


**Economic Commission for Europe**

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**

Forty-fourth session  
 Geneva, 12–15 March 2019

**Report of the Implementation Committee on its  
 forty-fourth session**
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## I. Introduction

1. The forty-fourth 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 was held from 12 to 15 March 2019, in Geneva.

### A. Attendance

2. The following members of the Committee attended the session: Anders Bengtsson (Sweden); Vladimir Buchko (Ukraine); Libor Dvorak (Czechia); Maria do Carmo Figueira (Portugal); Kaupo Heinma (Estonia); Zsuzsanna Pocsai (Hungary); Romas Švedas (Lithuania); Lasse Tallskog (Finland); and Nadezhda Zdanevich (Belarus). Aysel Babaeva (Azerbaijan) was absent. The Committee expressed regret that the Government of Azerbaijan had not yet appointed an alternate member to replace the permanent member.

### B. Organizational matters

3. The Chair of the Committee opened the session. As suggested by the Chair, the Committee agreed to consider the following two issues under “Other business”: a letter from Ukraine, dated 22 January 2019, regarding Nord Stream 2 (see paras. 112–116 below) and the proposals made by Ukraine at the intermediary sessions of the Meetings of the Parties to the Convention and the Protocol (Geneva, 5–7 February 2019) concerning the preparation of draft decisions on compliance (see para. 117 below). The Committee adopted its agenda as set out in document ECE/MP.EIA/IC/2019/1 with those adjustments.

## II. Review of decisions by the Meeting of the Parties to the Convention

4. The Committee noted decisions taken by the Meeting of the Parties to the Convention at its intermediary session, particularly on the review of compliance with and the applicability of the Convention to the lifetime extension of nuclear power plants (ECE/MP.EIA/27–ECE/MP.EIA/SEA/11/Add. 1).

## III. Follow-up to decisions IS/1 a, c, d, f and g

5. The Committee discussed the follow-up to decisions IS/1 a, c, d, f and g regarding compliance by individual Parties with their obligations under the Convention, as adopted by the Meeting of the Parties to the Convention at its intermediary session. The discussions were not open to observers, in accordance with rule 17 (1) of the Committee’s operating rules.<sup>1</sup> The Committee members nominated by Belarus, Lithuania and Ukraine were absent during the Committee’s consideration of matters in relation to which a direct or indirect conflict of interest could arise.

6. The Committee agreed on a schedule for its preparatory work in advance of the eighth session of the Meeting of the Parties to the Convention and the fourth session of the Meeting of the Parties to the Protocol (provisionally scheduled for 8–11 December 2020). Based on the information to be provided by the Parties in question, the Committee agreed to prepare the first drafts of the Meetings of the Parties’ decisions on compliance at its forty-seventh session (provisionally scheduled for 17–20 March 2020). Those drafts would be shared with all Parties for information and possible comments in advance of the meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (provisionally scheduled for 9–11 June 2020). Based on the comments received, the

<sup>1</sup> The Committee’s operating rules were adopted by decision IV/2, annex IV (see ECE/MP.EIA/10) and then 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).

Committee would finalize the draft decisions at its forty-eighth session (provisionally scheduled for 1–4 September 2020).

7. To increase the efficiency of the Committee's work, the Committee's curators for each of the compliance issue were invited to provide their analysis of the information to be received from the Parties in a timely manner, and no later than two weeks prior to the Committee's session at which the issue would be considered.

### **Follow-up to decision IS/1a regarding Armenia (EIA/IC/CI/1)<sup>2</sup>**

8. The Committee recalled that, prior to the intermediary session of the Meeting of the Parties, the adoption of the amended legislation by Armenia had been delayed due to changes in its Government. The Committee asked its Chair to write to Armenia urging it to adopt the proposed amendments and the secondary legislation as soon as possible, in accordance with decision IS/1a, and to inform the Committee of the progress made by 9 August 2019. Moreover, once adopted, Armenia should be invited to provide an English translation of that legislation for the Committee's consideration.

9. The Committee noted that the secretariat would shortly begin implementing the new European Union-funded "EU4Environment" initiative and invited the secretariat, in consultation with Armenia, to identify possible activities to facilitate the adoption of the legislation.

### **Follow-up to decision IS/1c regarding Azerbaijan (EIA/IC/CI/2)**

10. The Committee recalled that the Law on Environmental Impact Assessment, of July 2018, which provided a general legislative framework for environmental impact assessment in Azerbaijan, contained certain discrepancies and deficiencies regarding the Convention. Moreover, the secondary legislation, including the detailed procedure for implementing the Convention, had not yet been adopted by Azerbaijan.

11. The Committee also recalled that, at its forty-first session (Geneva, 13–16 March 2018), it had decided to consider the need for a possible hearing of Azerbaijan in 2019 to clarify the difficulties that had prevented it from adopting the Law for years, despite the extensive technical assistance provided to it. Given that the Law had subsequently been adopted and that the secondary legislation was under preparation, the Committee agreed that a hearing was no longer required.

12. The Committee asked its Chair to write to Azerbaijan urging it to: rectify the deficiencies in the new Law; adopt the secondary legislation to implement the Convention as soon as possible, in accordance with decision IS/1c; and provide an English translation of the adopted Law, and as relevant, of its amendments, and the secondary legislation. Azerbaijan should also provide a comprehensive overview of its environmental impact assessment and strategic environmental assessment schemes. Finally, Azerbaijan should be invited to identify, in consultation with the secretariat, the most efficient use of the technical assistance to be funded by EU4Environment.

### **Follow-up to decision IS/1d regarding Belarus (EIA/IC/S/4)**

13. The first Vice-Chair of the Committee chaired the discussions on the follow-up by Belarus and Lithuania to decision IS/1d on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets. The Committee noted the annual report that Lithuania had provided in December 2018 further to decision VI/2, and the absence of any such annual report from Belarus.

14. The Committee asked its Vice-Chair to write to Belarus and Lithuania to:

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<sup>2</sup> The Committee reference. Information on Committee initiatives is available from [www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html](http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html).

(a) Encourage them to accelerate completion of the bilateral agreement further to paragraph 17 of decision IS/1d and to enhance their work on the post-project analysis further to paragraph 19 of decision IS/1d;

(b) Request them to provide, by 1 February 2020, their annual reports on progress in implementing the recommendations contained in paragraphs 16 to 19 of decision IS/1d.

As necessary, Belarus and Lithuania could report on further progress, by no later than 9 August 2020, for the Committee's consideration at its forty-eighth session. The Committee agreed to reflect any such progress in its report to the Meeting of the Parties that it planned to finalize at that session.

## Ukraine

### Follow-up to decision IS/1f regarding the Bystroe Canal Project (EIA/IC/S/1)

15. The Committee welcomed the information from Ukraine and Romania, dated 20 February and 28 February 2019 respectively.

