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

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

Implementation Committee

Thirty-seventh session
Geneva, 12-14 December 2016

Report of the Implementation Committee on its thirty-seventh session

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I. Introduction

1. The thirty-seventh session of 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) was held from 12 to 14 December 2015 in Geneva, Switzerland.

A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Vladimir Buchko (Ukraine); Elyanora Grigoryan (Armenia); Kaupo Heinma (Estonia); Lourdes Aurora Hernando (Spain); Jerzy Jendrośka (Poland); Zsuzsanna Pocsai (Hungary); Ilda Shahu (Albania), Romas Švedas (Lithuania); and Nadezhda Zdanevich (Belarus). Elena Dumitru, the alternate member nominated by Romania, replaced Felix Zaharia for the present session.

B. Organizational matters

3. In absence of the Chair of the Committee, Mr. Zaharia, who was unable to attend the meeting owing to health reasons, Ms. Hernando, the first Vice-Chair of the Committee, chaired the session and Mr. Romas Svedas, the second Vice-Chair of the Committee, read out the draft report of the meeting before its adoption by the Committee.

4. The Committee adopted its agenda as set out in document ECE/MP.EIA/IC/2016/5.

5. The secretary informed the Committee about staff changes in the secretariat since the last Committee session, including the appointment of a new secretary to the Implementation Committee. Among others, there had been changes related to the management of the EaP-GREEN programme, and a consultant had been hired to help with preparations of the next sessions of the Meetings of the Parties.

II. Follow-up to decision VI/2

6. Discussions on the follow-up to decision VI/2 of the Meeting of the Parties on review of compliance with the Convention (see ECE/MP.EIA/20.Add.1-ECE/MP.EIA/SEA/4.Add.1) were not open to observers, in accordance with rule 17, paragraph 1, of the Committee's operating rules,¹ and took place in the absence of members nominated by Belarus, Lithuania, Romania and Ukraine during the consideration of cases concerning their countries.

A. Ukraine

1. Bystroe Canal Project (EIA/IC/S/1)²

7. Further to the discussions at its thirty-sixth session (Geneva, 5-7 March 2016), the Committee continued its consideration of the follow-up by Ukraine on decision VI/2

¹ 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).

² Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

(paras.15-28) in relation to the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project). By that decision, Ukraine had been requested to adopt relevant legislation and to bring the Project into full compliance with the Convention by the end of 2015 (paras. 24-25). The Committee considered information received from Ukraine and Romania on 4 and 16 November 2016, respectively, in response to the Committee's request of 19 September 2016, and the information provided by Ukraine and a Ukrainian non-governmental organization (NGO), Environment People Law, received on 22 November and 7 December 2016, respectively, regarding the adoption of the laws on environmental impact assessment (EIA) and strategic environmental assessment (SEA).

8. The Committee welcomed the preparation of the laws by Ukraine. It regretted that the new laws on EIA and SEA adopted by the parliament of Ukraine on 4 October 2016 had been vetoed by the Ukrainian President on 31 October 2016.

9. Further to the request of Ukraine of 22 November 2016, the Committee nevertheless considered both laws, taking into account an analysis of the legislation presented by a Committee member.

10. The Committee concluded that the law on EIA that had been adopted by the parliament on 4 October 2016 was generally compatible with the criteria that the Committee had previously set out in the review of the country's legal, administrative and other measures to implement the provisions of the Convention (see ECE/MP.EIA/IC/2009/5). The Committee expressed its wish that Ukraine would: (a) ensure that the EIA law would continue to satisfy those criteria further to its subsequent revision in accordance with the President's comments; and (b) consider further improving some provisions of the law in order to facilitate its practical implementation. The Committee encouraged Ukraine to adopt the revised law to conclude its reforms of its EIA system in line with the Convention by the next sessions of the Meeting of the Parties (Minsk, 13-16 June 2017).

11. The Committee also noted that Ukraine had failed to provide a report on its implementation of the post-project analysis, in accordance with article 7 of the Convention, on time. The report had been due eight months before the seventh session of the Meeting of the Parties, i.e., by 13 November 2016 (see decision VI/2, para. 26).

12. The Committee took note of information from Romania about the progress in negotiating a bilateral agreement with Ukraine concerning the implementation of the Convention.

