

**FIFTH MEETING OF THE ESPOO CONVENTION AD HOC WORKING GROUP ON LIFE-TIME  
EXTENTION OF NUCLEAR POWER PLANTS**

**(Geneva, 25-26 March 2019)**

**SUMMARY OF DISCUSSION**

**Prepared by the Co-Chairs**

The meeting was co-chaired by Lucy Tanner (UK) and Christof Sangenstedt (Germany) and attended by representatives from Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Italy, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Ukraine and the UK. Sweden and Switzerland joined the ad hoc group for the first time. The UNECE secretariat to the Espoo Convention and the Protocol on SEA and the European Commission also attended.

As mandated by the Working Group on EIA and SEA at its seventh meeting (Geneva, 28-30 May 2018), the ad hoc group continued its discussions on possible elements for the draft guidance on the applicability of the Espoo Convention (the Convention) to the lifetime extension (LTE) of nuclear power plants (NPPs), based on the terms of reference adopted by the Working Group.

The co-chairs reported on developments since the fourth meeting of the ad hoc group (London, October 2018). They highlighted their meeting with representatives of the NGOs on 18 December 2018 and the outcomes of the intermediary MOP (Geneva, 5 – 7 February 2019). As regards the proposals put forward by the NGOs, the group spoke out in favour of concentrating its work on the requirements of the Espoo Convention rather than seeking to also include the requirements of the Aarhus Convention. However, possible links between both Conventions might be part of another potential workshop, which could be held back to back to one of the upcoming ad hoc group meetings. The group also concluded that it is too early to decide whether a “stress test exercise<sup>1</sup>” on the draft guidance should be carried out and that the views of the Implementation Committee and the states with live cases would need to be considered. The co-chairs will discuss this idea inter alia with the Chair of the Implementation Committee. The group confirmed that consultations with NGOs should continue and encouraged the co-chairs to have another meeting with them in the margins of one of the next ad hoc group meetings.

The main focus of the fifth meeting was on the meaning and significance of the element of a “decision” within the definition of “proposed activity” in article 1, subparagraph (v) of the Convention. In accordance with this, only a LTE of an NPP which is “subject to a decision of a competent authority in accordance with an applicable national procedure” may amount to a “proposed activity”. The group discussed what would be the characteristic features of a “decision”. It was noted that according to article 2, paragraph 3 of the Convention, only “decisions to authorize or undertake a proposed activity” taken in the framework of an “applicable national procedure” may trigger an environmental impact procedure. Different views were expressed on whether the Convention would apply only to decisions issued in a formal way or whether it could apply to a broader spectrum of more informal decisions, also taking into account the spirit of the Convention. Different from article 2, paragraph 1 of the European EIA Directive, the Espoo Convention does not require Parties to establish a development consent procedure for activities in its scope. Discussing these questions, the group explored possible examples of LTE and considered in which of these

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<sup>1</sup> See summary report of the meeting of the Co-Chairs with NGOs Representatives 18 December 2018

scenarios a “decision” according to the Convention could be assumed. In cases in which a time-limited license was due to expire and a new license (or an extension of the existing license) would be issued the characteristics of a “decision” would usually be fulfilled, while in other cases (e.g. established design lifetime reached, continued operation to be determined) the situation could be different depending on the specific circumstances and national legislation.

In this context, the group also reflected on decision-making processes and periodic safety review (PSR). It was agreed that a PSR does not necessarily trigger the application of the Convention. Continued operation of a NPP following a safety review process could only be regarded as a “proposed activity” if the respective criteria of the Convention are met including the question of whether a “decision” is required to continue operation, taking into account the outcomes of the previous safety review.

Another aspect highlighted in the discussion was LTE by a specific domestic law. The group noted that the relevant provisions of the Convention explicitly refer to authorities and administrative decisions, but do not mention legislative bodies. On the other hand, the Convention does not contain any provisions excluding decisions of legislative bodies from its scope. This may offer the opportunity, when applying the Convention, to consider not only the title of the body or institution but rather the capacity in which it is operating. Bearing in mind that the questions at stake are also subject of the pending ECJ case C-411/17, the group agreed to postpone a deeper discussion of this issue until the ECJ has tabled its decision.

It was agreed that further discussions would be needed on “decision” and that this issue should be revisited in a future meeting.

The ad hoc group agreed on the following next steps:

- The Lisbon meeting will mainly focus on two issues: (1) Proposed structure for the guidance and (2) “Likely significant adverse transboundary effect”.
- Drafting groups should be set up within the ad hoc group to better share the increasing workload associated with drafting the guidance.
- Papers provided for further consideration in the ad hoc group should be designed in a way which would allow the text to be incorporated into the draft Guidance.