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

Eighth session

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

Fourth session

Vilnius, 8–11 December 2020

Items 4 (a) and 8 (a) of the provisional agenda

Compliance with and implementation of the Convention and the Protocol

Adoption of decisions: decisions to be taken jointly

Report on the activities of the Implementation Committee

Note by the Implementation Committee

Summary

The present document contains the report of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment on the Committee's activities since the seventh session of the Meeting of the Parties to the Convention and the third session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (Minsk, 13–16 June 2017), as well as such recommendations as it considers appropriate. It was prepared in accordance with the Committee's structure and functions (ECE/MP.EIA/6, annex II, appendix, para. 11), and the workplan adopted at the seventh session and the third session, respectively, of the Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (see ECE/MP.EIA/23.Add.1–ECE/MP.EIA/SEA/7.Add.1, decision VII/3–III/3).



More details on the Committee's deliberations are presented in the Committee's reports on its sessions during the intersessional period 2017–2020.^a The Committee's recommendations to the Meeting of the Parties to the Convention, presented in this report, were adopted unanimously.

The Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol are expected to consider the information provided.

^a See www.unece.org/environmental-policy/conventions/environmental-assessment/meetings-and-events.html#/0/0/0/28089/19940.

I. Introduction

A. Implementation Committee membership and sessions

1. In the intersessional period 2017–2020, the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment reviewed compliance under the Convention and the Protocol, in accordance with decision II/4 (MP.EIA/2001/4) adopted by the Meeting of the Parties to the Convention at its second session, article 14 (6) of the Protocol, and decision V/6–I/6 (ECE/MP.EIA/SEA/2) adopted at the fifth session of the Meeting of the Parties to the Convention and the first session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (Meeting of the Parties to the Protocol) (Geneva, 20–23 June 2011).

2. The members of the Implementation Committee and the Parties they represented on the Committee for Convention matters were: Ms. Aysel Rzayeva (Azerbaijan); Mr. Anders Bengtsson (Sweden); Mr. Vladimir Buchko (Ukraine); Ms. Maria do Carmo Figueira (Portugal); Mr. Kaupo Heinma (Estonia); Ms. Zsuzsanna Pocsai (Hungary); Mr. Romas Švedas (Lithuania); Ms. Nadezhda Zdanevich and Ms. Tatiana Kuhtenkova (from the forty-seventh session (Geneva, 16–19 March 2020) onwards) (Belarus). Mr. Buchko, Ms. Kliut, Ms. Pocsai and Mr. Švedas were serving their second term following the election of their countries, respectively, Ukraine, Belarus, Hungary and Lithuania, to nominate members at the sixth session of the Meeting of the Parties (Geneva, 2–5 June 2014) and their subsequent election as members (ECE/MP.EIA/20–ECE/MP.EIA/SEA/4, para. 67). Ms. Rzayeva, Mr. Heinma, Ms. do Carmo Figueira and Mr. Bengtsson were elected as members following the election of their countries, respectively, Azerbaijan, Estonia, Portugal, and Sweden, to nominate members at the seventh session of the Meeting of the Parties (Minsk, 13–16 June 2017) (ECE/MP.EIA/23–ECE/MP.EIA/SEA/7, para. 72).

3. The elected members¹ of the Committee and the Parties they represented on the Committee for Protocol matters were: Mr. Bengtsson (Sweden); Mr. Buchko (Ukraine); Mr. Libor Dvorak (Czechia; alternate to Ms. Kuhtenkova (Belarus, not a Party to the Protocol)); Ms. do Carmo Figueira (Portugal); and Mr. Lasse Tallskog (Finland; alternate to Ms. Rzayeva (Azerbaijan, not a Party to the Protocol)). The five members were elected to join the three continuing members of the Committee for Protocol matters: Mr. Heinma (Estonia), Mr. Švedas (Lithuania) and Ms. Pocsai (Hungary).

4. In line with the Committee's structure and functions and operating rules,² in addition to the permanent members, the following alternate members were appointed by the elected Parties for the same term of office: Ms. Leyla Aliyeva (from the forty-eighth session onwards) (Azerbaijan); Ms. Eliska Dvorska (Czechia); Ms. Larissa Lukina (from the forty-seventh session onwards) (Belarus); Ms. Christina Olson Lundh (Sweden); Mr. Szabolcs Péter Orosz (Hungary); Mr. Rainer Persidski (Estonia); Ms. Maryna Shymkus (Ukraine); Ms. Águeda Silva (Portugal); Mr. Juozas Steponėnas (Lithuania); and Ms. Charlotta von Troil (Finland).

5. At its thirty-ninth session (Geneva, 5–7 September 2017), the Committee elected Mr. Švedas as Chair of the Committee, Ms. do Carmo Figueira as the first Vice-Chair and Mr. Buchko as the second Vice-Chair (ECE/MP.EIA/IC/2017/4, para. 4).

6. Further to the Meeting of the Parties' decision at its intermediary session (Geneva, 5–7 February 2020) to extend the intersessional period 2017–2020 from three to three and a half years (ECE/MP.EIA/27–ECE/MP.EIA/SEA/1, para. 7), the Committee held ten sessions during the intersessional period instead of the nine originally planned.³ Due to the coronavirus disease (COVID-19) pandemic, two of these sessions were held using videoconferencing and without interpretation. Moreover, with a view to progressing on the

¹ For rules on election processes, see decision V/6–I/6, paras. 2 and 3.

² See decision IV/2, annex IV (see ECE/MP.EIA/10), as 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 ECE/MP.EIA/23/Add.1–ECE/MP.EIA/SEA/7/Add.1, decision VII/3–III/3, para. 7.

outstanding matters, the Committee held three additional one-day online meetings without interpretation. Reports on the Committee's sessions and its online meetings⁴ were made available to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment and published on the Convention website. Members nominated by Parties whose compliance was at issue were not present when the Committee considered the respective items in closed session.⁵ The related documents and information on the compliance issues considered by the Committee during the intersessional period, as specified in operating rule 16, are posted on the Convention's website.⁶ The Committee's opinions in the period 2017–2020 are included in the revised informal electronic publication of these opinions from 2001 to 2020 prepared by the secretariat in September 2020.⁷

B. Activities assigned to the Committee

7. The following decisions of the Meetings of the Parties regulate the operation of the Committee and the activities it carries out, which are in this report:

(a) Establishing the Committee for the review of compliance by the Parties with their obligations under the Convention with a view to assisting them fully to meet their commitments (ECE/MP.EIA/4, annex IV, decision II/4, para. 1);

(b) Deciding on the structure and functions of the Committee and the procedures for review of compliance (ECE/MP.EIA/6, annex II, decision III/2, para. 2); approving the amendments thereto and adopting the Committee's operating rules set out in annexes I and II to decision VI/2 (ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1) (decision VI/2, paras. 12 and 13, and ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2, decision II/2, para. 9);

(c) Extending the application of the Convention's compliance procedure to the Protocol (decision V/6–I/6);

(d) Requesting the secretariat to bring to the Committee's attention general and specific compliance issues identified in the fifth review of implementation of the Convention and the second review of implementation of the Protocol, and requesting the Committee to take these into account in its work (ECE/MP.EIA/23.Add.2–ECE/MP.EIA/SEA/7.Add.2, decision VII/1, para. 4, and ECE/MP.EIA/23.Add.3–ECE/MP.EIA/SEA/7.Add.3, decision III/1, para. 4);

(e) Requesting the Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible (ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1, decision IS/1, para. 6, and ECE/MP.EIA/23.Add.3–ECE/MP.EIA/SEA/7.Add.3, decision III/2, para. 7);

(f) Keeping under review and developing, if necessary, the structure and functions of the Committee and its operating rules, in the light of experience gained, and requesting the Committee to prepare proposals, as the Committee deems necessary, for the next sessions of the Meetings of the Parties (ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1, decision VI/2, para. 14, and decision IS/1, para. 10);

(g) Adopting the workplan for compliance with and implementation of the Convention and the Protocol in the period up to the eighth session of the Meeting of the Parties to the Convention and the fourth session of the Meeting of the Parties to the Protocol (ECE/MP.EIA/23.Add.1–ECE/MP.EIA/SEA/7.Add.1, decision VII/3–III/3), thereby tasking the Committee to:

(i) Consider compliance under submissions and the Committee initiatives;

⁴ A report on the Committee's additional meetings held on 26 May and 10 June 2020 is annexed to the Committee's report on its forty-eighth session (ECE/MP.EIA/IC/2020/4, annex).