16. It noted the progress by Ukraine in adopting its secondary legislation and in bringing the project into compliance with the Convention since September 2018. The Committee also noted that Ukraine had transmitted to Romania monitoring results for 2018–2019 and a draft bilateral agreement reflecting its new legislation.

17. The Committee asked its Chair to write to Ukraine encouraging it to continue its constructive approach towards implementing the decisions of the Meeting of the Parties after the adoption of its new legislation and to take all the steps foreseen in decision IS/1f without delay. With a view to facilitating reporting by Ukraine on its progress, the Chair was invited to:

(a) Communicate to Ukraine the Committee's schedule for preparing draft compliance decisions for the next sessions of the Meeting of the Parties and to share with it the reporting deadlines and templates the Committee had developed to monitor Parties' progress in complying with previous compliance decisions;

(b) As the compliance matter in question has been under consideration for over a decade, and with the aim of updating and compiling related information in a more systematic manner, request Ukraine to provide a comprehensive overview, from 2008 onwards, of its implementation of decision IV/2 (10) on repealing the final decision on the project, including Phases I and II;

(c) Request Ukraine to ensure that copies of the decisions to repeal the final decisions referred to above and decisions and other documents related to the new project were annexed to its information on its progress.

18. The Committee also requested the Chair to write to Romania inviting it to provide the Committee with information and opinions on the following:

(a) Progress in bringing the project into compliance with the Convention, including steps taken to implement the various deliverables in the road map developed by Ukraine;

(b) Monitoring of the project, including its results;

(c) Progress in preparing the bilateral agreement with Ukraine, as provided for in paragraph 17 of decision IS/1f;

(d) Other bilateral consultations with Ukraine on the project, including on the readiness of Romania to assist Ukraine in assessing related damage and in developing a plan of compensatory measures.

### Follow-up to decision IS/1g regarding the Rivne nuclear power plant (EIA/IC/CI/4)

19. The Committee noted the information from the Republic of Moldova of 11 February 2019 that it did not intend to participate in the transboundary procedure concerning the lifetime extension of the Rivne nuclear power plant in Ukraine. The Committee also noted the information from Ukraine, dated 14 February 2019, that Ukraine would continue the

transboundary procedure with other potentially affected Parties (Austria, Belarus, Hungary, Poland and Slovakia) once its authorities had received the environmental impact assessment report from the developers.

20. To assist Ukraine in implementing the Convention, the Committee requested its Chair to write to Ukraine inviting it to provide to the Committee and the potentially affected Parties a concrete timetable for implementing the steps foreseen in paragraphs 7 and 8 of decision IS/1g by 1 June 2019.

21. Further to decision IS/1g, Ukraine should report, by the end of each year, to the Committee on the steps it had taken to finalize the transboundary procedure. To allow the Committee to consider the information at its forty-sixth session, the first annual report should be provided by 7 November 2019.

## IV. Submissions

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

## V. Information gathering<sup>3</sup>

23. Discussions under the agenda item were not open to observers, in line with rule 17 (1) of the Committee's operating rules, and were held in the absence of the members nominated by Belarus and Ukraine during the consideration of the cases concerning their countries. In addition, the member nominated by Portugal declared a conflict of interest concerning the matter regarding the Almaraz nuclear waste storage in Spain. The member nominated by Hungary declared a conflict of interest regarding the construction of nuclear reactors 3 and 4 at the Khmelnytsky nuclear power plant and the construction of Svydovets tourism resort in Ukraine. Those members were absent during the consideration of those matters by the Committee.

### A. Convention matters

#### 1. Belarus: National legislation to implement the Convention (EIA/IC/INFO/21)

24. The Committee continued to consider the information it had gathered regarding the national legislation of Belarus to implement the Convention. Further to the curator's assessment of the information from Belarus dated 4 March 2019, the Committee agreed that it needed more time to examine that information.

25. It also invited its Chair to write to Belarus requesting it to provide the following additional clarifications regarding its environmental impact assessment legislation:

- (a) How the following provisions of the Convention were transposed:
  - (i) Articles 2 (6), 3 (8) and 6 (1) regarding public participation;
  - (ii) Articles 3 (1) and 3 (3) regarding actions to be taken as an affected Party.
- (b) A definition of the term *sanitarno-zaschitnaya zona* (sanitary-protection zone), as employed in national legislation, and an explanation of how it applied to assessment of environmental impacts of proposed activities;
- (c) What actions the law prescribed when an environmental impact of a proposed activity had been identified through a post-project analysis.

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<sup>3</sup> More information on information-gathering cases is available from <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>.

## 2. Bosnia and Herzegovina

### (a) Ugljevik thermal power plant (EIA/IC/INFO/16)

26. The Committee continued its consideration of the information it had gathered concerning the planned construction of a third block for the thermal power plant in Ugljevik, Bosnia and Herzegovina, close to the border with Serbia.

27. The Committee took note of the information provided by Bosnia and Herzegovina, dated 29 January 2019, by Serbia, dated 22 February 2019, and by the Centre for Environment on 28 January 2019.

28. The Committee noted that, according to the settlement agreement between the Energy Community Secretariat and Bosnia and Herzegovina, of 19 November 2018, the implementation of the project would not be continued based on the environmental permit of 24 July 2017 following the non-compliant environmental impact assessment approval dated 10 July 2013. Should the District Court of Banja Luka confirm the validity of the environmental permit issued on 24 July 2017, a new transboundary impact assessment procedure would be initiated.

29. The Committee took note that Serbia had expressed a wish to participate in a new transboundary environmental impact assessment, should such an assessment be initiated.

30. Further to the curator's analysis of the information received, the Committee invited its Chair to write to Bosnia and Herzegovina requesting it to provide:

(a) Responses to the Committee's unanswered questions addressed to it in the letter dated 20 December 2018;

(b) The outcomes of the court proceedings on the matter.

The Chair should also invite the Party to continue the environmental impact assessment procedure for the activity, in full compliance with the Convention, and report to the Committee by 9 August 2019 on the progress achieved, providing all relevant documentation confirming that progress.

31. The Committee agreed to resume its consideration of the matter at its next session, based on the analysis by the curator to be provided by 26 August 2019.

### (b) Stanari thermal power plant (EIA/IC/INFO/17)

32. The Committee continued its deliberations regarding the planned construction of a thermal power plant in Stanari, Bosnia and Herzegovina, close to the border with Croatia. The Committee noted the information provided by Bosnia and Herzegovina, dated 29 January 2019, and by Croatia, dated 12 February 2019.

