

Supporting Information:

Violations by Ukraine of its obligations under Espoo Convention in relation to decision to permit construction of 3rd and 4th nuclear reactors of Khmelnytska NPP

(attached to the Information on possible non-compliance submitted by Ecohome 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 construction of two nuclear reactors at Khmelnytska Nuclear Power Plant.

The decision to permit construction of a new nuclear reactor is taken by the Parliament of Ukraine in form of a Law of Ukraine.

Prior to approve KhNPP 3,4 project (3rd and 4th reactors of Khmelnytska NPP) Ukraine notified a number of countries in order to carry out necessary procedures under the Espoo Convention. Notification of neighboring countries is also a requirement of national nuclear legislation.

The Parliament of Ukraine adopted a law permitting construction of the KhNPP 3rd and 4th reactors before competition of relevant Espoo Convention procedures, including consultations and public participation (the Law of Ukraine No.5217-VI of Sep 06, 2012).

This information argues that Ukraine failed to comply with the requirements of the Espoo Convention in the process of taking a decision to permit construction of the KhNPP 3rd and 4th reactors.

1. Facts

Ukraine started planning procedure to construct KhNPP 3,4 in 2005 (by a Government's decision No.281-p.). The Government adopted several subsequent decisions related to planning and designing of the project. In 2009 the Government took a decision on use of WWER-1000/B-392 reactor type for the purpose of developing the feasibility study. In 2010 Ukraine signed an agreement with the Russian Federation, which specifies conditions for construction of KhNPP 3,4 including reactor type, fuel, management of used fuel, etc.

In January 2011 Ukraine sent official notifications under Espoo Convention to Belarus, Moldova, Poland, Russian Federation, Romania, Slovak Republic and Hungary. All countries responded except for Russia. All countries which sent response expressed desire to participate in the procedures under Espoo Convention, requested further information about the project and clarifications on the procedure. In addition, Austria requested to be consulted as well as affected party by a letter of March 10, 2011 (no response) and July 25, 2011.

To our knowledge, little further steps were taken to apply relevant obligations under the Espoo Convention. In particular, it is unclear whether all affected countries received EIA documentation and specific information requested. However, most affected parties were of the opinion that transboundary procedures are being carried out up until September 2012, when the decision was taken to construct KhNPP 3,4. For example, in July 2012 we were still discussing with the Ministry of Environment of Belarus deadlines for our possible comments.

In 2011 the proponent subcontracted a final report on consultations with affected parties, which was completed by the end of 2011. The report summarizes and describes in detail all steps taken by Ukraine to apply Espoo Convention procedures.

On August 16, 2012, the Government of Ukraine submitted draft law to permit construction of KhNPP 3, 4 to the Parliament. The draft law included a package of documents, including report on informing neighboring states. On September 6, 2012, the Parliament adopted the Law No. 5217-VI on location, designing and construction of KhNPP reactors 3 and 4. Upon signature by the President of Ukraine, the law became effective.

2. Applicable legislation

The following key national legislation is applicable to the decision-making related to planning, designing and construction of nuclear reactors:

- 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.

Article 2 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 a decision to locate, design and construct nuclear reactor shall be taken by the Parliament of Ukraine in form of law of Ukraine. Respective draft law shall submitted by the Government of Ukraine.

Article 5 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 a draft law on locating, designing and construction of a nuclear reactor shall be accompanied by the following supporting documentation:

- 1) feasibility study prepared by the licensee approved by Cabinet of Ministers;
 - 2) **conclusions of the state environmental review** (on the feasibility study);
 - 3) conclusions of state nuclear safety review (on the feasibility study);
 - 4) outcomes of the consultative referendum;
 - 5) **report on measures to inform neighbouring states about possible impact in a transboundary context.**
- The Law on Regulating Urban Development Activities (2011)

Article 31 of *Law on Regulating Urban Development Activities* the prohibits carrying out environmental and other expertizas (state environmental review) of feasibility studies or other technical design documents (projects, working documentation). It establishes a general review procedure for feasibility studies and other technical design documents (projects, working documentation), which is carried out by licensed companies with no input from environmental authorities.

