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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

Forty-sixth session

Geneva, 10–13 December 2019

Report of the Implementation Committee on its forty-sixth session

I. Introduction

1. The forty-sixth session of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment was held in Geneva, from 10 to 13 December 2019.

A. Attendance

2. The following members of the Committee attended the session: Mr. Anders Bengtsson (Sweden); Ms. Aysel Rzayeva (Azerbaijan); Mr. Libor Dvorak (Czechia); Ms. Maria do Carmo Figueira (Portugal); Mr. Kaupo Heinma (Estonia); Ms. Zsuzsanna Pocsai (Hungary); Mr. Romas Švedas (Lithuania); Mr. Lasse Tallskog (Finland); Ms. Nadezhda Zdanevich (Belarus); and Mr. Vladimir Buchko (Ukraine).

B. Organizational matters

3. The Chair of the Committee opened the session. As suggested by the Chair, the Committee agreed to consider the information from the non-governmental organization (NGO) ClientEarth, dated 29 October 2019 (see paras. 53–57 below) under agenda item 4 on “Information gathering” and a proposal by the Committee member nominated by Hungary to prepare a user-friendly format for notification under agenda item 7 on “Other business”. The



Committee adopted its agenda as set out in document ECE/MP.EIA/IC/2019/5 with that adjustment.

4. The Committee noted the report of the secretariat on the outcomes of the eighth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 26–28 November 2019), including the fact that the Working Group had adopted the time schedule for preparation for the eighth session of the Meeting of the Parties to the Convention (Vilnius, 8–11 December 2019) and welcomed the Committee’s plan to prepare the draft compliance decisions for the consideration of the Meeting of the Parties at that session.¹

II. Follow-up to decisions IS/1d, f and g

5. The Committee discussed the follow-up to decisions IS/1d, f and g regarding compliance by individual Parties with their obligations under the Convention, as adopted by the Meeting of the Parties to the Convention at its intermediary session (Geneva, 5–7 February 2019) (see ECE/MP.EIA/27–ECE/MP.EIA/SEA/11, paras. 48 and 50 (c)). The discussions were not open to observers, in accordance with rule 17 (1) of the Committee’s operating rules.² To avoid any direct or indirect conflict of interest, the Committee member nominated by Ukraine was absent during the Committee’s consideration of the matters regarding his own country. The deliberations regarding follow-up by Belarus to decision IS/1d regarding the Belarusian nuclear power plant in Ostrovets were held in the absence of the Committee members from Belarus and Lithuania. The discussions concerning follow-up by Ukraine to decision IS/1g regarding the lifetime extension of units 1 and 2 of the Rivne nuclear power plant were held in the absence of the members nominated by Belarus and Hungary.

A. Follow-up by Belarus to decision IS/1d regarding the Belarusian nuclear power plant in Ostrovets (EIA/IC/S/4)³

6. The first Vice-Chair of the Committee chaired the discussions on the follow-up by Belarus and Lithuania to decision IS/1d on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets.

7. The Committee recalled that it planned to prepare the first draft decision VIII/2c on follow-up to decision IS/1d regarding the Belarusian nuclear power plant in Ostrovets at its forty-seventh session (Geneva, 16–19 March 2020) based on the Parties’ annual reports for 2019 that it had expected to receive by 1 February 2020 (ECE/MP.EIA/IC/2019/2, paras. 6 and 14). The Committee noted with appreciation that Belarus had provided its 2019 annual report well in advance, on 8 December 2019.

8. The Committee then reviewed the 2018 annual reports of Lithuania, provided in January 2019, and of Belarus, submitted in March 2019, further to decision VI/2 of the Meeting of the Parties to the Convention, and the correspondence between Belarus and Lithuania since the intermediary session of the Meeting of the Parties (Geneva, 5–7 February 2019). It noted that progress regarding the Parties’ cooperation towards establishing a bilateral agreement to implement the Convention had been slow.

9. The Committee asked its first Vice-Chair to write to both Parties with a view to:

¹ See document entitled Informal presentation of conclusions, as agreed by the Working Group. Available at www.unece.org/environmental-policy/conventions/environmental-assessment/meetings-and-events/environmental-impact-assessment/working-group-on-eia-and-sea-espoo-convention/2019/working-group-on-eia-and-sea-8th-meeting/doc.html.

² The Committee’s operating rules were adopted by decision IV/2, annex IV (see ECE/MP.EIA/10) and then amended by decisions V/4, annex (see ECE/MP.EIA/15) and VI/2, annex II (see ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1).

³ More information on the matter is available at www.unece.org/env/eia/implementation/eia_ic_s_4.html.

(a) Encouraging them to accelerate completion of the bilateral agreement further to paragraph 17 of decision IS/1d and to enhance their work on the post-project analysis further to paragraph 19 of decision IS/1d;

(b) Reminding them about the Committee's schedule for the preparation of draft compliance decisions for the consideration of the Meeting of the Parties at its eighth session (Vilnius, 8–11 December 2020) as agreed at the Committee's forty-fourth session (Geneva, 12–15 March 2019).

10. Finally, the Committee noted that Belarus had included in its 2019 annual report a request to the Committee to gather and share with Belarus information about established practice under the Convention with respect to the evaluation of reasonable alternatives for nuclear energy-related activities and the selection of the preferred option in the environmental impact assessment documentation. It also noted information from the secretariat that, at the eighth meeting of the Working Group (Geneva, 26–28 November 2019), Belarus had submitted a related proposal to be included in the 2021–2023 workplan.

B. Follow-up by Ukraine to decision IS/1f regarding the Bystroe Canal Project (EIA/IC/S/1)⁴

11. Further to its deliberations at its forty-fifth session (Geneva, 10–13 September 2019), the Committee held informal consultations via videoconference with Ukraine on the progress made by the country in following up decision IS/1f in relation to the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project). Ukraine was represented by eight participants led by the Deputy Minister for Energy and Environmental Protection. The Committee appreciated inputs provided by the delegation of Ukraine and found the consultations to be very useful. It took note of recent governmental reform in Ukraine and the merging of the ministries responsible for energy and environment into the Ministry of Energy and Environmental Protection. It also noted that, due to those recent changes, the Ukrainian response to the Committee's letter of 11 October 2019 had been delayed to 10 December 2019.

12. The Committee's Chair presented to the representatives of Ukraine the outcome of the Committee's evaluation of follow-up by Ukraine to the decisions of the Meeting of the Parties concerning the Bystroe Canal Project, highlighting that Ukraine had been in non-compliance with the Convention for 11 years, with a caution issued 10 year previously.

