



# Economic and Social Council

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## 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

### Implementation Committee

#### Fifty-first session

Geneva, 4–7 October 2021

## Report of the Implementation Committee on its fifty-first session

### I. Introduction

1. The fifty-first session of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment was held from 4 to 7 October 2021. Due to coronavirus disease (COVID-19)-related restrictions on physical meetings and travel, the session was held in a hybrid mode.

#### A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Mr. Christian Baumgartner (Austria), Mr. Anders Bengtsson (Sweden), Ms. Barbora Donevová (Slovakia), Mr. Joe Ducombe (Luxembourg), Ms. Maria do Carmo Figueira (Portugal), Ms. Zsuzsanna Pocsai (Hungary), Ms. Heidi Stockhaus (Germany) and Mr. Lasse Tallskog (Finland). Ms. Aysel Rzayeva (Azerbaijan) and her alternate were absent.

3. The Committee agreed that its Chair should write to Azerbaijan to stress that Committee members were expected to attend each session of the Committee to honour the commitment made. Azerbaijan should also be reminded that, in line with rule 4 (2) of the Committee's operating rules,<sup>1</sup> if in exceptional cases the permanent member was unable to

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<sup>1</sup> See [https://unece.org/DAM/env/eia/documents/ImplementationCommittee/2014\\_Structure\\_and\\_functions/Implementation\\_Committee\\_structure\\_functions\\_procedures\\_rules.e\\_2014.pdf](https://unece.org/DAM/env/eia/documents/ImplementationCommittee/2014_Structure_and_functions/Implementation_Committee_structure_functions_procedures_rules.e_2014.pdf).



participate in a meeting of the Committee, the alternate member should participate, to ensure continuity in the Committee's deliberations and to share the Committee's important workload.

## **B. Organizational matters**

### **1. Adoption of the agenda**

4. The Chair of the Committee opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2021/5).

### **2. Membership of the Committee**

5. The Committee noted with regret that Austria had still not nominated an alternate Committee member and invited it to do so as soon as possible. In parallel, the secretariat was also invited to continue to remind the national focal point of Austria of the requirement for each Party represented in the Committee to nominate alternates.

### **3. Update on the Bureau meeting**

6. The Committee noted the information from the secretariat on the outcome of the Bureau meeting on 16 and 17 June 2021 and the status of the preparations for the tenth meeting of the Working Group (1–3 December 2021). It noted, in particular, that the questionnaires finalized by it at the end of August 2021, taking into account the comments by the Bureau, had been transmitted to the Working Group as official documents in mid-September 2021 and that, considering the schedule for the preparation of the 2019–2021 reviews of implementation, the Parties – further to the Bureau's recommendation – had been invited to provide any comments they might have on the questionnaires well in advance of the Working Group's meeting, i.e. by no later than 1 November 2021.

## **II. Follow-up to decisions VIII/4a–e**

7. Discussions on the follow-up to decisions VIII/4a–e<sup>2</sup> were closed to observers, in accordance with rule 17 (1) of the Committee's operating rules.

### **A. Armenia (EIA/IC/CI/1)<sup>3</sup>**

8. The Committee continued its follow-up to decision VIII/4a on compliance by Armenia with its obligations under the Convention in respect of its national legislation. It noted the timely response of Armenia to its letter, dated 15 February 2021, and the information provided by Armenia on the non-adoption of its amended legislation. The Committee agreed to continue its follow-up to decision VIII/4a at its fifty-fourth session, scheduled for 4–7 October 2022, with a view to evaluating the progress made by Armenia in meeting the requirements of decision VIII/4a in respect of its national legislation. It asked its Chair to write to Armenia with a view to:

(a) Encouraging Armenia to complete its legislative reform with a view to fully aligning its legislation with the provisions of the Convention and the Protocol;

(b) Inviting Armenia to provide the Committee, through the secretariat, with the following information:

(i) The date of the adoption of the amended legislation;

(ii) The text of the amended legislation and the relevant secondary legislation, along with the English translation thereof, within 30 days of said adoption.

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<sup>2</sup> See ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

<sup>3</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaicci1-armenia>

9. The Committee also noted the remark of Armenia regarding the letter from Azerbaijan, dated 29 November 2011, to which “no assessment has been given”. In that respect, and despite a decade having passed since the issue had been considered, the Committee found it important to clarify to Armenia that the letter in question constituted the reply that Azerbaijan had provided to the Committee, through the secretariat, further to paragraph 5 (a) of the Committee’s operating rules<sup>4</sup> with regard to submission EIA/IC/S/5 by Armenia on its having concerns about compliance by Azerbaijan with its obligations under the Convention with respect to six oil and gas projects developed in Azerbaijan. The Committee stressed that, contrary to the statement made by Armenia, its concerns, as an affected Party, submitted to the Committee through the secretariat on 31 August 2011, were considered fully receivable by the Committee and had been thoroughly considered by it during its deliberations on the submission in question. The Chair should assure Armenia that it had also duly scrutinized the letter from Azerbaijan of 29 November 2011 and refer Armenia to its report (ECE/MP.EIA/IC/2013/4, annex) containing findings and recommendations on the submission by Armenia with respect to Azerbaijan, in particular paragraphs 13 and 72–77 thereof.

10. The Chair should also point out that the Committee was aware of the absence of diplomatic relations between Armenia and Azerbaijan, and the challenging circumstances to which Armenia had alluded. At the same time, the Chair should recall:

(a) The Committee’s previous conclusion that the lack of diplomatic relations would not, as such, preclude contacts for the implementation of the Convention at the technical level;<sup>5</sup>

(b) The discussions held at a seminar on good practice on communication, cooperation and conflict resolution organized at the third meeting of the Working Group (Geneva, 11–15 November 2013) that pointed to a similar conclusion;<sup>6</sup>

(c) That the secretariat, with funding mainly from the European Union, had, since 2011, been extensively assisting both Armenia and Azerbaijan to align their legislation with the Convention and the Protocol and to build adequate national implementation capacities – in particular through environmental authorities and environmental impact assessment practitioners – but also to raise awareness of the treaties and their benefits among decision-makers, project developers and the public.

11. Lastly, the Chair should inform Armenia that the Committee, within the scope of its mandate and its resources, stood ready to continue to cooperate with both countries and the secretariat.

## **B. Azerbaijan (EIA/IC/CI/2)<sup>7</sup>**

12. The Committee followed up on decision VIII/4b on compliance by Azerbaijan with its obligations under the Convention in respect of its national legislation.

13. The Committee noted with regret that Azerbaijan had failed to provide its report on the implementation of decision VIII/4b.

14. The secretariat reported that, in the context of the implementation of the EU4Environment Programme, it had been informed that the draft secondary legislation on environmental impact assessment and strategic environmental assessment developed with the secretariat’s assistance in the course of 2020 had been undergoing the final stage of the intragovernmental consultation process. However, Azerbaijan had not communicated to the secretariat its schedule for the expected adoption of the amended legislation.

