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### 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

Thirty-eighth session  
Geneva, 20-22 February 2017

### Report of the Implementation Committee on its thirty-eighth session

#### Contents

	<i>Page</i>
I. Introduction .....	3
A. Attendance .....	3
B. Organizational matters .....	3
II. Follow-up to decision VI/2 .....	3
A. Belarus .....	3
B. Ukraine ... ..	5
C. Azerbaijan .....	7
D. Armenia ... ..	8

III.	Submissions.....	8
IV.	Information gathering.....	8
	A. Convention matters.....	8
	B. Protocol matters.....	11
V.	Review of implementation.....	12
	A. Specific compliance issues under the Protocol.....	12
VI.	Preparations for the next sessions of the Meetings of the Parties.....	13
VIII.	Other business.....	13
	A. United Kingdom of Great Britain and Northern Ireland ...	13
	B. Operating rules and procedures.....	13
VII.	Presentation of the main decisions taken and closing of the session.....	14
	Annex	

## I. Introduction

1. The thirty-eighth 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 (Protocol on SEA) was held from 20 to 22 February 2017 in Geneva, Switzerland.

### A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Vladimir Buchko (Ukraine); Elyanora Grigoryan (Armenia); Kaupo Heinma (Estonia); Lourdes Aurora Hernando (Spain); Zsuzsanna Pocsai (Hungary); Ilda Shahu (Albania); Romas Švedas (Lithuania); Felix Zaharia (Romania) and Nadezhda Zdanevich (Belarus). The alternate member for Belarus on Protocol matters Jerzy Jendroska (Poland) and his alternate Ms. Katarzyna Twardowska were absent.

### B. Organizational matters

3. The Chair of the Committee opened the session. The Committee adopted its agenda as set out in document ECE/MP.EIA/IC/2017/1.

4. The secretariat reported on the status of ratifications of the Protocol and the two amendments to the Convention, emphasizing that nine more ratifications were needed for the first amendment to become operational and that one ratification was missing for the second amendment to enter into force. The Committee took note of the information and, observing that, out of the countries represented in the Committee, Armenia and Ukraine had not yet ratified the two amendments, and that Belarus was still to ratify the second amendment, urged these countries to do so by the seventh session of the Meeting of the Parties to the Convention (Minsk, 13–16 June 2017).

The Member nominated by Ukraine informed the Committee that the issue of ratification of the amendments would be considered by the parliament soon after the expected adoption of the legislation on environmental impact assessment.

## II. Follow-up to decision VI/2

5. Discussions on the follow-up to decision VI/2 of the Meeting of the Parties to the Convention on the review of compliance with the Convention (see ECE/MP.EIA/20.Add.1-ECE/MP.EIA/SEA/4.Add.1) were not open to observers, in accordance with rule 17, paragraph 1, of the Committee's operating rules,<sup>1</sup> and took place in the absence of the Committee members nominated by Armenia, Belarus, Lithuania, Romania and Ukraine during the consideration of matters where a direct or indirect conflict of interests may arise.

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<sup>1</sup> See decision IV/1, annex IV (see ECE/MP.EIA/10), as 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).

## A. Belarus (EIA/IC/S/4)<sup>2</sup>

6. The Committee finalized its deliberations on follow-up by Belarus with decision VI/2 (paras. 48-64), regarding the Ostrovets nuclear power plant. It recalled that, at its previous session (12–14 December 2016), it had agreed on most of its recommendations to the Meeting of the Parties and provided some general considerations, which it specified at the present session. The Committee thus analyzed the reports and correspondence submitted to it by Belarus and Lithuania in the period from 5 January to 17 February 2017, including information about the Site and External Events Design (SEED) mission conducted by the International Atomic Energy Agency in Belarus in January 2017.

7. The Committee then concluded based on its thorough analysis of the steps taken by both Parties since the Committee's twenty-seventh session (12–14 March 2013) that Belarus had undertaken all the required steps to reach the final decision as provided for in the Convention. The Committee could not, however, reach a final conclusion on the compliance of these steps with the provisions of the Convention, pending the receipt of answers to the five questions on technical and scientific aspects of the environmental impact assessment documentation that it had put forward at its last session (see annex I to the report of the thirty-seventh session (ECE/MP.EIA/IC/2016/6) and annex I to draft decision VII/2 (ECE/MP.EIA/2017/8)).

