

**Economic Commission for Europe**

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

**Working Group on Environmental Impact Assessment  
and Strategic Environmental Assessment**

**Seventh meeting**

Geneva, 28–30 May 2018

Item 3 of the provisional agenda

**Compliance and implementation**

**An account of the deliberations on draft decision VII/2 on the  
review of compliance with the Convention before, during and  
in the margins of the seventh session of the Meeting of the  
Parties**

**Note by the secretariat:**

*Summary*

This informal document contains an account of the Committee's deliberations and changes proposed by delegations to draft decision VII/2 during and in the margins of the seventh session of the Meeting of the Parties to the Convention (Minsk, 13-16 June 2017).

The informal document reflects in track-changes:

- (a) The Committee's deliberations at its ad hoc session held in Minsk on 12 June 2017<sup>1</sup>;
- (b) Proposals by delegations during the general segment of the seventh session of the Meeting of the Parties (see paragraph 5 of the general part and paragraphs 69-72 of the specific part of the draft decision regarding the United Kingdom).
- (c) Informal discussions by Committee members in the margins of the seventh session (15 June 2017) that aimed to facilitate consensus on the paragraphs of draft decision VII/2 regarding Armenia, Azerbaijan, the United Kingdom and Ukraine (in particular on paras. 13-53);
- (d) The record of discussions on paragraphs 54-64 regarding Belarus held by the interested Parties and the Parties concerned in the morning of 15 June in parallel

<sup>1</sup> See ECE/MP.EIA/IC/2017/4, annex.

(e) to the plenary session further to the invitation by the Chair of the general segment of the Meeting the Parties.

The Working Group is invited to take note of this informal document when considering revised draft decision IS/1 on the general issues of compliance with the Convention and revised draft decisions IS/1a – IS/1g regarding Armenia, Azerbaijan, Belarus, Serbia, and Ukraine. See informal documents ECE/MP.EIA/WG.2/2018/INF.4 and ECE/MP.EIA/WG.2/2018/INF.4 a-g respectively.

## Contents

	<i>Page</i>
Draft decision VII/2 on review of compliance with the Convention .....	3
Annexes	
I. Questions to be considered by experts carrying out a review of the environmental impact assessment documentation related to the Ostrovets nuclear power plant .....	13
[II. Terms of reference for the temporary expert body to provide advice to the Implementation Committee regarding the environmental impact assessment documentation related to the Ostrovets nuclear power plant.....	14
[II. Terms of reference for national experts to be appointed by Convention Parties to provide advice to the Implementation Committee regarding the environmental impact assessment documentation related to the Ostrovets nuclear power plant] .....	15

## Draft decision VII/2

### Review of compliance with the Convention

*The Meeting of the Parties to the Convention,*

*Recalling* article 11, paragraph 2, of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), and decisions III/2, IV/2, V/4 and VI/2 of the Meeting of the Parties to the Convention on the review of compliance,

*Recalling further* article 14 bis of the second amendment to the Convention,

*Determined* to promote and improve compliance with the Convention,

*Seeking* to promote the identification, as early as possible, of compliance difficulties encountered by Parties and the adoption of the most appropriate and effective solutions for resolving those difficulties,

*Having considered* the analysis made by the Implementation Committee on general compliance issues contained in the fourth review of implementation of the Convention in document ECE/MP.EIA/2014/3 adopted by decision VI/1,

*Having also considered* the findings and recommendations of the Implementation Committee on two Committee initiatives further to paragraph 6 of the appendix to decision III/2,<sup>2</sup> as set out in the reports of the Committee on its thirty-fifth, thirty-sixth and thirty-eighth sessions,<sup>3</sup>

*Having reviewed* the structure and functions of the Committee, as described in the appendix to decision III/2<sup>4</sup> and annex I to decision VI/2,<sup>5</sup>

*Having also reviewed* the operating rules adopted in decision IV/2,<sup>6</sup> as amended by decisions V/4,<sup>7</sup> annex, and VI/2,<sup>8</sup> annex II, and recognizing the importance of improving the efficiency of the working methods of the Committee in view of the growing number and complexity of compliance issues brought before the Committee,

*Having further reviewed* the opinions of the Committee,

*Recognizing* the importance of rigorous reporting by Parties on their compliance with the Convention, and noting the fifth review of implementation of the Convention<sup>9</sup> based on the answers of Parties to the questionnaires on the implementation of the Convention adopted in decision VII/1,

*Recalling* that the compliance procedure is assistance-oriented, and that Parties may make submissions to the Committee on issues regarding their own compliance with the Convention,

<sup>2</sup> ECE/MP.EIA/6, annex II.

<sup>3</sup> ECE/MP.EIA/IC/2016/2, annex; ECE/MP.EIA/IC/2016/4, paras 40-44; and see ECE/MP.EIA/IC/2017/2, forthcoming.

<sup>4</sup> ECE/MP.EIA/6, annex II.

<sup>5</sup> See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

<sup>6</sup> ECE/MP.EIA/10, annex IV.

<sup>7</sup> See ECE/MP.EIA/15.

<sup>8</sup> See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

<sup>9</sup> ECE/MP.EIA/2017/8.