⁵ The reports on the Committee's sessions are available at www.unece.org/environmental-policy/conventions/environmental-assessment/meetings-and-events.html#/0/0/28089/19940.

⁶ See www.unece.org/env/eia/implementation/implementation_committee.html.

⁷ See www.unece.org/env/eia/implementation/implementation_committee.html.

- (ii) If necessary, review its structure and functions and operating rules (see also subparagraph (f) above);
- (iii) Examine the outcome of the fifth review of implementation of the Convention and the second review of implementation of the Protocol;
- (iv) Supervise reviews of legislation, procedures and practice and technical assistance in drafting legislation to strengthen Parties' implementation of and compliance with the Convention and the Protocol, as prompted by the Committee or requested by Parties themselves and subject to availability of funds;
- (v) Report on its activities to the eighth session of the Meeting of the Parties to the Convention and the fourth session of the Meeting of the Parties to the Protocol.

8. Additionally, based on the Meeting of the Parties to the Convention's decision at its seventh session that further efforts were needed to reach consensus on draft decision VII/2 on the review of compliance with the Convention (ECE/MP.EIA/2017/8), the Committee was mandated to revise draft decision VII/2 for consideration of the Meeting of the Parties to the Convention at the intermediary session (Geneva, 5–7 February 2019) (ECE/MP.EIA/23–ECE/MP.EIA/SEA/7, para. 27).

9. Further to specific compliance decisions adopted at the intermediary session, the Committee was requested to undertake various specific actions, in particular, regarding Armenia (decision IS/1a), Azerbaijan (decision IS/1c), Belarus (decision IS/1d), and Ukraine (decisions IS/1 f and IS/1g) (see ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1).

10. Furthermore, considering the continuously growing number of information-gathering cases on lifetime extension of nuclear power plants before the Committee and the need for guidance on the Convention's applicability in this respect, the Committee was invited to continue: gathering information on pending cases regarding lifetime extension of nuclear power plants; and providing its inputs, as appropriate, to the work of the related ad hoc working group established by the Meeting of the Parties at its seventh session (decision IS/2, para. 10).

II. Revision of draft decision VII/2 on the review of compliance with the Convention and follow-up to decisions IS/1 a, c, d, g and f

11. As mandated by the Meeting of the Parties at its seventh session (ECE/MP.EIA/23–ECE/MP.EIA/SEA/7, para. 27), the Committee at its forty-second (Geneva, 11–14 September 2018) and forty-third (Geneva, 4–7 December 2018) sessions, reviewed and revised draft decision VII/2 on the review of compliance with the Convention considering the progress made before, during and after that session, the comments provided at the seventh meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 28–30 May 2018) and all information provided by the Parties concerned by September 2018. To facilitate consideration and adoption of the revised draft, the Committee presented the outcomes of its work in separate documents as summarized in table 1 below. To establish a correlation between country-specific paragraphs of draft decision VII/2, decisions IS/1 (a)–(h) and draft decisions VIII/4 (a)–(e) on its follow-up to decision VI/2, table 1, as needed, contains the related references to decision VI/2.

Table 1
Revision of draft decision VII/2 on the review of compliance with the Convention

<i>Committee reference</i>	<i>Party concerned</i>	<i>Issue</i>	<i>Decision VI/2, paragraphs</i>	<i>Draft decision VII/2, paragraph</i>	<i>Decisions IS/1 (a)–(h)</i>	<i>Decisions VIII/4(a)–(e)</i>
EIA/IC/CI/1 ^a	Armenia	Lack of national legislation to implement Convention	29–35	38–44	IS/1a	VIII/4a
EIA/IC/S/3 ^b	Armenia	Did not apply Convention regarding planned construction of nuclear power plant in Metsamor.	45–46	45–47	IS/1b	-
EIA/IC/CI/2	Azerbaijan	Lack of national legislation to implement Convention	38–44	48–53	IS/1c	VIII/4b
EIA/IC/S/4	Belarus	Did not properly apply Convention regarding construction of the Belarusian nuclear power plant in Ostrovets.	48–64	54–65	IS/1d	VIII/4c
EIA/IC/CI/6	Serbia	Did not apply Convention regarding planned construction of new block at Kostolac lignite power plant	-	66–68	IS/1e	-
EIA/IC/S/1	Ukraine	Lack of national legislation to implement Convention; Did not apply Convention regarding Danube-Black Sea Deep Water Navigation Canal in Ukrainian sector of Danube Delta (Bystroe Canal Project)	15–28	13–28	IS/1f	VIII/4d
EIA/IC/CI/4	Ukraine	Did not apply Convention	68–71	29–37	IS/1g	VIII/4e

<i>Committee reference</i>	<i>Party concerned</i>	<i>Issue</i>	<i>Decision VI/2, paragrahs</i>	<i>Draft decision VII/2, paragraph</i>	<i>Decisions IS/1 (a)–(h)</i>	<i>Decisions VIII/4(a)–(e)</i>
EIA/IC/CI/5	United Kingdom	regarding extension of lifetime of Rivne nuclear power plant Did not notify Parties regarding planned construction of Hinkley Point C nuclear power plant	-	69–72	IS/1h	-

^a Symbols structured EIA/IC/CI/ followed by a number indicate Committee initiatives. For additional information on submissions, see www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html.

^b Symbols structured EIA/IC/S/ followed by a number indicate submissions to the Committee. For additional information on submissions, see www.unece.org/env/eia/implementation/implementation_committee_matters.html.

12. At its forty-seventh session (Geneva (online), 16–19 March 2020) based on its follow-up to decisions IS/1a, c, d, f and g, the Committee prepared the initial draft decisions VIII/4a–e on compliance by Armenia, Azerbaijan, Belarus and Ukraine with the Convention. It finalized the draft decisions at its forty-eighth session (Geneva, 1–4 September 2020) considering additional information and comments on draft decisions VIII/4 a–e provided by the Parties concerned since March 2020, including at the ninth meeting of the Working Group (Geneva, 24–26 August 2020).

A. Armenia

EIA/IC/CI/1

13. The Committee initiative on Armenia was launched in 2007 further to the Committee’s examination of national responses to the questionnaire for the first review of the Convention’s implementation (to mid-2003) and the request from Armenia for technical assistance from the Committee in implementing the Convention. In draft decision VII/2 (paras. 38–44) further to its follow-up to decision VI/2 (paras. 29–35) the Committee recommended that the Meeting of the Parties welcome the adoption by Armenia of legislation for the Convention’s implementation in June 2014 and note the deficiencies in the adopted legislation to be addressed by Armenia by amending its legislation and drafting secondary regulations.

14. Since the seventh session of the Meeting of the Parties, Armenia regularly reported to the Committee on the steps it had taken to bring its national legislative framework into full compliance with the Convention and the Protocol, including through preparing amendments to the Law on Environmental Impact Assessment and Expertise of 2014 and developing implementing regulations on environmental impact assessment, strategic environmental assessment and procedures on public participation. Considering the state of adoption of the amendments to the Law and the draft secondary legislation, the Committee reviewed and revised the relevant paragraphs of draft decision VII/2, renamed as draft decision IS/1a.