33. The Committee requested the Chair to write to Bosnia and Herzegovina inviting it to provide the following additional clarifications by 1 June 2019:

(a) Whether the screening procedure for a transboundary environmental impact assessment had been undertaken when issuing the 2010 environmental permit. If not, justification for that decision should be provided;

(b) The date on which the thermal power plant in Stanari, Bosnia and Herzegovina, began operations.

34. The Committee also requested the Chair to invite Bosnia and Herzegovina and Croatia to inform it, by 1 June 2019, of discussions and all other steps taken in accordance with article 3 (7) of the Convention.

35. The Committee invited the curator to prepare the analysis of the expected information by 20 June 2019 and agreed to resume its consideration of the matter at its next session.

### (c) Banovici thermal power plant (ECE/IC/INFO/23)

36. The Committee continued its deliberations on the information it had gathered further to the information received from Ekotim (Bosnia and Herzegovina) on 14 April 2017 concerning the planned construction by Bosnia and Herzegovina of a thermal power plant in Banovici, approximately 50 km from the borders with Croatia and Serbia.

37. The Committee noted information from Bosnia and Herzegovina, dated 29 January 2019, that, in its opinion, a significant adverse transboundary impact regarding the activity was not likely and that, consequently, the Party had not notified the neighbouring countries in accordance with article 3 (1) of the Convention.

38. The Committee also noted information from Croatia, dated 8 February 2019, that Croatia had been unaware of the activity and had not been notified. Croatia also informed the Committee that it would decide on its next steps based on information it had requested from Bosnia and Herzegovina on 24 January 2019.

39. In its letter dated 22 February 2019, Serbia reported that:

(a) It had not been notified and, without detailed information on the activity, it was unable to confirm whether it could consider itself potentially affected or not;

(b) It would be ready to use the mechanism provided in article 3 (7) of the Convention.

40. The Committee asked its Chair to write to Croatia inviting it to provide, by 9 August, replies to the unanswered questions contained in the Committee's letter dated 20 December 2018 based on the information yet to be received by Croatia from Bosnia and Herzegovina.

41. The Committee also asked the Chair to write to Serbia inviting it to:

(a) Contact Bosnia and Herzegovina without delay requesting information on the construction of Banovici thermal power plant;

(b) Establish as soon as possible – based on the information to be received from Bosnia and Herzegovina and, if needed, consultations between the two Parties, – whether it considered that it would be affected by a significant adverse transboundary impact of the proposed activity;

(c) Inform the Committee by 9 August 2019 of the steps taken.

Should Serbia consider that its environment would be affected, but no notification had taken place, it should clarify whether it planned to make use of the mechanism provided for in article 3 (7) of the Convention.

42. The Committee asked the Chair to inform Bosnia and Herzegovina that the Committee would continue its consideration of the matter at its next session, based on the information to be provided by Croatia and Serbia. It invited the curator to prepare, by 26 August 2019, an analysis of the expected information.

43. In addition, the Committee requested the secretariat to inform Ekotim of the Committee's deliberations on the matter.

(d) *Construction of unit 7 at Tuzla thermal power plant (ECE/IC/INFO/24)*

44. The Committee continued its consideration of the information it had gathered further to the information from Ekotim of 14 April 2017 concerning the planned construction by Bosnia and Herzegovina of unit 7 of the thermal power plant in Tuzla, close to the borders with Croatia and Serbia.

45. The Committee noted the information from Bosnia and Herzegovina dated 29 January 2019 that, in its opinion, a significant adverse transboundary impact regarding the activity was not likely. On that ground, Bosnia and Herzegovina had not notified the neighbouring countries in accordance with article 3 (1) of the Convention.

46. The Committee also noted the information from Croatia and Serbia, dated 8 February 2019 and 22 February 2019, respectively, that they had been unaware of the activity and had not been notified. The Committee also noted that, on 8 February 2019, Croatia had requested information from the relevant authorities of Bosnia and Herzegovina regarding the planned construction of unit 7 of the Tuzla thermal power plant and that it would inform the Committee regarding further steps it planned to take upon receipt of that information.

47. The Committee asked its Chair to write to Croatia inviting it to provide, by 9 August 2019, replies to the unanswered questions contained in the Committee's earlier letter dated 20 December 2018.

48. The Committee also asked the Chair to write to Serbia inviting it to:



- (a) Contact Bosnia and Herzegovina without delay requesting information on the construction of unit 7 of the Tuzla thermal power plant;
- (b) Establish as soon as possible – based on the information to be received from Bosnia and Herzegovina and, if needed, consultations between the two Parties – whether it considered that it would be affected by a significant adverse transboundary impact of the proposed activity;
- (c) Inform the Committee by 9 August 2019 of the steps taken.

Should Serbia consider that its environment would be affected, but no notification had taken place, it should clarify whether it planned to make use of the mechanism provided for in article 3 (7) of the Convention.

49. The Committee asked the Chair to inform Bosnia and Herzegovina that it would continue its consideration of the matter at its next session, based on the information to be provided by Croatia and Serbia. It invited the curator to prepare, by 26 August 2019, an analysis of the expected information.

50. In addition, the Committee asked the secretariat to inform Ekotim that the Committee had considered the matter and had agreed to continue its deliberations at its next session.

### 3. Serbia:

#### (a) *Extension of Drmno lignite pit mine (ECE/IC/INFO/27)*

51. The Committee continued its deliberations further to the information received from the NGO ClientEarth, dated 18 June 2018, concerning the extension of the capacity of the open-pit mine at Drmno, Serbia.

52. The Committee noted the information from Romania, dated 15 February 2019, and from Serbia, dated 22 February 2019, that Romania had communicated its wish to be notified regarding the planned construction of the third block of the Kostolac lignite power plant and the expansion of the lignite mine in 2015. In June 2016, Serbia had notified Romania regarding the power plant, and had carried out a transboundary environmental impact assessment procedure under the Convention, with the participation of Romania. As part of its notification, Serbia had also informed Romania that, as a part of the 2013 screening procedure, it had been concluded that no environmental impact assessment was necessary for the extension of the open-pit mine. The two Parties had discussed, and exchanged information on, that matter during the transboundary procedure. Serbia had answered fully all the questions from the Romanian authorities, and the public, including the NGO Bankwatch Romania, regarding the Drmno mine. No likely significant adverse transboundary environmental impacts of the proposed activity on Romania had been identified.

53. In their letters to the Committee, Romania and Serbia did not comment on the information from ClientEarth regarding the territory of the open-pit mine, which differed from the information reported during the environmental impact assessment procedure, indicating that the mine had been expanded 5 km beyond the boundaries established by the permit.

54. Serbia indicated that, should Romania consider that it was likely to be affected, Serbia would be ready to exchange sufficient information and hold discussions in accordance with article 3 (7) on whether a significant adverse transboundary impact on Romania was likely.

