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## Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context

### Seventh session

## Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

### Third session

Minsk, 13–16 June 2017

Item 6 of the provisional agenda

**Review of compliance, implementation and work  
done by the Implementation Committee**

## **Report on the activities of the Implementation Committee**

### **Note by the Implementation Committee**

#### *Summary*

The present document contains the report of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment on the Committee's activities since the sixth session of the Meeting of the Parties to the Convention (Geneva, 2-5 June 2014), as well as such recommendations as it considers appropriate. It was prepared in accordance with the Committee's structure and functions (ECE/MP.EIA/6, annex II, appendix, para. 11), and the workplan adopted at the sixth session and the second session, respectively, of the Convention's and Protocol's governing bodies (see ECE/MP.EIA/20/Add.3-ECE/MP.EIA/SEA/4/Add.3, decision VI/3–II/3).

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More details on the Committee's deliberations are presented in the Committee's reports on its sessions during the intersessional period 2014–2017.<sup>1</sup> The Committee's recommendations to the Meeting of the Parties to the Convention, presented in this report, were adopted unanimously.

The Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol are expected to consider the information provided.

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<sup>1</sup> Available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/meetings-and-events.html#0/0/0/28089/19940>.

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## I. Introduction

### A. Membership and sessions of the Implementation Committee

1. In the intersessional period 2014–2017, the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA) reviewed compliance under the Convention and the Protocol, in accordance with article 14, paragraph 6, of the Protocol, and decision V/6–I/6 adopted at the fifth session of the Meeting of the Parties Convention and the first session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (Meeting of the Parties to the Protocol) (see ECE/MP.EIA/SEA/2).

2. The members of the Implementation Committee and the Parties they represented on the Committee for Convention matters were: Vladimir Buchko (Ukraine); David Catot (from the thirty-fourth session) (France); Elyanora Grigoryan (Armenia); Lourdes Aurora Hernando (Spain); Anna Kliut (Belarus); Ivan Narkevych (from the thirty-session) (Belarus); Zsuzsanna Pocsai (Hungary); Michel Prieur (until the thirty-third session) (France); Romas Švedas (Lithuania); Felix Zaharia (Romania); and Nadezhda Zdanevich (from the thirty-fourth session) (Belarus).<sup>2</sup> Armenia, France, Romania and Spain were elected to nominate members at the fifth session of the Meeting of the Parties (Geneva, 20–23 June 2011), so members nominated by them were serving their second term. Belarus, Hungary, Lithuania and Ukraine were elected to nominate members at the sixth session of the Meeting of the Parties (Geneva, 2–5 June 2014).

3. The elected members<sup>3</sup> of the Committee and the Parties they represented on the Committee for Protocol matters were: Kaupo Heinma (Estonia); Jerzy Jendroška (Poland);<sup>4</sup> Ms. Pocsai (Hungary); Ilda Shahu (from the thirty-sixth session) (Albania); Ornela Soshi (Albania); and Mr. Švedas (Lithuania). The five members were elected to join the three continuing members of the Committee for Protocol matters, Armenia, Spain and Romania, while Estonia was elected to serve as an alternate to Ukraine, Poland as an alternate to Belarus and Albania as an alternate to France. Ukraine became a Party to the Protocol on 1 March 2016, but Estonia, elected by the Meeting of the Parties to serve as alternate to Ukraine, served as a member of the Committee until the end of its term of office.

4. In line with the amendments to the Committee's structure and functions and operating rules adopted by the Meetings of the Parties,<sup>5</sup> in addition to the permanent members, the following alternate members were appointed by the elected Parties for the same term of office: Borana Antoni (Albania); Almudena Casanueva Canamero (Spain); Larisa Kharatova (Armenia); Tatjana Laguta (from the thirty-fourth session) (Belarus); Ivan Narkevych (Belarus); Rainer Persidski (Estonia); Katarzyna Twardowska (Poland); and Jūratė Usevičiūtė (Lithuania). Szabolcs Péter Orosz (Hungary) was appointed to serve as

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<sup>2</sup> Originally appointed as alternate member, Mr. Narkevych was appointed and served as permanent member of the Committee for one session. Mr. Catot was appointed to replace Mr. Prieur from the thirty-fourth session. Manuel Menendez Prieto exceptionally replaced the Committee member nominated by Spain at the Committee's thirty-first session, and Elena Dumitru replaced Mr. Zaharia from Romania at the Committee's thirty-seventh session.

<sup>3</sup> For rules on election processes, see paragraphs 2 and 3 of decision V/6–I/6.

<sup>4</sup> On the election of Mr. Jendroška, see also ECE/MP.EIA/20–ECE/MP.EIA/SEA/4, para. 69.

<sup>5</sup> See decision IV/1, annex IV (see ECE/MP.EIA/10), as amended by decisions V/4 (see ECE/MP.EIA/15) and VI/2 (see ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1).

alternate from the thirty-second session of the Committee, Marc Clément (France) from the thirty-fourth session, and Elena Dumitru (Romania) and Maryna Shymkus (Ukraine) from the thirty-sixth session. The Committee also agreed that in the absence of the Chair, the Chair's functions would be carried out by the Vice-Chairs, and not by the alternate member appointed by the country the Chair represented.

5. At its thirty-first session, the Committee nominated Mr. Zaharia as Chair of the Committee. At its thirty-second session, the Committee elected Ms. Hernando as the first Vice-Chair and Mr. Švedas as the second Vice-Chair.

6. The Committee held eight sessions in the intersessional period 2014-2017. Reports of the Committee's sessions were made available to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Working Group on EIA and SEA), and were published on the Convention website. Members nominated by Parties whose compliance was at issue were not present when the Committee considered the respective items in closed sessions.

7. At the Committee's thirty-fifth session (Geneva, 15-17 March 2016), on the occasion of (informal) discussions with a delegation of Ukraine regarding the follow-up on decision VI/2 in relation to the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian Sector of the Danube Delta (Bystroe Canal Project), Ukraine requested that any discussions within the Committee on the follow-up by Ukraine to decision VI/2 in relation to that Project be consistently carried out in the absence of Committee members nominated by Romania and Ukraine. Subsequently, the Chair, as the member from Romania, no longer participated in any discussions of the Committee on the matter or signed letters to Ukraine on behalf of the Committee.