3. Alleged Violations

We allege that Ukraine violated Article 2.3, Article 2.6, Article 3.5, Article 3.8, Article 4.2, Article 5 and Article 6, by taking a decision to authorize construction of two nuclear reactors at Khmelnytska NPP prior to completing applicable procedures under the Espoo Convention.

We also claim that the legislation of Ukraine has a systemic failure by not requiring an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation for nuclear projects under Annex I of the Convention.

3.1. Decision to authorize KhNPP3,4 violates obligations under the Espoo Convention

- **Ukraine failed to implement a number of obligations under the Espoo Convention by not allowing sufficient timeframes for organizing public consultations, by not holding consultations under Article 5 by taking final decision with no regard taken of possible comments and outcomes of required consultations. The public in the affected countries had no opportunity to comment on proposed activity.**

It is clear that all affected parties expressed desire to participate in transboundary EIA procedures. The **Report on measures to inform neighbouring states about possible impact in a transboundary context**¹ includes responses/requests from affected parties. The report includes internal communications within the Government, which confirms that as of June 16, 2011, no project information was provided to affected parties. Yet, the deadline for any “comments” was set August 31, 2011. It is also clear from a letter from Austria that as of July 25, 2011, Austria’s request for participation was not yet dealt with by focal point in Ukraine.

The *Report* disregards any events which took place after September 2001 as irrelevant (since the deadline for any comments and proposals was set August 31, 2011). Therefore, all affected parties were of the opinion that the consultation process continues while final report summarizing the input was already finalized. No comments could have been taken into account after completion of the *Report* in 2011, since the it was the document supposed to reflect such comments. When the Cabinet of Ministers of preparing draft law and related submission, when the Parliament of Ukraine was considering draft decision to construct KhNPP 3,4 they had no opportunity to take into account any information received from affected parties after 2011.

The **Report on measures to inform neighbouring states about possible impact in a transboundary context** with no grounds alleges that as of September 16, 2011, no proposals for public events (meetings with the public) had been received from affected parties while most responses refer to the need to organize public participation.

In addition, on May 14, 2011, we, NGO “Ecohome”, sent a letter to the Ministry of Environment of Ukraine requesting public hearings in Belarus. In July 2011 we received a reply stating that the Ministry of Environment of Ukraine informed us that our request was forwarded to the Ministry of Energy & Coal. Copies of two letters by Ministry of Environment of Ukraine attached (reply to us and forwarding letter).

- **The Law of Ukraine No.5217-VI of Sep 06, 2012, is a final decision in the meaning of Article 6 of the Espoo Convention**

¹ Available at official web-site of the Parliament of Ukraine (in Ukrainian) at http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=44161

The Law of Ukraine on Locating, Designing and Construction of Khmelnytska NPP reactors No.3 and No.4 sets all major parameters of environmental importance of the project:

- Types of nuclear reactors,
- Location of nuclear reactors,
- Power production,
- Reactors lifetime,
- Use of natural resources, especially land and water
- All other main technical solutions (decisions) for units 3 and 4

3.2. National legislation does not require proper EIA procedure for nuclear projects

The Parliament adopted the Law No.5217-VI without proper EIA procedures. Applicable national procedure (Article 5 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*) requires that a draft law on locating, designing and construction of a nuclear reactor shall be accompanied by **conclusions of the state environmental review** on the feasibility study. The draft law on KhNPP 3,4 did not include such an annex. The draft law was accompanied by an expert statement by a scientific institution which in no circumstances can be qualified as conclusions of the state environmental review. Such conclusions is an official document which can only be adopted by the Ministry of Ecology of Ukraine.

The underlying reason for lack of conclusions of state environmental review is Article 31 of *Law on Regulating Urban Development Activities*. Art.31 the prohibits carrying out environmental and other expertizas (state environmental review) of feasibility studies or other technical design documents (projects, working documentation). At the same time, 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 requires such state environmental review for feasibility study for a nuclear reactor.

The Parliament violated national procedures for nuclear decision-making by choosing the approach which ignores the requirement 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.

Therefore, under this practice no future nuclear project in Ukraine will undergo an EIA procedure. We consider this to be a violation of the general obligation under Article 2.2 of the Espoo Convention.