15. The Committee agreed to continue its follow-up to decision VIII/4b at its fifty-fourth session, with a view to evaluating the progress made by Azerbaijan in meeting the

<sup>4</sup> See ECE/MP.EIA/6, annex II, decision III/2, appendix.

<sup>5</sup> ECE/MP.EIA/IC/2013/4, para. 74.

<sup>6</sup> See ECE/MP.EIA/WG.2/2013/7, annex I.

<sup>7</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaicci2-azerbaijan>

requirements of decision VIII/4b in respect of its national legislation. To enable its deliberations on the matter at that session, it asked its Chair to write to Azerbaijan to:

- (a) Urge Azerbaijan to complete its legislative reform with a view to fully aligning its legislation with the provisions of the Convention and the Protocol;
- (b) Reiterate its request for an annual report for the implementation of decision VIII/4b, including, if available:
  - (i) The date of the adoption of the amended legislation;
  - (ii) The text of the adopted legislation and the relevant secondary legislation, along with the English translation thereof, within 30 days of said adoption.

### C. Belarus (EIA/IC/S/4)<sup>8</sup>

16. The Committee followed up on decision VIII/4c on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets. It appreciated the timely submission by Belarus and Lithuania of their annual reports on implementation of the requirements set out in paragraphs 17–19 of decision IS/1d,<sup>9</sup> noting little progress in the Parties' bilateral cooperation owing, among other factors, to COVID-19 pandemic-related restrictions. The Committee observed that, on 10 September 2021, the secretariat had shared the annual report of Belarus with Lithuania and the annual report of Lithuania with Belarus; further to the Committee's operating rule 16 (10), both reports had been made available on the Convention's website;<sup>10</sup> thus far, the Committee had not received any comments from the Parties concerned regarding each other's reports.

17. The Committee asked its Chair to write to both Parties concerned to:

- (a) Request them to accelerate their bilateral cooperation using, as needed, electronic means of communication, including videoconferencing, with a view to:
  - (i) Concluding their bilateral agreement to implement the Convention by September 2022;
  - (ii) Proceeding with carrying out a post-project analysis, involving reaching an agreement on establishing a joint bilateral body and procedures for such analysis, in particular for ensuring sufficient public participation in the framework of the post-project analysis;
  - (iii) Continuing bilateral expert consultations on issues of disagreement, including on matters that were beyond the scope of the Convention process regarding all three open issues;
- (b) Invite them to provide their 2021/22 annual reports by 15 August 2022, and to participate at its fifty-fourth session for informal consultations to discuss, based on the annual reports and possible additional questions to be prepared by the Committee, progress made by them in implementing decision VIII/4c of the Meeting of the Parties. With a view to enhancing the efficiency of informal consultations, the Committee asked the secretariat to place the expected 2021/22 annual reports on the Convention's website once received and to invite the Parties to provide comments and views to each other's reports by 2 September 2022.

18. In the letter to Belarus, the Chair should invite the Party to provide the Committee with a summary of the outcomes of the second review of the Belarusian nuclear power plant in Ostrovets by the European Nuclear Safety Regulators Group.

<sup>8</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaics4-belarus>.

<sup>9</sup> ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

<sup>10</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaics4-belarus>.

## D. Bystroe Canal Project (EIA/IC/S/1)<sup>11</sup>

19. The Committee continued its follow-up on decision VIII/4d on compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project). It examined information by Romania, dated 1 July 2021, noting that:

(a) On 1 April 2021, Ukraine had notified Romania about the project “Arrangement of the deep water navigable channel Danube River-Black Sea within the Ukrainian part of the delta” (referred to by Ukraine as the Bystroe Canal, phase II project) and had submitted to Romania, as “relevant information under the notification”, a copy of the Research Report on analysis of the impact on the environment of the Danube River Delta (Research Report).<sup>12</sup> According to Romania, the notification was almost identical to that made by Ukraine on 22 June 2020 regarding the new “Bystroe Route” project;

(b) On 24 June 2021, Romania had referred Ukraine to its reply to the notification regarding the new “Bystroe Route”, dated 4 August 2020, and the comments and suggestions provided then, including for the scoping of the environmental report to which Ukraine had not yet responded. By that same letter, Romania had also provided to Ukraine its detailed comments regarding the Research Report;

(c) As of 1 June 2021, Ukraine had not responded to the comments of Romania, dated 17 September 2020, concerning the monitoring programme of the environmental status of the Danube Delta.

20. The Committee also noted the information from the secretariat on its assistance – under the EU4Environment Programme – to the Parties concerned in preparing a draft bilateral agreement to implement the Convention; in particular, that the draft had been prepared by international experts with a view to it being discussed with each Party individually, as needed, in autumn 2021 and, subsequently, at a joint workshop scheduled to take place by the end of 2021.

21. Furthermore, the Committee noted with regret that Ukraine had again failed to provide its report on the implementation of decision VIII/4(d) as set out in paragraph 15 of decision VIII/4d.

22. The Committee asked its Chair to urge Ukraine to provide its annual report on the implementation of decision VIII/4d without delay and no later than 15 November 2021. In addition, Ukraine should be requested to provide a copy of its replies to the letters of Romania, dated 4 August and 17 September 2020 and 24 June 2021 referred to in paragraph 19 (b) and (c) above.

23. To enhance the efficiency of its follow-up on decision VIII/4d at its next session, the Committee decided to transmit to Ukraine, for its information and comments, the correspondence from Romania to the Committee referred to above and to invite both Parties to participate in its fifty-second (Geneva, 1–4 February 2022) session to take part in informal consultations on the progress made by Ukraine in implementing decision VIII/4d. The secretariat was requested to make the necessary arrangements and the curator was requested to prepare the questions to guide the Committee’s discussion with the Parties.

<sup>11</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaics1-ukraine>.

<sup>12</sup> Full title of the report “Analysis of the impact on the environment of the Danube River Delta which follows from the already implemented work related to the project ‘Danube-Black Sea Deep-Water Navigation Channel on the Ukrainian Section of the Delta’ (stage 1 and full development) with the development of compensatory measures and measures to mitigate the likely impact based on the materials of the integrated environmental monitoring 2004–2017 and the results of field monitoring at least in transboundary context”.

## **E. Rivne nuclear power plant (EIA/IC/CI/4)<sup>13</sup>**

24. The Committee continued following up on decision VIII/4e on compliance by Ukraine with its obligations under the Convention in respect of extension of the lifetime of the Rivne nuclear power plant in the absence of the Committee members nominated by Austria, Hungary and Slovakia.

25. The Committee noted with regret that Ukraine had failed to provide its annual report on the implementation of decision VIII/4e and to respond to additional questions of the Committee specified in its letter dated 14 July 2021.

