



Economic and Social Council

Distr.: General
20 October 2020

Original: English

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 Eighth session
Geneva, 1–4 September 2020

Report of the Implementation Committee on its forty-eighth session

I. Introduction

1. The forty-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 was held from 1 to 4 September 2020. Due to the coronavirus disease (COVID-19) pandemic, the session was exceptionally held using videoconferencing and without interpretation.

A. Attendance

2. The following members of the Committee attended the session: Ms. Aysel Rzayeva (Azerbaijan); Ms. Tatiana Kuhtenkova (Belarus); Mr. Libor Dvorak (Czechia); Mr. Kaupo Heinma (Estonia); Mr. Lasse Tallskog (Finland); Ms. Zsuzsanna Pocsai (Hungary); Mr. Romas Švedas (Lithuania); Ms. Maria do Carmo Figueira (Portugal); and Mr. Anders Bengtsson (Sweden). Ms. Larissa Lukina, an alternate member nominated by Belarus, also attended the session, facilitating the Committee's work in the absence of interpretation. Mr. Vladimir Buchko (Ukraine) was absent.

B. Organizational matters

3. The Chair of the Committee opened the session. The Committee agreed to review under agenda item 5 on "Information gathering" new information received from other sources since its forty-seventh session (Geneva, 16–19 March 2020) (see paras. 43 and 44

below). The Committee adopted its agenda as set out in document ECE/MP.EIA/IC/2020/3 with that adjustment.

4. The Committee noted the secretariat's report on the relevant outcomes of the ninth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 24–26 August 2020), in particular, on preparations for 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 (Vilnius, 8–11 December 2020).

5. The Committee noted with concern that the draft Guidance on applicability of the Convention to the lifetime extension of nuclear power plants had been submitted to the Working Group by the Co-Chairs in square brackets owing to a lack of consensus among the Parties represented in the ad-hoc working group on the matter. It reiterated the urgent need for the Guidance to be finalized for consideration and adoption by the Meeting of the Parties to the Convention at its eighth session.

II. Preparations for the next sessions of the Meetings of the Parties

A. Preparation of draft decisions on country-specific issues of compliance with the Convention

6. The Committee finalized draft decisions VIII/4 a–e on compliance by Armenia, Azerbaijan, Belarus and Ukraine with the Convention, taking into account information on follow-up to decisions IS/1a, c, d, f and g and the comments on draft decisions VIII/4 a–e provided by the Parties concerned since its forty-seventh session, including by Armenia, Belarus, the European Union and Ukraine at the ninth meeting of the Working Group. It requested the secretariat to transmit the draft decisions as official documents for consideration by the Meeting of the Parties to the Convention at its eighth session and forward them, as a matter of courtesy, to the Parties concerned for information.

7. The discussions were not open to observers, in accordance with rule 17 (1) of the Committee's operating rules.¹ To avoid any direct or indirect conflict of interest, the Committee member nominated by Azerbaijan was absent during the Committee's consideration of the matter regarding Azerbaijan. The Committee members nominated by Belarus and Lithuania were absent during the Committee's consideration of the matter regarding the Belarusian nuclear power plant. The Committee members nominated by Belarus and Hungary did not participate in the Committee's deliberations regarding the lifetime extension of reactors 1 and 2 of the Rivne nuclear power plant.

1. Armenia (EIA/IC/CI/1)²

8. The Committee continued its consideration of the follow-up by Armenia to decision IS/1a on compliance by Armenia with its obligations under the Convention in respect of its national legislation.

9. It noted the information from Armenia dated 18 August 2020 that the draft law on amendment and additions to the Law of Armenia on Environmental Impact Assessment and Expertise and the relevant secondary legislation, including the implementing regulation on strategic environmental assessment, had been submitted for governmental consultations in their fourth cycle. Armenia had intended to adopt the new legislation by the eighth session of the Meeting of the Parties. Subsequently, the Committee finalized the text of draft decision VIII/4a on the matter.

¹ 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, annex (see ECE/MP.EIA/15) and VI/2, annex II (see ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1).

² Information on Committee initiatives is available at www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html.

2. Azerbaijan: (EIA/IC/CI/2)³

10. The Committee continued its consideration of the follow-up to decision IS/1c on compliance by Azerbaijan with its obligations under the Convention in respect of its national legislation.

11. The Committee noted the information from Azerbaijan received on 5 August 2020, including the comments on draft decision VIII/4b. It also noted that, with a view to fully aligning its legislation with the Convention and the Protocol, Azerbaijan had recently amended the draft regulations on environmental impact assessment, including in a transboundary context, and on strategic environmental assessment. Azerbaijan had intended to adopt the two draft regulations in advance of the eighth session of the Meeting of the Parties. The Committee then finalized the text of draft decision VIII/4b.

3. Belarus (EIA/IC/S/4)⁴

12. The first Vice-Chair of the Committee chaired the discussions on the follow-up to decision IS/1d, further to a submission by Lithuania of 16 June 2011 concerning compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets.

13. The Committee examined information from Belarus, dated 30 July 2020, and Lithuania, dated 27 July 2020, and the correspondence between the Parties made available to it since its previous session.

14. The Committee finalized the draft decision VIII/4c taking into account:

(a) Its evaluation of that information, noting in particular that the Parties' progress in addressing the requirements of the Meeting of the Parties set out in paragraphs 17 to 19 of decision IS/1d remained limited;

(b) Comments received from the European Union and Belarus at the ninth session of the Working Group;

(c) The nature of decision IS/1d on the matter and the structure of other draft compliance decisions prepared by it for the consideration of the Meeting of the Parties at its eighth session.

4. Ukraine (EIA/IC/S/1)⁵

15. The Committee continued its consideration of the follow-up to decision IS/1f further to a submission by Romania dated 26 May 2004 expressing concerns regarding compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project).

16. The Committee noted the information from Romania dated 16 July 2020 and the information from Ukraine dated 6 August 2020, including that Ukraine had begun developing a new "Bystroe Route" project, intended to cover Phases I and II of the Bystroe Canal Project, and had notified the affected Party, Romania, in accordance with the Convention, and that Romania had confirmed its intent to participate in the related transboundary procedure.

17. The Committee finalized draft decision VIII/4 d, recommending that the Meeting of the Parties request Ukraine to take a number of concrete steps to address its long-lasting and persistent non-compliance with the Convention, including:

(a) Continuing implementation of the road map, including completing the assessment of the damage to the environment – in particular in a transboundary context – that resulted from works carried out under Phases I and II of the Bystroe Canal Project and finalizing and approving the plan for compensatory or mitigation measures, in close cooperation with Romania;

³ For additional information, see www.unece.org/env/eia/implementation/eia_ic_ci_2.html.

⁴ For additional information, see www.unece.org/env/eia/implementation/eia_ic_s_4.html.

⁵ For additional information, see www.unece.org/env/eia/implementation/eia_ic_s_1.html.

(b) Ensuring that the new “Bystroe Route” project encompassed Phases I and II of the Bystroe Canal Project and carrying out all the subsequent steps of the transboundary environmental impact assessment procedure in that regard.