## I. General part

1. *Adopts* the report of the Implementation Committee on its activities contained in document ECE/MP.EIA/2017/4–ECE/MP.EIA/SEA/2017/4, welcomes the reports of the Committee on its meetings in the period after the sixth session of the Meeting of the Parties to the Convention, and requests the Committee:

- (a) To keep the implementation and application of the Convention under review;
- (b) To promote and support compliance with the Convention, including by providing assistance in this respect, as necessary;

2. *Welcomes* the examination by the Committee of specific compliance issues identified in the fourth review of implementation of the Convention<sup>10</sup> regarding Cyprus, which resulted in the Committee declaring its satisfaction with the clarifications provided by the Party;

3. *Welcomes also* the examination by the Committee of information received from other sources, including the public, in one case regarding Serbia and twice regarding Ukraine, which in both instances regarding Ukraine resulted in the Committee declaring its satisfaction with the clarifications provided by the Party at the time, and in the case of Serbia led both to a Committee initiative, regarding which the Committee is now satisfied with the clarifications provided and the actions taken by the Party,<sup>11</sup> and also to information gathering by the Committee regarding compliance with the Protocol that is to be continued at its upcoming sessions;

4. *Notes* the information received from other sources regarding Belgium, Belarus, Bosnia and Herzegovina, Czechia, the Netherlands, Spain and Ukraine that are to be further considered by the Committee at its forthcoming sessions;

~~5.~~ *Considers, taking into account the [EU] opinions of the Committee, that:*

(a) The opportunity provided by the Party of origin to a Party that considers that it would be affected by a significant transboundary environmental impact of a proposed activity listed in appendix I to the Convention, for which no notification has taken place in accordance with article 3, paragraph 1, demonstrates the agreement of the two Parties that a likely significant environmental impact on the territory of the potentially affected Party cannot be excluded according to article 3, paragraph 7, of the Convention;<sup>12</sup> ~~DELETE EU~~

~~[a] 5.a Where no notification has taken place in accordance with article 3, paragraph 1 of the Convention, but where a Party that considers that it would be affected by a likely significant transboundary environmental effect of a proposed activity listed in appendix I to the Convention enters into discussions on the application of an EIA procedure with the Party of Origin, that discussion should be conducted under article 3, paragraph 7, of the Convention. It may also be regarded as good practice to offer parties that have not been notified under article 3, paragraph 1 an opportunity to participate in an EIA procedure. (EU)~~

(b) The mere notification of possibly affected Parties, regardless of their number, does not impose an excessive burden on Parties of origin;<sup>13</sup> ~~(DELETE EU)~~

(c) For certain activities, in particular nuclear energy-related activities, while the chance of a major accident, accident beyond design basis or disaster occurring is very low,

<sup>10</sup> ECE/MP.EIA/2014/3.

<sup>11</sup> See paras. 66-69 below.

<sup>12</sup> ECE/MP.EIA/IC/2014/6, para. 35; see also ECE/MP.EIA/IC/2014/2 paras. 33–35.

<sup>13</sup> ECE/MP.EIA/IC/2016/2, annex, para. 59 and footnote k.

Commented [ES1]: This section contains the proposals by delegations at the seventh session of the Meeting of the Parties.

Deleted: following the

the likelihood of a significant adverse transboundary impact of such an accident can be very high; therefore, on the basis of the principle of prevention, when considering the affected Parties for the purpose of notification, the Party of origin should be exceptionally prospective and inclusive, in order to ensure that all Parties potentially affected by an accident, however uncertain, are notified. The Party of origin should make such consideration using the most careful approach on the basis of available scientific evidence, which indicates the maximum extent of a significant adverse transboundary impact from a nuclear energy-related activity, taking into account the worst-case scenario;<sup>14</sup> ~~EU~~

~~(b) [Although EU] [While BE] the likelihood of a major accident, accident beyond design basis or disaster occurring at nuclear activities listed in Appendix I is very low, the likelihood of a significant adverse transboundary environmental impact can be very high, if the accident occurs. Consequently, when assessing which parties are likely to be affected by a proposed nuclear activity listed in Appendix I, the most careful consideration on the basis of available scientific evidence should be made by the Party of origin.~~

~~(d) Procedural and substantive aspects of environmental impact assessment procedures can not necessarily be treated separately when assessing compliance in particular if the essence of the compliance case in question pertains to substantive aspects;<sup>14</sup> ~~EU~~~~

~~(c) Procedural and substantive aspects of environmental impact assessment procedures, so far as their consideration is required by the Convention, should not necessarily be treated separately by the Implementation Committee when assessing compliance, in particular if the essence of the compliance case in question relates to relevant aspects, provided that the Committee has the resources to consider substantive aspects. The Committee does not consider technical questions related to nuclear safety, as such. ~~(EU)~~ [The Committee may consider technical information on nuclear safety as long as it is strictly relevant to determining compliance with the provisions of the Convention ~~(CH)]~~.~~

~~[Should the Committee require an external support it should seek it from the most authoritative source. ~~(BY)~~~~

6. *Reiterates that:*

(a) The procedure in article 3, paragraph 7, does not substitute for the obligations of a Party of origin deriving from the Convention to notify possibly affected Parties, or to fulfil any other step of the transboundary environmental impact assessment procedure in compliance with the Convention in case transboundary environmental impacts cannot be excluded;<sup>15</sup>

(b) While the primary aim of the Convention, as stipulated in article 2, paragraph 1, is to “prevent, reduce and control significant adverse transboundary environmental impact from proposed activities”, even a low likelihood of such an impact should trigger the obligation to notify affected Parties in accordance with article 3. This is in accordance with paragraph 28 of the Guidance on the Practical Application of the Espoo Convention, endorsed by decision III/4.<sup>16</sup> This means that notification is necessary unless a significant adverse transboundary impact can be excluded;<sup>17</sup>

<sup>14</sup> Ibid., para. 62.

