to address the requirement in paragraph 2 (b) for the Party concerned to ensure that the State Security Department receives clear instructions to refrain from activities that could be perceived as harassment, penalization or persecution of members of the public exercising their rights under the Convention, as required under article 3 (8) of the Convention. In this context, the Committee notes that, in its plan of action, the Party concerned had stated that it:

“planned to contact the appointed intelligence controllers so that they could formulate methodological recommendations and / or provide advice to the State Security Department (and potentially other intelligence institutions) on refraining from activities that could be perceived as harassment, penalization or persecution of

²¹ Party’s first progress report, 29 September 2023, pp. 15-16.

²² Party’s first progress report, 29 September 2023, pp. 16-17.

persons seeking to exercise their rights to participate or seek access to justice under the Convention”.

71. The Committee considers that, subject to their content and legal force, if the methodological recommendations were in practice binding on officers of the State Security Department, such recommendations may indeed meet the requirements of paragraph 2 (b) of decision VII/81. The Committee, however regrets that, based on Party concerned’s first progress report, it appears that the Office of the Intelligence Controller has not yet commenced the preparation of any such recommendations.

72. In this context, the Committee recalls the comments submitted by the communicant of communication ACCC/C/2013/98 on the plan of action of the Party concerned. In its comments, the communicant had already flagged the failure of the Law on Intelligence Controllers and the Law on Intelligence to include explicit obligations for members of the intelligence services “to refrain from activities that could be perceived as harassment, penalization or persecution of persons seeking to exercise their rights”.²³

73. The Committee recognizes the difficult security situation in Lithuania due to the ongoing military invasion by the Russian Federation of Ukraine. However, while welcoming the initial steps taken to date, based on the considerations in paragraphs 66-72 above, the Committee considers that the Party concerned has not yet met the recommendation in paragraph 2 (b) of decision VII/81. The Committee therefore invites the Party concerned, together with its final progress report, to provide the full text, together with an English translation thereof, of all legislative and other measures that it has by then taken to fulfil paragraph 2 (b) of decision VII/81 and to explain in its final progress report how those measures meet the requirements of paragraph 2 (b) of decision VII/81.

IV. Conclusions

74. The Committee welcomes the Party concerned’s first progress report which was received on time.

75. The Committee, however, expresses its disappointment that, despite the Committee’s express request for it to do so,²⁴ the Party concerned has failed to provide the Committee with the full texts of all relevant legislation, together with English translations thereof.

76. The Committee also expresses its disappointment that, with respect to the recommendations in paragraph 2(a)(i)-(vi) of decision VII/81, the Party concerned has either omitted to indicate to the Committee which provisions of its current legislation implement those recommendations or provided incomplete or outdated information.

77. The Committee accordingly requests the Party concerned to provide the clarifications requested in the present progress review in its final progress report due on 1 October 2024. It also requests the Party concerned, together with its final progress report, to provide the full text of its EIA Law and EIA Regulations as then in force, as well as the text of any other legislative, regulatory or administrative measures that it has by that taken to implement the recommendations in paragraph 2(a)(i)-(vi) and (b) of decision VII/81, along with English translations thereof.

78. The Committee reminds the Party concerned that all measures necessary to implement decision VII/81 must be completed by, and reported upon, by no later than 1 October 2024, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VII/81.

²³ Communicant’s comments to Party’s plan of action, 1 August 2022, pp. 2-3.

²⁴ Email to Party concerned providing brief summary of Committee’s concerns on plan of action, 8 December 2022.