26. The Committee further noted correspondence from Austria to Ukraine, dated 20 May 2021, by which Austria had:

(a) Transmitted to Ukraine an analysis of responses by Ukraine to its expert statement of January 2021 and asked Ukraine to take its comments into account as provided for by article 6 of the Convention;

(b) Reiterated its inquiries of 22 January and 12 March 2021 about the decision taken by the Ukraine in December 2020 concerning the activity;

(c) Requested Ukraine to clarify how the outcome of the transboundary consultations would be considered by Ukraine when extending the lifetime of the Rivne nuclear power plant;

(d) Asked Ukraine to provide it, further to article 6 (2) of the Convention, with the final decision on the activity, along with the reasons and considerations on which it was based.

27. The Committee asked its Chair to urge Ukraine to respond to its letter of 14 June 2021 and to provide the annual report on the implementation of decision VIII/4e without delay and no later than 15 November 2021. In addition, Ukraine should be requested to provide a copy of its reply to the letter of Austria referred to in paragraph 26 above and the English translation thereof. The Chair should also reiterate to Ukraine that, in order to fulfil its obligations under the Convention, it should take the final decision after completing public participation procedures under articles 3 (8) and 4 (2) and consultations under article 5 of the Convention with each Party concerned and ensure that due account was taken of the outcomes of those procedures and consultations.

28. Lastly, the Committee agreed to continue following up on decision VIII/4e at its next session. To enhance the efficiency of its proceedings, it decided to invite Ukraine and Austria to participate in the session to take part in informal consultations on the progress made by Ukraine in implementing decision VIII/4e and requested the secretariat to make the necessary arrangements.

## **III. Submissions<sup>14</sup>**

29. The discussions under the agenda item were not open to observers, in accordance with rule 17 (1) of the Committee's operating rules.

### **A. Serbia (EIA/IC/S/6)<sup>15</sup>**

30. The Committee continued its consideration of the submission by Bulgaria of 30 May 2019 concerning compliance by Serbia with its obligations under the Convention regarding the following activities located close to the border with Bulgaria:

<sup>13</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaicci4-ukraine>.

<sup>14</sup> See <https://unece.org/submissions-overview>.

<sup>15</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaics6-serbia>.

- (a) Construction of an experimental facility to test flotation technology for processing copper, lead and zinc ore in Karamanica;
- (b) Ore exploitation and mining at the Podvirovi and Popovica mines;
- (c) Extension of production of zinc, lead and other metals at the Grot mine.

31. The Committee requested its members to provide, by 1 December 2021, their written comments to the draft findings and recommendations, and requested the curator, with the secretariat's assistance, to revise the draft for it to consider at its fifty-second session. Subsequently, the draft findings and recommendations would be transmitted to Serbia and Bulgaria for their comments and representations by 5 April 2022 with a view to the Committee reviewing and finalizing them at its fifty-third session taking into account the comments received.

## **B. Bosnia and Herzegovina (EIA/IC/S/8/SEA/IC/S/1)<sup>16</sup>**

32. The Committee continued its consideration of the submission by Montenegro expressing its concerns about compliance by Bosnia and Herzegovina with its obligations under the Convention and the Protocol in respect of the construction of Buk Bijela hydropower plant on the Drina River, received by the secretariat on 11 December 2020.

33. The Committee noted an email from Montenegro, of 18 May 2021, stating that it had learned that works at the activity had commenced on that day and a clarification received from it on 10 September 2021 that the focus of its submission was Buk Bijela hydropower plant. It also noted information from Bosnia and Herzegovina, dated 23 September 2021, that a decision of the Ministry of Spatial Planning, Construction and Ecology concerning the construction of the activity had been pending further to the consideration of the matter by the Supreme Court. Subsequently, it requested the Committee to grant it an extension of the deadline to answer the Committee's requests, dated 8 September 2021. Furthermore, the Committee welcomed the information from both Parties that, in July 2021, they had initiated bilateral consultations on the matter and carried out two bilateral meetings to define further joint actions regarding the activity.

34. The Committee invited its Chair to write to both Parties, separately:

- (a) Requesting them to provide, by no later than 15 November 2021, the following:
  - (i) Accurate and clearly structured detailed information on the outcomes of their bilateral consultations;
  - (ii) Missing responses to the Committee's previous requests regarding the activity and the related environmental impact assessment procedure and replies to additional questions to be elaborated by the curator by 12 October 2021;
- (b) Informing them that, further to its assessment of the quality and completeness of the information to be received from both Parties, the Committee would agree, using its electronic decision-making procedure, on whether to invite the Parties to attend its next session to present to the Committee information and opinions on the submission as set out in paragraph 9 of its structure and functions.<sup>17</sup>

35. In the letter to Montenegro, the Chair should point out that the Committee:

- (a) Noted with regret that the reply of Montenegro to its letter, dated 9 June 2021, was incomplete and provided with two months' delay;

<sup>16</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaics8seaics1>.

<sup>17</sup> See [https://unece.org/DAM/env/eia/documents/ImplementationCommittee/2014\\_Structure\\_and\\_functions/Implementation\\_Committee\\_structure\\_functions\\_procedures\\_rules.e\\_2014.pdf](https://unece.org/DAM/env/eia/documents/ImplementationCommittee/2014_Structure_and_functions/Implementation_Committee_structure_functions_procedures_rules.e_2014.pdf).

(b) Expected the Parties making a submission to treat their submissions as a priority and, consequently, to respond to the Committee's requests in a timely and complete manner.

36. In the letter to Bosnia and Herzegovina, the Chair should emphasize that the Committee would make its evaluation of the submission irrespective of whether the physical works at the activity had already been commenced and that Bosnia and Herzegovina undertook the works at its own risk.

### **C. Albania (EIA/IC/S/7)<sup>18</sup>**

37. Owing to time limitations at the current session, the Committee deferred until its next session its consideration of the submission by Montenegro expressing concern about compliance of Albania with its obligation under the Convention with respect to the planned construction of several small hydropower plants on the Cijevna/Cem River, received by the secretariat on 25 September 2019.

## **IV. Committee initiative<sup>19</sup>**

38. The discussions under the agenda item were not open to observers, in accordance with rule 17 (1) of the Committee's operating rules.

### **A. Serbia (SEA/IC/CI/1)<sup>20</sup>**

39. In the absence of the Committee member nominated by Hungary, the Committee prepared its draft findings and recommendations under its initiative concerning compliance of Serbia regarding its obligations under the Protocol with respect to the Energy Sector Development Strategy of the Republic of Serbia for the Period up to 2025 with Projections up to 2030 and the Strategy's Implementation Programme for the Period 2017–2023. It requested its Chair to transmit the document to Serbia and the other Parties concerned for comments and representations by 5 January 2022 with a view to the Committee reviewing and finalizing it at its fifty-second session taking into account the comments received.