13. The Chair subsequently informed the delegation of Ukraine of the schedule to prepare for the eighth session of the Meeting of the Parties. He emphasized that the Committee planned to prepare draft decision VIII/2d concerning the Bystroe Canal Project, along with all other draft compliance decisions, at its next session in March 2020 and to finalize it at its forty-eighth session (Geneva, 1–4 September 2020) based on the information to be received from the Parties concerned. The Committee confirmed its wish to thoroughly reflect in decision VIII/2d the progress made by Ukraine since the intermediary session of the Meeting of the Parties in February 2019. In that context, Ukraine was invited to provide updated information on the progress made, if any, at least four weeks in advance of those sessions, i.e. by 14 February 2020 and by 31 July 2020. Ukraine might also wish to submit, as needed, its views and comments on the draft decision before, during and after the meeting of the Working Group in June 2020.

14. Following the intervention by the delegation of Ukraine, the Committee acknowledged and welcomed the country's commitment to bringing the project into full compliance with the Convention and its willingness to provide the requested information further to the Committee's schedule. Nevertheless, the Committee expressed its concern regarding the completeness and quality of the information provided by Ukraine during the past decade. Ukraine had regularly reported on its legislative developments, progress in concluding a bilateral agreement with Romania and its monitoring activities. However, information on the steps taken by Ukraine to bring the Project into compliance with the Convention was not entirely clear or complete.

⁴ More information on the matter is available at www.unece.org/env/eia/implementation/eia_ic_s_1.html.

15. Subsequently, the delegation of Ukraine informed the Committee about steps taken by the country to follow up on decision IS/1f as set out by its 2018 Road Map, including: temporary suspension of works from July to September 2019; preparation during that period of an assessment of damage to the environment related to the Bystroe Canal Project; and the development of compensatory measures and measures to mitigate the likely environmental impact.

16. The Committee underlined the importance of corroborating information to substantiate the Party's responses to the Committee's questions and its information on the progress made to follow up on decision IS/1f and to implement the 2017 and 2018 Road Maps. The Committee indicated that Ukraine had not confirmed clearly and unambiguously that the final decisions on phases I and II of the Project had been repealed. Consequently, Ukraine was invited to provide:

(a) A consistent and complete list of all final decisions taken regarding phases I and II of the Project and amendments thereto, along with copies of all those decisions;

(b) A list of all subsequent decisions repealing the above-mentioned final decisions, along with copies of all those subsequent decisions.

17. Moreover, the Committee recalled information from Ukraine of 16 February 2018 about its intention to develop a new project for the Bystroe route and consequently conduct a relevant transboundary procedure under the Convention. Ukraine was invited to report whether the new project had been launched. If so, Ukraine should specify what the scope of the new project was and whether it had notified Romania. The Committee stressed that, if it were the case that the new project would not be launched, Ukraine should take steps to bring phases I and II of the current Project into compliance with the Convention.

18. The Committee asked its Chair to write to Ukraine expressing gratitude for its participation in the informal consultations, informing it of their outcome and inviting it to provide answers to the Committee's questions and the related corroborating information.

19. Lastly, the delegation of Ukraine emphasized the Convention's importance for Ukraine and its readiness to provide the requested information regarding the matter under consideration in a timely manner. The Convention was also crucial for Ukraine in respect of compliance by other Parties with the provisions of the Convention, particularly in the context of the Nord Stream 2 project. Ukraine wished to ensure that its request to set up an inquiry commission further to appendix IV of the Convention regarding that activity was addressed in a fair and equal way. The Committee's Chair confirmed receipt of the request, stating that the Committee would carefully consider the matter at the current session, providing equal treatment for all Parties concerned (see paras. 83-93 below).

C. Follow-up by Ukraine to decision IS/1g regarding the Rivne nuclear power plant (EIA/IC/CIS/4)⁵

20. The Committee welcomed the information from Ukraine dated 26 November 2019. It noted that Ukraine had entered into consultations with the affected Parties concerning the potential transboundary impact of the proposed activity in accordance with article 5 of the Convention, and that the Environmental Impact Assessment Report has been sent to Belarus, Hungary, Poland, the Republic of Moldova, Romania and Slovakia but that the consultation procedure had not been completed.

21. The Committee reviewed the information from Ukraine dated 27 May and 26 November 2019. It noted with regret that Ukraine had not responded to the Committee's request of 9 April 2019 inviting it to provide a detailed timetable for implementing the steps foreseen in paragraphs 7 and 8 of decision IS/1g and had not submitted its annual report on implementing that decision, due on 7 November 2019.

⁵ More information on the matter is available at www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative/eiaicci4-ukraine.html.

22. The Committee requested the Chair to write to Ukraine inviting it to provide its annual report on implementation of decision IS/1g, along with corroborating information on the steps taken, including copies of the correspondence with the Parties concerned.

23. In the above-mentioned letter to Ukraine, the Chair should also:

(a) Encourage Ukraine to continue the transboundary environmental impact assessment procedure with the Parties wishing to participate therein;

(b) Once again share the Committee's schedule to prepare draft compliance decisions, emphasising the importance of Ukraine presenting its information in a timely manner.

III. Submissions⁶

24. The discussions under the agenda item were not open to observers, in accordance with rule 17 (1) of the Committee's operating rules. The secretariat stated that, further to the Committee's operating rule 16 (4), the open submissions listed below and the replies to the submission provided to date by the Parties concerned had been made available through the Convention website within one month of their receipt.

A. Serbia (EIA/IC/S/6)⁷

25. The Committee began its consideration of the submission by Bulgaria received by the secretariat on 31 May 2019 and corroborating information received on 13 June and 28 June 2019. Bulgaria had expressed its concerns about compliance by Serbia with its obligations under the Convention regarding the following activities, located close to the Bulgarian border:

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

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

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

26. The Committee took note of the replies from Serbia received on 8 and 23 November 2019 and agreed to forward them to Bulgaria for comments and observations, inviting Bulgaria to provide any information and corroborating documentation that it considered relevant for the Committee to assess.

27. The Committee also agreed that, for its further deliberations on the submission, it needed additional information from Serbia concerning, among other things, each of the activities under consideration and the related environmental impact assessments and decision-making procedures. The curator for the submission was invited to formulate a request for additional information for the Committee to review at its next session. At its next session the Committee would also consider whether to invite Bulgaria and Serbia, in line with paragraph 9 of the Committee's structure and functions, to participate in the hearings and to present information and opinions on the matter under consideration at the Committee's forty-eighth session or forty-ninth session (tentatively scheduled to be held in Geneva, from 16 to 19 March 2021).

28. The Committee asked the Chair to send letters to Bulgaria, Serbia and the Balkan Association informing them of the Committee's deliberations.

⁶ More information on submissions is available at http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

⁷ More information on this matter is available at www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/enveiaimplementationimplementation-committee-matters/eiaics6-serbia.html.

B. Albania (EIA/ICS/7)⁸

29. The Committee noted the submission by Montenegro expressing concern about the planned construction of a number of small hydropower plants by Albania on the Cijevna River, which had been received by the secretariat on 25 September 2019.