8. When finalizing its recommendations, the Committee underlined that procedural and substantive aspects of the environmental impact assessment procedure could not necessarily be treated separately when assessing compliance, in particular if the essence of the compliance case in question was about substantive aspects. Since the Committee did not have the capacity nor the mandate to examine the environmental and scientific issues that had been raised in connection with the activity at Ostrovets, its rules of procedure provided for the possibility to turn to expert advice<sup>3</sup>. Unfortunately, in absence of resources, the Committee could not benefit from such advice. Therefore, the Committee included into the draft decision VII/2 on review of compliance two concrete proposals on how this expert advice could be provided to it by July 2018 (see paragraphs 64 - 66 of the draft decision VII/2 (ECE/MP.EIA/2017/8)).

9. The Committee remarked that the report of the SEED mission might provide answers to some of its questions, but noted that the report would be publicly released only by April 2017. It therefore agreed to ask the co-curators to try to find answers to its five questions in that report, if it was released at least two weeks in advance of the session of the next Meeting of the Parties. The Committee also agreed that based on the co-curators recommendations, it would convene a virtual meeting to consider which questions had been properly answered by the report. The Committee further agreed that its Chair would inform the Meeting of the Parties to the Convention of the outcomes of these potential further deliberations at its upcoming session to be held in Minsk.

10. In respect of the SEED mission, the Committee regretted that, according to the information available at the session, Belarus had not entirely followed the encouragement of the Meeting of the Parties by not having specifically invited the IAEA to evaluate the site selection criteria as well. The Committee nevertheless congratulated Belarus for having taken that confidence-building measure, and encouraged it to continue with such measures also in the future.

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<sup>2</sup> Information on this compliance case is available from [http://www.unece.org/env/eia/implementation/implementation\\_committee\\_matters.html](http://www.unece.org/env/eia/implementation/implementation_committee_matters.html)

<sup>3</sup> See paragraph 7 (d) of the Appendix to decision III/2 of the Meeting of the Parties on review of Compliance (ECE/MP.EIA/6).

11. After concluding its analysis, the Committee stressed that with the active support of both Parties it had attempted over the last three years all reasonable approaches to assist the Parties to fully comply with their obligations under the Convention.

12. In addition, the Committee noted the comments expressed prior to the adoption of the agenda of the meeting by the Committee member nominated by Belarus that the assessment of the new legislation should not be related to Ostrovets case, the Committee decided to consider information related to the recent adoption by Belarus of the law and subsequent regulations on environmental impact assessment, strategic environmental assessment and state ecological expertise as a separate information gathering at its next session. The Committee appointed Zsuzsanna Pocsai as a curator and Volodymyr Buchko as a co-curator for this information gathering.

## **B. Ukraine**

### **1. Rivne nuclear power plant (EIA/IC/CI/4)<sup>4</sup>**

13. The Committee continued its consideration of the follow-up by Ukraine on decision VI/2 regarding the lifetime extension of reactors 1 and 2 of the Rivne nuclear power plant.

14. The Committee noted the information from Ukraine of 7 February 2017 about the resolution of its Vice-Prime Minister of 12 January 2017 requesting the government to initiate the transboundary EIA procedure for the planned lifetime extension of reactors 1 and 2 of the Rivne nuclear power plant further to the decision VI/2 by January 2018. It regretted, however, that no information had been provided on the concrete steps to carry out such procedure. The Committee also noted with concern that Ukraine had not initiated discussions with potentially affected Parties to agree on whether notification was needed for the extension of the lifetime for the Rivne nuclear power plant as the Committee had requested at its thirty-fifth session (15–17 March 2016). It nevertheless stressed that, in the meantime, Austria, Hungary and Romania had asked Ukraine to be notified regarding the activity.