### **B. Ukraine (EIA/IC/CI/7)<sup>21</sup>**

40. The Committee continued the consideration of its initiative concerning construction of a large tourism complex (Svydovets mountains, Ukraine) close to the borders with Hungary and Romania in the absence of the Committee member nominated by Hungary during the Committee's closed sessions. The Committee examined information from: Hungary, dated 2 August and 1 October 2021; Romania, dated 29 June and 1 and 4 October 2021; and Ukraine, dated 24 September 2021.

41. The Committee welcomed the delegations of Hungary, Romania and Ukraine to the session for discussions, as set out in paragraph 9 of the Committee's structure and functions, and invited them to present information and opinions on the matter. It then posed questions to seek clarification on the countries' positions, further to their written replies. It noted the clarification of Ukraine that the activity constituted a mere project, with no activity going on at the current time, and welcomed the readiness of Ukraine – despite concluding the scoping stage of the environmental impact assessment procedure – to still consider information from Hungary and Romania on significant transboundary environmental impact. Noting the clarification of Hungary that it did not intend to participate in the scoping, the Committee

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<sup>18</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaics7-albania>.

<sup>19</sup> See <https://unece.org/environment-policy/environmental-assessment/committee-initiative-overview>.

<sup>20</sup> See <https://unece.org/seaicci1>.

<sup>21</sup> See <https://unece.org/environment-policy/environmental-assessment/eiaicci7>.



welcomed the willingness of Romania to provide to Ukraine more detailed information on the likely environmental impact of the activity on its territory.

42. The Committee welcomed the proposal of Ukraine to substantiate its position with further information on the proposed activity and the related environmental assessment procedures. It requested Ukraine to submit, by 1 November 2021, in particular, the following:

(a) The “scoping letter” with regard to the activity and any additional information on how the transboundary environmental impacts would be incorporated into the environmental impact assessment documentation;

(b) Detailed maps (with a resolution of 1:100,000 and 1:50,000) indicating the location and geographical characteristics of the site and distances to neighboring countries, taking into account the detailed territory plan of the Svydovets tourist and recreational complex approved by the Order No.135, of 15 May 2017, of the Head of Rakhiv District State Administration; information about the contents and the purpose of the plan;

(c) Information on whether and to what extent the developer had asked for deforestation or clear-cut licences with an area of more than 1 ha in the project area.

43. The Committee also requested Ukraine to ensure that the outcomes of relevant research, including that carried out by Ukraine with regard to migratory species, should be incorporated into the scope of the environmental impact assessment documentation to be prepared by the developer.

44. The Committee agreed to consider at its next session the draft findings and recommendations to be prepared by the curator with the assistance of the secretariat in advance of that session.

## V. Information gathering<sup>22</sup>

45. Discussions under the agenda item were not open to observers, in line with rule 17 (1) of the Committee’s operating rules.

### A. Convention Matters

#### 1. Belarus (ECE/IC/INFO/21)

46. The Committee considered its information gathering regarding the law of Belarus on State ecological expertise, strategic environmental assessment and environmental impact assessment. It noted information from Belarus, dated 31 August 2021, about the steps taken by it since 2019 to bring its legislation into compliance with the Convention and the Protocol, including the legislative review carried out with the assistance of the secretariat under the EU4Environment Programme.<sup>23</sup>

47. The Committee also noted the report by the secretariat that, further to the comments provided by Belarus at a project meeting on 14 September 2021,<sup>24</sup> the EU4Environment experts had finalized the review report and that the report would be made available on the Convention’s website in English by the end of October 2021. Note was taken of additional European Union approval requirements for EU4Environment funding allocations for technical assistance and capacity building activities in Belarus and of the fact that further legislative assistance under the EU4Environment Programme had not been requested by Belarus thus far.

48. The Committee agreed to examine the results of the legislative review with a view to establishing whether and, if so, how the deficiencies vis-à-vis the Convention identified by it in its preliminary assessment of the law had been taken into account in the review and to developing its further recommendations to Belarus.

<sup>22</sup> See <https://unece.org/environment-policy/environmental-assessment/information-other-sources>.

<sup>23</sup> ECE/MP.EIA/IC/2021/2, para. 44.

<sup>24</sup> See <https://unece.org/info/Environmental-Policy/Environmental-Impact-Assessment/events/360098>.

49. The Committee asked its Chair to, subsequently, write to Belarus:

(a) Requesting it to fully align its legislation with the Convention and the Protocol without delay, taking into account the results of the Committee's preliminary assessment and the recommendations to be developed by it further to its examination of the review report by 1 December 2021;

(b) Inviting it to inform the Committee, by 5 April 2022, of the steps taken by it to bring its environmental impact assessment legislation into compliance with the Convention and the Protocol, for the Committee's further deliberations on the matter at its fifty-third session.

## 2. Bosnia and Herzegovina (ECE/IC/INFO/24)

50. The Committee continued its consideration of the matter regarding the planned construction by Bosnia and Herzegovina of unit 7 of the thermal power plant in Tuzla. It examined information from Bosnia and Herzegovina, dated 22 July 2021, noting that, following the expiry of the old environmental permit for the activity, Bosnia and Herzegovina had initiated a new permitting procedure on 18 July. On 22 July 2021, in the framework of that procedure, it had notified Croatia, Serbia and Montenegro under the Convention. In the light of the above, the Committee concluded that there was no need for it to pursue further its information gathering regarding the matter.

51. With a view to facilitating future application of the Convention by Bosnia and Herzegovina regarding the activity, the Committee recommended that Bosnia and Herzegovina ensure proper implementation of all procedural steps under the Convention following official notification, notably:

(a) Preparing the environmental impact assessment documentation, including transboundary aspects, pursuant to article 4 of the Convention;

(b) Consulting with the public and authorities of the affected Parties based on the environmental impact assessment documentation, as set out in articles 3 (8), 4 (2) and 5 of the Convention;

(c) Ensuring that the final decision on the activity was made taking due account of the outcomes of the environmental impact assessment procedure pursuant to article 6.

52. The Committee asked the Chair to write to Bosnia and Herzegovina, Croatia and Serbia to inform them accordingly and to request agreement that the correspondence between the Committee, Bosnia and Herzegovina, Croatia and Serbia be placed on the Convention's website. It also asked the secretariat to write to Ecotim, the non-governmental organization (NGO) that had brought the matter to the attention of the Committee in April 2017, informing it about the outcome of the Committee's deliberations at the session.

## 3. Ukraine (EIA/IC/INFO/13)

53. The Committee continued its consideration of the information it had gathered concerning the planned activity related to mining at the Muzhiyevo goldmine (close to the border with Hungary) and its possible reopening by Ukraine. Further to its decision at its forty-ninth session (Geneva, 4–7 May 2021),<sup>25</sup> the Committee held informal consultations with Ukraine and Hungary with a view to obtaining missing information on the activity and the related environmental impact assessment procedure and assisting them, as needed, in the implementation of the Convention in respect of the activity. The member nominated by Hungary participated in the informal consultations as an observer and was absent during the Committee's deliberations in its closed session at which the Committee prepared and followed up on its discussion with the Parties concerned.

