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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-fourth session

Geneva, 8–10 December 2015

Report of the Implementation Committee on its thirty-fourth session

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I Introduction

1. The thirty-fourth session of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA) was held from 8 to 10 December 2015 in Geneva, Switzerland.

2. At the beginning of the meeting, the secretariat reported that Ukraine had deposited its instrument of ratification of the Protocol on Strategic Environmental Assessment on 2 December 2015. In accordance with article 24, paragraph 1, of the Protocol, the treaty would enter into force for Ukraine on 1 March 2016. The Committee welcomed Ukraine's participation in the Protocol.

A. Attendance

3. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Mr. Vladimir Buchko (Ukraine); Ms. Elyanora Grigoryan (Armenia); Mr. Kaupo Heinma (Estonia); Ms. Lourdes Aurora Hernando (Spain); Mr. Jerzy Jendrośka (Poland); Ms. Zsuzsanna Pocsai (Hungary); Mr. Romas Švedas (Lithuania); Mr. Felix Zaharia (Romania); and Ms. Nadezhda Zdanevich, who had been appointed by the Government of Belarus to replace Mr. Ivan Narkevich. Ms. Ornela Shoshi (Albania) was absent.

4. In addition, the Government of France had appointed Mr. David Catot to replace Mr. Michel Prieur, who had stepped down for private reasons. Mr. Catot, however, had informed the Committee that he was unable to attend the present meeting.

5. The Committee welcomed the new member nominated by Belarus.

6. A representative of Belarus was present for the adoption of the agenda.

B. Organizational matters

7. The Chair of the Committee, Mr. Zaharia, opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2015/3).

8. The secretariat informed the Committee that Belarus and France had appointed Ms. Tatjana Laguta and Mr. Marc Clément, respectively, as their alternate members. The Committee members from Romania and Ukraine informed the Committee that they were liaising with their Governments regarding the final appointment of alternate members, and that in the case of Romania the alternate was likely to be appointed by the end of the year.

II. Follow-up to decision VI/2

9. 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, according to rule 17, paragraph 1, of the Committee's operating rules, and took place in the absence of members nominated by Armenia, Belarus, Lithuania and Ukraine during the consideration of the cases concerning their countries.

A. Ukraine

1. Bystroe Canal Project (EIA/IC/S/1)¹

10. The Committee considered the report by the Government of Ukraine of 13 November 2015 regarding the follow-up to decision VI/2 (paras. 15–28). By that decision, Ukraine had been requested to adopt relevant legislation and to bring the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (the Bystroe Canal Project) into full compliance with the Convention by the end of 2015 (paras. 24–25). The Committee also considered the letters from Ukraine and Romania of 3 March and 16 March 2015, respectively, in response to the Committee’s letters to both Parties on 31 December 2014. Before leaving the session, the Committee member nominated by Ukraine provided an update of the status of the draft legislation and the various positions within the Verkhovna Rada, i.e., the Ukrainian parliament, regarding its adoption.

11. The Committee curator for follow-up to the case presented an in-depth analysis of the current situation regarding the case. The Committee took note of the clarification provided by Ukraine that the draft law “On assessing the impact on the environment” of May 2014 had been revoked after Ukraine had signed the Association Agreement with the European Union in June 2014. A new draft law on “Environmental Impact Assessment” had been developed to align Ukrainian legislation with the Convention and European Union legislation. The draft had been registered with the Ukrainian parliament. The Committee had been provided with an English translation of the draft, which, however, had been slightly amended since then in the context of consultations with the European Commission.

12. The Committee welcomed the developments in legislation, but considered that as there was still no certainty about the final draft, it would be too early to proceed with the review of required legislation, as mandated by paragraph 25 (a) of decision VI/2.

13. The Committee then noted that Ukraine had not provided any information on the steps taken to bring the Bystroe Canal Project into full compliance with the Convention, specifically the proposed measures in decision V/4, paragraph 19 (see ECE/MP.EIA/15),² which requested Ukraine to fulfil recommendations set out in a European Union report on the issue. Decision VI/2 also required Ukraine to refrain from any measure or programme which could jeopardize the fulfilment of the recommendations contained in the report. The Committee expressed its concern that the lack of information seemed to indicate that Ukraine had taken no relevant steps to bring the Project into full compliance with the Convention.

