



**LIETUVOS RESPUBLIKOS APLINKOS MINISTERIJA**  
**THE MINISTRY OF ENVIRONMENT OF THE REPUBLIC OF LITHUANIA**

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Compliance Committee  
Convention on Access to Information, Public  
Participation in Decision-making  
and Access to Justice in Environmental Matters  
(Aarhus Convention)  
United Nations Economic Commission for  
Europe  
Environment Division  
Palais des Nations  
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**SUBMISSION OF THE REPUBLIC OF LITHUANIA REQUESTING TO INVESTIGATE  
THE COMPLIANCE OF THE REPUBLIC OF BELARUS WITH THE PROVISIONS OF  
THE AARHUS CONVENTION IN THE COURSE OF THE IMPLEMENTATION OF THE  
PROJECT FOR THE CONSTRUCTION OF A NUCLEAR POWER PLANT IN BELARUS**

**I. SUMMARY**

This submission is placed in order to assess the actions of the Republic of Belarus (hereinafter referred to as Belarus) within the framework of the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter referred to as the Aarhus Convention) in the course of the implementation of the project for the construction of a nuclear power plant (hereinafter referred to as NPP) in Belarus (hereinafter referred to as the Project). The Republic of Lithuania (hereinafter referred to as Lithuania), being a concerned party and representing its public, claims that Belarus planned and performed preparatory and Project implementation works in violation to the right of the Lithuanian public of access to detailed information about the Project and the right to participate in the Project-related decision-making process.

Primary information about Belarus' plans to construct a NPP in Ostrovets area (Belarus) appeared in the media in 2006-2008. Since then Lithuania stated its interest to participate in the transboundary environmental impact assessment (hereinafter referred to as EIA) process and raised issues regarding the nuclear safety of the proposed facility and its impact on the Lithuanian public and the environment. Failing to receive any answers to the raised questions, Lithuania contacted the International Atomic Energy Agency (IAEA) asking to urge Belarus to provide the requested information in 2011. Lithuania contacted the Implementation Committee of the United Nations Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context (hereinafter referred to as the Espoo Convention) regarding the assessment of the compliance of the actions of Belarus with its obligations under international law.

Even though Belarus started preparatory works of the Project in 2008 (it actually selected the NPP construction site in Ostrovets area in 2008 and started the preparation of infrastructure at this site in January 2009), it informed Lithuania about the proposed activities, as required by the provisions of the Espoo Convention, only in August-September 2009 and provided the preliminary EIA report in September 2009. On 2 March 2010, efforts were made to hold a public hearing for the discussion of the said preliminary EIA report with the Lithuanian public; however, the event did not

meet the requirements of international law, because (1) Belarus, being the party of origin, failed to ensure translation into Lithuanian<sup>1</sup>, and (2) failed to provide information requested by the Lithuanian public and related to the impact of the proposed NPP on the Lithuanian environment and the public. During the bilateral meeting of Lithuanian and Belarusian experts held on 18 June 2010 it became apparent that Belarus had drawn up an EIA report, which was four times as voluminous, and made it publicly available on 4 March 2010, while no mention of it was made to the Lithuanian public and authorities concerned; therefore, the document presented in Vilnius on 2 March 2010 can only be considered as the EIA scoping document. Preparatory works of the Project were performed in haste: even though Lithuania repeatedly raised questions regarding the nuclear safety of the Project and its impact on population and the environment and requested to supplement the EIA report with relevant information, the Belarusian Ministry of Natural Resources and Environmental Protection failed to provide answers to questions raised by Lithuania. Some of the decisions made in the process of the implementation of the Project were not available to the Lithuania; thus, it could not submit any comments.

Having examined Lithuania's submission and related documents, the Implementation Committee (Espoo Convention) stated in its report published on 15 April 2013 that Belarus was in non-compliance with the provisions of the convention and recommended to take actions to eliminate the identified non-compliance.

Experts reached an agreement during the meeting of the Lithuanian-Belarusian Commission for Trade and Economic Cooperation held in Vilnius on 28 May 2013 that Belarus will provide an updated EIA report that would comply with the findings of the Espoo Committee. This undertaking was entered into the minutes and signed.

On 11 June 2013, Belarus provided Lithuania with the Lithuanian translation of the Project EIA report (the volume of the document was approximately 1,000 pages) drawn up in 2010. The quality of the translation was extremely bad, it was impossible to understand the text, as it was translated using a computer-based translation software; therefore, it was unsuitable to be disclosed for the public.

On 17 August 2013, Belarus unilaterally and without any consideration to Lithuania's request to abstain from any unilateral actions and to allocate reasonable time for the analysis of the document hastily organised an event in Ostrovets (Belarus) in order to obtain a formal approval of the EIA report version sent on 11 June 2013. Lithuanian competent authorities did not support this initiative, as (1) Belarus made a decision to organise this event unilaterally; (2) Lithuanian competent authorities were not allocated reasonable time for the scrutiny of the voluminous document received on 11 June 2013 and for the submission of comments regarding this document; (3) even though Belarus claimed to have sent the EIA report in Lithuanian language, the text made no sense and was unsuited for presentation to the public as a result of the extremely bad translation, made by Belarus. The majority of Lithuanian citizens who participated in the Ostrovets event were selectively chosen, while the attempts of several journalists intending to attend the event to get there were unsuccessful. After this event Belarus announced false information that the Lithuanian public had no comments regarding the ongoing Project, that answers were provided to all questions raised by Lithuania and that the EIA procedure was completed. Directly afterwards Belarus approved the findings of the State Ecological Expertiza stating that the Project would have no negative impact on the environment and the public and issued the permit (licence) authorising the installation of nuclear equipment in Unit One of the Ostrovets NPP, while the President of the Republic of Belarus adopted a decree on the implementation of the Ostrovets NPP Project in the period of 2013-2020.

In June 2014, the sixth meeting of the Parties to the Espoo Convention acknowledged that Belarus was implementing the NPP Project in non-compliance with the provisions of the Espoo Convention and recommended to take actions to eliminate the identified non-compliance. It should be noted that the fifth meeting of the Parties to the Aarhus Convention held in July 2014 also stated

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<sup>1</sup> The Implementation Committee (Espoo Convention) has also stated this in its report (ECE/MP.EIA/IC/2013/2), para. 45.

for the second time in a row<sup>2</sup> that Belarus was developing the NPP Project in non-compliance with the Aarhus Convention.

Even though non-compliance of Belarus with international conventions was acknowledged internationally and Lithuania reiterated objections to information disseminated by Belarus and urged to comply with obligations under international law, the Project implementation works were not and are not suspended. Questions raised by Lithuania regarding the nuclear safety and the impact on the Lithuanian environment and the public remain unanswered, while the public keeps submitting requests to provide detailed information pertaining to the construction of the Belarusian NPP that is a mere 50 km away from the Lithuanian capital of Vilnius.

With due consideration to the above and in order to ensure the security of rights guaranteed for the Lithuanian public by the Aarhus Convention, Lithuania hereby requests to assess the compliance of the actions of Belarus with **Article 3(9) and Article 6(2)-(4), (6) and (8) of the Aarhus Convention**.

## **II. INFORMATION ABOUT THE PARTY PLACING THE SUBMISSION**

This request to investigate the compliance of the actions of Belarus with the provisions of the Aarhus Convention in the course of the implementation of the Project has been drawn up by the Aarhus Convention national focal point, viz.

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Ministry of Environment of the Republic of Lithuania, A. Jakšto g. 4/9, LT- 01105, Vilnius.

## **III. INFORMATION ABOUT THE CONCERNED PARTY**

1. Belarus is the concerned party of this submission.
2. Belarus signed the Aarhus Convention on 16 December 1998. Provisions of the Convention came into force in Belarus on 30 October 2001.

## **IV. INFORMATION ABOUT THE PERFORMED RELATED PROCEDURES**

### ***Aarhus Convention***

Communication ACCC/C/2009/37 of 1 May 2009;

Communication ACCC/C/2009/44 of 18 December 2009; the communicant, viz. non-governmental organisation European ECO Forum, applied on behalf of the public regarding the restriction of the public participation in decision-making in the course of the implementation of the Belarusian NPP construction project.

The fourth meeting of the Parties to the Aarhus Convention held in 2011 adopted Decision IV/9(b) on the performance of obligations of Belarus under the Aarhus Convention (ECE/MP.PP/2011/L.13), which recognised that Belarus was non-compliant with Article 4(1), Article 6(2), (3), (8) and (9), Article 7 of the Aarhus Convention and provided recommendations.

The fifth meeting of the Parties to the Aarhus Convention held in 2014 adopted Decision V/9(c) on the performance of obligations of Belarus under the Aarhus Convention (ECE/MP.PP/2014/L.12), which recognised that Belarus was continuously non-compliant with Article 4(1), Article 6(2), (4), (6), (7) and (9) of the Aarhus Convention and provided recommendations.

### ***Espoo Convention***

Submission EIA/IC/S/4 of 7 June 2011, submitted by Lithuania. Request is made to investigate the compliance of Belarus with the provisions of the Espoo Convention in the course of the implementation of the Project.

The sixth meeting of the Parties to the Espoo Convention held in 2014 adopted Decision VI/2

<sup>2</sup> The statement regarding non-compliance of Belarus with the Aarhus Convention was made in meetings of the Parties to the Aarhus Convention held in 2011 and 2014.

on the compliance of the activities of Belarus with the provisions of the Convention, which recognised that Belarus was non-compliant with Article 2(6), Article 4(2), Article 5(a) and Article 6(1) and (2) of the Espoo Convention and provided recommendations for the elimination of the identified non-compliance.

## V. THE FACTS

From the very first media reports and official letters of Belarus informing about plans to construct a NPP in Ostrovets area in Belarus, the Lithuanian public and experts stated their interest to receive information and participate in the transboundary EIA process and raised issues regarding the nuclear safety of the proposed facility and its impact on the Lithuanian public and the environment.

Even though Belarus informed Lithuania about its plans to construct the NPP on 15 July 2008, it could not be considered to be the notification under Article 3 of the Espoo Convention, as it lacked substantial information, which Lithuania officially noted to Belarus. Nevertheless, the Ministry of Environment of the Republic of Lithuania (hereinafter referred to as the Lithuanian Ministry of Environment) informed about its intention to participate in the transboundary EIA process and requested notification on any further actions taken in the course of EIA procedures.

On 24 August 2009, the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus (hereinafter referred to as the Belarusian Ministry of Natural Resources and Environmental Protection) sent an abridged version of the preliminary EIA report<sup>3</sup> to the Lithuanian Ministry of Environment and stated that the full text of the document (in Russian and in English) will be available online at <http://minpriroda.by>, [www.minenergo.gov.by](http://www.minenergo.gov.by) and [www.dsae.by](http://www.dsae.by), and noted that later Lithuania will be provided with a hardcopy of the report. Having received this information, on 7 September 2009, the Lithuanian Ministry of Environment addressed competent national authorities and non-governmental environmental organisations<sup>4</sup> requesting them to assess information provided by Belarus and to submit their comments<sup>5</sup>. Thirty-nine comments were sent to Belarus identifying the missing information that had to be provided under Appendix II to the Espoo Convention and stating that the findings of the preliminary EIA report were unjustified and that the document could only be considered as an EIA scoping document.