<sup>15</sup> See decision VI/2, para. 5 (h).

<sup>16</sup> ECE/MP.EIA/6, annex IV.

<sup>17</sup> ECE/MP.EIA/10, decision IV/2, annex I, para. 54.

*[(c) The Committee may, as appropriate, seek the services of scientific experts and other technical advice or consult other relevant sources; **BY**]*

7. *Encourages* Parties to bring issues concerning their own compliance before the Committee;

8. *Requests* the Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible, and in this respect refers to decision VII/3 on the adoption of the workplan, recommending general requirements to be met by Parties wishing to receive technical advice from the Convention;

*8 bis. Recalling the central role of the International Atomic Energy Agency in providing expertise and advice in the field of nuclear safety, calls upon the Committee to cooperate with the Agency and, where appropriate, other relevant international organizations and bodies, to seek answers to technical questions relevant to the achievement of purposes of the Convention including for resolving nuclear energy-related disagreements **BY**:*

9. *Urges* Parties to take into account in their future work the recommendations for further improving the implementation of and compliance with the Convention, including by strengthening national legislation, based on but not limited to the analyses on general compliance issues from the reviews of implementation, adopted by decisions III/1, IV/1, V/3 and VI/1, in conjunction with the general guidance on enhancing consistency between the Convention and environmental impact assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia adopted by decision VI/8;

10. *Also urges* Parties to ensure the application of the Convention in nuclear energy-related activities, and in that respect recalls the 2014 Geneva Declaration<sup>18</sup> (Part A) on the application of the Convention and the Protocol to nuclear energy issues, and in particular:

(a) Emphasizes that Parties to the Convention that carry out nuclear energy-related activities should do so in accordance with the Convention, in a sustainable manner, taking into consideration the precautionary and polluter pays principles, and respecting international nuclear safety standards and relevant environmental legislation;

(b) Also emphasizes that close cooperation and improved mutual understanding of the practices and needs of other Parties in the field of nuclear energy will facilitate the application of transboundary environmental procedures in full compliance with the Convention and the Protocol;<sup>19</sup>

(c) Encourages effective cooperation among Parties, the secretariats of all relevant international treaties and international organizations to maximize synergies and strengthen capacities with a view to ensuring the highest possible quality of environmental assessment and level of safety in the nuclear energy field;<sup>20</sup>

11. *Urges* Parties to take into account in their further work the opinions of the Committee in the period from 2001 to 2017, and requests the secretariat to arrange for the revision of the informal electronic publication of these opinions to include the opinions of the Committee from 2014–2017;

12. *Decides* to keep under review and to develop, if necessary, the structure and functions of the Committee and its operating rules at its eighth session, in the light of experience gained by the Committee in the interim, and requests the Committee to prepare

<sup>18</sup> See ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3.

<sup>19</sup> Declaration, para. A9.

<sup>20</sup> Declaration, para. A10.

any proposals, as it deems necessary, for submission to the Meeting of the Parties at its eighth session;

## II. Follow-up to decision VI/2 A. Regarding Ukraine

Orange – Revised text provided by Ukraine to the members of the implementation committee through the secretariat

Lilac – Revised text agreed by the Committee members at the informal meeting on 15.06.2017

*Bystroe Canal Project*<sup>21</sup>

13. Welcomes the efforts demonstrated by the Government of Ukraine to follow the recommendations of the Meeting of the Parties addressed to it in decision VI/2;

14. Appreciates the reports received from the Government of Ukraine further to paragraph 25 of decision VI/2, concerning the follow-up to decision V/4 in relation to the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project);

15. Welcomes the efforts undertaken by the Governments of Ukraine and Romania to further develop the bilateral agreement for improved implementation of the Convention;

16. Welcomes the adoption by efforts of Ukraine to develop a new draft of the law on the implementing of the Convention, i.e. and the subsequent vote to adopt the text of the Law on Environmental impact assessment by the parliament of Ukraine as a concrete legislative step towards implementation of the strategy of the Government of Ukraine to implement the Convention as referred to in paragraph 25(a) of decision VI/2

17. Appreciates that Ukraine consulted-submitted the draft text of the Law to the Implementation Committee beforehand which the Committee at its thirty seventh session found to be generally compatible with the criteria previously set out in the review of the country's legal, administrative and other measures to implement the provisions of the Convention<sup>22</sup>;

18. Requests the Committee to assess the adopted Law and, if necessary, the secondary legislation once received by the Committee; and notes that the Law which have been adopted and signed by the President correspond to the text which was positively assess<sup>23</sup> by the Committee as generally compatible with the criteria the Committee had previously set out in the review of the country's legal, administrative and other measures to implement the provisions of the Espoo Convention<sup>24</sup>. Expresses deep concern, however, that, despite the positive vote by the parliament of Ukraine on the draft law on environmental impact assessment and the presentation of the new version of the text to the Committee, there is still no legislation in place in Ukraine to ensure proper implementation of the Convention;

18. Notes Regrets that Ukraine failed to the adoption of the the relevant legislation by the end of 2015, as set out in Law fulfils paragraphs 24 (with the respect to the adoption of legislation) and 25 (a) of decision VI/2;

19. Deeply regrets that no limited steps have been taken to bring the Bystroe Canal Project into full compliance with the Convention further to paragraph 24 of decision VI/2, and

<sup>21</sup> See ECE/MP.EIA/IC/2017/2, forthcoming.