54. The Committee welcomed the detailed information from Ukraine regarding the activity, dated 21 September and 4 October 2021, and that provided during the above-mentioned consultations. It noted, among other things, that, in the view of Ukraine, the activity was not listed in appendix I and was not likely to have a significant adverse

<sup>25</sup> ECE/MP.EIA/IC/2021/4. 60.

environmental impact on the territory of Hungary and that Ukraine was open to a dialogue with Hungary and ready to invite it to visit the Muzhyevo deposit with a view to discussing operation conditions for the disposal of ore dumps. It also noted that Hungary had reported to the Committee at the session that it intended to present its written opinion on the likelihood of such impact further to its thorough examination of the 2019 environmental impact assessment documentation that Ukraine had shared with it only shortly before the informal consultations, notably on 20 September 2021. It would also consider the possibility of visiting the activity, although, in general, it preferred to carry out consultations on the likelihood of a significant adverse transboundary impact in writing.

55. The Committee asked its Chair to write Hungary, inviting it to:

(a) Transfer to Ukraine its views on and comments to the information provided to it in advance of and during the hearings, including the environmental impact assessment documentation, the answers of Ukraine to the Committee's non-exhaustive list of questions, dated 4 October 2021, and the invitation of Ukraine to take part in a site visit;

(b) Provide the Committee, in advance of the next session, and no later than 15 December 2021, with copies of its correspondence to Ukraine referred to above and any replies from Ukraine to be received.

## **B. Convention matters with regard to nuclear-related activities**

56. The Committee observed that, currently, many of the compliance issues before it were linked to nuclear energy-related activities, including, in particular, to the lifetime extension of nuclear power plants, involving a multitude of concerned Parties. Due to that fact, a majority of the Committee members would find that they had a direct or indirect conflict of interest with respect to several of the issues in question.

57. The Committee considered that, in order to fulfil its mandate, it should proceed with its consideration of the cases in an objective and unbiased manner, involving the maximum number of its members. It emphasized that some of the cases had been before it since 2014, and that, during the intersessional period 2017–2020, its conclusions on those cases had been further delayed pending the preparation of guidance on the applicability of the Convention to the lifetime extension of nuclear power plants, endorsed by the Meetings of the Parties to the Convention in December 2020.<sup>26</sup>

58. Consequently, with respect to situations of conflict of interest, the Committee decided to exceptionally and provisionally abstain from applying rule 5 of its operating rules, unless the Committee members in question chose, nevertheless, not to take part in the Committee's related deliberations. The Committee believed that such an approach provided for its most unbiased deliberations on the cases given the representation in its current composition of Parties that used nuclear power and Parties that did not. The Committee also decided to prepare proposals to the Meetings of the Parties for amending its modus operandi based on the experience it had gained.

### **1. Construction of nuclear power plants**

(a) *Ukraine, Khmelnytsky nuclear power plant (EIA/IC/INFO/10)*

59. The Committee continued its deliberations on the information it had gathered on the planned construction of units 3 and 4 at Khmelnytsky nuclear power plant in Ukraine. The Committee noted information from: Hungary, dated 2 August and 28 September 2021; Republic of Moldova, dated 6 August 2021; Slovakia, dated 27 August and 29 August 2021; and Ukraine, dated 6 August and 24 September 2021.

60. It recalled that, at its fiftieth session (Geneva, 4–7 May 2021), the Committee had decided to invite Hungary, the Republic of Moldova, Slovakia and Ukraine to participate, at the current session, in informal consultations regarding the activity,<sup>27</sup> with a view to

<sup>26</sup> See ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2, decision VIII/6.

<sup>27</sup> ECE/MP.EIA/IC/2021/4, para. 54.

clarifying the impediments the Parties had been facing in completing the transboundary consultations regarding the activity. It noted that, since May 2021, Ukraine had made considerable progress in addressing the concerns of the above-mentioned affected Parties and, by 22 September 2021, it had completed transboundary consultations with them. As a result, Hungary, the Republic of Moldova and Slovakia had decided not to participate in the informal consultations.

61. Consequently, the Committee held informal discussions with the delegation of Ukraine. It welcomed the steps taken by Ukraine to conclude the transboundary consultations with all affected Parties and noted the information by the delegation of Ukraine that, on 1 October 2021, the Ministry of Environmental Protection and Natural Resources of Ukraine had made a decision on the environmental impact assessment procedure, setting environmental parameters for the construction of units 3 and 4 of Khmelnytsky nuclear power plant. According to Ukraine, in doing so, the Ministry had taken into account the outcome of the transboundary procedure. In addition, the delegation of Ukraine informed the Committee that the parliament of Ukraine was expected to adopt a law authorizing the construction of the activity that would constitute the final decision in the meaning of the Convention.

62. To assist Ukraine in completing the transboundary procedure in full compliance with the Convention, the Committee provided clarifications regarding the requirements for the final decision under article 6 (1) of the Convention, in addition pointing to its previous opinions that: “While the Parties are free to decide which of the multitude of decisions required within their regulatory framework should be considered final for the purpose of the Convention, their discretion in this respect is limited to those decisions that in real terms set the environmental conditions for implementing the activity.”;<sup>28</sup> and “If the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the ‘final decision’ in the meaning of the Convention.”<sup>29</sup>

63. It also emphasized that, according to article 6 (2), Ukraine should provide to the affected Party the final decision on the proposed activity, along with the reasons and considerations on which it was based.

64. In addition, responding to the question of Ukraine regarding the translation of the final decision, the Committee clarified, based on its previous opinion, that: “The concerned Parties should agree ... on ... whether the final decision will be translated and, if so, whether the whole final decision will be translated or only specific parts.”<sup>30</sup>

65. The Committee asked its Chair to write to Ukraine offering the Committee’s further assistance in the implementation of article 6, as needed, and requesting Ukraine to:

- (a) Adopt the final decision in compliance with article 6 (1) and to provide information to the affected Parties in compliance with article 6 (2) once the final decision had been adopted;
- (b) Inform all affected Parties, without delay, about:
  - (i) The adoption of the decision on the environmental impact assessment procedure;
  - (ii) The remaining steps to be taken by Ukraine and its tentative timetable to complete the transboundary procedure, including with regard to the final decision; in that context, Ukraine should invite the affected Parties to indicate to it whether the final decision needed to be translated and, if so, whether the whole final decision needed to be translated or only specific parts;
  - (iii) How the requirements of article 6 would be fulfilled in the final decision;
  - (iv) Commencing the activity further to the adoption of the final decision;

<sup>28</sup> ECE/MP.EIA/10, decision IV/2, annex I, para. 61.

<sup>29</sup> ECE/MP.EIA/15, decision V/4, para. 6 (i), compare with ECE/MP.EIA/IC/2009/2, para. 21.