On 10 February 2010, the Lithuanian Ministry of Environment proposed to organise a public hearing for the discussion of the submitted EIA report to be held on 2 March 2010 in Lithuania (in Vilnius). Belarusian representatives did not object to the public hearing; they confirmed their participation and informed that they would ensure translation into Lithuanian during the hearing. Approximately 80 representatives of the Lithuanian public concerned attended the meeting and had a lot of questions to ask; however, no translation into Lithuanian was provided. Belarusian representatives were not ready to answer questions of concern to the public, viz. they could not explain the criteria of the selection of the site, the potential impact of the Project on the Lithuanian environment and the public, etc. Belarusian representatives promised to translate all the presentations into Lithuanian and to send them after the meeting; however, they failed to do it.

In March-April 2010, appeals<sup>6</sup> of the public concerned were received as a response to public

<sup>3</sup> Letter No 14-16/3759- BH.

<sup>4</sup> Letter No (1-15)-D8-7721; information communicated to the Ministry of Energy, the Ministry of Agriculture, the Ministry of Transport and Communications, the Ministry of Foreign Affairs, the State Nuclear Power Safety Inspectorate, the Radiation Protection Centre, the Environmental Protection Agency, the Geological Survey, the State Service for Protected Areas, the Lithuanian Energy Institute, non-governmental organisations the Lithuanian Green Movement and Community *Atgaja*.

<sup>5</sup> Letter No 14-16/996.

<sup>6</sup> The appeal of 18 March 2010 of the association of Skirgiškės residents; Letter No AM-2010-03-10 of 29 March 2010 of the Lithuanian Green Movement; the petition of 25 March 2010 of the citizens of the Republic of Lithuania regarding the proposed Belarusian NPP; the public appeal of 31 March 2010 of 37 persons expressing concern over the construction of the Ostrovets NPP (reference is made to historical lessons learnt from the Chernobyl nuclear accident); the appeal of 23 April 2010 from the member of the European Parliament; e-mails from concerned citizens of the Republic of Lithuania dated March-April 2010.

information about the construction of the Ostrovets NPP, and comments regarding the improper presentation of the EIA report to the public at the meeting held on 2 March 2010 were submitted. The public concerned appealed not only to the Lithuanian Ministry of Environment, but also the Parliament (Seimas) of the Republic of Lithuania, the Lithuanian Prime Minister and the President of the Republic of Lithuania requesting to ensure due representation of the Lithuanian public in obtaining information about the safety of the Ostrovets NPP Project and its impact on the environment and the public. Members of the public initiated an e-petition against the construction of the Ostrovets NPP, which was signed by over 23,000 persons.

On 18 June 2010, a bilateral meeting of Lithuanian and Belarusian representatives was held in Minsk (Belarus), during which the Belarusian party unexpectedly informed about substantial amendments made to the EIA report (the volume of the report increased approximately four times). Lithuanian representatives expressed their regret that the updated EIA report was made available to them only at the time of the meeting and that neither Lithuanian competent authorities nor the public had any chance to examine it in advance<sup>7</sup>. Furthermore, on 9 July 2010, the Lithuanian Ministry of Environment submitted written comments to Belarus regarding the assessment of the bilateral meeting and requested to provide the updated EIA report as soon as possible. Some time after the meeting false information appeared in the Belarus media claiming that Belarus considered EIA procedures to be complete and that Lithuania had no objections regarding EIA documents. Lithuania submitted an official denial of this information.

On 15 September 2011, the President of the Republic of Belarus issued a decree approving the Ostrovets site for the construction of the NPP; however, the preparation of infrastructure at this site was started as early as January 2009. In 2006-2008, Belarus selected three potential locations for the construction of the NPP, viz. the Krasnaya Polyana site (Bykhov area), the Kukshinovo site (Shklov-Gorky area) and the Ostrovets site (Ostrovets area)<sup>8</sup>. The Belarus Ecological Expertiza findings stated that the comparative analysis of the selected locations showed that the activation of suffusion-karst processes were possible at the Kukshinovo site (Shklov-Gorky area) and at the Krasnaya Polyana site (Bykhov area); therefore, the Ostrovets site (Ostrovets area) was selected for the construction of the NPP. However, no explanation was provided as to why no consideration was given to the site in Vitebsk area, which was listed as one of the potential locations for the construction of the NPP in the letter<sup>9</sup> of 15 July 2008 that the Belarusian Ministry of Natural Resources and Environmental Protection sent to Lithuania. Neither the Ecological Expertiza findings nor any other documents drawn up by Belarus mention the site in Vitebsk area at all. Belarus still has not provided any reasoning behind the elimination of Vitebsk area from the list of NPP construction locations. Belarus failed to provide any evidence proving that any assessment of alternative locations was performed prior to selecting the Ostrovets site, or any objective justification for the choice to build the Belarusian NPP a mere 50 km away from the Lithuanian capital of Vilnius.

On 9 August 2012, the symbolic time-capsule laying ceremony signifying the commencement of the construction of the NPP was held with the participation of the President of the Republic of Belarus.

Due to the failure to have any constructive cooperation with the Belarusian Ministry of Natural Resources and Environmental Protection on the Project EIA matters, on 7 June 2011, Lithuania placed a submission to the Implementation Committee (Espoo Convention) requesting to investigate the compliance of the actions of Belarus with the provisions of the Espoo Convention in the course of the implementation of the Project. Having assessed information<sup>10</sup> provided by

<sup>7</sup> A written version of this EIA report was received only on 11 February 2011, i.e. more than seven months after the bilateral meeting.

<sup>8</sup> Findings No 98 of the State Environmental Expertiza approved on 23 October 2013 by the Belarusian Ministry of Natural Resources and environmental Protection and found online. It should be noted that decrees of the President of the Republic of Belarus are based on the Ecological Expertiza findings of 2011 and 2013 that were not available to Lithuania.

<sup>9</sup> Letter No 14-09/2945- BH.

<sup>10</sup> The assessment pertained to information provided by March 2013.

Lithuania and Belarus, the Implementation Committee published its report on 15 April 2013 in which it presented its findings and recommendations regarding Belarus. The Implementation Committee stated that Belarus was in non-compliance with the Espoo Convention and recommended for Belarus to continue the transboundary EIA process. It also stated that, prior to organising consultations, all concerned parties had to receive relevant and full EIA documentation. With regard to these recommendations, Lithuania requested to submit the final EIA documentation and to provide comprehensive answers to questions that Lithuania has been raising since 2009.

Experts reached an agreement during the meeting of the Lithuanian-Belarusian Commission for Trade and Economic Cooperation held in Vilnius on 28 May 2013 that Belarus will provide an updated EIA report that would comply with the findings of the Espoo Committee. This undertaking was entered into the minutes and signed.

On 11 June 2013, the Belarusian Ministry of Natural Resources and Environmental Protection provided the translation of the EIA report into Lithuanian (3 volumes)<sup>11</sup>, i.e. it was only after two years that Belarus did attempt to provide an opportunity for the Lithuanian public to examine the EIA report rather than its abridged and summarised version in Lithuanian. By the same letter, Belarus proposed to hold a discussion of the EIA report with the Lithuanian public by 15 August 2013. The preliminary assessment showed that the provided report was an old document drawn up in 2010, while its translation was of an extremely bad quality and could not be presented to the public. Complaints regarding the translation and the content of the document itself were submitted to the Belarusian Ministry of Natural Resources and Environmental Protection. As the Lithuanian text of the provided EIA report made no sense and was apparently translated using a computer-based translation software, Lithuania could not provide it to the public. Considering persistent requests from Belarus and only with an enclosed explanatory note informing that liability for the translation of the EIA report lays with the Belarusian Ministry of Natural Resources and Environmental Protection, Lithuania provided this document to the public on 27 September 2013.

On 8 July 2013, Lithuania informed Belarus that it had started the analysis of the received EIA report and, with due consideration to the huge volume of the document, it could submit its comments by the end of summer. Even though Lithuania asked Belarus to abstain from any unilateral actions regarding the provision of information to the public, the Belarusian Ministry of Natural Resources and Environmental Protection informed that it was going to organise the presentation of the EIA report in Ostrovets (Belarus) on 17 August 2013<sup>12</sup>. Such actions of Belarus were unacceptable to Lithuanian authorities, as (1) Belarus made a unilateral decision to organise the presentation of the EIA in Ostrovets; (2) Lithuanian authorities and the public did not have reasonable time for the scrutiny of the voluminous EIA report and for the submission of comments; (3) the translation of the EIA report into Lithuanian was of an extremely bad quality, the text made no sense and was translated using a computer-based translation software; therefore, it was unsuited for the presentation to the public. Lithuania's requests to abstain from organising discussions of the EIA reports in haste were submitted in the form of official letters; however, it became apparent from information in the media that the event was nevertheless held in Ostrovets. It was found out later that the majority of participants were from the Lithuanian town of Visaginas and only few came from Vilnius<sup>13</sup>. Lithuania cannot consider this event as ensuring for the Lithuanian public the access to information and the right to submit comments, because there were serious obstacles for the Lithuanian public to participate in the event. First, the Lithuanian public was not duly informed about this event; second, Lithuanian citizens wishing to get to the site of the event encountered difficulties, viz. they had to have a passport intended for travelling to countries other than the Schengen area countries, obtain a Belarusian visa, take care of the transport. Public sources prove that deliberate obstacles for Lithuanian public were made in order to sort out those who wished to participate, viz. restricted issuing of visas; limitation of information related to the proposed meeting;

<sup>11</sup> Letter No 13-15/1287-BH.

<sup>12</sup> Letter No 13-15/1429- BH.

<sup>13</sup> [http://www.15min.lt/naujiena/verslas/energetika/baltarusiai-ramina-lietuvius-kad-nera-ko-baimintis-katastrofos-astrovo-atomineje-elektrineje-vejas-dazniausiai-pucia-nuo-lietuvos-puses-664-361878?utm\\_source=15min&utm\\_medium=desine&utm\\_campaign=skaitomiausios\\_naujienos](http://www.15min.lt/naujiena/verslas/energetika/baltarusiai-ramina-lietuvius-kad-nera-ko-baimintis-katastrofos-astrovo-atomineje-elektrineje-vejas-dazniausiai-pucia-nuo-lietuvos-puses-664-361878?utm_source=15min&utm_medium=desine&utm_campaign=skaitomiausios_naujienos)

a group of people (mostly from Visaginas and formerly employed at the Ignalina Nuclear Power Plant who can potentially be employed at the Ostrovets NPP) specially gathered by Belarus for the purpose of going to Ostrovets as representatives of the Lithuanian public. Finally, without any prior warning, the departure for Ostrovets was one hour earlier than planned. Therefore those who intended to attend the event but were not aware of the change of the departure time failed to get to Ostrovets.

In September 2013, the editor of *Valstybė* Magazine placed a complaint to the Minister of Foreign Affairs because a reporter of the said magazine was not allowed to attend the event in Ostrovets in order to do a journalist's work. The Belarusian Consulate let him know that he will not get the visa as a journalist (because his accreditation was "lost") nor as a private individual, as Belarusian officials thought that he may ask questions or take pictures at the Ostrovets event.

