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Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context

Implementation Committee

Thirtieth session

Geneva, 25–27 February 2014

Report of the Implementation Committee on its thirtieth session

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I. Introduction

1. The thirtieth 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 25 to 27 February 2014 in Geneva, Switzerland.

A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Ms. A. Babayeva (Azerbaijan); Ms. S. Dimitrova (Bulgaria); Ms. E. Grigoryan (Armenia); Mr. J. Jendroška (Poland); Ms. V. Kolar-Planinšič (Slovenia); Ms. L. Papajová Majeská (Slovakia); Ms. T. Plesco (Republic of Moldova); Mr. M. Prieur (France); and Mr. F. Zaharia (Romania). Mr. J. Brun (Norway) attended a part of the meeting. Mr. J. I. Contreras Fernández, replaced Ms. L. A. Hernando (Spain) for the present session. With the prior agreement of Ms. Hernando, the Chair of the Committee acted as the curator for the matters for which Ms. Hernando had been nominated curator. Representatives of Azerbaijan and Belarus were present for the adoption of the agenda as observers. The international consultant to the secretariat, Mr. D. Skrylnikov, who had provided recommendations for the preparation of draft legislation in Armenia and Azerbaijan, was also present as an observer for the discussions on relevant agenda items.

B. Organizational matters

3. The Chair of the Committee, Ms. Kolar-Planinšič, opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2014/1).

II. Submissions

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

III. Follow-up to decision V/4

5. Discussions concerning follow-up to decision V/4 of the Meeting of the Parties (MOP) to the Convention (see ECE/MP.EIA/15) were not open to observers, according to rule 17, paragraph 1, of the Committee's operating rules. With the agreement of the Party whose compliance was in question, the Committee decided that the part of the meeting dealing with the follow-up to decision V/4 by Armenia would be attended by the international consultant to the secretariat.

A. Ukraine

6. The Committee considered the information provided by Ukraine on 14 February 2014 in response to the Committee's letter of 17 December 2013, seeking further clarification on the steps taken by Ukraine to bring about compliance with its obligations under the Convention as requested by the MOP at its fifth session (Geneva, 20–23 June 2011) (decision V/4, para. 24). The Committee also considered information provided by

Romania on 17 February 2014 on the progress in the implementation by Ukraine of decision V/4.

7. The Committee observed that Ukraine's answers focused on information about the preparation of legislation and the progress achieved with regard to monitoring. It welcomed the information on monitoring as a good basis for meeting the requirements under article 7 of the Convention. However, the Committee regretted that, despite being explicitly requested to do so, Ukraine had still failed to provide complete and specific information on the progress achieved with regard to the implementation of the strategy of the Government to implement the Convention, the adoption of concrete legislative measures to that effect and the specific actions to bring the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian Sector of the Danube Delta (Bystroe Canal Project) into full compliance with the Convention.

8. Specifically, the Committee noted the lack of progress regarding the adoption of the new draft law of Ukraine on "Amendments to some Laws of Ukraine on implementation of the Convention", which, according to Ukraine, was supposed to bring Ukrainian legislation into compliance with the Convention. The law was expected to be adopted by the parliament by the end of 2013, but its adoption was still pending.

9. Moreover, no information was available on how Ukraine had taken into account the specific measures envisaged in the report of the European Union (EU)-funded project to support Ukraine in its implementation of the Convention (as recommended by the MOP in decision V/4, para. 24, in conjunction with para. 19 and footnote 24) to bring the Project into full compliance with the Convention. In that respect, the Committee noted the information provided by Romania that Ukraine had taken the decision to continue implementation of the project, as evidenced, inter alia, by the Action Plan on the Implementation of the State Programme for Enhancing Economic Development during 2013–2014, adopted by the Council of Ministers of Ukraine by decision No. 187 of 27 July 2013; and that the Ukrainian authorities, in addition to maintenance works, had continued dredging the canal at the ports on the Ukrainian side of the river to keep waterways navigable.

10. On the basis of the above, the Committee noted with concern that Ukraine had demonstrated very little progress during the intersessional period in bringing about compliance with its obligations under the Convention, as requested by the MOP at its fifth session, while the recent decisions by the Government to continue dredging activities might indicate a further breach of its obligations. Consequently, the Committee agreed that it had no basis to recommend to the MOP to revise its recommendations set out in decision V/4 concerning compliance by Ukraine, including that the caution issued at MOP-4 remain effective. It also agreed that the MOP decision on review of compliance would set specific deadlines for the implementation of the MOP recommendations by Ukraine. It requested the secretariat to communicate the Committee's decision to Ukraine.

B. Armenia

11. The Committee took note of the report by the Committee member nominated by Armenia on the country's progress in adopting the draft legislation on environmental assessment, prepared following the recommendations by an international consultant to the secretariat further to a Committee initiative on Armenia. At the request of the Committee, the international consultant also provided his opinion on the concordance of the draft environmental assessment legislation with his recommendations.

12. The Committee noted that most elements of the consultant's recommendations had been included in developing the draft law, which was currently before the parliament. The

Committee further noted some weaknesses in the draft, notably with regard to the public participation procedure within the environmental impact assessment (EIA) procedure, and welcomed information by Armenia on how it planned to address them (revisions of the draft between the first and second readings in parliament and implementing regulations).

13. The Committee then invited Armenia to adopt the draft law as soon as possible. In doing so, Armenia was also encouraged to address the issues raised by the consultant in his opinion and in discussions with the Committee. Specifically, central elements of the EIA procedure, such as the core elements of public participation, should be provided for in the draft law rather than left to implementing regulations (cf. decision IV/2, annex II, para. 32). Furthermore, as Armenia was also a Party to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, it should ensure compliance with article 6 of that Convention. The Committee invited the secretariat to explore opportunities to assist Armenia in that regard, by contracting the international consultant to review again the draft law on EIA and, as needed, propose amendments for aligning the draft law with the Espoo Convention prior to its adoption by the parliament at its second reading.

14. The Committee also agreed to recommend that Armenia address strategic environmental assessment (SEA) procedures in a separate law. It welcomed information that the secretariat could offer technical assistance in that regard through the EU-funded Greening Economies in the Eastern Neighbourhood (EaP GREEN) Programme starting in 2014 with a review of the legislative and institutional framework for the application of SEA.

IV. Committee initiative¹

A. Azerbaijan

15. In regard to Committee initiative EIA/IC/CI/2, the Committee considered the report regarding Azerbaijan's progress in implementing recommendations by an international consultant to the secretariat to further strengthen the country's capacity to comply fully with its obligations under the Convention. The draft framework law on environmental assessment covering both EIA and SEA was still being processed at the ministerial level and revisions aimed to better reflect the recommendations of the international consultant.