15. Further to an analysis by the curator, the Committee concluded that since the sixth session of the Meeting of the Parties in June 2014 Ukraine had not taken the necessary practical steps to bring the project into compliance with the Convention. The Committee further noted that decision VI/2 paragraph 71 did not provide clear guidance for Ukraine on how to bring the activity into compliance with the Convention. Therefore, it recommended the Meeting of the Parties to outline in its decision VII/2 on the review of compliance, specific measures that would assist Ukraine in addressing its non-compliance with regard to the activity. In particular, Ukraine should be requested to revise by the end of 2018 its decision to extend the lifetime of reactors 1 and 2 of the Rivne nuclear power plant based on the outcomes of an EIA procedure to be carried out in full compliance with the Convention, and following the timeframe and concrete steps provided for in a strategy to be prepared by Ukraine, by the end of 2017. The strategy should include:

(a) the adoption of the general legal and administrative framework on the implementation of the Convention;

(b) the notification of all potentially affected Parties, in accordance with article 3 of the Convention;

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<sup>4</sup> Information on this compliance case is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>

(c) the preparation of the EIA documentation including transboundary aspects pursuant to article 4 of the Convention;

(d) consultations with authorities and public of the affected Parties based on the EIA documentation, as set out in article 5 of the Convention, and

(e) ensuring that in the revised final decision due account is taken of the outcomes of EIA procedure including EIA documentation and comments received from the affected Parties, further to article 6 of the Convention.

16. Ukraine should also be requested to report by the end of each year to the Implementation Committee on its implementation of the strategy and the revised final decision taken.

## **2. Bystroe Canal Project (EIA/IC/S/1)<sup>5</sup>**

17. The Committee then continued its consideration of the follow-up by Ukraine on decision VI/2 (paras.15-28) in relation to the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project) in order to finalize its report to the Meeting of the Parties. By decision VI/2 Ukraine had been requested to adopt relevant legislation and to bring the Project into full compliance with the Convention by the end of 2015 (paras. 24-25). Ukraine had also been requested to report by the end of each year to the Committee on how it had implemented those recommendations.

18. The Committee considered the information received from Ukraine since its last session, including:

(a) its annual progress report of 6 January 2017 with regard to the implementation of the government strategy to implement the Convention and concrete measures to bring the Bystroe Canal Project into conformity with the Convention,

(b) an analysis by Ukraine of 14 February 2017 on its implementation of decisions IV/2, V/4 and VI/2, and

(b) a report of 13 February 2017 on Ukraine's implementation of article 7 of Convention on monitoring measures and post project analysis.

19. With respect to the implementation of the strategy and the adoption of relevant draft legislation (decision VI/2, paras 24 and 25(a)), the Committee recalled that the text of the new law on Environmental Impact Assessment (EIA) had been adopted by the parliament of Ukraine on 4 October 2016, but vetoed by the Ukrainian President on 31 October 2016. It further noted that the Law had been returned by the parliament to its environmental committee for revision. The Committee expressed concerns that despite Ukraine's efforts to develop and adopt a new draft law on EIA, there was still no legislation in place to ensure proper implementation of the Convention. Consequently, the Committee agreed that it was not in a position to conclude that Ukraine had implemented provisions of paragraphs 24 and 25 (a) of decision VI/2 regarding the legislative measures.

20. With regard to steps taken by Ukraine to bring the Project into full compliance with the Convention, in particular, the implementation of the measures referred to in decision VI/2, para 25(b), the Committee agreed that although some steps had been taken, the information available to the Committee did not allow it to conclude that the Project had been brought into full compliance with the Convention.

21. On the above grounds, the Committee agreed that it had no basis to recommend to the Meeting of the Parties to revise its recommendations set out in decisions V/4 and VI/2

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<sup>5</sup> Information on this compliance case is available from [http://www.unece.org/env/eia/implementation/implementation\\_committee\\_matters.html](http://www.unece.org/env/eia/implementation/implementation_committee_matters.html).

concerning compliance by Ukraine and that, consequently, the caution issued at the fourth session of the Meeting of the Parties, in 2009, remained effective.

22. It finalized the draft decision VII/2 on the matter inviting the Meeting of the Parties to request Ukraine to adopt the relevant legislation and to bring the project in full compliance with the Convention by the end of 2018. Should Ukraine fail to do so, the Committee recommended that the eighth session of the Meeting of the Parties consider taking more stringent measures, such as the suspension of the special rights and privileges accorded to Ukraine under the Convention and the Protocol, involving for example Ukraine's possible future membership in the Bureau and the Committee<sup>6</sup>.