Even though Lithuania repeatedly submitted remarks regarding the improper presentation of the EIA report to the public and regarding the faults of the EIA report itself, on 23 October 2013, Belarus approved findings No 98 of the State Ecological Expertiza that neither Lithuanian competent authorities nor the Lithuanian public was informed about and, thus, had no opportunity to submit respective comments. It should be noted that the findings of the State Ecological Expertiza stated that the Project, i.e. the NPP, which is being built 50 km away from the Lithuanian capital of Vilnius, would not have any adverse transboundary impact. With due consideration to the content, scope and international significance of the Project, also considering the non-compliance of Belarus with international agreements (which was confirmed by the sixth Meeting of the Parties to the Espoo Convention<sup>14</sup>) and generally accepted standards (failed to investigate any adverse impact of the Project on the population across national borders (Belarus claimed that it was not its duty), also failed to perform any seismic survey, which was necessary because of earthquakes that occurred in the location of the NPP, or any other tests to ensure the safety of the Project) in the course of the implementation of the Project, it should be held that the findings of the Ecological Expertiza were unjustified. However, Lithuania did not have a possibility to state its reasoned position regarding the findings of the State Ecological Expertiza because this document was unavailable for the Lithuanian public and experts.

On 29 October 2013, the Belarusian Ministry of Emergency Situations issued Permit (Licence) No 02300/239-4 (dated 13 September 2013) authorising the installation of nuclear equipment in Unit One of the Ostrovets NPP.

In October-November 2013, appeals of the Lithuanian public were received that contained comments regarding the text of the EIA report of 11 June 2013 that was available at the website of the Lithuanian Ministry of Environment. The public asked why the Ostrovets site was selected as the location of the NPP, why no alternative locations were considered, why the Neris River was chosen as main cooling source and how this would affect the water of the Neris River and the Nemunas River<sup>15</sup>, and whether any consideration was given to the fact that there was an intensive flight corridor over the proposed NPP (whether the risk of a plane crash was considered). The public also asked where the spent nuclear fuel would be stored, how the Lithuanian environment and the public would be protected from the adverse NPP impact, and whether the NPP would meet the safety requirements, as there were announcements that this NPP would be one of the cheapest power plants in the world. The Lithuanian Ministry of Environment could not provide answers to questions raised by the public because the Belarusian Ministry of Natural Resources and Environmental Protection failed to give any relevant information.

On 2 November 2013, Decree *On Construction of the Belarusian Nuclear Power Station* of the President of the Republic of Belarus was adopted, which decreed to implement the Ostrovets Nuclear Power Plant project in the period of 2013-2020. The Decree states that Belarus intends to commence the NPP post-project analysis in spite of the fact that the project assessment stage involving Lithuania was not completed and remains incomplete. This confirms again that by

<sup>14</sup> Report ECE/MP.EIA/20/Add.1 of the sixth meeting of the Parties to the Espoo Convention.

<sup>15</sup> The Neris constitutes a significant part of the Nemunas basin, which empties out into the Baltic sea. The basin's area covers 72 % of Lithuanian territory.

ignoring Lithuania's requests and submitted claims Belarus kept carrying out Project implementation works.

On 3 December 2013, the Lithuanian Ministry of Environment forwarded comments and proposals submitted by the Lithuanian public to Belarus<sup>16</sup>, expressed concerns regarding the authorisation of the installation of nuclear equipment in Unit One of the Ostrovets NPP and requested to provide all related information. Lithuania repeated its invitation to organise a public hearing in Vilnius, as it received no response to its previous invitations, and also proposed to invite IAEA Site and External Events Design (SEED)<sup>17</sup> mission that could provide an unbiased assessment of the locations for the construction of the NPP in Belarus.

The Belarusian Ministry of Natural Resources and Environmental Protection sent a post-project analysis programme on 23 May 2014 and requested to submit comments<sup>18</sup>. The Lithuanian Ministry of Environment noted in its letter of 13 August 2014 that, pursuant to the Espoo Convention, a post-project analysis can only be started after the completion of preceding stages specified in the Espoo Convention. Lithuania also noted that it was impossible to submit comments on the post-project analysis programme, because Lithuania's questions still remained unanswered and the EIA procedure was not completed. Nevertheless, Lithuanian authorities analysed information submitted by Belarus and sent their comments according to general standards.

On 30 December 2014, the Belarusian Ministry of Emergency Situations issued a permit (licence) authorising the construction of Unit Two of the Belarusian NPP; however, the actual construction of Unit Two started at the end of April 2014, i.e. approximately 6-8 months ahead of schedule.

The sixth meeting of the Parties to the Espoo Convention held on 2-5 June 2014 approved the findings of the Implementation Committee published on 15 April 2013 and acknowledged that Belarus was in non-compliance with Article 2(6) (public participation), Article 4(2) (EIA documentation), Article 5(a) (consultations) and Article 6(1) and (2) (final decision) of the Espoo Convention, and provided recommendations<sup>19</sup>.

## VI. NATURE OF ALLEGED NON-COMPLIANCE

### *Article 3(9) of the Aarhus Convention*

As the Implementation Guide of the Aarhus Convention (hereinafter referred to as the Implementation Guide) states, language issues may be grounds for discrimination in transboundary situations<sup>20</sup>. The Espoo Convention's Implementation Committee observed that the opportunity provided to the public of the affected Party should be equivalent to that provided to the public of the Party of origin<sup>21</sup>.

The Lithuanian public encountered restrictions when trying to obtain Project-related information and seeking to participate in the Project-related decision-making. Some of the restrictions were the omission of Belarusian authorities, as the latter failed to provide answers to questions on the implementation of the Project, ignored official requests of the Lithuanian Ministry of Environment to hold a public hearing for the discussion of the EIA report in Lithuania, even though Lithuania submitted such request six times during 2013-2014:

1. Letter No (10-3)-D8-7539 of 10 September 2013;
2. Letter No (10-3)-D8-9195 of 29 September 2013;

<sup>16</sup> Letter No (10-3)-D8-10313.

<sup>17</sup> In response to Lithuania's questions regarding the selection and safety of the site, Belarus claimed that IAEA Integrated Nuclear Infrastructure Review (INIR) mission, which visited Belarus in June 2012, had no comments regarding the site. However, due to its nature and intended purpose, IAEA INIR mission does not perform the assessment of nuclear power plant construction sites. For this purpose IAEA has SEED mission.

<sup>18</sup> Letter No 13-11/1363-3.

<sup>19</sup> Report ECE/MP.EIA/20/Add.1 of the sixth meeting of the Parties to the Espoo Convention.

<sup>20</sup> The Dutch-Belgian case reviewed by the Espoo Convention committee is provided as an example, viz. in 2009, a Dutch NGO complained that EIA documentation relating to a proposed construction of a thermal electric power plant 500 metres from the Dutch-Belgian border was available only in French, and public hearings were conducted only in French-speaking municipalities (EIA/IC/INFO/4 Belgium). Implementation Guide, p. 73.

<sup>21</sup> Implementation Guide, p. 73.



3. Letter No (10-3)-D8-10313 of 3 December 2013;
4. Letter No (10-3)-D8-1162 of 13 February 2014;
5. Letter No (10-3)-D8-4044 of 29 May 2014;
6. Letter No (10-3)-D8-6055 of 13 August 2014.

Belarus failed to submit Project-related information in Lithuanian, even though such request was submitted; it neither provided information of concern to the Lithuanian public nor ensured translation into Lithuanian during the event held on 2 March 2010. Belarus has also taken actions very actively in order to start the Ostrovets NPP construction works as soon as possible.

Pursuant to the Constitution of the Republic of Lithuania, Lithuanian is the only State language in the Republic of Lithuania<sup>22</sup>. 84.2% of the population of the Republic of Lithuania are Lithuanians<sup>23</sup>. With due consideration to the above, it should be held that one of the mandatory preconditions for the proper information of the Lithuanian public and its participation in the Project-related decision-making process is the provision of information in Lithuanian. The following facts confirm the restriction of the rights of the Lithuanian public within the meaning of Article 3(9) of the Aarhus Convention:

1) An abridged preliminary EIA report in Lithuanian (15 pages), sent for the first time before the event held on 2 March 2010 in Vilnius. The summary of the report was brief, the important issues were either discussed superficially or not discussed at all.

2) Members of the Lithuanian public expressed their disapproval of the presentation of the EIA report in Russian during the event held on 2 March 2010 in Vilnius<sup>24</sup>.

3) Belarus did not comply with its obligation to ensure translation into Lithuanian during the meeting of 2 March 2010, even though they had to do that according to the “polluter pays” principle<sup>25</sup>. Presentations were made in a language other than Lithuanian, representatives of the public did not have a possibility to ask questions of concern in Lithuanian, while answers provided by Belarusian representatives were impossible to understand, and this was not only due to bad translation. Information provided in English was also difficult to understand. At the meeting Lithuanian representatives asked Belarusian representatives to submit their presentations in writing, hoping that they would be easier to understand in this way, but Belarusian representatives failed to do that. As a result, Lithuania could not consider the event held on 2 March 2010 as a proper presentation of the preliminary EIA report to the Lithuanian public; therefore, in 2013-2014 alone, it contacted Belarus six times requesting to organise a meeting with the Lithuanian public in Lithuania; however, Belarus ignored these requests. Following the meeting held on 2 March 2010 Belarusian representatives sent the first presentation translated into Lithuanian (few pages), which discussed several common organisational issues of the meeting; however, no subject-specific presentations were translated. Slides of several presentations in Russian were also received.

4) The EIA report translated into Lithuanian (as Belarus claims) was submitted in writing only on 11 June 2013<sup>26</sup>. The submitted EIA version was a translation of the report drawn up in 2010 into Lithuanian using a computer-based translation. It was impossible to understand the text, sentences made no sense, some words were lost in translation, e.g. in “nuclear power plant” the word “plant” was translated into Lithuanian as “herb” rather than “factory” or “enterprise”, while the description of the transboundary EIA process mentioned Uzbekistan instead of Lithuania. Most likely the text of the report was translated into Lithuanian using a computer-based translation software (*Google translate*, etc.).

5) The Lithuanian public did not have an opportunity to review the text of the Belarus State Ecological Expertiza at all; neither did it have an opportunity to submit comments regarding these documents. When information about performed expert examinations appeared in the media,

<sup>22</sup> Article 14 of the Constitution of the Republic of Lithuania.

<sup>23</sup> Data of the survey conducted in 2011 by Statistics Lithuania, available at [https://osp.stat.gov.lt/documents/10180/217110/Gyv\\_kalba\\_tikyba.pdf/1d9dac9a-3d45-4798-93f5-941fed00503f](https://osp.stat.gov.lt/documents/10180/217110/Gyv_kalba_tikyba.pdf/1d9dac9a-3d45-4798-93f5-941fed00503f).

<sup>24</sup> Minutes of the meeting of 2 March 2010.

<sup>25</sup> Cf. footnote 1.

<sup>26</sup> The total of two version in Lithuanian have been received, viz. the abridged preliminary version sent at the beginning of 2010, and the version sent on 11 June 2013.

Lithuanian competent authorities themselves searched for the findings of the Expertiza and found them online (in English). As it is noted in the Implementation Guide, the state environmental Expertiza is a decision whether to permit an activity<sup>27</sup>. The public has to have an opportunity to review this decision in due time and to submit comments; however, as it was mentioned before, the Lithuanian public did not have such opportunity.

Belarus was in non-compliance with the provisions of Article 3(9) of the Aarhus Convention, viz. it failed to ensure the access of the Lithuanian public to information about decisions made in relation to the implementation of the Project, failed to ensure translation of documents into Lithuanian and translation during the event held on 2 March 2010 in Vilnius, and failed to organise a public hearing.

