

Supporting Information:

Violations by Ukraine of its obligations under Espoo Convention in relation to extension of the lifetime of two 1st and 2nd nuclear reactor of Rivne NPP

(attached to the Information on possible non-compliance submitted by Ecoclub in relation to Ukraine)

Introduction

This information alleges that Ukraine is in violation of the Espoo Convention by not applying its provisions to the decision-making procedure related to the nuclear reactors lifetime extension.

Ukraine initiated and partially completed a process for extending lifetime (designed period) of operation set for some nuclear reactors. "Partially completed" refers to the fact that a final decision was taken in relation to two nuclear reactors located at Rive nuclear power plant (NPP).

This information argues that, in light of applicable the decision-making procedures and legislation, extension of nuclear reactors lifetime qualifies as a "major change" and, therefore, falls under the definition of proposed activity under the Espoo Convention.

1. Facts

1.1. Decision-making

In 2004 Ukraine initiated a special program to review and extend lifetime of certain nuclear reactors. On April 29, 2004, the Cabinet of Ministers adopted a *Complex Program of Works to Extend Operation Lifetime of Existing Nuclear Reactor of Nuclear Power Plants* (Decision No263-r). On January 18, 2005, state company Energoatom (operator of nuclear power plants in Ukraine) adopted a *Workplan for Implementation of the Complex Program of Works to Extend Operation Lifetime of Existing Nuclear Reactor of Nuclear Power Plants*.

In 2005-2010 numerous steps were taken by the operator, Energoatom, and nuclear safety authority, State Committee on Nuclear Regulation (today – State Inspection of Nuclear Regulation). These steps included both safety measures implemented by the operator, and various interim decisions taken by the State Committee on Nuclear Regulation in relation to 1st and 2nd reactors of the Rivne NPP. On December 22, 2009, Energoatom filed a request for an amendment of its license "EO No000211" for lifecycle operation of Rivne NPP. The request was re-filed on June 14, 2010, and re-filed again on November 11, 2010.

On December 10, 2010, a meeting of the Board of State Committee on Nuclear Regulation was held directly at the Rivne NPP. The Board (*kolegiya* in Ukrainian) took a decision No15 of Dec 10, 2010, to issue to Energoatom a new license EO No000943 for operation of nuclear reactors No1 and No2 at Rivne NPP until December 31, 2031. Therefore, the lifetime was extended for another 20 years for each nuclear reactor.

1.2. Reactors Lifetime

The public in Ukraine has no direct information about the original, designed lifetime of nuclear reactors operating in Ukraine. Most of them were built in Soviet time with no technical information available to the public until today. The above mentioned *Complex Program* adopted in 2004 refers to 30 years as a designed lifetime of the nuclear reactors in Ukraine. The program specifically mentions and addresses three nuclear reactors: 1st and 2nd at Rivne NPP and 1st at Yuzhno-Ukrainska NPP.

The first two nuclear reactors at Rivne NPP are the oldest in Ukraine: the 1st was put into operation on December 22, 1980 and the 2nd on December 22, 1981.

2. Applicable legislation

The following key national legislation is applicable to the decision-making related to extension of the nuclear reactors lifetime:

- The Law of Ukraine on Decision-Making Procedure for Locating, Designing, and Construction of Nuclear Reactors and Installations for Processing Radioactive Waste of National Importance, No 2861-15 of Sep 08, 2005.
- The Law of Ukraine on Permitting in the Sphere of Nuclear Energy Use, No1370-14 of Jan 11, 2000.

Article 6 of the *Law of Ukraine on Decision-Making Procedure for Locating, Designing, and Construction of Nuclear Reactors and Installations for Processing Radioactive Waste of National Importance* states that:

“Decision on extension of the nuclear reactors and installations lifetime... is taken by the state authority of nuclear regulation... in form of introducing changes into the operating license.”