<sup>22</sup> ECE/MP.EIA/IC/2016/6, para. 10;

<sup>25</sup> ECE/MP.EIA/IC/2016/4, para. 13

<sup>25</sup> ECE/MP.EIA/IC/2016/4, para. 13

**Commented [ES2]:** This section contains the summary of the discussions of the Committee members held in order to facilitate consensus on draft decision VII/2 regarding Ukraine (15 June 2017, 14.00 – 17.00 and 20.00-22.30).

**Deleted:** <sup>23</sup> See the letter ECE/ENV/2017/858 ECE/MP.EIA/IC/2016/6, para. XX;¶  
<sup>24</sup> See ECE/MP.EIA/IC/2009/5¶

~~request Ukraine and the Committee hold consultations and decide on further measure to be taken to bring the Bystroe Canal Project into full compliance, that the measures to be carried out in accordance with paragraph 19 of decision V/4 have not been implemented, as requested required in paragraph 19 of Decision V/4 and paragraphs 24 and 25 (b) of decision VI/2, taking into account newly adopted legislation;~~

20. *Endorses* therefore the findings of the Implementation Committee at its thirty-eighth session that, despite some steps taken, Ukraine has not yet fulfilled all ~~most~~ some of its obligations under paragraphs 24 and 25 of decision VI/2;<sup>25</sup>

21. *Declares*, therefore, that the caution to the Government of Ukraine issued at its fourth session is ~~suspended till the next meeting of the Parties with its further abolishment if Ukraine fully take measures envisaged in paragraph 19 of Decision V/4 and paragraphs 24 and 25 (b) of decision VI/2, still effective;~~

21. *Endorses also* the findings of the Committee that the continuation of dredging activities by the Government of Ukraine ~~for example further to the Action Plan adopted by decision No. 187 of 27 July 2013,~~ constitutes a further breach of its obligations under the Convention and shall be addressed in the consultations referred to in paragraph 4922 below;<sup>26</sup>

22. *Requests* the Committee to guide Ukraine until the end of 2017, after consultation with Ukraine, on the concrete measures that need to be taken to bring the Bystroe Canal Project into full compliance, taking into account newly adopted legislation and *reiterates its*

~~23.— Reiterates its request to the Government of Ukraine that it adopt the relevant draft legislation and to bring the Bystroe Canal Project into full compliance with the Convention by the end of 201898;~~

2423. *Requests* the Government of Ukraine to report by the end of each year to the Implementation Committee on how it has implemented paragraph 23 above, and specifically:

(a) On the implementation of the strategy of the Government of Ukraine to implement the Convention by the end of 2018, ~~inter alia, concrete legislative measures adopted to this effect;~~

(b) On steps taken to bring the Bystroe Canal Project into full compliance with the Convention, implementing the measures in accordance with ~~paragraph 19 of decision V/4,~~ paragraph 4922 of this decision, by the end of 201898, while refraining from any measure or programme which could jeopardize the fulfilment of these recommendations;

25. *Encourages* the Governments of Ukraine and Romania to continue their cooperation in preparing a bilateral agreement or other arrangement to support further the provisions of the Convention, as set out in article 8 of the Convention;

26. *Further requests* the Government of Ukraine to inform Romania about existing monitoring results and to consult with Romania on the post-project analysis, in accordance with article 7 of the Convention, and also to report to the Committee, eight months before the eighth session of the Meeting of the Parties, on the implementation of article 7 of the Convention;

27. *Declares*, therefore, that the caution to the Government of Ukraine issued at its fourth session remains in effect until the Committee decides that Ukraine fulfils all the measures referred to in para 22 above;

<sup>25</sup> ECE/MP.EIA/IC/2016/4, para. 13

<sup>26</sup> See ECE/MP.EIA/IC/2017/2, forthcoming.

~~27. Decides to address the issue of the suspension of the special rights and privileges accorded to Ukraine under the Convention, including its membership on the Bureau and the Implementation Committee, at the eighth session of the Meeting of the Parties, unless Ukraine adopts the relevant legislation and brings the Bystroe Canal Project into full compliance with the Convention by the end of 2018;~~

28. Requests the Committee to report to the eighth session of the Meeting of the Parties on its evaluation of the steps taken by the Government of Ukraine to bring about compliance, and to develop, if appropriate, further recommendations to assist Ukraine in complying with its obligations under the Convention;

2. Rivne nuclear power plant<sup>27</sup>

29. Notes with appreciation the regular information provided by Ukraine further to paragraph 71 of decision VI/2, concerning the Committee initiative regarding the extension of the lifetime of the Rivne nuclear power plant;

~~30. Regrets that, since last session of the Meeting of the Parties, Ukraine has not adopted new environmental impact assessment legislation to implement the provisions of the Convention Welcomes the adoption by Ukraine of the law implementing the Convention as referred to in paragraph 16 above; i.e. the Law on Environmental impact assessment;~~

31. Notes that Ukraine ~~notified~~ informed Austria, Romania, Hungary and the Committee in 2016 ~~about~~ that it plans ~~to~~ to conduct transboundary consultations on units 1 and 2 of Rivne NPP nuclear power plant during 2017-2018 ~~2020~~. Also regrets that Ukraine did not notify Austria, Hungary and Romania, which had expressed their wish to be notified regarding the extension of the lifetime of the Rivne nuclear power plant;

32. Also notes ~~Further regrets~~ that Ukraine did not provide any evidence of discussions with the other possibly affected Parties — i.e., Belarus, Poland, the Republic of Moldova and Slovakia — to agree on whether notification was needed for the extension of the lifetime of the Rivne nuclear power plant, as repeatedly recommended by the Implementation Committee. ~~Notes in this regard the notification of Ukraine referred to in paragraph 31;~~

