

**UNECE Economic Commission for Europe
Espoo Convention on EIA in a Transboundary Context
Working Group on EIA and SEA
28-30 May 2017, Geneva**

**Romas Švedas
Chair of the Implementation Committee**

Speaking notes

Monday, 28 May 2018

11.00– 12.30

Agenda item 3. Compliance with and implementation of the Convention and the Protocol

[6.] The Chair of the Implementation Committee will report on compliance and implementation. He will present the main outcomes of the Committee's thirty-ninth, fortieth and forty-first sessions (Geneva, 5–7 September 2017; 5–7 December 2017; and 13–16 March 2018, respectively), in particular regarding the revision of draft decision VII/2 on the review of compliance with the Convention. The Working Group may wish to comment the information provided and to put forward suggestions for the Committee to consider, if it so decides, in the finalization of the draft revised decision at its forty-second session (Geneva, 11–13 September 2018).

Introduction

Following the decision of MOP VI in June 2017 the **Implementation Committee in its new composition** has started its work with members nominated by Azerbaijan, Belarus, Estonia, Hungary, Lithuania, Portugal, Sweden and Ukraine. Members from Czechia and Finland service as alternates on Protocol matters for Belarus and Azerbaijan respectively. Since the seventh session of the MOP the Committee has so far convened three sessions: 39th session on September 5-7, 2017; 40th session December 5-7, 2017; 41st session March 11-14, 2018.

Organizational matters

At its first meeting, the Committee elected its Chair and Vice-Chairs and appointed the curators for the files on compliance issues.

It also addressed an issue of the **avoidance of conflict of interests** among other organizational matters. Some members of the Committee, including its Chair, face a direct or indirect conflict of interest with regard to the compliance issues concerning their own countries. Therefore, the Committee with the assistance of the Secretariat makes every effort to avoid it. For this

purpose, access to the Committee's member's electronic data base is in the process of modification in order to ensure that there was no preferential treatment regarding access to information.

The agenda of the Committee is becoming overloaded because of constantly increasing number of compliance issues and their complexity.. During this intersessional period the Committee has been considering 23 issues, 4 of which are newly opened information gathering procedures, including on Compliance with the Convention with regard to:

- the planned construction of a coal power plants in Banovići and Tuzla (14.04.2017), Bosnia and Herzegovina (EIA/IC/INFO/23);
- construction of taxiways at Zurich airport and modification/adaptation of the operating regulations (20.06.2017), Switzerland;

and on Compliance with the Protocol with regard to:

- Programme for Hydro Energy Development for the Period till 2026 (24.03.2017), Ukraine.

In addition, the Committee obtained a new information from an NGO with regard to lifetime extension of a NPP in Bulgaria (NPP "Kozloduy") in March 2018 acceptability of which it is yet to be considered.

Preparation for the intermediary session of the MOP to be convened on 5-7 February 2019 has added additional significant workload to the Committee's already full agenda. **Almost one year of the Committee's term of office had to be dedicated exclusively to the revision of that draft MOP decision VII/2** instead of using this time for the examination of other agenda items. The Committee fully devoted its last session (42nd session) as well as considerable part of the previous two sessions for preparing the revised decision on review of compliance with the Convention. The forthcoming session in September 2018 will also be dedicated for that same purpose.

Increased number and complexity of compliance issues is very time demanding. That made no longer possible for the Committee to examine all items on its agenda during one single session, as it was done previously. Therefore, the **Committee decided to extend the duration of its sessions from three to four days**. Extending meetings will generate substantial additional costs for UNECE, in particular to ensure interpretation. Therefore, the interpretation cannot be always guaranteed. In addition to that, it has become a practice for the Committee to extends its six one day working hours serviced by UN interpreters by 1-3 additional hours without interpretation. For this, I would like to express gratitude for all Committee members who agree to work extra hours and for those who are not so fluent in English though making an effort to work without interpretation. Also, as a result of the Committee's overloaded agenda, there was a need to prioritise agenda items, unfortunately, causing considerable delays for consideration of some pending and new compliance issues.

Committee's Agenda

So far, the main priority for the Committee has been the revision of draft MOP decision VII/2; the main challenge – consideration of the compliance issues with regard to the lifetime extension of nuclear power plants.