Article 6 of the *Law of Ukraine on Permitting in the Sphere of Nuclear Energy Use* states that

“Permitting is part of state regulating activity in the sphere of nuclear energy use and foresees...licensing of the operators’ activities at a given life cycle of the nuclear installation...”.

3. Alleged Violations

We allege that Ukraine violated Article 2, paragraph 2, and in conjunction with this Articles 3 to 6 of the Espoo Convention, by not applying Espoo Convention to the authorization procedure to extend lifetime of the 1st and 2nd nuclear reactors at Rivne NPP. We also allege that Ukraine continues to be in violation of the Espoo Convention by not applying it to the decision-making related to extending of the lifetime of other nuclear reactors.

We allege that Ukraine is in violation of Article 2 paragraph 3 by not ensuring EIA prior to authorizing extension of the lifetime of nuclear reactors.

3.1. Applicability of the Espoo Convention to Extension of the Lifetime

Extension of the lifetime of nuclear reactors shall be considered as a major change in activity and, therefore, means a “proposed activity” for the purpose of the Convention. This is justified by the following considerations.

Appendix I, para 2, lists nuclear power stations and other nuclear reactors as falling under Convention’s scope.

Unlike many other activities listed in Appendix I, nuclear installations do not have any thresholds. For this reason, any change in such activity shall be considered as major. This approach is supported by the recent decision of the Compliance Committee of the Aarhus Convention in Slovak case (C/41) where the Committee said:

“...the Committee wishes to stress that, while for many activities listed in annex 1 to the Convention there are certain criteria or thresholds envisaged below which the requirements of article 6 paragraph 1 (a) would not apply, for some of the activities listed (including nuclear power stations) the Convention does not establish any criteria or thresholds. This means that these activities, regardless of their size, are subject to article 6, paragraph 1 (a), and thus provisions of article 6 must be applied with respect to decisions of whether to permit such activities. By virtue of the first sentence of paragraph 22 of annex 1 the same applies to a change or extension of such activities. Thus, in principle, all changes or extensions to such activities are subject to article 6.”, para 58, ECE/MP.PP/C.1/2010/8/Add.1.

In addition, we consider that in case of the 1st and 2nd nuclear reactors of Rivne NPP, the extension of lifetime - 20 years (166%) compared to original period of 30 years – is a really significant change.

Nuclear installations may have significant adverse transboundary impact. Rivne NPP is located just about 85 km from the border with Belarus which increases the likelihood of transboundary impacts.

In light of recent developments related to nuclear accidents in Japan, a precautionary approach shall be taken in any interpretation and application of the Espoo Convention to nuclear activities.

3.2. Extension of the lifetime is a decision to authorize in the meaning of the Espoo Convention

Article 6 of the *Law of Ukraine on Permitting in the Sphere of Nuclear Energy Use* clearly puts licensing as a permitting procedure:

“Permitting is part of state regulating activity in the sphere of nuclear energy use and foresees...licensing of the operators’ activities at a given life cycle of the nuclear installation...”.

Extension of the lifetime requires a licensing process and in practice means a change to existing license, and as we understood, in case with the two reactors of Rivne NPP led to issuing a new license.

For these reasons, extension of the lifetime of nuclear reactors in Ukraine means a decision to authorize a proposed activity in the meaning of the Espoo Convention.

3.3. Notification and other obligations

Since no EIA system was established at all with regard to decision-making on extension of the nuclear reactors lifetime, Ukraine is in violation of the Article 2(2) of the Convention.

Since no EIA was conducted prior to authorizing extension of the lifetime of the 1st and 2nd nuclear reactors of Rivne NPP, Ukraine is in violation of the Article 2(3) of the Convention.

Since Ukraine did not notify any possibly affected country, including Belarus and Poland as the closest to Rive NPP location, about proposed decision to extend lifetime of the nuclear reactors at Rivne NPP, Ukraine is in violation of the Article 2(4) of the Espoo Convention.