18. The Committee asked its Chair to share with Ukraine the Committee’s detailed assessment of the steps taken by Ukraine to implement the road map, requesting Ukraine to provide additional information as indicated in that assessment.

5. Ukraine (EIA/IC/CIS/4)⁶

19. The Committee continued its consideration of the follow-up to decision IS/1g on compliance by Ukraine with its obligations under the Convention in respect of extension of the lifetime of the Rivne nuclear power plant. It examined information from: Austria, dated 28 May and 29 July 2020; Belarus, dated 9 July 2020; Hungary, dated 27 July 2020; Poland, dated 29 April and 16 July 2020; Romania, dated 16 July 2020; Slovakia, dated 22 July 2020; and Ukraine dated 17 August 2020.

20. Noting that the transboundary environmental impact procedure regarding the lifetime extension of the Rivne nuclear power plant was still ongoing, the Committee agreed that there was no need for it to amend the text of draft decision VIII/4e prepared by it at its forty-seventh session.

B. Preparation of draft decisions on general issues of compliance with the Convention and the Protocol

21. The Committee finalised draft decisions VIII/4 and IV/4 on general issues of compliance with the Convention and the Protocol, respectively, considering the comments provided by the Working Group at its ninth session.

C. Report on the activities of the Implementation Committee

22. The Committee reviewed the draft report on its activities in the 2017–2020 intersessional period and asked the secretariat to finalize the text of the report further to the outcomes of the current session for its adoption using its electronic decision-making procedure as set out in its operating rule 19.

III. Submissions⁷

23. The discussions under the agenda item were not open to observers, in accordance with rule 17 (1) of the Committee’s operating rules.

A. Serbia (EIA/IC/S/6)⁸

24. The Committee continued its consideration of the submission by Bulgaria of 30 May 2019 concerning compliance by Serbia with its obligations under the Convention regarding the following activities, located close to the Bulgarian border:

(a) Construction of an experimental facility to test flotation technology for processing copper, lead and zinc ore in Karamanica;

(b) Ore exploitation and mining at the Podvirovi and Popovica mines;

⁶ For additional information, see www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative/eiaicci4-ukraine.html.

⁷ For additional information, see www.unece.org/env/eia/implementation/implementation_committee_matters.html.

⁸ For additional information, see www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/enveiaimplementationimplementation-committee-matters/eiaics6-serbia.html.

(c) Extension of the production of zinc, lead and other metals at the Grot mine.

25. Further to its examination of replies from Serbia, dated 15 June 2020, in response to the Committee's letter of 17 April 2020 and the information from Bulgaria, dated 1 April and 15 August 2020, the Committee noted that:

(a) On November 2019, the Ministry of Environmental Protection of Serbia had issued a decision forbidding the continuation of flotation processing of lead and zinc ore at the Karamanica pilot facility for flotation processing of copper, lead and zinc ore. However, the status of copper ore processing at the facility had not been clarified;

(b) On 29 July 2016, Serbia had notified Bulgaria and North Macedonia of the pilot facility, inviting them to respond to the notification within six weeks. In the absence of a response to the notification from the Parties concerned, Serbia, on 29 September 2020, had granted an environmental permit for the activity, concluding that environmental impact assessment was not required;

(c) On 1 April 2020, Bulgaria approached Serbia:

(i) Referring to its response to a notification regarding the pilot facility, dated 11 October 2016, and expressing its wish to participate in the transboundary procedure;

(ii) Expressing its concerns about the current impacts on the environment of Bulgaria of the ongoing activities at the pilot facility;

(iii) Asking Serbia to take several concrete measures to reduce and mitigate the impact on its environment and to provide information about the activity;

(d) Environmental impact assessment for the activities from mines at Podvirovi and Popovica had been approved on 8 June 2009 and the transboundary procedure had not been carried out at the time. However, Serbia had been considering carrying out a transboundary procedure in accordance with the Convention for a new "Main mining project for exploitation and mining of ore mines Podvirovi and Popovica";

(e) On 23 December 2019, Serbia had taken a decision on the approval of a domestic environmental impact assessment for the activities at Grot mine and, based on that assessment, it had concluded that a significant adverse transboundary impact from the activity was not likely.

26. The Committee noted with concern that Serbia had not responded to any of the Committee's questions on the characteristics of and licence procedures for the mining activities under its consideration. The answers regarding the related transboundary procedures were also incomplete and often unclear. Additionally, the Committee noted with regret that Serbia had not provided a copy of its response to the request of Bulgaria concerning the mining activities at the Dragovishtitsa River catchment area, and the related transboundary environmental impacts, as requested by the Committee in its letter of 17 April 2020.

27. It asked its Chair to write to Serbia urging it to respond by 23 December 2020 to all its requests of 17 April 2020 and to substantiate the response with all required corroborating documentation, including copies of correspondence with Bulgaria, copies of licences, copies of other decisions referred to in the Committee's letter and non-technical summaries of the available environmental impact assessment documentation.

28. In addition, for its further deliberations, the Committee asked its Chair to request Serbia to provide additional clarifications and information regarding the Karamanica pilot facility and the new "Main mining project for exploitation and mining of ore mines Podvirovi and Popovica".

29. Serbia should ensure completeness, clarity and accuracy of the responses to the Committee's requests, including organizing for that purpose, as necessary, intergovernmental coordination and the retrieval of information from other sources and archives and their translation into English.

30. The Committee also invited its Chair to write to Bulgaria to:

(a) Transmit the information received from Serbia on 15 June 2020, inviting it to provide by 25 December 2020 any views and comments thereon;

(b) Request it to provide a copy of the notification of Serbia on the Karamanica pilot facility and its response to the notification, including transmittal letters.

31. Both Parties concerned should be also invited to provide information about their bilateral cooperation to implement the Convention under article 8 thereof.

32. Lastly, the Committee agreed to continue its deliberations on the matter at its next session (Geneva, 2–5 February 2021) and to hold the discussions with both Parties concerned, to be organized further to paragraph 9 of the Committee’s structure and functions,⁹ at its fiftieth session (Geneva, 4–7 May 2021). It asked its Chair to inform the Parties concerned accordingly and to invite them, in the interim, to enter into bilateral discussions regarding the activities subject to the Committee’s consideration with a view to identifying possible solutions to their disagreements and inform the Committee of their outcomes, if any, by 25 December 2020.

B. Albania (EIA/ICS/7)¹⁰

33. The Committee continued its consideration of the submission by Montenegro expressing concern about the compliance of Albania with its obligation under the Convention with respect to the planned construction of several small hydropower plants on the Cijevna River, received by the secretariat on 25 September 2019. The Committee noted that the proposed activities (small hydropower plants) subject to the submission were not listed in appendix I of the Convention and that such situations could be subject to article 2 (5) of the Convention.