30. The Committee also took note of the communication sent by the secretariat to the focal point of Albania on 30 September 2019, forwarding the submission with the corroborating information, in conformity with paragraph 5 (a) of the appendix of decision III/2 (ECE/MP.EIA/6, annex II).

31. The Committee noted that, at its forty-seventh session, it would consider the official submission by Montenegro, following receipt of the reply requested from Albania by 30 December 2019. Consequently, at its current session, the Committee would withhold from addressing any substantive issues regarding the submission.

IV. Information gathering⁹

32. Discussions under the agenda item were not open to observers – in line with rule 17 (1) of the Committee’s operating rules.

A. Convention matters

1. Belarus: national legislation to implement the Convention (EIA/IC/INFO/21)

33. The Vice-Chair chaired the Committee’s deliberations regarding the national legislation of Belarus implementing the Convention. The Committee’s Chair, as a member nominated by Lithuania, declared a conflict of interest and did not participate in the discussion. Before leaving the session, the Committee member nominated by Belarus informed the Committee that, on 15 July 2019, Belarus had adopted amendments to both its Law on state ecological expertise, strategic environmental assessment and environmental impact assessment and the relevant subsidiary legislation, respectively, on 15 July and 11 November 2019.

34. The Committee noted that, in its response of 15 July 2019 to the Committee’s letter of 11 April 2019, Belarus had clarified some aspects of its environmental impact assessment legislation prior to its amendment. The Committee agreed to ask its Vice-Chair to write to Belarus inviting it to:

(a) Update the Committee on recent changes in its environmental impact assessment-related legislation;

(b) Explain whether and how Belarus had addressed the deficiencies in its legislative framework vis-à-vis the Convention communicated to it in the Committee’s letter dated 2 January 2019, including concerning: the administrative framework for implementing the Convention; the definition of several key terms; the field of application; public participation; and transboundary consultations.

35. Belarus should also be requested to provide copies of the amended legislation and of all sanitary rules and regulations referred to in the letter of Belarus dated 15 July 2019, such as “Requirements for sanitary zones of organizations, constructions and other objects affecting human health and the environment”.

⁸ More information on this matter is available at www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/enveiaimplementationimplementation-committee-matters/eiaics7-albania.html.

⁹ More information on information-gathering cases is available at www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html.

36. The Committee acknowledged receipt of an unsolicited letter of 22 November 2019 from Lithuania regarding the national legislation of Belarus for implementing the Convention. The Committee noted that it was the Committee's prerogative to analyse the legislation of Belarus under its ongoing information gathering case, and, as appropriate, to consult relevant objective sources to assist it in the performance of its functions. The Committee noted that Lithuania was a concerned Party regarding the issue.

2. Bosnia and Herzegovina

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

37. The Committee continued its consideration of the information it had gathered regarding the planned construction of a third block for the thermal power plant in Ugljevik, Bosnia and Herzegovina, close to the border with Serbia.

38. The Committee reviewed information by Bosnia and Herzegovina, dated 5 November 2019, noting that, on 11 October 2019, Bosnia and Herzegovina had notified Serbia regarding the activity and invited it to express, within 15 days after receiving the notification, its interest in participating in the transboundary environmental impact assessment procedure.

39. The Committee asked its Chair to write to Bosnia and Herzegovina reiterating its invitation of 9 October 2019 to update the Committee on the status of the proposed activity and to provide a timeline for each step of the transboundary procedure. In his letter, the Chair should also invite the Party to report on its communication with Serbia following the notification.

40. Furthermore, the Committee asked its Chair to write to Serbia requesting it to confirm receipt of the notification from Bosnia and Herzegovina and to provide a copy of its response to the notification.

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

41. The Committee continued its deliberations regarding the information it had gathered concerning the construction by Bosnia and Herzegovina of a thermal power plant in Stanari, close to the border with Croatia, further to the information received from the NGO Centre for Environment on 18 September 2014.

42. Based on the analysis of all information provided by the two Parties and the NGO as of December 2019, the Committee noted that:

(a) Bosnia and Herzegovina had issued an environmental permit for the construction of a thermal power plant in Stanari with a total capacity of 410 MW in 2008, prior to ratifying the Convention in 2009. That permit had been issued based on the national environmental impact assessment procedure concluding that a significant adverse transboundary impact was not likely;

(b) In 2010, the 2008 environmental permit had been amended to provide for modifications to the initially proposed technologies, the reduction of the total capacity of the thermal power plant from 410 to 300 MW and the reduction of power generation output from 3000 to 2000 GWh. At that stage, Bosnia and Herzegovina had concluded that the proposed project modifications would result in a significant reduction of the initially estimated environmental impact;

(c) On 19 April 2013, upon the expiry of its five-year validity period, the environmental permit had been renewed and, in 2015, it had been revised once again. More stringent air emissions standards had been set for the activity, in line with the European Union Large Combustion Plants Directive.¹⁰

43. The Committee recalled that, in February 2014, based on the NGO's request, Croatia had invited Bosnia and Herzegovina to provide information regarding the activity. Bosnia

¹⁰ Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants, *Official Journal of the European Communities*, L 309 (2001), pp. 1–21.

and Herzegovina had responded on 9 June 2014, informing Croatia of the results of the 2008 national environmental impact assessment procedure.

44. The Committee further recalled that, in the period 2016–2017, the Committee had sent three requests to Croatia inviting it to indicate whether, in its opinion, a significant adverse transboundary impact on its territory was likely. Having received no answer, the Committee, in September 2017, had invited both Parties to enter, as soon as possible, into discussions as provided for by article 3 (7) of the Convention and to inform the Committee of the steps taken and the outcomes of the discussions. The Committee noted that – further to the Committee’s repeated reminders in 2018 and 2019 – Croatia had approached Bosnia and Herzegovina with its request for information on the activity on 11 February 2019 only. Furthermore, the Committee noted the information from Bosnia and Herzegovina, dated 15 May 2019, that the plant had entered into operation in November 2016.

45. In the Committee’s view, the Parties concerned had not demonstrated their willingness to use the mechanism under article 3 (7) in an appropriate manner and had failed to report back in a timely manner regarding the steps taken by them to implement the Committee’s recommendations. On those grounds, the Committee concluded that, at the current stage, there was no need for it to pursue further its information gathering regarding the issue.

46. Nevertheless, for future reference, the Committee emphasized that Croatia, as a potentially affected Party, had sent its information request to Bosnia and Herzegovina with a significant delay. That delay, in the view of the Committee, was beyond the reasonable time frame under the Convention. The Committee further held that article 3 (7) of the Convention created a right for a potentially affected Party to request the Party of origin to exchange sufficient information and to enter into discussions with it on whether a significant adverse transboundary impact was likely. That right, however, should not be abused. The Committee was of the opinion that potentially affected Parties should make such a request as soon as they became aware of a proposed activity that might have a likely significant adverse transboundary impact. The subsequent exchange of sufficient information and discussions under article 3 (7) of the Convention between the Parties concerned should be conducted within a reasonable time frame.