## **B. Activities assigned to the Committee**

8. The decisions of the Meetings of the Parties regulate the operation of the Committee and the activities it carries out, as described in this report. These decisions include:

(a) Establishing the Committee for the review of compliance by the Parties with their obligations under the Convention with a view to assisting them fully to meet their commitments (decision II/4, para. 1);

(b) Deciding on the structure and functions of the Committee and the procedures for review of compliance (decision III/2, para. 2);

(c) Extending the application of the compliance procedure of the Convention to the Protocol on SEA (decisions I/6-V/6);

(d) Requesting the secretariat to bring to the attention of the Committee general and specific compliance issues identified in the fourth review of implementation of the Convention and the first review of implementation of the Protocol, and to request the Committee to take these into account in its work (decision VI/1, para. 4, and decision II/1, para. 4);

(e) Requesting the Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible (decision VI/2, para. 9, and decision II/2, para. 7);

(f) Adopting the amendments to the structure and functions and operating rules of the Committee set out in annex I and II to decision VI/2 (decision VI/2, paras. 12 and 13, and decision II/2, para. 9) mainly concerning membership, participation in the meetings, documentation by Parties and electronic-decision making;

(g) Requesting the Committee to keep under review and develop, if necessary, its structure and functions, as well as its operating rules, in the light of experience gained, and to prepare proposals, as the Committee deems necessary, for the seventh session of the Meeting of the Parties to the Convention (decision VI/2, para. 14);

(h) Adopting the workplan for compliance with and implementation of the Convention and the Protocol in the period up to the seventh session of the Meeting of the Parties to the Convention and the third session of the Meeting of the Parties to the Protocol (decision VI/3–II/3), thereby tasking the Committee to:

- (i) Consider compliance submissions received;
- (ii) If necessary, review of the its structure and functions and operating rules (see also subpara. (g) above);
- (iii) Examine the outcome of the fourth review of implementation of the Convention and the first review of implementation of the Protocol;
- (iv) Modify the questionnaires for the report on implementation of the Convention and, as appropriate, the Protocol, in 2013–2015;
- (v) Supervise reviews of legislation, procedures and practice and technical assistance in drafting legislation, to strengthen Parties' implementation of and compliance with the Convention and the Protocol, as decided by the Committee and the Party concerned and subject to availability of funds, among other things country-specific reviews, including a period in-country examining national legislation and based on earlier reviews further to decision IV/2 (technical advice to Armenia on improving legislation to implement the Protocol and advice in drafting necessary amendments; technical advice to Azerbaijan on improving legislation to implement the Convention);
- (vi) Undertake a number of specific actions, as set out in decision VI/2 regarding Armenia (paras. 29–35 and 45–46), Azerbaijan (paras. 38–44 and 47), Belarus (paras. 47–64), Romania (paras. 36–37) and Ukraine (paras. 15–28 and 68–71);
- (vii) Report on its activities to the seventh session of the Meeting of the Parties to the Convention and the third session of the Meeting of the Parties to the Protocol.

9. In addition, the Committee was requested to contribute, as needed, to the preparation of guidance on the implementation of the Convention, drawing on opinions of the Implementation Committee. This activity was initially led and funded by the European Investment Bank, but was later undertaken by the Committee Chair and a member of the Implementation Committee on a voluntary, pro bono basis, i.e., not as consultants to the Bank. The co-authors proposed to enlarge the scope of the guidance beyond that foreseen in the workplan to cover also relevant linkages of the Convention with other ECE multilateral environmental treaties. While the Working Group on EIA and SEA could not reach a consensus on the extended proposal, the co-authors nevertheless decided that they would proceed to work on the proposed extended draft guidance, working in their individual capacity, independently from the Convention bodies, and informed the Working Group of their decision.

## II. Follow-up to decision VI/2

### A. Ukraine

*Committee reference:* EIA/IC/S/1<sup>6</sup>

10. The issue of compliance by Ukraine with its obligations under the Convention in relation to its legislation and the Bystroe Canal Project has been under consideration by the Committee since 2004. At its sixth session, the Meeting of the Parties to the Convention declared that the caution to the Government of Ukraine issued at its fourth session in 2008 was still effective (decision VI/2, para. 23). It requested the Government of Ukraine to adopt the draft legislation on the implementation of the Convention and to bring the Bystroe Canal Project into full compliance with the Convention by the end of 2015. In that respect, it also requested the Government to report by the end of each year to the Committee on how it implemented those recommendations.

11. Specifically, the Government was to report on: (a) the implementation of the strategy to implement the Convention by the end of 2015 — in particular concrete legislative measures adopted to that effect; and (b) the steps taken to bring the Project into full compliance with the Convention, implementing the measures in accordance with paragraph 19 of decision V/4 by the end of 2015, while refraining from undertaking any measure or programme that could jeopardize the fulfilment of those recommendations (decision VI/2, paras. 24–25).

12. During the intersessional period, the Committee followed closely the steps taken by the Government to bring about compliance with its obligations under the Convention, as requested by Meeting of the Parties. The Government of Ukraine provided information regularly at the Committee's request. However, on repeated occasions, the Committee observed that the Government provided insufficient information. To address the information gaps a delegation from Ukraine was invited to attend the thirty-fifth session to discuss progress in following up on the recommendations in decision VI/2.<sup>7</sup> The Committee also sought further information from Ukraine in the course of 2016. In February 2017, the Committee still found that the information provided by Ukraine on steps taken to bring the Bystroe Canal Project into compliance with the Convention were incomplete, and finalized its conclusions as presented below.

13. With respect to the implementation of paragraphs 24 and 25 (a) of decision VI/2 regarding the strategy and the adoption of relevant draft legislation, the Committee recalled that in October 2016 the Ukrainian President had vetoed the text of the new law on environmental impact assessment (EIA) adopted by the parliament earlier that month. It noted that the parliament had returned the law to its environmental committee for revision. The Committee expressed concerns that, despite the efforts of Ukraine to develop and adopt the new text of the law, there was still no legislation in place to ensure proper implementation of the Convention. Consequently, the Committee agreed that it was not in a position to conclude that Ukraine had implemented provisions of paragraphs 24 and 25 (a) of decision VI/2 regarding the legislative measures (see ECE/MP.EIA/IC/2017/2, forthcoming).

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<sup>6</sup> Symbols structured EIA/IC/S/ followed by a number indicate submissions to the Implementation Committee. More information on submissions can be found at [http://www.unece.org/env/eia/implementation/implementation\\_committee\\_matters.html](http://www.unece.org/env/eia/implementation/implementation_committee_matters.html).

<sup>7</sup> The discussions at the thirty-fifth session did not constitute a formal discussion (a hearing) on the matter, according to paragraph 9 of the Committee's structure and functions and operating rule 11.

14. With regard to steps taken by Ukraine to bring the Bystroe Canal Project into full compliance with the Convention and, in particular, the implementation of the measures referred to in decision VI/2, paragraph 25 (b), and decision V/4, paragraph 19, the Committee agreed that although some steps had been taken, the information available to the Committee did not allow it to conclude that the Project had been brought into full compliance with the Convention (see ECE/MP.EIA/IC/2017/2, forthcoming).

15. With reference to paragraph 22 of decision VI/2, the Committee at its thirty-sixth session (Geneva, 5-7 September 2016) deliberated on whether the dredging activities that Ukraine had acknowledged it carried out regularly in the seaward part of the channel “for maintenance purposes” could indicate a further breach of the Party’s obligations under the Convention. The Committee was of the view that dredging of the seaward part of the channel constituted an integral part of the project. Consequently, the Committee considered that until Phase I of the project was brought into full compliance with the Convention, the dredging of the seaward part of the channel represented continuation of the non-compliance (ECE/MP.EIA/IC/2016/4, para. 13).