#### ***Article 6(2) of the Aarhus Convention***

Even if the Aarhus Convention does not establish an EIA procedure *per se*, its article 6 does establish a kind of review of the environmental impacts of particular activities, where decision-making in relation to them takes place. This is because it is implicit in the Convention that public comments in relation to environmental matters must be taken into account<sup>28</sup>.

The concept of the “*Environmental decision-making procedure*” is provided by the Compliance Committee (Aarhus Convention) which held that the EIA (Rus. *OVOS - otsenka vozdeystviya na okruzhajushchuju sredu*) and the Belarus State Environmental Expertiza were considered jointly as a decision-making process involving a form of an EIA procedure and that the decision of the State Environmental Expertiza was considered as a permit to start an activity<sup>29</sup>. Thus, in this situation, the State Ecological Expertiza shall be considered as a decision in the process of making of which the Lithuanian public was not allowed to participate in spite of the intensive communication of the Lithuanian Ministry of Environment with Belarusian representatives and in spite of the aspiration to get involved in EIA procedures as actively as possible. The Lithuanian public is “*the public concerned*” within the meaning of this article, as Lithuania is one of the countries to be affected by the Project. The Implementation Guide states that the term “*the public concerned*” should be seen in the light of the non-discrimination provisions in Article 3(9), i.e. the due information of the public concerned must be guaranteed in spite of the “*citizenship, nationality, residence or domicile, place of registration or seat of activities*”. The obligation to inform the public concerned includes also the public across national borders<sup>30</sup>. As it was indicated before, neither the Lithuanian public nor Lithuanian competent authorities were informed about the Belarus State Ecological Expertiza or about the decision submitted on the basis of such expertise. It should also be noted that from the very start of the implementation of the project the Lithuanian public was not involved in the decision-making procedures and was not informed in an adequate, timely and effective manner about the progress of the Project, even though the Lithuanian public is concerned most of all other neighbouring countries as the Belarusian NPP is being built at the Ostrovets site, i.e. 50 km away from the Lithuanian capital of Vilnius.

It is implicit in Article 6(2) of the Convention that the public concerned must be informed at the earliest stage of the procedure. The early participation of the public means that the public may participate when all opportunities are open and the participation can be effective. The Lithuanian public received the first information about the proposed NPP construction project in Belarus from the media. Information said that Belarus intended to construct the NPP at the Ostrovets site, even though the EIA procedure was not even started. Even though Belarus claims that several alternative sites for the construction of the NPP were considered, it failed to submit a justified explanation as to why the priority was given to the Ostrovets site. Also, there is no information why Vitebsk area was eliminated from the list of alternative locations for the construction of the NPP. Belarus has been asked these questions since the very beginning of the implementation of the Project. The State

<sup>27</sup> ECE/MP.PP/2011/11/Add.2, para. 74.

<sup>28</sup> Implementation Guide, p. 128.

<sup>29</sup> Cf. footnote 22.

<sup>30</sup> Implementation Guide, p. 134.

Ecological Expertiza provides that the activation of suffusion-karst processes were possible at the Krasnaya Polyana site (Bykhov area) and at the Kukshinovo site (Shklov-Gorky area). In response to the question raised by the Lithuanian Ministry of Environment regarding alternative locations to the Ostrovets site, the Belarusian Ministry of Natural Resources and Environmental Protection stated that the Belarusian law prohibits any construction in areas of the activation of suffusion-karst processes. Pursuant to the provisions of the national law, the Polyana site (Bykhov area) and the Kukshinovo site (Shklov-Gorky area) were automatically eliminated from the list of alternative locations; therefore, it should be held that Belarus had to assess other realistic alternatives and had to select one location on the basis of objective criteria and with due consideration to the proposals submitted by entities concerned.

The Compliance Committee (Aarhus Convention) stated that the time frame for allowing the public to assess the relevant documentation is set in order for the public to participate in the decision-making process in an effective manner. The time frame is assessed with due consideration to the proposed activity and other individual circumstances. The Compliance Committee analysed and recognised the 30-day period as a reasonable time frame<sup>31</sup>; meanwhile, one-week period for getting acquainted with the EIA documentation was assessed as being an unreasonably short time frame<sup>32</sup>. The allocation of a reasonable time frame for getting acquainted with information is especially important in a transboundary EIA process, as nationals of various countries participate in the procedure. As a result of the existing language barrier and different procedure of the implementation of the same processes, the acquaintance with documents and the scrutiny of information provided in such documents may take longer.

The Aarhus Convention provides for an obligation to inform the public about the opportunity to participate in the decision-making process and about the time and venue of any public hearing. The Implementation Guide states that the notification of a public hearing must include sufficient information for the public concerned to understand where and when the public hearing will take place. The requirement for the timely notice must allow reasonable time between the notice and the date of the hearing<sup>33</sup>. Even though attempts were made to organise a public hearing for the discussion of the preliminary EIA report on 2 March 2010 in Vilnius, about which the Lithuanian Ministry of Environment informed both the Lithuanian public and competent authorities, it could not be considered as proper information of the public. Belarusian representatives were not ready to answer the questions raised by the Lithuanian public and failed to provide translation into Lithuanian. On 17 August 2013, Belarus unilaterally organised an event in Ostrovets (Belarus); however, Lithuanian authorities did not support it. The opportunity of the Lithuanian public to participate in the event was restricted, as it could not get acquainted with the provided EIA report, viz. the time allocated for the analysis of the voluminous document (1,000 pages) was insufficient, the translation of the EIA report was of an extremely bad quality, the text made no sense and was translated using a computer-based translation software, and it was unsuited for the presentation to the public. Only a small circle of persons knew about the proposed meeting and due to additional restrictions, not everybody who knew about the event succeeded to attend it. Therefore, it should be held that such omission, i.e. the failure to properly and timely inform about the time and the venue of the event and the application of restrictions for the participation, resulted in the Republic of Belarus being non-compliant with Article 6(2) of the Aarhus Convention.

#### ***Article 6(3) of the Aarhus Convention***

The States must ensure that all stages where public participation takes place includes reasonable time for the public to review and digest the provided information, time to seek updated and additional information and time to examine such information, time to prepare for proper participation in a public hearing<sup>34</sup>. By providing an updated EIA report (four times as voluminous as

<sup>31</sup> ECE/MP.PP/2011/11/Add.2, para. 89.

<sup>32</sup> ECE/MP.PP/2011/11/Add.1, para. 67.

<sup>33</sup> Implementation Guide, p. 138.

<sup>34</sup> Implementation Guide, p. 142.

the previous version of the report) during the meeting on 18 June 2010 and by providing the meaningless translation of the EIA report into Lithuanian in 11 June 2013, Belarus restricted the right of the Lithuanian public to get access to the EIA documentation and to participate in the decision-making procedure. By failing to provide answers to questions raised by the Lithuanian public, Belarus restricted and keeps restricting the opportunity of the Lithuanian public to participate in the implementation of the Project.

In the course of the implementation of the Project Belarus set unreasonable time for the examination of the provided information:

1) During the bilateral meeting held on 18 June 2010 Lithuanian representatives received an updated EIA report, which was four times as voluminous, that they had no opportunity to examine in advance, i.e. Belarus failed to allocate at least minimal time for the examination of the updated information. The Compliance Committee (Aarhus Convention) noted that the timeliness, adequacy and effectiveness of notification might require more than a single notification. If further information comes to light that may have relevance to the decision-making procedure, an additional notification may be necessary. Agreement provisions clearly show that Parties have an obligation to ensure that the notification is updated when necessary<sup>35</sup>. Even though Belarus updated the original version of the EIA report, the Lithuanian public did not have an opportunity to get acquainted with the EIA report provided during the bilateral meeting of 18 June 2010 in a timely and effective manner. Later it became apparent that Belarusian authorities presented this report (four times as voluminous) in Russian to the Belarus public on 4 March 2010 (a mere two days after the event held on 2 March 2010 in Vilnius), while Lithuania received this version of the report only in February 2011, i.e. more than six months after the bilateral meeting of Lithuanian and Belarusian representatives. Thus, the Lithuanian public was provided with unequal opportunity to get access to the Project-related information.

2) After it provided the EIA report in gibberish Lithuanian on 11 June 2013, Belarus pressed Lithuania regarding the date and venue of public hearings and expert consultations and demanded to hold the discussion of the EIA report by 15 August 2013. The Lithuanian Ministry of Environment informed<sup>36</sup> on 8 July 2013 that it started the analysis of the provided EIA report; however, as this document was voluminous, it could submit its comments by the end of summer at the earliest. Lithuania requested reasonable time for the examination of the report, because this document was voluminous and because the translation was extremely bad, but Belarus did not take this into consideration. As it was mentioned before, some words were lost in translation, e.g. in "nuclear power plant" the word "plant" was translated into Lithuanian as "herb" rather than "factory" or "enterprise", while the description of the transboundary EIA process mentioned Uzbekistan instead of Lithuania. It was impossible to understand the majority of sentences, as the text was translated using a computer-based translation software. Belarus urged Lithuania to publish the provided EIA report as soon as possible; however, with due consideration to the extremely bad translation of the text and in order to assess the content of the report and to receive comments from competent authorities, the Lithuanian Ministry of Environment postponed the time of the publication. Lithuania asked Belarus to provide a translation of the EIA report that would be comprehensible and had sense. As no revised translation was provided, the Lithuanian Ministry of Environment published the original version of the provided EIA report and issued a disclaimer stating that it assumed no liability for the translation and attached comments submitted by competent authorities.

3) The Lithuanian public was not informed in time about the adopted decision of the Belarus State Ecological Expertiza and had no opportunity to submit comments.

By failing to allocate reasonable time for the examination of the EIA documentation and to provide the opportunity to submit comments regarding the findings of the State Ecological Expertiza, Belarus was non-compliant with Article 6(3) of the Aarhus Convention.

<sup>35</sup> ECE/MP.PP/C.1/2009/4/Add.1, para. 41.

<sup>36</sup> Letter No (10-3)-D8-5750.

#### ***Article 6(4) of the Aarhus Convention***

Even though it is stated that a public authority can make a preliminary decision out of several alternatives about the proposed activity, it must still be in the information gathering and processing stage and must be open to persuasion by members of the public to change its position or opinion<sup>37</sup>. As it was mentioned before, the assessment of three preliminary alternatives, viz. the Ostrovets site (Ostrovets area), the Krasnaya Polyana site (Bykhov area) and the Kukshinovo site (Shklov-Gorky area), showed that the activation of suffusion-karst processes were possible at the Krasnaya Polyana site and at the Kukshinovo site. Belarusian competent authorities indicated that the law prohibits the implementation of projects of a similar nature in such areas. These sites were automatically eliminated from the list of alternative locations. Meanwhile, Vitebsk area is not mentioned as one of the locations for the construction of the NPP at all. The Lithuanian public received the initial information about the selection of the Ostrovets site for the construction of the Belarusian NPP from the media when the EIA process has not been started yet. The public could not submit comments regarding other alternative locations because there was none. The only option remaining was to object the selection of the location for the construction of the NPP, as such selection scared the public, seemed to be irrational and failing to consider public interest. Belarus had to assess other realistic alternatives and had to select one location on the basis of objective criteria and with due consideration to the proposals submitted by entities concerned. However, that was not the case.