34. The Committee examined the information from Albania and Montenegro, both dated 16 June 2020, and asked its Chair to write to the two Parties to:

(a) Welcome steps taken by them to enter, further to article 2 (5) of the Convention, into discussion on whether the proposed activities were likely to cause a significant adverse transboundary impact;

(b) Encourage the Parties to continue their dialogue under article 2 (5) of the Convention, ensuring that the cumulative impact of the proposed activities was properly assessed and the criteria listed in appendix III of the Convention were properly applied during the assessment, including with regard to the environmental sensitivity of the Cijevna River basin;

(c) Draw the attention of the two Parties to the fact that, in cases where the significant impact from the proposed activities could not be excluded, the Convention should apply;

(d) Invite the Parties to update the Committee on the status and outcome of the discussions in advance of its next session, but no later than 12 January 2021;

(e) Offer the Committee’s assistance in implementing the Convention, as needed.

35. The Committee then noted the outcome of separate information-gathering and consultation sessions with Montenegro and Albania concerning similar activities in the Cijevna River held at the same time by the Implementation Committee under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) at its eleventh meeting (Geneva, 31 August–2 September 2020) in the framework of its advisory procedure, including that the Parties concerned:

(a) Recognized the lack of information and data as the key challenges for the assessment of any transboundary impact of small hydropower plants in the Cijevna River basin;

⁹ See ECE/MP.EIA/6, annex II, decision III/2, appendix.

¹⁰ For additional information, see www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/enveiaimplementationimplementation-committee-matters/eiaics7-albania.html.

(b) Expressed their willingness to establish joint monitoring mechanisms and readiness to accept international expertise to assist them in that work.¹¹

36. The Committee welcomed the assistance to be provided in that regard by the Implementation Committee under the Water Convention, confirming its readiness to continue to exchange information on the matter with that Committee.

IV. Committee initiative¹²

37. The discussions under the agenda item were not open to observers, in accordance with rule 17 (1) of the Committee's operating rules.

C. Serbia (SEA/IC/CI/1)

38. The Committee continued its consideration of its initiative concerning the compliance of Serbia regarding its obligations under the Protocol with respect to the Energy Sector Development Strategy of the Republic of Serbia for the Period up to 2025 with Projections up to 2030 and the Strategy's Implementation Programme for the Period 2017–2023. To avoid any direct or indirect conflict of interest, the Committee member nominated by Hungary was absent during the Committee's consideration of the matter.

39. The Committee noted information from Serbia of 29 July 2020 that, due to extraordinary circumstances related to recent governmental changes and the COVID-19 pandemic, it was unable to participate in the hearings scheduled to take place at the current session further to paragraph 9 of the Committee's structure and functions. Taking into account the request of Serbia to consider rescheduling the hearing to a later date, the Committee agreed to exceptionally organize, for that purpose, a special online session on 10 November 2020. It requested the secretariat to inform Serbia accordingly.

40. The Committee then examined replies from Serbia, dated 24 June 2020, in response to the Committee's letter of 17 April 2020. It noted with regret that Serbia had not provided any new information on the matter and that, despite an invitation of 20 July 2020 to complete the missing information in advance of the hearings, the majority of the Committee's questions remained unanswered.

41. The Committee asked its Chair to write to Serbia reiterating its previous requests and requesting it to provide complete, clear and accurate responses to its questions, along with the requested corroborating documentation, by no later than 30 October 2020.

V. Information gathering and specific compliance issues under the Convention and the Protocol

42. Discussions on information gathering were not open to observers, in accordance with rule 17 (1) of the Committee's operating rules.

A. New information from other sources

43. The Committee took note of the new information received from other sources since its forty-seventh session, notably from:

(a) Two non-governmental organizations (NGOs) from Bosnia and Herzegovina (the Aarhus Centar and Centre for Environment) and two NGOs from Montenegro (Green Home and Environmental Movement "Ozon") of 15 May 2020 regarding the compliance of

¹¹ See ECE/MP.WAT/IC/2020/2, para. 10 (d) and (e), available at www.unece.org/index.php?id=52829.

¹² More information on committee initiatives is available at www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html.

Bosnia and Herzegovina with its obligations under the Convention with respect to the construction of the Buk Bijela hydropower plant;

(b) Portuguese political party, Pessoas–Animais–Natureza, received on 30 July 2020, expressing concerns about the non-application of the Convention by Spain to the planned lifetime extensions of two units of Almaraz nuclear power plant.

44. The Committee invited its Chair to write to the Parties of origin to:

(a) Request them to provide the Committee by 12 January 2020 with basic initial information on the above-mentioned issues;

(b) Transmit to the Parties concerned the information received from a correspondent – upon receipt of a related authorization – and invite them to provide any written explanations or statements clarifying the matter referred to in the correspondence and describing any response that might have been made in the meantime.

45. The Committee agreed to initiate its consideration of each matter separately at its forty-ninth session.

B. Convention matters

1. Bosnia and Herzegovina (EIA/IC/INFO/16, ECE/IC/INFO/23, ECE/IC/INFO/24)

46. The Committee continued its consideration of the matters regarding the planned construction by Bosnia and Herzegovina of a new thermal power plant in Banovici, unit 7 of the thermal power plant in Tuzla and a third block for the thermal power plant in Ugljevik.

47. It recalled that it had invited Bosnia and Herzegovina, Croatia and Serbia to join the current session online for the informal consultations regarding the activities, noting with regret the email correspondence from Bosnia and Herzegovina, dated 4 August 2020, and from Serbia, dated 29 July 2020, that they were unable to participate at the session and requesting that consideration be given to rescheduling of the consultations. The Committee agreed to exceptionally organize, for that purpose, a separate online session on 29 October 2020 and requested the secretariat to inform Bosnia and Herzegovina, Croatia and Serbia accordingly.

48. It examined the responses from Bosnia and Herzegovina and Serbia to the Committee's requests dated 14 January 2020 regarding the activities and noted with regret that Croatia had not provided any such responses despite numerous reminders from the secretariat.

49. The Committee considered that the related correspondence from Parties to the Committee should be made available to all Parties concerned to promote transparency and to increase the efficiency of the informal consultations. It asked the secretariat to write to Bosnia and Herzegovina, Croatia and Serbia requesting them to authorize sharing the information on the matters among the Parties concerned and to respond to the Committee's additional questions. It also asked the secretariat to once again write to Croatia requesting it to respond without delay to the Committee's letter of 14 January 2020.

2. Denmark: (EIA/IC/INFO/30)

50. The Committee continued its deliberations on the matter based on information received from Ukraine of 22 January 2019 concerning construction of a natural gas pipeline from the Russian Federation to Germany (Nord Stream 2 project), with Denmark, Finland, Germany and Sweden as Parties of origin. To avoid any direct or indirect conflict of interests, discussions under the agenda item were held in the absence of the members nominated by Finland and Sweden.

51. The Committee noted that no new information had been provided by Denmark and Ukraine regarding the status and outcome of the discussions under article 3 (7) of the Convention. It agreed to continue its consideration of the matter at its subsequent sessions upon receipt of any updates from the Parties concerned.