15. By decision IS/1a, the Meeting of the Parties invited Armenia to adopt the proposed amendments to the legislation and the secondary legislation as soon as possible and to inform the Implementation Committee of the progress made. Based on all information made available to it on its follow-up to decision IS/1a, the Committee agreed that, despite steps

taken since the intermediary session of the Meeting of the Parties, Armenia had not yet adopted the amendments to its legislation and the secondary legislation, and therefore, had not yet fulfilled the requests addressed to it under paragraphs 5 and 6 of decision IS/1a. Additionally, in the absence of official English translations of the adopted amendments and the secondary legislation, the Committee had to postpone the evaluation of the amended legislation referred to in paragraph 7 of decision IS/1a.

EIA/IC/S/3

16. The Committee also reviewed paragraphs 45 to 47 of draft decision VII/2 regarding the follow-up to decision VI/2 on the planned construction by Armenia of Metsamor nuclear power plant. It confirmed its decision at its thirty-second session (Geneva, 9–11 December 2014) that there was no longer a ground for it to follow up on decision VI/2 regarding the activity and agreed that there was no need for it to modify those paragraphs, aside from a minor editorial improvement and renaming them as decision IS/1b.

B. Azerbaijan

EIA/IC/CI/2

17. The Committee initiative on Azerbaijan was prompted by the country's responses to the questionnaire on the Convention's implementation in the period 2009–2011, indicating that it lacked national legislation on the Convention's application, and by the request from Azerbaijan for technical assistance from the Committee in that regard. In 2014, by decision VI/2 (paras. 41–42) the Meeting of the Parties requested Azerbaijan to adopt its draft framework law on environmental assessment and subsequent implementing regulations in full compliance with the Convention.

18. Despite the efforts of Azerbaijan in the intersessional period 2014–2017 to develop its legislation to implement the Convention, that legislation was still not in force by the seventh session of the Meeting of the Parties. In draft decision VII/2 (para. 51) the Committee recommended that the Meeting of the Parties urge Azerbaijan to adopt the draft legislation as soon as possible.

19. Azerbaijan was invited to a hearing during the Committee's fortieth session (Geneva, 5–7 December 2017) with a view to clarifying the difficulties that had prevented the country from adopting its law and the regulations, despite the extensive technical assistance provided to it by the secretariat since 2012. However, Azerbaijan was unable to attend the hearing, requesting a postponement.

20. The Committee revised paragraphs 48–53 of draft decision VII/2, renamed as draft decision IS/1c, acknowledging that the Law on Environmental Impact Assessment of Azerbaijan entered into force in July 2018 and that, although it provided a general legislative framework for environmental impact assessment in the country, it contained discrepancies and deficiencies regarding the Convention and the Protocol. Given that the Law was adopted, and secondary legislation was under preparation, a hearing was no longer required.

21. By decision IS/1c, the Meeting of the Parties urged Azerbaijan to ensure that its environmental impact assessment legislation fully complied with the Convention and requested the Committee to evaluate the compliance of the environmental impact assessment legislation of Azerbaijan with the Convention.

22. In 2019, Azerbaijan reported that it intended to address the existing discrepancies and deficiencies through the secondary legislation. According to Azerbaijan, in August 2020 it addressed a majority of the deficiencies in the revised drafts of secondary legislation on environmental impact assessment and strategic environmental assessment, including concerning the definition referred to in article 1 (v) of the Convention and ensuring proper public participation under articles 2 (6), 3 (8) and 4 (2) of the Convention. It intended to adopt the drafts in advance of the eighth session of the Meeting of the Parties.

23. In draft decision VIII/4b, the Committee recommended that the Meeting of the Parties endorse its finding that, pending adoption of its secondary legislation, Azerbaijan had not

fulfilled the requests addressed to it in decision IS/1c. Therefore, Azerbaijan remained in non-compliance with article 2 (2) of the Convention.

C. Belarus

EIA/IC/S/4

24. Under the chairmanship of its first Vice-Chair, the Committee – further to its deliberations during the intersessional period 2014–2017 – continued consideration of its follow-up to decision VI/2 (paras. 48–64) concerning the Belarusian nuclear power plant in Ostrovets. It reviewed and revised paragraphs 54–65 of draft decision VII/2, renamed as draft decision IS/1d, and considered its follow-up to decision IS/1d (see paras. 30 and 31 below).

25. Belarus and Lithuania submitted regular reports and information during the intersessional period, copying the Committee on their correspondence. At the request of Belarus and further to authorizations by both Parties, the Committee made all correspondence on the ongoing deliberations of the compliance matter available to both Parties.

26. When preparing the revised draft decision VII/2 on the matter, the Committee sought answers to its five questions on technical and scientific aspects of the environmental impact assessment documentation, including on reasonable locational alternatives and the methodology and data used in determining the siting. It needed those answers to conclude whether the environmental impact assessment documentation constituted a sufficient basis for Belarus to take the final decision referred to in paragraph 51 of decision VI/2 to proceed with the implementation of the activity.

27. In doing so, the Committee re-examined the report of the Site and External Events Design mission conducted by the International Atomic Energy Agency in January 2017 that it initially studied at its ad hoc session in Minsk, on 12 June 2017, and made several attempts to obtain resources and external specific expertise, including from the International Atomic Energy Agency. However, despite its efforts, several questions remained unanswered.

28. Having exhausted all avenues for receiving external expert advice, the Committee agreed to exceptionally examine by itself the documentation prepared by Belarus under the environmental impact assessment procedure. In doing so, the Committee took into account the answers to the Committee’s questions from Belarus and the related views of Lithuania.

29. The Committee found that the environmental impact assessment documentation of Belarus on the nuclear power plant in Ostrovets included information that sufficiently addressed issues referred to in the Committee’s technical and scientific questions related specifically to the Ostrovets site, including regarding population density in the area around the nuclear power plant, water contamination and waste management. It also found that the documentation, which had been made available to the affected parties and the public, made a reference to locational alternatives for a nuclear power plant and to site selection criteria. However, it did not provide sufficient information under appendix II of the Convention about the reasons and considerations explaining the selection of the Ostrovets site over the alternative locations to be taken into account in the final decision on the activity in accordance with the Convention.⁸

30. By decision IS/1d, the Meeting of the Parties declared that Belarus failed to comply with articles 4 (1), 5 (a) and 6 (1) of the Convention. It urged Belarus to ensure that, in the context of any future decision-making regarding any planned activity falling under the Convention, the Convention be applied (para. 16) and encouraged both Parties to: accelerate preparation of a bilateral agreement for the Convention’s implementation under article 8 thereof (para. 17); continue bilateral expert consultations on issues of disagreement, including on matters that were beyond the Convention’s scope (para. 18); and continue working on the post-project analysis regarding the activity (para. 19).

⁸ For more details see ECE/MP.EIA/IC/2018/4, annex.

31. Based on the analysis of all information and comments provided to it by the Parties concerned since the intermediary session of the Meeting of the Parties, the Committee prepared draft decision VIII/4c recommending that the Meeting of the Parties reaffirm its decision IS/1d and urge Belarus to apply the Convention in the future regarding a proper evaluation of reasonable alternatives further to paragraph 16 of that decision. Additionally, the Committee recommended that the Meeting of the Parties note the limited progress made by the Parties concerned in addressing the requirements set out in paragraphs 17–19 of decision IS/1d and again encourage Belarus and Lithuania to address those requirements by the ninth session of the Meeting of the Parties.