16. The Committee agreed to urge Azerbaijan to ensure that the draft framework law on environmental assessment, as well as the subsequent implementing regulations to be adopted, complied fully with the Convention. To that end, Azerbaijan was advised to take into account the recommendations of the international consultant, and also the general guidance on enhancing consistency between the Convention and EIA in the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia, expected to be adopted by the MOP at its sixth session (Geneva, 2–5 June 2014) (ECE/MP.EIA/2014/2).

17. The Committee invited the secretariat to explore opportunities to provide further legislative assistance to Azerbaijan in order to ensure its full compliance with the provisions of the Convention and the Protocol, in view of Azerbaijan's accession to it, including a review of its draft framework law, and other relevant legislation. It welcomed

¹ Information on Committee initiatives, including relevant documentation, is available from <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/areas-of-work/review-of-compliance/committee-initiative.html>.

the information that the secretariat would conduct a legislative and institutional review of the application of SEA to plans and programmes in April–October 2014. Based on the review, proposals for legislative, institutional and process changes would be developed to strengthen Azerbaijan’s capacity to accede to and implement the Protocol. Upon approval of the draft framework law on environmental assessment, additional assistance would be provided to support Azerbaijan in the development of the detailed implementing regulations in compliance with the Convention and the Protocol (tentatively, in 2015).

B. Ukraine

18. The Committee continued its consideration of its initiative on Ukraine regarding the planned extension of the lifetime of two reactors at the Rivne nuclear power plant (NPP) in Ukraine, close to the border with Belarus and Poland (EIA/IC/CI/4). It finalized its findings and recommendations further to the Committee initiative (annex), taking into account the information brought to its attention before, during and after its twenty-eighth session (Geneva, 10–12 September 2013).

19. The Committee requested the secretariat to inform Ukraine accordingly. The secretariat was also requested to provide the findings and recommendations to Ukraine, once issued as an official document, and to transmit them for consideration by the MOP at its sixth session. The related documents and information should also be posted on the Convention website.

V. Information gathering²

A. Lithuania

20. Further to its twenty-ninth session (Geneva, 10–12 December 2013), the Committee continued to consider the information it had gathered on the planned construction of the Visaginas NPP in Lithuania, close to the border with Belarus, in follow-up to the information provided by the Belarusian non-governmental organization (NGO) Ecoclub (EIA/IC/INFO/9). It considered the replies by Belarus and Lithuania in response to the Committee’s letters of 17 December 2013. The Committee also noted Lithuania’s response that it would be ready to grant consent for disclosing to Ecoclub the contents of its letter to the Committee of 20 November 2013, pending the consideration of the matter, on the condition that all the information provided by Ecoclub relating to the activities were made available to Lithuania.

21. The Committee agreed that the responses were sufficient at present. It noted that:

(a) On 27 August 2008, Lithuania had sent the EIA documentation to Belarus with a request to inform the Belarusian public and authorities;

(b) Belarus had informed its public and on 14 October 2008 had held a public hearing in Braslaw;

(c) On 24 November 2008, Belarus had provided to the Lithuanian Ministry of Environment the records (protocol) of the public hearing;

² More information on information-gathering cases, including relevant documentation, is available from <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>.

(d) On 21 April 2009, the final decision had been issued taking into account the outcome of the EIA in a transboundary context;

(e) On 5 May 2009, all the potentially affected Parties had been informed about the final decision;

(f) Belarus and other Parties had not expressed dissatisfaction concerning the way Lithuania had carried out its obligations under the Convention.

22. In the light of the above, the Committee decided that there was no need to further pursue its information gathering. It asked the Chair to write to Lithuania to inform it accordingly, with a copy to Ecoclub. The Committee noted that Parties should be advised to ensure that the public notice should be effective and that it was appropriate to keep a record of the procedures (such as copies of the public notices, records of the hearings, etc.). The Chair should also request agreement that the correspondence between the Committee and Lithuania 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. Ukraine

23. Further to its twenty-ninth session, the Committee continued its consideration of the information it had gathered with regard to the information provided by a Belarusian NGO on the planned construction of nuclear reactors 3 and 4 at the Khmelnytskyi NPP in Ukraine, approximately 150 kilometres from the borders with the Republic of Moldova and Romania, and approximately 350 kilometres from the border with Belarus. (EIA/IC/INFO/10). The Committee reviewed the clarifications received from the Governments of Austria, Belarus, Hungary, Poland, Republic of Moldova, Romania, Slovakia and Ukraine in response to the Committee's letters of 17 December 2013.

24. The Committee welcomed that Ukraine had initiated transboundary procedures with seven Parties to the Convention: the notifications had been sent and the EIA documentation had been provided, while some action on public participation and consultations procedures were still being carried out.

25. The Committee noted the information presented by Ukraine, arguing that the final decision for the planned activity was not Law 5217-VI of 6 September 2012 on "siting, designing and construction of power units No. 3[and] No. 4 of Khmelnytskyi nuclear power plant", but a subsequent decision expected to be adopted by the Cabinet of Ministers on the basis of Procedure No. 759 of 17 October 2013 for Approval and Expert Reviews of Construction Projects.

26. In that regard, the Committee considered that:

(a) Law 2861-IV of 8 September 2005 on a "decision-making procedure regarding siting, designing and construction of nuclear installations and radioactive waste management facilities of national significance", provided clear authority to the parliament to take the final decision with regard to the planned activity;

(b) Based on Law 2861-IV, Law 5217-VI seemed to constitute the final decision for the planned activity;

(c) Procedure No. 759 had only been introduced to Ukraine's legal system on 17 October 2013, after the adoption of Law 5217-VI of 6 September 2012.

27. Therefore, the Committee concluded that there were clear indications that Ukraine had not properly applied the Convention in relation to the planned construction of reactors 3 and 4 at the Khmelnytskyi NPP, since a post-factum change in the legal system in

October 2013 could not retroactively alter the legal nature of the decision of the parliament by law of 6 September 2012 to authorize the activity at issue on the basis of legislation in force at the time. The Committee noted that the information could be the basis of a profound suspicion of non-compliance.