3. France: (EIA/IC/INFO/32)

52. The Committee continued its consideration of the information from Greenpeace France received on 9 March 2020 and completed by 5 May 2020. Greenpeace France expressed its concerns about the non-application of the Convention by France to the planned lifetime extensions of 32 units of eight nuclear power plants, including 4 units of Blayais nuclear power plant, 4 units of Bugey nuclear power plant, 4 units of Chinon nuclear power plant, 4 units of Cruas nuclear power plant, 4 units of Dampierre nuclear power plant, 6 units of Gravelines nuclear power plant, 2 units of St. Laurent nuclear power plant and 4 units of Tricastin nuclear power plant.

53. The Committee asked its Chair to write to France sharing with it – further to the authorization provided by the NGO – the information received, and inviting it to provide by 18 January 2021, its comments and views on that information and asking it to submit by that same date the following clarifications and information regarding the activities:

(a) A brief description of the activities, including information on: their location and distance from neighbouring countries, illustrating the location on a map also vis-à-vis the neighbouring countries; the gross electrical capacity of all units and the status of their operation; other relevant information;

(b) A list of other nuclear power plants subject to lifetime extension by 2030, indicating the number of units to be extended in each plant and a timeline for the expected extension;

(c) The state of play of each unit of the activities under consideration, including information on:

(i) The established design lifetime, the initial date of the final shutdown and the planned extension of lifetime;

(ii) The validity and nature (definite/indefinite) of current licences/authorizations and the need for their extension/alteration, along with information on original and previous licences and/or their extensions/alterations and the reasons for such alterations/extension;

(iii) Whether all supporting operations linked to the operation of the activities – such as those related to waste management, including radioactive waste, or the abstraction and release of cooling water – were covered by one overarching license/authorization or by individual licenses/authorizations. In the latter case, France should indicate whether the individual licences/authorizations were still valid and whether they would be affected by the lifetime extension of the activities;

(iv) Stages for the lifetime extension of the proposed activities, including list of steps and decisions/authorizations taken so far and/or to be taken.

(d) Clarifications regarding the national legislative framework of France concerning the lifetime extension of nuclear power plants (or continuation of the operation of the activities beyond their established design lifetime), in particular, the following:

(i) A detailed, step-by-step description of the national procedure for the extension of the lifetime of nuclear power plants;

(ii) Whether a domestic environmental impact assessment procedure and/or a screening was required for the planned extension of the lifetime of nuclear power plants in accordance with the national legislative framework;

(e) Whether a transboundary environmental impact assessment procedure had been carried out.

(i) If so, France should be invited to clarify whether and when France had notified or intended to notify the potentially affected Parties and to provide a step-by-step timetable for the entire transboundary procedure, along with copies of the notifications and the responses to the notifications by the affected Parties, if any;

(ii) If the potentially affected Parties had not been notified, France should provide a justification for such decision.

54. The Committee asked the secretariat to inform Greenpeace France of the outcome of the Committee's deliberations at the session and to invite it to provide any further relevant information on the matter by 19 January 2021 for consideration of the matter at its subsequent sessions.

4. Switzerland: (ECE/IC/INFO/25)

55. The Committee examined the information from the German civil initiative, dated 27 October 2019 and 29 July 2020, from Germany, dated 13 November 2019, and from Switzerland, dated 12 February 2020, concerning the planned changes by Switzerland at Zurich Airport, close to the border with Germany. It noted that:

(a) In the view of Germany, the construction of new taxiways and changes in the operating regulations could not be regarded as separate measures. Together with other measures, they were part of a comprehensive activity "extension of Zurich Airport". Although each measure separately might be regarded as a minor change, taken together, those multiple minor changes might add up to an overall project and might have a significant impact on the environment of Germany. In that regard, Germany considered itself as an affected Party;

(b) According to Switzerland, neither the high-speed taxiways from runways 28 and 34 nor the changes in the 2014 operating regulations had relevant impacts on the territory of Germany. However, the environmental impact assessment documentation developed by Switzerland in 2013 indicated that those three activities had been assessed separately, without consideration of their overall cumulative impact; while the 2017 changes to operating regulations had been addressed in another environmental impact assessment report prepared subsequently.

56. The Committee asked its Chair to write to Switzerland requesting it to:

(a) Clarify whether and how a cumulative impact from the three activities covered by the 2013 environmental impact assessment procedure had been assessed;

(b) Justify its conclusion that a significant transboundary impact on the territory of Germany could be excluded, taking into account the cumulative impact of the three activities referred to in point (a) above.

57. The Committee agreed to resume its consideration of the matter at its next session requesting the secretariat to inform Germany and the German civil initiative accordingly.

5. Ukraine

58. The discussions under the agenda item were held in the absence of the members nominated by Hungary to avoid any direct or indirect conflict of interests.

EIA/IC/INFO/13

59. The Committee considered information from Hungary, dated 25 February 2020, concerning the planned activity related to mining at the Muzhiyev goldmine and a possible reopening of the goldmine by Ukraine, close to the border with Hungary.

60. The Committee requested its Chair to write to both Parties to:

(a) Welcome their willingness to exchange information and to enter into discussions on the matter under article 2 (5) of the Convention demonstrated in early July 2019;

(b) Express the Committee's concern that, despite its willingness to organize personal consultations on 16 July 2019, Ukraine had not responded to the request of Hungary dated 15 July 2019 to carry out discussions under article 2 (5) of the Convention in writing and to provide, in that context, the environmental impact assessment documentation and the information referred to in appendix III of the Convention with regard to the proposed activity;

(c) Invite them to update the Committee by 12 January 2021 on the progress made since July 2019 in discussing the matter, substantiating the response with copies of the related correspondence between them, if any.

61. Should Ukraine not to date have responded to the request of Hungary of 15 July 2019, it should be asked to clarify its reasons for not doing so and to explain the reason for the lack of progress in the discussions initiated on the matter.

62. In the letter to Ukraine, the Chair should also ask Ukraine to provide the Committee with a description of the proposed activity, along with a description of its likely environmental impacts, including in a transboundary context, and information on the status of the proposed activity and on the related environmental impact assessment procedure.

63. The Committee agreed to continue its consideration of the matter at its subsequent sessions.

EIA/IC/INFO/29

64. The Committee continued its consideration of the matter concerning the construction of a large tourism complex (Svydovets mountains, Ukraine), close to the border with Hungary and Romania. The Committee noted with regret that information from Ukraine, received on 14 August 2020, did not contain answers to the Committee's questions regarding the application of Convention's provision 3(7) in its letter of 6 July 2020.

65. It then examined the information from Hungary, dated 27 July 2020, and from Romania, dated 7 August 2020. It recalled that Ukraine had informed its own public about the proposed activity in March 2018 and noted that, despite the requests from both Parties, Ukraine had not notified Hungary and Romania regarding the activity under articles 2 (4) and 3 (1) of the Convention. The Committee also noted that Ukraine had not responded to the reiterated request from Romania to exchange sufficient information and to enter into discussions, under article 3 (7) of the Convention, on whether a significant adverse transboundary impact from the activity was likely.

66. The Committee agreed that information available to it constituted a profound suspicion of non-compliance by Ukraine with its obligations under articles 2 (4) and 3 (1) and (7) of the Convention and decided to begin a Committee initiative further to paragraph 6 of the Committee's structure and functions. The Committee agreed to consider scheduling the discussions with Ukraine, to be organized further to paragraph 9 of the Committee's structure and functions, for its subsequent sessions.