13. Following the analysis by the curator³ of the information made available to the Committee so far, the Committee agreed that the progress made by Ukraine in bringing the Bystroe Canal Project into full compliance with the Convention, specifically with regard to the proposed measures in decision V/4 (see ECE/MP.EIA/15, paras 24-26) had been very limited.

14. The Committee invited the Vice-Chair to write again to the Government of Ukraine reminding it to report on progress by the end of 2016 with regard to:

(a) Implementation of the government strategy to implement the Convention, in particular the concrete legislative measures adopted to that effect;

³ For each compliance issue before the Committee, a member (or members) is assigned to curate the Committee's consideration of the matter.

(b) Concrete measures to bring the Bystroe Canal Project into conformity with the Convention, especially in relation to measures taken in accordance with paragraph 19 of decision V/4 (see ECE/MP.EIA/15).

15. In the letter, the Vice-Chair should also reiterate the Committee's request to Ukraine that it report by the same deadline on its implementation of article 7 of Convention. The Committee requested the curator, with the assistance of the Vice-Chair and interested Committee members, to analyse by 5 February 2017 the information to be provided and to prepare his analysis and draft recommendations to the Meetings of the Parties on the matter, with a view to their finalization at the Committee's thirty-eighth session (Geneva, 20–22 February 2017). The Committee noted that, in case of the further prolongation of non-compliance by the Party concerned, it would consider recommending to the Meeting of the Parties to take more stringent measures.

2. Rivne nuclear power plant (EIA/IC/CI/4)⁴

16. The Committee continued its consideration of the follow-up by Ukraine on decision VI/2 regarding the lifetime extension of power units 1 and 2 of the Rivne nuclear power plant. Further to an analysis by the curator, the Committee considered information provided by Ukraine since the previous session, in response to the Committee's request of 19 September 2016.

17. Following the analysis by the curator, the Committee expressed its concerns that since the sixth session of the Meeting of the Parties in June 2014 Ukraine had not taken all the necessary practical measures to address the recommendations contained in decision VI/2, as required by its paragraph 71.

18. The Committee noted the information provided by Ukraine, in an e-mail of 5 December 2016 to the secretariat, that by January 2017 the inter-agency coordinating council would decide on the planned steps for carrying out a transboundary EIA procedure for the activity in question in 2017-2018.

19. The Committee recalled that, in its previous communication to Ukraine in April and September 2016, it had specifically invited Ukraine to enter into discussions with Belarus, Hungary, Poland, the Republic of Moldova, Romania and Slovakia to agree on whether notification was needed for the extension of the lifetime for the Rivne nuclear power plant. The Committee took note of the correspondence between Ukraine and the Governments of Austria, Hungary, and Romania between July and November 2016. It also noted the e-mail clarification by the national focal point of Ukraine that Ukraine intended to initiate discussions with Belarus, Poland, the Republic of Moldova, Romania and Slovakia in 2017.

20. The Committee noted the wish expressed by Austria and Romania to be notified by Ukraine. It also noted that Ukraine had only provided advance information to the Governments of Austria and Romania of its intention to carry out a transboundary EIA procedure in the future, without specifying the concrete EIA steps and the time schedule.

21. The Committee asked its Vice-Chair to write to the Government of Ukraine to reiterate its request for Ukraine to undertake the following actions by 10 February 2016:

(a) To enter into discussions with Belarus, Hungary, Poland, the Republic of Moldova, and Slovakia and report on the outcomes of the discussions for the Committee's consideration at its next session;

⁴ Information on this compliance case is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>.

(b) To inform the Committee about the planned steps for carrying out a transboundary EIA procedure in 2017-2018, on the basis of the decisions of the inter-agency coordination council, which was scheduled to meet at the end of January 2017, including the detailed timeline.

22. On the basis of the information to be provided by Ukraine, the Committee requested the curator to prepare, by 15 February 2016, an analysis and draft recommendations to the Meeting of the Parties on the matter for the Committee's consideration at its next session.

B. Belarus

23. The Committee then continued its deliberations regarding follow-up by Belarus with decision VI/2 (paras. 48-64) on the Ostrovets nuclear power plant. It considered the information provided by Belarus and Lithuania in response to the Committee's request of 19 September 2016, and reviewed the correspondence between the two Parties that had been copied to the Committee.