<sup>30</sup> ECE/MP.EIA/2011/4, para. 51 (b).

(c) Provide to the Committee, in advance of its next session, but no later than 5 January 2022, the following information and clarifications:

(i) Information shared by Ukraine during the informal consultations, including that the law was the final decision for the activity in the meaning of the Convention and a confirmation that it would also set the environmental conditions for implementing the activity;

(ii) Steps taken by Ukraine to fulfil the Committee's recommendations listed in paragraphs 65 (a) and (b) above and the copies of the related correspondence with all potentially affected Parties;

(iii) The status of the final decision and the implementation of the requirements of article 6 (1) and (2) of the Convention.

## 2. Lifetime extension of nuclear power plants

### (a) *Bulgaria (EIA/IC/INFO/28)*

66. The Committee continued its consideration of the information it had gathered further to the information from the Romanian NGO Actiunea pentru Renasterea Craiovei regarding the lifetime extension of units 5 and 6 of Kozloduy nuclear power plant in Bulgaria, 3 km from the border with Romania. The Committee welcomed information from Bulgaria, dated 9 September 2021, noting with regret that some of its requests still remained unanswered.

67. To enable its consideration of the matter at its next session, the Committee asked its Chair to write to Bulgaria and the NGO requesting them to provide, by 20 December 2021, more detailed information about the activity further to specific questions to be developed by the co-curators by 22 October 2021. In the letter to Bulgaria, the Chair should clarify that, according to its mandate and current practice, the Committee evaluated compliance of Parties with their obligations under the Convention even in situations where a decision on the activity in question had already been taken by the Parties concerned.

68. The Committee then examined information from Serbia, dated 23 September 2021, noting that, on that date, Serbia, considering itself potentially affected by the lifetime extension of units 5 and 6 of Kozhloduy nuclear power plant, had requested Bulgaria to provide a notification regarding the activity. The Committee asked its Chair to write to Serbia:

(a) Noting that the request for a notification from Serbia had been made with a significant delay, notably more than one-and-a-half years after the initial request for information about the matter from the Committee to Serbia;

(b) Providing, further to its previous opinions, additional clarifications for Serbia on the application of article 3 (7) of the Convention, notably that, in the absence of a notification, a Party that considered that it would be affected by a significant adverse transboundary impact of a proposed activity listed in appendix I might take advantage of the rights afforded by the Convention by making use of the procedure stipulated in article 3 (7).<sup>31</sup> However, the potentially affected Party should contact the Party of origin as early as possible, or as soon as it became aware of a proposed activity that it considered to have a likely significant adverse transboundary impact.<sup>32</sup>

### (b) *Belgium (EIA/IC/INFO/18)*

69. Further to its fiftieth session, the Committee continued to consider the information it had gathered regarding the lifetime extensions of units 1 and 2 of Doel nuclear power plant and unit 1 of Tihange nuclear power plant by Belgium through the laws of 18 of December 2013 and 18 June 2015, respectively. The Committee examined information from Belgium, dated 26 July 2021.

<sup>31</sup> ECE/MP.EIA/2019/14, para. 85.

<sup>32</sup> ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2, decision VIII/4, para. 12 (a) (i).

Units 1 and 2 of Doel nuclear power plant

70. It noted that, further to the decision of the Constitutional Court of Belgium, of 5 March 2020, Belgium, on 31 August 2020, had contacted all potentially affected Parties inviting them to confirm, by 30 September 2020, their interest in taking part in transboundary consultations. Further to positive responses from Austria, Ireland, Germany, Luxembourg, the Netherlands, Poland and Sweden, Belgium had initiated a transboundary procedure with those Parties and, on 2 April 2021, had provided them with the environmental impact assessment documentation.

71. In the light of the above, the Committee considered that there was no need for it to continue its consideration of the matter. The Committee asked its Chair to write to Belgium, Germany, the other affected Parties listed above and the German Federal States of North Rhine-Westphalia and Rhineland-Palatinate to inform them accordingly. The Chair should also request Belgium, Germany and the German Federal States of North Rhine-Westphalia and Rhineland-Palatinate for an agreement that the correspondence between them and the Committee be placed on the Convention's website.

Unit 1 of Tihange nuclear power plant

72. The Committee further noted that Belgium had taken no steps to initiate a transboundary procedure under the Convention regarding the modernization works at unit 1 of Tihange nuclear power plant. With reference to its 2015 screening procedure and the environmental impact assessment documentation prepared by it in the context of the transboundary procedure for units 1 and 2 of Doel nuclear power plant, Belgium maintained that those works, in its view, would cause no significant adverse transboundary impact.

73. To enable its deliberations at its next session, the Committee asked its Chair to write to Belgium, requesting it to provide, by 20 December 2021:

(a) Information regarding the activity based on the checklist prepared by the Committee in the light of the Guidance on the applicability of the Convention to the lifetime extension of nuclear power plants (ECE/MP.EIA/2020/9) (the Guidance) with a view to gathering information on and evaluating the compliance matter;

(b) A copy of the individual decisions providing conditions for the modernization and further operation of unit 1 of Tihange nuclear power plant, including those challenged by the German Federal States Rhineland-Palatinate and North Rhine-Westphalia before the Council of State, and the English translation thereof;

(c) A detailed description of the content of the investment plan contained in the agreement between Belgium and Electrabel AG concerning the extension of the period of industrial production of electricity by unit 1 of Tihange nuclear power plant.

74. The Chair should also inform Belgium that, in line with its established practice and in the absence of any objections based on reasonable grounds from Belgium within two weeks of receiving the electronic version of the Chair's letter, the Committee would share the information from Belgium, dated 26 July 2021, with the German Federal States of North Rhine-Westphalia and Rhineland-Palatinate, inviting them to provide their comments and views on the information from Belgium by 20 December 2021.

*(c) Czechia (EIA/IC/INFO/19)*

75. The Committee continued its consideration of the information it had gathered concerning the lifetime extension of four units at Dukovany nuclear power plant. The Committee noted with appreciation information from Czechia, dated 30 July 2021, including the checklist, translated licenses for the lifetime extension of units 1–4 and information about the changes in the legislative framework. It also noted that a significant amount of information, in particular related to communication with the neighbouring countries regarding the long-term operation of the nuclear power plant, had been provided in the Czech language only.