47. The Committee also stressed that an official letter containing the results of a completed national environmental impact assessment procedure could not be regarded as a notification for the purposes of the Convention. The notification on the proposed activity should contain the information referred to in article 3 (2) of the Convention and preferably be prepared further to decision I/4 of the Meeting of the Parties regarding the format for notification (ECE/MP.EIA/2, annex IV).

48. The Committee asked the Chair to write to Bosnia and Herzegovina and Croatia to inform them accordingly and to encourage them to conclude a bilateral agreement to implement the Convention in line with article 8 of the Convention. Finally, the Chair should request agreement that the correspondence between the Committee, Bosnia and Herzegovina and Croatia be placed on the Convention’s website.

(c) Banovici thermal power plant (ECE/IC/INFO/23) and construction of unit 7 at the Tuzla thermal power plant (ECE/IC/INFO/24)

49. The Committee continued its deliberations concerning the planned construction by Bosnia and Herzegovina of a new thermal power plant in Banovici, approximately 50 km from the borders with Croatia and Serbia, and the planned construction by Bosnia and Herzegovina of unit 7 of the thermal power plant in Tuzla, approximately 40 km from the borders with Croatia and Serbia.

50. The Committee reviewed the information regarding both proposed activities from Bosnia and Herzegovina, dated 7 and 8 November 2019, from Croatia, dated 28 October 2019, and from Serbia, received on 17 September and 8 and 22 November 2019. It noted that:

- (a) In the view of Bosnia and Herzegovina, significant adverse transboundary impact from both proposed activities on the territories of Croatia and Serbia was not likely;
- (b) Serbia had sought to engage in the transboundary environmental impact assessment procedure regarding both activities. After examining the information provided by

Bosnia and Herzegovina in response to its request of 28 August 2019, Serbia had considered that it would be a potentially affected Party by both proposed activities and intended to make use of the mechanism under article 3 (7);

(c) The information from Croatia lacked clarity. On the one hand, Croatia indicated that the information provided by Bosnia and Herzegovina further to its request in February 2019 was insufficient to determine whether significant adverse environmental impact from the proposed activities on its territory was likely. On the other hand, Croatia considered that it should have been informed of the proposed activities in a timely manner and that article 2 (4) of the Convention should have been properly applied for the proposed activities.

51. With a view to obtaining further clarifications regarding the Parties' positions regarding the proposed activities, and to assisting them in complying with the Convention, the Committee decided to invite Bosnia and Herzegovina, Croatia and Serbia for informal consultations, to be organized by the secretariat at its forty-seventh session. It additionally agreed that the informal consultations should address the construction of the third block at the Ugjevik thermal power plant. The Committee invited the curator to develop, by 9 January 2020, a list of specific questions for each Party regarding each activity to be discussed during the informal consultations. The Committee asked its Chair to inform the Parties accordingly and to request them to provide their written responses to the Committee's questions and to inform the Committee of the composition of their delegations.

52. The Committee expressed regret at the fact that the requested information from Bosnia and Herzegovina regarding its legislation, its framework energy strategy and the related strategic environmental assessment had been received with delay, on 6 December 2019. Consequently, the Committee needed to postpone consideration of the matter to its next session, inviting the curator to prepare an analysis of the information by 28 February 2020.

3. Serbia: extension of Drmno lignite pit mine (ECE/IC/INFO/27)

53. Further to the information received on 29 October 2019 from the NGO ClientEarth, the Committee continued to consider the information it had gathered on the extension of the capacity of the open-pit mine at Drmno, Serbia, close to the border with Romania. It noted ClientEarth's comments expressing concern that, at its forty-fifth session (Geneva, 10–13 September 2019), the Committee had agreed not to pursue further its information-gathering activities regarding the issue (ECE/MP.EIA/IC/2019/4, paras. 43 and 44).

54. The Committee asked the Chair to write to ClientEarth emphasizing that the Committee had agreed that there was no need for it to continue the information-gathering procedure regarding the extension of the open-pit mine based on the information received from the Parties concerned – notably Serbia, as the Party of origin, and Romania, as the affected Party. Romania had expressed its satisfaction with the transboundary environmental impact assessment procedure carried out by Serbia and its outcomes.

55. Referring to the Committee's previous opinions, the Chair should emphasize that ensuring effective public participation was an integral part of the transboundary environmental impact assessment procedure under the Convention (ECE/MP.EIA/WG.1/2006/4, para. 16), and a common responsibility of the affected Party and the Party of origin (ECE/MP.EIA/15, decision V/4, para. 6 (c)). According to information from Romania and Serbia, the two Parties had discussed and exchanged information regarding the Drmno pit mine during the transboundary procedure regarding the construction of the third block of the Kostolac power plant, including at a public hearing in September 2017. In the view of Romania, Serbia had fully answered all the questions from the Romanian authorities and public and the NGO Bankwatch Romania (ECE/MP.EIA/IC/2019/4, para. 43 (a)).

56. Romania had also stated that it intended to observe any adverse transboundary impact of the activity further to the post-project analysis measures agreed on with Serbia in accordance with article 7 of the Convention, as set out in the final decision of 28 September 2017. In that context, ClientEarth and Bankwatch Romania should be invited to communicate their observations and concerns regarding the current exploitation by Serbia of the Drmno mine to the Government of Romania to enable it to address them under the post-project analysis procedure.

57. Lastly, the Chair should point out that the Parties' decisions on outcomes of application of the Convention procedure were without prejudice to the rights of the public under other relevant international legal instruments, such as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, and to national standards establishing a Government's obligations to the public.

4. Switzerland: changes at Zurich Airport (ECE/IC/INFO/25)

58. The Committee continued its consideration of the information that it had gathered further to the information received from a German civil initiative on 20 June 2017 regarding the planned changes at Zurich Airport, close to the border with Germany, including the construction of taxiways and changes in the operating regulations.

59. The Committee noted the information from the German civil initiative, dated 27 October 2019, and from Germany, dated 13 November 2019. It also noted that, due to the extensive coordination and translation work needed to prepare answers to the Committee's inquiries of 9 October 2019, Switzerland had requested an extension of the deadline for responding. The Committee recalled that, on 11 November 2019, the extension of the deadline to 14 February 2020 had been exceptionally granted as proposed by the Committee's Chair. It agreed to resume its consideration of the matter at its next session and requested the secretariat to inform Germany and the German civil initiative accordingly.

