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

Intermediary session

Geneva, 5–7 February 2019

Item 3 (a) and 8 of the provisional agenda

Outstanding issues: draft decisions

Adoption of decisions by the Meeting of the Parties to the Convention

Draft decision IS/1 on general issues of compliance with the Convention

Proposal by the Implementation Committee

Summary

The draft decision contained in the present document was prepared by the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment. It responds to the request of the Meeting of the Parties to the Convention at its seventh session (Minsk, 13–16 June 2017) for the Committee to revise draft decision VII/2 on the review of compliance with the Convention, taking into account the work already carried out and the progress achieved before, during and after the seventh session of the Meeting of the Parties (ECE/MP.EIA/23-ECE/MP.EIA/SEA/7, para. 27).

Draft decision IS/1 focuses on general issues of compliance and presents a revised version of the relevant paragraphs from the draft decision VII/2 (ECE/MP.EIA/2017/8, paras. 1–12). Country-specific compliance issues addressed in draft decision VII/2 have been split into separate draft decisions to facilitate their consideration and adoption and are contained in separate documents.

The Meeting of the Parties is expected to review the draft decision and agree on its adoption.

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The Meeting of the Parties to the Convention,

Recalling article 11, paragraph 2, and article 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context and decisions III/2, IV/2, V/4 and VI/2 of the Meeting of the Parties to the Convention on the review of compliance,

Determined to promote and improve compliance with the Convention,

Seeking to promote the identification, as early as possible, of compliance difficulties encountered by Parties and the adoption of the most appropriate and effective solutions for resolving those difficulties,

Having considered the analysis made by the Implementation Committee on general compliance issues contained in the fourth and fifth reviews of implementation of the Convention contained in documents ECE/MP.EIA/2014/3, adopted by decision VI/1, and ECE/MP.EIA/2017/9, adopted by decision VII/1,

Having also considered the findings and recommendations of the Implementation Committee on a Committee initiative concerning the United Kingdom of Great Britain and Northern Ireland, as set out in the report of the Committee on its thirty-fifth session¹ and in document ECE/MP.EIA/2019/14,

Having further considered the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its seventh session² and the reports of the Committee on its ad hoc,³ thirty-ninth,⁴ fortieth,⁵ forty-first⁶ and forty-second sessions,⁷

Recalling its decision at its seventh session (Minsk, 13–16 June 2017) to finalize its deliberations on the review of compliance with the Convention at an intermediary session, based on a revised draft decision to be prepared by the Implementation Committee and taking into account the work carried out and progress achieved before and during the seventh session,⁸

Having reviewed the structure and functions of the Committee, as described in the appendix to decision III/2⁹ and annex I to decision VI/2,¹⁰

Having also reviewed the operating rules adopted in decision IV/2,¹¹ as amended by decisions V/4,¹² annex, and VI/2,¹³ annex II, and recognizing the importance of improving the efficiency of the working methods of the Committee in view of the growing number and complexity of compliance issues brought before the Committee,

Having further reviewed the opinions of the Committee,

¹ ECE/MP.EIA/IC/2016/2, annex.

² ECE/MP.EIA/2017/4–ECE/MP.EIA/SEA/2017/4.

³ Informal document ECE/MP.EIA/IC/ad-hoc/2017/INF.6, available from <https://www.unece.org/index.php?id=48313>.

⁴ ECE/MP.EIA/IC/2017/4.

⁵ ECE/MP.EIA/IC/2017/6.

⁶ ECE/MP.EIA/IC/2018/2.

⁷ ECE/MP.EIA/2018/4.

⁸ See ECE/MP.EIA/23–ECE/MP.EIA/SEA/7, para. 27. See also draft decision VII/2 (ECE/MP.EIA/2017/8).

⁹ ECE/MP.EIA/6, annex II.

¹⁰ See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

¹¹ ECE/MP.EIA/10, annex IV.

¹² See ECE/MP.EIA/15.

¹³ See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

Recognizing the importance of rigorous reporting by Parties on their compliance with the Convention, and noting the fifth review of implementation of the Convention based on the answers of Parties to the questionnaires on the implementation of the Convention adopted in decision VII/1,

Recalling that the compliance procedure is assistance-oriented, and that Parties may make submissions to the Committee on issues regarding their own compliance with the Convention,

Recalling also its related decisions IS/1a, IS/1b, IS/1c, IS/1d, IS/1e, IS/1f, IS/1g and IS/1h, concerning compliance by Armenia, Azerbaijan, Belarus, Serbia, Ukraine and the United Kingdom of Great Britain and Northern Ireland, adopted at the intermediary session,

1. *Adopts* the report of the Implementation Committee on its activities contained in document ECE/MP.EIA/2017/4-ECE/MP.EIA/SEA/2017/4, welcomes the reports of the Committee on its meetings in the period after the sixth session of the Meeting of the Parties to the Convention, and requests the Committee:

- (a) To keep the implementation and application of the Convention under review;
- (b) To promote and support compliance with the Convention, including by providing assistance in this respect, as necessary;

2. *Welcomes* the examination by the Committee of specific compliance issues identified in the fourth review of implementation of the Convention regarding Cyprus, which resulted in the Committee declaring its satisfaction with the clarifications provided by the Party;

3. *Also welcomes* the examination by the Committee of information received from other sources, including the public, regarding Belarus, Belgium, Bosnia and Herzegovina (on two issues), Czechia, the Netherlands, Serbia, Spain (on two issues) and Ukraine (on three issues), which:

(a) In one instance regarding Ukraine resulted in the Committee declaring its satisfaction with the clarifications provided by the Party at the time,