The topic of **lifetime extension of NPPs** will be address in detail later today during the dedicated Workshop. At this point, I would like to draw your attention, that **Implementation**

Committee's work is heavily constrained because of (1) rapidly increasing number of cases on lifetime extensions brought to the attention of the Committee, (2) high complexity of the cases, (3) controversial opinions on the matter, (4) lack of guidance. However, the duty of the Committee is to examine the compliance issues and to provide the Parties concerned with recommendations without undue delay. There is an urgent need for the Guidance, therefore work on developing the Guidance on the applicability of the Convention to the lifetime extension of nuclear power plants is of crucial importance.

Let me now present the outcome of the **revision of draft MOP decision VII/2**.

The MOP at its seventh session mandated the Committee to prepare a revised draft decision on compliance VII/2 for consideration by the MOP at its intermediary session. The Committee was asked to take into account (1) the work already carried out, (2) the progress achieved before, during and in the margins of the Convention's MOP (see ECE/MP.EIA/WG.2/2018/INF.4.h) and (3) the information still to be provided to the Committee by the Parties concerned.

Practice so far was that decisions on review of compliance were prepared as single document combining a general part and specific parts concerning compliance by individual Parties. Though, the experience of the MOP at its seventh session showed that failing to reach an agreement on one or two issues may delay or block decision adoption process of all compliance cases. Therefore, following the proposal by Ukraine at MOP of June 2017 in Minsk that was later also supported by the Bureau at its February 2018 meeting, the Committee decided to prepare revised draft MOP decision VII/2 and future **decisions on the review of compliance with the Convention in a split format**: with one general and several country-specific decisions. The Committee hopes that such approach will facilitate consideration and adoption of the decisions by the MOP and will increase the efficiency of all bodies of the Espoo Convention.

The new reference number for revised draft decision VII/2 on review of the compliance with the Convention will be IS/1, where IS stands for "intermediary session". The general part will be numbered simply IS/1, country-specific parts will contain an additional letter from (a) to (h).

Let me now introduce revised country-specific draft decisions on compliance IS/1 from (a) to (h).

- **Draft decision IS/1a (ECE/MP.EIA/WG.2/2018/INF.4.a): Armenia – National legislation to implement the Convention (EIA/IC/CI/1)**. Pending the adoption of the amended legislative framework by Armenia, the Committee's opinion on the compliance by Armenia with the Convention with regard to its national legislation remained unchanged.
- **Draft decision IS/1b (ECE/MP.EIA/WG.2/2018/INF.4.b): Armenia – Planned construction of a nuclear power plant in Metsamor (EIA/IC/S/3)**. No change in Committee's opinion prepared for MOP7 concluding, that there is no longer a project requiring transboundary EIA procedure.
- **Draft decision IS/1c (ECE/MP.EIA/WG.2/2018/INF.4.c): Azerbaijan – National legislation to implement the Convention EIA/IC/CI/2)**. Since MOP 7 Azerbaijan revised

and further elaborated its draft law on EIA and submitted it to the National Parliament in early March 2018. Pending the adoption of the amended legislative framework by Azerbaijan the Committee's position on compliance by Azerbaijan with the Convention with regard to its national legislation remained unchanged.

- **Draft decision IS/1d (ECE/MP.EIA/WG.2/2018/INF.4.d): Belarus – Construction of Ostrovets NPP).**

The floor is passed over to the vice-Chair.

The submission by Lithuania regarding Belarus' compliance with the provisions of the Espoo Convention concerning the building of the nuclear power plant (NPP) in Ostrovets, has become one of the most complicated situations brought before it. The essence of this compliance matter is about unresolved substantive aspects of the environmental impact assessment documentation. For reaching the final conclusion on whether Belarus is in compliance with its obligations under the Convention both procedural and substantive aspects of the EIA procedure are to be examined.

From the procedural point of view the Committee concluded that Belarus had undertaken all the required procedural steps to reach the final decision on the planned activity at Ostrovets, as provided for in the Convention. However, to examine the substantive aspects of the EIA documentation the Committee identified the need for sufficient resources and specific expertise that were not available to it.