55. Romania stated that, it did not intend to make use of article 3(7) based on the information received during the transboundary procedure of the Kostolac lignite power plant. In its view, the environmental impacts of the extension of the Drmno mine had been addressed under that procedure.

56. The Committee agreed to ask its Chair to write to Romania inviting it to inform the Committee by 1 June 2019 of:

- (a) Its views on the information from the NGO ClientEarth regarding the territory of the open-pit mine, and whether it was satisfied with the assessment of the possible adverse transboundary environmental impacts regarding the Drmno open-pit mine that had been carried out within the environmental impact assessment procedure of the third block of the

Kostolac lignite power plant under the Convention, and whether it could confirm that the procedure had been completed;

(b) Whether it intended to take other procedural steps in accordance with the Convention and, if so, what those steps would be.

57. The Committee asked its Chair to write to ClientEarth:

(a) Informing it of the outcomes of the Committee's deliberations on the matter and inviting it to provide the Committee with any further relevant information by 1 June 2019;

(b) Seeking clarification regarding the reasons why ClientEarth had raised its concerns only in 2018, one year after the transboundary procedure had been completed;

(c) Asking whether it had also attempted to address its concerns to the Governments of both Parties before complaining to the Committee and, if so, what the outcomes had been.

58. The Committee agreed to continue its consideration of the matter at its next session further to the analysis of the expected information to be prepared by the curator by 20 June 2019.

#### **4. Spain: Construction of a temporary spent fuel storage facility at the Almaraz nuclear power plant (ECE/IC/INFO/22)**

59. The Committee continued its consideration of the information dated 27 January 2017 provided by the Portuguese political party Pessoas-Animais-Natureza concerning the planned construction of a temporary spent-fuel storage facility at the Almaraz nuclear power plant in Spain.

60. The Committee noted official information from Portugal, received on 9 March 2019, and an email from Spain, received on 13 March 2019.

61. It instructed the secretariat to contact Spain requesting it to provide its answer to the Committee's letter dated 20 December 2019 in the form of an official letter to the Committee.

62. The Committee invited the curator to prepare, by no later than 26 August 2019, an analysis of the information expected from both Parties and agreed to resume its consideration of the matter at its next session.

#### **5. Switzerland: changes at Zurich Airport (ECE/IC/INFO/25)**

63. The Committee continued its consideration of the information received from a German civil initiative on 20 June 2017 concerning planned changes at Zurich Airport, close to the border with Germany, including the construction of taxiways and changes in the operating regulations.

64. The Committee noted the information from Switzerland dated 15 February 2019 that, on 18 March 2016, the Federal Department of the Environment, Transport, Energy and Communication had granted a permit for the construction of two high-speed taxiway turn offs on two of Zurich Airport's runways (26 and 34). The related domestic environmental impact assessment procedure had determined no significant environmental impact on the territory of Germany.

65. Switzerland reported that the changes in the operating regulations, were designed to improve safety. Again, the environmental impact assessment had concluded that no significant adverse environmental impact on the territory of Germany was likely. An increased noise impact on a small, rural area of Germany near the border was not attributed to the changes in the operating regulations, but to an overall increase in traffic and, consequently, in flight operations. According to Switzerland, the documents on the proposed changes in the operating rules, including regarding runways 34 and 38, along with the related environmental impact assessment reports, had been sent to the competent German Federal authorities and those of the State of Baden-Württemberg. The documents had been displayed publicly in the areas likely to be affected (Constance, Schwarzwald-Baar and Waldshut). The relevant district authorities had been formally consulted on the matter. The German public and authorities had been granted equal rights with their Swiss counterparts to participate.

66. The Committee also noted that, under the Sectoral Aviation Infrastructure Plan, Switzerland intended to carry out other projects at Zurich Airport. Not being a Party to the Protocol, Switzerland had no obligation to carry out the transboundary procedure thereunder. The runway extension projects under the Plan had been envisioned but did not yet exist.

67. Switzerland assured the Committee that it was willing to notify Germany regarding all Zurich Airport projects subject to an environmental impact assessment procedure and likely to have a significant impact on Germany. It underlined that, in the past, no notification had been issued for Zurich Airport projects, given that Germany had made no request in that regard and that German involvement had functioned smoothly.

68. The Committee also noted the information from Germany, dated 15 February 2019, that:

(a) It considered itself a potentially affected Party, as – on the basis of the assessment carried out by the competent authorities of the State of Baden-Württemberg, which acted as the competent authority in terms of the provisions of the Convention regarding an affected Party – the proposed changes at Zurich Airport were likely to have a significant adverse transboundary impact on certain nearby areas of south-west Germany;

(b) The German competent authorities had requested the Swiss Federal Office of Civil Aviation to carry out a transboundary environmental impact assessment procedure, in line with the provisions of the Convention. However, Switzerland had not notified Germany;

(c) The legal and procedural situation regarding application of the Convention to the activity was complicated; the extension of Zurich Airport involved several decisions, making it difficult to identify at which stage the Convention should be applied;

(d) In the view of Germany, it would be difficult to agree with Switzerland on a transboundary environmental impact assessment procedure within a reasonable time frame;

(e) The administration of the State of Baden-Württemberg had decided not to use article 3 (7) regarding the activity yet;

(f) Germany considered that the discussion on the impact of Zurich Airport should remain on the bilateral agenda of both Parties and that they should strengthen their efforts to find appropriate solutions to prevent and minimize adverse transboundary impacts of Zurich Airport as much as possible.

69. The Committee agreed to ask its Chair to write to Germany requesting it to clarify, by 15 July 2019, whether it had asked Switzerland to notify it regarding the construction of the taxiway run-offs on runways 26 and 34 and the changes in the operating rules and, if so, with what results.

70. The Committee also asked its Chair to write to Switzerland requesting it to provide the Committee, by 15 July 2019, with the following information and clarifications:

(a) The status of the environmental impact assessment and authorization procedures regarding the taxiway run-off construction project and the changes to the operating rules, with explicit references to, and the dates of, the decisions taken;

(b) The timetable for both the construction of the taxiway run-offs and the implementation of the changes to the operational rules.

Switzerland should also be invited:

(c) To provide an English translation of the annexes to the letter sent by it to the Committee on 22 February 2019;

(d) To clarify – further to the information from the German civil initiative – whether it planned to install a nuclear waste deposit close to the flight approach routes to Zurich Airport. If so, it should provide information on the matter.

71. The Committee agreed to continue its consideration of the matter at its next session, based on the analysis of the expected information to be prepared by the curator by 15 August 2019. It requested the secretariat to inform the German civil initiative accordingly and to invite it to provide any further information by 15 July 2019, if available.