28. However, taking into account that steps had been taken in the implementation of the transboundary EIA procedure set out in the Convention, and the fact that transboundary public participation and transboundary consultation procedures with some affected Parties had not yet been concluded, the Committee agreed that it would continue its consideration of the matter at its next session. The Committee asked the Chair to write to Ukraine to request that it provide the following clarifications and information:

(a) What was the nature of the “Procedure for approval and expert reviews of construction project” in the hierarchy of laws of Ukraine?;

(b) Could the decision by the Cabinet of Ministers change the parameters for the activity or its location, as defined in Law No. 5217-VI of 6 September 2012?;

(c) What was the legal basis for the final decision under Procedure No. 759 to assure that the requirements of article 6, paragraph 1, of the Convention, were met, i.e., that in the final decision on the proposed activity due account was taken of the outcome of the EIA, including the EIA documentation, as well as the comments thereon received pursuant to article 3, paragraph 8, and article 4, paragraph 2, of the Convention and the outcome of the consultations as referred to in article 5?;

(d) Since the adoption of Procedure No. 759 for Approval and Expert Reviews of Construction Projects by the Cabinet of Ministers on 17 October 2013, did Ukraine plan to annul the law No. 5217-VI of 6 September 2012?;

(e) A copy of the letter, including materials, of 6 April 2012 (No. 7123/10/10) sent by Ukraine to potentially affected Parties (Austria, Belarus, Hungary, Poland, Republic of Moldova, Romania and Slovakia);

(f) Copies of the notifications, with the date and supporting documentation, Ukraine had sent in 2010 to potentially affected Parties (Austria, Belarus, Hungary, Poland, Republic of Moldova, Romania, and Slovakia) about the activity;

(g) How did Ukraine fulfil the requirements under article 2, paragraph 6, article 3, paragraph 8, and article 4, paragraph 2, of the Convention with respect to its obligation as a Party of origin to ensure public participation for the public likely to be affected in the affected Party (in Austria, Hungary, Poland, the Republic of Moldova and Slovakia)?;

(h) How and when had Ukraine informed its own public about the proposed activity?;

(i) Information about the public participation in Ukraine in May 2011 and whether Ukraine had informed the potentially affected Parties about the public hearing.

29. The Committee encouraged Ukraine to finalize the ongoing transboundary public participation and consultation procedures with all concerned Parties, in accordance with article 3, paragraph 8, and article 5 of the Convention, respectively, and to adopt the final decision in compliance with article 6 of the Convention.

30. The Committee requested that the written replies to its questions be provided through the secretariat, in English, by no later than 4 August 2014 for analysis by the curator and for consideration by the Committee in September 2014. It also decided to designate Mr. Zaharia as co-curator for the case. The curators were invited to provide an

analysis of the information received by 18 August for consideration at the Committee's next session.

C. United Kingdom of Great Britain and Northern Ireland

31. Further to its twenty-ninth session, the Committee continued its consideration of the information it had gathered on the planned construction of the Hinkley Point C NPP by the United Kingdom of Great Britain and Northern Ireland (EIA/IC/INFO/12). It reviewed the clarifications received from the Governments of Belgium, the Netherlands, Norway, Spain and the United Kingdom in response to its letters of 17 December 2013.

32. The Committee considered the responses of some Parties that had maintained that they could not exclude the significant adverse transboundary environmental impact of the proposed activity on their territory.

33. In addition, it noted that, with the exception of the informal exchanges with Ireland and the transboundary procedure with Austria after its request in accordance with article 3, paragraph 7, of the Convention, the United Kingdom had failed to notify any potentially affected Party about the planned activity. The Committee further noted the information that national legislation in the United Kingdom did not provide for the possibility to extend the transboundary consultations, as presented in the transboundary procedure with Austria.

34. The Committee then recalled its previous opinion that:

while the Convention's primary aim, as stipulated in article 2, paragraph 1, was to "prevent, reduce and control significant adverse transboundary environmental impact from proposed activities", even a low likelihood of such an impact should trigger the obligation to notify affected Parties in accordance with article 3. This would be in accordance with the *Guidance on the Practical Application of the Espoo Convention*, paragraph 28, as endorsed by decision III/4 (ECE/MP.EIA/6, annex IV). This means that notification is necessary unless a significant adverse transboundary impact can be excluded.

(decision IV/2, annex I, para. 54).

35. On the above grounds, the Committee found that there was a profound suspicion of non-compliance and decided to begin a Committee initiative further to paragraph 6 of the Committee's structure and functions. In line with paragraph 9 of its structure and functions, the Committee decided that the United Kingdom should be invited to the Committee's thirty-second session (Geneva, 9–11 December 2014) to participate in the discussion and to present information and opinions on the matter under consideration. The Committee would start by considering the initiative in a closed session, followed by a brief presentation by the United Kingdom and questions by the Committee. The initiative would then be considered again in a closed session to draft findings and recommendations.

36. The Committee agreed that at its thirty-first session (Geneva, 2–4 September 2014) it would agree on questions to be sent to the United Kingdom. After that session, along with a request to address any questions, the United Kingdom should also be invited to provide the secretariat with the names of its respective delegates as soon as possible, and be reminded of operating rule 11, paragraphs 1 to 3, and rule 15, paragraph 4, regarding the procedure for Committee initiatives. The Committee asked the Chair to send a letter to the United Kingdom including the above information.

D. Ukraine

37. The Committee considered the information received on 3 October 2013 from a political party of Hungary concerning the planned reopening of a goldmine using cyanide technology in Muzhiyovo, Ukraine, close to the border with Hungary (EIA/IC/INFO/13). Further to an analysis prepared by the curator, the Committee considered that a decision to continue an activity included in appendix I to the Convention that had been formally terminated would constitute a proposed activity under the Convention. Moreover, in the light of information available to it, the Committee considered that gold mining as the activity in question constituted major mining within the meaning of item 14 of appendix I.

38. The Committee agreed that it would continue its consideration of the matter at its next session and asked the Chair to write to Ukraine to request that it provide the following clarifications and information:

(a) Whether Hungary had been notified in accordance with article 3 of the Convention;

(b) A copy, if any, of the response of the Ministry of Environmental Protection of Ukraine to the letter of the Ministry of Rural Development of Hungary dated 30 November 2011, regarding the notification to the Hungarian Government;

(c) The transboundary EIA process for the planned activity;

(d) The planned activity (Muzhiyovo goldmine project), the location and the area of exploitation (map) and its current status, and whether there was an intention to restart operation;

(e) Whether the Government had taken the necessary legal, administrative and other measures to implement the provisions of the Convention with respect to the activity.

