

Cover note to comments of Ukraine to

## **Draft decision VIII/6**

### **Applicability of the Convention to the lifetime extension of nuclear power plants**

The Government of Ukraine wishes to recall that in the last three and a half years, the ad-hoc group could not agree on a number of key issues and guiding principles regarding the application of the Convention to lifetime extension of nuclear power plants.

Noting the comments provided so far by some Parties (EU and its member States) to the draft Vilnius declaration, in particular introduction of square brackets to para 12 welcoming the adopted Guidance on applicability of the Convention to the lifetime extension of nuclear power plants, Ukraine considers that the open issues in the draft Guidance have not yet been resolved by the Parties of the European Union.

An absence of a clear Guidance on the matter has been keeping Ukraine for the last sixth years in a discriminatory position whereby Ukraine was declared, by the MOP, as non-compliant with the Convention with regard to extending the lifetime of one of its nuclear power plants and then requested to apply the Convention to that activity. Whereas throughout this period the other Parties extended or intend to extend the lifetime of their nuclear plants without application of the Convention.

To this end, the Government of Ukraine wishes to draw the attention of the Parties to article 26 of the Vienna Convention on the Law of Treaties, stipulating that every treaty in force is binding upon the parties to it and must be performed by them in good faith. **This means whatever is lawful, just, or equitable for one State in a particular situation, should be equally lawful, just, and equitable for all other States in that situation.**

Ukraine also wishes to recall article 27 of the Vienna Convention providing that a Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Taking into account the above comments the Government of Ukraine proposes the following changes to the draft decision VIII/6 on applicability of the Convention to lifetime extension of nuclear power plants:

*Affirming* the principle of States' sovereign equality before the international law and recalling that in addition to equal rights, states also have the duty to comply fully and in a good faith with their international obligations.

*Recalling* paragraphs 68-70 of its decision VI/2 and its decision IS/1g requesting one Party to apply the Convention to lifetime extension of its nuclear power plant;

*Recognizing* that a significant adverse transboundary impact from any lifetime extension or a long-term operation of nuclear power plants cannot be excluded;

*Reiterating* that it is essential for Parties to meet fully their obligations deriving from the Convention, and therefore urging them all to do so,

*Noting* plans of a number of Parties to extend in the next intersessional period lifetime of a larger number of nuclear power plants in the UNECE and the wish of a number of potentially affected Parties and their public to participate in the transboundary procedures under the Convention;

*Wishing* to assist Parties in complying with their obligations under the Convention, and to promote its effective application in the field of nuclear energy, in particular as regards the lifetime extension of nuclear power plants,

*Wishing also* to support the work of the Implementation Committee in assessing compliance by Parties with their obligations under the Convention regarding the lifetime

extension of nuclear power plants that the Committee for a number of year is unable to conclude in absence of a Guidance,

1. ~~Notes the work carried out~~ *Welcomes the development of draft guidance* by an ad hoc working group of Parties to the Convention co-chaired by Germany and the United Kingdom of Great Britain and Northern Ireland and composed of representatives of Armenia, Azerbaijan, Austria, Belarus, Belgium, Bulgaria, Canada, Croatia, Czechia, Finland, France, Germany, Greece, the European Union, Italy, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Switzerland and Ukraine, and supported by the secretariat;

2. *Regrets* that the Conventions' Parties failed to agree on the Guidance containing general principles on the application of the Convention to lifetime extensions of nuclear power plants;

3. *Requests* the Parties in absence of the Guidance to apply the Convention provisions to all lifetime extensions of nuclear power plants with the view to ensure non-discriminatory application of provisions of the Convention by all the parties to similar activities.

~~2. — Endorses the Guidance on the Applicability of the Convention to the Lifetime Extension of Nuclear Power Plants (ECE/MP.EIA/2020/9);~~

~~3. — Recommends that the Parties take into account the contents of the Guidance when implementing the Convention;~~

~~4. — Also recommends that the Implementation Committee consider the Guidance when performing its functions;~~

~~5. — Calls on the Parties to widely disseminate the Guidance to authorities and relevant stakeholders.~~