14. With regard to the Meeting of the Parties’ request to Ukraine to inform Romania about existing monitoring results and to consult with Romania on the post-project analysis, according to article 7 of the Convention (decision VI/2, para. 26), the Committee took note of the information provided by Ukraine that a report on comprehensive monitoring had been sent to Romania in April and October 2015. It noted, however, that the information was still limited. The Committee also took note of the information regarding the steps undertaken by Ukraine and Romania to further develop a bilateral agreement for improved implementation of the Convention.

15. The Committee then requested the secretariat to encourage the adoption of the environmental impact assessment (EIA) law in Ukraine, including by having the Executive

¹ Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

² Available from http://www.unece.org/env/eia/meetings/mop_5.html#.

Secretary of the Economic Commission for Europe (ECE) send letters on its behalf to the President of Ukraine, the Chair of the Ukrainian parliament and the Chair of the parliamentary committee on issues of European integration. The letters should highlight the importance of the adoption of the law to ensure the country's compliance with its commitments under the Convention, which had been an issue of concern for the past 10 years.

16. The Committee concluded that Ukraine had not provided adequate reports as required by decision VI/2. In order to obtain sufficient information, the Committee asked the Chair to write to the Government of Ukraine inviting it to attend its forthcoming session to discuss progress made in complying with the decisions of the Meeting of the Parties. The invitation letter should include references to the issues that the Committee considered needed to be addressed during the discussion. The Committee asked the curator to prepare the questions, which members would discuss electronically.

17. The Committee further asked the Chair to write to Romania asking for its views on the ongoing consultations with Ukraine on the post-project analysis and the possible development of a bilateral agreement with Ukraine on the implementation of the Convention. Romania should provide its views by 29 February 2016.

2. Rivne nuclear power plant (EIA/IC/CI/4)³

18. The curator for Committee initiative EIA/IC/CI/4 provided an analysis of the current situation regarding the case. In that context, the Committee considered information from Ukraine dated 3 March 2015, in response to the Committee's request of 31 December 2014. Ukraine had specifically informed the Committee that national EIA legislation did not require the carrying out of an EIA procedure for planning and implementing activities relating to the extension of the operation of a nuclear power plant (NPP) and that, as evidence proved, that was in accordance with established international practice. In its response, Ukraine had also indicated that although the Meeting of the Parties had endorsed the Committee's findings and recommendations that the extension of the lifetime of the Rivne NPP was subject to the Convention, Parties were continuing dialogue on the implementation of the Convention to activities relating to the extension of the lifetime of NPPs, since practice by Parties in that regard varied across the region.

19. The Committee also took note of the information submitted by the National Ecological Center of Ukraine and Ecoclub Rivne on 2 February and 4 December 2015 asserting the alleged failure by Ukraine to apply the Convention in the extension of lifetime of other nuclear facilities in Zaporizha and South Ukraine, and the lack of applicable legislation in Ukraine to cover similar activities. In their letter, the non-governmental organizations (NGOs) referred to the exchange of correspondence between Ukraine and Austria, Hungary, Romania and Slovakia, which according to the NGOs had requested information about the decision-making process. The NGOs also referred to a letter by the European Commission of 29 September 2015 expressing the view that, whether or not it involved any physical works, any decision by Ukraine to extend the lifespan of any of its NPPs would require assessments under the Espoo Convention and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

20. The Committee agreed that the response of Ukraine indicated that it had not taken any specific measures to meet the Meeting of the Parties' request further to the

³ 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>.

endorsement of the Committee's finding on non-compliance by Ukraine with article 2, paragraphs 2 and 3, article 4, paragraph 1, and articles 3 and 6 of the Convention. The Committee expressed its disappointment at the reluctance of Ukraine to take measures on the issue. It then asked the curator for the case, in consultation with the Chair, to prepare an analysis and draft advice for Ukraine on the implementation of decision VI/2 in respect of the Rivne NPP. The Committee also expressed the wish that the new law on EIA address either directly or indirectly, by reference to specific legislation in the nuclear field, the existing gaps in the application of the EIA procedure in cases involving the extension of the lifetime nuclear facilities. That message should be conveyed to the Party concerned by the Executive Secretary in his letters to the President of Ukraine, the President of the Ukrainian parliament and the Chair of the parliamentary committee on European integration (see para. 15).