39. In addition, the Chair should write to Hungary asking it to provide any information on any subsequent correspondence with Ukraine further to the letter of the Minister of Rural Development of Hungary of 30 November 2011 addressed to the Minister of Environmental Protection of Ukraine, indicating that Hungary had been informed about the planned reopening of the Muzhiyovo goldmine, that it considered itself an Affected Party under the Espoo Convention and requesting notification.

40. The information should be requested in English by 4 August 2014 for analysis by the curator by 17 August and for consideration by the Committee at its thirty-first session.

VI. Structure, functions and operating rules

41. Further to the discussions held by the Committee at its two previous sessions, the comments received during and after the third meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 11–15 November 2013) and the deliberations of the Committee through its electronic decision-making procedure, the Committee finalized its proposals for amending its structure, functions and operating rules. It agreed that its proposals would be annexed to draft decision VI/2 on review of compliance.

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

42. On the basis of the discussions held by the Committee at its two previous sessions, the comments received during and after the third meeting of the Working Group, the deliberations of the Committee through its electronic decision-making procedure and the outcomes of the conclusion of its consideration on several matters at the present session, the Committee finalized draft decisions VI/2 and II/2 on the review of compliance with the Convention and the Protocol, respectively. The decisions would be forwarded to the MOP to the Convention at its sixth session and the MOP serving as the MOP to the Protocol (MOP/MOP) at its second session.

43. The Committee also finalized a draft report on the activities of the Committee, to be submitted to the MOP and the MOP/MOP at their sixth and second sessions, respectively, as foreseen in the workplan (see ECE/MP.EIA/SEA/2, decision V/9-I/9).

44. In that context, as agreed at its twenty-ninth session, the Committee noted the steps taken by Belarus and Lithuania to reach compliance subsequent to the Committee's findings and recommendations at its twenty-seventh session (Geneva, 12–14 March 2013) further to the submission by Lithuania, received on 16 June 2011, expressing concerns about compliance by Belarus with its obligations under the Convention regarding the planned construction of an NPP in Ostrovets, Belarus, close to the border with Lithuania (EIA/IC/S/4).³ The Committee's approach on the matter was reflected in the Committee's report to the MOP (ECE/MP.EIA/2014/4–ECE/MP.EIA/SEA/2014/4, paras. 53–56).

VIII. Other business

45. The secretariat informed the Committee about the recent decision of the Executive Secretary of the United Nations Economic Commission for Europe that the sixth session of the MOP and the second session of the MOP/MOP would take place in Geneva, instead of Kyiv. The dates of the meetings would remain the same, i.e., from 2 to 5 June 2014. The Committee was also informed about the ongoing preparations for those sessions, and took note of the information.

46. Further to repeated attempts by Parties involved in the compliance procedures to obtain information from Committee members, the Committee underlined again that, in line with its operating rules, each member was to ensure the confidentiality of information received during its review of compliance by Parties with their obligations under the Convention. Committee members should clarify that to any Party that sought to receive information other than that which was publicly available.

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

47. The Committee adopted the draft report of its session, prepared with the support of the secretariat.

³ Information on submissions by one Party about another Party's compliance with its obligations (or self-referrals), including relevant documentation, is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

48. The Committee, with new members elected by the Meeting of the Parties, agreed to hold its next sessions as follows: its thirty-first meeting from 2 to 4 September and its thirty-second meeting from 9 to 11 December 2014; in 2015, it would hold its thirty-third session from 17 to 19 March, its thirty-fourth session from 7 to 9 September and its thirty-fifth session from 8 to 10 December.

49. The Committee noted that four of its present members on Convention matters, including its Chair, would have completed their two terms on the Committee by June 2014, and be replaced by the MOP at its sixth session, including two alternate members on Protocol matters. Committee members thanked the Chair and the other members for their contribution to the work on review of compliance during the intersessional period.

50. The Chair then closed the thirtieth session.

Annex

Findings and recommendations further to a Committee initiative concerning Ukraine (EIA/IC/CI/4)^a

I. Introduction — the Committee's procedure

1. On 20 April 2011, a Ukrainian non-governmental organization (NGO), Ecoclub, provided information to the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment, regarding the planned extension of the lifetime of two nuclear reactors of the Rivne nuclear power plant (NPP) in Ukraine, close to the border with Belarus and Poland. In the information provided, Ecoclub alleged non-compliance by Ukraine with its obligations under the Convention with respect to the proposed activity.
2. At its twenty-first session (Geneva, 20 June 2011), the Committee began its consideration of the information provided. It decided to ask the Government of Ukraine to provide information on the environmental impact assessment (EIA) for the planned activity and clarification on whether it had taken the necessary legal, administrative and other measures to implement the provisions of the Convention.
3. At its twenty-second session (Geneva, 5–7 September 2011), further to Ukraine's request for additional time to properly address the Committee's questions, the Committee postponed consideration of the matter and requested Ukraine to reply by 15 November 2011. Ecoclub was informed accordingly. Ukraine provided information on 15 November 2011.
4. At its twenty-third session (Geneva, 5–7 December 2011), the Committee, based on the information available, concluded that Ukraine had not applied the Convention in relation to the extension of the lifetime of the Rivne NPP. However, it noted that the main issue was to establish whether the activity in question was a proposed activity subject to the Convention. The Committee provisionally concluded that the lifetime extension of NPPs could be considered as a major change to an activity in appendix I, and thus fell under the scope of the Convention. It referred in this sense to the background note by the secretariat on the application of the Convention to nuclear energy-related activities (ECE/MP.EIA/2011/5, para. 10 (c)), which indicated that major changes might include "an extension of the lifetime of a facility". Each Committee member was invited to consider the matter further and to present their views for discussion and conclusions at the Committee's subsequent session.
5. At its twenty-fifth session (Geneva, 11–13 September 2012), following the presentation of Committee members' views, the Committee reached a consensus that the extension of the lifetime of an NPP, even in absence of any works, was to be considered as a major change to an activity and consequently subject to the provisions of the Convention.
6. At its twenty-seventh session (Geneva, 12–14 March 2013), the Committee decided to begin a Committee initiative further to paragraph 6 of the Committee's structure and

^a Documentation related to this Committee initiative is available from <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/areas-of-work/review-of-compliance/committee-initiative/eiaicci4-ukraine.html>.

functions. In line with paragraph 9 of its structure and functions, the Committee decided to invite Ukraine to its next session to participate in the discussion and to present information and opinions on the matter under consideration. Ukraine was also invited to provide written replies to a list of questions by 31 May 2013. Ukraine provided replies on 11 June and 26 August 2013. On 26 August, the Committee also received additional information from Ecoclub.