(b) In the case of Serbia led both to a Committee initiative, regarding which the Committee is now satisfied with the clarifications provided and the actions taken by the Party,¹⁴ and also to information gathering by the Committee regarding compliance with the Protocol that is to be continued at its upcoming sessions;¹⁵

(c) In the cases of Belarus, Belgium, Bosnia and Herzegovina (two issues) Czechia, the Netherlands, Spain (two issues) and Ukraine (two issues) required further consideration by the Committee at its upcoming sessions;

4. *Notes* the new information received from other sources regarding Bosnia and Herzegovina (on two issues), Bulgaria and Switzerland to be considered by the Committee at its upcoming sessions;

5. *Considers*, following the opinions of the Committee, that:

(a) Early and wide notification in accordance with the Convention, regardless of the number of the affected Parties, plays an essential role in the transboundary procedure, in keeping with the precautionary approach and the principle of prevention enshrined in the Convention and with the Convention's objective of enhancing international cooperation in

¹⁴ See ECE/MP.EIA/2019/6.

¹⁵ ECE/MP.EIA/2017/4-ECE/MP.EIA/SEA/2017/4, para. 76.

assessing environmental impact, in particular in a transboundary context, as mentioned in its preamble;¹⁶

(b) For certain activities, in particular nuclear energy-related activities, while the probability of a major accident, accident beyond design basis or disaster occurring is very low, the likelihood of a significant adverse transboundary impact of such an accident can be very high and its consequences severe. Therefore, on the basis of the principle of prevention, when considering the affected Parties for the purpose of notification, the Party of origin should be exceptionally prospective and inclusive, in order to ensure that all Parties potentially affected by an accident, however uncertain, are notified. The Party of origin should make such consideration using the most careful approach on the basis of available scientific evidence, which indicates the maximum extent of a significant adverse transboundary impact from a nuclear energy-related activity, taking into account the worst-case scenario;¹⁷

(c) In the absence of notification, in particular regarding nuclear power plants, when a potentially affected Party considers that a significant adverse transboundary impact of a proposed activity cannot be excluded and expresses the wish to be notified, the Party of origin should apply the Convention. In this situation, a failure to notify would infringe on the right of the potentially affected Parties and their public to be informed and to participate in a timely manner in the environmental impact assessment procedure;¹⁸

(d) Procedural and substantive aspects of environmental impact assessment in accordance with the Convention cannot necessarily be treated separately when assessing compliance, in particular if the essence of the compliance case in question pertains to substantive aspects;¹⁹

(e) All information, including that of a substantive nature, provided in environmental impact assessment documentation should be sufficient to properly support the decision-making in accordance with the Convention;

(f) For the alternatives assessed, the information provided in the environmental impact assessment documentation should be sufficient to properly justify the selected alternative during the subsequent steps of the procedure, including the final decision taken;²⁰

6. *Encourages* Parties to bring issues concerning their own compliance before the Committee;

7. *Requests* the Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible, and in this respect refers to decision VII/3 on the adoption of the workplan, recommending general requirements to be met by Parties wishing to receive technical advice from the Convention;

8. *Urges* Parties to take into account in their future work the recommendations for further improving the implementation of and compliance with the Convention, including by strengthening national legislation, based on but not limited to the analyses on general compliance issues from the reviews of implementation, adopted by decisions III/1, IV/1, V/3 and VI/1, in conjunction with the general guidance on enhancing consistency between the Convention and environmental impact assessment within the framework of

¹⁶ ECE/MP.EIA/2019/14, para. [102].

¹⁷ *Ibid.*, paras. [94–95].

¹⁸ *Ibid.*, para. [103].

¹⁹ ECE/MP.EIA/IC/2017/2, para. 9.

²⁰ ECE/MP.EIA/IC/2018/4, para. 34 and annex, paras. 25–26.

State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia adopted by decision VI/8;

9. *Also urges* Parties to ensure the application of the Convention in nuclear energy-related activities, and in that respect recalls the 2014 Geneva Declaration²¹ (Part A) on the application of the Convention and the Protocol to nuclear energy issues, and in particular:

(a) Emphasizes that Parties to the Convention that carry out nuclear energy-related activities should do so in accordance with the Convention, in a sustainable manner, taking into consideration the precautionary and polluter pays principles, and respecting international nuclear safety standards and relevant environmental legislation;

(b) Also emphasizes that close cooperation and improved mutual understanding of the practices and needs of other Parties in the field of nuclear energy will facilitate the application of transboundary environmental procedures in full compliance with the Convention and the Protocol;²²

(c) Encourages effective cooperation among Parties, the secretariats of all relevant international treaties and international organizations to maximize synergies and strengthen capacities with a view to ensuring the highest possible quality of environmental assessment and level of safety in the nuclear energy field, especially stressing the importance of the treaties under the auspices of the International Atomic Energy Agency (IAEA);²³

10. *Further urges* Parties to take into account in their further work the opinions of the Committee in the period 2001–2018, and requests the secretariat to arrange for the revision of the informal electronic publication of these opinions to include the opinions of the Committee from 2014–2018;

11. *Decides* to keep under review and to develop, if necessary, the structure and functions of the Committee and its operating rules at its eighth session, in the light of experience gained by the Committee in the interim, and requests the Committee to prepare any proposals, as it deems necessary, for submission to the Meeting of the Parties at its eighth session.

²¹ See ECE/MP.EIA/20/Add.3-ECE/MP.EIA/SEA/4/Add.3.

²² Declaration, para. A9.

²³ Declaration, para. A10.