## 6. Ukraine

### (a) *Construction of nuclear units 3 and 4 at the Khmelnytsky nuclear power plant in Ukraine (EIA/IC/INFO/10)*

72. The Committee continued its consideration of the information it had gathered on the planned construction of nuclear units 3 and 4 at the Khmelnytsky nuclear power plant in Ukraine in the light of new information made available by Poland in the first quarter of 2017.

73. It noted the information from Austria, dated 18 January 2019, from Poland, dated 18 February 2019, from Ukraine, dated 28 December 2018 and 15 February 2019, from Romania, dated 15 February 2019, from Slovakia, dated 18 February 2019, from Hungary, dated 22 February 2019, and from the Republic of Moldova, dated 27 February 2019.

74. The Committee observed that Ukraine had carried out the transboundary environmental impact assessment procedure, and that, as of February 2019, Austria, Belarus and Poland had received updated information from Ukraine regarding the activity. In contrast, Slovakia and the Republic of Moldova had received information in 2017, and the status of the current consultation process was unclear. Hungary and Romania, in turn, reported that they had not received any information since 2015 and 2013, respectively.

75. The Committee asked the Chair to write to Ukraine requesting, by 9 August 2019, the following:

(a) Updated information since its last communication to the Committee on 15 February 2019, namely, on:

- (i) The status of the consultations with Austria, Belarus and Poland, including those that had already taken place;
- (ii) The timeline for each further step of the transboundary procedure, including the taking of the final decision in accordance with article 6 of the Convention.

(b) Clarification of the status of the transboundary consultation process with Hungary, the Republic of Moldova, Romania and Slovakia.

76. The Committee also invited the Chair to write to Austria, Belarus and Poland requesting them to update the Committee, by 9 August 2019, on progress in the ongoing transboundary procedure as set out in the Convention.

77. The Committee then requested the Chair to write to Hungary, the Republic of Moldova and Slovakia inviting them to clarify, by 9 August 2019:

(a) Whether there had been any developments regarding the environmental impact assessment procedure concerning the construction of nuclear units 3 and 4 of the Khmelnytsky nuclear power plant since February 2019;

(b) In the absence of any developments, they should inform the Committee whether they still considered themselves to be potentially affected Parties regarding the activity. If they considered themselves to be potentially affected and wished to participate in the transboundary environmental impact assessment procedure, they should be invited to contact Ukraine directly, without delay, expressing their wish to participate.

78. The Committee agreed to resume its consideration of the matter at its next sessions based on the curator's analysis to be prepared by 26 August 2019.

### (b) *Construction of Svydovets tourism complex (EIA/IC/INFO/29)*

79. Further to the curator's analysis, the Committee considered information of 28 November 2018 from Swiss NGO Bruno Manser Fonds concerning the construction of a large tourism complex in the Svydovets mountain range in western Ukraine, close to the border with Hungary and Romania. The Committee agreed to gather further information on the matter and invited the Chair to write to Ukraine requesting it to provide, by 9 August 2019, the following information and clarifications:

(a) The exact location of the planned activity, illustrated by a map showing the distance from the borders with the neighbouring countries, and the characteristics of the activity;

(b) A description of the decision-making procedure regarding the proposed activity in accordance with the national legislation on the environmental impact assessment (i.e. whether development consent was required) and a description of the current implementation status of the project (i.e. whether a permit procedure was ongoing or had been completed, or whether the construction was being planned or under way);

(c) Whether Ukraine had adopted a plan or programme setting the framework for future development consent for the Svydovets project. If so, Ukraine should provide further details of the plan/programme, including its name and date of adoption, and explain whether a strategic environmental assessment had been carried out at the national level, in line with the Protocol, and whether potential significant transboundary effects of the plan or programme were likely;

(d) Whether Ukraine considered that the project fell under the Convention, taking into account the characteristics of the location of the activity, including: the size and the scope of the project; and its proximity to the possibly affected Parties and environmentally sensitive areas, such as natural conservation areas, national parks, vulnerable ecosystems of national or international importance, including in accordance with the Convention on Biological Diversity. If it considered that the project did not fall under the Convention, Ukraine should justify its conclusion;

(e) Should Ukraine conclude that a transboundary procedure was not needed according to article 3 (1) of the Convention, Ukraine should justify its conclusion and specify whether it had been reached in cooperation with the potentially affected Parties;

(f) National legislative requirements for the environmental impact assessment procedure in relation to the planned activity, particularly how the requirements of the Convention, notably articles 2 (4) and 3 (1), had been fulfilled. Ukraine should also provide an outline of its legislative framework for implementing the Convention;

(g) Whether Ukraine had officially responded, or intended to respond, to the letter of Hungary dated 3 May 2018. If so, it should provide a copy of that response and its translation into English. If a response had not been sent, justification for not responding should be provided.

80. The Committee also asked the Chair to request Hungary to clarify, by 9 August 2019, whether it had received an official response from Ukraine to its letter dated 3 May 2018. If Ukraine had responded, Hungary should be invited to provide a copy of that response and its translation into English. If Ukraine had not responded, Hungary should be requested to clarify whether it planned to make use of the mechanism provided for in article 3 (7) of the Convention.

81. The Chair was also invited to write to Romania requesting it to provide, by 9 August 2019, clarifications on the following:

(a) Whether Romania considered that it would be affected by a significant adverse transboundary impact of the planned activity in Ukraine;

(b) If so, whether Romania had been notified by Ukraine in accordance with article 3 (1) of the Convention. If it had not been notified, whether it planned to make use of the mechanism provided for in article 3 (7) of the Convention.

82. The Committee agreed to continue its consideration of the matter at its forty-fifth session based on the analysis of the expected information by the curator to be prepared by 26 August 2019.

83. The Committee asked the secretariat to inform the Swiss NGO Bruno Manser Fonds of the outcomes of the deliberations accordingly.

## **B. Information gathering matters related to lifetime extension of nuclear power plants**

84. Further to its deliberations at its forty-third session, the Committee continued its consideration of the cases related to the lifetime extension of nuclear power plants. It had previously decided to focus on any information gaps identified by the curators. Based on the analysis by the curators, it agreed to request additional information regarding the Kozloduy

nuclear power plant in Bulgaria and 11 power units located at the Rivne, South-Ukrainian, Zaporizhzhya and Khmelnytsky nuclear power plants in Ukraine. The Committee decided to continue consideration of the matters at its next session, inviting the curators to prepare their analyses of the information from the Parties concerned by 15 June 2019.