7. At its twenty-eighth session (Geneva, 10–12 September 2013), the Committee considered its initiative, inviting the Ukrainian delegation to present it with information and opinions on the matter. The Ukrainian delegation also replied to questions by the members of the Committee. Ukraine was further requested to address in writing a list of questions by 15 October 2013. Ukraine replied on 18 October 2013 and provided additional information to the Committee on 25 November 2013.

8. The Committee then proceeded with the preparation of its draft findings and recommendations based on the information made available to it. The draft was completed at the Committee's twenty-ninth session (10–12 December 2013).

9. Before finalizing the findings and recommendations, in accordance with paragraph 9 of the appendix to decision III/2, the Committee sent the draft findings and recommendations to Ukraine, inviting its comments or representations by 14 February 2014. At its thirtieth session, the Committee finalized its findings and recommendations taking into account the representations provided.

II. Summary of facts, information and issues

10. This section summarizes the main facts, information and issues considered to be relevant to the question of compliance, as presented by Ecoclub (by letters of 20 April 2011 and 28 August 2013) and by Ukraine (by letters of 15 November 2011, 11 June 2013 and 26 August 2013, and during the hearing of 11 September 2013).

A. Facts — the planned activity

11. The Rivne NPP is located in Kuznetsovsk, Rivne Oblast, Ukraine, and has four reactors. Construction began in 1973. Reactor 1 was commissioned on 22 December 1980, reactor 2 on 22 December 1981, reactor 3 on 21 December 1986 and reactor 4 in 2004. The NPP is operated by Energoatom, the State enterprise operating all NPPs in Ukraine.

12. On 29 April 2004, the Cabinet of Ministers adopted Decision No. 263-r on a "Complex Programme of Works to Extend [the] Operational Lifetime of Existing Nuclear Reactors of Nuclear Power Plants". On 18 January 2005, Energoatom adopted a workplan to implement that decision.

13. During 2005–2010 Energoatom and the Ukrainian nuclear safety authority, the State Committee on Nuclear Regulation (now the State Nuclear Regulatory Inspectorate), adopted safety measures and interim decisions in relation to reactors 1 and 2 of the Rivne NPP.

14. On 22 December 2009, Energoatom filed an application to amend its licence (EO No000211) with regard to the lifetime of the Rivne NPP. The application was resubmitted on 14 June and 11 November 2010.

15. On 10 December 2010, the Board of the State Committee on Nuclear Regulation took decision No. 15 extending the lifetime of nuclear reactors 1 and 2 of the Rivne NPP by

20 years and issuing a new licence (EO No000943) for the operation of the two nuclear reactors by Energoatom until 31 December 2031.

B. Information and issues

16. In the information it provided, Ecoclub alleged that Ukraine had failed to undertake transboundary EIA procedures according to the Convention with respect to the decision-making on the planned extension of the lifetime of reactors 1 and 2 of the Rivne NPP and that it had already taken the final decision to authorize the proposed activity on the basis of article 6 of the Law of Ukraine on Permitting in the Sphere of Nuclear Energy Use. However, in the view of Ecoclub, an extension of 20 years compared to the initial life of 30 years qualified as a “major change” to an activity listed in appendix I to the Convention. Ecoclub therefore alleged that Ukraine had failed to comply with article 2, paragraphs 2, 3 and 4, and articles 3 to 6, of the Convention.

17. Specifically, according to Ecoclub, although nuclear installations might cause significant adverse transboundary environmental impact (radioactive contamination), the proposed activity had not been subjected to an EIA procedure: the only document covering environmental issues was the “Periodic safety review, safety factor # 14 Impacts on environment from NPP operation”, which did not meet the requirements of appendix II to the Convention, had not been subjected to public participation procedures and had not been disclosed to the public on request. Ecoclub further alleged that Ukraine had not notified potentially affected Parties, in particular, Belarus and Poland as the closest neighbouring countries to the NPP site, but also all other European countries, which could also be potentially affected taking into consideration recent events in Fukushima, Japan, calling for the application of the precautionary principle in nuclear matters. In Ecoclub’s view, the findings and recommendations of the Compliance Committee under the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters on communication ACCC/C/2009/41 concerning compliance by Slovakia in relation to the extension of reactors 3 and 4 of the Mochovce NPP were also relevant (see ECE/MP.PP/2011/11/Add.3, para. 58).

18. In additional information provided in 2013, Ecoclub alleged that by not applying the Convention in the ongoing decision-making for the extension of the lifetime of Rivne NPP reactors 3 and 4, Ukraine was in continuous non-compliance with the Convention.

19. Ukraine, for its part, asserted that the decision to continue the operation of reactors 1 and 2 of the Rivne NPP was based on a prior state expertise on the operator’s “Report on the frequency of power units security revaluation”, which had analysed a number of factors, including environmental impact, and had assessed that such an impact did not exceed limits set by law. According to Ukraine, the technical/performance characteristics of the original project had not changed. Ukraine also informed the Committee that a periodic safety assessment was scheduled after 10 years of operation (i.e., in 2020).

20. Ukraine thus claimed that the proposed activity for the operational lifetime extension did not lead to any major changes (art. 1, para. (v), of the Convention) for the operation of a nuclear facility. Therefore, the licence authorizing the lifetime extension for the Rivne NPP reactors 1 and 2 was not a final decision in the meaning of article 6, paragraph 1, of the Convention and the activity had not been subject to an EIA procedure under the Convention.

III. Consideration and evaluation

A. General observations

21. The Committee gathered information allowing it to identify in a sufficiently precise manner the main facts and events, and to evaluate the application of the Convention. It also referred to the clarifications that it had sought from Ukraine since 2011, prior to beginning its initiative, on Ukraine's application of the Convention with respect to the lifetime extension for Rivne NPP reactors 1 and 2 (see paras. 2–5 above).

22. In determining whether to begin a Committee initiative, in accordance with paragraph 6 of the Committee's structure and functions (para. 6 above), the Committee took into account, inter alia, the following criteria (cf. operating rule 15, para. 2):

- (a) The source of the information, Ecoclub, was known and not anonymous;
- (b) The information related to nuclear power stations and other nuclear reactors, an activity listed in appendix I to the Convention;
- (c) The information was the basis for a profound suspicion of non-compliance, with respect to the extension of the lifetime of nuclear power reactors;
- (d) The information related to the implementation of Convention provisions;
- (e) Committee time and resources were available.