C. Protocol matters

Poland (SEA/IC/INFO/4)

67. The Committee initiated its consideration of the information gathered further to the information provided on 11 February 2020 by a German parliamentarian expressing concerns about the application of article 10 of the Protocol (on transboundary consultations) by Poland regarding the draft Energy Policy of Poland until 2040.

68. The Committee welcomed the response by Poland, dated 10 June 2020, to its letter of 4 May 2020 concerning the Policy, the related strategic environmental assessment and the national legislation on strategic environmental assessment.

69. The Committee noted with appreciation that Poland had properly transposed all the Protocol's provisions into its national legislation on strategic environmental assessment.

70. It also noted that the Policy provided for the development of power production sources, including renewable energy sources, gas and nuclear energy sources, heat production sources and expansion of power, natural gas, oil and fuel transmission infrastructure. According to Poland:

(a) The draft Policy fell under article 4 (2) of the Protocol and the required strategic environmental assessment was ongoing;

(b) The nuclear section of the Policy was built on the comprehensive Polish Nuclear Power Programme adopted in 2014 upon completion of a separate strategic environmental assessment procedure, including in a transboundary context, with 10 States

being notified in 2011. Based on that Programme, the environmental impact assessment procedure for a nuclear energy project listed in the Policy had already been commenced;

(c) Based on the environmental report concerning the Policy, Poland had concluded that a significant transboundary environmental effect of implementing the Policy was not likely and that, subsequently, Poland had not notified the neighbouring countries under article 10 of the Protocol;

(d) At the request of Austria on 14 December 2018, Poland, taking into account the fact that Austria considered itself potentially affected, had entered into transboundary consultations with it, providing it with the environmental report and other supporting documentation, also in German. The transboundary consultations with Austria were still ongoing and once the Policy was adopted, Poland intended to inform Austria accordingly and make the Policy available to the Party consulted under article 11 (2) of the Protocol.

71. The Committee further noted that, to facilitate the implementation of the Convention and the Protocol, Poland and Germany, on 10 October 2018, had signed a bilateral agreement on environmental impact assessments and strategic environmental impacts in a transboundary context. Although the ratification of the agreement by Poland was pending, the Parties had come to an arrangement that the agreement should apply further to its ratification by Germany.

72. The Committee welcomed the constructive approach of Poland to application of the Protocol and its willingness to enter – at the current stage of the Policy’s development – into transboundary consultations with Germany in accordance with the Protocol, should Germany consider itself potentially affected with respect to the Policy’s implementation and request notification under article 10 (1) of the Protocol.

73. The Committee asked its Chair to write to Germany informing it about the information from the German parliamentarian and the response from Poland and inviting it to inform the Committee, by no later than 12 January 2020, whether it considered itself potentially affected with respect to the Policy. In case Germany considered itself potentially affected, it should take the necessary steps under article 10 of the Protocol without delay and inform the Committee accordingly.

74. The Committee also invited the Chair to write to Poland, informing it of the outcome of its deliberations at the current session and encouraging it to complete the transboundary procedure with Austria.

75. Additionally, the Committee asked its Chair to inform the correspondent of the outcome of its consideration of the matter, inviting it to contact the competent authorities of Germany directly should it wish to encourage Germany to enter into consultations with Poland regarding the Policy.

D. Other information-gathering procedures and specific compliance issues under the Convention and the Protocol

76. The Committee expressed regret that, owing to time limitations at its current session, it had to postpone its consideration of other information-gathering matters, along with the specific compliance issues related to the reviews of implementation of the Convention and the Protocol, to its subsequent sessions.

VI. Presentation of the main decisions taken and closing of the session

77. The Committee confirmed that it would next meet from 2 to 5 February 2021 and noted that its fiftieth and fifty-first sessions had been tentatively scheduled to take place in Geneva from 4 to 7 May 2021, and 5 to 8 October 2021, respectively.

78. The Committee agreed to adopt the draft report of its session, to be prepared with the support of the secretariat, using its electronic decision-making procedure. The Chair then formally closed the forty-eighth session.

Annex

Report of the Implementation Committee on its additional meetings held using videoconferencing between its forty-seventh and forty-eighth sessions

I. Introduction

1. Further to its decision at its forty-seventh session (Geneva (online), 16–19 March 2020) and with a view to progressing on postponed matters in advance of its forty-eighth session (Geneva, 1–4 September 2020), the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment held additional meetings on 26 May and 10 June 2020, using videoconferencing and without interpretation.

A. Attendance

2. The following members of the Committee attended the meetings: Ms. Aysel Rzayeva (Azerbaijan); Ms. Larissa Lukina (alternate member nominated by Belarus); Mr. Libor Dvorak (Czechia); Mr. Kaupo Heinma (Estonia); Mr. Lasse Tallskog (Finland); Ms. Zsuzsanna Pocsai (Hungary); Mr. Romas Švedas (Lithuania); Ms. Maria do Carmo Figueira (Portugal); and Mr. Anders Bengtsson (Sweden). Mr. Vladimir Buchko (Ukraine) and his alternate were absent.

B. Organizational matters

3. As proposed by the Chair, the Committee agreed to consider the following matters outstanding from its forty-seventh session:

(a) On 26 May 2020, to prepare the Committee's inputs to the draft guidance on the applicability of the Convention to the lifetime extension of nuclear power plants, including with regard to the Convention's provisions under article 2 (2) and (3);

(b) On 10 June 2020, to continue its consideration of:

(i) Information it had gathered concerning application of the:

a. Convention by:

i. Bulgaria regarding lifetime extension of Kozloduy nuclear power plant;

ii. Denmark, regarding construction of the Nord Stream 2 project;

iii. Ukraine, regarding the planned construction of: nuclear reactors 3 and 4 at Khmelnytsky nuclear power plant; and a tourism complex in the Svydovets mountains;

b. Protocol by Ukraine regarding the Programme of Ukraine for Hydro Energy Development for the Period until 2026;

(ii) The specific compliance issue regarding the European Union identified during the first review of implementation of the Protocol (ECE/MP.EIA/SEA/2014/3, para. 5);

(iii) The specific compliance issues identified during the fifth review of implementation of the Convention.¹³

¹³ See United Nations publication, ECE/MP.EIA/25.

II. Draft guidance on the applicability of the Convention to the lifetime extension of nuclear power plants

4. The Secretary to the Convention and its Protocol briefed the Committee on the revised schedule of an ad-hoc working group tasked to complete, by the end of June 2020, the draft guidance on the applicability of the Convention to the lifetime extension of nuclear power plants taking into account comments collected via written procedure and during videoconferences in May and June 2020.

5. The Committee observed that the number of cases before it related to public concerns regarding non-application of the Convention to planned lifetime extensions of nuclear power plants continued to grow rapidly. Currently, those cases covered 55 units of 16 nuclear power plants as compared to 19 units of 8 plants in 2019. Several Parties found themselves potentially affected by those activities and wished to participate in the related environmental impact assessment procedures in accordance with the Convention.