16. On the above grounds, the Committee agreed that it had no basis to recommend to the Meeting of the Parties to revise its recommendations set out in decisions V/4 and VI/2 concerning compliance by Ukraine and that, consequently, the caution issued at the fourth session of the Meeting of the Parties remained effective (ECE/MP.EIA/IC/2009/4, para. 16). It recommended to the Meeting of the Parties that it request Ukraine to adopt the relevant legislation and bring the Bystroe Canal Project into full compliance with the Convention by the end of 2018. Should Ukraine fail to do so, the Committee recommended that, at its next session in 2020, the Meeting of the Parties consider taking more stringent measures, such as the suspension of the special rights and privileges accorded to Ukraine under the Convention, involving for example the possible future membership of Ukraine in the Bureau and the Committee.<sup>8</sup>

*Committee reference: EIA/IC/CI/4*<sup>9</sup>

17. By decision VI/2 (para. 71), the Committee was invited to follow up its assessment of the case regarding the extension of the lifetime of reactors 1 and 2 of the Rivne nuclear power plant (NPP) by Ukraine, which had been subject to proceedings before the Committee during the previous intersessional period, taking into consideration the specific circumstances and the fact that Ukraine had acted in good faith. At its thirty-second session (Geneva, 9-11 December 2014), the Committee noted that the mandate provided by decision VI/2 in relation to the case was unclear. It observed, however, that the decision adopted by the Meeting of the Parties had explicitly endorsed the finding of non-compliance by Ukraine with several provisions of the Convention in relation to the project and the legislation. In that regard, the Committee agreed that following up with decision VI/2 would not imply reconsideration of the case.

18. Consequently, the Committee requested the Government of Ukraine to provide information on specific measures to address the Committee’s findings of non-compliance by Ukraine with article 2, paragraphs 2 and 3, article 4, paragraph 1, and articles 3 and 6 of

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<sup>8</sup> See the Committee’s operating rules, decision IV/1, annex IV (see ECE/MP.EIA/10), as amended by decisions V/4 (see ECE/MP.EIA/15) and VI/2 (see ECE/MP.EIA/20/Add.1-ECE/MP.EIA/SEA/4/Add.1).

<sup>9</sup> Symbols structured EIA/IC/CI/ followed by a number indicate Committee initiatives. More information on Committee initiatives can be found at <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>.

the Convention, which were endorsed by the Meeting of the Parties. In February 2017, the Committee noted the resolution of the Ukrainian Vice-Prime Minister of 12 January 2017 requesting the Government to initiate by January 2018 the transboundary EIA procedure for the planned lifetime extension of two reactors of the Rivne NPP further to decision VI/2. It regretted, however, that no information had been provided on the concrete steps to carry out that procedure.

19. The Committee also noted with concern that Ukraine had not initiated discussions with potentially affected Parties to agree on whether notification was needed for the extension of the lifetime of the Rivne NPP, as the Committee had requested at its thirty-fifth session. It nevertheless stressed that, in the meantime, Austria, Hungary and Romania had asked Ukraine to notify them regarding the activity.

20. On the basis of the above, the Committee concluded that since the sixth session of the Meeting of the Parties in June 2014 Ukraine had not taken the necessary practical steps to bring the project into compliance with the Convention. The Committee further noted that decision VI/2, paragraphs 68-71, did not provide clear guidance for Ukraine on how to bring the activity into compliance with the Convention. Therefore, it recommended that the Meeting of the Parties outline, in its decision VII/2 on the review of compliance, specific measures that would assist Ukraine in addressing its non-compliance with regard to the activity and in reporting on the progress made to the Committee annually. In particular, Ukraine should be requested to revise by the end of 2018 its decision to extend the lifetime of reactors 1 and 2 of the Rivne NPP based on the outcomes of an EIA procedure to be carried out in full compliance with the Convention, and following the time frame and concrete steps provided for in a strategy to be prepared by Ukraine by the end of 2017 (ECE/MP.EIA/IC/2017/2, forthcoming).

## **B. Romania**

*Committee reference: EIA/IC/S/2*

21. In its decision VI/2 (paras. 27 and 37), the Meeting of the Parties encouraged the Governments of Romania and Ukraine to strengthen their cooperation and develop the bilateral agreement for improved implementation of the Convention. The Governments of Romania and Ukraine provided information on how they had implemented decision VI/2. The Committee welcomed the steps undertaken by the two Governments and recommended that the Meeting of the Parties encourage them to continue to exchange information and to cooperate with a view to preparing a bilateral agreement or other arrangement to further support the implementation of the Convention, in accordance with the Convention's article 8.<sup>10</sup>

## **C. Armenia**

*Committee reference: EIA/IC/CI/1*

22. The Committee initiative on Armenia was launched in 2007 as a result of the examination by the Committee of national responses to the questionnaire for the first review of implementation of the Convention (to mid-2003) and the request from Armenia for technical assistance from the Committee in implementing the Convention. In its decision VI/2 (paras. 31–32), the Meeting of the Parties welcomed the progress made by the Government of Armenia towards adoption of the draft revised legislation, prepared with

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<sup>10</sup> See draft decision VII/2 (ECE/MP.EIA/2017/8), paras. 25-26.

the assistance of the Implementation Committee and an international consultant to the Convention secretariat in the previous intersessional periods. It invited the Government to adopt the revised law, while ensuring its compliance with the Espoo Convention and its Protocol, and also with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. In addition, the Government was requested to ensure that the adopted legislation was in accordance with the recommendations of the international consultant to the secretariat (decision VI/2, para 32).

23. The Committee noted that the new law on EIA of Armenia entered into force on 11 August 2014 and was complemented by the Government's decision No. 1325 (in force as of 19 November 2014) regulating public participation aspects. It also noted that the law only partially addressed the recommendations of the international consultants, and that practical application of the law could create confusion, because the EIA and SEA procedures were not clearly distinguished from each other.

24. During the intersessional period, the Committee monitored the technical advice provided by the secretariat to assist the country to bring its legislation fully in line with the Convention and the Protocol, undertaken with funding from European Union Greening the Economies in the Eastern Neighbourhood (EaP Green) Programme (see decision VI/2, para. 35). It considered regular reports by the member of the Committee representing Armenia and by the secretariat on the progress made in the implementation of the technical advice to amend the 2014 Law on EIA and to draft relevant secondary legislation.

25. In February 2017, the Committee noted that Armenia had prepared draft amendments to the 2014 Law on EIA and had drafted relevant secondary regulations under the supervision of the Deputy Minister of Nature Protection. The Committee took note of the information provided by an international consultant to the secretariat involved in the legal drafting in Armenia that the proposed legislative amendments and the draft secondary regulations in their current version provided for a better distinction between the EIA and SEA procedures. The Committee remarked, however, that additional revisions would still be necessary to address deficiencies in their practical application, in particular in relation to the definition of the final decision and time frames for different stages of public participation.

26. The Committee recommended to the Meeting of the Parties to encourage Armenia to address the remaining deficiencies in the law and to adopt the proposed amendments and the secondary legislation as soon as possible.

*Committee reference: EIA/IC/S/3*

27. The Committee was also requested by the Meeting of the Parties to the Convention to follow up and, as appropriate, monitor the steps in the transboundary EIA procedure in relation to the planned construction of the Metsamor NPP (decision VI/2, paras. 45–46). In fall 2014, the Government informed the Committee that, through decision 511-A of 19 May 2014, the Government had approved its new energy programme, which among other projects, envisaged that the construction of the new block of the NPP would only start in 2018. It also stated that no works had been initiated or carried out in relation to the planned construction of the Metsamor NPP, that the information contained in the notification dated 27 August 2010 on the project — which had originally been the subject of compliance concerns voiced by Azerbaijan — had no further validity, that any activities based on that notification had been suspended and that any new developments would be based solely on the Government's new programme.