The Committee sought the external expert advice in various ways, including also from the International Atomic Energy Agency. When addressing the IC request the IAEA had provided references to its relevant safety standards without elaborating how those standards had been applied in the case of the Ostrovets nuclear power plant. In other words, the questions on technical and scientific issues that the Committee formulated previously (during 2014-2017 intersessional period) to help clarify whether the environmental impact assessment documentation constituted a sufficient substantive basis for Belarus to take its final decision to proceed with the implementation of the activity remained unanswered.

Having exhausted all the avenues for receiving external expert advice and considering the unprecedented circumstances related to this compliance matter, the Committee decided exceptionally to examine the documentation prepared by Belarus under the environmental impact assessment procedure and, as appropriate, seek the services of scientific experts and other technical advice or consult other relevant sources in accordance with its structure and functions. In addition, the Committee agreed to invite Belarus to provide answers to the Committee's scientific and technical questions. For the sake of transparency, it also invited Lithuania to provide its views on the matter.

The Committee then agreed on the revised draft decision IS/1d, taking into account the information provided by Belarus and Lithuania since the seventh session of the Meeting of the Parties. It also agreed to finalize the draft decision at its next session further to the results of the examination of the EIA documentation and taking into account the information expected from both Parties.

Return the floor to the IC Chair.

- **Draft decision IS/1e (ECE/MP.EIA/WG.2/2018/INF.4.e): Serbia – Kostolac lignite power plant.** The Committee’s opinion with regard to the Kostolac lignite power plant remained unchanged – Serbia brought the planned activity in compliance with the Convention by notifying the potentially affected Party.
- **Draft decision IS/1f (ECE/MP.EIA/WG.2/2018/INF.4.f): Ukraine – Bystroe Canal Project.** Despite adoption of the legislative framework to implement the Convention in June 2017 (that entered into force in December 2017), only limited progress had been made by Ukraine in bringing the project into compliance with the Convention, as required by the Meeting of the Parties to the Convention since 2008 in decisions IV/2 (paras. 12–14), V/4 (para. 24) and VI/2 (paras. 24–25). At its last (41st) session informal consultations with Ukraine took place. The Committee appreciated that, taking into account the Committee’s proposals at its fortieth session (ECE/MP.EIA/IC/2017/6, paras. 21–22), Ukraine had prepared a road map with concrete steps to bring the Bystroe Canal Project into full compliance with the Convention and had reported on the monitoring results as well as the preparation of a bilateral agreement with Romania. Further to the informal consultations with Ukraine on its progress achieved, the Committee prepared the draft decision IS/1f (ECE/MP.EIA/WG.2/2018/INF.4.f). Draft MOP decision IS/1f will be finalised at the next Committee’s session (42nd) further to the evidence-based information to be provided by Ukraine and Romania in advance of that session.
- **Draft decision IS/1g (ECE/MP.EIA/WG.2/2018/INF.4.g): Ukraine – lifetime extension of the Rivne nuclear power plant.** At its previous session, the Committee welcomed the information from Ukraine that it had initiated the transboundary environmental impact assessment procedure by notifying Austria, Belarus, Hungary, Poland, the Republic of Moldova and Slovakia about the planned activity at the Rivne nuclear power plant. It also noted that Austria had indicated to Ukraine its wish to participate in the transboundary procedure and had requested Ukraine to expand the scope of the environmental impact assessment to also cover in sufficient detail the extent to which Austria could be affected by severe accidents. Based on the available information, the Committee prepared the revised draft decision on the matter (see ECE/MP.EIA/WG.2/2018/INF.4.g containing a number of square brackets). The Committee agreed to request additional clarifications about the positions of the potentially affected Parties and an update on the progress to be made by Ukraine. It will finalize the draft decision at its 42nd session further to the analysis of the expected information.
- **Draft decision IS/1h: UK (Hinkley point C)** will be made available only after the Committee’s 42nd session. To this end, the potentially affected Parties that have not yet submitted the requested information are invited to do so without delay in order to allow the Committee to timely proceed with finalising its additional findings and recommendations.

Committee did not have time to consider possible revision of the general part of the draft decision VII/2. However, it prepared a template of that part that you may find in the informal document **ECE/MP.EIA/WG.2/2018/INF.4**.