B. Armenia

1. Law on environmental impact assessment (EIA/IC/CI/1)⁴

21. The Committee considered the information provided by Armenia in its letter of 25 February 2015. Armenia explained that the Armenian parliament and NGOs were discussing the comments made by international and national consultants on the national Law on EIA, in particular with regard to the terminology, the clear division of the EIA and strategic environmental impact (SEA) procedures and public participation. Public participation aspects had already been taken into account in the Government's decision of 19 November 2014. An opinion on the necessary legislative amendments had also been prepared by a consultant to the secretariat, in the context of the legislative assistance to Armenia foreseen in the workplan,⁵ with funding from the European Union under the Greening the Economies in the Eastern Neighbourhood (EaP Green) Programme, and had been available to the Committee in the Russian language since March 2015.

22. Before leaving the session, the Committee member nominated by Armenia provided an update of the situation since February 2015. She explained that Armenia had decided to proceed with the finalization of the amendments after the pilot application of SEA to a strategic document in the area of waste management. The pilot would be implemented in the context of the legislative assistance to Armenia foreseen in the Espoo workplan, with funding from the European Union, and the amendments would be implemented in the course of 2016. In the meantime, the authorities were preparing the English translation of Government decision No. 1325 of 19 November 2014 on public participation, which would be sent to the Committee once it was finalized.

23. The Committee took note of the information. It also noted that the new law departed from the traditional expertiza system,⁶ which was common in the countries in Eastern Europe, the Caucasus and Central Asia, and the transboundary procedure was sufficiently regulated. However, practical application of the law could create confusion, because both EIA and SEA procedures were not clearly distinguished from each other. It agreed to wait for the English translation of the Government's decision of 19 November 2014 on public participation and to consider it at its next session.

⁴ Ibid.

⁵ See ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3, decision VI/3-II/3, annex I.

⁶ See general guidance on enhancing consistency between the Convention and environmental impact assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia (ECE/MP.EIA/2014/2), available from http://www.unece.org/env/eia/meetings/mop_6.html#/.

2. Metsamor nuclear power plant (EIA/IC/S/3)⁷

24. At its thirty-second session (Geneva, 9–11 December 2014), the Committee had considered that the information provided by Armenia dated 19 November 2014 regarding the planned new unit at the Metsamor NPP had been satisfactory, and had decided it would take the information into account for the preparation of its report for the next session of the Meeting of the Parties in 2017. At the present session, the Committee took note of further information from Armenia dated 25 February 2015 that, by a decision of 19 May 2014, the Government had approved the Government Programme. The energy chapter of the Programme had simply provided a list of the Government priorities in the energy sector in the country and therefore, in the view of the Government, an SEA procedure was not required and had not been carried out.

25. The Committee agreed to ask Armenia to send an English translation of the Government Programme. It asked the Chair to send a letter to that effect. The information should be provided by 29 February 2016 for the Committee to consider at its next session

C. Azerbaijan⁸

26. At the Committee's request, on 3 August 2015, Azerbaijan had provided an English translation of the latest version of its draft framework law on environmental assessment. In accordance with the Espoo workplan, the draft law was being developed with the help of ongoing technical advice from the secretariat, with funding from the European Union under the EaP Green Programme.

27. The Committee member acting as an international consultant in the legislative assistance project commented that, given the lack of any legislative framework in the past in the area, substantial progress had been achieved. The present draft provided for a regulatory framework on public participation and transboundary EIA procedures. However, if adopted, amendments would be necessary to bring the law into full compliance with the Convention and the Protocol. In addition, the national experts involved in the exercise had stressed the need to raise awareness among national high-level officials about the requirements of the Convention and the Protocol.

28. A representative of the secretariat, reporting on the legislative advice provided, noted that Azerbaijan had withdrawn the draft for which the Committee had received an English translation. The Government was now developing an updated version of the draft law to ensure proper transposition of the requirements of the Convention and the Protocol. The new version was expected to be prepared by March 2016.

29. The Committee took note of the information. It noted with regret that Azerbaijan had still not adopted the draft environmental assessment law and that the adoption of such a law had already been pending for several years. It asked the Chair to send a letter to Azerbaijan reminding it of the Meeting of the Parties' request in decision VI/2 that the Government of Azerbaijan adopt the draft law and the subsequent implementing regulations. In accordance with decision VI/2, the Committee would report to the Meeting of the Parties at its next session, in June 2017, on its evaluation of the legislation adopted in accordance with the Convention (decision VI/2, paras. 42–43). On that basis, Azerbaijan

⁷ Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

⁸ 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>.

should be urged to adopt the legislation, as well as the subsequent implementing regulations, as soon as possible so that the Committee would be able to evaluate it in its report to the Meeting of the Parties at its next session.