33. Endorses the finding of the Implementation Committee that Ukraine remains in non-compliance with the provisions of the Convention referred to in paragraphs 69 and 70 of decision VI/2 with respect to the extension of the lifetime of reactors 1 and 2 of the Rivne nuclear power plant. Declares that Ukraine remains in ~~Suspend the~~ non-compliance until the revised decision referred to in paragraphs 36 below is taken ~~69 and 70 of decision VI/2~~ with respect to the extension of the lifetime of reactors 1 and 2 of the Rivne nuclear power plant. Request the Committee to review this decision following the elaboration and approval by the established on the VII meeting of the Parties the WG of the LTO criteria;

34. Requests the Government of Ukraine to revise its decision on the lifetime extension of reactors 1 and 2 of the Rivne nuclear power plant after following the results of the transboundary consultations are completed ~~referred to in paragraph 31 of this decision~~ by the end of 2018 in order to bring it into compliance with the Convention, based on the strategy referred to in paragraph 35 below;

35. Also requests Ukraine to submit to the Implementation Committee by the end of 2017 a strategy for complying with the provisions of the Convention regarding this activity, including time schedule and concrete steps to be undertaken by Ukraine, including:

<sup>27</sup> See ECE/MP.EIA/IC/2017/2, forthcoming.

~~(a) The adoption of the general legal and administrative framework on the implementation of the Convention;~~

(ab) The notification of all potentially affected Parties, in accordance with article 3 of the Convention;

(eb) The preparation of the environmental impact assessment documentation, including transboundary aspects, pursuant to article 4 of the Convention;

(ec) Consultations with authorities and the public of the affected Parties based on the environmental impact assessment documentation, as set out in article 5 of the Convention;

(de) Ensuring that in the revised final decision due account is taken of the outcomes of the environmental impact assessment procedure, including the environmental impact assessment documentation and comments received by the affected Parties, further to article 6 of the Convention;

36. *Requests* Ukraine to report by the end of each year to the Implementation Committee on its implementation of the strategy and to notify once and the revised final decision is taken;

37. *Requests* the Committee to report to the Meeting of the Parties to the Convention at its eighth session on compliance by Ukraine, and to develop, if appropriate, further recommendations to assist Ukraine in fulfilling its obligations under the Convention;

## B. Regarding Armenia

### I. National legislation<sup>28</sup>

38. *Appreciates* the reports received from the Government of Armenia during the intersessional period;

39. *Welcomes* the adoption by the Government of Armenia of legislation for the implementation of the Convention, including the regulation on public participation in compliance with the Convention and the Protocol, further to the decision VI/2, paragraph 31;

40. *Notes*, however, some deficiencies in the adopted legislation related to its practical application;

41. *Takes note with appreciation* of efforts undertaken by Armenia to address the deficiencies referred in paragraph 40 above by amending its legislation and drafting secondary regulations;

42. *Requests* Armenia to enhance distinction between the environmental impact assessment and strategic environmental assessment procedures to facilitate practical application of the legislation based on the recommendations of the international consultants to the secretariat;

43. *Also requests* the Government of Armenia to report to the Committee on the progress made one year before the next session of the Meeting of the Parties;

44. *Requests* the Implementation Committee to evaluate the subsidiary legislation adopted by Armenia for the implementation of the Convention and to report to the Meeting of the Parties at its eighth session thereon;

Commented [ES3]: no comments were obtained for paras 38-44 regarding Armenia

<sup>28</sup> See ECE/MP.EIA/IC/2017/2, forthcoming.

## 2. Metsamor nuclear power plant<sup>29</sup>

45. Takes note of the information from Government of Armenia that the final decision on the construction of the Metsamor nuclear power plant is no longer valid and activities based on that decision were suspended;

46. Endorses, therefore, the finding of the Committee that there is no longer a project and a transboundary environmental impact assessment procedure relating to the Metsamor nuclear power plant;

47. Encourages, however, Armenia to ensure that any projects carried out in accordance with energy-related programmes, including nuclear activities, be in compliance with the Convention;

~~[47. Encourages, however, Armenia to ensure that any projects carried out in accordance with energy-related programmes, including nuclear activities, be in compliance with the Convention [AR].]~~

46. Endorses, therefore, the finding of the Committee that there is no longer a project, and subsequently [AZ] a transboundary national [AZ] environmental impact assessment process [AZ] procedure, including transboundary procedure [AZ] relating to the Metsamor nuclear power plant;

47. Encourages Requests, however, Armenia to ensure that any projects *on nuclear activities in Metsamor* [AZ] carried out in accordance with energy-related programmes, including nuclear activities, be in compliance with the Convention, *in particular with the Decision VI/2, paragraph 45 adopted by MOP6 with respect to the submission by Azerbaijan regarding Armenia* [AZ].]