#### 1. Bulgaria (ECE/IC/INFO/28):

85. The Committee asked the Chair to write to Bulgaria inviting it to provide the following clarifications and information by 1 June 2019:

(a) A brief description of the Kozloduy nuclear power plant, including information on its location, distance from neighbouring countries, gross electrical capacity of all units and status of their operation (date of first grid connection, design lifetime, dates of the final shut-down and other relevant information);

(b) The situation regarding units 5 and 6, including information on:

(i) The design lifetime, initial date of the final shut-down and planned lifetime extension;

(ii) The validity, expiry dates and need for extension of current licences, and information on original and previous licences and/or their extensions and the reasons for their change or extension;

(iii) Whether all supporting operations linked to the operation of the nuclear power plant – such as those related to waste management, including radioactive waste, or the abstraction and release of cooling water – were covered by one overarching licence or by individual licences. In the latter case, Bulgaria should indicate whether the individual licences were still valid and whether they would be affected by the lifetime extension of units 5 and 6;

(iv) Changes, upgrades or other physical work that had been carried out or planned for during the operation of the units:

a. Whether those changes could be considered as a major change pursuant to article 1 (v) of the Convention;

b. Whether any such changes were covered by the original licence or by subsequent licences. If they were covered by subsequent licences, Bulgaria should clarify whether any relevant environmental impact assessment procedures had been undertaken.

(c) Based on its national legislation, Bulgaria should be invited to clarify:

(i) The national procedure for the lifetime extension of the nuclear power plants;

(ii) Which of the national decisions taken to extend the lifetime of units 5 and 6 at the Kozloduy nuclear power plant were considered to be final decisions for the purposes of the Convention and by which competent authority they had been taken.

(d) Clarifications regarding the environmental impact assessment procedure, including on:

(i) Whether and when units 5 and 6 had been subject to an environmental impact assessment procedure. Whether a transboundary environmental impact assessment procedure had been carried out;

(ii) Whether and when Bulgaria had informed potentially affected Parties (including Austria, Serbia and Romania) of the lifetime extension of units 5 and 6.

86. The Committee also asked the Chair to invite Bulgaria and Romania to provide, by 1 June 2019, a summary and an English translation of the communication between them regarding the activity that, according to information provided by the Romanian NGO Actiunea pentru Renasterea Craiove, had been initiated by Bulgaria in 2014.

87. The Committee asked the secretariat to inform the Romanian NGO Actiunea pentru Renasterea Craiove that the Committee had initiated information gathering on the activity

and to invite it to provide the Committee with any further relevant information, if available, by 1 June 2019.

## 2. Ukraine (ECE/IC/INFO/20)

88. With a view to allowing Ukraine to present its information in a systematic and comprehensive manner, the Committee asked the Chair to invite Ukraine to submit, by 19 August 2019, the following clarifications and information:

(a) A brief description of the Khmelnytsky nuclear power plant, including information on: its location and distance from neighbouring countries; the gross electrical capacity of all units and status of their operation; the date of the first grid connection; the date of issue of the licence and its validity; and the initial design lifetime of each unit;

(b) Whether, since the start of the operation of the two units, any upgrades or technological changes had occurred. If so, Ukraine should clarify:

(i) Whether it considered that those upgrades and changes might constitute a major change pursuant to article 1 (v) of the Convention;

(ii) Whether any environmental impact assessment had been carried out. If so, Ukraine should clarify when the assessment had been carried out and what the outcomes had been.

(c) The situation regarding the extension of the lifetime of units 1 and 2, including:

(i) Whether and when the relevant decisions had been taken or were expected to be taken;

(ii) Whether any changes in technical characteristics had occurred and whether those changes might constitute a major change pursuant to article 1 (v) of the Convention.

(d) Whether Ukraine considered that the lifetime extension of units 1 and 2 fell under the scope of the Convention. If so, Ukraine should clarify whether it had notified or intended to notify the potentially affected Parties of the proposed activity further to article 3 of the Convention:

(i) If so, it should provide a step-by-step timetable for the entire procedure (including preparation of the environmental impact assessment documentation, consultation with the authorities and the public of the affected Parties and issuing of the final decision on the basis of the outcome of the procedure) and provide copies of the notifications and the responses to the notifications by the affected Parties, if available;

(ii) If not, it should provide a justification for its conclusion.

89. The Chair should also invite Ukraine to update the Committee on the transboundary consultations with Austria, Belarus, Germany, Hungary, Poland, the Republic of Moldova, Romania and Slovakia concerning the lifetime extension of the Zaporizhzhya and South-Ukrainian nuclear power plants, including on:

(a) The outcomes of the consultation with the affected Parties, and;

(b) Whether and how those outcomes had been considered in the decision-making process;

(c) The date of any decisions already taken to extend the lifetime of the Zaporizhzhya and South-Ukrainian nuclear power plants and clarification of whether any modifications of the initial licences had been required.

90. The Chair should also invite Austria, Belarus, Germany, Hungary, Poland, the Republic of Moldova, Romania and Slovakia to report to the Committee on their participation in the transboundary environmental impact assessment procedure on the lifetime extension of the Zaporizhzhya and South-Ukrainian nuclear power plants.

## C. Protocol matters

### 1. Serbia (SEA/IC/INFO/1)

91. The Committee continued its consideration of compliance by Serbia with the Protocol regarding the Energy Sector Development Strategy of the Republic of Serbia for the Period up to 2025 with the Projections up to 2030, the Strategy's implementation programme and the second Spatial Plan. The Committee noted the information from Bosnia and Herzegovina, dated 7 and 15 February 2019, from Croatia, dated 8 February 2019, from Bulgaria, Hungary and Romania, dated 15 February 2019, and from Montenegro and Serbia, dated 22 February 2019.

92. Further to the analysis by the curator of that information, the Committee observed that the status of notification of the potentially affected Parties regarding the Energy Sector Development Strategy remained unclear, pending the receipt of the additional clarifications that Serbia intended to provide by the end of March 2019.

93. The Committee noted that Serbia had notified Bulgaria, Croatia, Hungary, Montenegro and Romania concerning the Strategy's implementation programme. All notified countries, except Bulgaria and Montenegro, had confirmed their participation in the procedure. Serbia had provided comments to the issues raised by Romania. Hungary was still awaiting the environmental report in Hungarian.

94. The Committee asked its Chair to write to Serbia requesting it to provide, by 1 June 2019, additional clarifications and information, including on:

(a) When the first formal preparatory act for the programme referred to in article 24 (4) of the Protocol had been completed and on the origin and the nature of that act;

(b) Transboundary consultations on the Energy Sector Development Strategy implementation programme carried out between Serbia and the Parties concerned, including, in particular, Hungary and Montenegro. Whether the consultations had already been completed with some or all of the Parties and whether they had been carried out in accordance with article 10 of the Protocol;

(c) The date of adoption of the programme. Whether the programme had been adopted in accordance with article 11 (1) of the Protocol. Whether the Parties consulted had been informed about the decision pursuant to article 11 (2) of the Protocol.