24. Further to the extensive analysis by the curator and based on the request of the Meeting of the Parties (decision VI/2, paras. 60 and 63), the Committee thoroughly analysed the steps taken by both Parties since the Committee's twenty-seventh session (Geneva, 12-14 December 2016) in following the Committee's recommendations to the Meeting of the Parties. It appreciated the reports regularly provided by the Governments of Belarus and Lithuania on the implementation of the requirements in decision VI/2.

25. The Committee also took note of the clarifications provided at its request by the Committee member representing Belarus regarding the date of the International Atomic Energy Agency Site and External Events Design mission and the new law of Belarus on State environmental expertise, SEA and EIA adopted in July 2016.

26. The Committee reiterated its previously stated position that, in essence, the submission was about substantive issues, with objections from Lithuania to the planned construction of a nuclear power plant near Vilnius. It noted that the persistent disagreement between the two Parties related to scientific and other technical matters concerning the construction of the nuclear power plant, for example, regarding reasonable locational alternatives and the methodology and data used in determining the siting as described in the EIA documentation. The Committee further reiterated that it was not within its capacity or mandate to examine the environmental and scientific issues that had been raised in connection with the planned activity. The Committee therefore regretted that the Parties had not agreed with its proposal to establish and finance an expert body modelled after the inquiry commission provided for under appendix IV to the Convention, and also had been unable to find consensus on their points of disagreement through the bilateral expert consultations held in June and September 2016.

27. Consequently, the Committee agreed to recommend to the Meeting of the Parties to invite Parties that had expertise in carrying out EIAs for nuclear power plant-related activities (such as Finland, France, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, or any other volunteering Party with such expertise) to appoint national experts to assess the EIA documentation⁵ of Belarus for the proposed activity in accordance with their domestic procedures for quality control of EIA documentation, and taking into account a list of questions to be provided by the Committee (see annex I). Based on the outcomes of the national expert assessment, the Committee would be able to

⁵ In an English translation.

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.

28. Alternatively, the Meeting of the Parties could recommend the establishment of a joint expert body modelled after the inquiry commission provided for under appendix IV to advise both Parties on technical and scientific matters, including those beyond the scope of the Convention.

29. The Committee recognized that efforts had been made to satisfy the language requirements of the public consultations. It agreed in that respect to invite the Meeting of the Parties to request Belarus and Lithuania to ensure sufficient public participation under the post-project analysis regarding the nuclear power plant.

30. The Committee noted that the Parties had made some efforts in agreeing on steps for the post-project analysis with respect to the nuclear power plant, which might involve the establishment of a joint body. The Committee also noted efforts by both Parties in negotiating a bilateral agreement for the implementation of the Convention in accordance with article 8 and welcomed their efforts in holding bilateral discussions on technical issues.

31. The Committee agreed to recommend the Meeting of the Parties to encourage Belarus and Lithuania to:

- (a) Continue bilateral expert consultations on issues of disagreement, including on matters beyond the scope of the Convention;
- (b) Continue working on the post-project analysis and achieve a joint agreement on establishing a joint bilateral body and procedures for post-project analysis;
- (c) Conclude a bilateral agreement for the implementation of the Convention in accordance with article 8.

32. The Committee requested the Vice-Chair to write to the Governments of Belarus and Lithuania to ask them to provide by 6 February 2017 an update on progress in negotiating the bilateral agreement, including information on the timetable and steps to finalize the agreement and on its substantive content. In the letter to Belarus, the Vice-Chair should also ask the Government to provide by the same deadline further information on: (a) the results of the Site and External Events Design mission scheduled to take place in December 2016; (b) confidence-building measures Belarus had taken in order to implement paragraph 64 of decision VI/2, including regarding the provision of information related to the construction of the nuclear power plant and any possible incident or accident. Moreover, Belarus should be invited to provide an English translation of the provisions regarding transboundary EIA procedures of its newly adopted law and its subsequent subsidiary regulations. The Committee requested the co-curators, with the assistance of the Vice-Chair and interested Committee members, to analyse the information to be provided by the two Parties and to prepare draft recommendations to the Meetings of the Parties on the matter by 13 February 2017, with a view to their finalization at the Committee's thirty-eighth session.

III. Submissions

33. No submissions had been received since the Committee's previous session and there were no earlier submissions still under consideration.