76. The Committee considered that, for its further consideration of the matter at its next session, it needed additional information and clarifications from Czechia and the four NGOs

that had brought the matter to the Committee's attention in 2016.<sup>33</sup> It asked its Chair to write to Czechia inviting it to provide, by 20 December 2021, the following information and clarifications:

(a) Whether Czechia had carried out a screening procedure with the purpose of establishing whether an environmental impact assessment was needed and, if so, how that procedure had been carried out (including information on timing and the authorities involved), what factors had been taken into account during that procedure, how the outcomes of that procedure had been taken into account in the decision-making on the activity, as well as how the public of Czechia had been informed and involved in the decision-making process of the lifetime extension process of units 1–4);

(b) Whether Czechia had evaluated an overall increase in total production of radioactive waste and spent fuel associated with the lifetime extension of the activity and, if so, how that had been done and how the outcomes had been taken into account in the decision-making on the activity;

(c) Whether Czechia considered that decision VIII/6 and the opinions reflected in paragraphs 59 and 60 of the Guidance should be reflected in its environmental licensing system related to lifetime extension of nuclear units, in particular in the light of the following factors and issues referred to in the Guidance:

(i) The importance of a wide notification in order to reach a mutual understanding between the Parties (paras. 76 and 79 of the Guidance);

(ii) The nuclear power plant had been planned and constructed before the Convention had entered into force (para. 78 of the Guidance);

(iii) The risk perception (including changes thereto) of the potentially affected Party (para. 78 of the Guidance);

(d) Whether, in its view, paragraph 69 of decision VI/2 (ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1) regarding the need for a legislative framework for the lifetime extension of the nuclear power plant referred in that decision was applicable to the lifetime extensions of units 1–4 of Dukovany nuclear power plant. The Chair should invite Czechia to provide a justification of its position on the issue, taking into account that, according to article 2 (2) and (3) of the Convention, Parties were obliged to take the necessary legislative, administrative or other measures to ensure that a transboundary environmental impact assessment procedure in accordance with the Convention was undertaken prior to any major change of the activity listed in appendix I to the Convention that was likely to cause a significant adverse transboundary impact, prior to a decision to authorize or undertake that activity.

77 The Committee also asked its Chair to write to the four NGOs requesting them to provide, by 20 December 2021, more detailed information about the activity further to specific questions to be developed by the curator by 22 October 2021.

(d) *France (EIA/IC/INFO/32)*

78. The Committee continued its consideration of the information from Greenpeace France received on 9 March 2020 and supplemented on 5 May 2020 regarding the planned lifetime extension by France of 32 units of eight nuclear power plants.<sup>34</sup> It recalled that, despite its initial decision at its fiftieth session to request France to provide information based on its checklists for all 32 units of the eight nuclear power plants,<sup>35</sup> it had, in the interests of efficiency of proceedings, requested France to provide it only with information regarding units 1 and 2 of Tricastin nuclear power plant and units 2 and 4 of Bugey nuclear power plant, as well as to answer some additional questions. The Committee also recalled that, further to the request of France of 8 July 2021 and taking into account the extensive research and expertise required and the summer break period, it had exceptionally granted France an

<sup>33</sup> Oeokobureau, Global 2000, Jihočeské matky and Calla.

<sup>34</sup> For more information about the number of units see ECE/MP.EIA/2020/4–ECE/MP.EIA/SEA/2020/4, table 4.

<sup>35</sup> ECE/MP.EIA/IC/2021/4, para. 79.

extension of the deadline and invited it to provide the information in two stages: information about units 1 and 2 of Tricastin nuclear power plant by 10 September 2021; and information about units 2 and 4 of Bugey nuclear power plant and additional information by 15 October 2021.<sup>36</sup>

79. To enable its further deliberations at its next session, the Committee asked its Chair to write to France expressing its appreciation for the information regarding the lifetime extension of the units at Tricastin and Bugey nuclear power plants, received from France on 16 September 2021, and inviting it to provide, by 15 October 2021, the remaining information requested by the Committee in the letters dated 18 June and 22 July 2021. In its letter to France, the Chair should emphasize that, in its view, when a Party decided to apply a multistage procedure for a long-term operation of a nuclear power plant, providing first for a generic phase covering multiple nuclear power plants/units with common technical characteristics and then for a subsequent specific phase focusing on each individual plant/unit, it must ensure that its screening decision was made at a stage covering all impacts, including those resulting from operational states, as well as those resulting from accidents. A similar approach should apply to the scoping of the environmental impact assessment documentation.

80. The Committee then also asked its Chair to write to Greenpeace France requesting it to provide, by 20 December 2021, more detailed information about the activity further to specific questions to be developed by the co-curators by 22 October 2021.

*(e) Netherlands (EIA/IC/INFO/15)*

81. The Committee also continued to consider the information it had gathered regarding the lifetime extension of Borssele nuclear power plant in the Netherlands. It noted with regret that the Netherlands, despite numerous reminders from the secretariat, had not responded to the Committee's letter, dated 15 June 2021, owing to a change of focal point. The Committee asked its Chair to write to the Netherlands to reiterate the Committee's requests for information, including information regarding the activity based on the checklists prepared by the Committee in the light of the criteria proposed by the Guidance with a view to gathering, structuring and evaluating information on all matters under its consideration related to the lifetime extension of nuclear power plants. In the letter, the Chair should emphasize that Parties had a responsibility to inform the secretariat regarding a change of their focal points without delay. It was crucial that the list of focal points be kept up-to-date to allow the Parties to regularly contact each other on matters related to the implementation of the Convention and the Protocol and to allow the Committee to communicate with the Parties concerned on the compliance matters under its consideration.

*(f) Spain (EIA/IC/INFO/34)*

82. The Committee continued to consider information it had gathered further to information received on 30 July 2020 from the Portuguese political party, Pessoas–Animais–Natureza, expressing concerns about the non-application of the Convention by Spain to the planned lifetime extensions of two units of Almaraz nuclear power plant. It noted with appreciation the response of Spain, received on 7 September 2021, to its letter of 21 June 2021, and noted with regret that Portugal had not responded to its letter of 21 June 2021.

83. To enable its further deliberations at its next session, the Committee asked its Chair to write to the political party requesting it to provide, by 20 December 2021, more detailed information about the activity further to specific questions to be developed by the curator by 22 October 2021.

*(g) Ukraine (EIA/IC/INFO/20)*

84. The Committee continued its deliberations on the lifetime extension of 12 power units located at the Rivne, South Ukrainian, Zaporizhzhya and Khmelnytsky nuclear power plants

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<sup>36</sup> Committee's letter to France, dated 22 July 2021.



in Ukraine. It noted with regret that Ukraine had not responded to its requests regarding the activities of 14 June 2021, despite numerous reminders from the secretariat.

85. Further to its analysis of the information from Austria, dated 10 August 2021, from Belarus, dated 12 August 2021, from Germany, dated 13 August 2021, from Poland, dated 14 August 2021, from the Republic of Moldova, dated 6 August 2021, from Romania, dated 29 June 2021, and from Slovakia, dated 13 August 2021, the Committee noted that the transboundary consultations regarding the South Ukrainian and Zaporizhzhya nuclear power plants with the potentially affected Parties were still ongoing. However, according to Austria and Slovakia, Ukraine had already extended the operating licence of unit 5 of Zaporizhzhya nuclear power plant for another 10 years.