95. In his letter to Serbia, the Chair should also:

(a) Clarify that the aim of question (c) contained in his previous letter to Serbia dated 20 December 2018 was to determine whether, subsequent to the entry of the Protocol into force in Serbia, on 6 October 2010, the Protocol should have been applied to the second Spatial Plan of Serbia, in line with article 24 (4) of the Protocol;

(b) Request Serbia to respond to all the Committee's questions addressed to Serbia in his letter dated 20 December 2019.

96. In addition, the Committee invited its Chair to write to Montenegro requesting it to specify:

(a) Whether it had communicated to Serbia its willingness to participate in the strategic environmental assessment of the Energy Sector Development Strategy implementation programme? If so, Montenegro should provide the Committee with an English translation of its responses to Serbia;

(b) Whether it has been informed about the adoption of the implementation programme further to article 11 of the Protocol, should the transboundary procedure have already been completed.

97. The Committee also agreed to ask its Chair to write to Serbia and Hungary drawing their attention to article 10 (4) of the Protocol, which stipulated that the Parties concerned must agree on detailed arrangements to ensure that the public concerned and the authorities referred to in article 9 (1) of the Protocol in the affected Party were informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame. Such arrangements should, among other things, include the translation of documents.



98. The Committee also requested the secretariat to resend the previous letter from the Committee's Chair to North Macedonia, inviting it to respond to the Committee without delay.

99. The Committee agreed to resume its consideration of the matter at its next session, further to the curator's analysis of the expected information to be prepared by 20 June 2019.

## 2. Ukraine (SEA/IC/INFO/3)

100. The Committee continued its deliberations concerning the Programme for Hydro Energy Development for the Period until 2026 of Ukraine. Further to the analysis of the information from Ukraine dated 26 February 2019, the Committee concluded that the information was not sufficient to assess whether the Programme fell within the scope of the Protocol and decided to continue information gathering on the issue. The Committee invited the Chair to write to Ukraine asking it to provide, by 1 August 2019, more precise information and exact clarifications on the following:

- (a) When the first formal preparatory act for the Programme referred to in article 24 (4) of the Protocol had been made and the origin and the nature of that act;
- (b) Whether the first formal preparatory act was dated after 1 March 2016 (when the Protocol had entered into force in Ukraine), in which case, Ukraine should provide:
  - (i) Further information on the content of the Programme and, particularly on whether it set the framework for future development consent for projects listed in annex I to the Protocol (for example, regarding the location, size and operational conditions of projects, requirement for natural resources);
  - (ii) Clarification of the nature of possible environmental and health effects, if any, including possible transboundary effects, if any;
  - (iii) An English translation of the relevant parts of the Programme, addressing the questions raised above.
- (c) A summary, in English, of concrete provisions enshrined in national legislation, including secondary legislation, if any, to implement the Protocol;
- (d) Clarification of how Ukraine had ensured the fulfilment of the obligations arising from the Protocol prior to the entry into force of its law on strategic environmental assessment.

101. The Committee agreed to resume its consideration of the matter at its next session, based on the analysis of the information by the curator expected by 20 August 2019. The Committee asked the secretariat to inform Eco-TIRAS International Environmental Association of River Keepers (Republic of Moldova) accordingly.

## VI. Review of implementation

### A. Specific compliance issue under the Protocol

102. The Committee continued to consider the information it had gathered concerning the specific issue of compliance by the European Union with the Protocol identified in the first review of implementation of the Protocol (ECE/MP.EIA/SEA/2014/3). Further to the analysis by the curator of the existing reporting format, the Committee noted that the current reporting format did not distinguish between the regional economic integration organization referred to in article 21 of the Protocol and individual Parties. It agreed to further consider the reporting of the European Union under the Protocol, including with a view to possibly developing a more adapted format for it as the regional economic integration organization.

103. The Committee then considered the comparison of European Union Directive 2001/42 on the Assessment of the Effects of Certain Plans and Programmes on the Environment vis-à-vis the requirements of the Protocol, prepared by the curator. It noticed several possible discrepancies between the Directive and the Protocol. It also noted that, in its report on the implementation of the Protocol during the periods 2012–2015 and 2016–2018, the European Union had clarified that:

(a) The Protocol was part of European Union legislation and all member States were bound to abide by it;

(b) The European Commission services prepared reports, studies and guidance documents designed to facilitate the application of, and ensure compliance with, the Protocol and the Directive;

(c) The European Commission services were currently evaluating the Directive.

104. The Committee invited its Chair to write to the European Commission informing it of the discrepancies identified and inviting it to provide, by 1 July 2019, comments in their regard and clarification as to whether and how it planned to address them, with a view to fully aligning the Directive and the related guidance documents with the Protocol.

105. The Committee invited the curator to prepare the analysis of the expected information by 20 August 2019 and agreed to resume its consideration of the matter at its forty-fifth session.

## **B. Examination of general and specific compliance issues from the fifth review of implementation of the Convention**

106. The Committee continued its consideration of the general and specific compliance issues identified in the fifth review of implementation of the Convention (ECE/MP.EIA/2017/9). It noted some weaknesses or shortcomings in the Convention's implementation by Parties, including concerning: different definitions of and approaches to key terms; late reporting; a lack of standardized practice regarding the organization of transboundary consultations and public participation; and uncertainty regarding translation requirements. Since those issues had already been identified in previous reviews, the Committee decided to prepare a note for consideration by the Bureau and the Working Group, for example, proposing the inclusion, in the next work plan, of activities to update the relevant parts of the available guidance documents on application of the Convention, starting with the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7).

107. The Committee took note that a majority of Parties had reported not having relevant provisions in their national environmental impact assessment legislation requiring the organization of public hearings as an affected Party. The Committee asked the Chair to write to those Parties requesting them to clarify how they, as affected Parties, ensured public involvement in the environmental impact assessment procedure under articles 3 (8) and 4 (2) of the Convention.

108. The Committee noted that Italy, Luxembourg and Malta, when acting as Parties of origin, did not have specific mechanisms to ensure that environmental impact assessment documentation was of sufficient quality, while Slovakia had not provided a response in that regard. The Committee invited the Chair to write to Italy, Luxembourg, Malta and Slovakia asking them to provide clarifications of how article 4 (1) was implemented within their national legal and administrative frameworks.

109. The Committee also noted that France did not have an exhaustive list of elements to be covered in the decisions authorizing projects subject to an environmental impact assessment and thus could not indicate such elements to be covered by a final decision referred to in article 6 (1) of the Convention. The Committee asked the Chair to write to France requesting it to clarify how article 6 (1) of the Convention was implemented in its national legislation.

