

Meeting of the Parties to the Espoo Convention, 8th session and Meeting of the Parties to the Protocol on SEA, 4th session

Vilnius, Lithuania, 8 - 11 December 2020

Item 3 (b) (ii) of the provisional agenda

Letter of the Co-Chairs of the ad hoc working group on the applicability of the Espoo Convention to the lifetime extension of nuclear power plants

After more than three years of intensive work, we are pleased to provide to the Meeting of the Parties our draft guidance on the applicability of the Espoo Convention to the lifetime extension of nuclear power plants (ECE/MP.EIA/2020/9). This draft is the result of in-depth discussions in the ad hoc working group. It also takes into account the views of civil society and other stakeholders who were consulted inter alia in three workshops and various meetings with the Co-Chairs.

The process of drawing up the guidance can be divided into three periods of work. The ad hoc working group was established by the Meeting of the Parties at its seventh session (Minsk, 13-16 June 2017). The group's first task was limited to drafting terms of reference which were subsequently adopted by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its seventh meeting (Geneva, 28-30 May 2018).

At the same meeting, the Working Group extended the mandate of the ad hoc working group and invited it to prepare a draft guidance based on the terms of reference. The Meeting of the Parties at its intermediary session (Geneva, 5-7 February 2019) confirmed this proceeding and decided that the draft guidance should be finalized for consideration by the Working Group at its ninth meeting (Geneva, 24-26 August 2020) before being submitted to the Meeting of the Parties for adoption. Thus began a second period of work. After a series of fruitful plenary meetings, the ad hoc group's efforts in preparing the draft were, however, severely impeded by the Covid-19 pandemic and subsequent restrictions on travel. As already described in our previous letter to the Working Group¹, all physical meetings scheduled for 2020 had to be cancelled and discussions within the group had to be carried out primarily in written procedure, accompanied by online plenary meetings. Consequently, the responsibility for drafting the guidance largely fell to the Co-Chairs. Despite our best efforts, confronted with highly opposing views on key issues, the draft presented to the Working Group did not reflect all concerns and was therefore not validated by the entire ad hoc working group.

At its ninth meeting, the Working Group commented on the draft guidance and invited the ad hoc group to further elaborate on it, taking into account the comments made, with a view to finalizing it for the consideration of the Meeting of the Parties at its eighth session. Aware that the revision of the draft had to be finalized by 19th October 2020, the group intensified its efforts and started to revisit the draft guidance immediately after the meeting of the Working Group. In this third and final period of work, ten online plenary meetings were carried out, organized by the Secretariat and prepared by the Co-Chairs and their teams. Furthermore, between these meetings some delegations representing opposing views entered into separate discussions on how certain points of conflict could be resolved in a spirit of compromise. This exchange turned out to be very productive. One of the outstanding subjects for which common ground was found is the list of

¹ Available under the „informal documents“ tab at <https://www.unece.org/index.php?id=53209>.

situations understood as a possible lifetime extension (chapter II, section C.). As the term “lifetime extension” determines the scope of the guidance, its meaning was one of the most intensively disputed topics within the ad hoc group. It is therefore quite an achievement that this question could be clarified by the group. Another difficult point of conflict which was not expected to be resolved was “lifetime extension per se” (chapter III, section C.2.). After long discussions it was finally concluded by the group that a lifetime extension may under certain conditions amount to a major change even if it is not accompanied by physical works or modifications in the operating conditions. It is also worth noting that the text underwent stringent editing in this final period which has considerably shortened the text and improved its readability whilst also ensuring its compliance with UNECE rules.

However, there are still some issues in this draft guidance on which the ad hoc working group was not able to agree. These points have been placed in square brackets, some of them including options reflecting opposing views of delegations on the respective matter. Not all of these points carry the same weight. One of the most challenging issues of dispute is whether accidents of a very low probability have to be included when determining if a lifetime extension is likely to cause significant adverse transboundary impacts (para 63).

Another key issue which has only been partially resolved by the ad hoc group is the question of whether a decision-making procedure established in national law, is a precondition for the Espoo Convention to apply, or whether Parties are required by the Espoo Convention to have decision-making procedures in place for “any activity or any major change to an activity” which is “likely to cause significant adverse transboundary impact”. In its final meeting the group agreed that an excerpt from a letter of the Chair of the Implementation Committee to the Co-Chairs of the ad hoc working group should be included in the draft guidance, illustrating the Committee’s opinion on this matter (see para 84). However, several delegations took the view that this question would be an issue of general relevance for the applicability of the Convention and that in order to provide for more legal clarity the Meeting of the Parties should be asked to address this point explicitly in Decision VIII/6.

It is important to note that the draft guidance which has been submitted to the Meeting of the Parties for adoption has been validated by the ad hoc working group. This means that the text is recognized by the group as properly reflecting the results of its final discussions following the meeting of the Working Group. By presenting a validated draft guidance the Co-Chairs consider the task of the ad hoc working group to be accomplished.

This draft guidance has been prepared under unusual and extremely difficult conditions. Nevertheless, the ad hoc working group and its Co-Chairs have done everything possible to deliver the expected outcome. Now that the final stage of this process is approaching, we call on the Parties to maintain their spirit of compromise in considering appropriate solutions for the remaining open points when preparing for the upcoming Meeting of the Parties. Please bear in mind that this guidance is urgently needed by Parties and the Implementation Committee. It would be a shame if the tremendous amount of work which has been invested in this enterprise was in vain.

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