28. The Committee took into account the information provided. It agreed that, since the decision for the planned construction of the NPP was no longer valid and activities based on that decision were suspended, there was no transboundary EIA procedure relating to that project and therefore no longer a ground to follow up. It decided to recommend to the Meeting of the Parties to close the case and to encourage Armenia to ensure that any projects carried out in accordance with energy-related programmes, including nuclear activities, be in compliance with the Convention.

29. Nevertheless, the Committee observed that the Programme of the Government of 19 May 2014 seemed to set the framework for future activities in the energy field. Therefore, as Armenia was a Party to the Protocol on SEA, the Committee initiated an information-gathering procedure on Protocol matters (SEA/IC/INFO/2) to establish whether the Government programme in question should have been a subject to an SEA (see paras. 76-78 below).

## **D. Azerbaijan**

*Committee reference: EIA/IC/CI/2*

30. The Committee initiative on Azerbaijan was prompted by the country's responses to the questionnaire on implementation of the Convention in the period 2009-2011, indicating that it lacked national legislation on the application of the Convention, and by the request from Azerbaijan for technical assistance from the Committee in that regard.

31. In its decision VI/2 (paras. 38-44), the Meeting of the Parties requested Azerbaijan to ensure that its draft framework law on environmental assessment and its implementing regulations complied with the Convention. In particular, Azerbaijani legislation had to clearly designate which decision constituted a final decision for the purposes of the Convention and any final decision had to comply with the Convention's requirements, taking into account the 2009 recommendations of the international consultant to the secretariat and also the general guidance on enhancing consistency between the Convention and EIA in the framework of state ecological expertise in the countries of Eastern Europe, the Caucasus and Central Asia (ECE/MP.EIA/2014/2, endorsed through decision VI/8). Azerbaijan had also been requested to adopt the draft law and the subsequent implementing regulations and to regularly report to the Committee.

32. The Committee noted that, following the request of the Meeting of the Parties, the secretariat had facilitated extensive technical assistance to Azerbaijan with funding from the EaP Green Programme to assist the country in bringing its draft legislation fully in line with the Convention and the Protocol (decision VI/2, para. 44), including an expert review of the draft legislation and the drafting of new legislation. During the intersessional period, the Committee considered regular reports by the Government, an international expert to the secretariat and the secretariat, on progress in the implementation of the technical advice to Azerbaijan.

33. In February 2017, the Committee noted that, despite efforts from all the authorities to amend the draft legislation on EIA and SEA as recommended by international consultants, Azerbaijan had not managed to adopt the draft law and the subsequent regulations, as requested by the Meeting of the Parties (decision VI/2, para 42). The Committee acknowledged the efforts of the Azerbaijan, but noted that it was still not in a position to report to the Meeting of the Parties on any relevant legislation in force in Azerbaijan for the implementation of the Convention.

34. While regretting that situation, the Committee agreed that the Meeting of the Parties should again invite Azerbaijan to adopt its law as soon as possible. It discussed the causes for the longstanding failure of Azerbaijan to adopt the law, and decided that the usefulness

of the technical assistance provided to Azerbaijan deserved a dedicated analysis. To this end, the Committee asked the secretariat to submit to it in advance of its fortieth session (Geneva, 5-7 December 2017) a comprehensive report on the technical assistance provided to Azerbaijan, including its views on the reasons why that assistance had not contributed to the outcomes requested by the Meeting of the Parties.

35. The Committee also expressed its concerns about the readiness of the Government of Azerbaijan to make full use of the outcomes of the technical assistance. Therefore, it decided to continue its initiative by inviting Azerbaijan to a hearing during its fortieth session to present, inter alia, these difficulties. The Committee would subsequently draft its findings and recommendations to the next Meeting of the Parties in respect of Azerbaijan.

## **E. Belarus**

*Committee reference: EIA/IC/S/4*

36. In the intersessional period, the Committee considered its follow-up to decision VI/2 regarding Belarus (paras. 48–64). The recommendations in that decision followed the Committee's findings and recommendations at its twenty-seventh session (Geneva, 12-14 March 2013) on a submission by Lithuania expressing concerns in relation to the planned construction of an NPP in Ostrovets, Belarus, close to the border with Lithuania. The recommendations in decision VI/2 also included additional recommendations made by the Committee after considering extensive documentation submitted prior to the sixth session of the Meeting of the Parties by Belarus and Lithuania on steps taken to reach compliance with the Committee's earlier findings (ECE/MP.EIA/2014/4–ECE/MP.EIA/SEA/2014/4, paras. 53–56).

37. Also by decision VI/2, the Meeting of the Parties requested the Committee to thoroughly analyse the steps undertaken by the two Parties following the adoption of the Committee's report on its twenty-seventh session, to reflect the conclusions of its analysis in the report of its thirty-third session at the latest, and to report to the Meeting of the Parties at its seventh session on the matter. Belarus and Lithuania submitted regular reports and information during the intersessional period, and copied the Committee on their correspondence. To facilitate its deliberations, the Committee also held discussions, which did not constitute a formal discussion (a hearing) on the matter, with the delegations of Belarus and Lithuania at its thirty-fifth session.

38. In September 2016, the Committee: (a) recognized efforts made by Belarus during this intersessional period to satisfy the language requirements of the public consultations; (b) noted that Belarus and Lithuania had made some efforts in agreeing on steps for the post-project analysis with respect to the NPP, which might involve the establishment of a joint body; and (c) observed efforts by both Parties in negotiating a bilateral agreement for the implementation of the Convention in accordance with article 8.

39. In February 2017, based on its thorough analysis of the steps taken by both Parties since the Committee's twenty-seventh session, the Committee concluded that Belarus had undertaken all the required steps to reach the final decision as provided for in the Convention. However, based on the available information, the Committee could not reach a final conclusion on the compliance of the steps taken by Belarus to reach the final decision with the provisions of the Convention, as the essence of the compliance case was about unresolved substantive aspects of the EIA documentation that could not necessarily be treated separately from the procedural aspects of EIA (ECE/MP.EIA/IC/2017/2, forthcoming).

40. In this context, the Committee recalled that the persistent disagreement between the Belarus and Lithuania related in particular to scientific and other technical matters

concerning the construction of the NPP, for example, regarding reasonable locational alternatives and the methodology and data used in determining the siting as described in the EIA documentation.<sup>11</sup> Since the Committee did not have the capacity nor the mandate to examine the scientific issues raised by the two Parties, it considered asking for expert advice, as provided in its rules of procedure,<sup>12</sup> but there were no resources for such a proceeding. Therefore, in December 2015, the Committee recommended to the two Parties that they consider establishing and financing an expert body modelled after the inquiry commission provided for under appendix IV to the Convention. Belarus, despite encouragement from the Bureau in January 2016,<sup>13</sup> maintained its reservations regarding the Committee's proposal, pointing to the need to exhaust all possible avenues through bilateral consultations.