D. Belarus⁹

30. The Committee then considered its follow-up to decision VI/2 (paras. 48–64) regarding Belarus. At the Committee's request, on 24 June 2015, Belarus had clarified that the Presidential Decree of 23 November 2013 could change the site selected by the Decree of 2011 on the location of the NPP, if the information arising from the development of the project documentation, the conduct of transboundary EIA procedures or the carrying out of the ecological expertise provided evidence of the possibility of significant transboundary impacts or factors that would prohibit the construction of the NPP on the selected site.

31. Belarus and Lithuania had also submitted their reports to the Committee on the implementation of the Meeting of the Parties' recommendations, on 23 November and 4 December 2015, respectively. The Committee had also been copied on the correspondence between the two Parties.

32. In the view of the Committee, the matters of disagreement between the two Parties related to scientific and other technical matters. The Committee recalled that, according to its structure and functions, its mandate was to provide advice and recommendations, *inter alia*, relating to technical matters (decision III/2, appendix, para. 4 (c)); but since it did not in this specific case have the sufficient technical and scientific knowledge to assess compliance by Belarus with the Convention on that basis, it was necessary for it to seek the services of scientific experts and other technical advice or consult other relevant sources, according to its structure and functions (*ibid.*, para. 7 (d)).

33. The Committee agreed that, subject to the agreement of Belarus and Lithuania, it would be useful if the two countries established and financed an expert body modelled after the inquiry commission provided for under appendix IV to the Convention. In that regard, the Committee asked the Chair to send letters to the Governments of Belarus and Lithuania seeking their views about the possibility of establishing such an expert body and inviting representatives of both countries to the Committee's thirty-fifth session (Geneva, 15–17 March 2016) to discuss the steps they had taken to implement the recommendations in decision VI/2. The Committee also agreed that the Chair should invite the Bureau, including its members representing Belarus and Lithuania, to discuss the establishment of the expert body at the next meeting of the Bureau (Geneva, 19–20 January 2016).

III. Submissions

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

⁹ Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

IV. Committee initiative¹⁰

35. Discussions on Committee initiatives were not open to observers, in accordance with rule 17 of the Committee's operating rules.

A. United Kingdom of Great Britain and Northern Ireland

36. The Committee drafted its findings and recommendations further to its initiative on the United Kingdom of Great Britain and Northern Ireland regarding the planned construction of the Hinkley Point C NPP (EIA/IC/CI/5). In preparing its draft, the Committee took into account the information brought to its attention before, during and after its thirty-third session (Geneva, 17–19 March 2015).

37. The Committee agreed to send the draft findings and recommendations to the United Kingdom at the beginning of January 2016. In accordance with paragraph 9 of the structure and functions of the Committee, the Chair should invite the Government of the United Kingdom to submit to the secretariat, by 7 March 2016 at the latest, its comments or representations, which were to remain confidential at that stage.

38. The Committee agreed to consider any comments or representations at its thirty-fifth session before finalizing its findings and recommendations for consideration by the Meeting of the Parties to the Convention at its next session.

B. Serbia

39. At its previous session, the Committee had decided to begin a Committee initiative concerning compliance by Serbia with its obligations under the Convention in relation to the planned construction of the Kostolac lignite power plant in north-east Serbia, by the River Danube, close to the border with Romania (EIA/IC/CI/6). Ms. Pocsai was designated as the new curator for the case. The Committee took note of the information dated 20 November 2015 from Serbia that no further information on the activity in question was available because of pending domestic administrative remedies questioning the validity of the final decision vis-à-vis the compliance of Serbia with the Espoo Convention.

40. The Committee asked the curator to prepare an analysis of the situation regarding the case in advance of the Committee's thirty-fifth session, and to decide whether Serbia should be invited to participate and to present information and opinions on the matter under consideration at its thirty-sixth session (Geneva, 5–7 September 2016).

V. Information gathering¹¹

41. Due to the absence of the curator for the case, the Committee postponed to its next session consideration of the information it had gathered concerning compliance by Serbia with the Protocol in relation to the Government's Energy Strategy and the Spatial Plan

¹⁰ Information on Committee initiatives, including relevant documentation, is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>.

¹¹ More information on information-gathering cases, including relevant documentation, is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>.

(EIA/IC/INFO/14) further to original information received from an NGO on the planned construction of the Kostolac lignite power plant in north-east Serbia by the River Danube, close to the border with Romania (see paras. 39–40 above).