## **C. Examination of general and specific compliance issues from the second review of implementation of the Protocol**

110. The Committee continued its consideration of general and specific compliance issues identified in the second review of implementation of the Protocol (ECE/MP.EIA/SEA/2017/9). The Committee noted some possible weaknesses and shortcomings regarding the general issues of implementation of the Protocol, including regarding: public participation in screening and scoping; incorporation of health aspects into

environmental reports; and the carrying out of transboundary consultations in line with article 10 of the Protocol. The Committee highlighted the need for guidance or good practice recommendations on transboundary consultations under the Protocol and invited the secretariat to bring that matter to the attention of the Bureau and the Working Group.

111. Regarding specific issues on the implementation of the Protocol's provisions, the Committee noted that there were some concerns regarding individual Parties. It invited its Chair to write to Italy and Serbia seeking clarification on implementation of article 7 (3) of the Protocol, particularly on how they ensured that reports were of sufficient quality, and to invite both Parties to clarify whether the procedure followed in practice met the requirements of the Protocol.

## **VII. Other business**

### **A. Nord Stream 2**

112. Discussions under the agenda item were held in the absence of the members nominated by Finland, Sweden and Ukraine, to avoid any direct or indirect conflict of interests. The Committee Chair and the secretariat introduced a letter from Ukraine of 22 January 2019 to the secretariat and the Committee, requesting:

(a) The establishment of inquiry commissions (in accordance with article 3 (7) and appendix IV of the Convention) to consider whether the planned construction of the Nord Stream 2 project in Denmark, Germany and Finland was likely to have a significant adverse transboundary impact on Ukraine;

(b) Verification of compliance by Sweden with its obligations under the Convention for not having officially responded to a query of Ukraine of 8 August 2018.

113. In its letter, Ukraine explained that, on 8 August 2018, considering itself affected by a significant adverse impact of the planned construction of the Nord Stream 2 natural gas pipeline in the Baltic Sea, and in the absence of a notification, Ukraine had written to the Governments of Denmark, Finland, Germany and Sweden requesting transboundary consultations in accordance with article 3 (7) of the Convention. However, contesting the existence of significant impacts on Ukraine, Denmark, Finland and Germany had not agreed to involve Ukraine in the procedures provided for in the Convention, and Sweden had failed to provide Ukraine with any official response.

114. Following deliberations, the Implementation Committee requested its Chair to send a letter to Denmark, Finland, Germany, Sweden and Ukraine inviting those Parties to exchange sufficient information and to hold discussions in accordance with article 3 (7) on whether the Nord Stream 2 project was likely to have a significant adverse transboundary impact on the territory of Ukraine. Ukraine should provide more details on and evidence of the significant adverse environmental impacts by which it considered itself to be affected. Denmark, Finland, Germany and Sweden should provide Ukraine with relevant information on the proposed activity and its impacts. In addition, Sweden should be invited to explain why it had not provided an official response to the query of Ukraine. The Parties should be invited to hold their discussions as soon as possible and to inform the Committee of their outcomes. It would be left up to the Parties concerned to decide how they wished to organize the discussions.

115. The Committee also made the following conclusions/observations and invited the Chair to outline them in the letters to the concerned Parties:

(a) Appendix IV to the Convention regarding the inquiry procedure was not applicable unless the pre-conditions in article 3 (7) had been met. Namely, the concerned Parties must, at the request of the affected Party, exchange sufficient information for the purposes of holding discussions on whether there was likely to be a significant adverse transboundary impact. If those Parties could not agree whether there was likely to be a significant adverse transboundary impact, any such Party might submit that question to an inquiry commission in accordance with the provisions of appendix IV to advise on the likelihood of such significant adverse transboundary impact, unless they agreed on another method of setting that question. The Committee did not find evidence in the letter of Ukraine

and its annexes that sufficient information had been exchanged or that discussions had been held;

(b) Based on the information available to it, the Committee considered that the request from Ukraine had come late. It seemed that the Parties of origin of the activity in question had notified all the countries around the Baltic Sea in 2013, and, except for Denmark, they had also completed the transboundary impact assessment procedures in the first half of 2018, i.e. before receiving the request of Ukraine of August 2018. In its response to Ukraine, Finland also pointed out that work on the activity had already started in its exclusive economic zone in April 2018. In that regard, the Committee emphasized the importance of timeliness for the effective implementation of the Convention to ensure that environmental factors were given explicit consideration at an early stage in the decision-making process, as referred to in the preamble of the Convention. It was the responsibility of both the Parties of origin and the affected Parties to ensure that all the procedural steps set out in the Convention were implemented within a reasonable time frame;

(c) In its letter, Ukraine had not provide many details about the significant adverse transboundary impact that the planned activity could have on its environment. Based on the information available to it, the Committee expressed doubts about the likelihood of such an impact. The transboundary procedures carried out by Finland, Denmark, Germany, the Russian Federation and Sweden had concluded that the project had not had a significant environmental impact on any of the nine countries directly around the Baltic Sea (Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, the Russian Federation and Sweden). Moreover, seven years of environmental monitoring of the existing Nord Stream 1 pipeline had demonstrated that no significant adverse transboundary environmental impact had occurred. The monitoring results had confirmed the outcomes of the transboundary assessments from 2007–2008; that any environmental impact from the construction and operation of the pipeline would be temporary, local and minor.

116. Finally, the Committee noted that it would still need to clarify the procedural aspects to be followed in case multiple Parties were involved in an inquiry procedure, as the Convention foresaw the establishment of a commission only between two Parties. To date, the inquiry procedure had also been applied only once, involving two Parties, Romania and Ukraine. However, the Committee considered that deliberations on detailed procedural aspects of multi-Party inquiry procedures were premature at the current stage. It invited the secretariat, as needed, to consult it without delay, prior to taking any action.

## **B. Work methods and operating rules**

117. The Committee noted the proposals that Ukraine had provided at the intermediary session of the Meeting of the Parties on the procedure for preparing draft compliance decisions. Seeking to increase the efficiency of the Committee's work and to address possible shortcomings in its proceedings, the Committee agreed to establish a task force led by the Committee's Chair and assisted by the secretariat. The task force would review the Committee's structure and functions and its operating rules and prepare proposals for their amendment, for the consideration of the Committee at its subsequent sessions. Ultimately, the amendment proposals would be submitted for consideration and endorsement by the Meetings of the Parties of the Convention and the Protocol, to the extent feasible, at their next sessions in December 2020.

## **VIII. Presentation of the main decisions taken and closing of the session**

118. The Committee confirmed that it would hold its forty-fifth session from 10 to 13 September 2019 and its forty-sixth session from 10 to 13 December 2019. The secretariat reported that the dates for the Committee's 2020 sessions would be confirmed by the end of

May 2019. Unless the Committee decided otherwise, all the meetings would be held in Geneva.

119. The Committee adopted the draft report of its session, prepared with the support of the secretariat. The Chair then formally closed the forty-fourth session.

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