### C. Regarding Azerbaijan<sup>30</sup>

48. Notes the information received from the Government of Azerbaijan during the intersessional period;

49. Expresses concern that, despite some steps taken during this intersessional period, the Government of Azerbaijan failed to implement the requests addressed to it in decision VI/2 (paras. 41-43);

~~[49. Expresses concern that, despite some many steps taken during this intersessional period, the Government of Azerbaijan failed to had not managed to implement adopt the Draft EIA Law the requests addressed to it as requested in decision VI/2 (paras. 41-43); [AZ].]~~

50. Notes with regret that the technical advice offered to the Government of Azerbaijan was not used effectively enough to enact relevant legislation on the implementation of the Convention;

51. Urges the Government of Azerbaijan to adopt the draft law and the subsequent implementing regulations in line with all technical advice provided, before the end of 2017, and to regularly report to the Committee on the progress made;

52. Requests the Committee to continue its initiative concerning Azerbaijan based on a profound suspicion of non-compliance with article 2, paragraph 2, of the Convention,

**Commented [ES4]:** Comments by Armenia to para 47 were submitted during the plenary session of the MOP (14.06.2017). The members of the Committee considered these comments at the informal meeting on 15.06.2017. In absence of the new information regarding the Party's compliance with the Convention, the Committee members decided to ask the Meeting of the Parties to keep the text of the paragraph 47 unmodified.

**Commented [ES5]:** Comments by Azerbaijan to paras 46-47 were submitted during the plenary session (14.06.2017). The Committee members considered these comments at its informal meeting on 15.06.2017 and decided to ask the Meeting of the Parties to keep the text of the paragraph 46-47 unmodified.

**Commented [ES6]:** Comment to paras 49, 52 and 53 were provided by Azerbaijan at the plenary session 14.06.2017. The members of the Committee considered these comments by Azerbaijan at the informal meeting on 15.06.2017. In absence of the new information regarding the Party's compliance with the Convention, the Committee members decided to ask the Meeting of the Parties to keep the text of the paragraph 49,52 and 53 unmodified.

<sup>29</sup> ECE/MP.EIA/IC/2014/6, para. 23, and ECE/MP.EIA/2017/4–ECE/MP.EIA/SEA/2017/4, paras. 27-28.

<sup>30</sup> See ECE/MP.EIA/IC/2017/2, forthcoming.

and to report to the Meeting of the Parties to the Convention at its eighth session on compliance by Azerbaijan with the Convention;

~~[52. Requests the Committee to continue its initiative concerning Azerbaijan based on a profound suspicion of non-compliance with article 2, paragraph 2, of the Convention, and to report to the Meeting of the Parties to the Convention at its eighth session on compliance by Azerbaijan with the Convention its evaluation of steps taken by Azerbaijan pertinent to the requests in paragraph 51 of this decision; [AZ]]~~

Commented [ES7]: See comment to para 49 above

53. Also requests the Committee to assess circumstances affecting the effectiveness of the technical advice provided to the Government of Azerbaijan, including the organizational structure put in place by the Government to make use of such technical advice, and invites the secretariat to make available to the Committee all information needed to this end;

~~[53. Also requests the Committee to assess circumstances affecting the effectiveness of the technical advice provided to the Government of Azerbaijan, including the organizational structure put in place by the Government to make use of such technical advice, and invites the secretariat to make available to the Committee all information needed to this end; [DELETE AZ]]~~

Commented [ES8]: See comment to para 49 above

#### D. Regarding Belarus<sup>31]</sup>

**Red – proposal by Belarus provided to the Chair of the Implementation Committee in the margins of the MOP**

**Lilac - the revisions proposed at the ad hoc meeting.**

54. *Appreciates* the annual reports and information provided by Belarus and Lithuania to the Implementation Committee further to decision VI/2 (para. 59);

55. *Welcomes* the steps taken by both Parties since the sixth session of the Meeting of the Parties to address the recommendations in decision VI/2 directed to them (paras 51-58, 62, and 64);

56. *Commends* the Implementation Committee for its thorough analysis of the steps undertaken by Belarus after the twenty-seventh session of the Committee, as outlined in the report of the Committee on its activities<sup>32</sup>;

57. *Recognizes* the efforts made by Belarus to implement decision VI/2;

[57 bis. *Acknowledges* ~~Endorses the findings~~ the conclusions of the Implementation Committee that Belarus had undertaken all [the required] [procedural] steps to reach the final decision on the planned activity at Ostrovets as provided for in the Convention, however *noting acknowledging* that the Implementation Committee, had not been able to reach final conclusion on the compliance of those steps with the provisions of the Convention without answers on technical and scientific aspects of the environmental impact assessment documentation to the questions listed in annex I of the Committee's report on its thirty seventh session Annex I<sup>33]</sup>

[57 bis. *Notes* that the Implementation Committee at its thirty-eighth session concluded, that Belarus had undertaken all the required steps to reach the final decision on

Commented [ES9]: This section contains the summary of the discussions held on 15 June 2017 by the interested Parties and Parties concerned further to the invitation of the Chair of the general segment of the Meeting of the Parties.

The interested Parties discussed (a) paragraph 5 of the general part of draft decision VII/2 which summarized the Committee's opinions prepared during 2014-2017 concerning the United Kingdom of Great Britain and Northern Ireland and the follow up by Belarus with decision VI/2, and (b) paragraphs 54-64 regarding Belarus. The Chair of the Implementation Committee and several Committee members also took part in that meeting. Further to the proposal from Belarus to consider any revisions to paragraph 5 after finalizing deliberations on the specific decisions regarding the above compliance issues, the participants of the ad hoc meeting considered revisions to paragraphs 54-64 concerning Belarus taking into account the formal comments provided by Belarus on 9 June 2017 and the proposals by Belarus delegation provided in the margins of the Meeting of the Parties.

<sup>31</sup> ECE/MP.EIA/IC/2016/6, paras. 29–31, and see ECE/MP.EIA/IC/2017/2, forthcoming.

<sup>32</sup> ECE/MP.EIA/2017/4–ECE/MP.EIA/SEA/2017/4.