42. Due to time constraints, the Committee also postponed to its next session consideration of the information provided by the NGO Center for Environment (Bosnia and Herzegovina) concerning compliance by Bosnia and Herzegovina in relation to the planned construction of a third block for the thermo-power plant in Ugljevik, close to the border with Serbia (EIA/IC/INFO/16), and the planned construction of a new thermo-power plant in Stanari, close to the border with Croatia (EIA/IC/INFO/17). It designated Ms. Zdanevich as the new curator for both cases.

A. Ukraine

43. Following on from its discussion at its thirty-second session in March 2015, the Committee continued its consideration of the information it had gathered further to information provided by a Belarusian NGO on the planned construction of nuclear reactors 3 and 4 at the Khmelnytskyi NPP in Ukraine (EIA/IC/INFO/10).

44. The Committee reviewed the information from Ukraine dated 13 November 2015 and, after an analysis presented by the curator, it agreed that since Ukraine had renounced the cooperation agreement with the Russian Federation for the construction and financing of the third and fourth power units of the Khmelnytskyi NPP, putting off implementation of the activity, there was no need to further pursue its information gathering. It asked the Chair to write to Ukraine to inform it accordingly, with a copy to the NGO. The Chair should also request the agreement of Ukraine that the correspondence between the Committee and Ukraine be placed on the Convention's website, as an illustration of the Committee's approach to information gathering and of a proper and sufficient response from a Party to address the issue.

B. The Netherlands

45. The Committee then turned to the consideration of the information it had gathered further to the information provided by the NGO Greenpeace Netherlands concerning the extension by the Netherlands of the lifetime of the Borssele NPP (EIA/IC/INFO/15). The Committee took note of information from Belgium dated 20 March 2015 in response to the Committee's letter of 24 December 2014 and from Germany dated 29 May 2015 in response to the Committee's letter of 28 April 2015.

46. The Committee designated Ms. Zdanevich as a co-curator for the case along with Mr. Buchko. Further to an analysis presented by Mr. Buchko, the Committee agreed to continue its consideration of the matter at its next session. It also agreed that it would decide electronically whether it would possibly need further information from the Netherlands before its next session.

VI. Review of implementation

47. At its previous session, the Committee had discussed the modification of the questionnaires for the fifth review of implementation of the Convention and the second review of implementation of the Protocol, covering the period 2013–2015. Taking into account the comments from the Bureau at its February 2015 meeting and from the World

Health Organization, the Committee had completed the modification of the questionnaires via electronic means.

48. The secretariat reported that the modified questionnaires had been submitted to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its fourth meeting (Geneva, 26–28 May 2015) for consideration. The Working Group had approved the questionnaires with a number of amendments and had agreed on the timetable for the distribution and return of the questionnaires for the preparation by the secretariat of the draft fifth review of implementation of the Convention and the draft second review of implementation of the Protocol. According to the Working Group's request, the secretariat had revised the two questionnaires, arranged for their translation into the other official languages of ECE and had disseminated the questionnaires on 31 October 2015 for completion by 31 March 2016.

49. Due to time constraints, the Committee postponed consideration of the failure of the United Kingdom to report on its implementation of the Convention and the failure of Portugal to report on its implementation of both the Convention and the Protocol in the period 2010–2012. The Committee also postponed consideration of the specific compliance issue from the fourth review of implementation regarding Cyprus. The Committee took note, however, of the information that on 25 June 2015 Ireland had returned its questionnaire on its implementation of the Convention for the previous reporting round and that on 17 November 2015 Luxembourg had returned its questionnaires on implementation of both the Convention and the Protocol.

50. The Committee examined a reply from the European Commission received on 21 October 2015 in response to the Committee's letter of 9 June 2015, including questions that the Committee had decided on using its electronic decision-making procedure after the thirty-third session. The Committee agreed to continue consideration of the case at its next session.

51. Finally, the Committee took note of the lack of a response from Bosnia and Herzegovina to its letters requesting information regarding the content of the transboundary notification, further to the responses provided by the country to the questionnaire for the implementation of the Protocol in the period 2010–2012. Since Bosnia and Herzegovina had completed the questionnaire without being a Party to the Protocol, the Committee agreed to close the case. It asked the Chair to send a letter to Bosnia and Herzegovina welcoming its reports on the implementation of the Protocol as merely a Signatory, encouraging ratification by Bosnia and Herzegovina of the Protocol and offering the Committee's assistance in the country's efforts to become a Party to and implement the Protocol.

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

52. The Committee agreed to hold its thirty-fifth session from 15 to 17 March 2016; its thirty-sixth session from 5 to 7 September 2016; and its thirty-seventh session from 12 to 14 December 2016.

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