D. Serbia

EIA/IC/CI/6

32. When reviewing and revising paragraphs 66–68 of draft decision VII/2 regarding the planned construction by Serbia of the Kostolac lignite power plant, including an extension of the open-pit mine at Drmno, the Committee reconfirmed its decision at its thirty-sixth session (Geneva, 5–7 September 2016) that, by notifying Romania, Serbia had brought the project into compliance with article 3 (1) of the Convention and that there was no need for it to pursue further the Committee initiative opened in March 2015.

33. Further to comments made by the non-governmental organization (NGO) ClientEarth at the seventh meeting of the Working Group and information from it dated 18 June 2018 concerning the extension of the Drmno open-pit mine, the Committee revised the related paragraphs of draft decision VII/2 renamed as draft decision IS/1e concerning the Kostolac lignite power plant.

34. Considering that the information from ClientEarth contained new facts regarding the procedure regarding the Drmno open-pit mine, the Committee initiated information-gathering concerning the mine (see para. 76 below).

E. Ukraine

EIA/IC/S/1

35. The issue of compliance by Ukraine with its obligations under the Convention regarding its legislation and the Bystroe Canal Project has been under the Committee's consideration since 2004. In the intersessional period 2014–2017, the Committee concluded that it had no basis to recommend that the Meeting of the Parties revise its recommendations set out in decisions V/4 and VI/2 concerning compliance by Ukraine and that the caution issued at the fourth session of the Meeting of the Parties should remain effective (ECE/MP.EIA/IC/2009/4, para. 16). Draft decision VII/2 (paras. 13–28) contained reiterated requests to Ukraine to adopt the relevant legislation and to bring the Bystroe Canal Project into full compliance with the Convention by the end of 2018.

36. By decision IS/1 f, the Meeting of the Parties welcomed the adoption by Ukraine of the Law on Environmental Impact Assessment in May 2017, the declaration of Ukraine of its genuine wish to bring the Bystroe Canal Project into full compliance with the Convention and the intended steps to be taken by Ukraine in this regard, as stipulated in the road map developed by Ukraine to bring the project into full compliance with the Convention, such as repealing the final decision, conducting an assessment of damage to the environment and developing a plan for compensatory and mitigation measures. Decision IS/1f also contained various recommendations and requests to Ukraine addressing the country's persistent non-compliance with the Convention. Ukraine and Romania were encouraged to continue their cooperation in preparing a bilateral agreement or other arrangement to support further their implementation of the Convention, as set out in article 8 thereof.

37. After the intermediary session of the Meeting of the Parties, the Committee continued its follow-up on the steps taken by Ukraine to bring about compliance with the Convention. It also continued taking additional steps to assist Ukraine in addressing its long-standing non-compliance with the Convention, including by providing Ukraine with a list of specific

questions to help it summarize all required information for the reporting on progress made and holding additional informal consultations with Ukraine at its forty-sixth session (Geneva, 10–13 December 2019) and in advance of the Committee’s forty-eighth session.

38. In September 2020, Committee noted the information from Ukraine regarding adopting its secondary legislation to implement the Convention and implementing various steps listed in the road map, including carrying out an assessment of damage to the environment resulting from works under Phases I and II of the Bystroe Canal Project and developing a draft plan of compensatory or mitigation measures. Ukraine had also begun developing a new “Bystroe Route” project, intended to cover Phases I and II of the Bystroe Canal Project, and had notified Romania under the Convention.

39. Romania had confirmed its intent to participate in the transboundary procedure under the Convention regarding the new “Bystroe Route” project and its readiness to closely cooperate with Ukraine concerning assessment of damage to the environment and development of compensatory or mitigation measures.

40. The Committee concluded, that despite progress made, Ukraine had not to date fulfilled all its obligations under paragraphs 9 and 11 of decision IV/2, paragraphs 17 and 19 of decision V/4, paragraphs 24, 25 and 26 of decision VI/2 and paragraphs 5, 14, 15 and 17 of decision IS/1f. Subsequently, the Committee could not recommend that the Meeting of the Parties lift the caution issued to the Government of Ukraine at its fourth session (ECE/MP.EIA/10, decision IV/2, para. 10).

EIA/IC/CI/4

41. During its follow-up to decision VI/2 (paras. 68–71) regarding extension of the lifetime of reactors 1 and 2 of the Rivne nuclear power plant by Ukraine in the intersessional period 2014–2017, the Committee noted that the decision did not provide clear guidance for Ukraine on how to bring the activity into compliance with the Convention. Therefore, in draft decision VII/2 (paras. 29–37), it recommended that the Meeting of the Parties outline specific measures that would assist Ukraine in addressing its non-compliance with the Convention regarding the activity.

42. Pending consideration by the Meeting of the Parties of draft decision VII/2 at the intermediary session, the Committee, in September 2017, decided – further to Committee operating rule 14 (b) – to make direct recommendations to Ukraine. In particular, the Committee recommended that Ukraine notify all potentially affected Parties regarding the activity under article 3 of the Convention and take the subsequent steps of the transboundary environmental impact assessment procedure under the Convention.

43. In January 2018, Ukraine notified potentially affected Parties –Austria, Belarus, Hungary, Poland, the Republic of Moldova, Romania and Slovakia – regarding the activity. Further to the notification, some of the potentially affected Parties requested Ukraine to provide additional information, including information listed in article 3 (2) of the Convention.

44. In September 2018, the Committee reviewed and revised paragraphs 29–37 of draft decision VII/2 concerning the matter, renamed as decision IS/1g, further to the updated information provided to it by the Parties concerned.

45. By decision IS/1g, the Meeting of the Parties endorsed the Committee’s finding that Ukraine remained in non-compliance with its obligations under the Convention, as referred to in paragraph 70 of decision VI/2, and requested Ukraine to bring the activity into compliance with the Convention by continuing the transboundary procedure with the Parties wishing to participate therein.

46. Based on its assessment of the steps taken by Ukraine since the intermediary session to implement the recommendations of decision IS/1g, the Committee – in draft decision VIII/4e – recommended that the Meeting of the Parties endorse its finding that Ukraine remained in non-compliance with its obligations under the Convention pending adoption of the remaining pieces of its secondary legislation on environmental impact assessment and completion of the transboundary procedure under the Convention as referred to in paragraphs 4, 7 (a), (b) and (c) and 8 of decision IS/1g.

F. United Kingdom of Great Britain and Northern Ireland

EIA/IC/CI/5

47. The Committee decided to begin a Committee initiative in February 2014 further to information regarding the planned construction of a nuclear power plant at Hinkley Point C by the United Kingdom of Great Britain and Northern Ireland provided by a German parliamentarian and by the NGO Friends of the Irish Environment and additional information gathered from the Governments of Austria, Belgium, France, Germany, Ireland, the Netherlands, Norway, Spain and the United Kingdom of Great Britain and Northern Ireland.

48. In March 2016, the Committee finalized, in line with its structure and functions and operating rules, its findings and recommendations regarding the matter that were brought to the attention of the Party concerned (see ECE/MP.EIA/IC/2016/2, annex). Further to information from the United Kingdom of Great Britain and Northern Ireland in early 2017 on the steps it had taken to address the Committee's recommendations, the Committee – at its thirty-eighth session (Geneva, 20–22 February 2017) – supplemented its findings and recommendations with additional ones, recommending that, if a potentially affected Party requested to be notified, the country should suspend works on the proposed activity until the transboundary environmental assessment procedure was finalized (ECE/MP.EIA/IC/2017/2, para. 61).