41. In December 2016, the Committee noted that the Parties had been unable to find consensus on their points of disagreement through the bilateral expert consultations held in June and September 2016. Therefore, in February 2017, the Committee included in draft decision VII/2 two concrete proposals for how the expert advice could be provided to the Committee by July 2018 to enable it to conclude whether the EIA documentation constituted a sufficient basis or not for Belarus to take the final decision to proceed with the implementation of the activity (ECE/MP.EIA/IC/2017/2, forthcoming). The expert advice to be provided to the Committee through one of the two proposed alternatives should answer five questions on technical and scientific aspects of the EIA documentation that the Committee had put forward at its thirty-seventh session (Geneva, 12-14 December 2016) (ECE/MP.EIA/IC/2016/6, annex I).

42. The Committee remarked that the report of the Site and External Events Design (SEED) mission conducted by the International Atomic Energy Agency (IAEA) in January 2017 further to the invitation by Belarus, as requested by decision VI/2 (para. 64), might provide answers to some of its questions. If the report were released at least two weeks before seventh session of the Meeting of the Parties, the Committee agreed to consider which questions had been properly answered at a virtual meeting prior to that session, and that the Committee Chair would inform the Meeting of the Parties of the outcome.

43. Regarding the SEED mission, the Committee regretted that, according to the information available at its thirty-seventh session, Belarus had not entirely followed the proposal of the Meeting of the Parties, as it had not specifically invited IAEA to evaluate the site selection criteria as well. The Committee nevertheless congratulated Belarus for having taken that confidence-building measure, and encouraged it to continue with such measures also in the future.

44. After concluding its analysis, the Committee stressed that, with the active support of both Parties, over the past three years it had attempted all reasonable approaches to assist the Parties to fully comply with their obligations under the Convention.

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<sup>11</sup> See ECE/MP.EIA/IC/2015/4, para. 32; ECE/MP.EIA/IC/2016/2, para. 24; ECE/MP.EIA/IC/2016/4, para. 33; ECE/MP.EIA/IC/2016/6, para. 26.

<sup>12</sup> ECE/MP.EIA/6, decision III/2, appendix, paragraph 7 (d).

<sup>13</sup> See informal notes of the Bureau meeting, available from <http://www.unece.org/index.php?id=40421#/>.

### III. Examination of the outcomes of the reviews of implementation

45. The secretariat presented to the Committee general and specific compliance issues identified in the fourth review of implementation of the Convention and the first review of implementation of the Protocol (ECE/MP.EIA//2014/3 and ECE/MP.EIA/SEA/2014/3), and in the completed questionnaires on which it was based. The Committee took this information into account in its work, as requested in decision VI/1 (para. 4) of the Meeting of the Parties to the Convention and decision II/1 (para. 4) of the Meeting of the Parties to the Protocol.

#### A. General compliance issues

46. The Committee did not consider any general compliance issues in the intersessional period.

#### B. Specific compliance issues

47. In the intersessional period the Committee examined five specific compliance issues, one regarding the Convention and four regarding the Protocol, as summarized in table 1. The correspondence between the Committee and concerned Parties on specific compliance issues arising from the reviews of implementation are posted on the Convention's website,<sup>14</sup> in accordance with the Committee's decision at its eighth meeting (Geneva, 14–15 November 2005) to do so as an illustration of the Committee's approach to a specific compliance issue and of a proper and sufficient response from a Party to address the issue.

48. The Committee was satisfied with the clarifications provided by Austria, Cyprus and Spain and also decided not pursue the specific compliance issue regarding Bosnia and Herzegovina.

Table 1  
Specific compliance issues

<i>Committee reference</i>	<i>Party concerned</i>	<i>Issue</i>
EIA/IC/SCI/4/1	Cyprus	Seemed to lack any regulation in national legislation concerning notification of the public about a transboundary EIA procedure.
SEA/IC/SCI/1/1	Austria	Appeared to not strictly apply the requirement of article 5, paragraph 4, of the Protocol that screening conclusions be made available to the public in a timely manner.
SEA/IC/SCI/1/2	Bosnia and Herzegovina	Seemed to lack provisions in national legislation regarding the content of the transboundary notification under article 10, paragraph 2, of the Protocol.

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<sup>14</sup> See [http://www.unece.org/env/eia/implementation/implementation\\_committee\\_letters.html](http://www.unece.org/env/eia/implementation/implementation_committee_letters.html).

<i>Committee reference</i>	<i>Party concerned</i>	<i>Issue</i>
SEA/IC/SCI/1/3	Spain	Appeared to set overly restrictive conditions for the participation of non-governmental organizations (NGOs) in the assessment procedures, which might prevent the fulfilment of effective public participation under the Protocol.
SEA/IC/SCI/1/4	European Union	Did not complete and return the questionnaire on its implementation of the Protocol in the period from 2010 to 2012, according to the obligation set in article 14, paragraph 7, of the Protocol.

### 1. Cyprus

*Committee reference:* EIA/IC/SCI/4/1

49. In its response to the questionnaire for the preparation of the fourth review of implementation, Cyprus indicated that there was no provision in its current national legislation on when and how the public should be notified about a transboundary EIA procedure under the Convention. In December 2016, the Committee noted the information provided by Cyprus that it had never needed to apply the Convention but that, if it was to do so, it would notify its public through the relevant channels, as stipulated in its national EIA legislation. The Committee concluded that the information provided by Cyprus was sufficient and decided to close the information-gathering on the issue.

### 2. Austria

*Committee reference:* SEA/IC/SCI/1/1

50. In December 2014, the Committee considered the clarification provided by Austria on the timing of the publication of screening conclusions in accordance with article 5, paragraph 4, of the Protocol. The Committee agreed that the response was to its satisfaction.

### 3. Bosnia and Herzegovina

*Committee reference:* SEA/IC/SCI/1/2

51. Bosnia and Herzegovina indicated in its response to the questionnaire for the first review of implementation of the Protocol that there were no provisions in its legislation regarding the content of the transboundary notification (art. 10, para. 2). The Committee sought clarification from Bosnia and Herzegovina. Despite the lack of response from the country, the Committee agreed to close the case, taking into consideration that Bosnia and Herzegovina had completed the questionnaire without being a Party to the Protocol. The Committee, however, welcomed the report provided by Bosnia and Herzegovina as a signatory, encouraged ratification by Bosnia and Herzegovina of the Protocol and offered the Committee's assistance in the country's efforts to become a Party to and to implement the Protocol.

#### **4. Spain**

*Committee reference:* SEA/IC/SCI/1/3

52. The Committee was satisfied with the clarification provided by Spain in November 2014 with regard to the conditions for NGO participation in SEA procedures.

#### **5. European Union**

*Committee reference:* SEA/IC/SCI/1/4

53. In September 2014, the Committee noted that the European Union had not returned the questionnaire, as required by article 14, paragraph 7, of the Protocol. The Committee requested the European Union to complete and return the questionnaire by November 2014 and also to address questions regarding any European Union legislative, regulatory or administrative provisions on plans or programmes subject to article 4, paragraphs 2 or 3, of the Protocol on SEA.

54. In December 2014, the Committee took note of the clarifications provided by the European Union with regard to its obligation to report under the Protocol and its competences as a regional economic integration organization. After reviewing the requirements under article 4, paragraphs 2 and 3, of the Protocol, and the competence of the European Union in defining activities by its member States, notably in the areas of its exclusive competence, the Committee decided to seek further clarification in respect of the nature of specific European Union measures, such as those on the European rail network for competitive freight in transport sector, the 2030 Energy Strategy or the total allowance catches in the fisheries sector, all of which seemed to set the framework for future development consent by member States.