86. The Committee asked its Chair to write to Ukraine to:

(a) Draw to the attention of Ukraine the fact that a situation where a final decision regarding the activity was made while transboundary consultations with and public participation in the affected Parties were ongoing constituted non-compliance with the Convention;

(b) Request Ukraine to ensure that the transboundary procedure concerning the lifetime extension of the South Ukrainian and Zaporizhzhya nuclear power plants was completed with all the affected Parties in full compliance with the Convention;

(c) Urge it to reply to the Committee's requests, dated 14 June 2021, regarding all activities without delay and no later than 15 November 2021.

87. It agreed to continue its consideration of the matter at its next session.

## C. Protocol matters

### Poland (SEA/IC/INFO/4)

88. The Committee continued its consideration of the information gathered further to that provided on 11 February 2020 by a German parliamentarian expressing concerns about the application of article 10 of the Protocol by Poland regarding the draft Energy Policy of Poland until 2040. To avoid any direct or indirect conflict of interest, the Committee members nominated by Germany and Finland were absent during the Committee's consideration of the matter.

89. The Committee examined the information from Germany, dated 14 July 2021, and information from Poland, dated 3 September 2021. It noted that Germany had not been notified regarding the Energy Policy, although, in its view, the adverse transboundary impact on the territory of Germany could not be excluded. Further to the correspondence from the Committee, dated 28 October 2021, Germany, on 20 January 2021, had informed Poland that it had been considering whether to participate in the transboundary procedure or not. On 17 March 2021, Germany had officially expressed its willingness to participate in the procedure with a view to ensuring that its public and the relevant authorities had an opportunity to submit their comments with regard to the Policy and the related strategic environmental assessment. By that time, notably on 2 February 2021, Poland had already adopted the Energy Policy. Nevertheless, with a view to maintaining good bilateral relations with Germany, Poland, in August 2021, had proposed that it meet with Germany in the framework of a "Mutual forum exchange of information on the ways of the energy transformation" with a view to, among other things, addressing the thematic issues of the Energy Policy raised by Germany. It also stressed that, as of early September 2021, it had been awaiting an answer from Germany.

90. The Committee asked its Chair to transmit to Germany all information received from Poland regarding the Energy Strategy, inviting Germany to provide, by 1 December 2021, its comments and views on the position of Poland, including, in particular, on the information provided by Poland in the letter, dated 3 September 2021. In addition, the Chair should invite Germany to clarify its statements in the letter, dated 14 July 2021, notably to indicate whether that information should be considered as an official submission regarding the non-compliance of Poland with its obligations under the Protocol or whether Germany intended

to inform the Committee that it would continue the bilateral discussions with Poland on the matter directly, requiring no assistance from the Committee in that regard.

## VI. Review of implementation

### A. Templates for the European Union to report under the Convention and the Protocol<sup>37</sup>

91. Following its deliberations at its fiftieth session,<sup>38</sup> the Committee continued the preparation of the reporting templates for the European Union under the Protocol and the Convention as mandated by decisions IV/5<sup>39</sup> and VIII/5,<sup>40</sup> respectively. It particularly focused on ensuring that the nature and competencies of the European Union, as a regional economic organization, were properly reflected in the templates and that the templates did not request the European Union to repeat information provided by Parties to the treaties that were also European Union member States.

92. Further to its informal meeting (online, 7 September 2021), the Committee examined the comments of the European Union to the draft reporting templates under the Convention and the Protocol provided by it on 16 July 2021 and took note of the outcome of the informal discussions between several Committee members and several representatives of the European Commission organized on 8 July 2021 further to the Bureau's recommendation.

93. The Committee noted the suggestions of the European Union, represented by the European Commission, to limit the reporting templates to the information that it had been providing to date in its notes under the review of implementation process, notably brief updates on recent changes to European Union legislation and recently developed studies and guidelines on environmental impact assessment and strategic environmental assessment. It pointed out that the previous approach by the European Union to sharing brief information contained in its notes did not qualify as reporting and more substantive information on the measures taken by it to implement the Convention and the Protocol at the European Union level was needed to keep the treaties' implementation under review further to article 11 (2) of the Convention and article 14 (4) of the Protocol, in particular concerning existing policies and approaches to environmental impact assessment and strategic environmental assessment to further improve the procedures under the treaties and with a view to exchanging information (see arts. 11 (2) (a)–(b) of the Convention and 14 (4) (a)–(b) of the Protocol). For that purpose, the Committee considered that reporting on the legislative, regulatory and other appropriate measures adopted by the European Union, including case law, was particularly relevant.

94. The Committee finalized the reporting templates taking into account substantive textual comments provided by the European Union and retaining part one of the templates related to legislative, regulatory and other appropriate measures – with minor changes – as a pivotal part of the reporting. Subsequently, the Committee asked the secretariat to forward the reporting templates as informal documents (ECE/MP.EIA/WG.2/2021/INF.5 and ECE/MP.EIA/WG.2/2021/INF.6) to the Working Group.

<sup>37</sup> The template for the European Union to report under the Convention is a separate item on the Committee's agenda and is prepared as mandated by decision VIII/5, para. 6 (ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2). It is exceptionally presented in this report jointly with the reporting template under the Protocol – an item related to the specific issue of compliance by the European Union with the Protocol identified in the first review of implementation of the Protocol (SEA/IC/SCI/1/4).

<sup>38</sup> ECE/MP.EIA/IC/2021/4, paras. 100–103.

<sup>39</sup> ECE/MP.EIA/30/Add.3–ECE/MP.EIA/SEA/13/Add.3, decision IV/5, para. 6.

<sup>40</sup> ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2, decision VIII/5, para. 6.

## **B. Examination of general and specific compliance issues from the sixth review of implementation of the Convention and from the second and third reviews of implementation of the Protocol**

95. Owing to time limitations, the Committee agreed to defer its examination of general and specific compliance issues from the sixth review of implementation of the Convention and from the second and third reviews of implementation of the Protocol.

## **VII. Work methods and rules of procedure**

96. Owing to time limitations, the Committee agreed to consider at its next session the draft submission form prepared by the curator with the secretariat's assistance further to its decision at its fiftieth session<sup>41</sup> and to agree on the schedule for drafting revision proposals to its structure and functions and its operating rules for the Meetings of the Parties to consider at their sessions in December 2023.

## **VIII. Presentation of the main decisions taken and closing of the session**

97. The Committee confirmed that it would next meet from 1 to 4 February 2022, in Geneva. It also agreed that it would hold its fifty-third session from 10 to 13 May 2022 (online), and its fifty-fourth session from 4 to 7 October 2022 (online). Subsequently, the Chair invited its members to take appropriate steps to ensure their participation at its fifty-second session in person.

98. The Chair then formally closed the fifty-first session. The Committee adopted the draft report of its session, prepared with the support of the secretariat, using its electronic decision-making procedure, on 13 October 2021.

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<sup>41</sup> ECE/MP.EIA/IC/2021/4, para. 104.