49. In the current intersessional period, the Committee reviewed and revised its 2016 recommendations as supplemented at its thirty-eighth session, along with paragraphs 69–72 of draft decision VII/2 – renamed as decision IS/1h – considering information submitted from August 2017 to August 2018 by the United Kingdom of Great Britain and Northern Ireland, the potentially affected Parties (Austria, Denmark, Germany, Ireland, Luxembourg, the Netherlands and Norway) and the Irish NGO Environmental Pillar. It finalized its findings and recommendations using its electronic decision-making procedure in November 2018 further to comments and representations received from the United Kingdom of Great Britain and Northern Ireland.

50. By decision IS/1h, the Meeting of the Parties endorsed the Committee's finding that the United Kingdom of Great Britain and Northern Ireland failed to comply with the Convention by not notifying the potentially affected parties in accordance with articles 2 (4) and 3 (1) of the Convention concerning the Hinkley Point C nuclear power plant project. Although steps taken by the country did not remedy the breach of the Convention, no further action from the country was required on the grounds that the potentially affected Parties had accepted the consultation process offered by the United Kingdom of Great Britain and Northern Ireland at the current stage of the activity and on the understanding that, in future, it would provide notification of planned nuclear power plants in accordance with the Convention.

III. Examination of the outcomes of the reviews of implementation

51. As requested in decision VII/1 (para. 4) of the Meeting of the Parties to the Convention and decision III/1 (para. 4) of the Meeting of the Parties to the Protocol, the Committee took into account in its work information from the secretariat on the general and specific compliance issues identified in the fifth review of implementation of the Convention (ECE/MP.EIA/2017/9) and the second review of implementation of the Protocol (ECE/MP.EIA/SEA/2017/9).

A. General compliance issues

52. The Committee noted some general weaknesses or shortcomings in the Convention's and Protocol's implementation by Parties identified in the fifth review of implementation of the Convention and the second review of implementation of the Protocol, respectively. It observed that some of those issues had already been recognized in previous reviews.

Subsequently, the Committee proposed that the Bureau and the Working Group include in the next work plan activities to update the relevant parts of the available guidance documents on application of the Convention, starting with the *Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context*,⁹ and to prepare guidance or good practice recommendations on transboundary consultations under the Protocol.

B. Specific compliance issues

53. The specific compliance issues arising from the Convention and Protocol implementation reviews considered by the Committee in the intersessional period are summarized in table 2 below. In particular, the Committee examined three specific compliance issues concerning the Convention, regarding 30 Parties, and one specific compliance issue concerning the Protocol, regarding 2 Parties. It also continued consideration of 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).

Table 2
Specific compliance issues

<i>Committee reference</i>	<i>Party concerned</i>	<i>Issue</i>
EIA/IC/SCI/5/1	a. Albania b. Austria c. Azerbaijan d. Belgium e. Croatia f. Cyprus g. Czechia h. Denmark i. Finland j. Greece k. Ireland l. Italy m. Latvia n. Liechtenstein o. Luxembourg p. Montenegro q. Norway r. Portugal s. Rep. of Moldova t. North Macedonia u. Slovakia v. Spain w. Sweden x. Ukraine	The Committee sought clarification on how the Parties, as affected Parties, ensured public involvement in the environmental impact assessment procedure under articles 3 (8) and 4 (2) of the Convention
EIA/IC/SCI/5/2	a. Italy b. Luxembourg c. Malta d. Slovakia	The Committee sought clarifications on how article 4 (1), including appendix II, of the Convention concerning environmental impact assessment documentation was implemented within the Parties' national legal and administrative frameworks
EIA/IC/SCI/5/3	France	Seemed to lack a referral in its national legislation to a list of elements to be covered by a final decision referred to in article 6 (1) of the Convention

⁹ United Nations publication, ECE/MP.EIA/7.

<i>Committee reference</i>	<i>Party concerned</i>	<i>Issue</i>
Protocol matters		
SEA/IC/SCI/2/1	a. Italy b. Serbia	Seemed to lack an environmental report quality control system to ensure full implementation of article 7 (3) of the Protocol
SEA/IC/SCI/1/4	European Union	Did not complete and return the questionnaire on its implementation of the Protocol in the period 2010–2012, according to the obligation set in article 14 (7) of the Protocol

1. Conventions matters

(a) *Ensuring, as an affected Party, public involvement in the environmental impact assessment procedure under articles 3 (8) and 4 (2) of the Convention*

EIA/IC/SCI/5/1(a–x)

54. The Committee sought clarification on how the Parties without relevant provisions in their national environmental impact assessment legislation requiring the organization of public hearings, ensured, as affected Parties, public involvement in the environmental impact assessment procedure under articles 3 (8) and 4 (2) of the Convention. It expressed satisfaction with the clarifications provided by Albania, Austria, Azerbaijan, Belgium, Croatia, Cyprus, Czechia, Denmark, Finland, Greece, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Montenegro, Norway, Portugal, the Republic of Moldova, Slovakia, Spain, Sweden and Ukraine on the matter. It regretted, however, that North Macedonia had failed to respond to the Committee's reiterated requests since April 2019 and that it needed to postpone consideration of the matter on that Party to the next intersessional period.

(b) *Ensuring environmental impact assessment documentation was of sufficient quality to fully implement article 4 (1) of the Convention*

EIA/IC/SCI/5/2 (a–d)

55. The Committee noted that Italy, Luxembourg and Malta, when acting as Parties of origin, did not have specific mechanisms to ensure that environmental impact assessment documentation was of sufficient quality, while Slovakia had not provided a response in that regard. The Committee declared its satisfaction with clarifications provided by the Parties concerned on how article 4 (1), including appendix II, of the Convention concerning preparation of environmental impact assessment documentation was implemented within their national legal and administrative frameworks and decided not to pursue the specific compliance issue further.

(c) *Elements to be covered by the final decision further to article 6 (1) of the Convention*

EIA/IC/SCI/5/3

56. The Committee also noted that France did not have an exhaustive list of elements to be covered in the decisions authorizing projects subject to an environmental impact assessment and thus could not indicate elements to be covered by a final decision as referred to in article 6 (1) of the Convention. The Committee was satisfied with a reply from France clarifying how article 6 (1) of the Convention had been implemented in national legislation.

2. Protocol matters

(a) *Ensuring quality of the environmental report to ensure full implementation of article 7 (3) of the Protocol*

SEA/IC/SCI/2/1 (a and b)

57. Further to responses to the questionnaires on implementation of the Protocol in the reporting period 2016–2018 by Italy and Serbia, the Committee sought clarification on implementation by those Parties of article 7 (3) of the Protocol, particularly on how they ensured that reports were of sufficient quality and whether the procedure followed in practice met the Protocol's requirements. The Committee was satisfied with the clarification by Italy. Concerning Serbia, the Committee noted that specific requirements for the content of the environmental report as set out by the Serbian Law on Strategic Environmental Assessment, particularly article 12 thereof, seemed to be more general than those required by annex IV to the Protocol. Serbia had been expected to, but did not, provide clarifications on implementation of article 7 (2) of and annex IV (in particular, paras. 1–5 and 11) to the Protocol regarding information to be included in the environmental report, along with a copy of its law and possible secondary legislation related to strategic environmental assessment. The Committee regretted that it needed to postpone its consideration of the matter to the next intersessional period due to the lack of response by Serbia.

(b) *European Union*

SEA/IC/SCI/1/4

58. In the intersessional period, 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), focusing on the following three main aspects of the matter:

(a) The Protocol's applicability to plans/programmes adopted at European Union level;

(b) Limited applicability of the current reporting format on the implementation of the Protocol by individual Parties for reporting by the regional economic integration organizations referred to in article 21 of the Protocol, such as the European Union;

(c) Possible discrepancies between the Protocol and the European Union Strategic Environmental Assessment Directive.¹⁰

59. The Committee considered that the transport-, energy- and fisheries-related plans/programmes adopted at the European Union level it had examined so far could not be regarded as plans and programmes under article 4 (2) of the Protocol. In the Committee's view, those documents constituted guidance documents of a political nature that should be regarded as policies falling under article 13 of the Protocol. The Committee agreed that there was no need for it to pursue further its information-gathering activities regarding the Protocol's applicability to plans/programmes adopted at European Union level. It requested its Chair to draw the attention of the European Union to article 13 of the Protocol, including to paragraph 13 (4) on reporting.