23. In particular, the Committee decided to begin its Committee initiative due to its profound suspicion of non-compliance by Ukraine with respect to the proposed activity for lifetime extension, as well as its initial conclusion at its twenty-fifth session that the extension of the lifetime of an NPP, even in absence of any works, was to be considered as a major change to an activity and consequently subject to the provisions of the Convention. The Committee agreed that it needed to further substantiate this conclusion (see below), taking also into account that this was the first time that it was to consider the application of the Convention to the extension of the lifetime of an NPP and the impact of its considerations to the general application of the Convention to nuclear activities. The Committee also agreed that it was important to examine whether the periodic safety reviews carried out according to international standards on nuclear safety and required within the period of validity of the licence for an NPP would be sufficient to examine all effects, including environmental effects, for the purposes of extending such a licence within the framework of the Convention.

24. In this context, the Committee agreed that the extension of the lifetime of an NPP originally designed to operate for 30 years for a further 20 years represented an activity that would require a comprehensive EIA of its effects according to the Convention, regardless of whether it was treated as a major change to an existing activity or a new activity, and regardless of whether originally it had been subject to such an EIA or not.

25. The Committee also took note of the information concerning the plans for short- and long-term nuclear waste storage reported by Ukraine.^b It observed that these activities fell under paragraph 3 of appendix I to the Convention, in which case the Convention's provisions should apply.

^b Reply by Ukraine to question 13 on 18 October 2013.

B. Legal basis

26. Ukraine deposited its instrument of ratification on 18 October 1999. The Convention entered into force for Ukraine on 20 July 1999.

27. Appendix I, item 2, of the Convention identifies among proposed activities to which it applies:

Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and ... nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

28. Furthermore, appendix I, item 3, identifies “installations solely designed for ... the storage, disposal and processing of radioactive waste” as proposed activities to which the Convention applies.

29. In the context of its initiative, the Committee examined the relevant provision of article 1, paragraph (v), of the Convention, which defines a “proposed activity” as “any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure”; as well as, other relevant provisions of the Convention in article 2, paragraphs 2, 3 and 6, article 3, article 4 and article 6, and their application.

C. Main issues

1. Applicable legislation in Ukraine — decision-making for the extension of the lifetime of nuclear reactors

30. Law No. 2861-15 of 8 September 2005 on decision-making on the planning, “accommodation” and construction of nuclear installations and facilities designed for radioactive wastes of national importance (art. 6) provides that:

Decisions on lifetime extension of the existing nuclear installations and facilities intended for radioactive waste management, which are of national importance, shall be made by the State regulatory body for nuclear and radiation safety, on the basis of a conclusion of the State nuclear and radiation safety expert review, introducing changes to the licence for operation of a nuclear facility or installation of national importance, which are intended for managing the radioactive waste.

31. Law No. 1370-14 of 11 January 2000 on Permitting in the Sphere of Nuclear Energy Use (art. 6) provides that: “Permitting is part of State regulating activity in the sphere of nuclear energy use and foresees ... licensing of the operators’ activities at a given life cycle of the nuclear installation”.

32. In addition, Order No. 181 of 26 November 2004 of the State Committee on Nuclear Regulation concerning “Generic Requirements for Continued Operation of NPP Power Units beyond their Designed Life Term based [on] the Outcomes of the Periodic Safety Reassessment” regulates matters arising from the extension of NPP lifetime. It provides that after the life term expires, an NPP unit can continue operation provided that changes in the operational term of a power unit are introduced into the licence authorizing the activity called “operation of a nuclear facility” (para. 1.2).

33. Ukrainian legislation does not require the carrying out of either a domestic or a transboundary EIA procedure for the extension of the licence through its renewal, because

according to Ukraine the actual object of the project remains the same as originally licenced. Updates are based on strict safety requirements.

2. The nature of the proposed activity under the Convention (art. 1, para. (v), in conjunction with appendix I)

34. The activity concerns the renewal of the licence for the operation of Rivne NPP reactors 1 and 2. As noted above, for the Committee the main issue was first to establish whether the activity was a proposed activity subject to the Convention.

35. In its preliminary conclusions (twenty-fifth session) the Committee reached consensus that the extension of the lifetime of an NPP, even in absence of any works, was to be considered as a major change to an activity and consequently subject to the provisions of the Convention. However, the Committee deemed it very important to verify this initial conclusion and examine whether that was an activity or any major change to an activity, on the basis of further information and opinions that Ukraine provided at the Committee's request before, during and after the hearing held at the Committee's twenty-eighth session (in particular Ukraine's letters of 11 June 2013, 26 August 2013, and 18 October 2013). The Committee was grateful for Ukraine's openness in answering all of its questions.

36. The Committee noted Ukraine's opinions that the lifetime extension for the nuclear reactors was a change that, even if it implied safety upgrades, did not trigger any change to the actual object of the project, as originally licensed for operation in 1981 and that, consequently, it did not constitute a major change requiring a transboundary EIA according to the Convention. According to Ukraine, the extension of lifetime licence was not a new licence, but a confirmation that the installations' operation could continue within the parameters defined in the original licence. Furthermore, Ukraine maintained that the practice of extending the lifetime of Rivne reactors 1 and 2 was in accordance with Ukrainian legislation, and stressed that it applied the highest international standards and improvements for all its nuclear power installations, including the Rivne NPP.

37. The Committee noted that the listed activity under item 2 of the appendix did not specifically refer to the construction or the extension of lifetime or update of a nuclear reactor, but, rather, identified a nuclear reactor as such as an activity, among other activities in the list that, if it was likely to cause significant adverse transboundary impact would then require the application of the Convention. Therefore, a significant adverse transboundary impact is likely to be caused not only by the construction and first operation of a nuclear reactor, but also from the continued operation beyond the originally authorized lifetime of a nuclear reactor.

38. The Committee took note of the opinion by Ukraine that:

In the process of making any changes to a licence in a part of the reactor operation any significant transboundary impact can't be caused. ... Any project indicators of the NPP will not be changed, requirements for the indicators of its operation (including environmental impact indicators) won't get worse [than] is justified in the Report on the periodic reassessment of the security that in accordance to the Ukraine legislation shall pass an examination on nuclear and radioactive safety.

In the conclusions of the chapter "Environmental impact from the operational activity of the power block" of the Report on the periodic reassessment of the security of the power blocks No. 1 and No. 2 Rivne Nuclear Power Plant specify that

indicators of the levels of radioactivity for the last decades is constant and has the tendency to the impact reduction.^c

39. While the Committee took all of the above into account, it noted that Ukraine had based its opinions on the conclusions of the periodic safety review. Also, Ukraine had not presented the EIA documentation and/or conclusions of an EIA procedure in order to substantiate its arguments.