### C. Azerbaijan (EIA/IC/CI/2)<sup>7</sup>

23. The Committee continued its consideration of the follow-up by Azerbaijan on decision VI/2 regarding the national legislation for the implementation of the Convention (paras. 41–42). The Committee noted based on the last correspondence from Azerbaijan dated 13.12.2016 that despite efforts from all authorities to amend the draft legislation on EIA and SEA as recommended by international consultants, Azerbaijan had not managed to adopt the draft law and the subsequent regulations, as requested by the Meeting of the Parties (decision VI/2, para 42). The Committee acknowledged the efforts of the Azerbaijani authorities, but noted that it was not in a position to report to the Meeting of the Parties on any relevant legislation in Azerbaijan for the implementation of the Convention. This situation confirmed the Committee's profound suspicion of non-compliance of Azerbaijan with article 2 para 2 of the Convention.

24. The Committee recalled that in 2009, it had begun its initiative on Azerbaijan prompted by Azerbaijan's responses to the questionnaire on its implementation of the Convention in the period 2003–2005, indicating that it lacked national legislation on the application of the Convention, and by the request from Azerbaijan for technical assistance from the Committee in that regard. It also recalled that following that request, extensive technical assistance had been made available to Azerbaijan since 2012 without, however, tangible results.

25. The Committee regretted that situation. It agreed that the Meeting of the Parties should again invite Azerbaijan to adopt its law as soon as possible. The members of the Committee also discussed the possible causes for the longstanding failure for Azerbaijan to adopt the law, and decided that the usefulness of the technical assistance provided to Azerbaijan deserved a dedicated analysis. To this end, the Committee asked the secretariat to submit a comprehensive report on the technical assistance provided to Azerbaijan together with its views on the reasons why that assistance had not contributed to the outcome requested by the Meeting of the Parties. The report should be submitted to the Committee one month in advance of its 40th session (5-7 December 2017).

26. Based on the information presented orally by the secretariat during the session, the Committee noted that better communication with and within the Government, could have expedited the implementation of the conclusions of the technical assistance. The Committee

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<sup>6</sup> See the Committee's operating rules, decision IV/1, annex IV (see ECE/MP.EIA/10), as 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).

<sup>7</sup> Information on this compliance case is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>

underlined in this context that the full implementation of the Convention requires not only technical expertise, but also dedicated political commitment.

27. The Committee also expressed its concerns about the difficulties of the Government of Azerbaijan to make full use of the outcomes of the technical assistance. Therefore, it decided to continue its initiative by inviting Azerbaijan to a hearing during its 40th session (5-7 December 2017) to present, inter alia, these difficulties. The Committee would subsequently draft its findings and recommendations to the next Meeting of the Parties in respect of Azerbaijan.

#### **D. Armenia (EIA/IC/CI/1)<sup>8</sup>**

28. The Committee continued its consideration of the follow-up by Armenia on decision VI/2 regarding the national legislation for the implementation of the Convention (paras. 31–35). Committee took note of the information by Armenia provided on 13 February, 2017, complemented by an oral report by Committee member nominated by Armenia and the information from the secretariat on the country's progress in ensuring that its legislation fully complies with the Convention and the Protocol.

29. The Committee noted that with the support of the secretariat funded through the European Union's Programme 'Greening Economies in Eastern Partnership' (EaP Green), Armenia had prepared draft amendments to its 2014 Law and drafted relevant secondary regulations under the supervision of the deputy environment minister. The Committee took note of the information by an international consultant to the secretariat involved in the legal drafting in Armenia that the proposed legislative amendments and the draft secondary regulations in their current version provided for a better distinction between the EIA and SEA procedures. However, additional revisions would still be necessary to address deficiencies in their practical application, in particular to (a) ensure that the final decision sets the environmental conditions for the activity in real terms and is based on the results of the EIA procedure; (b) propose reasonable timeframes for different stages of public participation in EIA and SEA procedure, including the minimum timeframes between notification about a planned public hearing and the actual public hearing.