55. At its thirty-sixth session, the Committee discussed the matter on the basis of an in-depth analysis by the curator for the issue. It agreed to ask the European Commission to answer additional specific questions that were to be agreed by the Committee after the session.

56. Given the absence of the curator at its thirty-eighth session (Geneva, 20–22 February 2017), the Committee resumed its deliberations on the matter at a dedicated virtual session on 9 March 2017. Further to its consideration of the analysis by the curator of the answers to the specific questions provided by the European Union on 9 February 2017, and because of the lack of a quorum, the Committee noted that it was not able to complete its deliberations and prepare its findings and recommendations on the matter before the seventh session of the Meeting of the Parties. It therefore noted that the consideration of this specific compliance issue would be postponed to its thirty-ninth session in September 2017, with a view to deciding on whether to open a Committee initiative.

### **IV. Submissions by Parties**

57. There were no submissions by Parties regarding their own compliance or another Party's compliance during the present intersessional period.

### **V. Information from other sources (information-gathering cases)**

58. The Committee received information from sources other than Parties, further to operating rule 15, paragraph 1, as summarized in table 2 below.

Table 2  
Information from other sources<sup>15</sup>

<i>Committee reference</i>	<i>Party concerned</i>	<i>Issue</i>
<i>Convention matters</i>		
EIA/IC/INFO/10	Ukraine	Planned construction of nuclear reactors 3 and 4 at Khmelnytskyi NPP, close to the border with Belarus.
EIA/IC/INFO/13	Ukraine	Planned construction and operation of a gold mine using cyanide technology in Muzhiyevo.
EIA/IC/INFO/14 which led to EIA/IC/CI/6 and SEA/IC/INFO/1	Serbia	Planned construction of a new block at the Kostolac lignite power plant.
EIA/IC/INFO/15	Netherlands	Planned extension of the lifetime of the Borssele NPP.
EIA/IC/INFO/16	Bosnia and Herzegovina	Planned construction of a third block for the thermo-power plant in Ugljevik.
EIA/IC/INFO/17	Bosnia and Herzegovina	Planned construction of a new thermo-power plant in Stanari.
EIA/IC/INFO/18	Belgium	Planned lifetime extensions of reactors at Doel and Tihange NPPs.
EIA/IC/INFO/19	Czechia	Planned lifetime extension of reactors at the Dukovany nuclear power plant.
EIA/IC/INFO/20	Ukraine	Planned lifetime extension of the South Ukrainian, Khmelnytskyi and Zoprizhia NPPs.
EIA/IC/INFO/21	Belarus	Law and subsequent regulations on EIA, strategic environmental assessment (SEA) and State ecological expertise.
EIA/IC/INFO/22	Spain	Planned construction of a temporary storage for radioactive waste at the Almaraz NPP.
<i>Protocol matters</i>		
SEA/IC/INFO/1	Serbia	SEA procedures for the Energy Development Strategy and the Spatial Plan.
SEA/IC/INFO/2	Armenia	SEA procedure for the programme of the Government adopted by Decision 511-A of 19 May 2014

<sup>15</sup> EIA/IC/INFO/11 (Azerbaijan) was concluded and EIA/IC/INFO/12 (United Kingdom) led to EIA/IC/CI/5 (see below) before the sixth session of the Meeting of the Parties. More information on information-gathering cases is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>.

## A. Convention matters

### 1. Ukraine

*Committee reference:* EIA/IC/INFO/10

59. The Belarusian NGO Ecohome provided information concerning the planned construction of nuclear reactors 3 and 4 at Khmelnytskyi NPP, in Ukraine, approximately 150 kilometres from the borders with the Republic of Moldova and Romania, and approximately 350 kilometres from the border with Belarus, before the sixth session of the Meeting of the Parties. The Committee initiated a review of the case prior to its thirty-first session (Geneva, 2-4 September 2014) and continued consideration of the information it gathered during the present intersessional period.

60. The Government of Ukraine was requested to provide further information and clarification regarding the 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. In the light of the information received from the Government of Ukraine that it had renounced the cooperation agreement with the Russian Federation for the construction and financing of reactors 3 and 4 at the Khmelnytskyi NPP, putting off implementation of the activity, the Committee decided that at that stage there was no need for it to pursue further its information gathering regarding this issue.

*Committee reference:* EIA/IC/INFO/13

61. The Committee initiated information gathering before the sixth Meeting of the Parties further to information provided by a Hungarian political party concerning the planned reopening of a gold mine using cyanide technology in Muzhiyevo, Ukraine, close to the border with Hungary. On the basis of information provided by the Government of Ukraine regarding the validity of the licences and the mining activities, the Committee decided there was no need to further pursue its information gathering regarding the issue.

*Committee reference:* EIA/IC/INFO/20

62. The Committee reviewed information provided by the NGO Central and Eastern Europe (CEE) Bankwatch Network concerning the planned lifetime extension of the South Ukrainian, Khmelnytskyi and Zoprizhia NPPs. In the light of information submitted by the Government of Ukraine before the Committee's thirty-eighth session in February 2017, the Committee agreed to request additional information from Ukraine before deliberating further on the matter.

### 2. Serbia

*Committee reference:* EIA/IC/INFO/14

63. The Committee reviewed information provided by the NGO Bankwatch Romania regarding the planned construction by Serbia of the Kostolac lignite power plant in north-east Serbia, by the River Danube, close to the border with Romania.

64. On the basis of further clarification by the NGO, and the information received from the Government of Serbia in relation to the transboundary procedures for the project and from the Government of Romania, the Committee noted that the construction of one block at the Kostolac lignite power plant was an activity listed in appendix I (para. 2) to the

Convention and that the likelihood of a significant adverse transboundary impact could not be excluded. However, Serbia had not notified potentially affected Parties.

65. On those grounds, and based on a profound suspicion of non-compliance, the Committee decided to begin a Committee initiative (EIA/IC/CI/6) (see paras. 86-87 below). In parallel, the Committee decided to gather information on Protocol matters regarding the Serbian Energy Development Strategy and the Spatial Plan (SEA/IC/INFO/1) (see para. 76 below).

### **3. Netherlands**

*Committee reference:* EIA/IC/INFO/15

66. The Implementation Committee reviewed information provided by the NGO Greenpeace Netherlands concerning the extension by the Netherlands of the lifetime of the Borssele NPP, and the additional information provided further to the Committee's request by the Governments of the Netherlands, Belgium and Germany.

67. In this context, at its thirty-eighth session, the Committee deliberated on a general opinion or recommendation on the lifetime extension of NPPs that could provide the curators of information-gathering procedures concerning such extensions — for example, at the Borssele NPP, but also at the Doel and Tihange NPPs in Belgium (see paras. 71-72 below) and the Dukovany NPP in Czechia (see para. 73 below) — with the elements needed to properly assess the information received. The Committee could not, however, reach an agreement on the matter and therefore decided to resume its discussion at its thirty-ninth session in September 2017.

68. While expressing its gratitude to the Netherlands for the information provided, the Committee regretted that it could not conclude the matter before the seventh session of the Meeting of the Parties.