40. It was the view of the Committee that when a Party argued before it that a transboundary impact was unlikely, that Party should base its arguments on the conclusions of procedures undertaken in accordance with the Convention.

41. Moreover, the Committee noted that the original decisions concerning reactors 1 and 2 had authorized commissioning and operation only for a limited period of time. The Committee was aware that this had been and still was the usual practice in relation to such activities. In most countries, operational lifetimes could not be extended automatically, but only on the basis of another licence issued by a competent authority according to a procedure defined by law. Whether this licence was a new one or just, as Ukraine argued, a confirmation that the operation of the installations could continue within the parameters defined initially, had no effect on the Committee's determination, since without a new decision the activity would legally have to be terminated when the licensed time period expired. That was also the situation according to Ukrainian law (Order No. 181, para. 1.2). In that respect, Committee recalled that article 1, paragraph (v), of the Convention defined a "proposed activity" as "any activity or any major change to an activity subject to a decision of a competent authority *in accordance with an applicable national procedure*" (emphasis added).

42. The Committee considered that there could be many reasons why Parties to the Convention would decide that the final decision on a proposed activity should be issued only for a limited period of time. Among the reasons, the Committee could identify:

- (a) Risks associated with the proposed activity;
- (b) Changes in the state of the environment;
- (c) Changes in the density of population;
- (d) Possible effects on human health;
- (e) Advancements in scientific knowledge, as well as relevant developments in the regulatory framework;
- (f) The development of the state of the art in relation to mitigation measures.

43. Clearly then, when the limited period of time expired, the Party of origin would have to re-evaluate such reasons and make the decision to extend the initial period of time or not. Ukraine did it as well, although focusing on safety matters, and decided on the extension. As mentioned above, without this decision for the extension of lifetime, the operation of the activity would have terminated.

44. The Committee, also recalling its previous opinion concerning the validity of an EIA with respect to an activity owing to the passage of time (ECE/MP.EIA/IC/2009/4, paras. 36 and 46), considered that the re-evaluation should have been made after having properly and comprehensively assessed the environmental impact, including the transboundary impact, of the activity subject to extension through the licence renewal.

^c See comments of Ukraine of 14 February 2014 on the draft findings and recommendations.

45. On the basis of the above, it was the view of the Committee that the decision to authorize a proposed activity subject to the Convention, according to the national procedure, only for a limited period of time meant that any subsequent decision to extend that limited period of time, whether in the form of a new licence or amendment or renewal of the existing one, would, under the Convention, be another decision of a competent authority to authorize or undertake a proposed activity. In that context it becomes less relevant whether it is a new activity or a major change to an activity.

3. Notification (art. 3)

46. Ukraine informed the Committee that, since under its national legislation, the proposed activity did not constitute a major change to the environment that could cause significant adverse transboundary environmental impact, it had not notified any possibly affected Parties. It also informed the Committee that under its national legislation a licence is required for the so-called “operational period” of an NPP, which consists of construction and putting into operation the NPP, operation of the NPP and decommissioning of the NPP; and that a decision to extend the operation is not by issuing a new licence, but by introducing amendments to the specified period of operation, without changing the project characteristics or other terms of operation.^d

47. Having determined that the lifetime extension of the two nuclear reactors was a proposed activity under the Convention, the Committee had to establish whether such an activity had a significant adverse transboundary environmental impact. Referring to its previously stated opinion, that “notification is necessary unless a significant transboundary impact can be excluded” (decision IV/2, annex I, para. 54), the Committee concluded that, in absence of a transboundary EIA documentation arguing to the contrary, it could not exclude the significant transboundary impact of the proposed activity.

48. The Committee noted that Ukraine maintained that it had not received any requests for exchange of information and holding of discussions from neighbouring countries relating to the planned activities on lifetime extension, further to article 3, paragraph 7, of the Convention. The Committee observed that the procedure in article 3, paragraph 7, did not substitute the obligations of a Party of origin deriving from the Convention to notify possibly affected Parties, or to fulfil any other step of the transboundary EIA procedure in compliance with the Convention in case transboundary environmental impacts could not be excluded.

4. EIA procedures and preparation of EIA documentation (art. 2, paras. 2 and 3, and art. 4, para. 1)

49. The Committee noted that, as the original construction permit for reactors 1 and 2 of the NPP was issued in 1981 — long before the Convention’s entry into force for Ukraine — the Convention did not apply to the original 1981 licence. Based on the information made available to it, the Committee could gather that the EIA procedures available at the time would not comply with the provisions of the Convention.

50. The Committee also noted the information provided by Ukraine that a full EIA procedure, not covering transboundary procedures, had been carried out in 1998 for the Rivne NPP as a whole, in the context of the decision-making for the construction of reactor 4.

51. The Committee was of the view that an EIA procedure carried out in 1998 within the decision-making for the construction of reactor 4, even if it related to the Rivne NPP as a

^d Ibid.

whole, could not be considered as the required EIA in the context of the specific decision-making in 2010 for the reconsideration of the licence for reactors 1 and 2. In particular, the Committee noted that the 2010 decision concerned a considerable extension of the reactors' lifetime for an additional period of 20 years, i.e., extending the lifetime of the reactors by two thirds of their initial 30-year lifetimes. To ensure safe operation of the reactors during the extension, a number of upgrades would address the ageing of equipment and safety concerns. Therefore, the Committee was of the view, that the 2010 decision for the lifetime extension concerned a situation that had not been taken into account during the preparation of the 1998 EIA documentation.

52. The Committee further noted that periodic safety reviews according to international standards were carried out every 10 years. The 2010 decision of the Board of the nuclear safety authority to extend the lifetime of the reactors had been issued based on the periodic safety review and related expertise.

53. Despite not having carried out EIA documentation, Ukraine argued that the periodic safety review included a section on environmental assessment, which demonstrated that the project would have no transboundary environmental impact. Ukraine added, however, that: "it should be noted that the [periodic safety review] is not an analogue of the EIA. [The periodic safety review] is a document what justify the safety of nuclear installations".^e In this respect, the Committee stressed the difference between the periodic safety reviews carried out every 10 years to ensure safe operation within the duration of a permit and the issuance of a new permit for the proposed activity, when the original permit had expired.