IV. Information gathering⁶

A. Convention matters

1. The Netherlands

34. The Committee continued its consideration of the information it had gathered further to information provided by the NGO Greenpeace Netherlands concerning the lifetime extension of the Borssele nuclear power plant (EIA/IC/INFO/15) in the Netherlands. In a letter dated 15 November 2016, the Netherlands had provided its response to the questions in the Committee's letter of 19 September 2016.

35. Further to the analysis of the curator, the Committee considered the information from the Netherlands, including the non-technical summaries of the EIA reports of 2004 and 2011, which covered the environmental impact of the Borssele nuclear power plant only in relation to the use of new fuel and fuel diversification, respectively.

36. The Committee decided to continue the information gathering at its next session. Further to an in-depth analysis by the curator, the Committee agreed to ask its Vice-Chair to write to the Netherlands to request it to provide by 19 January 2017 further information regarding the transboundary EIA procedures carried out in 2004 and 2010 in relation to the fuel modifications at the Borssele nuclear power plant, including the following:

(a) Copies of the letters of notification sent to the potentially affected Parties in accordance with the article 3 of the Convention, along with English translations;

(b) An English translation of the parts of the 2004 and 2011 EIA documentation prepared according to the article 4, paragraph 1, and annex II to the Convention and provided to the potentially affected Parties in accordance with article 4, paragraph 2, of the Convention;

(c) An English translation of the minutes and/or other documents that had been prepared to record the results of consultations on the basis of the EIA documentation carried out by the Dutch authorities in accordance with the article 5 of the Convention;

(d) An English translation of the final decisions on the proposed activity following the 2004 and 2011 EIAs, along with the reasons and considerations on which they were based, including information on how the EIA outcomes — including the comments on the EIA documentation received pursuant to the article 3, paragraph 8, and article 4, paragraph 2, and the outcomes of the consultations as referred to in the article 5 — were taken into account in the final decision;

(e) Whether the consultations carried out in accordance with the article 5 of the Convention covered issues relating to post-project analysis, as referred to in article 7 of the Convention and, if so, an English translation of the related documentation on the post-project analysis and/or other relevant documentation;

(f) Whether the 2004 and 2010 EIA procedures and documentation covered the lifetime extension of Borssele nuclear power plant until 2033, indicating the places in the EIA documentation where that matter had been considered;

⁶ More information on information-gathering cases, including relevant documentation, is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>.

(g) Whether in 2013 there had been an EIA screening procedure related to the lifetime extension decision and, if so, an English translation of the related screening decision.

37. In addition, the Netherlands should be requested to clarify its licensing process related to the operation of the nuclear power plant and, in particular:

(a) To provide the Committee with a copy of the licence for operating the Borssele nuclear plant issued in 1994, along with amendments to that license or new licences granted to the operator (EPZ) in the period from 1994 to 2016, including an English translation of those documents;

(b) To explain whether EPZ could have operated the Borssele nuclear plant until 2033 without the prior approval by the competent authorities of the amendments to the 1994 licence or the issuing of a new license.

38. The Committee requested the curator to provide his analysis of the matter in writing by 10 February 2017 for the Committee to consider at its thirty-eighth session.

39. Further to an increased number of information-gathering cases related to the lifetime extension of nuclear power plants that had been brought before the Committee, the Committee agreed to formulate a general opinion or recommendation on the matter. It requested Mr. Buchko to prepare by 20 January 2017 a draft recommendation in that regard for the Committee to consider at its next session.

2. Bosnia and Herzegovina

(a) Ugljevik thermal power plant

40. The Committee continued its consideration of the information it had gathered further to information received on 18 September 2014 from the NGO Center for Environment (Bosnia and Herzegovina) concerning the planned construction of a third block for the thermal power plant in Ugljevik, Bosnia and Herzegovina, close to the border with Serbia (EIA/IC/INFO/16). It considered the information received from Serbia on 11 November 2016 in response to the Committee's request of 19 September 2016.

41. The Committee noted that, in its response to the Committee, Serbia had expressed its wish to be notified by Bosnia and Herzegovina. The Committee further noted that the activity in question was an activity listed in appendix I to the Convention and that the likelihood of a significant adverse transboundary impact on the territory of Serbia could not be excluded.