30. The Committee decided to recommend to the Meeting of the Parties to encourage Armenia to adopt the proposed amendments and the secondary legislation as soon as possible.

### **III. Submissions**

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

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<sup>8</sup> Information on this compliance case is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>

## IV. Information gathering<sup>9</sup>

### A. Convention matters

#### 1. Belgium (EIA/IC/INFO/18)

32. The Committee then continued its consideration of the information it had gathered further to information provided by the German Federal states of North Rhine-Westfalia and Rhineland-Palatinate concerning the lifetime extensions of reactors at the Doel and Tihange nuclear power plants in Belgium. The Committee recalled that at its thirty-seventh session it had requested Belgium to provide further clarifications on the matter by 3 February 2017. It noted the request from Belgium of 6 February 2017 to extend that deadline in order to, among others, arrange for translation of the documents required by the Committee from its four official languages into English, to carry out consultations between Belgian authorities and to conclude ongoing court proceedings regarding the activity. The Committee agreed to ask its Chair to write to the Government of Belgium informing it of the Committee's decision to extend the deadline until 17 July 2017, and in addition, to request any other relevant information. The Committee agreed to continue the consideration of the matter at its 39th session (5–7 September 2017).

#### 2. The Netherlands (ECE/IC/INFO/15)

33. Prior to continuing its consideration of the information it had gathered regarding the lifetime extension of the Borssele nuclear power plant in the Netherlands the Committee recalled that at its thirty-seventh session it had agreed to formulate a general opinion or a recommendation on the extension of lifetime of nuclear power plants. Such an opinion or recommendation could provide the curators of the several information gatherings concerning the extension of lifetime of nuclear power plants, including the one at Borssele, the elements needed to properly assess the information received. The Committee noted in this respect that in its letter of 2 February 2017 regarding the Dukovany nuclear power plant (see para 34 below), Germany had also requested guidance on the matter.

34. The Committee began its discussions based on a draft text prepared in advance by its Chair in consultation with several Committee members through electronic means of communication, including virtual meetings. The Committee discussed the issue at length, debating inter alia whether decision VI/2 referred only to the nuclear power plant at Rivne or could be applied to other similar cases. It could not, however, reach an agreement on the matter. Therefore, it decided to resume its discussion at its next session, in September 2017, based on the draft text referred to above, as amended during the session.

35. After discussing the general opinion or recommendation, the Committee took note of the information provided by the Netherlands on 3 February 2017 further to the Committee's request. The Committee expressed its gratitude to the Netherlands for all the information it had provided since the beginning of the information gathering. While regretting that it could not conclude the matter before the seventh session of the Meeting of the Parties, the Committee postponed the consideration of the information it had gathered to its next session.

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<sup>9</sup> More information on information-gathering cases is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>. [to be updated]

#### 4. Czechia (EIA/IC/INFO/19)

36. The Committee also postponed, owing to time constraints, the consideration of the information it had gathered further to the information received from five non-governmental organizations concerning the lifetime extension of four reactors at the Dukovany nuclear power plant in Czechia, while noting with appreciation the information from Austria, Czechia, Germany, Slovakia and additional information by NGOs.

#### 5. Ukraine (EIA/IC/INFO/20)

37. Further to the letter of 1 August 2016 from the non-governmental organization CEE Bankwatch Network (NGO) to the Committee and on the basis of the information provided by Ukraine in response to the Committee's questions, the Committee continued its information gathering regarding the lifetime extensions of reactor 3 of the Rivne nuclear power plant, three reactors of the South-Ukrainian, five reactors of the Zaporizhzhya and two reactors of the Khmelnytsky nuclear power plants in Ukraine.

38. The Committee noted the information provided by the NGO that Romania, Slovakia, Austria and Hungary had considered themselves affected and had entered into discussions with Ukraine in accordance with article 3 para 7 of the Convention in respect of the licensing of one of the three reactors of the South-Ukrainian nuclear power plant. It also noted information by Ukraine of 7 February 2017 regarding its intention to initiate transboundary consultations under the Convention for the reactors of the South-Ukrainian and the Zaporizhzhya nuclear power plants by February 2018 and to prepare non-technical summaries of the EIA documentation for these activities. The curator informed the Committee that no information had been provided regarding Ukraine's plans to carry out a transboundary EIA for the reactor 3 of the Rivne nuclear power plant nor regarding the two reactors the Khmelnytsky nuclear power plant.