5. Ukraine

(a) *Construction of units 3 and 4 at the Khmelnytsky nuclear power plant in Ukraine (EIA/IC/INFO/10)*

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

61. The Committee reviewed the information received from Ukraine on 26 November 2019 and expressed regret at the fact that Ukraine had failed to provide concrete and comprehensive answers to the Committee's questions in its letter of 17 October 2019. It asked the Chair to write to Ukraine reiterating the Committee's requests and, in particular, asking Ukraine to provide clear and precise information regarding the following:

(a) The status of the transboundary consultations with Hungary, the Republic of Moldova, Romania and Slovakia, including, if applicable, the reasons for terminating the consultations;

(b) The timeline for each step of the transboundary procedure, including the consultations with all potentially affected Parties under article 5 of the Convention, and the expected date of the final decision on the activity, in accordance with article 6 of the Convention.

62. In the above-mentioned letter, the Chair should also request Ukraine to provide copies of all relevant decisions and of all correspondence with all potentially affected Parties, including Austria, Belarus, Hungary, Poland, the Republic of Moldova, Romania and Slovakia.

63. The Committee agreed to resume its consideration of the matter at its next sessions based on the curator's analysis to be presented by 28 February 2019.

(b) *Construction of Svydovets tourism complex (EIA/IC/INFO/29)*

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

65. The Committee reviewed the information from Czechia, Serbia, Slovakia and Bulgaria dated 7, 8, 11 and 22 November 2019, respectively. It noted that those Parties had

not been notified by Ukraine under article 3 (1) of the Convention regarding the proposed activity. Czechia, Serbia and Slovakia had concluded – after examining the English translation of the public notice of Ukraine on the activity – that they would not be affected by a significant adverse transboundary impact of the activity. Slovakia intended to continue monitoring the project and wished to receive relevant new information. Bulgaria would inform the Committee about its intention to use the mechanism under article 3 (7) of the Convention at a later stage.

66. The Committee recalled that Hungary had sent a request for a notification to Ukraine on 3 May 2018. It noted the information from Hungary, dated 20 November 2019, that, to date, Hungary had not received a notification and had been considering making use of the mechanism under article 3 (7) of the Convention regarding the construction of a tourism complex in the Svydovets mountain range.

67. The Committee reviewed the information from Romania, dated 14 November 2019, and information from Ukraine received on 28 November 2019. It noted that Romania, on 24 October 2019, had initiated a discussion with Ukraine using the mechanism under article 3 (7) and that Ukraine, in its responses to Romania and Slovakia, had stated that its competent authority had been unable to establish whether a significant transboundary environmental impact was likely pending receipt of the environmental impact assessment documentation from the developer. Should the transboundary impact be determined based on that documentation, Ukraine would inform Romania and Slovakia accordingly.

68. The Committee agreed to ask its Chair to write to Ukraine inviting it to update the Committee on the activity's status and to engage without delay in consultations with Hungary, Romania and other Parties wishing to exchange sufficient information and hold discussions as provided for under article 3 (7) of the Convention. In the Committee's view, when no notification had taken place in accordance with article 3 (1) of the Convention, and when a Party that considered itself to be potentially affected by a significant adverse transboundary impact of a proposed activity listed in appendix I requested to hold discussions under article 3 (7), particularly at an early stage of the proposed activity, the Party of origin should immediately respond to the request of such a Party, providing it with sufficient information on the activity and its potential environmental impacts. Should the likelihood of a significant transboundary impact not have been comprehensively assessed at the time of the request, the competent authority of the Party of origin should provide the potentially affected Party with the available information on the activity. Moreover, the Party of origin should present to the potentially affected Party a timetable for its decision-making process regarding the activity, with an indication of when the discussion on whether a significant adverse transboundary impact was likely to take place.

69. The Committee asked the Chair to inform Hungary, Romania and the Swiss NGO Bruno Manser Fonds of the outcome of the Committee's deliberations and to invite them to provide any additional relevant information on the matter.

6. Information-gathering matters related to the lifetime extension of nuclear power plants

70. The Committee continued its consideration of the cases related to the lifetime extension of nuclear power plants. It noted information from the secretariat on the progress of the ad-hoc group in drafting guidance on the applicability of the Convention to the lifetime extension of nuclear power plants (ECE/MP.EIA/WG.2/2019/INF.6), including the results of the ad-hoc group's eighth meeting (Vienna, 3 and 4 December 2019),¹¹ and the outcome of a related international stakeholders' workshop (Vienna, 2 December 2019).¹² Additionally, it noted the OECD report entitled "Legal Frameworks for Long-Term Operation of Nuclear Power Reactors".¹³

¹¹ See www.unece.org/index.php?id=51794.

¹² See www.unece.org/index.php?id=52767.

¹³ Available at www.oecd-neo.org/law/pubs/2019/7504-long-term-operation-npp.pdf.

(a) Bulgaria: Kozloduy nuclear power plant (ECE/IC/INFO/28)

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

72. It first reviewed the response of Bulgaria of 8 November 2018 to the Committee's requests of 17 April, 22 July and 9 October 2019. The Committee agreed that further clarifications should be sought from Bulgaria and requested the Chair to write to Bulgaria asking it to respond in a clear and precise manner to the following questions:

(a) Whether a comprehensive environmental impact assessment procedure covering the whole activity (units 5 and 6) had been conducted at any time. If so, Bulgaria should specify when that procedure had been conducted and provide a copy of the non-technical summary of the related environmental impact assessment report;

(b) Whether any transboundary environmental impact assessment procedure had been carried out regarding the construction, operation or lifetime extension of units 5 and 6 of the nuclear power plant. If so, Bulgaria should specify the countries involved and the outcome of that procedure and provide a copy of the non-technical summary of the related environmental impact assessment report;

(c) Whether any modernization or other changes, including upgrading measures or increase of the original capacity of the power units, had been undertaken since 2008. If so, Bulgaria should provide a list of those changes, specifying a time period when they had been undertaken.

73. Furthermore, Bulgaria should be requested to supply the following additional information regarding licensing of the activities:

(a) Copies of the initial licences for units 5 and 6 of the Kozloduy nuclear power plant issued prior to their entry into operation in 1987 and 1991 respectively, and copies of all subsequent licences for construction and operation of units 5 and 6, including technical conditions, restrictions and mitigation measures set out by each licence;

(b) A summary table listing the technical conditions, restrictions and mitigation measures set out in the initial operation licences for units 5 and 6 and changes in those technical conditions, restrictions and mitigation measures introduced by the subsequent licences, including those issued in 2003, 2009, 2017 and 2019;

(c) An explanation of whether, according to Bulgarian legislation, licensing procedures for lifetime extension of units 5 and 6 were to be regarded as replacements for the previous licences or amendments to the original licences.

74. The Committee also asked the Chair to write to Romania inviting it to provide its views on the responses of Bulgaria to the Committee's questions.