42. On those grounds, the Committee asked the Vice-Chair to write to Bosnia and Herzegovina, requesting it to notify Serbia in accordance with article 3, paragraph 1, as soon as possible and to inform the Committee about the progress by no later than 3 February 2017. The Committee agreed that, based on an analysis of the information to be provided by Bosnia and Herzegovina by the curator at its next session, it would decide on whether to begin a Committee initiative further to paragraph 6 of the Committee's structure and functions. The Committee requested the curator to provide her analysis of the information by 10 February 2017, to be presented for further consideration by the Committee at its next session.

(b) Stanari thermal power plant

43. The Committee continued its consideration of the information it had gathered further to the information received on 18 September 2014 from the Center for Environment on the planned construction of a new thermal power plant in Stanari, Bosnia and Herzegovina, close to the border with Croatia (EIA/IC/INFO/17). The Committee noted that Croatia had

not responded to the Committee's letter of 19 September 2016 inviting Croatia to confirm whether it considered that the activity proposed by Bosnia and Herzegovina was likely to cause a significant adverse transboundary environmental impact on its territory. The Committee requested the secretariat to send another reminder to Croatia in that regard and decided to postpone consideration of the matter until its next session. The Committee invited the curator to provide her analysis of the information by 10 February 2017, to be presented for further consideration by the Committee at its next session.

3. Belgium

44. The Committee then continued its consideration of the information it had gathered further to information provided by the German Federal states of North Rhine-Westfalia and Rhineland-Palatinate concerning the lifetime extensions of reactors at the Doel and Tihange nuclear power plants in Belgium (EIA/IC/INFO/18). It considered the information provided by the Governments of Belgium and Germany on 14 November and 15 November 2016, respectively, in response to the Committee's request of 19 September 2016, and the additional information provided by the two German Federal states on 26 October 2016.

45. The Committee noted that, in its letter of 15 November 2016, Germany had confirmed that the complaint by the German Federal states of North Rhine-Westfalia and Rhineland-Palatinate should not be considered as an official submission by Germany.

46. Further to an in-depth consideration of the matter, the Committee agreed to ask its Vice-Chair to write to Belgium to request further clarifications by 3 February 2017 about:

(a) The lifetime of the nuclear reactors Tihange 1, Doel 1 and Doel 2, as established by the project's technical documentation;

(b) What technical improvements and/or modifications had been implemented in relation to the lifetime extension and whether the latter constituted a "major change" within the meaning of article 1, subparagraph (v), of the Convention;

(c) Whether an EIA procedure, including an analysis of possible significant adverse transboundary impacts, had been conducted prior to the decisions on the lifetime extension of the Tihange 1, Doel 1 and Doel 2 nuclear reactors, and whether the notifications within the meaning of article 3 of the Convention had been conducted. In the event an EIA procedure had been carried out, Belgium should be requested to provide copies of the executive summaries of the EIA reports.

47. The Committee invited the curator to provide his analysis of the matter by 10 February 2017, for the Committee to consider at its thirty-eighth session, time permitting.

4. Czechia

48. The Committee continued its consideration of the information it had gathered further to the information received from five NGOs (four jointly) concerning the lifetime extension of four reactors at the Dukovany nuclear power plant in Czechia (EIA/IC/INFO/19). Further to the analysis by the curator, the Committee agreed to ask the Vice-Chair to write to the Government of Czechia, the NGOs and the Governments of the neighbouring countries to request further information, for submission by 3 of February 2017. Following the thirty-seventh session, the Committee agreed on the questions to be put to Governments and NGOs (see annex II), as proposed by the curator in her analysis, using its electronic decision-making procedure. The Committee invited the curator to provide her analysis of the information received by 10 February 2017, to be presented for further consideration by the Committee at its next session.

5. Ukraine

49. The Committee recalled that, at its thirty-sixth session, further to the letter of 1 August 2016 from the CEE Bankwatch Network expressing concerns about the situation in Ukraine regarding the lifetime extensions of the Rivne, South Ukrainian, Zaporizhia and Khmelnytsky nuclear power plants, the Committee had decided to open an information-gathering case (EIA/IC/INFO/20) and to consider the matter further at its thirty-seventh session, time permitting. However, the Committee had been informed that the letter it had requested the Chair to write to the Government of Ukraine asking for further information had not been sent out, owing to an oversight. Consequently, the Committee reiterated its request to the Vice-Chair to write to the Government of Ukraine, asking it to provide by 1 February 2017 the required information in English for the Committee's consideration at its thirty-eighth session.