It should also be noted that the requirement for the timely public participation applies not only to the entire chain of decision-making procedures but also to each of the decisions in that chain<sup>38</sup>. This means that the Lithuanian public had to be provided with the opportunity to submit comments not only regarding the alternative locations for the implementation of the project but also regarding all wordings of the EIA report and the decision of the State Ecological Expertiza. The Lithuanian Ministry of Environment published all information received from Belarus online, and forwarded the received comments of the public to Belarus. However, both the notification of the selected Project location and other EIA documentation was received after relevant decisions were made; therefore, the public did not have the opportunity of early participation in an effective manner. In this way Belarus was non-compliant with Article 6(4) of the Aarhus Convention.

#### ***Article 6(6) of the Aarhus Convention***

These provisions guarantee the access of the public to all information relevant to decision-making and available to a public authority. They also guarantee that the public will be immediately informed about any updates of the available information. The Implementation Guide states the following characteristic of Article 6(6): Parties must ensure that all information relevant to the decision-making is made available to the public at request, which is not limited to environmental information<sup>39</sup>. The Lithuanian Ministry of Environment contacted the Belarusian Ministry of Natural Resources and Environmental Protection and repeatedly requested the provision of detailed information about the impact of the Project on the Lithuanian public and environment, other safety issues of the Project (such as the criteria for the selection of the site, seismic survey, cooling of reactors, management of spent nuclear fuel, etc.).

Pursuant to item (b) of paragraph 6, the Lithuanian public was entitled to demand the presentation of a full and detailed EIA report, which has not been provided yet (the preliminary EIA report was provided before the meeting held on 2 March 2010 in Vilnius, while an updated report was presented at the time of the meeting in Minsk on 18 June 2010). Belarus did not give an opportunity and did not allocate at least minimum time for the examination of the updated EIA report. The EIA report has not been further updated with any additional information, while information provided in the letters of Belarus has not provided any answers to the above questions raised by the Lithuanian public.

Pursuant to item (c) of paragraph 6, the Lithuanian public was entitled to request the provision

<sup>37</sup> Implementation Guide, p. 144.

<sup>38</sup> Implementation Guide, p. 145.

<sup>39</sup> Implementation Guide, p. 147.

of full information about any adverse impact of the proposed Project on the Lithuanian population and elements of the environment (air, drinking water, fauna and flora of the Neris River, etc.) and indication of the measures to be taken by Belarus in order to mitigate this adverse impact. However, Lithuania was told that the proposed Project would not have any adverse impact on the population and the environment. No evidence supporting such claim was provided.

Pursuant to item (f) of paragraph 6, Belarus had to provide Project-related reports and proposals. Lithuania is not aware of whether Belarusian competent authorities have drawn up any reports stated in item (f). It should be held that it is impossible to provide answers to the majority of questions raised by Lithuania without performing a thorough survey the results of which would either support or deny the position of Belarus; therefore, Lithuania has reasonable doubts of whether such survey was in fact performed.

With due consideration to the above, it should be acknowledged that Belarus failed to ensure the availability of all information relevant to the construction project of the Belarusian NPP (not limited to environmental information) to public concerned, and thus, was non-compliant with Article 6(6) of the Aarhus Convention.

#### *Article 6(8) of the Aarhus Convention*

The Aarhus Convention obliges Parties to ensure that the entity that makes the decision takes due account of the outcome of the public participation in the decision-making process.

“Take into account” means that a competent authority must review the different arguments, if necessary organise discussions, evaluate compromise decisions made during such discussions or any doubts, and then let this information and the outcome of discussions become part of the drafted policy, plan, programme or legal instrument<sup>40</sup>. “Taking due account” does not require the competent authority to change its decision according to every comment; however, the competent authority is ultimately responsible for the decision based on all the information available and should be able to show why a particular comment was rejected or ignored<sup>41</sup>. The Compliance Committee also noted that a system where, as a routine, comments of the public were disregarded or not accepted on their merits, without any explanation, would not comply with the Convention<sup>42</sup>.

It should be held that Belarus failed to ensure that in decisions due account was taken of the outcome of the public participation, the most important such decisions being the EIA report and the decision of the State Ecological Expertiza:

- 1) EIA reports provided to Lithuania in English and in Lithuanian fail to discuss public participation in the EIA procedure or to indicate at which stage of the EIA procedure the public did participate, whether it submitted comments and, if it did, what comments, etc.
- 2) The findings of the State Ecological Expertiza, which the Lithuanian public was not informed about, merely mentioned that Lithuania expressed concerns about the EIA report<sup>43</sup>, and falsely stated that the EIA report was discussed with the public concerned and that the required international procedures were carried out<sup>44</sup>. The decision of the Expertiza also claimed that the EIA report was sent to concerned parties in 2009, the final EIA report was sent in 2011, a public hearing for the discussion of the EIA report was held in March 2011 in Vilnius, and discussions with Lithuania regarding the content of the EIA report were continuing until 2013. Lithuania holds that “discussions” mentioned in the Expertiza were in fact the repeated requests of Lithuania to provide information and the multiple standard statements issued by Belarus and failing to provide any answers. No public hearing to discuss the EIA report was held, as Belarusian representatives failed to provide information relevant to issues raised by the Lithuanian public at the event of 2 March 2010 in Vilnius, the findings of the Ecological Expertiza failed to take into account any questions raised by Lithuania, as there were no expert consultations or public hearings held in Lithuania. The event held in August 2013 in Ostrovets cannot be considered as a public hearing of

<sup>40</sup> Implementation Guide, p. 155.

<sup>41</sup> Ibid.

<sup>42</sup> ECE/MP.PP/C.1/2009/8/Add.1, paras. 99-100.

<sup>43</sup> The State Ecological Expertiza of 23 October 2013, p. 13.

<sup>44</sup> Ibid, p. 14.

the EIA report either (no reasonable time was allocated for the examination of the EIA report sent on 11 June 2013; the Lithuanian text of the provided document made no sense; other participation restrictions).

For the purpose of evaluation of the compliance of the actions of Belarus in respect of the Lithuanian public, it should be noted again that the fifth meeting of the Parties to the Aarhus Convention recognised that Belarus was continuously in non-compliance with Article 4(1) and Article 6(2), (4), (6), (7) and (9) of the Aarhus Convention and provided recommendations.

Belarus failed to meet the requirement of the Aarhus Convention to ensure that in a relevant decision due account was taken of the outcome of the public participation, and was thus non-compliant with Article 9(8) of the Aarhus Convention.

#### **Decision V/9c on compliance by Belarus with its obligations under the Convention**

In 2009, two communications were provided to the Compliance Committee (Aarhus Convention), viz. ACCC/C/2009/37 and ACCC/C/2009/44, regarding the compliance by Belarus with its obligations under the Aarhus Convention. The first communication questioned the compliance of the actions of Belarus taken in the course of the implementation of the project for the construction of a hydro power plant on the Nemunas River, and the second – the compliance of the actions of Belarus taken in the course of the implementation of the Ostrovets NPP project. These communications are related to the extent of the issue of the compliance of Belarusian national legislation, which regulates access to information and public participation,<sup>45</sup> with the Aarhus Convention.

In 2011, the fourth meeting of the Parties to the Aarhus Convention adopted Decision IV/9b on compliance by Belarus with its obligations under the Aarhus Convention. This Decision stated that Belarus was non-compliant with Article 4(1) and Article 6(2), (7) and (9) of the Aarhus Convention. Decision IV/9b also stated that respective provisions of Belarusian national legislation were non-compliant with the provisions of the Aarhus Convention.

On 28 June 2011, the Compliance Committee adopted its findings and recommendations on communication ACCC/C/2009/44, which comment and support the findings and recommendations adopted on communication ACCC/C/2009/37 (concerning the public participation procedure relevant to the implementation of NPP projects; the final decision permitting the activity; the role of the project developer in submitting comments of the public to a competent authority). It is also stated that Belarus was non-compliant with the following of the Aarhus Convention:

- (a) Article 4(1)(b) and Article 6(6) by restricting access to the full version of the EIA report to the premises of the Directorate of the NPP in Minsk and by not allowing any copies to be made;
- (b) Article 6(2)(d)(vi) 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);
- (c) Article 6(4) by precluding the public from having any input regarding alternatives for the implementation of the Project and by organising only one public hearing at the stage of the EIA;
- (d) Article 6(6) by not informing the public in due time of the possibility of examining the full EIA report;
- (e) Article 6(7) by limiting the possibility for the public to submit comments.

In 2014, on the grounds of communication ACCC/C/2009/44, **the fifth meeting of the Parties to the Aarhus Convention adopted Decision V/9c on compliance by Belarus with its obligations under the Aarhus Convention** (hereinafter referred to as Decision V/9c) in the implementation of the NPP project in Belarus, based on the said findings of the Compliance Committee (ECE/MP.PP/C.1/2011/6/Add.1) and the report of the Compliance Committee concerning compliance by Belarus with its obligations under the Aarhus Convention (ECE/MP.PP/2014/12), and with due consideration to the progress made by Belarus in complying

<sup>45</sup> The Compliance Committee (Aarhus Convention) assessed the legal framework disputed in ACCC/C/2009/44 with due consideration to the recommendations issued on the grounds of ACCC/C/2009/37 and Decision IV/9c on compliance by Belarus with the provisions of the Aarhus Convention.

with Decision IV/9b as well as the findings and recommendations of the Compliance Committee. By this Decision the meeting of the Parties approved the findings of the Compliance Committee, i.e. stated that Belarus implemented the NPP project in non-compliance with Article 4(1)(b), Article 6(2)(d)(vi), Article 6(4), Article 6(6) and Article 6(7) of the Aarhus Convention.

In order to reveal the key differences between communication ACCC/C/2009/44 and this new submission, we hereby note the following:

1. Parties placing the submission and interests protected: communication ACCC/C/2009/44 was submitted by a non-governmental organisation to protect the interests of the Belarusian public, and this submission is placed by Lithuania, which is a Party to the Aarhus Convention, to protect the interests of the Lithuanian public;

2. The facts: with due consideration to the specific character of the entity placing the submission, the specific character of the interests protected, the document provides additional facts that were not stated in communication ACCC/C/2009/44;

3. National legislation: in its communication ACCC/C/2009/44 the communicant disputes the Belarusian national legislation, which regulates access to information and public participation in the development of NPP projects (or the absence of such legislation). Decision IV/9b and the findings and recommendations adopted by the Compliance Committee show that Belarus still has not approved the required national legislation. It should be held that the international aspect of access to information and public participation in the development of NPP projects is also very important (with due consideration to the potential and realistic impact of such projects on the population of several countries); therefore, this aspect must be taken into account when drafting amendments to the national legislation:

1) *Dissemination of information* – with due respect to the fact that the public of a foreign country participates in the implementation of the Project, it is apparent that specific procedures must be applied in order to involve the latter into the implementation of the Project both due to different national languages and due to different legal frameworks (different applicable procedures); therefore, the compliance by Belarus with the Aarhus Convention in the implementation of this Project must be assessed not only within the context of the local community but also within the context of securing the rights and legal interests of the public of foreign countries;

2) *Public participation* – just as the provision of information, the public participation in a transboundary context has its own specific character, viz. communication between the entity implementing the Project and the public across national borders is carried out through competent authorities (forwarding of relevant documents, submission of comments of the public), “international” public hearings (intended for the public across national borders) must be organised pursuant to international legislation (Espoo Convention), etc. It should be held that, in this case, additional measures to secure the rights and legal interests of the public across national borders must be applied (concerning access to information, public participation), viz. additional sources of information, the need to provide the key Project information in the national language, longer time frames for the submission of comments, adequate and timely information about updated or amended documents (taking into account that documents may need to be translated, submitted to national competent authorities for comments, etc.), coordinated and duly organised (e.g. by ensuring translation into the language understood by the public concerned) public hearings.