60. The Committee agreed to finalize its work on preparing the reporting format for regional economic integration organizations for the next reporting round on the period 2019–2021 and to continue monitoring how discrepancies between the Directive and the Protocol were addressed, particularly regarding the identified uncertainty surrounding its scope that was being reviewed by the European Union.

¹⁰ See <https://ec.europa.eu/environment/eia/sea-legalcontext.htm>.

IV. Submissions by Parties

61. There were two submissions by Parties having concerns about another Party's compliance, as summarized in table 3 and paragraphs 63–65 below.

Table 3
Submissions

<i>Committee reference</i>	<i>Party concerned</i>	<i>Submitted by</i>	<i>Issue</i>
EIA/IC/S/6	Serbia	Bulgaria	Several mining activities: (a) Construction of experimental facility to test flotation technology for processing copper, lead and zinc ore in Karamanica; (b) Ore exploitation and mining at Podvirovi and Popovica mines; (c) Extending production of zinc, lead and other metals at Grot mine.
EIA/IC/S/7	Albania	Montenegro	Construction of several small hydropower plants on Cijevna River

Serbia

EIA/IC/S/6

62. Bulgaria made a submission to the Committee expressing concerns about compliance by Serbia with its obligations under the Convention regarding several mining activities listed in table 3, close to Bulgaria. The secretariat received the submission on 31 May 2019 and corroborating information – on 13 June and 28 June 2019. It forwarded the submission and corroborating information to the focal point of Serbia on 19 June and 8 July 2019 respectively. The response by the Government of Serbia to the submission was received on 8 November 2019 and additional clarifications on 23 November 2019.

63. For its further deliberations on the submission, the Committee sought additional information from Serbia based on a list of questions on each activity under consideration and the related environmental impact assessments and decision-making procedures agreed by the Committee at its forty-seventh and forty-eighth sessions. The Committee agreed to consider scheduling the discussions with the Parties concerned, to be organized further to paragraph 9 of the Committee's structure and functions, for its subsequent sessions.

Albania

EIA/IC/S/7

64. Montenegro made a submission to the Committee expressing concerns about compliance by Albania with its obligations under the Convention regarding the planned construction of several small hydropower plants by Albania on the Cijevna River. The secretariat received the submission on 25 September 2019 and on 30 September 2019, forwarded it to the focal point of Albania. The Committee initiated its consideration of the submission at its forty-seventh session further to the response to the submission by the Government of Albania of 30 December 2019. In September 2020, the Committee noted that small hydropower plants under its consideration were not listed in appendix I of the Convention and that, further to article 2 (5) of the Convention concerning such activities, the two Parties had entered into discussions on whether the proposed activities were likely to cause a significant adverse transboundary impact. It welcomed the assistance to be provided in this regard by the Implementation Committee under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) and

encouraged the two Parties to ensure that the cumulative impacts of the proposed activities are assessed in the process. It also noted that the Espoo Convention should apply in case significant impact from the proposed activities cannot be excluded and offered the Parties its assistance in implementing the Convention, as needed.

V. Information from other sources (information-gathering cases)

65. During the intersessional period, the Committee also considered information received from sources other than Parties – further to operating rule 15 (1) – on a total of 25 matters: 22 on the Convention’s application and 3 on the Protocol’s application (summarized in table 4).

Table 4
Information from other sources

<i>Committee reference</i>	<i>Party concerned</i>	<i>Status</i>	<i>Issue</i>
<i>Convention matters</i>			
EIA/IC/INFO/10	Ukraine	reopened in 2018	Planned construction of nuclear reactors 3 and 4 at Khmelnytsky nuclear power plant
EIA/IC/INFO/13	Ukraine	reopened in September 2020	Planned construction and operation at Muzhiyev gold mine
EIA/IC/INFO/16	Bosnia and Herzegovina	ongoing since September 2014	Planned construction of third block for Ugljevik thermo-power plant
EIA/IC/INFO/17	Bosnia and Herzegovina	closed in December 2019	Planned construction of new thermo-power plant in Stanari
EIA/IC/INFO/21	Belarus	ongoing since September 2017	Law and subsequent regulations on environmental impact assessment, strategic environmental assessment and State ecological expertise
EIA/IC/INFO/22	Spain	closed in September 2019	Planned construction of temporary storage for radioactive waste at Almaraz nuclear power plant
ECE/IC/INFO/23	Bosnia and Herzegovina	ongoing since December 2018	Planned construction of new thermal power plant in Banovici
ECE/IC/INFO/24	Bosnia and Herzegovina	ongoing since December 2018	Planned construction of unit 7 of Tuzla thermal power plant
ECE/IC/INFO/25	Switzerland	ongoing since December 2018	Planned changes at Zurich airport, (extension of two taxiways and changes in operating regulations)

ECE/IC/INFO/27	Serbia	closed in December 2019	Extension of Drmno open pit mine
EIA/IC/INFO/29	Ukraine	opened in December 2018/closed in September 2020 /lead to EIA/IC/CI/7	Construction of large tourism complex in Svydovets mountains
EIA/IC/INFO/30	Denmark	ongoing since March 2019	Construction of natural gas pipeline (Nord Stream 2 project)
EIA/IC/INFO/31	Serbia	closed in December 2019 further to EIA/IC/S/6	Construction of experimental facility to test flotation technology for processing copper, lead and zinc ore in Karamanica.
EIA/IC/INFO/33	Bosnia and Herzegovina	ongoing since September 2020	Construction of Buk Bijela hydropower plant.
<i>Convention matters on lifetime extensions of nuclear power plants</i>			
EIA/IC/INFO/15	Netherlands	ongoing since September 2014	1 unit of Borssele nuclear power plant
EIA/IC/INFO/18	Belgium	ongoing since September 2016	2 units of Doel nuclear power plant, 1 unit of Tihange nuclear power plant
EIA/IC/INFO/19	Czechia	ongoing since December 2016	4 units of Dukovany nuclear power plant
EIA/IC/INFO/20	Ukraine	ongoing since September 2016	3 units of South Ukrainian nuclear power plant 2 units of Khmelnytskyi nuclear power plant 2 units of Rivne nuclear power plant 5 units of Zaprizhia nuclear power plant
ECE/IC/INFO/26	Spain	closed in March 2019	1 unit of Santa Maria de Garoña nuclear power plant
ECE/IC/INFO/28	Bulgaria	ongoing since March 2019	2 units of Kozloduy nuclear power plant
EIA/IC/INFO/32	France	ongoing since March 2020	4 units of Blayais nuclear power plant 4 units of Bugey nuclear power plant 4 units of Chinon nuclear power plant 4 units of Cruas nuclear power plant 4 units of Dampierre nuclear power plant 6 units of Gravelines nuclear power plant 2 units of St. Laurent nuclear power plant 4 units of Tricastin nuclear power plant

EIA/IC/INFO/34	Spain	ongoing since September 2020	2 units of Almaraz nuclear power plant
<i>Protocol matters</i>			
SEA/IC/INFO/1 opened further to EIA/IC/INFO/14	Serbia	closed in December 2019 / lead to SEA/IC/CI/1	Energy Sector Development Strategy for the Period up to 2025 with Projections up to 2030 and the Strategy's implementation programme for the Period 2017–2023
SEA/IC/INFO/3	Ukraine	closed in December 2019	Programme for Hydro Energy Development for the Period until 2026.
SEA/IC/INFO/4	Poland	ongoing since September 2020	Draft of the Energy Policy until 2040.