50. The Committee also invited the curator to provide an analysis of the information received by Ukraine. It agreed that it would consider the matter at its thirty-eighth session, time permitting.

B. Protocol matters

1. Serbia

51. The Committee then continued its consideration of the information it had gathered in relation to compliance by Serbia with the Protocol on SEA regarding the Government's Energy Strategy and Spatial Plan (EIA/IC/INFO/1). It recalled that at its previous session the Committee had agreed to seek further clarification from Serbia including:

- (a) The precise date of adoption of the Government's Energy Strategy and Spatial Plan;
- (b) A copy of the report on public consultations;
- (c) An explanation of whether and how the health authorities had been consulted.

52. The Committee was informed that, owing to an oversight, the letter from the Chair had not been sent. Consequently, the Committee reiterated its request to the Vice-Chair to write to the Government of Serbia, asking it to provide by 1 February 2017 the required information and documents in English for the Committee's consideration at its next session. The curator was requested by 10 February 2017 to analyse the information provided.

53. The Committee decided to discuss the curator's analysis using its electronic decision-making procedure and to work on its conclusions and recommendations on the matter in advance of its next session.

2. Armenia

54. Further to its deliberations on the follow-up to decision VI/2 (paras. 45-46) regarding Armenia at its thirty-second session (Geneva, 9-11 December 2014), the Committee had sent a letter dated 16 December 2015 requesting the Government to supply additional information. The Committee now considered the information provided by Armenia on 11 March 2016, in response to that request, regarding the Programme of the Government of Armenia adopted by decision 511-A of 19 May 2014.

55. Before leaving the session, the Committee member nominated by Armenia clarified that the 2014 Programme had been developed in accordance with article 74 of the Constitution of Armenia within 20 days after the appointment of a new Government. It had then been adopted by the parliament of Armenia. The Programme had a political nature and like other such programmes was based on the electoral programme of the new Government.

Owing to the change of Government in October 2016, the parliament had recently adopted a new Governmental Programme. It was also possible that, following elections in April 2017, a new Programme would be prepared in spring 2017 if another change of Government took place.

56. Further to the analysis by the curator, the Committee deliberated on the legal nature of the Programme. It noted that SEA was obligatory for plans and programmes that fell under the provisions of article 2, paragraph 5, and article 4 of the Protocol, while application of the Protocol to policies and legislation was not binding according to article 13, paragraph 1. It carefully considered all the information provided by Armenia on the matter since 2014 and concluded that it was not sufficient to determine the legal status of the Programme and whether it set the framework for development consent of future activities in the energy field.

57. The Committee requested the Vice-Chair to write to the Government of Armenia inviting it to clarify by 3 February 2017 the following:

- (a) Whether the Government Programme of 19 May 2014 was still valid;
- (b) Whether the Government Programme had the legal status of a plan, programme or policy;
- (c) The relationship between the Government Programme and related subsequent permits: what were the various steps to be taken for granting a permit for an activity referred to by the Programme?;
- (d) Whether Governmental programmes developed in accordance to article 74 of the Constitution of Armenia were subject to SEA according to the 2014 Law of Armenia on EIA, SEA and environmental expertise.

58. The Committee invited the curator to provide his analysis of and the recommendations on the matter by 10 February 2017 for the Committee's consideration on the second week of February 2017 through its electronic decision-making procedure.

V. Review of implementation

A. Specific compliance issues under the Convention⁷

Cyprus (EIA/IC/SCI/4/1)

59. The Committee further considered the specific compliance issue from the fourth review of implementation of the Convention regarding Cyprus. It reviewed the information from Cyprus of 2 November 2016, in response to the questions in the Committee's letter of 9 June 2015, regarding how the public was notified in the absence of current national legislation.

60. The Committee noted that, in the absence of activities that fell within the scope of the Convention, the Government of Cyprus had not yet applied a transboundary EIA procedure. However, if it were to apply such a procedure, the public would be notified through the relevant governmental department's website, the official government gazette, the public press and the media, as stipulated in the national EIA legislation. The Committee concluded that the information provided by Cyprus was sufficient and decided to close the

⁷ More information on cases involving specific compliance issues, including relevant documentation, is available from http://www.unece.org/env/eia/implementation/implementation_committee_letters.html.

information-gathering on the issue. It asked the Vice-Chair to write to Cyprus to inform it accordingly. The Vice-Chair should also request the agreement of Cyprus that the correspondence between the Committee and Cyprus be placed on the Convention's website, as an illustration of the Committee's approach to specific compliance issues and of a proper and sufficient response from a Party to address the issue.