The facts stated in this submission of Lithuania – both before and after the adoption of Decision IV/9b (to the extent it relates to the case under examination) and Decision V/9c – confirm that Belarus was and is non-compliant with its obligations under the Aarhus Convention and concerning the Lithuanian public:

1. **The selection of alternative locations.** The public has never received any proper and justified explanation of the selection of the Ostrovets NPP site. There is a reason to doubt that an objective assessment of all alternative locations for the implementation of the project was performed before the selection of the site.

**2. EIA procedure:**

2.1. EIA report. No full EIA report in a language that the Lithuanian public could understand has been provided.



2.2. Public hearings. Not a single public hearing, which would comply with the international law and in which the Lithuanian public concerned could state its position, submit comments and proposals and get answers to its questions, has been organised.

3. **Findings of the State Ecological Expertiza.** Neither Lithuanian competent authorities nor the Lithuanian public was informed about the adopted findings of the State Ecological Expertiza and had no opportunity to submit comments.

4. The Project implementation and the process of communication of Belarus with the Lithuanian public encountered problems caused by national **languages being different.**

By this submission we request to acknowledge that Belarus:

(a) Failed to ensure access of the Lithuanian public to information about decisions made in relation to the Project and failed to ensure translation of documents into Lithuanian and translation during the event held on 2 March 2010 in Vilnius, and thus, was **non-compliant with Article 3(9) of the Convention;**

(b) Failed to allocate reasonable time for the examination of the EIA report, failed to inform about the event of 17 August 2013 properly and in due time and restricted the participation in this event, and thus, was **non-compliant with Article 6(2) of the Convention;**

(c) Failed to allocate reasonable time for the examination of the EIA documentation and to provide the opportunity to submit comments regarding the findings of the State Ecological Expertiza, and thus, was **non-compliant with Article 6(3) of the Convention;**

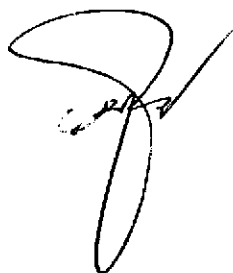
(d) Failed to provide the opportunity for the Lithuanian public of early participation in the Project and to submit its position regarding the selection of alternative locations, and thus, was **non-compliant with Article 6(4) of the Convention;**

(e) Failed to ensure the access of the Lithuanian public to all information relevant to the Project and thus, was **non-compliant with Article 6(6) of the Convention;**

(f) Failed to ensure that in decisions due account was taken of the outcome of the public participation (the most important such decisions being the EIA report and the findings of the State Ecological Expertiza) and thus, was **non-compliant with Article 6(8) of the Convention.**

ENCL. A detailed chronological list of events, 10 pages.

Minister of Environment



Kęstutis Trečiokas

## Annex 1

### A detailed chronological list of events

Date	Event
2006-2008	Belarus selected three potential locations for the construction of a nuclear power plant (NPP), viz. Krasnaya Polyana site (Bykhov area), Kukshinovo site (Shklov-Gorky area) and Ostrovets site (Ostrovets area). Ostrovets site (Ostrovets area) was selected for the construction of the NPP <sup>1</sup> .
2008	The first reports informing of the Belarus' plans to construct a NPP near the Lithuanian capital city of Vilnius appeared in the Lithuanian media.
15 Jul 2008	The Belarusian Ministry of Natural Resources and Environmental Protection <sup>2</sup> informed the Minister of Environment of the Republic of Lithuania about its intention to implement the NPP construction project in the territory of Belarus. On 24 September 2008, in response to the letter of the Belarusian Ministry of Natural Resources and Environmental Protection, the Lithuanian Ministry of Environment noted that Lithuania intended to participate in the EIA process during the implementation of the NPP project in Belarus and requested to be informed of any further actions undertaken by Belarus during the EIA procedure.
7 Jan 2009	The Lithuanian Ministry of Environment, in reaction to information published in Lithuanian and Belarusian media, expressed concerns about the Ostrovets NPP project, the location of which has been selected prior to the commencement of the EIA procedure and without notifying the concerned parties about the project as required by the Espoo Convention <sup>3</sup> .
19 Mar 2009	The Belarusian Ministry of Natural Resources and Environmental Protection informed <sup>4</sup> of Belarus' intention to implement the NPP project and indicated the priority location for the construction of the NPP, viz. the Ostrovets site (Ostrovets area). Furthermore, the Belarusian Ministry of Energy is currently planning works on the implementation of the NPP project, and the results of such planning will be communicated to the concerned parties.
24 Mar 2009	A letter of the Belarusian Ministry of Natural Resources and Environmental Protection on the provision of additional information about the implementation of the NPP construction project and on the compliance with the provisions of the Espoo Convention <sup>5</sup> . On 6 April 2009, in response to this letter, the Lithuanian Ministry of Environment noted that it still did not receive a proper notification consistent with the provisions of the Espoo Convention regarding the initiation of the EIA procedure in the process of the implementation of the NPP construction project; Lithuania will nevertheless collect and provide information requested by Belarus on socioeconomic factors and health and environmental conditions in municipalities that are likely to be affected by the implementation of this project <sup>6</sup> . On 22 May 2009, Lithuania repeated its request to be

<sup>1</sup> Decision No 98 of 23 October 2013 of the State Environmental Expertize of the Republic of Belarus.

<sup>2</sup> Letter No 14-09/2945- BH.

<sup>3</sup> Letter No (1-15)-D8-92.

<sup>4</sup> Letter No 14-16/1382- BH.

<sup>5</sup> Letter No 14-16/1487- BH of 24 March 2009 of the Belarusian Ministry of Natural Resources and Environmental Protection.

<sup>6</sup> Letter No (1-15)-D8-3011 of 6 April 2009.

	notified as required by the Espoo Convention and provided information requested by the Belarusian Ministry of Natural Resources and Environmental Protection <sup>7</sup> .
24 Aug 2009	The Belarusian Ministry of Natural Resources and Environmental Protection sent an abridged version of the preliminary EIA report <sup>8</sup> and stated that the full text of the document (in Russian and in English) will be available online at <a href="http://minpriroda.by">http://minpriroda.by</a> , <a href="http://www.minenergo.gov.by">www.minenergo.gov.by</a> and <a href="http://www.dsae.by">www.dsae.by</a> , and later Lithuania will be provided with a hardcopy of the report. Having received this information, on 7 September 2009, the Lithuanian Ministry of Environment addressed competent national authorities and non-governmental environmental organisations <sup>9</sup> requesting them to assess information provided by Belarus and to submit their comments. On 15 September 2009, the Belarusian Ministry of Natural Resources and Environmental Protection sent a hardcopy of the preliminary EIA report and extended the deadline for the submission of comments until 15 October 2009 <sup>10</sup> . Lithuanian competent authorities submitted comments regarding the preliminary EIA report <sup>11</sup> , and the Lithuanian Ministry of Environment analysed, summarised and forwarded the comments to the Belarusian Ministry of Natural Resources and Environmental Protection <sup>12</sup> . Thirty-nine comments were sent to Belarus identifying the missing information that had to be provided under Appendix II to the Espoo Convention and stating that the findings of the preliminary EIA report were unjustified and that the document could only be considered as a scoping document (EIA programme). The letter also stated that the public hearing should be organised in Lithuania only after the complete and final EIA report was received.
26 Jan 2010	The Belarusian Ministry of Natural Resources and Environmental Protection replied to the letter of 15 October 2009 of the Lithuanian Ministry of Environment and comments on the EIA summary and information about the transboundary impact of the proposed activity; however, the assessment of the provided material showed that it contained no answers to the questions raised by Lithuania.
10 Feb 2010	The Lithuanian Ministry of Environment proposed to organise a public hearing for the discussion of the submitted EIA report to be held on 2 March 2010 (in Vilnius). Belarusian representatives did not object to the public hearing; they confirmed their participation and informed that they would ensure translation into Lithuanian during the hearing. On 18 February 2010, the Lithuanian Ministry of Environment sent a notice to interested parties stating the date, the time and the venue of the public hearing of the EIA report and informed that translation into Lithuanian would be ensured during the hearing <sup>13</sup> . This information was also provided on the website of the Lithuanian Ministry of Environment.
2 Mar 2010	Approximately 80 members of the Lithuanian public concerned attended the meeting and had a lot of questions to ask; however, no translation into Lithuanian was provided.

<sup>7</sup> Letter No (1-15)-D8-4528.

<sup>8</sup> Letter No 14-16/3759- BH.

<sup>9</sup> Letter No (1-15)-D8-7721; information communicated to the Ministry of Foreign Affairs, the Ministry of Energy, the Ministry of Agriculture, the Ministry of Transport and Communications, the State Nuclear Power Safety Inspectorate, the Radiation Protection Centre, the Environmental Protection Agency, the Geological Survey, the State Service for Protected Areas, the Lithuanian Energy Institute, non-governmental organisations the Lithuanian Green Movement and Community *Atgaja*.

<sup>10</sup> Letter No 14-16/996.

<sup>11</sup> Comments of the Institute of Ecology of Vilnius University dated 7 September 2009 (Letter No (11-2)-D8-7736); comments of the Energy Institute dated 25 September 2009 (Letter No (1.15)-D8-7721).

<sup>12</sup> Letter No (1-15)-D8-8864 of 15 October 2010.

<sup>13</sup> Letter No (10-3)-D8-1626.

	Belarusian representatives were not ready to answer questions of concern to the public, viz. they could not explain the criteria of the selection of the site, the potential impact of the Project on the environment and the public, etc.
24 Mar 2010	The Lithuanian Ministry of Environment expressed its regret to the Belarusian Ministry of Natural Resources and Environmental Protection <sup>14</sup> that representatives of the Lithuanian public could not receive information of concern about the Project during the event held on 2 March 2010. Lithuania also reminded about the Belarusian commitment to translate into Lithuanian presentations delivered by their representatives at the event held in Vilnius on 2 March 2010, to send them, to make them available to the public and to provide their comments. However, Belarusian representatives failed to do that.
Mar – Apr 2010	<p>Appeals<sup>15</sup> of the public concerned were received as a response to information about the construction of the Ostrovets NPP in the public domain; also, comments pertaining to the event held in Vilnius on 2 March 2010 were provided. The public concerned appealed not only to the Lithuanian Ministry of Environment, but also the Parliament (Seimas) of the Republic of Lithuania, the Lithuanian Prime Minister and the President of the Republic of Lithuania requesting to ensure due representation of the Lithuanian public in the implementation of the Ostrovets NPP construction project; the public concerned also raised issues such as project safety and reliability. Members of the public initiated the signing of an e-petition against the construction of the Ostrovets NPP. The petition has been signed by more than 23,000 persons.</p> <p>With due consideration to the received comments, the Lithuanian Ministry of Environment drafted the Lithuanian position document on the EIA of the proposed construction of the NPP in Belarus and issued an invitation to attend a public hearing for the discussion of this position document on 27 April 2010. The meeting once again raised issues of the content of the submitted EIA report and approved the position document drawn up by the Lithuanian Ministry of Environment that disapproved the construction of the NPP at the Ostrovets site (Ostrovets area).</p>
7 May 2010	The Lithuanian Ministry of Environment sent the said position document to the Belarusian Ministry of Natural Resources and Environmental Protection <sup>16</sup> and stated that the EIA report must be supplemented and that, with due consideration to the provided information, Lithuania disapproved the construction of the NPP in Ostrovets. Lithuania requested to hold a public hearing for the discussion of the EIA report in Lithuania and expressed the desire to participate in bilateral oral consultations.
14 Jun 2010	The Belarusian Ministry of Natural Resources and Environmental Protection notified that it forwarded the reply to questions raised in the Lithuanian position document and informed that more detailed information would be provided at the bilateral meeting to be held in Minsk on 18 June 2010. This letter only provided information of a general nature; however, it contained no reply to questions raised by Lithuania.
18 Jun 2010	During the bilateral meeting held in Minsk Belarusian representatives informed Lithuania about substantial amendments made to the EIA report (the scope of the report increased by approximately four times) that Lithuanian representatives had no chance to examine in advance and presented only general information related to the construction of the

<sup>14</sup> Letter No (10-3)-D8-2781.