39. Nevertheless, in respect of the Khmelnytsky nuclear power plant, the Committee recalled that at its thirty-fourth session it had agreed that since Ukraine had denounced the agreement of cooperation with the Russian Federation for the construction and financing of reactors 3 and 4 of the Khmelnytsky NPP, thus ending the implementation of the activity, there was no need for it to further pursue the information gathering in respect of these two reactors. The member nominated by Ukraine confirmed, once again, the information regarding the Khmelnytsky NPP.

40. Therefore, the Committee decided to continue the information gathering only in respect of the lifetime extensions of the reactor 3 of the Rivne NPP, and of the reactors at the South-Ukrainian and Zaporizhzhya nuclear power plants. The Committee asked its Chair to write to Ukraine to request it to provide by 16 October 2017 additional information, including about:

(a) The planned lifetime extension of reactor 3 of the Rivne nuclear power plant, of three reactors of the South-Ukrainian nuclear power plant and of five reactors of the Zaporizhzhya nuclear power plant, including their location, the characteristics and the current status;

(b) Progress in carrying out transboundary EIA procedures for reactors of the South-Ukrainian and the Zaporizhzhya nuclear power plants as referred in the letter of Ukraine of 7 February 2017;

(c) Ukraine's plans to carry out a transboundary EIA procedure for reactor 3 of the Rivne nuclear power plant;

(d) Whether the potentially affected countries had been notified in relation to the proposed activities in accordance with article 3 of the Convention; If notification took place, Ukraine should provide copies of the notifications and available responses to them from the

potentially affected countries; In absence of notifications, Ukraine should present the reasons why in the view of its government the planned activities fell outside of the scope of the Convention;

(e) Progress in the adoption of the Law on environmental impact assessment and in setting up other legal, administrative and other measures to implement the provisions of the Convention with respect to the above mentioned planned activities.

41. In his letter, the Chair should also ask Ukraine to confirm by the same date, in writing, that Ukraine does not plan to build the third and fourth reactors of the Khmelnsky nuclear power plant.

## **6. Bosnia and Herzegovina**

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

42. Further to the information received on 18 September 2014 from the NGO Center for Environment (Bosnia and Herzegovina) 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. The Committee noted information by Bosnia and Herzegovina of 6 February 2017 about its intention to notify Serbia with respect to the planned construction of the power plant further to the Committee's request of 20 December 2016.

43. The Committee decided to ask its Chair to write to Serbia to invite it to confirm by 17 July 2017 whether it had been notified by Bosnia and Herzegovina with respect to the planned activity. If Serbia had been notified, it should be also invited to provide the Committee with an English translation of its response, if any, to Bosnia and Herzegovina.

44. The Committee also requested its Chair to write to Bosnia and Herzegovina asking it to inform the Committee by 17 July 2017 about the outcomes of the discussions with Serbia regarding the further steps to be taken to implement the transboundary EIA procedure regarding the planned activity.

45. The Committee agreed to continue the information gathering case at its thirty-ninth session and requested the curator to prepare her analysis on the matter by 10 August 2017.

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

46. The Committee also continued its consideration of the information it had gathered further to the information received on 18 September 2014 from the NGO Center for Environment on the planned construction of a new thermal power plant in Stanari, Bosnia and Herzegovina, close to the border with Croatia. The Committee regretted that Croatia had not yet responded to the Committee's letter of 19 September 2016.

47. The Committee agreed to ask the Chair to write to Croatia one more time asking it to confirm by 17 July 2017 whether it could exclude a transboundary environmental impact of activity proposed by Bosnia and Herzegovina on the territory of Croatia. In the letter, the Chair should also inform Croatia that in absence of a response, the Committee would understand that Croatia can exclude a significant adverse transboundary environmental impact on its territory related to the planned construction of a new thermal power plant in Stanari by Bosnia and Herzegovina.

48. The Committee will continue the information gathering on this matter at its 39th session, based on the reply from Croatia to the Committee's letter, if any, and an analysis to be prepared by the curator by 10 August 2017.