B. Specific compliance issues under the Protocol

European Union (SEA/IC/SCI/1/4)

61. The Committee continued its consideration of the specific compliance issue from the second review of implementation of the Protocol regarding the reporting obligation of the European Union, on the basis of an in-depth analysis provided in writing by the curator during the previous session. The Committee recalled that it had asked the Chair to write to the European Commission asking it to answer by 5 December 2016 additional specific questions.

62. The Committee noted that the European Commission had not received the Committee's letter sent to it by e-mail on 28 October 2016, and that it had only become aware of the letter on 7 December 2016 when receiving a reminder. The Committee asked the secretariat to request the European Commission to submit the information by 3 February 2017. It further requested the curator to analyse the information received by 10 February 2017, for the Committee's consideration at its next session.

VI. Preparations for the next sessions of the Meetings of the Parties

63. The Committee agreed to finalize at its next session draft decisions VII/2 and III/2 on the review of compliance with the Convention and the Protocol, which, once finalized, would be forwarded to the Meetings of the Parties for consideration at their next sessions. The Committee invited all the curators, in addition to their written analysis of the pending cases, to provide language for the draft decisions.

64. The Committee also agreed to finalize at its next session a draft report on the activities of the Committee to be submitted to the Meetings of the Parties, as foreseen in the workplan (see ECE/MP.EIA/20/Add.3-ECE/MP.EIA/SEA/4/Add.3, decision VI/3-II/3). The Committee requested the secretariat to circulate by 3 February 2017 a revised draft report for Committee members to comment.

VII. Presentation of the main decisions taken and closing of the session

65. The Committee agreed to hold its thirty-eighth session from 20 to 22 February 2017. The Committee also agreed that the Chair, the Vice-Chair, the curators and the interested Committee members should hold one or several online meetings in advance of its next session. It requested the secretariat to carry out consultations in order to set dates for the online meetings.

67. The Committee also took note of the dates for its meetings scheduled after the next sessions of the Meetings of the Parties: its thirty-ninth session would be held from 12 to 14 September 2017; and its fortieth session from 5 to 7 December 2017.

68. The Committee adopted the draft report of its session with regard to certain items and decided to agree the rest by its electronic decision-making procedure, following the meeting. The Vice-Chair then formally closed the thirty-seventh session.

Annex I

Questions to be considered by experts carrying out a review of the environmental impact assessment documentation related to the Ostrovets nuclear power plant

1. Following the findings of the Implementation Committee and decision VI/2 of the Meeting of the Parties of June 2014 — which requested Belarus, inter alia, to take a final decision on site selection for a nuclear power plant, to provide Lithuania with the final decision and to continue the transboundary EIA procedure on the basis of the EIA documentation — the two Parties concerned could not agree on the final character of the transboundary EIA. The Implementation Committee was asked to follow up on the implementation of decision VI/2, in order to support bilateral discussion between the two Parties. These discussions concluded in a list of disagreements, especially on what should have been taken into account in the final EIA decision.

2. Using the framework of the questions set out below, experts carrying out a review of the EIA documentation should seek to provide assurance that, in conformity with decision VI/2, “due account has been taken of the outcome of the EIA documentation” before the final decision was taken (see decision VI/2, para. 51):

(a) What are the characteristics, according to current international rules, recommendations, guidelines and other relevant guidance documents, of an aircraft (heavy or light aircraft) whose direct crash on a commercial nuclear power reactor should be assessed before building a reactor? Were such characteristics analysed in the case of the Ostrovets nuclear power plant? (This question covers point of disagreement No. 7 in annex II to the curator’s note (EIA/IC/37/2016/INF4));

(b) What is the size, according to current international rules, recommendations, guidelines and other relevant guidance documents, of the area around the commercial nuclear power reactor for which the population density has to be assessed in order to take into account the radiological impact of a major accident and to prepare accordingly the emergency measures? Was it respected in the case of the Ostrovets nuclear power plant? (This question covers point of disagreement No. 5 in annex II to the curator’s note);