<sup>33</sup> ECE/MP.EIA/IC/2017/2, para 8 and ECE/MP.EIA/IC/2016/6, annex for the list of questions.

the activity at Ostrovets as provided for in the Convention and had not, however, been able to reach a final conclusion on the compliance of those steps with the provisions of the Convention, without answers to five questions on technical and scientific aspects of the environmental impact assessment documentation that it had put forward at its thirty seventh session.<sup>34]</sup>

58. *Further acknowledges* that, in order to finalize its conclusions concerning compliance by Belarus [~~with the provisions referred to in a paragraph 50 of decision VI/2]~~ and in that particular case ~~and in order~~ to support the dialogue between the two Parties, the Implementation Committee needs expert advice on environmental issues, ~~including from the relevant recognized international organisations [which both parties are members to];~~

59. *Encourages* the Implementation Committee to seek answers to the questions listed in Annex 1 to this decision ~~before the next meeting of the Working Group with a view to report on the matter to the Meeting of the Parties at its eighth session, and, if necessary, in accordance with its structure and functions (para 7 d) and encourage all the Parties, including the Parties concerned to contribute financially to the Trust Fund of the Convention~~

~~Encourages all the Parties, including the Parties concerned, to contribute financially to the Trust Fund of the Convention [in order to enable the Committee to obtain the scientific and other technical advice in accordance with the Committee's Operating rules]. Emphasizes that all activities of the Implementation Committee with possible implications to its recommendations on the implementation of the Convention by Parties should be financed in a way to ensure their impartiality~~ **[MOVE TO THE GENERAL PART]**

~~[60. *Requests* the Implementation Committee to finalize the assessment of the compliance by Belarus with the provisions of the Convention in the light of paragraph 59 and to report on the matter to the Meeting of the Parties at its eighth session.]~~

61. *Encourages* Belarus and Lithuania to continue bilateral expert consultations on issues of disagreement, including on matters that are beyond the scope of the Convention;

62. *Also encourages* both Parties to continue working on the post-project analysis and reach an agreement in establishing a joint bilateral body and procedures for post-project analysis, in particular to ensure sufficient public participation in the framework of the post-project analysis regarding the activity at Ostrovets;

63. *Regrets* that the bilateral agreement for the implementation of the Convention has not been yet concluded, and encourages Lithuania and Belarus to conclude such an agreement further to article 8 of the Convention;

64. Requests Belarus and Lithuania to report annually to the Implementation Committee on the progress made.

### III. Committee initiative

#### A. **Regarding Serbia**<sup>35</sup>

66. *Endorses* the finding of the Implementation Committee that Serbia is in compliance with the Convention regarding the planned extension of the open-pit mine of the Kostolac lignite power plant;<sup>36</sup>

**Commented [ES10]:** No comments to paras 66-68 regarding Serbia were obtained during the MOP7.

<sup>34</sup> ECE/MP.EIA/IC/2017/2, para 8 and ECE/MP.EIA/IC/2016/6, annex for the list of questions.

<sup>35</sup> ECE/MP.EIA/IC/2016/4, paras 42 - 44.

<sup>36</sup> ECE/MP.EIA/IC/2016/4, paras 42

67. Welcomes the efforts undertaken by Serbia during the intersessional period to implement the recommendations of the Committee regarding the planned construction of block 3 of the Kostolac lignite power plant;

68. Also endorses the findings of the Implementation Committee that Serbia brought the planned construction into compliance with the Convention by initiating a transboundary procedure in accordance with the Convention;<sup>37</sup>

**B. Regarding the United Kingdom of Great Britain and Northern Ireland<sup>38</sup>**

69. Endorses the [recommendations](#) of the Implementation Committee [in relation to the Hinkley Point C nuclear power plant project and declares](#) that the United Kingdom of Great Britain and Northern Ireland is in non-compliance with its obligations under the Convention **[EU]**.<sup>39</sup>

[69 bis. Welcomes the fact that the United Kingdom is taking steps to address the issue of non-compliance](#) **[EU]**.

70. Also welcomes that the United Kingdom has entered into discussions with possibly affected Parties, including Parties that cannot exclude a significant adverse transboundary impact from the activity at Hinkley Point C, in order to agree on whether notification is useful at the current stage for this proposed activity **[EU]**;

71. Requests the United Kingdom to report to the Committee on the results of [this process](#) **[EU]**;

72. Encourages the United Kingdom to ensure that, in the context of any future decision-making regarding the planned construction of a nuclear power plant, notifications are sent in accordance with the Convention, [proper consideration is given to paragraph 5 above](#) **[EU]**.

Commented [ES11]: This section presents proposals by the Parties.

<sup>37</sup> Ibid., para 43.

<sup>38</sup> ECE/MP.EIA/IC/2016/2, annex., paras 66-67. Further to its consideration of the information provided by the United Kingdom shortly before the Committee's thirty-eighth session (Geneva, 20-22 February 2017), the Committee decided at that session to add additional recommendations to those set out in the present document, which it had finalized in March 2016 (see the report of the Committee on its thirty-eighth session (ECE/MP.EIA/IC/2017/2, forthcoming)). The Committee will finalize its recommendations to the Meeting of the Parties based on the comments to be provided by the United Kingdom.

<sup>39</sup> Ibid., annex, para. 66.