75. Furthermore, the Committee asked the Chair to invite Austria and Serbia to clarify:

(a) Whether they had been notified of the lifetime extension of units 5 and 6 of the Kozloduy nuclear power plant in Bulgaria. If so, they should indicate when the notifications had been received and the outcomes of the subsequent procedure;

(b) Whether, based on the information available, they considered themselves potentially affected Parties by the activity and would have wished to be notified;

(c) If they considered that they could be potentially affected but had not been notified, whether they planned to make use of the mechanism under article 3 (7) of the Convention.

76. The Committee asked the secretariat to inform the Romanian NGO Actiunea pentru Renasterea Craiove of its deliberations and to invite the NGO to provide the Committee with any relevant information by 14 February 2019.

(b) Ukraine: Khmelnytsky, Rivne, South Ukrainian and Zaporizhzhya nuclear power plants (ECE/IC/INFO/20)

77. The Committee continued its consideration of the information it had gathered concerning the lifetime extensions of the Khmelnytsky, South Ukrainian and Zaporizhzhya

nuclear power plants and units 3 and 4 of the Rivne nuclear power plant. Discussions under the agenda item were held in the absence of the members nominated by Belarus, Hungary and Ukraine, to avoid any direct or indirect conflict of interests.

78. The Committee reviewed the information received from Ukraine on 26 November 2019. The Committee regretted that, to date, Ukraine had not responded to its questions concerning the extension of the lifetime of the Khmelnytsky nuclear power plant.

79. Regarding the intention of Ukraine to resume the consultations regarding the lifetime extension of the Khmelnytsky, Rivne, South Ukrainian and Zaporizhzhya nuclear power plants only after the guidance on the applicability of the Convention to the lifetime extension of nuclear power plants had been adopted, the Committee reiterated its earlier conclusion that, by suspending the ongoing transboundary procedure, Ukraine had put itself in non-compliance with the Convention (ECE/MP.EIA/IC/2019/4, para. 89). Moreover, the Committee pointed out that, since the concerned Parties had already initiated the application of the Convention to the proposed activities in question by a common agreement, the availability of a guidance document in that respect was irrelevant.

80. Indeed, in the Committee's view, a notification by a Party of origin regarding a proposed activity under articles 2 (4) and 3 (1) of the Convention, followed by the indication by the affected Party of its intent to participate in the environmental impact assessment procedure further to article 3 (3) of the Convention, constituted a mutual agreement between the Parties concerned that a significant transboundary environmental impact on the territory of the affected Party was likely. The subsequent steps of the transboundary procedure set out in the Convention, including the preparation of the environmental report under article 4, carrying out transboundary consultations further to article 5 and taking a final decision as set out in article 6, should be completed based on that agreement regardless of the general discussions by the Parties on application of the Convention to similar activities. The Committee considered that the guidance being prepared would be useful for Parties in the future regarding a related proposed activity when the Parties concerned could not agree whether significant adverse transboundary impact was likely and, consequently, when the transboundary procedure had not started.

81. The Committee asked its Chair to write to Ukraine conveying and re-emphasizing its above-mentioned views and:

(a) Strongly encouraging Ukraine to proceed with the finalization of the transboundary procedures concerning the activities at the Khmelnytsky, Rivne, South Ukrainian and Zaporizhzhya nuclear power plants;

(b) Inviting Ukraine to respond to its requests for information of 17 April and 9 October 2019 concerning the lifetime extension of units at the Khmelnytsky nuclear power plant.

82. The Committee asked the secretariat to inform the NGO Central and Eastern Europe Bankwatch Network of its deliberations on the matter at the current session and to invite the NGO to provide any additional relevant information.

7. Nord Stream 2 (EIA/IC/INFO/30)

83. The Committee continued its deliberations on the information it had gathered further to the information received from Ukraine of 22 January 2019 concerning the construction of a natural gas pipeline from the Russian Federation to Germany (Nord Stream 2 project) with Denmark, Finland, Germany and Sweden as Parties of origin. To avoid any direct or indirect conflict of interests, specific discussions concerning the Nord Stream 2 project under the agenda item were held in the absence of the members nominated by Finland, Sweden and Ukraine. At the invitation of the Committee, the above-mentioned Committee members, with the exception of the member nominated by Finland – who declared a possible conflict of interest and who was absent from all the discussions under the agenda item – took part in the Committee's general discussion on the application of article 3 (7) of the Convention (see paras. 87 and 88 below).

84. The Committee noted two letters from Ukraine, dated 18 November 2019: one addressed to the Committee and another to the secretariat. In both letters, Ukraine referred to the Committee's requests of 17 April 2019 for the concerned Parties to exchange sufficient

information and to hold discussions in accordance with article 3 (7), and presented the view of Ukraine that the Parties of origin had not implemented the Committee's requests. Ukraine also referred to information from "open sources" that, on 30 October 2019, Denmark had granted a permit for the construction of the Nord Stream 2 gas pipeline through the continental shelf of Denmark, which was expected to start four weeks from the date of publication of the permit, i.e. towards the end of November.

85. On the one hand, expressing its concerns regarding the situation, Ukraine renewed its previous request to establish several inquiry commissions in accordance with article 3 (7) and appendix IV of the Convention, with a view to considering whether the planned construction of the Nord Stream 2 project was likely to have a significant adverse transboundary impact on Ukraine. On the other hand, the same letters referred to the setting up of an inquiry commission "primarily" with Denmark. The Committee noted that the requests of Ukraine lacked clarity in that respect.

86. Further to its deliberations, the Committee reiterated its previous conclusion that appendix IV of the Convention regarding the inquiry procedure was not applicable unless the preconditions in article 3 (7) had been met.

87. The Committee specified that, in its view, when a Party considered that it would be affected by a significant adverse transboundary impact of a proposed activity listed in appendix I, and when no notification had taken place in accordance with article 3 (1), it might, in accordance with article 3 (7), request exchange of sufficient information for the purposes of holding discussions on whether there was likely to be a significant adverse transboundary impact. The affected Party should make its request as soon as it became aware of a proposed activity that it considered to have a likely significant adverse transboundary impact. The subsequent exchange should be conducted within a reasonable time frame.

88. Moreover, to implement article 3 (7) the concerned Parties should:

(a) Exchange information that was sufficient and within the scope of the Convention for the purposes of holding discussions on whether there was likely to be a significant adverse transboundary impact. Moreover, if available, the Party of origin should provide the environmental impact assessment documentation for the proposed activity to the Party that considered itself affected;

(b) Hold discussions on whether a significant adverse transboundary impact on the territory of the affected Party was likely. The Committee considered that the outcome of those discussions should be documented, preferably as joint statements or meeting minutes signed by the Parties concerned, but as a minimum as part of official correspondence;

(c) Endeavor to agree on another method of settling that question.