<sup>15</sup> The appeal of 18 March 2010 of the association of Skirgiškės residents; Letter No AM-2010-03-10 of 29 March 2010 of the Lithuanian Green Movement; the petition of 25 March 2010 of the citizens of the Republic of Lithuania regarding the proposed Belarusian NPP; the public appeal of 31 March 2010 of 37 persons expressing concern over the construction of the Ostrovets NPP (reference is made to historical lessons learnt from the Chernobyl nuclear accident); the appeal of 23 April 2010 from the member of the European Parliament, e-mails from concerned citizens of the Republic of Lithuania dated March-April 2010.

<sup>16</sup> Letter No (10-3)-D8-4486.

	Ostrovets NPP; however, no answers were received to specific questions raised in the letters sent. The updated text of the EIA report was not discussed either, as Lithuanian representatives did not have an opportunity to examine this text in advance and to assess it.
9 Jul 2010	The Lithuanian Ministry of Environment submitted its comments in writing to Belarus on the outcomes of the bilateral meeting and expressed its regret that the amended EIA report was available to them only at the time of the meeting and that neither competent authorities of Lithuania nor the public had any chance to examine it. It stated that the document, which was available until that date, should be considered as a scoping document and that a public hearing should be organised in Lithuania when the detailed final EIA report was available. It requested to be provided with the final version of the document, to hold a public hearing in Lithuania in order to get answers to unsolved problem issues, and to organise a bilateral meeting in which Lithuanian representatives could participate in an equal discussion having examined relevant versions of EIA documents in advance.
9 Sep 2010	The Belarusian Ministry of Natural Resources and Environmental Protection replied <sup>17</sup> that it complied with the provisions of Articles 3-5 of the Espoo Convention, and it also stated that it was currently reviewing comments of the concerned parties regarding the EIA report and comments submitted at the time of the meeting of 18 June 2010. Belarus noted that the updated EIA report contained no new information, and promised to officially send it in the short run. It should be noted that Lithuania received the said version of the EIA report only in February 2011. Minutes <sup>18</sup> of the bilateral meeting were enclosed to the Belarusian letter; however, the content of these minutes have not been coordinated with Lithuanian representatives. On the other hand, minutes failed to include the Lithuanian letter stating that bilateral consultations should be considered as being not held.
6 Dec 2010	The Lithuanian Ministry of Foreign Affairs delivered a note to Belarus demanding to deny false statements made by Belarusian representatives about the completed EIA procedure and about Lithuania not having any objections regarding the submitted EIA documentation. Belarus was also repeatedly urged to provide answers to questions raised in the letter of 9 July 2010 of the Lithuanian Ministry of Environment.
31 Jan 2011	The Belarusian Embassy in Vilnius forwarded the note delivered by Belarus on 20 January 2011 stating that Belarus provided answers to all raised questions and that it still did not receive any comments of Lithuanian representatives regarding minutes of the meeting of 18 June 2010. It should be noted that Lithuania has already expressed its objection to minutes of the meeting of 18 June 2010 by the letter of 9 July 2010 of the Lithuanian Ministry of Environment and by the note of 6 December 2010 of the Lithuanian Ministry of Foreign Affairs.
11 Feb 2011	The Belarusian Ministry of Natural Resources and Environmental Protection sent the 2010 version of the EIA report that the Lithuanian delegation has learned about at the meeting of 18 June 2010, and stated that, even though the report differed from the preliminary report, it contained no new information regarding characteristics or environmental impact of the proposed NPP <sup>19</sup> . On 21 February 2011, the Lithuanian Ministry of Environment informed competent authorities about the received report and requested to submit comments by 10 March 2011 <sup>20</sup> .

<sup>17</sup> Letter No 13-16/4464- BH.

<sup>18</sup> Minutes basically stated that bilateral consultations were held and that answers were provided to all the questions raised by representatives of the Republic of Lithuania.

<sup>19</sup> Letter No 13-16/816-BH.

<sup>20</sup> Letter No (10-3)-D8-1699.

18 Mar 2011	The Lithuanian Ministry of Environment addressed the Belarusian Ministry of Natural Resources and Environmental Protection <sup>21</sup> noting that Belarus failed to comply with the provisions of the Espoo Convention in the EIA process of the Ostrovets NPP and stating that it could not consider the EIA report sent by Belarus as final because it failed to answer questions raised by the Lithuanian public. Lithuania reminded that, pursuant to the Espoo Convention, the implementation of the project could be commenced only after the EIA procedure was completed; according to information available to Lithuanian representatives, excavation and construction works have already been started in the location of the Ostrovets site (Ostrovets area). It repeatedly requested to provide answers to the submitted questions and to supplement the EIA report.
22 Apr 2011	The Belarusian Ministry of Natural Resources and Environmental Protection claimed that it provided explanation to questions raised by the Lithuanian Ministry of Environment and that part of the questions were answered during the bilateral meeting held in Minsk on 18 June 2010.
7 Jun 2011	<b><i>Lithuania placed a submission to the Implementation Committee (Espoo Convention) requesting to investigate whether Belarus acted in compliance with the provisions of the Espoo Convention while implementing the NPP construction project in Belarus. On 29 June 2011, the Lithuanian Ministry of Environment informed<sup>22</sup> Belarus of the submission placed to the Implementation Committee (Espoo Convention) and reminded that Belarus failed to provide the requested information and explanations.</i></b>
23 Sep 2011	The Belarusian Ministry of Natural Resources and Environmental Protection informed <sup>23</sup> that on 5 September 2011 the President of the Republic of Belarus signed Decree No 418 <i>On the Location and Design of Nuclear Power Plant in Belarus</i> , which approved the Ostrovets site for the construction of the NPP. Belarus noted that answers to questions raised by Lithuania could not be included into the EIA report, while comments would be taken into consideration in the process of the implementation of the project. Belarus also informed that it intended to perform a post-project analysis within the scope of Article 7 of the Espoo Convention and Appendix V to the Espoo Convention, and it repeatedly attempted to provide information of a general nature; however, still no answers were provided to questions raised by Lithuania. Lithuania was not provided with Decree No 418; therefore, Lithuanian authorities and the public were unable to submit any comments regarding the text of this decree.
2 Dec 2011	The Lithuanian Ministry of Environment stated <sup>24</sup> that the answers provided by Belarus were not comprehensive. It was repeatedly requested to organise a public hearing for the discussion of the EIA report in Lithuania and bilateral consultations.
6 Feb 2012	The Belarusian Ministry of Natural Resources and Environmental Protection proposed to the Lithuanian Ministry of Environment to hold a bilateral discussion of the post-project analysis.
26 Apr 2012	The President of the Republic of Belarus confirmed the commencement of construction works of the Ostrovets NPP.
22 Jun 2012	The Vice Prime-Minister of Belarus announced that special works for the preparation of the site for the construction of the first reactor have started.
28 Jul	The Belarusian media informed that a 13m-deep foundation pit has been excavated at the

<sup>21</sup> Letter No (10-3)-D8-2613.

<sup>22</sup> Letter No (10-3)-D8-5817.

<sup>23</sup> Letter No 13-15/424-B.

<sup>24</sup> Letter No 13-15/3613-BH of 25 July 2011 and Letter No 13-15/424-BH of 23 September 2011.

2012	site.
9 Aug 2012	The President of the Republic of Belarus participated in the symbolic time-capsule laying ceremony at the Ostrovets site.
27 Feb 2013	The Belarusian Ministry of Natural Resources and Environmental Protection proposed <sup>25</sup> to Lithuania to hold bilateral consultations to discuss the additional EIA documentation provided in November-December 2012.
15 Apr 2013	<i>The Implementation Committee (Espoo Convention) published Findings and recommendations further to a submission by Lithuania regarding Belarus and concluded that Belarus performed EIA procedure of the Project in non-compliance with Article 2(6), Article 5 and Article 6(1) and (2) of the Espoo Convention.</i> <sup>26</sup>
2 May 2013	The Lithuanian Ministry of Environment reminded <sup>27</sup> Belarus that the Implementation Committee (Espoo Convention) published its report on 15 April 2013 in which it presented its findings and recommendations regarding Belarus. The Implementation Committee stated that Belarus was in non-compliance with the Espoo Convention, recommended for Belarus to continue transboundary EIA process, and noted that prior to consultations all concerned parties had to receive relevant and full EIA documentation. With regard to these recommendations, Lithuania requested to submit the final EIA documentation and to provide comprehensive answers to questions that Lithuania has been raising since 2009.
28 May 2013	Experts reached an agreement during the meeting of the Lithuanian-Belarusian Commission for Trade and Economic Cooperation held in Vilnius that Belarus would provide an updated EIA report that would comply with the findings of the Implementation Committee (Espoo Convention). This undertaking was entered into the minutes and signed.
11 Jun 2013	The Belarusian Ministry of Natural Resources and Environmental Protection submitted <sup>28</sup> the EIA report in Lithuanian (1,000 pages) and pressed Lithuania to hold the discussion of the EIA report by 15 August 2013.
8 Jul 2013	The Lithuanian Ministry of Environment informed <sup>29</sup> that it had started analysing the EIA report, requested to allocate reasonable time for the analysis of the voluminous document, and informed that it could submit its comments by the end of summer at the earliest. Lithuania noted an extremely bad quality of translation of the EIA report, viz. it was impossible to understand the text, which was apparently translated using a computer-based translation software; therefore, it was unsuitable for public dissemination.
19 Jul 2013	The Belarusian Ministry of Natural Resources and Environmental Protection stated <sup>30</sup> that, in order to have a public hearing for the discussion of the final EIA report and to enable the public to submit comments, it published respective information in the Lithuanian media. The letter stated that the Lithuanian public was also informed of the discussion of the EIA report to be held in Ostrovets (Belarus) on 17 August 2013. It invited representatives of Lithuanian authorities to attend bilateral consultations (to discuss the EIA report and to provide answers to the remaining questions) to be held in Minsk on

<sup>25</sup> Letter No 13-15/434-BH.

<sup>26</sup> Report of the Implementation Committee (Espoo Convention) (ECE/MP.EIA/IC/2013/2).

<sup>27</sup> Letter No (10-3)-D8-3644.

<sup>28</sup> Letter No 13-15/1287-BH.

<sup>29</sup> Letter No (10-3)-D8-5750.

<sup>30</sup> Letter No 13-15/1429- BH.