## Annex I

### Questions to be considered by experts carrying out a review of the environmental impact assessment documentation related to the Ostrovets nuclear power plant

1. ~~What are the characteristics, according to current international rules, recommendations, guidelines and other relevant guidance documents, of an aircraft (heavy or light aircraft) whose direct crash on a commercial nuclear power reactor should be assessed before building a reactor? Were such characteristics analysed in the case of the Ostrovets nuclear power plant? [DELETE: Proposal by IC at the ad-hoc session<sup>40</sup>]~~
2. What is the size, according to current international rules, recommendations, guidelines and other relevant guidance documents, of the area around the commercial nuclear power reactor for which the population density has to be assessed in order to take into account the radiological impact of a major accident and to prepare accordingly the emergency measures? Was it respected in the case of the Ostrovets nuclear power plant?
3. According to current international rules, recommendations, guidelines and other relevant guidance documents, should the contamination of rivers and groundwater by radionuclides through direct discharge of contaminated water into the environment following a major accident or through the air be assessed before building a commercial nuclear power reactor? Was such an assessment undertaken in the case of the Ostrovets nuclear power plant?
4. According to current international rules, recommendations, guidelines and other relevant guidance documents, should the management of radioactive waste and spent fuel from a commercial nuclear power reactor (near surface repository or deep geological disposal) be decided before building such a reactor? Was there any mention of the waste management policy in the environmental impact assessment of the Ostrovets nuclear power plant?
5. ~~What are the selection and exclusion criteria (for example, geological and seismo-tectonic structure of the site, seismic hazard assessment (probabilistic assessment), etc.) that a country has to apply, according to current international rules, recommendations, guidelines and other relevant guidance documents, when assessing the suitability of a nuclear power plant site? Were such criteria applied in the selection of the Ostrovets site in comparison with the other sites that were also examined and were the data provided in the environmental impact assessment documentation sufficient to have an idea of the selection process? [DELETE: Proposal by IC at the ad-hoc session<sup>41</sup>]~~

<sup>40</sup> See. Informal document ECE/MP.EIA/IC/ad-hoc/2017/INF.6, containing 'Report of the Implementation Committee on its ad-hoc session held in advance of the Meeting of the Parties', paras 7-11. Online available at: [http://www.unece.org/fileadmin/DAM/env/eia/documents/ImplementationCommittee/2017/ad-hoc\\_session\\_12\\_June\\_2017/ece.mp.eia.ic.2017.ad-hoc.draft\\_report\\_06.07.2017\\_for\\_web.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/ImplementationCommittee/2017/ad-hoc_session_12_June_2017/ece.mp.eia.ic.2017.ad-hoc.draft_report_06.07.2017_for_web.pdf)

<sup>41</sup> Ibid.

## [Annex II

### **Terms of reference for the temporary expert body to provide advice to the Implementation Committee regarding the environmental impact assessment documentation related to the Ostrovets nuclear power plant**

1. The temporary expert body shall be organized as follows:

(a) It shall consist of three scientific or technical experts. Within two months after the adoption of decision VII/2 of the Meeting of the Parties, one member shall be appointed by Belarus and a second member by Lithuania; a third expert designated by common agreement of the two members shall be the President of the temporary expert body. The third member shall be designated within two months of the appointment of the second expert. The third member shall not be a national of either Belarus or Lithuania, have his or her usual place of residence in the territory of one of these Parties, be employed by either of the two Parties, or have dealt with the matter in any other capacity;

(b) If the President of the temporary expert body has not been designated within the time period mentioned in subparagraph (a) above, the Executive Secretary of the Economic Commission for Europe shall, at the request of either Party, designate the President within a further two-month period;

(c) If Belarus or Lithuania do not appoint their experts within the two-month period stipulated, the Executive Secretary of the Economic Commission for Europe shall designate the President of the temporary expert body within a further two-month period. Upon designation, the President of the expert body shall request the Party that has not appointed an expert to do so within one month. After such a period, the President shall inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further one-month period;

(d) The temporary expert body shall adopt its own rules of procedure and may take all appropriate measures in order to carry out its functions;

(e) Belarus and Lithuania shall facilitate the work of the temporary expert body and, in particular, shall provide it with all relevant documents, facilities and information;

(f) The Parties and the experts shall protect the confidentiality of any information they receive in confidence during the work of the temporary expert body;

(g) The decisions of the temporary expert body shall be taken by majority vote of its members. The answers of the temporary expert body shall reflect the view of the majority of its members and shall include any dissenting view;

(h) The answers of the temporary expert body shall be based on current international rules, recommendations, guidelines and other relevant guidance documents. The answers shall be transmitted by the temporary expert body to the Implementation Committee.

2. The creation and functioning of the temporary expert body will be supported by Belarus and Lithuania in equal shares. In case of disagreement by one of the Parties, the other Party may support, on a voluntary basis, the creation and functioning of the expert body. The expert body shall keep a record of all its expenses and shall furnish a final statement thereof to the Parties.]

**[Annex II**

**Terms of reference for national experts to be appointed by Convention Parties to provide advice to the Implementation Committee regarding the environmental impact assessment documentation related to the Ostrovets nuclear power plant**

1. The national experts appointed by Parties shall:
  - (a) Not be nationals of either Belarus or Lithuania, have their usual place of residence in the territory of one of these Parties, be employed by either of them, or have dealt with the matter in any other capacity;
  - (b) Protect the confidentiality of any information received in confidence during their work of answering the questions;
  - (c) Base their answers on current international rules, recommendations, guidelines and other relevant guidance documents;
  - (d) Transmit their answers to the Implementation Committee.
2. Belarus and Lithuania shall facilitate the work of the national experts and, in particular, shall provide them with all relevant documents, facilities and information.]