54. On the basis of the above, the Committee considered that Ukraine did not carry out EIA procedures specifically for the purposes of reconsidering the 1981 licence, and which reconsideration had the effect of permitting the operation of two nuclear reactors at Rivne NPP for another 20 years on the basis of safety upgrades. No consideration was given at any stage to the changed environmental conditions since 1980 and the potential impact of the continued operation on the environment. The extended operation of the reactors was based mainly on safety considerations. Ukraine had indeed claimed that as long as the physical parameters of the reactors remained, there was no major change, but only an extension of the existing permit, stressing that it had taken all measures to ensure their safe prolonged operation. In this regard, the Committee considered that if an EIA procedure was necessary only for the construction or demolition of physical parameters, such as buildings, of an NPP and was not necessary for the modernization and replacement of technical components for safety reasons, Parties would be able to continuously modernize and thus extend the lifetime of all existing nuclear installations, without ever carrying out an EIA procedure in accordance with the Convention.

55. The Committee also noted the additional information submitted by Ukraine (on 25 November 2013) about other Parties' legislation and practice on the extension of the lifetime of NPPs, which, according to Ukraine, was not subject to EIA procedures. The Committee was thus made aware of the fact that some Parties might not apply the provisions of the Convention for extending the lifetime of NPPs and that there could be problems in understanding the implementation of nuclear safety legislation vis-à-vis environmental legislation. The Committee found it important to clarify the matter and agreed that in this regard further research on the issue was needed in order to ensure proper implementation of the Convention. In that respect, the Committee welcomed the preparation of guidance on the application of the Convention to nuclear energy-related activities in 2015–2017, which the Meeting of the Parties was expected to consider at its seventh session.

^e Reply by Ukraine to question 2 on 18 October 2013.

5. Public participation (art. 2, paras. 2 and 6, and art. 4, para. 2)

56. Concerning public participation, Ukraine informed the Committee that, prior to the renewal/extension decision in 2010, information materials had been distributed through the mass media (radio and television programmes) in the Rivne and Volyn oblasts, the Board of the nuclear safety authority had held meetings that had been attended by representatives of a number of NGOs and the public position had been considered in the State ecological expertise process. In this respect, the Committee noted that the participation of representatives of some NGOs in the meetings of the Board of the nuclear safety authority did not amount to public participation of the public in the areas likely to be affected in the meaning of article 2, paragraph 6, of the Convention. Ukraine had also confirmed that no transboundary procedures, including public participation procedures, in the potentially affected Parties had been carried out.

6. Final decision (art. 6, para. 1)

57. According to Ukraine, the final decision authorizing the extension of the lifetime of the nuclear reactors was decision No. 15 of the Board of the nuclear safety authority of 10 December 2010. In this regard, the Committee noted that this decision did not fulfil the requirements under the Convention, since the elements required under article 6 had not been duly taken into account in the final decision and the decision had not been provided to the affected Parties.

IV. Findings

58. Having considered the above, the Committee adopts the following findings with a view to bringing them to the attention of the Meeting of the Parties for formal adoption in accordance with paragraph 13 of the appendix to decision III/2.

1. The nature of the proposed activity under the Convention (art. 1, para. (v), in conjunction with appendix I)

59. Recalling its conclusion at its twenty-fifth session, the Committee finds that the extension of the lifetime of reactors 1 and 2 of the Rivne NPP after the initial licence has expired, even in absence of any works, is to be considered as a proposed activity under article 1, paragraph (v), and is consequently subject to the provisions of the Convention.

2. Legal, administrative or other measures (art. 2, para. 2)

60. The Committee finds that Ukraine, by not taking the necessary legal, administrative or other measures to implement the provisions of this Convention with respect to the extension of the lifetime of nuclear reactors, which is a proposed activity under article 1, paragraph (v), of the Convention, and listed in its appendix I, is not in compliance with article 2, paragraph 2, of the Convention.

3. Notification (art. 3)

61. “Nuclear reactors” is an activity listed in appendix I to the Convention. The Committee also recalls its previous opinion, according to which “even a low likelihood of a [significant adverse transboundary] impact should trigger the obligation to notify affected Parties”, and that “notification is necessary unless a significant transboundary impact can be excluded” (decision IV/2, annex I, para. 54). Therefore, the Committee considers that since Ukraine could not exclude a significant adverse transboundary impact of this activity, it should have notified the possibly affected Parties. The Committee finds that since Ukraine did not notify the possibly affected Parties with respect to the proposed extension

of the lifetime of the nuclear reactors, Ukraine is not in compliance with article 3 of the Convention.

4. EIA procedures and preparation of EIA documentation (art. 2, paras. 2 and 3, and art. 4, para. 1)

62. The Committee considers that the environmental part of the periodic safety review is not comparable to EIA documentation including the elements set out in appendix II.

63. The Committee finds that by not ensuring that an EIA was undertaken, in accordance with the provisions of the Convention, prior to the decision for the extension of the original licence, Ukraine is not in compliance with article 2, paragraph 3, in conjunction with article 2, paragraph 2, and article 4, paragraph 1, of the Convention.

5. Final decision (art. 6, para. 1)

64. Considering its findings above, the Committee also finds that Ukraine is not in compliance article 6, paragraph 1, of the Convention.

V. Recommendations

65. The Committee recommends that the Meeting of the Parties:

(a) Endorse the findings of the Implementation Committee that the extension of the lifetime of an NPP after the initial licence has expired is to be considered as a proposed activity under article 1, paragraph (v), and consequently subject to the provisions of the Convention;

(b) Endorse the findings of the Implementation Committee that Ukraine is in non-compliance with its obligations under article 2, paragraph 2, with respect to the general legal and administrative framework applicable in the decision-making for the extension of the lifetime of nuclear reactors.

(c) Endorse the findings of the Implementation Committee that Ukraine is in non-compliance with its obligations under article 2, paragraphs 2 and 3, article 4, paragraph 1, and articles 3 and 6 of the Convention with respect to the extension of the lifetimes of reactors 1 and 2 of the Rivne NPP;

(d) Request Ukraine to improve its legislation to provide for the application of the Convention in similar cases of the lifetime extension of nuclear installations;

(e) Urge Ukraine to carry out an EIA that would permit public participation and preparation of EIA documentation described in appendix II;

(f) Invite Ukraine to notify potentially affected Parties — taking into account that potential impacts extend not only to neighbouring countries, but may also be long-range (cf. MP.EIA/WG.1/2003/3, para. 8) — about the extension of the lifetime of reactors 1 and 2 of the Rivne NPP, as required under the Convention, in due time, before the next periodic safety review due in 2020, and to undertake all subsequent steps, as appropriate, in line with the Convention;

(g) Invite Ukraine to report to the Committee on the measures taken to bring about the compliance of the project with the Convention.