## 7. Spain

49. The Committee noted the information provided on 27 January 2017 by the Portuguese political party Pessoas – Animais – Natureza (PAN) concerning the planned construction of individual temporary storage for radioactive waste at the Almaraz Nuclear Power Plant in Spain. The Committee member nominated by Spain informed the Committee that Spain had suspended its decision related to storage of spent nuclear fuel and communicated the decision to suspend to the Portuguese authorities.

50. The Committee decided nevertheless to appoint Ms. Zdanevich as a curator for the matter. The curator was invited to submit by 15 August 2017 her analysis of the information provided by PAN for consideration at the next session of the Committee, including a list of questions that could be addressed to Spain to clarify the status of the decision to build the temporary storage.

## B. Protocol matters

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

51. The Committee then continued its consideration of compliance by Serbia with the Protocol on SEA regarding the Government's Energy Strategy and Spatial Plan. Further to detailed information presented by the curator, the Committee requested the Chair to write to Serbia's neighboring countries (Bulgaria, FYROM, Bosnia and Herzegovina, Croatia Hungary, Montenegro, and Romania ) asking them to provide by 1 July 2017 a copy of the notification sent by Serbia in relation to the Energy Strategy, if any. It decided to continue its deliberation on the matter at its next session in September 2017 further to an analysis to be prepared by the curator by 1 August 2017.

### 2. Armenia (EIA/IC/INFO/2)

52. The Committee continued its consideration of the information it had decided to gather from Armenia regarding the programme of the Government of Armenia adopted by decision 511-A of 19 May 2014. In response to the Committee's letter of 20 December 2016 requesting for clarifications on the nature of that programme, Armenia had provided additional information on 2 February 2017 and 13 February 2017.

53. Further to an analysis by the curator, the Committee noted that at the moment of its examination, the Programme of the Government of Armenia of 19 May 2014, that in its Energy section had envisaged the construction in 2018 of a new reactor at the Metsamor nuclear power plant, was no longer valid. The Committee also noted that following the resignation of the Government on 8 September 2016 and the appointment of the new Government, a new Programme of the Government had been adopted on 18 October 2016 by Government decision 1060A and had no reference to the construction of a new reactor at nuclear power plant in Metsamor. Furthermore, subsequent to Parliamentary elections scheduled for April 2017, a new Government would be formed, followed by the adoption of another programme of the Government.

54. Having considered all information provided by Armenia, the Committee agreed that the Programme of the Government of Armenia was not a plan or programme under the provisions of article 2, paragraph 5, and article 4 of the Protocol. Consequently, that Programme was not subject to the SEA procedure stipulated in the Protocol.

55. The Committee concluded that the information provided by Armenia was sufficient and decided to close the information gathering on the issue. It asked the Chair to write to Armenia to inform it accordingly and to thank Armenia for its cooperation. The Chair

should also request the agreement of Armenia that the correspondence between the Committee and Armenia be placed on the Convention's website, as an illustration of the Committee's approach to specific compliance issues and of a proper and sufficient response from a Party to address the issue.

## **V. Review of implementation**

### **A. Specific compliance issues under the Protocol**

#### **European Union (SEA/IC/SCI/1/4)**

56. The Committee noted the response of 9 February 2017 from the European Commission to its letter of 28 October 2017 regarding the specific compliance issue arising from the second review of implementation of the Protocol regarding the reporting obligation of the European Union. In the absence of the curator, however, the Committee decided to resume its consideration of the matter at a dedicated virtual session to be held during the second week of March 2017 and reflect the results of the deliberations at the present report. Further to consideration of the analysis by the curator of the recent information by the EU at its virtual session on 9 March 2017 and because of the lack of quorum at the session, the Committee was not able to finalize its deliberation on the matter. It, therefore, noted that the consideration of this information gathering would be postponed to its next session in September 2017 with a view to decide on whether to open a Committee initiative. Taking into account that the membership of the current curator in the Committee expires, the vice-Chair who chaired the virtual session proposed to the Committee to appoint Ms. Pocsai and Mr. Svedas as new co-curators for the issue to ensure continuity on its consideration.