6. It reiterated that there was an urgent need for the above-mentioned guidance regarding lifetime extension of nuclear power plants currently being planned in the United Nations Economic Commission for Europe (ECE) region.

7. Further to its consideration of the guidance's draft chapters and the related discussion papers made available to it in May 2020, the Committee stressed that the guidance should be as concrete as possible, providing guiding principles and other criteria or preconditions for the Convention's application.

8. The Committee then considered application of article 2 (2) and (3) of the Convention. The Committee pointed out that the Convention was to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms and in the light of its object and purpose. Its interpretation was to consider the context, subsequent agreement and practice regarding the Convention's application, and relevant rules and principles of international law. The Committee recalled that, as set out in its preamble and article 2 (1), the Convention was based on the principle of prevention and the precautionary approach, and that its primary purpose was to effectively prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.

9. The Committee agreed that, in accordance with the principles of international law, by agreeing to take on the obligations under the Convention, the Parties had committed themselves to having in place and taking all the legal, administrative and other measures necessary to implement the treaty effectively within the domestic legal order, as stipulated in article 2 (2). Consequently, to comply with the Convention, and as provided for in article 2 (3), with respect to all proposed activities that fell within the Convention's scope, each Party must undertake an environmental impact assessment in accordance with the Convention, prior to proceeding with its decision-making to authorize or undertake such activities. Moreover, the Committee underlined that a "final decision" on the proposed activity was a core obligation under the Convention, which Parties must fulfil in accordance with article 6.

10. The Committee stated that the Convention applied to all proposed activities (activities and major changes to activities) listed in appendix I that were likely to cause significant adverse transboundary impact. If concerned Parties so agreed, the Convention could apply to any other such activity outside appendix I. As to the term "likely", the Committee reiterated its view that, in conformity with its primary purpose, even a low likelihood of a significant adverse transboundary impact should trigger the obligations of the Convention.

11. The Committee underlined that, while the Convention allowed its Parties flexibility regarding application of its procedures within diverse national contexts, that flexibility was limited by each Party's duty to comply with the Convention, and to implement it effectively and in keeping with its purpose. Regarding the domestic decision-making process, the Committee observed that Parties were free to determine which of the multitude of decisions required in accordance with the applicable national legal system and administrative procedures should be considered as a decision to authorize or to undertake a given proposed activity. The Committee emphasized, however, that independently of differences in national systems, no proposed activity within the Convention's purview should be undertaken or

authorized without taking due account of the outcome of the environmental impact assessment in accordance with the Convention.

12. Lastly, the Committee recalled its earlier opinion that, for the purpose of the Convention, final decisions were those that set in real terms the environmental conditions for implementing activities.

III. Information gathering

13. Discussions on information gathering were not open to observers, in accordance with rule 17 (1) of the Committee's operating rules.¹⁴

A. Bulgaria (ECE/IC/INFO/28)

14. The Committee continued its consideration of information regarding the lifetime extension of units 5 and 6 of Kozloduy nuclear power plant, Bulgaria, 3 km from the border with Romania.

15. The Committee reviewed the responses to the Committee's requests of 14 January 2020 by Austria, on 7 January 2020; Bulgaria, on 14 February 2020; Romania, also on 14 February 2020; and Serbia, on 18 February 2020.

16. It noted that, on 11 June 2015, Austria had requested Bulgaria for a notification about the activity. Bulgaria had informed Austria on that same date of its screening decision, particularly that lifetime extension of units 5 and 6 was not likely to have any significant adverse impact. No further steps had been taken by Austria. However, Austria emphasized that, in its view, every such extension required an environmental impact assessment procedure in accordance with the Convention.

17. Serbia stated that it had not been notified regarding the activities but considered itself a potentially affected Party intending to make use of the mechanism under article 3 (7) of the Convention.

18. According to Bulgaria and Romania there had been no distinct environmental impact assessment procedure regarding units 5 and 6. Cumulative environmental impacts of those units had been covered by other transboundary environmental impact assessment procedures, particularly those carried out by Bulgaria involving Romania in: 2001 regarding decommissioning of units 1–4; 2014 and 2016 on constructions of high and low radioactive waste treatment/disposal facilities; and 2015 regarding construction of a new nuclear unit.

19. The Committee noted that, after numerous requests concerning lifetime extension of units 5 and 6 from Romania to Bulgaria from 2015 to 2019, the Parties had met on 31 January 2020 and discussed issues related to lifetime extension of nuclear power plants by both Parties.

20. It also noted with regret that Bulgaria had failed to provide concrete and comprehensive answers to several Committee questions addressed to Bulgaria in the Committee's letter of 14 January 2020. The Committee requested the Chair to write to Bulgaria:

- (a) Reiterating its previous requests regarding licensing of activities;
- (b) Inviting Bulgaria, in the light of all the questions in the letter, to comment on information from World Nuclear News, particularly on upgrades implemented by Bulgaria from 2012 to 2019, prior to extending the operating lifetime of units 5 and 6 from 30 to 60

¹⁴ 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, annex (see ECE/MP.EIA/15) and VI/2, annex II (see ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1).

years, under a €360 million contract between the Kozloduy plant and the Rosenergoatom/Électricité de France consortium.¹⁵

21. In the letter, Bulgaria should also be invited to:

(a) Update the Committee on the proposed activity's status;

(b) Exchange sufficient information and enter into discussions with Serbia wishing to consider, further to article 3 (7) of the Convention, whether there was likely to be a significant adverse transboundary impact from the activity, and to inform the Committee of the outcomes of the discussions.

22. The Committee also asked its Chair to write to Serbia inviting it to address to Bulgaria without delay, if it had not yet done so, a request to exchange sufficient information and to hold discussions under article 3 (7) regarding the activities, and to provide the Committee, by 14 August 2020, with information on the outcomes of the discussions.

23. The Committee also asked the Chair to forward information from Bulgaria to Romanian non-governmental organization (NGO) Actiunea pentru Renasterea Craiove inviting it to provide, by 14 August 2020, its views and comments regarding the responses of Bulgaria to the Committee's questions and any other relevant information.

B. Denmark (EIA/IC/INFO/30)

24. The Committee continued its deliberations on the matter based on the information received from Ukraine of 22 January 2019 concerning construction of a natural gas pipeline from the Russian Federation to Germany (Nord Stream 2 project), with Denmark, Finland, Germany and Sweden as Parties of origin. To avoid any direct or indirect conflict of interests discussions under the agenda item were held in the absence of the members nominated by Finland and Sweden.

25. The Committee noted with appreciation information from Denmark dated 14 February 2020 that, further to the Committee's letter of 20 December 2020, Denmark, on 23 January 2020, had provided Ukraine with extensive information regarding the Nord Stream 2, including related environmental impact assessment documentation. It also noted that, on 7 February 2020, Denmark had addressed each concern of Ukraine regarding likely environmental impacts of the Nord Stream 2 on its territory that Ukraine had briefly listed in its letter to Denmark on 4 February 2020. The Committee found that the information provided by Denmark to Ukraine was sufficient for the purposes of holding discussions under article 3 (7) of the Convention.

