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UNITED NATIONS

ECONOMIC COMMISSION
FOR EUROPE

IMPLEMENTATION COMMITTEE
CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

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Dear Mr. Tarasenko,

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

At thirtieth session that was held in Geneva from 25 to 27 February 2014, the Committee continued its consideration of the information it had gathered with regard to the information provided by a Belarusian non-governmental organization on the planned construction of nuclear reactors 3 and 4 at the Khmelnytskyi NPP in Ukraine, approximately 150 km from the borders with the Republic of Moldova and Romania, and approximately 350 km from the borders with Belarus (EIA/IC/INFO/10). The Committee reviewed the clarifications received from the Governments of Austria, Belarus, Hungary, Poland, Republic of Moldova, Romania, Slovakia and Ukraine in response to the Committee's letters of 17 December 2013.

The Committee welcomed that Ukraine had initiated transboundary procedures with seven Parties to the Convention: notifications had been sent, the EIA documentation had been provided, while some action on public participation and consultations procedures were still being carried out.

The Committee noted the information presented by Ukraine, arguing that the final decision for the planned activity was not the Law of the Parliament 5217-VI of 6 September 2012 on "siting, designing and construction of power units No3, No4 of Khmelnytskyi nuclear power plant"; but a subsequent decision expected to be adopted by the Cabinet of Ministers on the basis of Procedure No. 759 of 17 October 2013 for Approval and Expert Reviews of Construction Projects.

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In that regard, the Committee considered that:

(a) The Law of Ukraine 2861-IV of 8 September 2005 on “decision-making procedure regarding siting, designing and construction of nuclear installations and radioactive waste management facilities of national significance”, provided clear authority to the Parliament to take the final decision with regard to the planned activity;

(b) Based on Law 2861-IV, Law 5217-VI seemed to constitute the final decision for the planned activity;

(c) Procedure No. 759 had only been introduced to Ukraine’s legal system on 17 October 2013, after the adoption of Law 5217-VI of 6 September 2012.

Therefore, the Committee concluded that there were clear indications that Ukraine had not properly applied the Convention in relation to the planned construction of reactors 3 and 4 at the Khmelnytskyi NPP, since a post-factum change in the legal system in October 2013 could not retroactively alter the legal nature of the decision of the Parliament by law of 6 September 2012 to authorize the activity at issue on the basis of legislation in force at the time. The Committee noted that the information could be the basis of a profound suspicion of non-compliance.

However, taking into account that steps had been taken in the implementation of the transboundary EIA procedure and the fact that transboundary public participation and consultations procedures with some affected Parties had not yet been concluded, the Committee agreed that it would continue its consideration of the matter at its next session.

At the request of the Committee, I am now writing to the Government of Ukraine to request for the following further clarifications and information in English:

(a) What is the nature of the “Procedure for approval and expert reviews of construction project” in the hierarchy of laws of Ukraine?

(b) Can the decision by the Cabinet of Ministers change the parameters for the activity or its location, as defined in Law No. 5217-VI of 6 September 2012?

(c) What is the legal basis for the final decision under Procedure No. 759 to assure that the requirements of article 6, paragraph 1, of the Convention, are met, i.e. that in the final decision on the proposed activity due account is taken of the outcome of the EIA procedure, including the EIA documentation, as well as the comments thereon received pursuant to article 3, paragraph 8, and article 4, paragraph 2, and the outcome of the consultations as referred to in article 5?

(d) Since the adoption of Procedure No. 759 for Approval and Expert Reviews of Construction Projects by the Cabinet of Ministers on 17 October 2013, does Ukraine plan to annul the law of the Parliament 5217-VI of 6 September 2012?

(e) Please provide a copy of the letter, including materials, of 6 April 2012 (No 7123/10/10) sent by Ukraine to potentially affected Parties (Austria, Belarus, Hungary, Poland, Republic of Moldova, Romania, and Slovakia).

(f) Please provide copies of the notifications, with the date and supporting documentation, Ukraine sent in 2010 to potentially affected Parties (Austria, Belarus, Hungary, Poland, Republic of Moldova, Romania, and Slovakia) about the activity.

(g) How does Ukraine fulfil the requirements under article 2, paragraph 6, article 3, paragraph 8, and article 4, paragraph 2, of the Convention, with respect to its obligation as a Party of origin to ensure public participation for the public likely to be affected in the affected Party (in Austria, Hungary, Poland, the Republic of Moldova and Slovakia)?

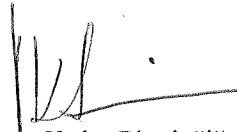
(h) How and when did Ukraine inform its own public about the proposed activity?

(i) Please provide information about the public participation in Ukraine in May 2011 and whether Ukraine informed the potentially affected Parties about the public hearing.

You are kindly requested to provide the information to the secretariat by no later than 4 August 2014, for the Committee to consider at its next session. You are further encouraged to finalize the ongoing transboundary public participation and consultation procedures with all concerned Parties, in accordance with article 3, paragraph 8, and article 5, of the Convention, respectively, and to adopt the final decision in compliance with article 6 of the Convention.

You are kindly requested to provide the information to the secretariat by no later than 4 August 2014, for the Committee to consider at its next session.

Yours sincerely,



Vesna Kolar Planinšič
Chair, Implementation Committee,
Convention on Environmental Impact Assessment
in a Transboundary Context