A. Convention matters

1. Belarus

EIA/IC/INFO/21

66. The Committee agreed to monitor ongoing revision by Belarus of national environmental assessment legislation with a view to addressing its deficiencies and shortcomings vis-à-vis the Convention and Protocol.

2. Bosnia and Herzegovina

EIA/IC/INFO/16

67. At its forty-eighth session, the Committee agreed to continue monitoring the ongoing transboundary procedure under the Convention regarding planned construction of the Ugljevik thermal power initiated by Bosnia and Herzegovina in October 2019 by notifying Serbia further to the outcomes of the informal consultations referred to in paragraph 69 below.

EIA/IC/INFO/17

68. At its forty-sixth session, the Committee agreed that there were no grounds for it continuing its information gathering activities concerning planned construction by Bosnia and Herzegovina of a new thermo-power plant in Stanari, close to Croatia. The Parties concerned had not demonstrated willingness to apply the Convention for the activity, also under article 3 (7), as recommended by the Committee.

ECE/IC/INFO/23 and ECE/IC/INFO/24

69. To address information gaps and clarify the Parties' positions regarding application of the Convention to the planned construction of the Banovici and Tuzla thermal power plants, close to Croatia and Serbia, the Committee invited the three Parties concerned to informal consultations at its forty-seventh session. Due to COVID-19-related circumstances the informal consultations had been postponed to the Committee's forty-eighth session. However, Bosnia and Herzegovina and Serbia were unable to participate at that session. At the two Parties' request, the Committee agreed to hold informal consultations at an additional online session on 29 October 2020.

EIA/IC/INFO/33

70. At its session in September 2020, further to information of 15 May 2020 submitted jointly by two NGOs from Bosnia and Herzegovina (Aarhus Centar and Centre for Environment) and by two NGOs from Montenegro (Green Home and Ozon), the Committee agreed to initiate gathering information on planned construction of Buk Bijela hydropower plant, close to Montenegro.

3. Denmark

EIA/IC/INFO/30

71. The Committee agreed to continue its consideration of the matter initiated further to the request of Ukraine from January 2019 to establish an inquiry Commission regarding the Nord Stream 2 Project. The Committee clarified preconditions for establishing an inquiry commission under article 3 (7) and appendix IV, explaining steps to be taken and documentation to be provided by both Parties in that regard (see draft decision VIII/4, para 12 (a)). At its subsequent sessions, it will consider the information expected from Denmark and Ukraine on the outcomes of their discussions under article 3 (7) on whether there was likely to be a significant adverse impact from Nord Stream 2 on the territory of Ukraine.

4. Switzerland

ECE/IC/INFO/25

72. For its further consideration of the compliance matter concerning planned extension activities at Zurich airport, the Committee, in September 2020, requested additional information from Switzerland and agreed to continue its consideration of the matter at its subsequent sessions.

5. Ukraine

EIA/IC/INFO/10

73. The Committee agreed to continue its consideration on whether Ukraine had afforded the right to Hungary, the Republic of Moldova and Romania to participate in the ongoing transboundary procedure on the planned construction of units 3 and 4 at Khmelnytsky nuclear power plant.

EIA/IC/INFO/29

74. At its forty-eighth session, the Committee decided to begin a Committee initiative further to paragraph 6 of the Committee's structure and functions (see para. 87 below) based on a profound suspicion of non-compliance by Ukraine with its obligations under the Convention concerning construction of a large tourism complex in the Svydovets mountains. In particular, based on information made available to it by the Parties concerned, the Committee noted that Ukraine had not:

(a) Notified Hungary and Romania regarding the activity further to articles 2 (4) and 3 (1) of the Convention despite their requests;

(b) Responded to reiterated requests of Romania under article 3 (7) of the Convention to exchange sufficient information and enter into discussions on the likelihood of a significant adverse transboundary impact.

EIA/IC/INFO/13

75. Further to new information provided by Hungary on 25 February 2020, the Committee agreed at its forty-eighth session to reopen its information gathering on the planned reopening by Ukraine of a gold mine in Muzhiyevo.

6. Serbia

ECE/IC/INFO/27

76. The Committee agreed that there was no need for it to continue its information gathering activity concerning the extension of Drmno open pit mine. Romania, as an affected Party, had expressed its satisfaction with the related transboundary environmental impact assessment procedure carried out by Serbia and its outcomes, including regarding public participation.

EIA/IC/INFO/31

77. Following the official submission by Bulgaria regarding Serbia, the Committee agreed to consider thereunder the information of 10 February 2019 submitted by Bulgarian NGO the Balkanka Association concerning construction of an experimental facility in Karamanica by Serbia (see paras. 62 and 63 above).

7. Spain

EIA/IC/INFO/26

78. The Committee agreed that there was no ground for it to continue its information gathering activities concerning the planned construction by Spain of a temporary storage for radioactive waste at the Almaraz nuclear power plant. Although Portugal, as an affected Party, would have preferred to be officially notified by Spain under the Convention, it had accepted, on an exceptional basis, an alternative procedure under an amicable agreement reached between the Parties concerned in 2017 through a European Union-led mediation exercise. Under that procedure the two Parties had been able to exchange information and views regarding the activity and to foresee mitigation measures.

8. Lifetime extensions of nuclear power plants by Belgium, Bulgaria, Czechia, France, the Netherlands, Spain and Ukraine

EIA/IC/INFO/15, EIA/IC/INFO/18, EIA/IC/INFO/19, EIA/IC/INFO/20, EIA/IC/INFO/26, EIA/IC/INFO/28, EIA/IC/INFO/32, EIA/IC/INFO/34

79. Further to decision IS/2, paragraph 10, the Committee continued gathering information on eight cases related to concerns of the public regarding non-application of the Convention to planned lifetime extensions of nuclear power plants by Belgium, Bulgaria, Czechia, France, the Netherlands, Spain (two issues) and Ukraine as summarized in table 4 above. In particular, the Committee:

(a) Focussed on filling in remaining information gaps on pending matters, particularly on lifetime extension of 12 units of four nuclear power plants in Ukraine;

(b) Initiated information gathering concerning new matters, including two units of one nuclear power plant in Bulgaria, 32 units of eight nuclear power plants in France, and three units of two nuclear power plants in Spain.

80. Further to its deliberations, the Committee agreed that there was no need for it to pursue its information gathering concerning Santa Maria de Garoña nuclear power plant in Spain, as Spain had declared the permanent cessation of the plant's operation (Committee ref.: EIA/IC/INFO/26).

81. The Committee provided inputs to the ad hoc working group on preparing draft guidance on the applicability of the Convention to the lifetime extension of nuclear power plants, including a description of all related compliance cases under the Committee's consideration and clarifications on interpretation of article 2 (2) and (3) of the Convention. Further to its deliberations, the Committee noted that several Parties find themselves potentially affected by those activities and would wish to participate in the related transboundary procedure under the Convention. On numerous occasions, it stressed that Parties urgently need such guidance to properly apply the Convention to their ongoing activities and that the Committee itself also urgently needs guidance to proceed with the

consideration and development of findings regarding present and future cases. Many of the current cases had been pending before the Committee for several years in the absence of guidance and could no longer wait to be concluded.