26. The Committee also noted that Ukraine had informed Denmark –in writing on 14 February 2020 and during the first meeting between the Parties held using teleconferencing on 27 February 2020 – that it needed more time to study information provided by Denmark. The Committee further noted that the information provided by Ukraine to Denmark so far had lacked sufficient detail to substantiate its concerns and that Ukraine was still to provide Denmark – which had expressed its readiness to continue discussions – and the Committee with clear and comprehensive explanations and documentation regarding environmental impacts of the proposed activity on its territory.

27. The Committee invited its Chair to write to Denmark and Ukraine encouraging them to continue discussions under article 3 (7) of the Convention and reiterating the Committee's previous conclusion that appendix IV of the Convention regarding the enquiry procedure was not applicable unless all preconditions of article 3 (7) had been met, including regarding other methods of settling the question.

¹⁵ See <https://world-nuclear-news.org/Articles/Bulgaria-agrees-Kozloduy-6-life-extension-plan-wit>; <https://world-nuclear-news.org/Articles/Bulgaria-issues-Kozloduy-5-licence-extension>; <https://world-nuclear-news.org/Articles/Kozloduy-unit-6-clear-to-operate-for-another-10-ye>; and <https://www.world-nuclear.org/information-library/country-profiles/countries-a-f/bulgaria.aspx>.

C. Ukraine (EIA/IC/INFO/10)

28. The Committee continued its deliberations on information it had gathered on the planned construction of units 3 and 4 at Khmelnytsky nuclear power plant, Ukraine, in the absence of the members nominated by Belarus and Hungary, to avoid any direct or indirect conflict of interests.

29. The Committee recalled that Hungary, the Republic of Moldova, Romania and Slovakia had informed Ukraine of their willingness to participate in the reopened transboundary procedure regarding the proposed activity resumed in spring 2017. Ukraine in its response of 14 February 2020 to the Committee's repeated requests dated 16 April 2019, 7 October 2019, and 14 January 2020, had stated that: public and expert consultations with those Parties had been held in 2012 without providing reasons for not extending the consultations under the reopened transboundary procedure with other Parties (Austria, Belarus and Poland); and a final decision on the proposed activity had not been taken pending the adoption of its revised Energy Strategy for the Period up to 2035 that would be reviewed in late January 2020.

30. The Committee asked its Chair to write to Ukraine inviting it to engage with Hungary, Republic of Moldova, Romania and Slovakia without delay and to provide all Parties equal opportunity to participate in all steps of the transboundary environmental impact assessment procedure on the resumed activity and to report on the steps taken by 14 August 2020. The letter should emphasize that not involving four affected Parties in the transboundary procedure while carrying out a fully-fledged procedure with three other Parties constituted non-compliance with the Convention.

31. Recalling that Ukraine had been a Party to the Protocol since March 2017, the Committee asked the Chair to invite Ukraine to provide the following information and clarifications regarding its Energy Strategy for the Period up to 2035:

- (a) Whether the revised Strategy had been approved and, if so, when;
- (b) Should the Strategy not have been approved, a timetable for its revision, including an anticipated date for final approval and a timetable for concluding transboundary consultations regarding the activity, including for taking the final decision further to article 6 of the Convention;
- (c) Information on the Strategy's content, particularly on:
 - (i) 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) The scope of the Strategy's revision;
- (d) Clarification of the nature of possible environmental and health effects, if any, including possible transboundary effects, if any;
- (e) Whether a strategic environmental assessment, including in a transboundary context, had been carried out when preparing and revising the Strategy.

32. The Committee agreed to resume its consideration of the matter at its subsequent sessions.

D. Ukraine (EIA/IC/INFO/29)

33. The Committee continued to consider information it had gathered on the construction of a large tourism complex (Svydovets mountains, Ukraine), close to the border with Hungary and Romania, further to information provided by Swiss NGO Bruno Manser Fonds on 28 November 2018. The discussions under the agenda item were held in the absence of the members nominated by Hungary to avoid any direct or indirect conflict of interests.

34. The Committee noted the information from Bulgaria, dated 20 December 2019, that Bulgaria had concluded that there was no need for it to participate in the transboundary environmental impact assessment procedure regarding the activity.

35. The Committee then examined information from: Hungary, dated 12 February 2020; from Romania, dated 17 February 2020; from Ukraine, dated 14 February 2020; and Bruno Manser Fonds, dated 14 February 2020.

36. The Committee noted that, in its letter to the Committee of 14 February 2020, Ukraine had described the project in the context of deforestation of large areas (i.e. 430 ha to be subject to deforestation), the impacts on nature protection areas, the proximity to international borders (particularly with Romania – 65 km) and other factors, concluding that “the real scale of the planned activity, the area of implementation and the potential consequences of the planned activity would not have a significant negative impact on the environment of the neighbouring countries” and that the project “did not fall under the requirements of the Espoo Convention”. Conversely, Ukraine had also stated that it had been preparing an environmental impact assessment “to determine whether planned activities were subject to the requirements of the Espoo Convention”.

37. The Committee also noted that, despite its requests to Ukraine of 9 October 2019 and of 14 January 2020 to exchange sufficient information with Hungary and Romania and to hold discussions with them on whether there was likely to be a significant adverse transboundary impact under article 3 (7), and despite similar requests from Romania since October 2019, Ukraine had not provided the required information to the Parties concerned and the related discussions had not yet taken place.

38. In the Committee’s view, when, in the absence of a notification, a Party that considered itself affected by a significant adverse transboundary impact of a proposed activity listed in appendix I, requested the Party of origin to exchange sufficient information for the purposes of holding discussions on whether a significant adverse transboundary impact was likely, failure of a Party of origin to provide information that was sufficient and to enter into the corresponding discussions constituted non-compliance with article 3 (7) of the Convention.

39. The Committee asked the Committee’s Chair to write to Ukraine to: inform it accordingly; and urge it to exchange sufficient information and to enter into discussions with Hungary and Romania regarding the activity without delay. In the letter, the Chair should also request Ukraine to:

(a) Inform the Committee, by 15 August 2020, of the discussions’ outcomes, preferably in a joint document, or to explain why such discussions had not taken place;

(b) Provide the Committee with copies of all relevant correspondence with Hungary and Romania;

(c) Inform the Committee about the status of the proposed activity and the process to assess its likely significant transboundary impact.

40. The Committee also asked its Chair to write to Hungary and Romania inviting them, as potentially affected Parties, to address Ukraine without delay, if they had not yet done so, with a request to exchange sufficient information and to hold discussions on whether a significant adverse transboundary impact was likely, and to provide the Committee, by 15 August 2020, with information on the status and outcomes of the discussions and copies of all relevant correspondence with Ukraine.

41. The Chair was asked to share among the Parties concerned all relevant information made available to the Committee by Hungary, Romania, Ukraine and Bruno Manser Fonds, inviting them to provide their views and comments regarding that information.