### **4. Bosnia and Herzegovina**

*Committee reference:* EIA/IC/INFO/16

69. The Committee reviewed information provided by the NGO Center for Environment (Bosnia and Herzegovina) concerning the planned construction of a third block for the thermo-power plant in Ugljevik, close to the border with Serbia. During its deliberations on the matter, the Committee noted that: (a) the activity in question was an activity listed in appendix I to the Convention; (b) the likelihood of a significant adverse transboundary impact on the territory of Serbia could not be excluded; and (c) Serbia had expressed its wish to be notified by Bosnia and Herzegovina. In the light of information submitted in February 2017 by the Government of Bosnia and Herzegovina about notifying Serbia regarding the planned activity, the Committee decided to request further information from Bosnia and Herzegovina and Serbia and continue its consideration of the matter at its thirty-ninth session.

*Committee reference:* EIA/IC/INFO/17

70. The Committee reviewed information provided by the NGO Center for Environment (Bosnia and Herzegovina) concerning the planned construction of a new thermo-power plant in Stanari, close to the border with Croatia. In February 2017, in the absence of a response by Croatia to the Committee's letter of 19 September 2016, the Committee agreed to ask Croatia one more time to confirm whether it could exclude a transboundary environmental impact of the activity proposed by Bosnia and Herzegovina on the territory of Croatia and to continue deliberation on the matter at its session based on the response.

## 5. Belgium

*Committee reference:* EIA/IC/INFO/18

71. At its thirty-sixth session, the Committee reviewed information submitted in March 2016 by the German federal states of North Rhine-Westfalia and Rhineland-Palatinate regarding the extension of the lifetime of the Doel and Tihange NPPs in Belgium.

72. At its thirty-seventh session, the Committee considered the information provided by the Governments of Belgium and Germany, and decided to request Belgium to provide further clarifications on the matter by 3 February 2017. In February 2017, further to the request from Belgium to extend that deadline in order to, among others, arrange for translation of the documents required by the Committee from its four official languages into English, to carry out consultations between Belgian authorities and to conclude ongoing court proceedings regarding the activity, the Committee agreed to continue the consideration of the matter at its thirty-ninth session.

## 6. Czechia

*Committee reference:* EIA/IC/INFO/19

73. The Committee reviewed information submitted jointly by four NGOs (Oekobuero, Global 2000, Jihočeské matky (South Bohemian Mothers) and Calla) and also by the NGO Aarhus Konvention Initiative Germany regarding the extension of the lifetime of the Dukovany NPP in Czechia. At its thirty-eighth session in February 2017, the Committee noted with appreciation the information from Austria, Czechia, Germany and Slovakia and additional information by NGOs. However, as the Committee was not able to reach an agreement on a general opinion or a recommendation on the extension of lifetime of NPPs at that session (see para. 67 above), it postponed consideration of the issue.

## 7. Belarus

*Committee reference:* EIA/IC/INFO/21

74. In February 2017, further to its deliberations on the follow-up by Belarus with decision VI/2 regarding the Ostrovets NPP (EIA/IC/S/4), the Committee noted information provided by the international consultants to the secretariat in relation to the recent adoption by Belarus of the law and subsequent regulations on EIA, SEA and State ecological expertise. It appointed curators on the issue and decided to consider this information as a separate information-gathering procedure at its next session.

## 8. Spain

*Committee reference:* EIA/IC/INFO/22

75. The Committee noted the information provided in January 2017 by the Portuguese political party Pessoas-Animais-Natureza (People-Animals-Nature) concerning the planned construction of individual temporary storage for radioactive waste at the Almaraz NPP. It appointed a curator and decided to consider the matter at its thirty-ninth session based on the curator's analysis of the information provided by the political party.

## **B. Protocol matters**

### **1. Serbia**

*Committee reference: SEA/IC/INFO/1*

76. Following its consideration of information-gathering procedure EIA/IC/INFO/14, which led to a Committee initiative regarding the application of the Convention by Serbia with regard to the planned construction of a new block at the Kostolac lignite power plant, the Committee agreed to gather further information regarding the application of the Protocol by Serbia in relation to the carrying out of the SEA procedures for the Serbian Energy Development Strategy and its Spatial Plan. According to information provided by the Government of Serbia, the planned project for the construction of a new block at the Kostolac lignite power plant was envisaged in the Energy Development Strategy and the Spatial Plan, with projections by 2015 on the environment. The Government had added that the Energy Development Strategy and the Spatial Plan had been submitted to neighbouring countries for comments. The Committee decided to gather further information from countries neighbouring Serbia and to continue its deliberations on the matter at thirty-ninth session.

### **2. Armenia: SEA/IC/INFO/2**

77. As a result of the follow-up on decision VI/2 (paras. 45-46) regarding the planned construction of the Metsamor NPP by Armenia, the Committee initiated information gathering procedure in relation to the Programme of the Government adopted by Decision 511-A of 19 May 2014. The energy section of that programme envisaged the construction of a new reactor at the Metsamor NPP in 2018 and seemed to set the framework for future activities in the energy field. In February 2017, the Committee noted that, at the time of its examination, that Programme of the Government was no longer valid. The Committee also noted that following the resignation of the Government on 8 September 2016 and the appointment of the new Government, a new Programme of the Government had been adopted on 18 October 2016 by Government decision 1060A, which made no reference to the construction of a new reactor. Furthermore, subsequent to parliamentary elections scheduled for April 2017, a new Government would be formed, followed by the adoption of another programme of the Government. The Committee deliberated on the nature of the Programme and whether an SEA procedure, including a transboundary procedure, or at least the notification of potentially affected countries, would have been required before the adoption of the Programme.

78. Having considered all information provided by Armenia, the Committee agreed that the Programme of the Government of Armenia was not a plan or programme under the provisions of article 2, paragraph 5, and article 4 of the Protocol. Consequently, that Programme was not subject to the SEA procedure stipulated in the Protocol.

79. The Committee concluded that the information provided by Armenia was sufficient and decided to close the information gathering on the issue.

## **VI. Committee initiatives**

80. The Committee considered two Committee initiatives — on the United Kingdom of Great Britain and Northern Ireland and Serbia — further to its operating rule 15, paragraph 2, as summarized in table 3 below.

Table 3  
**Committee initiatives**

<i>Committee reference</i>	<i>Party concerned</i>	<i>Issue</i>
EIA/IC/CI/5	United Kingdom	Did not notify Parties with respect to the planned construction of the NPP at Hinkley Point C.
EIA/IC/CI/6, further to EIA/IC/INFO/14	Serbia	Did not apply the Convention with respect to the planned construction of a new block at the Kostolac lignite power plant.

## A. United Kingdom of Great Britain and Northern Ireland

*Committee reference:* EIA/IC/CI/5

81. Further to information provided by a German member of parliament and by the NGO Friends of the Irish Environment regarding the planned construction of an NPP at Hinkley Point C by the United Kingdom, and additional information gathered from the Governments of Austria, Belgium, France, Germany, Ireland, the Netherlands, Norway, Spain and the United Kingdom, in February 2014 the Committee decided to begin a Committee initiative.

82. At the invitation of the Committee, the United Kingdom participated in the discussion on the matter at the Committee's thirty-third session (Geneva, 17-19 March 2015), and presented the Committee with information and opinions on the matter under consideration. Committee members posed further questions to seek clarification on the country's position, further to its written replies. The Committee prepared its findings and recommendations in closed session in December 2015. In March 2016, further to the comments by the United Kingdom, the Committee finalized minor points in its findings and recommendations that were brought to the attention of the Party concerned (see ECE/MP.EIA/IC/2016/2).