B. Protocol matters

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

82. The Committee continued its consideration of compliance by Serbia with the Protocol regarding its Energy Sector Development Strategy for the period up to 2025 with Projections up to 2030, the Strategy's implementation programme for the Period 2017–2023 and its second Spatial Plan. Based on the information provided by Serbia and Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Montenegro, North Macedonia and Romania, the Committee decided:

(a) That there was no need for it to continue gathering information concerning the second Spatial Plan. Considering general time frames for preparing spatial plans and the fact that the Plan had entered into force on 1 December 2010, the Committee concluded that the first formal preparatory act for the Plan had been executed before the Protocol's entry into force for Serbia on 6 October 2010. Referring to article 24 (4) of the Protocol, the Committee concluded that the Protocol was not applicable to the Plan;

(b) To begin a Committee initiative further to paragraph 6 of the Committee's structure and functions based on a profound suspicion of non-compliance by Serbia with its obligations under:

(i) 10 (1) and (2) of the Protocol, due to a lack of evidence that Serbia had notified Croatia, Hungary and Romania regarding the Energy Strategy;

(ii) Article 10 (4) of the Protocol, as Serbia, before adopting the Strategy's implementation Programme, had failed to respond to the request of Hungary to agree on the language regime, consequently hindering participation of Hungary in consultations on the Programme under article 10 (3) of the Protocol;

(iii) Article 11 (2) of the Protocol, as the potentially affected Parties, including Hungary and Montenegro, had not been informed of the Programme's adoption in October 2017 (see para. 86 below).

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

83. The Committee agreed that there was no need for it to continue gathering information concerning the application of the Protocol by Ukraine to its Programme for Hydro Energy Development for the Period until 2026. According to Ukraine, the country had initiated the development of the Programme prior to entry into force of the Protocol on 1 March 2016, 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 considering the usual time frames needed for preparation of national plans and programmes, including time for consultations, the Committee, referring to article 24 (4) of the Protocol, concluded that the Protocol was not applicable to the Programme.

3. Poland (SEA/IC/INFO/4)

84. The Committee agreed to continue at its subsequent session gathering information further to information provided on 11 February 2020 by a German parliamentarian expressing concerns about non-application of article 10 of the Protocol (on transboundary consultations) by Poland regarding the draft Energy Policy of Poland until 2040.

VI. Committee initiatives

85. Further to operating rule 15 (2), the Committee decided to begin two Committee initiatives: on Serbia concerning Protocol matters; and on Ukraine concerning Convention matters.

Serbia (SEA/IC/CI/1)

86. Under the Committee initiative on application by Serbia of the Protocol concerning its Energy Sector Development Strategy for the Period up to 2025 with Projections up to 2030 and the Strategy's implementation programme for the Period 2017–2023 (see para. 82 (b) above), Serbia, further to paragraph 9 of the Committee's structure and functions, was invited to the Committee's forty-eighth session to participate in the discussion and to present the Committee with information and opinions on the matter under consideration. At the request of Serbia, which was unable to participate at that session, the Committee exceptionally agreed to postpone the hearings and organize for that purpose a special online session on 10 November 2020. Further to the discussions' outcomes, the Committee agreed to prepare its draft findings and recommendations on the matter at its forty-ninth session in February 2021 and to finalize them at its fiftieth session in May 2021 further to the comments and representations to be submitted by Serbia in advance of that session.

Ukraine (EIA/IC/CI/7)

87. The Committee begun its initiative on application by Ukraine of the Convention concerning construction of a large tourism complex in the Svydovets mountains, in September 2020 (see para. 74 above). It agreed that, at its forty-ninth session, it would consider timing for scheduling discussions with the Parties concerned under paragraph 9 of the Committee's structure and functions and requested Ukraine to update it on the activity's status in advance of that session.

VII. Revised questionnaires and reviews of implementation

Modification of the questionnaires

88. The Committee agreed on minor modifications to the questionnaires for the sixth review of the implementation of the Convention and the third review of the implementation of the Protocol considering suggestions for improving the questionnaire from Parties.¹¹ In May 2018, the Working Group approved the revised questionnaires (ECE/MP.EIA/WG.2/2018/2, annexes II and III).

Reviews of implementation

89. In accordance with the timetable agreed by the Working Group (ECE/MP.EIA/WG.2/2018/INF.5), the secretariat sent the Convention and Protocol questionnaires to the Parties at the end of October 2018, for completion by 31 March 2019. The Committee noted the findings of the draft sixth review of implementation of the Convention (ECE/MP.EIA/WG.2/2019/3) and the draft third review of implementation of the Protocol (ECE/MP.EIA/WG.2/2019/4) prepared by the secretariat with consultants' assistance; and the Parties' and consultants' suggestions for improvement of the questionnaires for the next reporting round.

VIII. Structure and functions and operating rules

90. The Committee reviewed its working methods and practice, highlighting that its work had been hindered by lateness and insufficient quality of responses by some Parties

¹¹ ECE/MP.EIA/23.Add.2–ECE/MP.EIA/SEA/7.Add.2, decision VII/1, para. 6.

concerned, and, in some cases, also by their refusal to respond and cooperate. It clarified its operating rules on handling conflict of interest by its members, proposed some ways to increase its effectiveness and efficiency to tackle the constantly growing number of compliance cases before it¹² and agreed to continue its efforts with a view to revising, during the 2021–2023 intersessional period, the Committee’s structure and functions and its operating rules for the consideration of the Meeting of the Parties at its ninth session. As a matter of priority, it also suggested an adjustment to its operating rule 11 (4) regarding the deadline for the delivery of information by Parties (see draft decision VIII/4, annex).

IX. Workload

91. The Committee’s workload continued to grow in the intersessional period 2017–2020 due to the constantly increasing number of compliance issues before it and their complexity. As indicated in sections II–VI above, the Committee had been considering 36 compliance issues (5 cases to follow-up on previous decisions of the Meeting of the Parties, 5 specific compliance issues arising from reviews of implementation of the Convention, 2 submissions, and 24 information gathering cases, with 1 case leading to a Committee initiative). Moreover, the Committee’s workload significantly increased further to the Meeting of the Parties’ request to revise draft decision VII/2 for its intermediary session. Subsequently, the Committee’s consideration of numerous pending issues and new compliance issues had been delayed for almost a year.

92. To tackle its considerable workload, the Committee, in agreement with the Bureau, had extended the duration of its sessions from three to four days and, as mentioned in paragraph 6 above, held ten sessions, instead of the nine foreseen by the 2017–2020 workplan.¹³ In order to fulfil its mandate, the Committee also carried out, in accordance with its operating rule 19, consultations by email between its sessions and held three additional meetings using videoconferencing.

93. Table 5 provides an approximate overview of the time spent by the Committee on its various tasks as described in this document.

¹² ECE/MP.EIA/IC/2019/4, paras. 120–130.

¹³ ECE/MP.EIA/27–ECE/MP.EIA/SEA/11, para. 43.

Table 5
Overview of time spent by the Committee on its key tasks

<i>Task</i>	<i>Approximate proportion of Committee session time (percentage)</i>
Follow-up to decision VI/2 and revision of draft decision VII/2	37
Follow up to decisions IS/1 a, c, d, g and f	13
Examination of the outcome of the reviews of implementation	4
Consideration of submissions by Parties	5
Consideration of information from other sources	18
Committee initiative	<3
Modification of the questionnaires	<1
Review of the Committee's structure, functions and operating rules	5
Preparation for the seventh session of the Meeting of the Parties to the Convention and the third session of the Meeting of the Parties to the Protocol	14
Total	100

Abbreviations: The symbol (<) means less than.

X. Outreach

94. The Committee undertook efforts to raise awareness of its work and assist Parties in implementing the Convention. In particular, it continued to request publication on the Convention website of the Committee's correspondence and information related to compliance issues. The Chair of the Committee regularly exchanged experiences with the Chair of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and, together with a Committee member, participated (by videoconference) in a meetings of the Implementation Committee under the Water Convention (19 May 2020).