89. The Committee noted that, despite its requests in the Chair's letter of 17 April 2019 to Ukraine to exchange sufficient information with Denmark, Finland, Germany and Sweden, to hold discussions with them, and to inform the Committee of the outcomes of the discussions, the letters from Ukraine contained no corroborating information on the exchange of sufficient information, the discussions held or on their outcomes. The Committee agreed therefore that it was not currently in a position to conclude whether the preconditions of article 3 (7) had been met. Moreover, the Committee lacked any information on the possible consideration of other methods for settling the question among the concerned Parties.

90. On those grounds, the Committee asked its Chair to write to the Government of Ukraine reiterating its request of 17 April 2019 and inviting Ukraine to provide the Committee with the above-mentioned information and clarifications.

91. Furthermore, the Committee noted that Ukraine now expressed concerns primarily about Denmark alone. It observed, based on the information from Ukraine, that Denmark had not followed the Committee's requests at its forty-fourth session to exchange sufficient information and to enter into discussion with Ukraine under the article 3 (7) mechanism. The Committee asked its Chair to write to Denmark to again invite it to exchange sufficient information, to enter into discussions with Ukraine and to inform the Committee about the discussions' outcomes, preferably in the form of a joint document.

92. In his letters, the Committee Chair should also encourage both Parties to seek other alternative methods of settling the question. The information, including the copies of the correspondence between the Parties and their translation into English, should be provided to

the Committee through the secretariat by 14 February 2020 for the Committee to consider at its next session.

93. Pending receipt of the information and the clarifications from Ukraine and Denmark, the Committee reiterated its invitation to the secretariat to take no action regarding the establishment of one or several inquiry commissions and to consult it without a delay, as needed.

B. Protocol matters

1. Serbia (SEA/IC/INFO/1)

94. The Committee continued its consideration of compliance by Serbia with the Protocol regarding the Energy Sector Development Strategy of the Republic of Serbia for the Period up to 2025 with Projections up to 2030, the Strategy's implementation programme for the Period 2017–2023 and the second Spatial Plan of the Republic of Serbia. The discussions were held in the absence of the Committee member nominated by Hungary, to avoid any direct or indirect conflict of interests.

95. The Committee noted with regret that Serbia had not responded to the Committee's letter of 7 October 2019 offering the country an additional opportunity to provide information on its strategic planning documents and explanations on the related transboundary procedures before the Committee drew its conclusions.

96. The Committee then reviewed all information available on the matter, including the information from Bosnia and Herzegovina, dated 6 November 2019. It considered the absence of a response from North Macedonia to the Committee's questions as an indication that the Party did not consider itself to be potentially affected by the strategic documents under consideration.

97. Regarding the transboundary strategic environmental assessment procedure concerning the Energy Sector Development Strategy, the Committee recalled that, in October 2013, Serbia had sent a notification under the Protocol to Bosnia and Herzegovina, Bulgaria, Montenegro and North Macedonia. The Committee further recalled information from Serbia that, in October 2013, it had also notified Croatia, Hungary and Romania of the Strategy. Nevertheless, those countries had stated that they had not received notification. Despite numerous requests from the Committee, Serbia had been unable to substantiate its statement with copies of original correspondence with Croatia, Hungary and Romania, including copies of the notifications to those countries or the Parties' responses thereto. The Committee agreed that information available to it constituted a profound suspicion of non-compliance by Serbia with its obligations under article 10 (1) and (2) of the Protocol and decided to begin a Committee initiative further to paragraph 6 of the Committee's structure and functions.

98. Concerning the Programme for the implementation of the Energy Strategy for the Period 2017 up to 2023, the Committee recalled that Croatia, Hungary, Montenegro and Romania had confirmed their wish to participate in the transboundary consultations under article 10 of the Protocol further to notification by Serbia in August 2017. Within three weeks of obtaining notification, Hungary had asked Serbia to provide it with Hungarian translations of the documents to ensure effective public participation in its territory. In September 2017, it had also invited Serbia to agree on the language regime of the procedure under article 10 (4) of the Protocol. As of 31 May 2019, the requests of Hungary had not been addressed by Serbia, hindering its participation in consultations as provided for by article 10 (3) of the Protocol before the adoption of the Programme. Moreover, further to the available information, the Committee found that the Programme had been adopted in October 2017 and that the potentially affected Parties, including Hungary and Montenegro, had not been informed of the adoption of the Programme in accordance with article 11 (2). On those grounds, and further to paragraph 6 of the Committee's structure and functions, the Committee decided to extend the Committee initiative regarding the Energy Sector Development Strategy to the Programme for its implementation.

99. In line with paragraph 9 of its structure and functions, the Committee decided to invite Serbia to its forty-eighth session to participate in the discussion and to present information

and opinions regarding transboundary consultations concerning both the Strategy and the Programme for its implementation. The Committee would start by considering the initiative in a closed session, followed by a brief presentation by Serbia and questions by the Committee. The initiative would then be considered again in a closed session at which findings and recommendations would be drafted. The Committee agreed that, at its forty-seventh session, it would agree on questions to be sent to Serbia and invited the curator to formulate them. After that session, along with a request to address any questions, Serbia should also be invited to provide the secretariat as soon as possible with the names of its respective delegates, and to keep in mind operating rules 11 (1) to (3) regarding procedures for submissions and 15 (4) regarding procedures for Committee initiatives. The Committee asked the Chair to send a letter to Serbia including the above information.

100. Finally, regarding the second Spatial Plan, the Committee considered – taking into account general time frames for preparing spatial plans and the Plan’s entry into force on 1 December 2010 – that it was likely that the first formal preparatory act for the Plan had been executed before the entry into force of the Protocol for Serbia on 6 October 2010. Thus, in line with article 24 (4) of the Protocol, the Protocol was not applicable to the Plan. On those grounds, the Committee agreed that there was no need to elicit further information on the matter.

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

101. The Committee continued its consideration of the information it had gathered concerning the Programme of Ukraine for Hydro Energy Development for the Period until 2026, adopted by the Government of Ukraine on 13 June 2016.

102. It reviewed the information from the Republic of Moldova, dated 22 November 2019, and the replies of Ukraine, dated 30 July and 9 August 2019, to the Committee’s inquiries of 17 April 2019 requesting Ukraine, among other things, to clarify the date, origin and nature of the first formal preparatory act for the Programme, as referred to in article 24 (4) of the Protocol.

103. The Committee noted that, according to article 24 (4) of the Protocol, the Protocol should apply to plans, programmes, policies and legislation for which the first formal preparatory act was subsequent to the date on which the Protocol entered into force.

