

**SEVENTH MEETING OF THE ESPOO CONVENTION AD HOC WORKING GROUP ON LIFE-TIME
EXTENTION OF NUCLEAR POWER PLANTS**

(Rotterdam, 8-9 October 2019)

SUMMARY OF DISCUSSION

Prepared by the Co-Chairs

The meeting was co-chaired by Lucy Tanner (UK) and Christof Sangenstedt (Germany) and attended by representatives from Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Italy, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland and the UK. Representatives from Slovakia and Luxembourg sent their apologies. The UNECE secretariat to the Espoo Convention and the Protocol on SEA and the European Commission also attended.

As mandated by the Working Group on EIA and SEA at its seventh meeting (Geneva, 28-30 May 2018), the ad hoc group continued its discussions on possible elements for the draft guidance on the applicability of the Espoo Convention (the Convention) to the lifetime extension (LTE) of nuclear power plants (NPPs) based on the terms of reference adopted by the Working Group.

The first point on the agenda for the seventh meeting of the ad hoc group was the review and consideration of the decision of the European Court of Justice (ECJ) on Case C-411/17. The group took note that the ECJ did not interpret the Espoo Convention, that it returned to its previous interpretation of the term “project” and applied it to the lifetime extension in question. The ECJ came to the conclusion that this case would fall under Annex I No. 24 of the EIA Directive, because the LTE taken together with the upgrading work linked to it would be a change or extension with similar effects on the environment as the original project. Furthermore, the group noted that according to the ECJ, the EIA Directive is applicable to a legislator’s consent to LTE, if the law is precise and unconditional and determines all essential characteristics of the project. The group agreed that although the ECJ only answered questions on the interpretation of the EIA Directive, its judgement is relevant to the work of the ad hoc group. It must be considered which of the reasons given by the ECJ are also relevant within the legal framework of the Convention. The group will keep in mind though, that the jurisdiction of the ECJ is only directly applicable to EU member states, and has no legal weight for the other Parties to the Espoo Convention.

Much of the remainder of the meeting was spent in three drafting groups, followed by a discussion in plenary on the outcomes of their work.

The first drafting group on “major change” revisited the question of whether a LTE should be considered as a new activity or rather as a major change. The group confirmed that an LTE is more likely to be a change. Only in certain conditions can LTE be a new activity. This will be the case where the license has (legally) expired and a new consent must be issued for the NPP to keep operating or where a new license or extension of the existing license also includes the licensing of a new activity in Appendix I. Further discussion is needed on whether and how the ECJ judgment conclusion should be included.

The drafting group also reviewed possible factors which indicate that a LTE is a major change. One of these factors is physical works related to the NPP activity. The group took the view that new technical solutions or facilities or major upgrading works could indicate a major change, if they amounted to an extent which implies significant environmental impacts. On the other hand, works already covered by the existing license or needed for maintenance purposes would not per se be a major change. A second factor reviewed by the drafting group was a changed intervention in the environment. The group suggested that these changes might be regarded as “major” if they will cause significant environmental

impacts. However, changes within the operational limits of the existing license would not be a major change per se. A third factor is the length of the extension. The view of the drafting group was that short-term extensions would not constitute a major change but it would depend on the length of the extension. The drafting group will continue to elaborate on its proposals and reasoning in future meetings. Further discussions will also be needed to conclude whether and how previous multiple minor changes, changes in the environment, the existence or absence of a former EIA and new scientific findings might be additional factors to be considered in the screening process. In plenary the ad hoc group took note of the report of the drafting group and agreed to proceed as proposed.

The second drafting group on “decision” continued previous plenary discussions on this issue. Recognising that there is no common definition of LTE, the group proposed to focus on certain examples which may be relevant in this context and reflect the different legal and procedural situations of the Parties. The examples should also take account of the cases currently pending at the Implementation Committee.

In order to better frame the scope of the term “decision” the drafting group also began to consider cases in which no decision according to article 1, subparagraph (v) of the Convention is taken. A question considered, but which may need to be further explored in future meetings is, for example, whether following a periodic safety review any subsequent statement of the competent authority on whether and under which conditions the NPP may continue to operate could be regarded as a “decision”, noting nevertheless that it might not be a LTE. The same applies to the findings of the ECJ on multi-tiered decision making and LTE by a specific domestic law. The drafting group started to discuss how this ruling could be reflected in the guidance and will return to this issue at the next meeting. In plenary the ad hoc group took note of the report of the drafting group and agreed to proceed as proposed.

The third drafting group on “likely to cause significant, adverse, transboundary impact” focused on the development of a screening process following a stepwise approach. Furthermore, it looked at the interpretation of “transboundary”, addressing the question of how widely parties will have to notify. The drafting group recalled that an early and wide notification is necessary to fulfil the obligations of the Convention. As a minimum, neighbouring parties and those who request notification according to article 3 paragraph 7 have to be notified. As a matter of good practice, other potentially affected Parties should be provided with information, preferably through a shared database. Finally, the drafting group focused on how to establish the significance of a LTE. It proposed that the criteria of Appendix III of the Convention could be used. Although Appendix III primarily aims to assist Parties in the determination of the environmental significance of activities not listed in Appendix I, its criteria are of a general nature and are also suitable for activities listed in Appendix I. The drafting group proposed to further elaborate on these criteria at the next meeting, notably on the question of whether it would be helpful to provide some additional elements. The ad hoc group discussed the report of the drafting group and agreed to proceed as proposed.

As regards other issues on the agenda, the ad hoc group agreed that the guidance should include an introductory section in which questions of a general or cross-cutting nature can be addressed. The Co-Chairs will present a preliminary outline for this section at the next meeting of the ad hoc group.

The ad hoc group also discussed plans for the stakeholder workshop to be held in advance of its 8th meeting in Vienna on 2nd December 2019. It agreed that the workshop would take the form of a focused panel discussion with invited speakers, chaired by the Co-Chairs, on the key points being considered by the ad hoc group. This will be followed by an opportunity for additional remarks from the audience. It was agreed that the Co-Chairs would provide a summary of the key points discussed in the group to aid panellists in preparing their remarks. This summary would also be sent to the

Working Group on EIA and SEA under the Convention and the Protocol to facilitate discussion at its 8th meeting (Geneva, 26–28 November 2019).

The ad hoc group will meet again on 3rd and 4th December 2019 in Vienna, immediately following the stakeholder workshop. The group will discuss the outcomes of that workshop and focus on the ongoing work of the drafting groups and the introductory chapter.