(c) According to current international rules, recommendations, guidelines and other relevant guidance documents, should the contamination of rivers and groundwater by radionuclides through direct discharge of contaminated water into the environment following a major accident or through the air be assessed before building a commercial nuclear power reactor? Was such an assessment undertaken in the case of the Ostrovets nuclear power plant? (This question covers point of disagreement No. 6 in annex II to the curator’s note);

(d) According to current international rules, recommendations, guidelines and other relevant guidance documents, should the management of radioactive waste and spent fuel from a commercial nuclear power reactor (near surface repository or deep geological disposal) be decided before building such a reactor? Was there any mention of the waste management policy in the EIA of the Ostrovets nuclear power plant? (This question covers point of disagreement No. 10 in annex II to the curator’s note);

(e) What are the selection and exclusion criteria (for example, geological and seismo-tectonic structure of the site, seismic hazard assessment (probabilistic assessment), etc.) that a country has to apply, according to current international rules, recommendations, guidelines and other relevant guidance documents, when assessing the suitability of a nuclear power plant site? Were such criteria applied in the selection of the Ostrovets site in comparison with the other sites that were also examined and were the data provided in the

EIA documentation sufficient to have an idea of the selection process? (This question covers points of disagreement Nos. 2 and 3 in annex II to the curator's note.)

Annex II

Information to be requested concerning the lifetime extension of four reactors at the Dukovany nuclear power plant in Czechia (EIA/IC/INFO/19)

A. Questions for the Government of Czechia

1. To enable its further consideration of the matter, the Committee requested the Vice-Chair to invite the Government of Czechia to provide the Committee by 3 February 2017 with the following information and clarifications:

(a) Please provide information about the exact location of the planned activity (extension of the lifetime of reactors at the Dukovany nuclear power plant) and its distance from the borders of Austria, Germany, Poland and Slovakia. Please substantiate the information with a map illustrating the location of the planned activity, showing also the distances from the neighbouring countries;

(b) Please indicate whether an environmental impact assessment (EIA), including a transboundary EIA, process was carried out in relation to Unit One of the Dukovany nuclear power plant. Please also inform the Committee whether Czechia intends to carry out an EIA procedure, including a transboundary EIA procedure, prior to taking a decision regarding Units Two, Three and Four of the planned activity;

(c) Is a domestic EIA procedure and/or an EIA screening required for the planned extension of the lifetime of nuclear power plant reactors in accordance with the legislative framework of Czechia?;

(d) Please provide information about the transboundary EIA process for Unit One of the nuclear power plant. Have the potentially affected countries been notified in accordance with article 3 of the Convention or have they been informed by other means? If the affected countries have not been notified, please justify the view of your Government that the planned activity falls outside the scope of the Convention.

B. Questions for non-governmental organizations

2. The Committee also requested the Vice-Chair to invite four NGOs to provide by 3 February 2017 the following clarifications and information with respect to the supporting information submitted by these organizations on 27 July 2016:

(a) Please provide information about the current status of the planned activity (extension of the lifetimes of Units One, Two, Three and Four at the Dukovany nuclear power plant);

(b) Please specify the exact date of issuance of decision GZ 4932/2016 by the Czech State Office for Nuclear Safety, which is referred to on pages two and three of the supporting information submitted to the Committee;

(c) Please provide copies and English translations of all the correspondence and documents referenced in the supporting information (in footnote 1 on page one of the document);

(d) Please provide relevant correspondence between Austria and the European Commission to substantiate the following statement presented on page 6, paragraph 1, of the supporting information: "The Austrian Government subsequently turned to the

European Commission to share its views that an EIA was necessary and that Austria should have an opportunity to provide its opinion about the extension”.

C. Questions to Governments of neighbouring countries

3. Finally, the Committee requested the Vice-Chair to invite the Governments of Austria, Germany, Poland and Slovakia to answer the following questions:

(a) Has your Government been notified about the planned extension of the Dukovany nuclear power plant and, if yes, when?;

(b) Does your country consider itself a potentially affected Party with respect to this planned activity?;

(c) If your country considers that it could be potentially affected but has not been notified, has your Government made use of the mechanism provided for in article 3, paragraph 7, of the Espoo Convention?