	20 August 2013. It requested to provide information about the composition of the Lithuanian delegation and issues for discussion by 14 August 2013.
6 Aug 2013	The Lithuanian Ministry of Foreign Affairs delivered a note to the Belarusian Ministry of Foreign Affairs and stated that the EIA report provided in June 2013 was merely a translation of the EIA report submitted two years ago into Lithuanian. Lithuania attached the letter of 5 August 2013 <sup>31</sup> stating that Belarus failed to provide an updated EIA report in spite of the recommendation of the Implementation Committee, reminding the promise of Belarusian representatives given at the bilateral meeting held in Vilnius on 28 May 2013 to update the EIA report, and repeating that the received version of the report was referred to competent authorities for the assessment and that final comments could be submitted at the end of summer at the earliest. Lithuania requested to correct the status of the report sent on 11 June 2013, as the content of this report was in fact identical to the content of the report sent on 11 February 2011; it also urged Belarus to avoid taking any unilateral actions and to send the final EIA report to be assessed by experts.
16 Aug 2013	The Belarusian Ministry of Natural Resources and Environmental Protection replied <sup>32</sup> that the findings and recommendations of the Implementation Committee did not specify what information had to be provided in the EIA report. The EIA report was provided to Lithuania on 11 February 2011; however, in 2013, additional information was provided (in a separate book) about consultations held in 2011-2013. Belarus complained that the provided EIA report was not disseminated to the public and confirmed that bilateral consultations will be held in Minsk on 20 August 2013.
17 Aug 2013	Based on the media information and statements made by Belarusian representatives, an event was held in Ostrovets, in which almost two hundred people participated. Half of them arrived from Lithuania, mostly from Visaginas, and only a few from Vilnius <sup>33</sup> .
10 Sep 2013	The Lithuanian Ministry of Environment stated <sup>34</sup> that, with due consideration to the recommendation of the Implementation Committee, Lithuania expected to receive a substantially updated EIA report. Having analysed information provided by Belarus, Lithuanian authorities stated that it contained no answers to questions raised by Lithuania; therefore, the situation remained unchanged. Belarus failed to submit the assessment of alternative sites for the construction of the NPP, the geological assessment of the selected site, the assessment of the impact on the Lithuanian environment and the public, information about the cooling of the NPP, the impact on the Neris River and the Nemunas River as well as the drinking water in Lithuania, emergency preparedness, etc. Belarus failed to consider recommendations of the Implementation Committee to allocate reasonable time for the analysis of information and the submission of comments (Lithuania requested the allocation of reasonable time for the analysis of the voluminous document). Lithuania noted that the attempt of Belarus to comply with the provisions of the Espoo Convention was hurried and formal. Lithuania expressed concerns regarding public statements made by Belarusian representatives following the event of 17 August 2013, which stated that no international legal acts were binding Belarus to develop emergency preparedness or evacuation plans for the population of the Lithuanian capital of Vilnius, and that the development of such plans was not needed. Lithuania

<sup>31</sup> Letter No (10-3)-D8-6605.

<sup>32</sup> Letter No 13-13/1244.

<sup>33</sup> [http://www.15min.lt/naujiena/verslas/energetika/baltarusiai-ramina-lietuvius-kad-nera-ko-baimintis-katastrofos-astrovo-atomineje-elektrineje-vejas-dazniausiai-pucia-nuo-lietuvos-puses-664-361878?utm\\_source=15min&utm\\_medium=desine&utm\\_campaign=skaitomiausios\\_naujienos](http://www.15min.lt/naujiena/verslas/energetika/baltarusiai-ramina-lietuvius-kad-nera-ko-baimintis-katastrofos-astrovo-atomineje-elektrineje-vejas-dazniausiai-pucia-nuo-lietuvos-puses-664-361878?utm_source=15min&utm_medium=desine&utm_campaign=skaitomiausios_naujienos)

<sup>34</sup> Letter No (10-3)-D8-7539.



	repeated its request to provide the missing information by 1 October 2013 and proposed to organise a public hearing in Vilnius at the end of October 2013.
1 Oct 2013	The Belarusian Ministry of Natural Resources and Environmental Protection stated <sup>35</sup> that answers have already been provided to the majority of questions raised by Lithuania, even though Lithuania considered that requested information has not been provided. Belarus noted that it did not think the EIA report should be updated, and confirmed that it took all measures in order to comply with the provisions of the Espoo Convention; however, it was apparent from the factual circumstances and received complaints from the population that the non-compliance with the provisions of the Espoo Convention continued. Belarus regretted that Lithuania did not respond to repeated proposals to organise a meeting of experts (even though the latter must be held only after an appropriate public hearing for the discussion of the EIA report) and that Lithuania did not inform its public about the EIA report provided on 11 June 2013 (even though this report was available online as soon as experts assessed its content and an explanatory note informing that liability for the translation of the EIA report lays with the Belarusian Ministry of Natural Resources and Environmental Protection was enclosed).
23 Oct 2013	The Belarusian Ministry of Natural Resources and Environmental Protection approved Findings No 98 of the State Ecological Expertize.
29 Oct 2013	The Belarusian Ministry of Emergency Situations issued Permit (Licence) No 02300/239-4 (dated 13 September 2013) authorising the installation of nuclear equipment in Unit One of the Ostrovets NPP.
29 Oct 2013	The Lithuanian Ministry of Environment asked Belarus to comply with recommendations of the Implementation Committee <sup>36</sup> and stated that it hoped to receive the requested explanations, and then it would like to organise a public hearing for the Lithuanian public in Lithuania and a meeting of experts to discuss the remaining issues. It noted that both parties should abstain from unilateral actions and that reasonable time must be allocated for the assessment of the received information. Lithuania informed that the provided EIA documentation was publicly available and that the public was in the process of submitting comments.
Oct – Nov 2013	Appeals of the Lithuanian public were received that contained comments regarding the text of the EIA report of 11 June 2013, available on the website of the Lithuanian Ministry of Environment. The Lithuanian Ministry of Environment could not provide answers to questions raised by the public as it failed to obtain the said information from the Belarusian Ministry of Natural Resources and Environmental Protection.
2 Nov 2013	Edict <i>On Construction of the Belarusian Nuclear Power Station</i> of the President of the Republic of Belarus was adopted, which decreed to implement the Ostrovets NPP project in the period of 2013-2020.
21 Nov 2013	The Belarusian Ministry of Natural Resources and Environmental Protection informed <sup>37</sup> that on 2 November 2013, the President of the Republic of Belarus adopted an edict on the construction of the Belarusian NPP. The edict stated that no negative impact of the Belarusian NPP in a transboundary context was identified. Concerned parties also failed to prove any negative impact. Belarus intended to perform a post-project analysis of the Belarusian NPP.
3 Dec	The Lithuanian Ministry of Environment forwarded comments and proposals submitted

<sup>35</sup> Letter No 13-13/1602.

<sup>36</sup> Letter No (10-3)-D8-9195.

<sup>37</sup> Letter No 13-13/2028-2.

2013	by the Lithuanian public to the Belarusian Ministry of Natural Resources and Environmental Protection <sup>38</sup> . As it was mentioned in the letter of 29 October 2013, according to the assessment of Lithuanian experts, the major share of information provided in 2013 was received earlier and was not updated. Lithuania regretted that instead of answering questions Belarus provided an abbreviated version of answers that were already provided before; it noted that no answers were provided to questions listed in the annex to the letter, and also to other questions, e.g. related to the event held in Ostrovets (Belarus) on 17 August 2013. Lithuania expressed concerns regarding the authorisation of the installation of nuclear equipment in Unit One of the Ostrovets NPP and requested to submit all related information. Lithuania repeated its invitation to organise a public hearing in Vilnius, as it received no response to its previous invitations, and also proposed to invite IAEA Site and External Events Design (SEED) mission <sup>39</sup> that could provide an unbiased assessment of the locations for the construction of the nuclear power plan in Belarus.
13 Feb 2014 and 24 Feb 2014	The Belarusian Ministry of Natural Resources and Environmental Protection repeatedly claimed <sup>40</sup> that all questions raised by Lithuania were answered in 2011-2013, that Belarus was in compliance with the provisions of the Espoo Convention (even though Lithuania had to raise the same questions over and over again), that Lithuania did not cooperate in the organisation of the event held in Ostrovets, did not have a public hearing for the discussion of the EIA report sent on 11 June 2013 and did not provide an opportunity to submit comments, even though these steps were neither discussed nor coordinated with Lithuania. Belarus repeated that it was prepared to organise a post-project analysis.
29 May 2014	The Lithuanian Ministry of Environment regretted <sup>41</sup> that the construction was under way at the Ostrovets site even though the EIA procedure has not been completed yet. When commenting on the possibility of the public involvement in the Ostrovets NPP construction project, Lithuania <i>inter alia</i> noted that the unilateral organisation of the meeting of 17 August 2013 by Belarus was non-compliant with obligations under international legal acts and with recommendations of the Implementation Committee. It is repeatedly regretted in the letter that Belarus failed to allocate reasonable time for the assessment of the provided information and to coordinate the date and the venue of the meeting. The said meeting was attended by persons selected from among the population of a certain region of Lithuania. It should be noted that so far the Lithuanian public concerned has not been provided with an opportunity to receive full information about the Project and to participate in a public hearing, as Belarus has failed to respond to respective requests of Lithuania. The proposal of Belarus to organise a public hearing during the post-project analysis does not comply with the provisions of the Espoo Convention.
23 May 2014	The Belarusian Ministry of Natural Resources and Environmental Protection sent a post-project analysis programme and requested to submit comments by 4 August 2014 <sup>42</sup> .

<sup>38</sup> Letter No (10-3)-D8-10313.

<sup>39</sup> In response to Lithuania's questions regarding the selection and safety of the site, Belarus claimed that IAEA Integrated Nuclear Infrastructure Review (INIR) mission, which visited Belarus in June 2012, had no comments regarding the site. However, due to its nature and intended purpose, IAEA INIR mission does not perform the assessment of nuclear power plant construction sites. For this purpose IAEA has SEED mission.

<sup>40</sup> Letter No 13-13/425 of 13 February 2013; Letter No 13-13/503 of 24 February 2013.

<sup>41</sup> Letter No (10-3)-D8-4044.

<sup>42</sup> Letter No 13-11/1363-3.

2-5 Jun 2014	<i>The Meeting of the Parties to the Espoo Convention adopted Decision VI/2 on the compliance of the activities of Belarus with the provisions of the Convention, which recognised that Belarus was non-compliant with Article 2(6), Article 4(2), Article 5(a) and Article 6(1) and (2) of the Espoo Convention and provided recommendations for the elimination of the identified non-compliance.</i>
13 Aug 2014	The Lithuanian Ministry of Environment noted that, pursuant to the Espoo Convention, a post-project analysis can only be started after the completion of previous stages specified in the Espoo Convention. The Lithuanian Ministry of Environment also noted that it was impossible to submit comments on the post-project analysis programme, because Lithuania's questions still remained unanswered and the EIA procedure was not completed. Lithuanian authorities analysed information submitted by Belarus according to general standards. They submitted specific comments and noted that they still expected to receive answers to questions raised by Lithuania.
30 Dec 2014	The Belarusian Ministry of Emergency Situations issued a permit (licence) authorising the construction of Unit Two of the Belarusian NPP; however, the actual construction of Unit Two started at the end of April 2014, i.e. approximately 6-8 months ahead of schedule.