## **VI. Preparations for the next sessions of the Meetings of the Parties**

57. The Committee finalized draft decision VII/2 on the review of compliance with the Convention to be forwarded to the Meeting of the Parties to the Convention for consideration at its next session. Due to time constraints, the Committee decided to finalize decision III/2 on the review of compliance with the Protocol through its electronic making procedure by 15 March 2017.

58. Committee also agreed to finalize its report on the activities of the Committee to be submitted to the Meetings of the Parties, as foreseen in the workplan (see ECE/MP.EIA/20/Add.3-ECE/MP.EIA/SEA/4/Add.3, decision VI/3-II/3) through its electronic decision making procedure by 15 March 2017. The Committee requested the secretariat to revise the current version of the report and circulate a revised draft report for Committee members for comments.

## **VIII. Other business**

### **A. Committee Initiative United Kingdom of Great Britain and Northern Ireland**

59. The Committee welcomed the letter of 13 February 2017 from the United Kingdom of Great Britain and Northern Ireland indicating its intention to address the Committee's findings and recommendations to the Meeting of the Parties further to its initiative regarding the Hinkley Point C nuclear power plant project (see annex I to the Committee's report on its thirty-fifth session). The Committee noted with appreciation that

the United Kingdom had written to Parties to the Convention on 21 December 2016, asking them whether they considered that a notification under the Espoo Convention was useful at the current stage of the proposed activity.

60. The Committee also remarked the commitment of the United Kingdom to notify, in future, all Parties to the Convention in respect of applications for development consent for all new nuclear power plants, which nevertheless goes beyond the recommendations of the Committee.

61. The Committee noted, however, that according to the information received from the United Kingdom, the Hinkley Point C nuclear power plant had been granted development consent by the relevant Secretary of State on 19 March 2013 with work under the development consent having already commenced. The Committee was concerned that the continuation of works at Hinkley Point C might influence the views of the Parties consulted by the United Kingdom on 21 December 2016. Moreover, if the potentially affected parties considered that a notification was useful and therefore asked to participate in the transboundary EIA procedure, the continuation of works might render the results of the procedure irrelevant. The Committee recalled that in a previous situation where the procedures under the Convention had not been completed it had been of the opinion that the project including its maintenance and its operation should have been suspended (decision IV/2 paragraphs 69 (b) and 74(b)). The Committee therefore decided to ask its Chair to write to the United Kingdom inviting it to consider refraining from carrying out works at the proposed activity until it established whether notification was useful. The Committee also decided to recommend to the Meeting of the Parties that if a potentially affected Party requests to be notified, the United Kingdom should suspend works related to the proposed activity until the transboundary EIA procedure is finalized.

## **B. Operating rules and procedures**

62. Because of the increasing number and complexity of issues brought before the Committee, the Committee members discussed possibilities to improve the effectiveness of their work by amending the Committee's operating rules<sup>10</sup> to provide for regular virtual meetings. The Committee recalled that rule 19 allowed for the use of electronic means of communication in between meetings for the purpose of decision making and of conducting informal consultations. The Committee also recalled that it had used this provision for conducting informal consultations in preparation of its session and noted their usefulness.

63. The Committee members considered the possibility of using electronic means of communication more frequently, and organizing at least one virtual meeting per month only in English to facilitate deliberations on the compliance issues. The Committee agreed that it would continue to use virtual meetings for informal consultations regularly. However, it further decided to review the existing rules for electronic decision-making procedure under other UNECE multilateral environmental agreements and to resume the discussion on amending its operating rules at its next session in September 2017.

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

64. The Committee agreed to hold its thirty-ninth session from 5 to 7 September 2017.

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<sup>10</sup> See decision IV/1, annex IV (see ECE/MP.EIA/10), as 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).

65. The Committee also took note of the dates for its subsequent meeting of 5–7 December 2017, and of the following dates preliminarily scheduled in 2018, 13-15 March, 11–13 September and 4-6 December 2018.

66. The Committee adopted the draft report of its session, and decided to agree on the pending issues, as outlined above (see paragraphs 52 and 53 of the present report), through its electronic decision-making procedure, following the meeting. The Chair then formally closed the thirty-seventh session, thanking the members for their active involvement and cooperation during these last three years.

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