104. The Protocol had entered into force in Ukraine on 1 March 2016. According to Ukraine, the country had initiated the development of the Programme prior to that date, following the adoption of the Energy Strategy of Ukraine for the period up to 2030 by the Government of Ukraine in 2013. Ukraine referred to the minutes for the meeting of relevant units of the Ministry of Energy and Coal Industry of Ukraine held on 28 December 2015 as constituting the first formal preparatory act for the Programme. Following that clarification, and taking into account the usual time frames needed for the preparation of national plans and programmes, including time for consultations, the Committee noted that the temporary provision provided for in article 24 (4) of the Protocol should apply to the Programme and that, subsequently, the provisions of articles 5 to 11 of the Protocol should not apply.

105. In the light of the above, the Committee decided that there was no need for it to pursue further its information-gathering activities regarding the issue. The Committee asked the Chair to write to Ukraine, the Republic of Moldova and Eco-TIRAS to inform them accordingly. The Chair should also request agreement that the correspondence between the Committee, Ukraine and the Republic of Moldova be placed on the Convention’s website, as an illustration of the Committee’s approach to information gathering.

V. Review of implementation

A. Specific compliance issue under the Protocol

106. The Committee continued to consider the information it had gathered concerning the specific issue of compliance by the European Union with the Protocol identified in the first review of implementation of the Protocol (ECE/MP.EIA/SEA/2014/3, para. 5).

107. The Committee examined a reply from the European Commission received on 12 November 2019 in response to the Committee's letter of 9 October 2019 requesting the European Union to:

(a) Provide comments on the Committee proposal for a possible reporting format for regional economic integration organizations, developed with a view to streamlining European Union reporting on the Protocol's implementation in the future;

(b) Ensure that possible discrepancies between the European Union Strategic Environmental Assessment Directive¹⁴ and the Protocol identified by the Committee were taken into account in the Commission evaluation of the Directive.

108. The European Union had not provided any comments on the proposed reporting format for regional economic integration organizations, reiterating its position regarding its obligation to report under the Protocol and its competences as a regional economic integration organization. The Committee requested the secretariat to forward the proposal for the possible reporting format for consideration by the Working Group at its tenth session (Geneva, 30 November–2 December 2021).

109. The Committee subsequently reviewed the working documentation on the evaluation of the Strategic Environmental Assessment Directive¹⁵ and the corresponding external expert study for the European Commission. It noted the results of the evaluation, in particular that there was a consensus on a need to clarify the Directive due to uncertainty over its scope and that said need could be addressed through various means, ranging from an amendment of the Directive to the preparation of guidance. Regarding the Protocol, the Committee remarked that, while the external expert study considered, among other things, the fact that the lack of public consultation in scoping was seen as an inconsistency with the Protocol, the European Commission had not referred to possible early occurrence of consultation procedures, including public participation in scoping, as a priority issue. The Commission services had been planning to further assess the information and evidence and carefully follow the development of the case law to decide on further steps. The Committee expected that the European Commission would use the Committee's opinion on the possible discrepancies between the Directive and the Protocol as one of the inputs in that process.

110. The Committee asked the curator to prepare a summary of its previous assessment on applicability of the Protocol to plans/programmes adopted at the European Union level.

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

111. The Committee continued its consideration of specific compliance issues identified in the fifth review of implementation of the Convention (ECE/MP.EIA/2017/9).

112. The Committee examined replies from Belgium, Montenegro and Cyprus received on 2 August 2019, 15 November 2019 and 4 December 2019 respectively in response to the Committee's letters of 11 April 2019 and 9 October 2019 requesting further clarifications on how those Parties, as affected Parties, ensured public involvement in the environmental impact assessment procedure under articles 3 (8) and 4 (2) of the Convention. The Committee agreed that the Parties' responses were to its satisfaction and asked the Chair to write to the Governments of the above-mentioned countries accordingly.

113. The Committee regretted that it had not received a response from North Macedonia or from Portugal to its letters of 11 April and 9 October 2019 and stated that it needed to postpone consideration of the reply from Cyprus to its next session due to the reply's late arrival.

¹⁴ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, *Official Journal of the European Communities*, L 197 (2001), pp. 30–37.

¹⁵ See https://ec.europa.eu/environment/eia/pdf/Doc%201%20SWD_2019_SEA%20REFIT.pdf and https://ec.europa.eu/environment/eia/pdf/Doc%202%20SWD_2019_SEA%20REFIT%20executive%20summary_EN.pdf.

114. It invited the Chair to write to North Macedonia and Portugal urging them to provide responses without delay.

C. Examination of general and specific compliance issues from the second review of implementation of the Protocol

115. The Committee continued its consideration of a specific compliance issue regarding Serbia identified in the second review of implementation of the Protocol (ECE/MP.EIA/SEA/2017/9). It reviewed the response received from Serbia on 22 November 2019 to its letter dated 17 April 2019 requesting clarifications on implementation of article 7 (3) of the Protocol, particularly on how Serbia ensured that environmental reports were of sufficient quality.

116. The Committee observed that the Serbian quality control system for environmental reports had been generally well developed and included such measures as the review by a competent authority of environmental reports and related reports on consultations with the relevant authorities and public. Additionally, it noted specific requirements for the content of the environmental report as set out by the Serbian law on strategic environmental assessment, particularly article 12 thereof. In view of the Committee, those requirements seemed to be more general than those required by annex IV to the Protocol. The Committee asked the Chair to write to Serbia seeking clarification on implementation of article 7 (2) of and annex IV (in particular, paras. 1–5 and 11) to the Protocol regarding the information to be included in the environmental report, and requesting Serbia to provide a copy of its law and possible secondary legislation related to strategic environmental assessment.

VI. Work methods and operating rules

117. The Committee continued its discussions on ways to increase its effectiveness and efficiency to tackle its constantly growing workload of compliance cases.

118. It agreed to complete, during the current intersessional period, the review of its working methods and practice, with a view to revising, during the 2021–2023 intersessional period, the Committee’s structure and functions and its operating rules in the light of experience gained in the interim, aiming to improve their coherence and avoid duplication.

119. To facilitate timelier responses by Parties concerned to the Committee’s requests, the Committee also agreed that – in addition to being sent to the focal points for administrative matters – on request by Parties, the Chair’s letters should be copied to points of contact regarding the notification.

VII. Other business

120. To assist Parties in preparing notifications under the Convention and the Protocol and Parties’ responses thereto, the Committee invited the secretariat to republish decisions I/4 and II/2 on the Convention’s website in a user-friendly way.

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

121. The Committee agreed to continue its consideration of all compliance issues before it at its forty-seventh session, time permitting. To ensure efficient preparation for the session, the Parties concerned should be invited to provide the requested information by 14 February

122. The analyses of the expected information by the curators, including, where necessary, elements of draft compliance decisions, should be prepared by 28 February 2020.

123. The Committee confirmed that it would hold its forty-seventh session from 16 to 19 March 2020 and its forty-eighth session from 1 to 4 September 2020. Both sessions would be held in Geneva.

124. The Committee adopted the draft report of its session, prepared with the support of the secretariat. The Chair then formally closed the forty-sixth session.