83. In February 2017, at its thirty-eighth session, the Committee welcomed the intention of the United Kingdom to address the Committee's findings and recommendations by, among others, contacting Parties to the Convention and asking them whether a notification under the Espoo Convention was useful at the current stage of the proposed activity.

84. The Committee also noted that the relevant Secretary of State granted development consent to the activity in March 2013, and that works under the development consent had already commenced. The Committee expressed its concerns that the continuation of works might influence the views of the Parties consulted by the United Kingdom, and that if the potentially affected Parties considered that a notification was useful and therefore asked to participate in the transboundary EIA procedure, the continuation of works might render the results of the procedure irrelevant. The Committee maintained its previous opinion that the project, including its maintenance and its operation, should have been suspended until the procedures under the Convention were completed (cf. decision IV/2, paras. 69 (b) and 74 (b)). It, thus, decided to invite the United Kingdom to consider refraining from carrying out works at the proposed activity until it established whether notification was useful.

85. The Committee also decided to recommend to the Meeting of the Parties that, if a potentially affected Party requested to be notified, the United Kingdom should suspend works on the proposed activity until the transboundary EIA procedure was finalized (see ECE/MP.EIA/IC/2017/2, forthcoming). The Committee informed the United Kingdom

about the outcomes of its thirty-eighth session, and subsequently transmitted its recommendations including this additional conditional recommendation to the United Kingdom for comments. The Committee agreed that it would finalize the revised draft recommendations regarding this matter taking into account the comments provided.

## **B. Serbia**

*Committee reference:* EIA/IC/CI/6

86. Further to information provided by the NGO Bankwatch Romania regarding the planned construction by Serbia of the Kostolac lignite power plant in north-east Serbia, by the River Danube, close to the border with Romania, and additional information received from the Government of Serbia in March 2015, the Committee decided to begin a Committee initiative (see chap. V above) and urged Serbia to comply with its obligations under the Convention.

87. The Committee agreed that the planned extension of an open pit mine was an activity listed in appendix I to the Convention and that the likelihood of a significant adverse transboundary impact could not be excluded. It noted that Serbia, on the basis of a domestic EIA, had concluded that that activity was not likely to cause adverse transboundary impacts and that consequently the application of the Convention had not been considered necessary. The Committee also noted that Serbia had notified Romania regarding the planned extension of the power plant. Consequently, considering that Serbia had in the meantime initiated a transboundary procedure in accordance with the Convention with respect to the extension of the power plant, the Committee agreed that there was no need for it to pursue the Committee initiative.

## **VII. Revised questionnaires and reviews of implementation**

### **A. Modification of the questionnaires**

88. The Committee was requested to revise and simplify the questionnaires for the report on the implementation of the Convention and the Protocol and to provide modified versions of the questionnaires.<sup>16</sup>

89. The Committee accordingly prepared proposals for the modification of the two questionnaires and submitted them to the Working Group on EIA and SEA for consideration. In May 2015, the Working Group approved the two questionnaires with a number of amendments (ECE/MP.EIA/WG.2/2015/2, annexes I and II). The Working Group also agreed on a detailed timetable for the distribution and return of the questionnaires (ECE/MP.EIA/WG.2/2015/INF.5).

### **B. Reviews of implementation**

90. In accordance with the timetable agreed by the Working Group, the secretariat sent the Convention and Protocol questionnaires to the Parties at the end of October 2015 for completion by 31 March 2016.

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<sup>16</sup> Decision VI/1, para. 6 and decision VI/3–II/3, annex I.

91. The secretariat has regularly provided information on the reporting process to the Committee. On the basis of the completed questionnaires, the secretariat prepared the draft fifth review of implementation of the Convention and the draft second review of implementation of the Protocol for consideration by the Working Group at its sixth meeting and, based on the comments received, finalized them for submission to the Meetings of the Parties to the Convention and the Protocol at their seventh and third sessions, respectively (ECE/MP.EIA/2017/9 and ECE/MP.EIA/SEA/2017/9).

## VIII. Structure and functions and operating rules

92. The Committee decided that it would not propose any revisions to its structure and functions and procedures for the review of compliance. In view of its increased workload (see para 93. below), the Committee discussed how to improve the efficiency of its working methods and to amend its operating rules to allow for at least one virtual meeting per month (in English) so that it could undertake informal consultations in preparation of its sessions. It decided to review the existing rules for electronic decision-making procedures under other ECE multilateral environmental agreements and to resume the discussion on amending its operating rules in September 2017 (see ECE/MP.EIA/IC/2017/2, forthcoming).

## IX. Workload

93. The Committee's workload remained high in the intersessional period 2014–2017. The documentation received by Parties was at times extensive, technical and of increased complexity. No new submissions were made, but the Committee prepared findings and recommendations further to its initiative regarding the United Kingdom and considered an increased number of cases of follow-up to decisions of the Meeting of the Parties, further to decision VI/2, and information-gathering cases. As foreseen in the budget, the Committee held eight sessions during the intersessional period, but in order to fulfil its mandate it had to carry out consultations by e-mail between its sessions or hold online meetings in accordance with rule 19 of the Committee's operating rules. For this reason, the Committee agreed to propose the inclusion of nine, instead of eight, Committee meetings in the workplan and budget for the 2017-2020 intersessional period.

94. Table 4 provides an approximate overview of the time spent by the Committee on its various tasks as described in this document.

Table 4

### Overview of the time spent by the Committee on its key tasks

<i>Task</i>	<i>Approximate proportion of Committee session time (percentage)</i>
Follow-up to decision VI/2	40
Examination of the outcome of the reviews of implementation	10
Consideration of submissions by Parties	-
Consideration of information from other sources	15
Committee initiative	<15
Modification of the questionnaires	<10
Review of the Committee's structure, functions and operating rules	1

<i>Task</i>	<i>Approximate proportion of Committee session time (percentage)</i>
Preparation for the seventh session of the Meeting of the Parties to the Convention and the third session of the Meeting of the Parties to the Protocol	<10
<b>Total</b>	<b>100</b>

*Abbreviations:* The symbol (-) means not applicable and (<) means less than.

## X. Outreach

95. During the intersessional period, the Committee undertook various efforts to raise awareness of its work and to assist Parties in their implementation of the Convention. It continued to request publication on the Convention website of the Committee's correspondence and information related to compliance issues. Members of the Committee also spoke on the implementation of the Convention at various events, for example:

(a) The Chair of the Committee participated (by videoconference) in meetings of the informal network of the compliance and implementation bodies to the ECE multilateral environmental agreements in June 2015 and 2016;

(b) Ms. Grigoryan, Ms. Zdanevich and Mr. Jendroška spoke at the subregional conference on enhancing SEA legal frameworks in selected countries of Eastern Europe, the Caucasus and Central Asia, held in Georgia in November 2015;

(c) Mr. Jendroška took part in the national workshop on legal implementation of the Protocol on SEA held in Astana in January 2017, and provided advice at a subregional workshop on updating the guidelines on a transboundary EIA procedure for Central Asian countries held in Almaty, Kazakhstan, in February 2017.