42. Lastly, the Committee asked its Chair to inform Bruno Manser Fonds of the outcome of the Committee’s deliberations and invite it to provide any additional relevant information by 14 August 2020.

E. Ukraine (SEA/IC/INFO/3)

43. The Committee examined information from NGO Eco-TIRAS, Republic of Moldova, dated 17 January 2020, concerning the Programme of Ukraine for Hydro Energy Development for the Period until 2026, adopted by the Government of Ukraine on 13 June 2016, and the related Kyiv Administrative Court of Appeal decision of 18 May 2018.

44. The Committee confirmed its previous conclusion that there was no need for it to pursue further its information-gathering activities regarding the issue (ECE/MP.EIA/IC/2019/6, para. 105). It emphasized that, taking into account the usual time frames needed for a Government to develop its plans/programmes, the order of a Prime Minister of Ukraine – referred to in the court decision – which had been issued one month prior to the Programme’s adoption, could not be considered as a first formal preparatory act for the Programme.

45. The Committee asked its Chair to write to Eco-TIRAS thanking it for its work and informing it of the outcome of the Committee’s consideration of the matter.

IV. Specific compliance issue under the Protocol

46. The Committee continued to consider 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, para. 5).

47. Further to its deliberations at its forty-sixth session (Geneva, 10–13 December 2019), and in the light of the Protocol’s requirements, including those under articles 2 (5), 4 and 13, the Committee considered issues of the Protocol’s applicability to plans/programmes set out in European Union legislation and adopted at European Union level, including:

(a) Investment plans pursuant to European Union Regulation No. 913/2010 concerning the rail transport sector;¹⁶

(b) A policy framework for climate and energy in the period 2020–2030;¹⁷

(c) The Community-wide network development plan pursuant to European Union Regulation No. 714/2019 related to the energy sector;¹⁸

(d) Total allowable catches, fishing opportunities (quotas) and multi-annual plans pursuant to European Union Regulation No. 1380/2013;¹⁹

(e) Work plans pursuant to European Union Regulation No. 1315/2013 concerning the transport sector.²⁰

48. In doing so, the Committee considered division and performance of powers in the European Union and the character of plans and programmes that had been under the Committee’s consideration from 2014 to 2017.

49. The Committee noted that the European Union had been a Party to the Protocol since November 2008. Pursuant to article 4 (2) of the Treaty on the Functioning of the European Union,²¹ shared competence between the European Union and its member States applied in all three areas (transport, energy, and fisheries) of the plans/programmes under the Committee’s consideration. Consequently, it would be erroneous to conclude that the member States, through implementation of the European Union Strategic Environmental Assessment Directive,²² were solely responsible for implementation of the Protocol for those plans/programmes and that the European Union had no role in that regard. Should the plan/programme be prepared and adopted at European Union level, including by bodies established or designed by the European Union according to European Union law, the member States, while following the plan/programme adopted previously by a European Union body, might subsequently have the scope of their activities reduced.

¹⁶ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0913>.

¹⁷ See <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52014DC0015>.

¹⁸ See <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>.

¹⁹ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1380#:~:text=Regulation%20%28EU%29%20No%20A01380%2F2013%20of%20the%20European%20Parliament%20and,No%20A02371%2F2002%20and%20%28EC%29%20No%20A0639%2F2004%20and%20Council%20Decision%202004%2F585%2FEC>.

²⁰ See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.348.01.0001.01.ENG.

²¹ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>.

²² See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0042..>

50. Regarding characteristics and the character of the plans/programmes examined by it, the Committee noted that those plans/programmes fell under the definition of “plans and programmes” as provided for by article 2 (5) of the Protocol and had been prepared for sectors listed in article 4 (2) of the Protocol.

51. Subsequently, it examined whether the plans/programmes in question set the framework for future development consent for projects listed in annexes I and II to the Protocol as required by article 4 (2) of the Protocol. In the Committee’s view, a plan/programme set a framework for a future development consent when there was a link between a strategic level decision-making procedure, such as the development and adoption of the plan/programme, and a project level decision-making procedure, such as a development consent procedure, particularly when a plan/programme foresaw conditions and/or requirements for a future permitting procedure, including regarding location, nature, size and operation conditions, or by allocating resources.

52. Thus, the Committee concluded that the plans/programmes in question contained some elements relevant for environmental assessment procedure – such as the multi-annual plans setting out quantifiable targets and the work plans comprising an analysis of possible impacts of climate change and proposed measures for mitigating greenhouse gas emissions, noise and, as appropriate, other negative environmental impacts. Nonetheless, those plans/programmes had not, fully or partially, provided the framework for future development consent of the projects listed in or envisaged by them. Moreover, some of those plans/programmes, such as the work plans, had merely summarized relevant information from national plans/programmes for which a strategic environmental assessment had been carried out previously, at the national level.

53. Consequently, the Committee considered that: the documents listed in paragraph 47 (a)–(e) above could not be regarded as plans/programmes under article 4 (2) of the Protocol; and those documents constituted guidance documents of a political nature providing objectives, strategic direction, key elements and general description of the proposed measures for future sectoral development and should be regarded as policies falling under article 13 of the Protocol.

54. The Committee agreed that there was no need for it to pursue further its information-gathering activities regarding the Protocol’s applicability to plans/programmes adopted at European Union level.

55. Recalling its deliberations at its forty-fifth (Geneva, 10–13 September 2019) and forty-sixth sessions, the Committee agreed to:

(a) Continue monitoring the issue of discrepancies between the European Union Strategic Environmental Assessment Directive²³ and the Protocol examined by it at its previous sessions, also taking into account the expected European Union clarifications concerning the Directive, particularly regarding the identified uncertainty surrounding its scope;

(b) Finalize its work on preparing the reporting format for regional economic integration organizations for the next reporting round on the period 2019–2021.

56. The Committee invited its Chair to write to the European Union informing it of the outcome of the Committee’s deliberations and drawing its attention to the obligations deriving from article 13 of the Protocol, including on reporting under article 13 (4).

V. Examination of general and specific compliance issues from the fifth review of implementation of the Convention

57. The Committee continued its consideration of specific compliance issues identified in the fifth review of implementation of the Convention (ECE/MP.EIA/2017/9) by examining replies from Portugal received on 19 March 2020 in response to the Committee’s letters of 11 April 2019, 9 October 2019 and 14 January 2020 repeatedly requesting further clarifications on how Portugal, as an affected Party, ensured public involvement in the environmental impact assessment procedure under articles 3 (8) and 4 (2) of the Convention.

²³ See <https://ec.europa.eu/environment/eia/sea-legalcontext.htm>.

The Committee agreed that the Party's responses were to its satisfaction. It asked the Committee's Chair to inform the Government of Portugal accordingly, requesting the agreement of the Party to publish the information on the Convention website as an illustration of the Committee's approach to the matter.

VI. Presentation of the main decisions taken and closing of the session

58. The Committee agreed to adopt the draft report of its additional meetings, to be prepared with the secretariat's support, using its electronic decision-making procedure and to annex it to the Committee's report on its forty-eighth session. The Chair formally closed the forty-seventh session.
